



Northumberland County Council

TYNEDALE LOCAL AREA COUNCIL
14 June 2022

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

ALLEGED RESTRICTED BYWAY No 26 PARISH OF WEST ALLEN

Report of the Executive Director of Local Services
Cabinet Member: Councillor Jeff Watson, Healthy Lives

Purpose of report

In this report, the Tynedale Local Area Council is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of restricted byway rights over the route of existing Public Footpath No 26, from the Cumbria County boundary at Blacklaw Cross, in a general northerly direction, to existing Byway Open to All Traffic No 37, at Keirsleywell Bank.

Recommendation

It is recommended that the Local Area Council agrees that:

- (i) there is still insufficient evidence to indicate, on a balance of probabilities, that public vehicular rights have been shown to exist over the route A-B;**
- (ii) there is, however, sufficient evidence to indicate, on a balance of probabilities, that public bridleway rights have been shown to exist over the route A-B;**
- (iii) the route be included in a future Definitive Map Modification Order as a public bridleway.**

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 upgrading an existing public right of way on the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(c)(ii) 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 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 This route has been the subject of two previous applications. In February 1998, Alan Kind made an application to upgrade existing Footpath No 26 to Byway Open to All Traffic status. This application was refused (insufficient evidence for public vehicular or public bridleway rights) by the County Council's Rights of Way Committee in January 2001. The applicant appealed this decision to the Secretary of State, and the Secretary of State allowed the appeal, directing the County Council to include the route in a future Definitive Map Modification Order (DMMO). DMMO (No 10) 2003, identifying the route as a byway open to all traffic, was made on 12 May 2003. The Order attracted 7 sustained objections, and was referred to the Secretary of State for determination. Following a public local inquiry on 6 & 7 April 2004, the Inspector concluded (decision letter dated 10 September 2004) that there was insufficient evidence to demonstrate the existence of carriageway rights.
- 1.4 On 22 November 2016, Mr Kind made a fresh application, supported by some extra documentary evidence, seeking to upgrade Footpath No 26 to restricted byway status. This application was refused (insufficient evidence for public vehicular rights) by the County Council's Rights of Way Committee in November 2017. Again, the applicant appealed this decision to the Secretary of State, though this time the Secretary of State rejected the appeal. The Inspector concluded (decision letter dated 19 December 2018) that there was insufficient evidence to demonstrate the existence of restricted byway rights.
- 1.5 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2.0 PUBLIC EVIDENCE

- 2.1 In October 2019, Alan Kind of Newcastle upon Tyne made a formal application seeking to modify the Definitive Map of Public Rights of Way by upgrading, to restricted byway status, existing Public Footpath No 26, from the northern end of existing U3111 road in Cumbria, at the County boundary at Blacklaw Cross, in a general northerly direction over the route of existing Public Footpath No 26, to existing Byway Open to All Traffic No 37, at Keirsleywell Bank, west of Fairplay.
- 2.2 The application is supported by the following evidence: The Hexham and Allendale Inclosure Act 1792, The Alston Moor Inclosure Act 1803, Extracts from the Hexham and Allendale Inclosure Award 1799, Extracts from the Alston Moor Inclosure Award 1820, a Paper on widths and photographs of Blakelaws Road, a Report on the State and Condition of the Roads and Mines on the Estates of the Greenwich Hospital in the Counties of Cumberland, Durham, and Northumberland by Edward Lockyer (1823), Greenwood's Map

of Northumberland 1827, Hodkinson & Donald's Map of Cumberland 1770, Greenwood's Map of Cumberland 1823/4, OS 27/3789 extract from the National Archives, 2nd Edition 25" OS map extract, OS Book of Reference page to accompany the 1st Edition 25" OS map, an extract from Richard Oliver in Ordnance Survey Maps: a concise guide for historians (2005), a satellite image of the application route, and case law, as cited in the accompanying Statement of Grounds.

- 2.3 Mr Kind supplied the following background and an analysis of the evidence to accompany his application:

"Earlier Orders Concerning This Route

This route has been the subject of two previous applications which were each rejected by the surveying authority, and later rejected by the Secretary of State on appeal under Schedule 14.

Reopening the Issue of Status

1. It is established law that the process of applying for, and (separately) making, an order to modify the definitive map, is not barred to further orders after an initial order has been made. (Express statutory provision apart, such as regarding restricted byways in CRoWA 2000). What matters is the 'discovery' of evidence, and that discovered evidence must then be considered with all other available evidence, whether 'new', or not. In the Wildlife and Countryside Act 1981, S.53(3)

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

(i) 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;

2. In *R v. Secretary of State for the Environment, ex p. Riley* [1989] CO/153/88, the ability to 'reopen' the question of the status of a way previous subject to a definitive map reclassification order was considered. Held: that there is no *res judicata* in this statutory provision, and MacPherson J provided an oft-quoted reference to a 'better greybeard's evidence being added to a (earlier) "not very convincing greybeard's evidence," and the whole being weighed together (at D-E on page 10 of the judgement).

3. *Stubbing Court v Secretary of State for EFRA* [2012] (consent order) is a case concerning an order to delete a public right of way from the definitive map and statement. The Secretary of State consented to judgement on the point that there is no 'gatekeeper test' for the discovered evidence (the 'new evidence'). Once there is new evidence then the test of sufficiency (cogency, positivity, etc.) is applied to all the evidence together. It is wrong to apply any different test to any part of the evidence: the relevant test must be applied to all the evidence.

4. In this application there is the evidence previously considered, plus 'new evidence', which is also evidence that speaks to the historical public status of the road. It does not matter if this 'new evidence' alone

is not sufficient to establish the claimed status. What matters is whether this 'new evidence', plus all other evidence, weighed together, is sufficient to prove.

5. The correct approach is to establish that there is discovery of evidence and, if there is, discount that the route has been subject to an earlier application, or order. Consider this application as a fresh, stand-alone issue.

6. To facilitate this approach the discovered evidence (the 'new evidence') is identified below, and then all the evidence is set out in this submission.

Overview

7. The application route – The Carriers' Way – is highlighted in blue. It is 'bookended' by two lengths of inclosure award public carriage road (in green). The road highlighted yellow is the pre-1823 turnpike road. The A686, A689 & B6294 are part of JL McAdam's 1823 turnpikes.

8. The essential proposition is this: There is no direct evidence as to the highway status of the application route, but the continuation at each end is an awarded public carriage road. There is no place of public resort over which the application route runs. The totality of the indirect evidence points clearly to the whole through route being the same public traffic status throughout.

The 'New Evidence'

9. Three items of evidence, not previously considered, have been found and are put in as part of this application. These are:

9.1 John McAdam's plan of his proposed turnpike roads, 1823.

9.2 C & J Greenwood's Map of Cumberland, 1823/4. Copy located online at the Cumbria Record Office, with a higher-resolution version later found on the 'Guides to the Lakes' website.

9.3 Extracts relating to Gateley Road in the Hexhamshire and Allendale Inclosure Award.

10. This document is set out firstly as regards the evidence in Northumberland, and secondly as regards the evidence in Cumbria (Cumberland, as was). Each county section is in chronological sequence.

Northumberland Historical Evidence

11. The Hexham and Allendale Inclosure Act 1792

11.1 An Act for dividing and inclosing certain parts of the commons, moors, or tracts of waste land, called Hexhamshire, and Allendale Common, and also certain town fields within the regality or manor of Hexham, in the county of Northumberland, and for stinting the depasturing of other parts of the said commons, moors, or waste land.

11.2 This Act provides for two distinct processes. The first is "dividing and inclosing certain parts of" and the second is "stinting the depasturing [grazing] of other parts..."

11.3 Thus the process of allotment of stints is not "dividing and inclosing". It is a separate and different process.

11.4 S.17 provides (marginal title) "Commissioners to set out the best part of the commons or wastes to be divided and inclosed".

11.5 S.17, (marginal title) "Roads", "... the said commissioners ... shall and they are hereby authorised and required, in the first place, to set out and appoint such publick carriage roads in, over, and upon the lands and grounds intended to be divided and allotted as they shall think necessary and proper, all of which publick road shall be and remain of the breadth of sixty feet at the least.

11.6 S.17, "Roads" on page 3254, "... none of the inhabitants of the said parishes of Hexham and Allendale (other than the owners and proprietors of the said lands and grounds to be divided and allotted) shall be charged and chargeable (over and above the statute duty) towards the forming and putting the said roads into repair, until the same shall be completely formed and made good."

11.7 S.18 "Commissioners to determine to what township roads belong" empowers the commissioners to allocate roads to townships, even where these are "ancient ones".

11.8 S.18 continues (page 3256) to provide that once the commissioners have set out public highways over the lands to be "divided and allotted", it shall be unlawful to use other roads, and such other roads shall be deemed part of the lands to be divided and allotted.

11.9 S19 provides that the commissioners shall have the power to "assign and set out such common, publick, and private horse and other roads, ways, passages, bridges, stiles ... in, over, and through the said lands and grounds to be divided as they shall think proper, useful and convenient ..."

11.10 S36 "The residue of the commons, etc, to be held as stinted pastures" "... after the fifteen thousand acres of the said commons, moors, or tracts of waste land shall have been set out and allotted in manner herein-before directed, the residue and remainder of the said commons, moors, or tracts of waste land shall be held and enjoyed as stinted pastures ..."

11.11 Thus, this Act empowers the commissioners to alter existing public and private roads, keep existing roads, and make new roads, in the lands to be afterwards divided, inclosed and allotted. There is no power to the commissioners to do anything with, or to, the public and private roads in the residue of the lands directed to be "held and enjoyed as stinted pastures".

12. The Hexham and Allendale Inclosure Award 1799 (QRA31/1)

12.1 The inclosure award has 'private roads' set out by the commissioners. One such is shown and named on the inclosure plan as 'Gaterly Road, and is set out thus, "One other private carriage road sixty feet in breadth, beginning at Houstie Carrs Road, opposite the end of Coldcoats road, and then leading eastward to the stinted pasture, for the use of the owners and occupiers, for the time being, of lands and allotments in the township of Catton Grieveship."

12.2 So it was perfectly within powers for the inclosure commissioners to set out private roads to the stinted pasture.

12.3 It has previously been suggested that there is some significant distinction between the award stating that some public carriage roads run "to the stinted pasture" and some "into the stinted pasture". There seems to be no obvious explanation for this linguistic distinction. Consider two roads adjacent to Alston Road as examples – Keirsleywell Road, and Appletreeshield Road – both of these are set out as running "to the stinted pasture", yet on a simple view of the inclosure plan and Ordnance Survey map, both must also have run through / over the stinted pasture. Appletreeshield Road would be a dead end, both ends, if it did not.

12.4 And further, Alston Road is set out as "Alston Road, beginning at a place called Powstile gate, and leading south-westwards to the stinted pasture near Knights-cleugh head." On the face of that wording, that road is also a double-dead-end public road, and there is no such thing known to the law. It would be irrational to hold that an awarded public road called 'Alston Road' went only about 1.25 miles and then stopped as a dead end.

12.5 The unclassified public road that runs up the hill from Hawkuplee to the northern end of the application route is set out in the award as a public carriage road called "Alston Road", thus, "beginning at a place called Powstile gate, and leading southwestward to the stinted pasture near Knights-cleugh head."

12.6 Judging from the old maps there is little doubt that the unclassified road / BOAT from Ninebanks, up the awarded 'Alston Road', to Long Cross, and down to the pre-1823 road at Clarghyll Colliery, was a principal route from Alston Moor towards Tyneside. But it was not necessarily the only route. Using online mapping, the route from Powstile Gate, along 'Alston Road', via Longcross, on pre-1823 roads, to Alston marketplace, is just over 5.6 miles.

12.7 Measuring from Powstile Gate, along 'Alston Road', via the application route, Blagill (pre-1823 roads) and Gossipgate, measures at just over 5.7 miles. Nothing in it.

12.8 And further, when the award plan is superimposed on modern OS mapping (below), it is clear that the Long Cross road makes a thirty-degree turn to the right, off the line of the 'Alston Road', through what is shown as an unbroken boundary on the award plan.

12.9 By contrast, the application route continues the straight alignment of 'Alston Road' for about 75 yards before making a turn of about ten

degrees at the end of the 'funnel' between allotments, which is where 'Alston Road' blends into the stinted pasture.

12.10 This below is the same location from a satellite photograph.

12.11 Simply, 'Alston Road' on the award plan, and as set out, is anciently as likely to be the end of application route as it is of the Long Cross road. The Long Cross road makes a lateral connection with a much straighter alignment. This suggests that 'Alston Road' and the application route is the older route, and the Long Cross route was, at one time, a side branch off it.

13. Greenwood's Map of Northumberland 1827/8

13.1 It is often difficult to understand and reconcile 'simplistic' early commercial maps, based on magnetic north, with modern Ordnance Survey maps based on grid north and with much more detail and precision.

13.2 This below is that Greenwood map, superimposed as a see-through layer on a same-area piece of outline First Edition 6" scale OS map, rotated to register common features (such as junction of Alston Road and the order route).

13.3 It is clear that Greenwood is showing the order route to and beyond Blakelaw Cross, and also the Long Cross road. The representation is somewhat schematic, but the commonality of features and reasonably precise registration leave little doubt that Greenwood was showing a through route along the order route in 1827.

13.4 It might be observed that Greenwood shows a 'dog-leg' in the county boundary line to the west of Blakelaw Cross, whereas the OS shows a dog-leg to the east. It may be that Greenwood was in error here, but his location of Blakelaw Cross is accurate. It may be that Greenwood is showing a schematic representation of the boundary line around Hard Rigg. It may be that the boundary line has altered over time. Hodkinson and Donald's map of Cumberland suggests that is the case. Whichever, what matters is the reasonably accurate (by today's exacting standards) representation of Long Cross, Blakelaw Cross, and the roads leading to those.

13.5 There is a particularly important point to be made about Greenwood's map. It was published in 1827 / 8 (different reference books give the different dates). Greenwood shows a road in this extract from the southwest end of the 'Alston Road', reasonably directly to 'Black Cross'. Greenwood shows a shallow reflex curve in the route, which schematically mimics that still shown on the Ordnance Survey map. In 1827 Greenwood had no map to copy from. Fryer (1820) and Cary (1825) do not show this road. According to Richard Oliver, the county was not surveyed by the Ordnance Survey until 1855. It is improbable that Greenwood dreamed-up a road here that quite accurately predicts the course shown since 1855 by the Ordnance Survey. It is probable that there was a road here, well-enough defined to be seen, followed and mapped.

14. Ordnance Survey, First and Second Edition Maps

14.1 There is no visible change between the first edition OS large-scale maps (1855-64) and the first revision (1894-7). This extract below is from the 1896 issue, 25" scale map, available online on the National Library of Scotland website. It is from sheet CVI.II, and has the name 'Carriers' Way' printed alongside the application route.

15. Ordnance Survey Book of Reference

15.1 The Ordnance Survey published 'Books of Reference' (in some places) to accompany the first edition 25" maps. This copy below is from 1858/9 (dated by its being made in 'large letterpress') and for the same map sheet CVI.II, lists 'Carriers' Way' as being 'A cart road'. The accompanying extract from Richard Oliver's book (page 54) explains how these Books of Reference were made.

16. Ordnance Survey Boundary Sketch Book

16.1 The Ordnance Survey made 'Boundary Sketch Books' as part of the first surveys, which are now held at the National Archives under reference OS27. These records were made under the authority of the Ordnance Survey Act 1841, and the surveyor had statutory power to summon the clerk of the peace, and any documents he wished to see. The Boundary Sketch Books were then advertised for public inspection. The books are held in the National Archives and the extract below was taken there.

16.2 The relevant sketch for Blakelaw Cross, made in 1858, is OS27/3789. This below is the catalogue reference and the sketch itself. The sketch shows a 'road' to each side of the county boundary, labelling the Cumberland side as 'Black Laws / Road', and the Northumberland side as 'Carriers Way / Road'.

Cumberland Historical Evidence

17. Hodkinson & Donald's Map of Cumberland 1770

17.1 This is the earliest map of Cumberland to show any significant pattern of roads. It does not show any road to, or past, Blacklaw Cross. It does show a road past Long Cross. It does not show the 'low road' northeastward from Clarghyll. It does not show many roads in the area depicted, which must have existed to connect settlements.

18. The Alston Moor Inclosure Act 1803

18.1 An Act for dividing, allotting, inclosing and otherwise improving several commons, moors, or wastes, within the manor of Alston otherwise Alston Moor and Carrigill in the parish of Alston, and county of Cumberland. 11 June 1803.

18.2 This Act (page 1462) imports the provisions of the 'General Inclosure Act' of 1801, unless otherwise stated. No variation from the 1801 provisions is made as regards 'roads'.

18.3 S.8 of the 1801 Act requires that a public carriage road is set out at least 30 feet in breadth. The annotated plan here shows widths taken at intervals along Blakelaws Road. The road is walled (some parts have disappeared, leaving foundations) and is historically wider than 30 feet throughout.

18.4 Blakelaws Road is a publicly maintainable road on the list of streets, and has been on the county council's records of publicly maintainable highways since 1929 (the handover from the rural district council i.e. a road under the authority of the rural district council).

18.5 Nobody is questioning the status and origins of Blakelaws Road. The setting out of this road by the 1803 inclosure award, and its becoming a pre-1835 publicly maintainable highway is valid by virtue of the award and the view of the court in *R v. The Inhabitants of the Parish of Enford* 28 March 1955.

18.6 The setting out of Blakelaws Road is important evidence regarding the status of the order route. The 1820 award is 21 years after the 1799 award. The adjoining land in Northumberland had been statutorily inclosed 21 years earlier; it could not in the normal way of things be inclosed again. The many stint holders hold that land in severalty, and it would be effectively impossible for a highway to be dedicated at common law. Thus the idea that the Alston commissioners set out Blakelaw Road in anticipation of the Carriers' Way being later dedicated in the same status is not a rational explanation of the facts.

18.7 The stint holders in the 1799 inclosure award are all Northumberland land-holders or land-occupiers. None of them are Cumberland people. The stinted pasture is not any sort of place of public resort. Although both the Alston and Allendale inclosure acts provide power to set out 'private roads', the commissioners do not set out the order route, or its linear continuation along Blakelaws Road, as a private road for the stint-holders.

18.8 The Alston Moor commissioners did set out private roads. This is an example quite close to Blakelaws Road.

18.9 This raises a strong presumption that in 1820 when Blakelaws Road was set out as a public carriage road there was a purpose – a utility – in that setting out. That purpose was most probably making a through-route from the Weardale Turnpike, to Blakelaw Cross, along the order route, and to Ninebanks beyond. There is case law on 'through route presumption', the study of which assists here, and is set out below. It is important, here to consider the evidence as a whole.

19. The Alston Moor Inclosure Award 1820

19.1 The inclosure award sets out as a 'Public Carriage Road': Blakelaws Road beginning at the Weardale Turnpike road near Nenthall and leading northward to the boundary of the regality or Manor of Hexham near Blake Laws Cross."

19.2 None of the awarded roads in this award are set out as 'leading into' lands outside the award boundaries, and similarly none are shown on the plan as extending beyond the award boundaries, although all or some, e.g. the Weardale Turnpike road, must have. The pre-award Long Cross road is set out and mapped as 'stopping' at the inclosure boundary.

20. JL McAdam's Turnpike Road Plan 1823

20.1 In his plan of a proposed turnpike road from Alston into Weardale (which was largely an improvement of the existing road) McAdam marks and names a number of public roads, including (to the east of Alston) Limekiln Road, "From Blagill", "To Galligill", Blakelaws Road & Rampgill Rake Road. This suggests that McAdam regarded Blakelaws Road as being a public road of some 'traffic connection' to the proposed turnpike, rather than no more than a dead-end with no incoming traffic.

21. Report on the State and Condition of the Roads and Mines on the Estates of Greenwich Hospital in the Counties of Cumberland, Durham and Northumberland, with suggestion for their improvement. Edward Lockyer 1823.

21.1 This is an early report into the process that engaged John McAdam to survey the roads with a view to their improvements. These improvements were put into effect by the turnpiking of the lower roads. Mr Lockyer notes on page 3, "The public roads are carried over the highest hills with scarce attempt to find an easier level, and the surface is loaded with an immense quantity of heavy stones, without the least consideration of the wear and tear of carriages and cattle employed in the conveyance."

21.2 'Cattle' in this context means draught animals, not 'cows'. The reference to 'carriages' in the context of "roads ... carried over the highest hills ..." is good evidence of reputation that the hill roads were before 1823 used by 'carriages' - vehicles. Carriages are not just 'stage coaches' or vehicles for the carriage of persons. A carriage is a 'means of conveyance'. If hill roads were used by vehicles for the trade of the area in 1823 then it is probable that they were also used before this time for as long as the trade traffic existed.

22. C & J Greenwood's Map of Cumberland, 1823/4

22.1 Greenwood's map of 1823/4 shows Blakelaws Road running up to Blakelaw Cross, and continuing for a distance into Northumberland. Greenwood shows the Long Cross road and the Hexham Turnpike, in the same way. Greenwood, in his 1827/8 Map of Northumberland (above) shows the south crossing the boundary at Blakelaw Cross and continuing a little way into Cumberland.

23. Topography

23.1 The physical existence and nature of a route is some evidence, taken with other evidence, as to its antiquity and status. Satellite images (from the website wheresthepath.com) clearly show a linear feature on the same line as the footpath on modern OS mapping, and as the 'Carriers' Way' on the first and second edition OS mapping.

23.2 It is improbable that such a feature was made by public foot traffic alone in a remote area. It is improbable that a public footpath would have been identified by the Ordnance Survey as a 'cart road', and would have survived for another (almost) 165 years with such visibility.

24. The 'Through Route Presumption'

24.1 There is considerable judicial consideration regarding 'dead-end roads in the countryside. Two examples will suffice here. These views should be applied to Blakelaws Road, south to north, to where that road finishes on the Alston inclosure award at Blacklaw Cross.

24.2 In *Leicestershire County Council (R on the application of) v. Secretary of State for EFRA* [2003] EWHC 171, Mr Justice Collins, at paragraph 16, "The Inspector notes that it was highly improbable that the footpath actually finished at the northern boundary of Manor Cottage. That seems to me to be a matter of common sense because it would serve no practical purpose unless it went through to the road." That view seems entirely applicable to the present case. A 'status change' is as much a cul de sac as is a 'full stop' to a highway of any sort.

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

24.4 "But supposing you think Tinker's Lane is a public highway, what would be the meaning in a country place like that of a highway which ends in a cul-de-sac, and ends at a gate onto a common? Such things exist in large towns ... but who ever found such a thing in a country district like this, where one of the public, if there were any public who wanted to use it at all, would drive up to that gate for the purpose of driving back again? It is just an observation that if you think that Tinkers Lane was a public highway, an old and ancient public highway, why should it be so unless it leads across a common to some of those places beyond? I cannot conceive myself how that could be a public highway, or to what purpose it could be dedicated or in what way it could be used so as to become a public highway, unless it was to pass over from that side of the country to this side of the country. Therefore it seems to me, after all is said and done, that the evidence with regard to this little piece across the green cannot be severed from the other it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green ... I am not laying this down as law; but I cannot understand how there could be a public way up to the gate – practically, I mean; I do not mean theoretically, - but how in a locality like this there could be a public highway up to the gate without there being a highway beyond it. If there were a public highway up Tinker's Lane before 1835, it does not seem to me at all a wrong step to take, or an unreasonable step to take, to say there must have been one across that green."

25. Summary

25.1 As stated in the 'overview' above, there is no direct evidence of status of the application route, but there is a large and informative set of indirect evidence.

25.2 In *Commission for New Towns v JJ Gallagher* [2002] EWHC 2668 (Ch); [2003] 2 P&CR 3, Neuberger J at paragraph 83, "While each of these aspects of the evidence has to be initially considered on its own, it must, of course, also be assessed in light of the other aspects. In the end, after considering all of these aspects together, I have to ask myself whether, bearing in mind that the onus of proof is on the Commission, I am satisfied on the balance of probabilities that the use and reputation of Beoley Lane was such as to justify the inference that it was dedicated as a public carriageway."

25.3 In considering the indirect evidence it is easier to aggregate the evidence by considering the whole through route, effectively from the Alston to Stanhope Turnpike in Cumbria, northwards to Ninebanks in Northumberland, and onwards towards Tyneside.

25.4 In 1820, inclosure commissioners set out a public carriage road leading from the turnpike (before McAdam's 1823 turnpike, this road was previously turnpiked) northwards towards Blacklaw Cross. This road was formed and inclosed, is about 1.75 miles long, and is and has been since a recognised publicly maintainable highway.

25.5 The fundamental question is this: why would the Alston Moor inclosure commissioners set out, form and make a public carriage road, nominally 30 feet wide, only for it to stop – dead – at the county boundary, where there was no place of public resort? The commissioners could set out private roads, foot roads and bridle roads, and if the Carriers' Way was in 1820 only a foot road, then it is improbable that they would have set out a public carriage road.

25.6 There is evidence which suggests that the road ran on northwards from Blacklaw Cross, albeit never 'made' as it was in Cumberland. The two Greenwood maps show a through road 30 years before the Ordnance Survey made its first survey here.

25.7 The Allendale inclosure award in 1799 sets out 'Alston Road'. As set out above, this road most probably went to Alston, and from the maps and topography there is no greater case that it went by Long Cross than it did by Blacklaw Cross.

25.8 But nothing says that there was only one route from the top of the awarded Alston Road. The Long Cross road is undisputed, but the inclosure boundaries, and the direction taken by each of the Long Cross Road and the application route point to the Blacklaw Cross route as once being more important, or at least older, than the Long Cross route.

25.9 Then there is the Ordnance Survey, starting about 1858. The map calls the route the Carriers' Way. The Book of Reference describes this as a cart road. The Boundary Sketch Book has Black Laws Road one side of the county boundary, and the Carriers' Way on the other side.

25.10 The 'through route presumption' is not a legal presumption; rather it is a matter of commonsense and joining-up the dots. The courts have no problem applying them.

25.11 It really is very hard to see how commonsense can be applied to Blakelaws Road without reaching the view that the same public highway continued along the Carriers' Way, and made a direct linear connection with the awarded Alston Road."

3. LANDOWNER EVIDENCE

- 3.1 Under covering letter, dated 25 March 2022, Warners (solicitors) responded on behalf of the Wellhope Partnership, supplying a detailed report prepared by their rights of way consultant, Liz Sobell:

"Parish of West Allen Alleged Restricted Byway No 26 Comments on behalf of the Wellhope Partnership

1. I have been asked by Mr Tom Warde-Aldam of Galbraith LLP, on behalf of the Wellhope Partnership, to research what historical evidence might exist in relation to the alleged restricted byway which is currently recorded as the Parish of West Allen Public Footpath No. 26.
2. The claimed route, known as the Carriers Way, is entirely within Northumberland, beginning at the Cumbria County boundary near Blacklaw Cross and joining a point on the U8039 road (Byway No 37) at Keirsleywell Bank. The current application is the third claim made for this route by Mr Kind.
3. The first application led to a two-day public inquiry in 2004 (Order Ref. FPS/R2900/7/30). The Inspector Mr Alan Beckett did not agree with Mr Kind's proposal that the status of the claimed route should be upgraded from public footpath to byway open to all traffic, stating '*I conclude the evidence before me is insufficient to show the existence of public carriageway rights over the Order route.*' (Order Decision FPS/R2900/7/30, § 35).
4. Mr Kind's second attempt was made in 2016, when his application for a restricted byway over the same route was made under the provisions of the Wildlife and Countryside Act 1981, s.53(3)(c)(ii). This is the duty of the surveying authority to keep the definitive map under review and to react appropriately to any discovery of new evidence which would lead to an alteration of the description of a highway. In such a situation, all relevant evidence must be considered along with newly discovered evidence.
5. Northumberland County Council (the surveying authority) refused the application by letter in November 2017. Mr Kind's appeal (Ref: FPS/P2935/14A/5) was decided by the Inspector Mr Rory Cridland, who noted that most of the evidence submitted had already been considered in detail at the 2004 inquiry, stating '*I have seen nothing which would lead me to reach a different conclusion on that evidence.*' (§6).
6. The two pieces of documentary evidence submitted in order to trigger the 2016 claim were the Alston Moor Inclosure Act of 1803, and a copy of an Ordnance Survey Boundary Sketch Map of 1858. Both will be discussed further below.
7. The argument put forward by Mr Kind was that his claim should succeed on the 'through route presumption', that is, that a length of way between two

public highways should benefit from a presumption that it shared the same highway rights.

8. However, in his summary Mr Cridland stated that *'I agree with the conclusions of the Inspector in 2004 that the evidence in support is so meagre that this presumption does not weigh heavily in favour'* and that *'Accordingly, I do not consider that it has been demonstrated on the balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail'*. (§14 & §15).
9. For the current, third, application Mr Kind has cited three documents which he puts forward as new evidence. His numbered list contains a total of seventeen items, one of which is the location plan. Discounting this plan, along with case law (No.17), satellite imagery (No.15), a paper on widths and photographs (No.6), a passage from a reference book (No.14), and a statement of grounds in support of his application (No.16), Mr Kind has submitted eleven historical documents, eight of which have already been considered by one or both Inspectors who refused to confirm the 2004 and 2016 applications owing to the 'meagre' and 'insufficient' evidence that had been provided.
10. The remaining three items of 'newly discovered' evidence currently supplied by the applicant therefore need to be sufficient (when added to all previous evidence) to demonstrate on the balance of probabilities that Footpath 26, the Carriers Way, should be given the status of restricted byway. Paragraphs 11 to 18 below consider these.

J.L. MacAdam's Proposed Turnpike Roads NRO QRUP 13, Map 4, (1823)

11. Mr Kind devotes only one paragraph (§20) to a discussion of this 'newly discovered' evidence. He points out that MacAdam correctly identifies public roads branching off the proposed turnpike, including Blakelaws Road. However, this map is dated 1823, three years after the Alston Moor Inclosure Award, and therefore would be expected to show roads in the vicinity to help locate the line of the proposed turnpike.
12. Mr Kind claims too much for Blakelaws Road as it appears on the 1823 turnpike map. It is not disputed that Blakelaws Road was set out as a public highway in 1820. MacAdam's plan does not extend to the county boundary. Therefore, it is of no assistance as evidence of the status of the alleged route, the Carrier's Way, which is entirely within Northumberland.

C & J Greenwood's Map of Cumberland 1823

13. As with the previous item of 'newly discovered' evidence, only one paragraph (§22.1) is allocated by Mr Kind in reference to Greenwood's Cumberland map of 1823. He points out that the extract shows Blakelaws Road. Since The Alston Moor Inclosure Award was made in 1820 and Greenwood's map was published three years later, it would be surprising if his map failed to show Blakelaws Road.
14. Therefore, two out of the three pieces of 'newly discovered' evidence cite maps which post-date the Alston Moor Inclosure Award by three years and correctly show Blakelaws Road. The existence of this awarded road is not disputed but is not the alleged route. Greenwood's maps of Cumberland and Northumberland will be discussed further below.

Extracts relating to Gaterley Road, Hexhamshire & Allendale Commons Inclosure Award (1799)

15. Mr Kind uses the example of Gaterley Road (§12.1) which was set out in the 1799 Award as a private road with its eastern terminus at the stinted pasture. Use of the road was restricted to owners and occupiers of the township of Catton Grieveship.
16. In paragraph 12.2, Mr Kind states '*So it was perfectly within powers for the inclosure commissioners to set out private roads to the stinted pasture.*' This is all that is said about Gaterley Road: no coherent argument is made to demonstrate how this helps identify the status of the Carriers Way. From §12.3 onward, no more mention is made of the road.
17. Mr Kind's following paragraphs contain his views concerning the respective importance of the Alston and Long Cross Roads. It is very difficult to accept the Gaterley Road extract as evidence of any kind, 'newly discovered' or otherwise. Its function seems to be to allow a repetition of Mr Kind's assertions about the Hexhamshire and Allendale Commons Inclosure, which have already been submitted as evidence in 2004 and 2016 and found insufficient by two Inspectors.

Greenwood's Maps of Cumberland (1823) and Northumberland (1828)

18. Paragraph 13 of Mr Kind's application deals with Greenwood's map of Northumberland which was published in 1828. It might have been expected that the applicant would show extracts of both the Cumberland and Northumberland maps side by side to demonstrate the continuation of the alleged route spanning two counties.
19. However, when Greenwood's county maps are placed side by side, it becomes obvious that the Cumberland map of 1823 is much more highly detailed and accurate than his 1828 Northumberland map. (See Appendix 1). The topography shown in the Northumberland map is vague in comparison, leading to inaccurate locations of some landscape features.
20. This is clear in the case of the Northumberland map, where Black Laws Cross (Greenwood: '*Black Cross*') is located to the north-west of Mohope Head instead of to the south-west. This and other inaccuracies were pointed out in the 2004 decision letter (FPS/R2900/7/30). The inspector stated '*In the light of these errors from an otherwise reputable cartographer, I do not attach much weight on this map as evidence of the existence of the claimed road over the moor*' (§22).
21. The late J.B. Harley, in his 1962 book *Christopher Greenwood County Map-maker and his Worcestershire Map of 1822* (pp1-24) devotes a chapter to an analysis of Greenwood's map-making business. Harley compared Greenwood's expenses per square mile with those of the Board of Ordnance survey in Ireland. He concluded that Greenwood had spent approximately 30 shillings per square mile surveyed, whereas evidence given to the inquiry into the Survey of Ireland in 1828 estimated that a proper survey would cost £16 per square mile.
22. Harley stated '*Moreover, as many costs such as the drawing, engraving and advertisement of a map would be the same throughout most surveys of the period, it is most likely that the economies were effected in the topographical survey.*' (pp. 31-32). Despite his surveying economies, Greenwood's business

was failing by the late 1820s and he was unable to complete his intended series of county maps. Greenwood's Northumberland County map of 1828 is therefore an example of an insufficiently surveyed (consequently unreliable) map published by a company in financial difficulties.

Ordnance Survey Boundary Sketch Book Extract (OS 27/3789)

23. This extract (below) was submitted by Mr Kind in 2016, but not considered to provide significant detail about the alleged route's status or use (Appeal Decision FPS/P2935/14A/5, §10). However, the sketch provides evidence of correction of the naming of it: Close examination shows that later corrections to the sketch were made in red ink, whereas black ink was used for original annotations. The black ink original marked '*Black Laws*' on the Cumberland side of the county boundary, and '*Road*' on the Northumberland side. Red ink corrections deleted '*Road*' on the Northumberland side and substituted the name '*Carriers Way*'. The designation '*Road*' was confined to the Cumberland side, added below '*Black Laws*'.
24. These corrections were made either by Ordnance Survey Examiners, or else reflect an objection made when the boundary sketches were open to public scrutiny. As a result, a distinction was made between the name of a route in Cumberland and its apparent continuation in Northumberland. Appendix 2 shows a description of the work of Ordnance Survey Assistants. It was not part of the duties of Ordnance Survey employees to ascertain the legal status of ways being mapped, as demonstrated by the details of their duties given in Appendix 2.
25. The second edition of the 25-inch OS map carries the disclaimer '*N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way*'. The entry in the Book of Reference as '*Cart Road*' merely describes the appearance, not the status, of the Carriers Way.

The 'Through Route Presumption'

26. All three of Mr Kind's applications for this route have argued that the status of Carrier's Way should be upgraded on 'the through route presumption'. However, he has not been able to cite any document which on the balance of probability demonstrates the existence of a highway for wheeled traffic along the alleged route.
27. All documents submitted in applications to alter the definitive map ought to be understood according to the historical context of their creation. The following paragraphs explain the background to the two relevant Inclosures, that of Hexhamshire and Allendale Commons (1799) and Alston Moor (1820).
28. In the case of Hexhamshire and Allendale Commons, the lord of the Manor of Hexham when the Act (NRO 691/61/29) was passed in 1792 was Sir Thomas Blackett, who died very soon after. He was succeeded by his daughter and son in law, Diana and Colonel Thomas Richard Beaumont. No Act proposing to inclose commons or 'wastes' within a manor could proceed without the agreement of the lord of the manor.
29. There were three Commissioners of the Hexhamshire & Allendale Inclosure: one appointed by the lord of the manor, Colonel Beaumont, another by major landowners (in this instance the Greenwich Hospital Commissioners), and a

third commissioner recommended by the first two. The inclosure outcome was the result of close cooperation between Greenwich Hospital and the Beaumonts to ensure that the division was carried out to their best advantage. The Commissioners were John Fryer, William Bates, and Thomas Bates.

30. The scope of the enabling Act of 1792 covered the whole area of the commons, hence the legal necessity to perambulate the boundary: the lord of the manor, commissioners, and all persons entitled to right of common or their agents were required to *'openly, publickly, and in the Day Time, ride or perambulate, or cause to be ridden or perambulated, the Boundary of the said Commons, Moors, or Tracts of Waste Land intended to be divided and stinted'* (NRO 691/29, clause VI, pp.3240-3241).^[1]
31. Since large areas of the Hexhamshire and Allendale Commons were assessed as incapable of agricultural improvement, it was decided to allot limited grazing rights or 'stints' over the common land which would not be made into fields.
32. Those who held tenements valued at less than £10 per annum could choose to take their awarded allotment as either land or stints (clause XXXVIII, pp.3274-4). Therefore, the land designated as stinted pastures was allotted under the same powers as lands which were divided and allotted as fields. It was not, as Mr Kind claims, outside the powers of the Commissioners to decide what happened in the stinted pastures.
33. The 1792 Act ordered that the Commissioners should set out roads and ways over the former Commons, and that following the Inclosure no former roads or ways would be lawful unless set out in the Award. Once the newly confirmed roads had been certified by Justices of the Peace, they were to be maintained as parish roads at the expense of the inhabitants of the townships they crossed (clause XVIII, pp.3255-6).
34. No roads, other than Allenheads Road, were set out across the stinted pastures, yet lead ore still had to be carried across the moors over which the 1792 Act operated. Transport of lead ore by packhorse was a major expense, and clearly could have been affected by alteration to routes in the mining areas had not the following clause been included in the Act.
35. Clause LI (pp.3284-5) reserved to the lord of the manor all of his rights to minerals under the former Commons, *'together with all convenient and necessary Ways and Wayleaves.....and leading and carrying away the Lead, Lead Ore, Coals, Stones, and other things to be gotten thereout, or out of any other Mines, Minerals, and Quarries or Collieries belonging to the said Sir Thomas Blackett, his heirs and Assigns.'*
36. Therefore, all tracks and Carriers Ways crossing the former Commons could continue to be used as occupation ways for the Lord of the Manor's lead transport, including materials transported from any mines elsewhere owned by the lord.
37. The township inhabitants (who were mostly employed as lead miners, smelters and farmers who also worked as carriers) were responsible for the maintenance of roads as far as the stinted pastures, but ways over the undivided pastures were the financial responsibility of the mineral owners, Colonel and Mrs Beaumont.

38. To require roads to be formed and then maintained over the Stinted Pastures would have been a grossly unfair burden on the Township inhabitants, especially since those ways existed for the future profit of their manorial lord.
39. Before the completion of the inclosure process, Colonel and Mrs Beaumont were naturally concerned that the inclosure should not in any way lessen the profits of their lead business, and wrote to their Hexham Manor Bailiff, John Bell, asking his opinion as to whether their lead interests would be harmed by it.
40. In a letter dated 10th March 1793 to John Erasmus Blackett, (Chief Steward of the Blackett Lead Company), John Bell wrote that the Greenwich Hospital's Northern Receiver had made enquiries in Weardale and Teesdale where there were stinted pastures. They had found that lead transport costs were no more expensive there than costs over open moorland.
41. Bell also pointed out that roads between the inclosed fields were *'to be made by the Proprietors and when the Carriers get upon that Part of the Common which is to be stinted they will then have the open wide Moor to pick their Way upon in the best manner they can as they do now'*
- (Extract of letter written by John Bell to J.E. Blackett, Allendale Estate Archive, now moved to Northumberland Archives but not yet catalogued).
42. Paragraphs 29 to 40 above have shown that there were powers comprised in the 1792 Hexhamshire and Allendale Commons Inclosure Act for the Commissioners not only to allot land and set out publicly maintainable roads within certain areas of former common, but also to allot limited grazing rights and set out roads over land designated as stinted pastures.
43. The fact that no public road other than Allenheads Road was set out over the stinted pastures must be seen as a deliberate decision on the part of the Commissioners, because the lord of the manor's mineral rights allowed full rights to make ways convenient for his lead business. The tracks whose names contain the word *Way* reflect this right.
44. Turning now to Alston Moor Inclosure (Act 1803 NRO 324/A83/6; Award 1820 CRO/QRE/1/108), the following paragraphs describe the historical background of the event.
45. The Manor of Alston belonged, in 1803, to the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich. In 1735 this charitable foundation had been awarded the former Northern Estates of the Earl of Derwentwater following his attainder and execution for taking part in the 1715 Jacobite Uprising. The Northern Estates were administered by Receivers, who got approval to instigate an Inclosure of the extensive Common land within the Manor.
46. The Receivers were the same people who had worked closely with Hexham Manor's administrators between 1792 and 1799 to bring about the inclosure of Hexhamshire and Allendale Commons. The two manors shared a boundary at Black Laws Cross and for a considerable distance in either direction. The whole extent of Alston Moor was awarded as allotments of land to be fenced off into individual plots. No area was designated as stinted pasture.

47. The Commissioners appointed to carry out the Alston Moor Inclosure were John Fryer, William Bates, and William Donkin, two of whom had also been Commissioners for the Hexhamshire and Allendale Inclosure.
48. Alston Moor was also a very productive lead mining area. Greenwich Hospital leased the mines to the London Lead Company but retained the duty ores, which were taken via the Whitfield Valley to their own smelt mill at Langley. London Lead Company smelted their ore at the Cupola Mill in Whitfield, but from 1746, the Company's ores were smelted at Nenthead. Neither Greenwich Hospital nor London Lead Company used a route via Black Laws as the primary means to carry lead ore to their smelt mills.
49. Since the administrators of both Hexham and Alston Moor manors were on demonstrably good and cooperative terms, and Greenwich Hospital had benefited greatly from the land and stints awarded to it by the 1799 Inclosure, it can be assumed that the Receivers were familiar with the Hexhamshire and Allendale Commons Inclosure Award plans.
50. As joint promoters of that Inclosure, they did not object during the planning period to the stinted pastures having no public roads set out apart from Allenheads Road. It is reasonable, therefore, to look for an alternative reason for the creation within their own manor of a publicly maintainable road leading as far as the Cumberland county boundary.
51. Blakelaws Road was set out with this description: '*Blakelaws Road beginning at the Weardale Turnpike near Nent Hall and leading Northwards to the boundary of the Regality or Manor of Hexham near Blakelaws Cross*'. Appendix 3 is an extract of the Alston Moor Inclosure Award plan.
52. Two other public highways were set out leading from Blakelaws Road: these were Blagill Greens Road and Nentsberry Greens Road. Blagill Greens Road ran east from the old Hexham Turnpike Road into Blakelaws Road, allowing access to newly allotted lands.
53. Nentsberry Greens Road ran south-east from Blakelaws Road, crossing Gudamgill Burn, then into Nenthead from the north-east. It provided access to new allotments, lead mines, and a quarry.
54. As well as the two public roads which joined Blakelaws Road from east and west, the road itself gave direct access to six newly awarded fields on the east side, and five on the west side before the junction with Foreshield Private Carriage Road.
55. Continuing north from that point up to the County boundary, the west side of the road allowed access to a block of approximately 950 acres awarded in five parcels to the Greenwich Hospital, lords of the manor, promoters and chief beneficiaries of the inclosure.
56. Since two public roads joined Blakelaws Road, it would not have been appropriate to set it out as a private carriage road limiting its use to owners of allotments on either side, as that would have blocked access to and from Blagill Greens and Nentsberry Greens Roads.
57. For this reason, I suggest, it was simpler (and more beneficial to Greenwich Hospital) to set out Blakelaws Road as a public highway whose maintenance was the responsibility of the parish.

Conclusion

58. This report has demonstrated that out of the eleven historic documents submitted by the applicant only three items can be claimed as 'newly discovered' evidence: however, two of these, MacAdam's Turnpike Plan of 1823 and Greenwood's 1823 Map of Cumberland, do not add any helpful information about the claimed route. The third, the Gaterley Road extract, is completely irrelevant to the route. The remainder of the applicant's submitted evidence has already been considered and rejected in 2004 and 2016.
59. I have described the historical context in which the inclosures of the Hexhamshire and Allendale, and Alston Moor Commons were carried out, providing evidence which gives a plausible explanation for the existence of a public highway in Cumbria which at the county boundary meets with a track which was once used as an occupation road for lead ore transport. The historical context in this instance makes the through route presumption untenable.

Liz Sobell MA, 8 February 2022.

^[1] NB: I have not submitted the entire text of the 1792 Act, as I have previously supplied both the Surveying Authority and (indirectly) Mr Kind with this document.

4. CONSULTATION

- 4.1 In January 2021, 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". One reply was received and is included below.
- 4.2 By email, in March 2021, the British Horse Society responded to the consultation, stating:

"Parish of West Allen

Alleged restricted byway no 26

"As this proposal is supported by inclosure awards, a source that requires an Act of Parliament, it can be assumed that the origin of the public rights associated with it will have a legal origin.

"The change of the recorded status of the route as it passes from Cumbria to Northumberland through Blacklaw Cross, high on the watershed of the North Pennines, has long been recognised as an anomaly. Why should a recognised county road in one county (Cumbria) become a public footpath once it crosses into the adjacent one (Northumberland)? There is surely no reason why anyone in the past would have made the demanding journey with a horse & cart up to the top of the ridge, if they did not plan to travel down the other side? A similar ancient way, Long Cross road, a little further north crosses the county boundary without a change in status.

"Map evidence suggests that the fenced lane, recorded as a horse & cart route in Cumbria continued as a route of similar status, although

unfenced, as it descended the hillside on the Northumberland side of the county boundary. This means that the route should be recorded as a restricted byway rather than a public footpath. Whether the route is suitable for a horse & cart today is not a consideration for the purpose of recording the public rights. If those rights existed in the past, they still exist today so the BHS supports the recording of this alleged restricted byway."

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

Although "Black Cross" is depicted on the map, there is no evidence of track, approximating to the route of alleged Restricted Byway No 26, leading up to it.

1800 Hexhamshire & Allendale Inclosure Award

"Alston Road" is depicted on the award map. It enters the stinted pasture a short distance north-east of Point A. There is no evidence of any track approximating to the alleged restricted byway through the stinted pasture.

1820 Alston Moor Inclosure Award (in Cumbria)

"Blakelaws Road" is depicted on the map. It proceeds in a general northerly then north-easterly direction, to the county boundary at Blakelaw Cross (Point B).

1820 Fryer's County Map

"Blakelaws Cross" is depicted on the map, but there is no evidence of a track, approximating to the route of alleged Restricted Byway No 26, leading up to it. The "Long Cross" route, slightly further to the north, is identified.

1823 JL McAdam's Turnpike Road Plan 1823

The western end of Blakelaws Road is clearly identified (and labelled as such) on the map. Map not included here – original map supplied is small scale and copies made from this are of poor quality.

1823 Greenwood's County Map (Cumberland)

There is clear evidence of a road or track following the continuation of alleged Restricted Byway No 26 on the Cumberland side of the county boundary (in the vicinity of "Blacklaw Cross"). In common with other cross-border routes, a short extension of the road / track is shown in Northumberland.

1827 Cary's Map

There is no evidence of track, approximating to the route of alleged Restricted Byway No 26, on the Northumberland side of the boundary, and no evidence of a track on the Cumbria side of the boundary either. The route passing Long Cross, slightly further to the north, is depicted.

1828 Greenwood's County Map (Northumberland)

There is clear evidence of a road or track approximating to the route of alleged Byway No 26, crossing the boundary in the vicinity of "Black Cross". Another route is shown crossing the boundary in the vicinity of Long Cross, although "Long Cross" itself, is not identified.

1858 Ordnance Survey Boundary Remarks Sketch Book

There is clear evidence of a route crossing the border, at what appears to be Point B (the southern end of alleged Restricted Byway No 26). On the Cumberland side it is identified as an enclosed road. On the Northumberland side it appears to be identified as an unenclosed road or track. The entry for this boundary crossing appears to have been amended (originally both sides of the boundary were depicted as parts of "Black Laws Road") so that the Cumberland side (only) is "Black Laws Road" with the Northumberland side relabelled as "Carriers Way".

c. 1860 Ordnance Survey Book of Reference

In the extract taken from the back of the Book of Reference published to accompany the 25" 1st Edition Ordnance Survey Map, "Carriers Way" is described as "A cart road".

1865 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

1898-99 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

1924-6 Ordnance Survey Map: Scale 1:10,560 (reduced)

There is clear evidence of an unenclosed path / track over the route of alleged Restricted Byway No 26. It is labelled "Carriers' Way".

c.1952 Definitive Map – original Survey Map

The route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map. It is labelled "Carriers' Way", but no public rights of way are identified for inclusion over it.

Draft Map

As with the Survey Map, the route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map. It is labelled "Carriers' Way", but no public rights of way are identified for inclusion over it.

1957 Bridges and Roads Committee minutes (16 December 1957)

These state that "The County Surveyor has carefully considered a large number of representations made by the Ramblers' Association for the inclusion of paths on the draft map for the Rural Districts of Belford, Castle Ward, Haltwhistle, Hexham and Norham and Islandshires and his recommendation on these are based upon the evidence he has been able to obtain from local sources." Some one hundred and ninety-two routes were identified, and all of them appear to be footpaths.

Draft Map (Modified)

The routes of existing Public Footpaths Nos 12, 26 and 27 are all identified (in purple) for inclusion as public footpaths (then numbered 30, 31 and 32), as a result of successful representations at the Draft Map stage.

Provisional Map

As with the Draft Map (Modified), the route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map and is identified (by the purple colouring) as a public footpath (then numbered "30").

1962 Original Definitive Map

The route of existing Public Footpath / alleged Restricted Byway No 26 exists on the base map and is identified (by the purple colouring) as a public footpath (then numbered "125") in the Parish of Allendale.

2004 Inspector's Decision regarding DMMO (No 10) 2003

The Inspector determined that, on a balance of probabilities, public vehicular rights had not been shown to exist.

2018 Inspector's Decision re appeal against NCC's refusal to make an Order

The Inspector determined that, on a balance of probabilities, public vehicular rights had not been shown to exist.

6. SITE INVESTIGATION

- 6.1 From Point A, on existing Byway Open to All Traffic No 37, a 3 to 5 metre wide, overgrown and slightly sunken grass surfaced track proceeds in a south-westerly direction for a distance of 150 metres to a field gate. A parallel, 0.5 metre wide trodden grass path, on slightly higher ground, just to the north-west of the track, appears to be the route favoured by walkers today. There is a pool of standing water at the gateway. An adjacent step stile provides access for walkers. Beyond the field gate, a grass track proceeds across the open

moorland, in a general southerly direction for a distance of 2480 metres to Point B, at the north end of the U3111 road in Cumbria, at a field gate, at Blacklaw Cross.

- 6.2 The track across the open moor is almost entirely grass surfaced. It is mostly clearly defined (and helpfully identified by waymark posts, at regular intervals), but the width is variable, ranging from 30 centimetres up to around 3 metres. The widest sections are most evident up to about 100 metres from the field gates at either end. The track fords 4 minor watercourses. In other places the grass surface was quite saturated with water.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In May 2022, a draft copy of the report was circulated to the applicant and those landowners / occupiers who responded to the initial consultation for their comments.
- 7.2 By email, on 27 May 2022, Tom Warde-Aldam of Galbraith LLP submitted the following comments in relation to the Draft Report:

"I refer to your letter dated the 13 May to Michael McNally of Warners Law LLP.

"My firm, Galbraith LLP, act as agents for the Wellhope Partnership which owns valuable sporting rights over the footpath in question.

"I note your recommendation that there is not sufficient evidence to record RB (Restricted Byway) Rights, but also your further recommendation that there is sufficient evidence to support the existence of Bridleway Rights.

"I am writing, on behalf of my Client, to make an objection to your recommendation in relation to the Bridleway proposal. I would make the following comments:

"You suggest in your report that the NCC Rights of Way Committee refused Mr Kind's original 1998 Application for Byway status on the grounds of "insufficient evidence for vehicular or Public Bridleway Rights". This decision was appealed, leading to a two day Public Enquiry in 2004. The Inspector in that case refused the appeal on the grounds that the evidence did not reach the standard required for a balance of probability test on *either* level of rights.

"The next application in 2016 for a Restricted Byway over the route of Footpath 26 also failed on Appeal in 2018 for the same reasons. Both Inspectors commented on the "meagre" nature of the applicant's evidence.

"The 2019 application is once again for Restricted Byway status using the trigger of "newly discovered evidence". Liz Sobell's carefully researched report showed that what was submitted amounted to only three pieces of previously unsighted evidence; one of these was totally irrelevant (Gaterley Road) and the other two did not show the route under consideration.

"All three applications have relied heavily on the presumption of a "through route" linking two public roads. However, this is an argument twice rejected by Planning Inspectors in 2004 and 2018, because there was insufficient documentary evidence to support it.

"Section 8 of your draft report states at paragraph 8.6 that "it does not appear that the possibility of Public Bridleway Rights existing over this route has been properly explored." It further assumes that in rejecting the claims for public and vehicular rights, no other status had been considered by the two Inspectors in 2004 and 2018. We would suggest that this is an unjustified conclusion on your part; the Inspectors had full powers to order that the route should have been recorded as a Public Bridleway if they had concluded that the evidence submitted had shown that, on the balance of probabilities.

"None of the "newly discovered evidence" adds any support to a claim for Public Bridleway status, nor has Mr Bell's own documentary research added any support to such a conclusion.

"On this basis, we have to disagree with the recommendations for elevating Footpath 26 to Bridleway status. The decision by the Rights of Way Committee should be based on the strength or otherwise of the documentary evidence in relation to this alleged Restricted Byway, not on un-evidenced supposition.

"I trust that you will take this into account in your report and will highlight our clients' strong objection to the Rights of Way Committee."

8. DISCUSSION

8.1 Section 53 (3)(c)(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 highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description."

8:2 When considering an application / 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 Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of vehicular public rights of way 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.

- 8.4 None of the above saving provisions would appear to apply to the alleged restricted byway route. This point would appear to have been acknowledged by the applicant. Whilst his 1998 application was for a byway open to all traffic, his (post NERC Act 2006) 2016 and 2019 applications, only sought to record the route as a restricted byway.
- 8.5 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 8.6 It is possible to detect a degree of frustration, from the landowners, that this matter is being considered for a third time, on the basis of, what they consider to be, very limited new evidence. On the one hand, whilst it is an important principle that the discovery of new evidence should enable a matter to be revisited, it should not be followed in such a way that an applicant might be encouraged to withhold evidence and then drip feed additional documents into the equation, so they can have multiple bites at the cherry. Notwithstanding these reservations, new evidence has been introduced to support this most recent application to record a restricted byway and, significantly, it does not appear that the possibility of public bridleway rights existing over this route has been properly explored. The Inspector determining DMMO (No 10) 2003 does not appear to have considered this aspect (he simply found that there was insufficient evidence in support of public vehicular rights). The Inspector considering Mr Kind's appeal against the Council's refusal to make an order pursuant to his 2016 restricted byway application, similarly found against Mr Kind in relation to the existence of public vehicular rights without, apparently, considering the possibility that public bridleway rights might exist.
- 8.7 Mr Kind and Ms Sobell have both devoted a certain amount of time to the subject of whether those pre-existing public highways over the stinted pasture land, that were not specifically set out in the inclosure award, were extinguished by the inclosure award process. Mr Kind's view is that they were not. The Inspector determining DMMO (No 10) 2003, in 2004, agreed with him on this particular point, and I would also agree with this position. The Hexhamshire and Allendale Inclosure Award did not set out or otherwise identify any public rights over the alleged restricted byway route. Accepting that any pre-existing public rights over the stinted pasture were not extinguished by the inclosure process does not mean that any public highway rights necessarily continued through the stinted pasture or that any highway rights that did exist were necessarily vehicular ones. Ultimately, whilst the Inspector determining DMMO (No 10) 2003 agreed with Mr Kind regarding the effects of the inclosure process, he found against Mr Kind in relation to the overall strength of the evidence in support of vehicular rights.
- 8.8 The landowner is not impressed with the new JL McAdam's turnpike plan evidence. They aren't contesting that Blakelaws Road was set out as a public vehicular highway in the Alston Moor Inclosure award, only three years previously. Ms Sobell considers, not unreasonably, that the turnpike road's intersection with Blakelaws Road would have been identified as a point of reference. This part of Blakelaws Road might be used by traffic from Blagill Greens Road or from Nentberry Green Road – not necessarily by people

travelling across the county boundary. I would have to agree that the turnpike plan – which appears to identify many connecting routes, not just a select few – adds little weight to support the reputation of Blakelaw Road as part of a cross-border through route for public vehicular traffic.

- 8.9 Ms Sobell is critical of the accuracy of Greenwood's Map of 1828. She, not unfairly, points to a lack of precision with regard to the location of Blacklaws Cross. She also notes that JB Harley, writing in 1962 about Greenwood's Worcestershire Map of 1822, had concluded that Greenwood spent approximately 30 shillings per square mile surveyed, which compared unfavourably with the £16 per square mile cost information supplied to the inquiry into the Survey of Ireland in 1828. I'm not sure this is necessarily comparing like with like, however. If the Board of Ordnance survey in Ireland amounts to an Ordnance Survey standard survey, it is to be expected that this would be vastly more expensive to conduct. The level of detail provided on Ordnance Survey maps dwarfs that shown on the commercially produced County maps. In my own experience, the accuracy of and detail on Greenwood's County Map of Northumberland compares favourably with the map produced by Fryer. In general, the County maps do have a tendency to be slightly schematic.
- 8.10 Mr Kind has drawn attention to Edward Lockyer's report, of 1823, into the condition of roads on Greenwich Hospital Estate's land in the area. Mr Lockyer observes "The public roads are carried over the highest hills". Whilst this certainly does indicate that wheeled traffic was using some of the upland routes in this area, Mr Lockyer does not appear to identify which ones. This comment may relate to routes which are, today, accepted public roads – it need not apply to the application route.
- 8.11 Ms Sobell has also noted that the Ordnance Survey Boundary Sketch Book entry, illustrating where the route crosses the Cumberland – Northumberland boundary, appears to have been corrected. The original entry had the words "Black Laws" on the Cumberland side of the boundary, with "Road" on the Northumberland side, implying that the cross border route was uniformly known as "Black Laws Road". The correction (made in red) identifies "Black Laws Road" as being the route on the Cumberland side of the boundary and "Carriers Way" its continuation on the Northumberland side. The word "Road", on the Northumberland side, has been crossed through with a red line. This correction could, of course, simply be due to the fact that the route was known by different names, depending which side of the boundary you were on, but it might also reflect a perceived difference in the status of the route.
- 8.12 The applicant has acknowledged that he has no direct evidence identifying the alleged restricted byway route, itself, as a public vehicular highway. He considers that since, at its eastern end, the alleged restricted byway begins on a recognised public vehicular highway, and because its westerly continuation (within Cumbria) has also been determined to be a public vehicular highway, it is reasonable to conclude that the central (alleged restricted byway) section is also public vehicular highway. He has supported this proposition with two legal judgements (Leicestershire County Council v Secretary of State for EFRA [2003] and Eyre v New Forest Highway Board [1892]).
- 8.13 On the face of it, this is a fairly convincing general principle, but it cannot be assumed to apply universally. It would be particularly persuasive in circumstances where a route didn't intersect with any other highways, traversed fairly uniform terrain and crossed land that, historically, had always

been owned by a single landowner. The situation at Mohope could be explained simply by differential dedication. The route across the stinted pasture (and its continuation within Cumbria) may, historically, have been something less than a public vehicular right of way. If the Alston Moor Inclosure Commissioners elected to 'upgrade' the Cumbria continuation to vehicular status, this wouldn't alter the status of the section across the stinted pasture in Northumberland.

- 8.14 Mr Kind has argued that it wouldn't make sense for the Cumbrian continuation of the alleged restricted byway route to have been set out as a public road if the continuation within Northumberland didn't have the same status. Members of the public driving vehicles along Blakelaws Road, within Cumbria, would be forced to turn round at the County boundary, and there is no obvious reason why anyone would derive any utility from this. This argument is not without merit. As Mr Kind points out, the inclosure commissioners could have set out Blakelaws Road (or the section east of that road's junction with Blagill Greens Road, at least) as a public highway of lower status (to match the continuation within Northumberland – had the inclosure process there, some twenty years previously, established the status of the route across the stinted pasture) or as a private road (potentially, with public footpath or bridleway rights along the same route).
- 8.15 Ms Sobell has suggested that since two public roads joined Blakelaws Road, it would not have been appropriate to set it out as a private road, thereby limiting access to the Blagill Greens and Nentbury Greens public roads. She has also argued that it was simpler - and more beneficial to the Greenwich Hospital Estate – for Blakelaws Road to be set out as a public highway, because then the maintenance responsibility would fall on the parish, rather than on specific landowners. The commissioners could have solved the first difficulty by setting out most of Blakelaws Road as public – so as to preserve a through connection between the Blagills Green and Nentbury Greens Roads, but naming the northern end (the cul-de-sac section leading to the County boundary) as something different (with a lower status). I would suggest that the maintenance argument does have merit, however. No parcels of land (in Cumberland) would rely on the extension up to the County boundary. The Greenwich Hospital and Joseph Dickinson plots, lying either side of this route, would both still have direct access to the public road network, even if this extension didn't exist. There may have been influential landowners on the Northumberland side of the boundary (perhaps with private rights, or perhaps satisfied by the existing footpath or bridleway rights through the stinted pasture, in the Northumberland) keen to preserve access on the Cumberland side of the boundary. I wonder whether there may, potentially, have been some difficulty setting out a private road to protect these interests, if the beneficiaries in Northumberland (who would usually be expected to initially finance and subsequently maintain the route) weren't actually landowners involved in the Alston Moor inclosure. By making this route a public road, the maintenance burden would, as Ms Sobell points out, be shared amongst the whole parish.
- 8.16 There are, in fact, a significant number of other non-through route vehicular highways, apparently set out in the Hexhamshire and Allendale Inclosure Award. I have attached a small scale map extract showing the existing public rights of way network between Allendale and Hexhamshire. The yellow routes are ordinary roads (shown on the OS base map). The routes represented by solid brown lines are recorded on the Definitive Map as byways open to all traffic, the broken green lines are public bridleways and the broken red lines

are public footpaths. Starting in the 12 o'clock position, and working round clockwise, Greenridge Road, Ardley Road, Eshells Road, Lightside Road, Westburnhope Road, Lousley Road, Houstie Carr's Road, Shilburn Road, Watch Currock Road and Newfold House Road are all byways open to all traffic that were set out as public roads in the Allendale and Hexhamshire Inclosure Award. All of these roads were set out only as far as the stinted pasture separating the two valleys. All of the highway continuations crossing the stinted pasture, connecting with byways open to all traffic on the other side, are currently recorded on the Definitive Map as public bridledways – not as vehicular rights of way (nor as footpaths). Whilst it is certainly possible that one or more of the crossover routes could be more than just public bridledways, I haven't, as yet, been made aware of any compelling evidence to demonstrate that any of them are.

- 8.17 In relation to the above area between Allendale and Hexhamshire, I have also attached extracts from Fryer's (1820) and Greenwood's (1828) County maps. Both Fryer and Greenwood appear to have identified the majority of the inclosure awarded roads leading up to the stinted pasture. At present, there are 7 public bridledways recorded on the Definitive Map crossing over the stinted pasture to connect with the ends of these roads. Fryer has depicted 3 of them and Greenwood appears to have depicted 5 (possibly 6) of them. The majority of the public highways shown on Fryer's and Greenwood's County maps are vehicular ones. Given the scale of the mapping, this is almost inevitable – it would be impossible to show, in any meaningful way, every public bridledway and footpath, too, though Greenwood did specifically identify a few (i.e. less than 20) bridledway routes (labelling them as bridledways) within Northumberland. I would suggest that both Fryer and Greenwood may have shown a small number of routes where the status wasn't absolutely certain. They may have believed they were likely to be vehicular, but in reality they might have been of a lower (most likely, public bridledway) status.
- 8.18 The cumulative documentary evidence in support of public vehicular rights over the alleged restricted byway route is not considered to be sufficient to satisfy the balance of probabilities test. Whilst the "through route presumption" undoubtedly has significant merit, it cannot automatically apply in every case. The numerous identified examples of inclosure awarded roads (many of them now recorded as byways open to all traffic) terminating at the stinted pasture between Allendale and Hexhamshire, with public bridledways forming the upland link between them, reinforces that position. If the alleged Restricted Byway No 26 route (like the connecting routes between Allendale and Hexhamshire) is not a vehicular highway, it does, however, seem more likely than not that (again, like the connecting routes between Allendale and Hexhamshire) it will be of public bridledway rather than public footpath status. It may be significant that the Allendale to Hexhamshire routes were all originally identified as public bridledways at the Draft Map stage, whereas the Mohope route was only identified for inclusion following representations to that Draft Map, by the Ramblers' Association – a walking group.
- 8.19 Commenting on a draft version of this report, Galbraith LLP (for the Wellhope Partnership), objected to the recommendation in support of the existence of public bridledway rights. The sequence of events outlined in paragraph 1 of their comments section isn't quite correct. It is quite true that the NCC Rights of Way Committee refused Mr Kind's 1998 application to record a byway open to all traffic on the grounds of "insufficient evidence for vehicular or public bridledway rights". Mr Kind appealed against this refusal and this appeal was successful. Northumberland County Council was directed, by the Secretary of

State, to include the route in a future Definitive Map Modification Order as a byway open to all traffic. An Order (DMMO (No 10) 2003) was duly made, and attracted objections, which led to the Order and objections being submitted to the Secretary of State for determination, and it is this which led to the two day public inquiry – not the appeal against the County Council's refusal to make an Order. Following the public inquiry, the Inspector declined to confirm DMMO (No 10) 2003 on the grounds that "the evidence before me is insufficient to show the existence of public carriageway rights over the Order route."

- 8.20 The applicant's appeal against the County Council's refusal to make a definitive map modification order pursuant to his 2016 application failed. The Inspector concluded "I do not consider that it has been demonstrated on a balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail."
- 8.21 Galbraith LLP has also argued that the amount of new evidence produced to support the new application is extremely meagre. Although the new evidence in support of vehicular rights is certainly modest, whilst investigating this application, additional evidence that further challenges the through route presumption was discovered. This draws on the treatment (within the same Inclosure Award) of routes linking the Allendale and Hexhamshire valleys. Whilst the Award set out numerous public roads leading up to the stinted pasture, no continuation was identified continuing through the stinted pasture itself, though there are multiple public bridledways recorded crossing over that pasture, on the Definitive Map, today, adding support to the hypothesis that the application route might be something less than public vehicular but more than public footpath.
- 8.22 Galbraith LLP is correct in asserting that the Inspector had the power to amend DMMO (No 10) 2003, if he had believed the route was a public bridledway, and the Inspector considering the 2017 appeal might have been able to direct the County Council to make an Order for public bridledway, even if he hadn't been convinced that public vehicular rights existed. Neither of them did, but this is perhaps unsurprising, because neither Inspector appears to have addressed the potential existence of public bridledway rights. If an Inspector had actually considered the existence of public bridledway rights, and then dismissed the evidence in support as being insufficient, it is not unreasonable to expect that they would have stated as much.
- 8.23 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. Where no width can be determined by documentary means (such as an Inclosure Award, Highway Order or dedication document), there is usually a boundary to boundary presumption for public highways. Since this route is not enclosed now, nor does it appear to have been enclosed previously, it is proposed that, if it is to be upgraded to public bridledway status, it should be recorded with the Council's standard default width of 3 metres (i.e. wide enough for two horses, travelling in opposite directions, to pass each other).

9. CONCLUSION

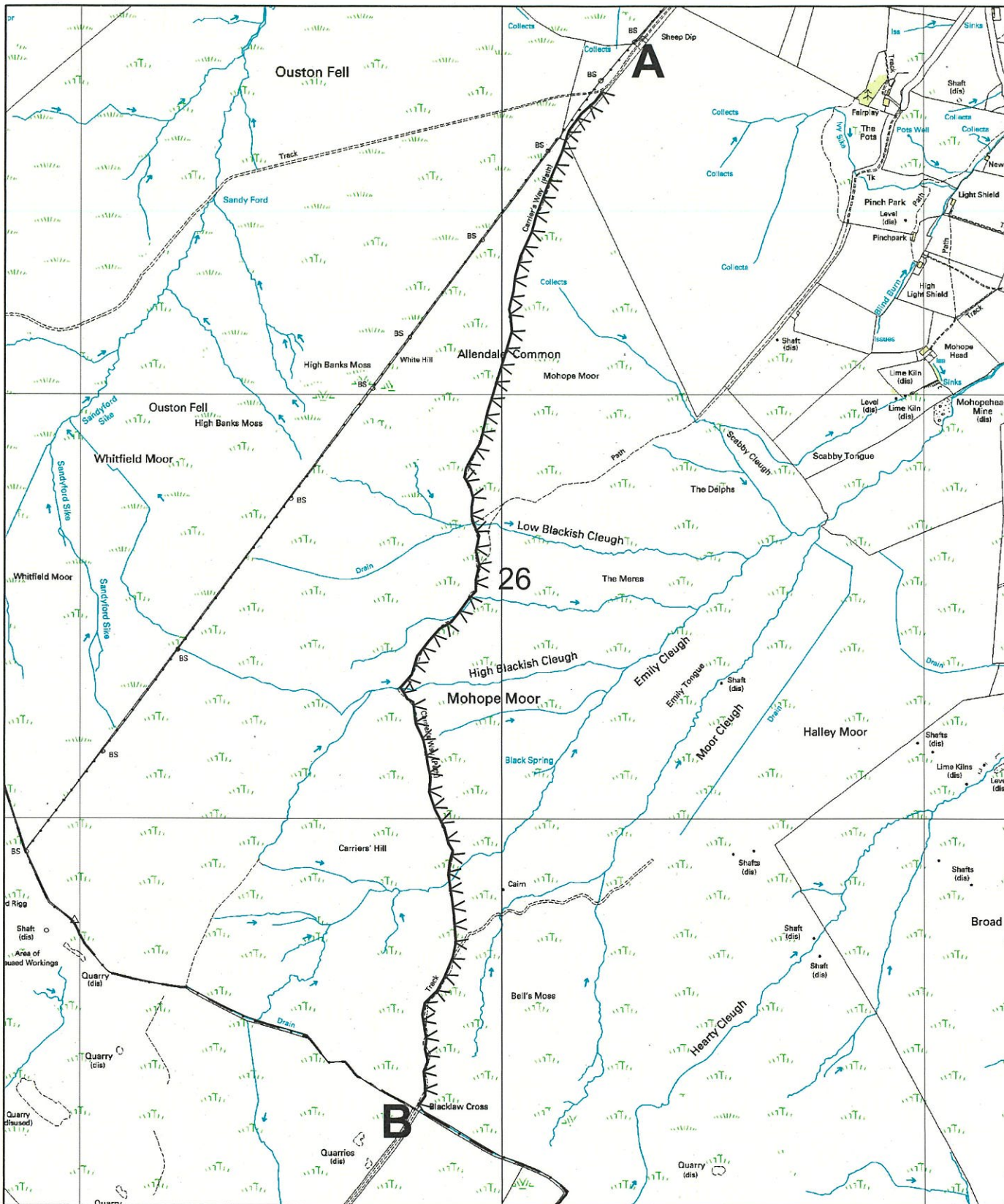
- 9.1 In light of the documentary evidence available, it appears that, on a balance of probabilities, public vehicular rights have not been shown to exist over the route of alleged Restricted Byway No 26.

- 9.2 In light of the documentary evidence available, it appears that, on a balance of probabilities, public bridleway rights have been shown to exist over the route of alleged Restricted Byway No 26.
- 9.3 It would be appropriate to recognize the public's higher rights over the route of existing Footpath No 26 by upgrading this to public bridleway status on the Definitive Map.

BACKGROUND PAPERS

Local Services Group File: E/49/26z

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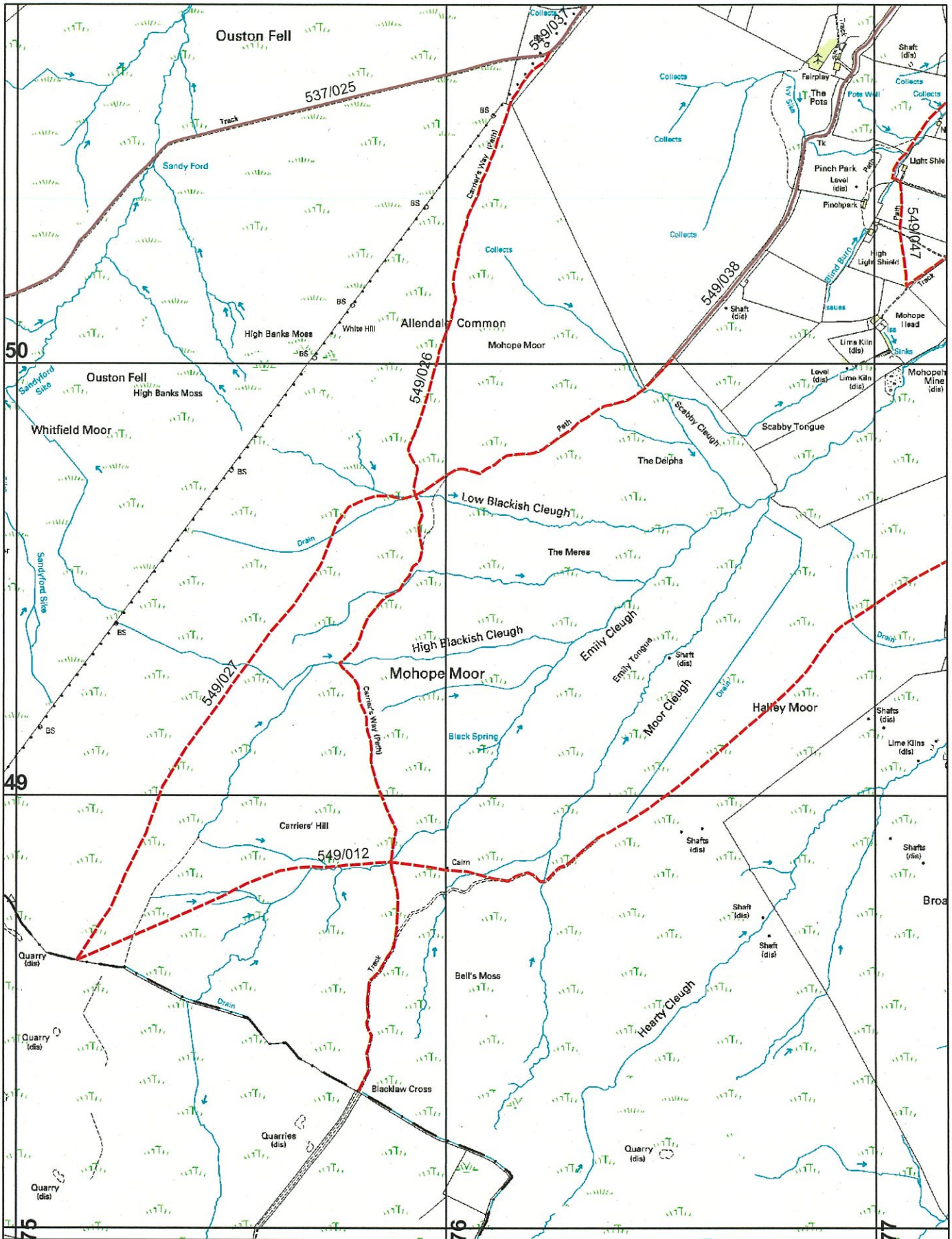
Wildlife & Countryside Act, 1981



Alleged Restricted Byway

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Former District	Tynedale	Parish	West Allen	Scale	NTS
Def. Map. No.	205	O.S. Map	NY74NE/75SE	Date	September 2020



Northumberland
County Council

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

Legend

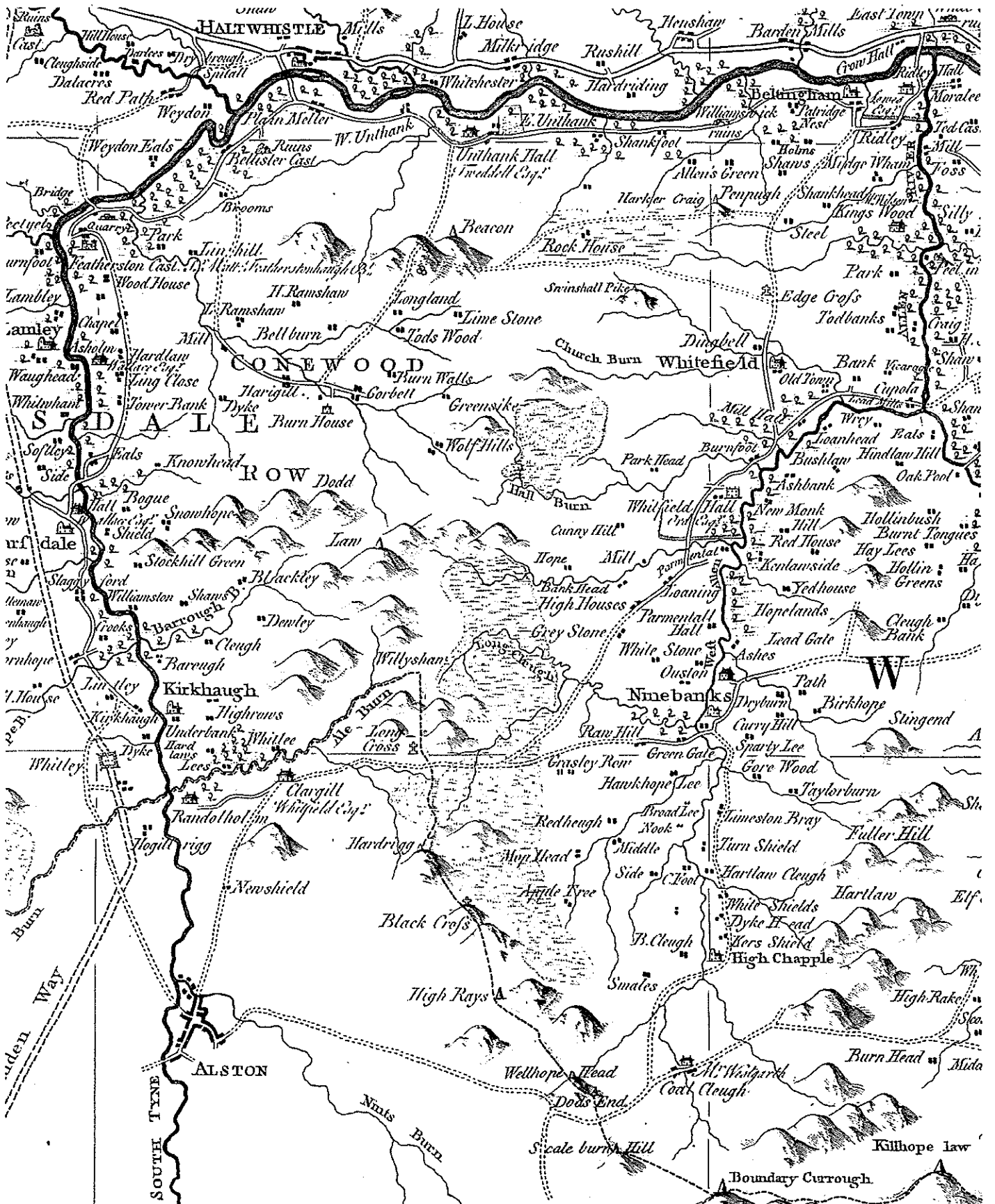
- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic
- 1km Gridlines

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

Scale: 1:10,000

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Armstrong's County Map
1769



Hexhamshire & Allendale Inclosure Award 1800

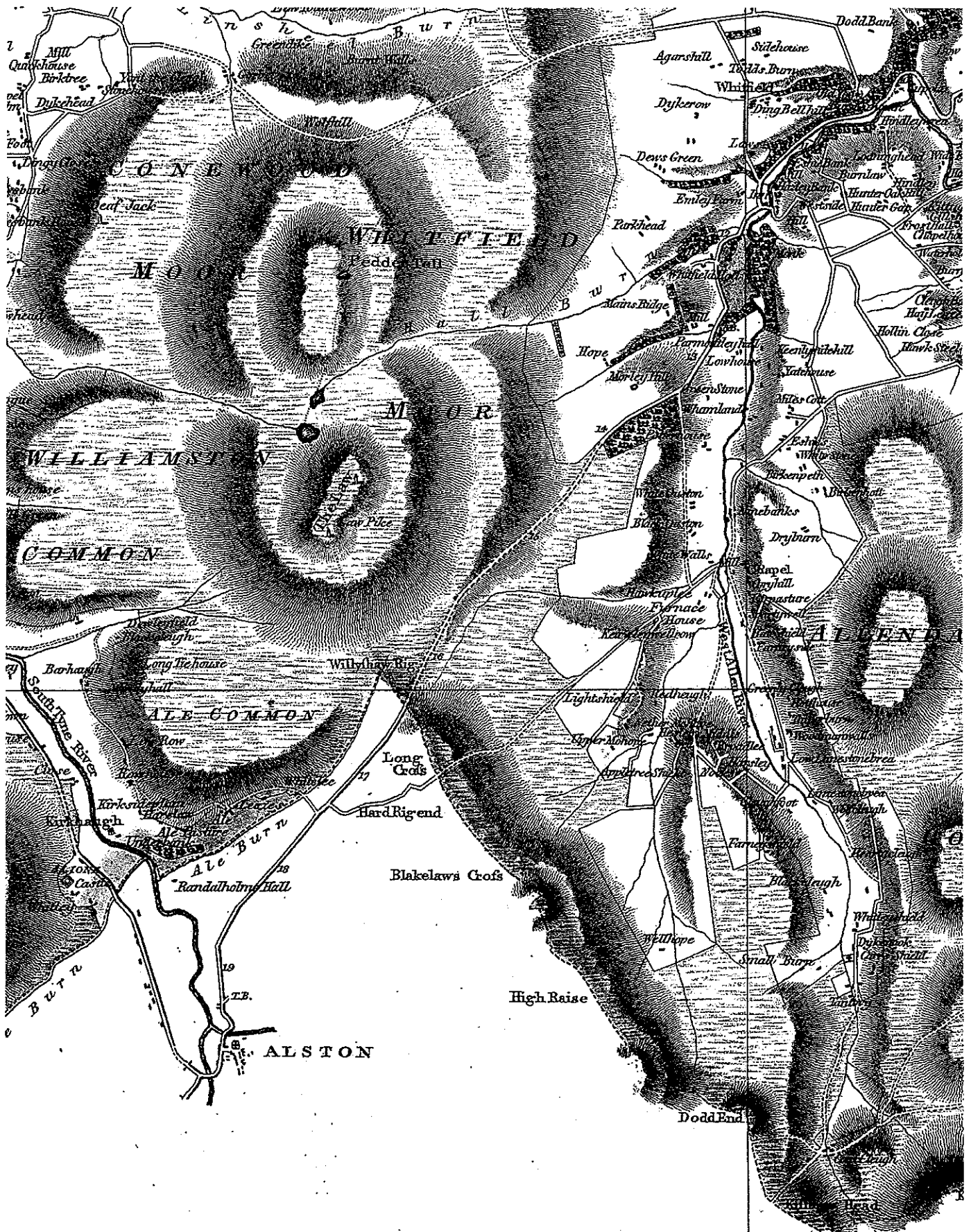


Alston Moor Inclosure Award 1820

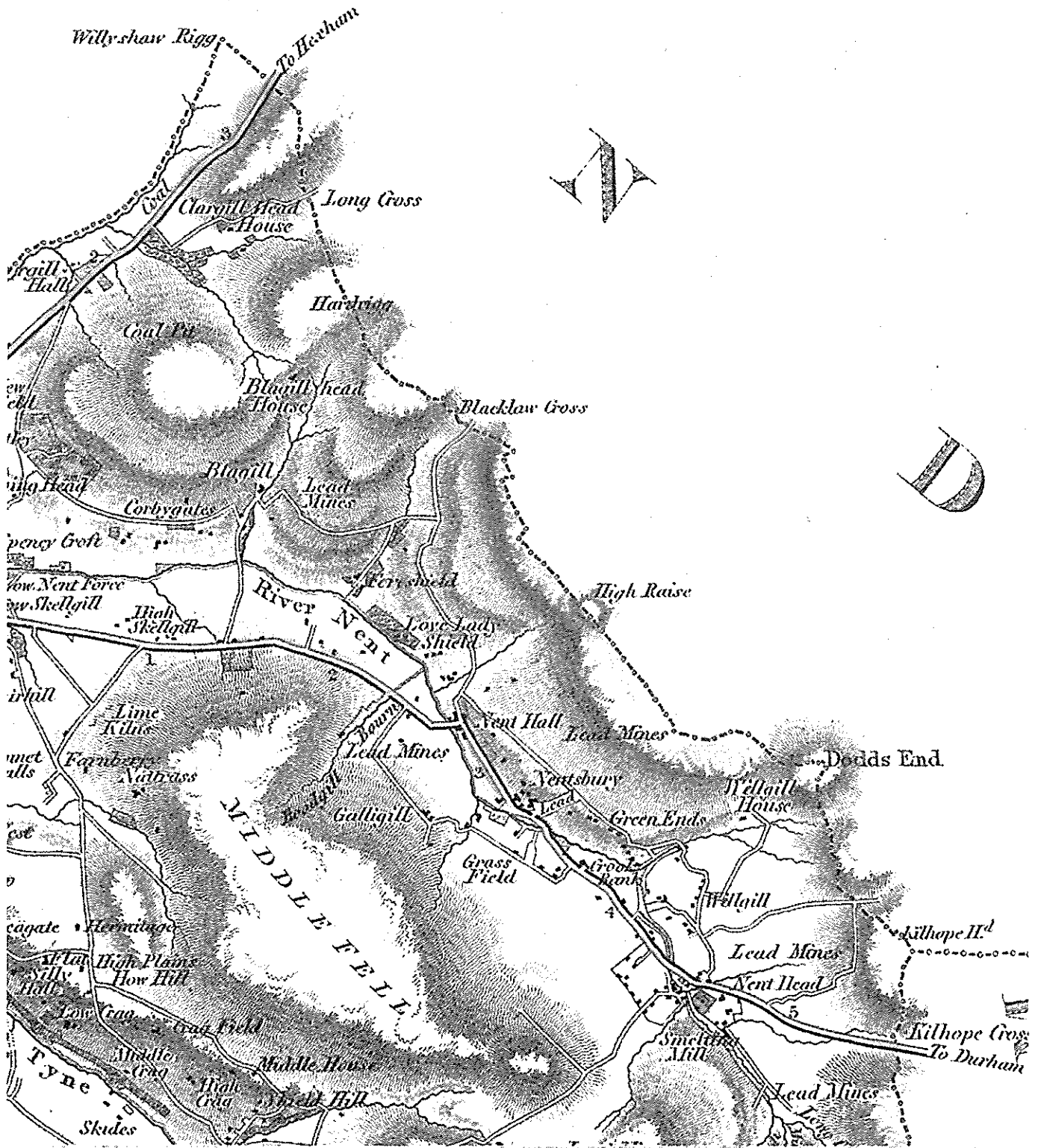


Extract of plan supplied by Liz Sobell

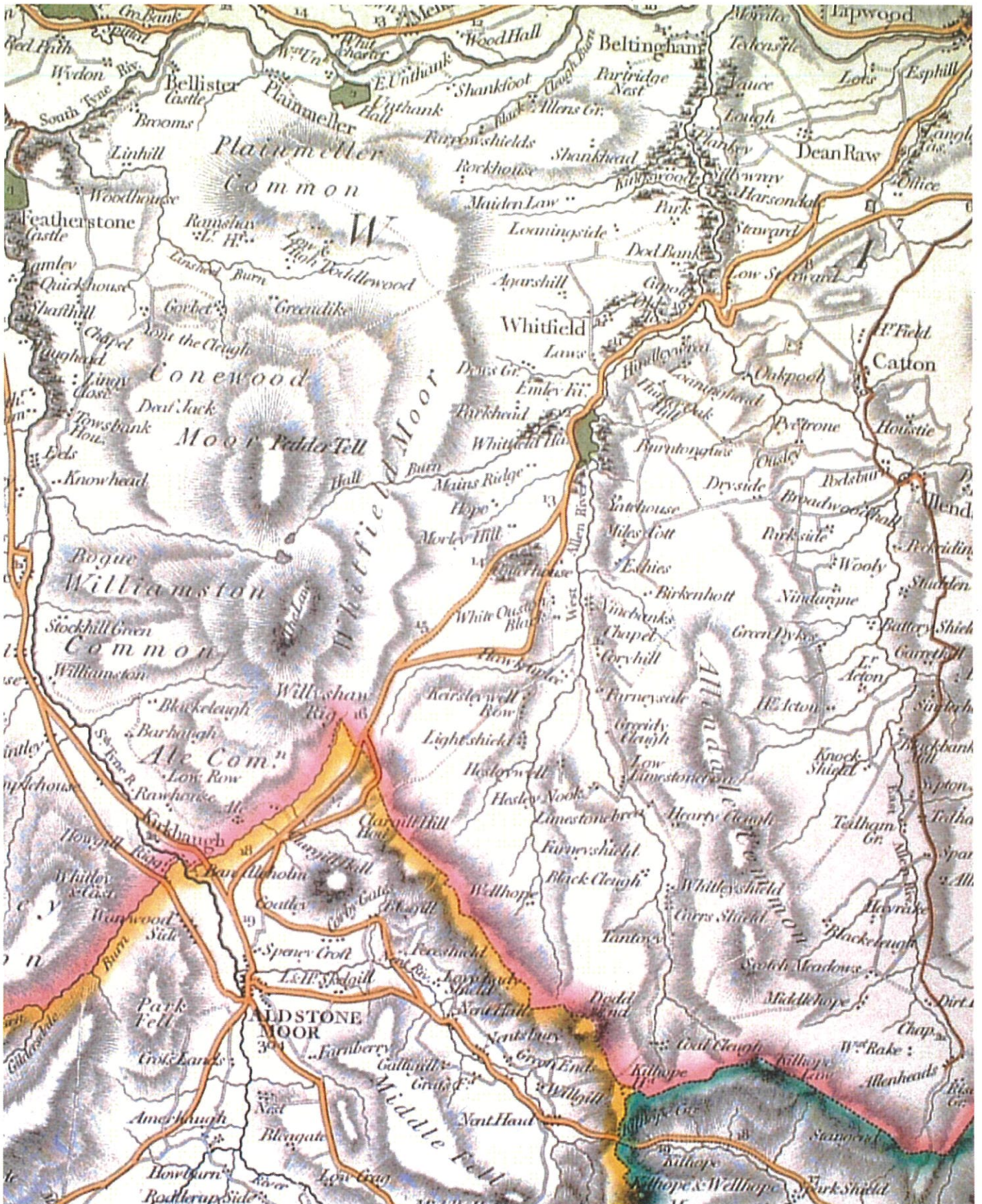
Fryer's County Map
1820



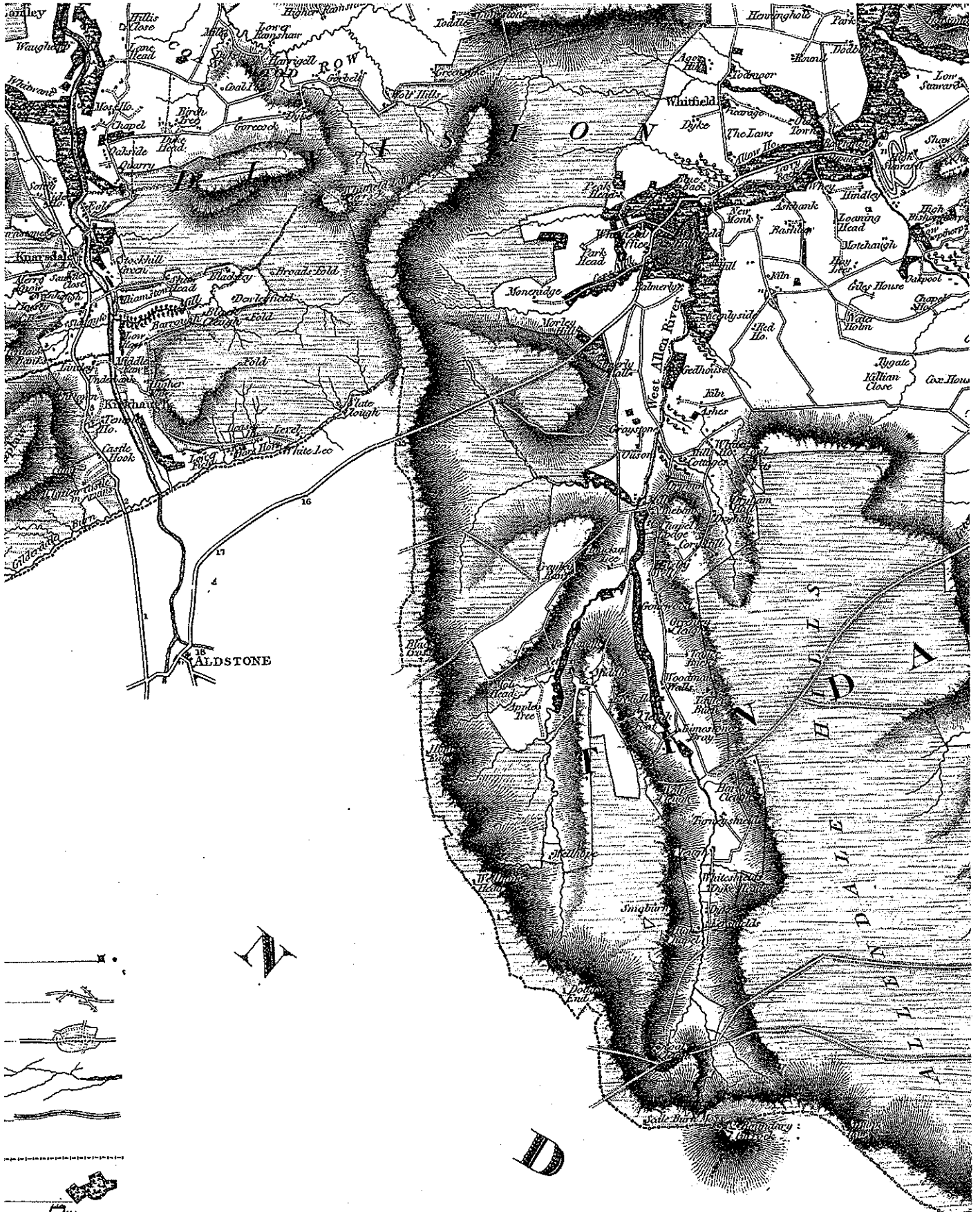
Greenwood's County Map (Cumberland)
1823



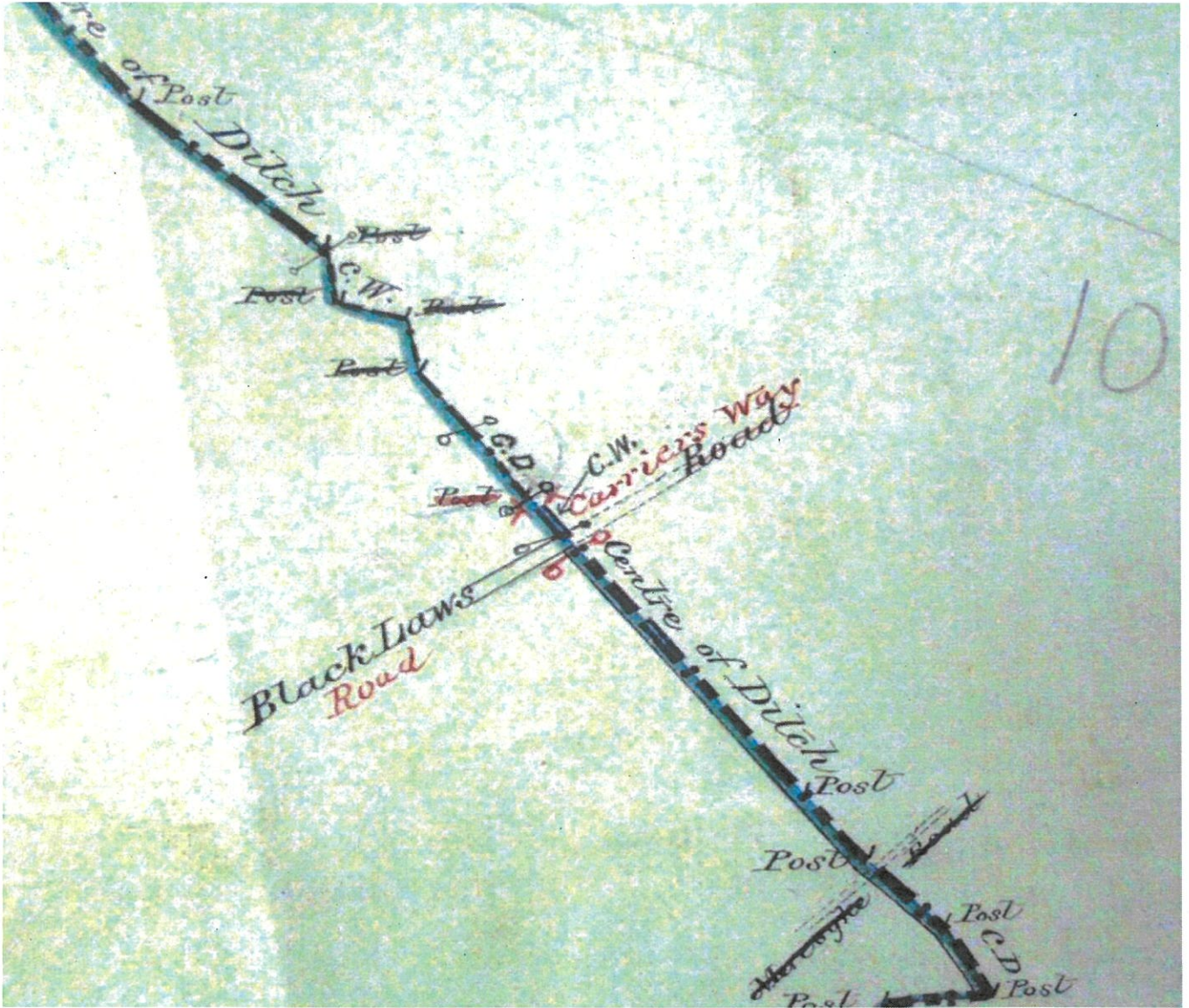
Extract of plan supplied by Liz Sobell



Greenwood's County Map (Northumberland) 1828



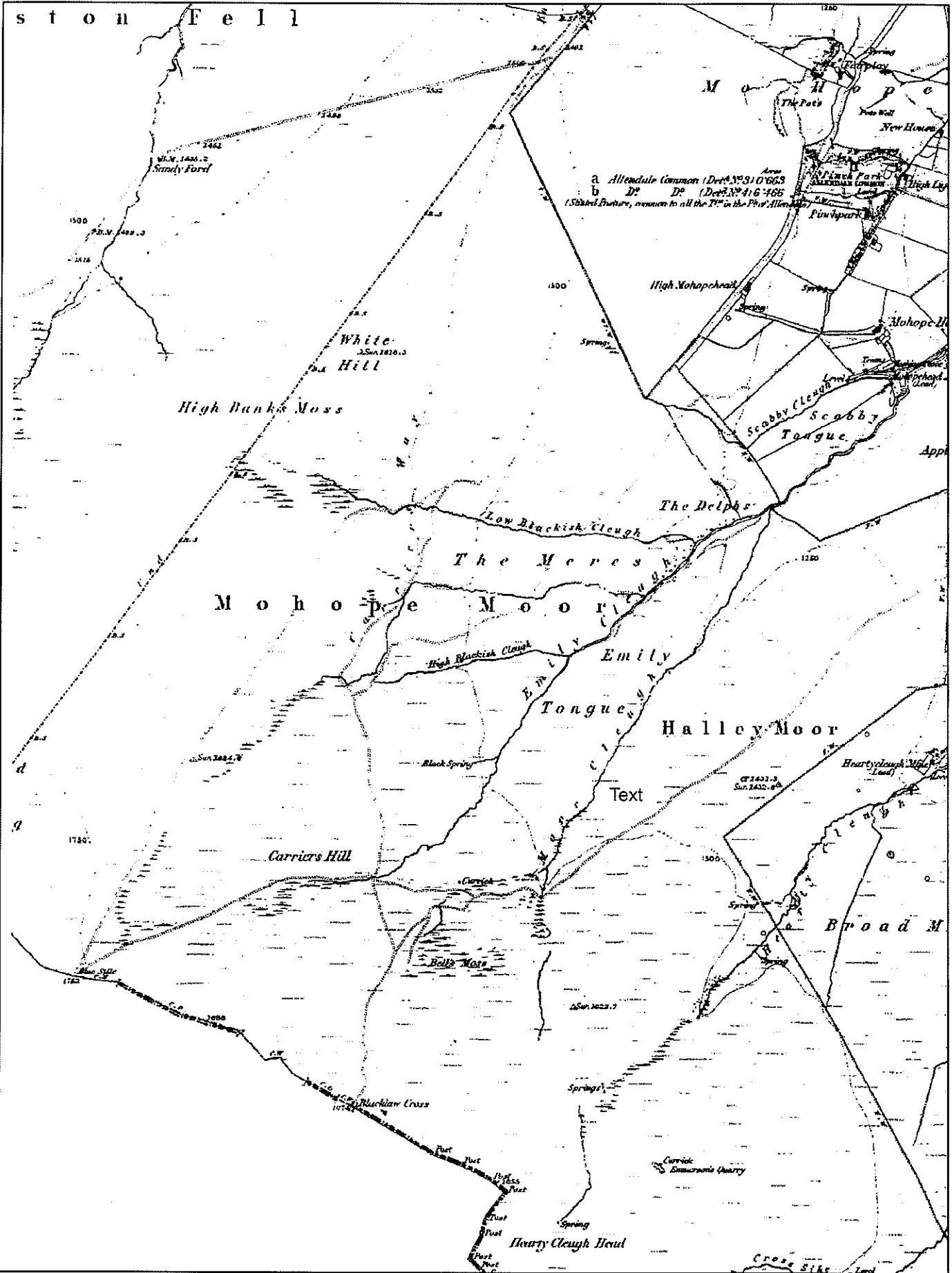
Ordnance Survey Boundary Sketch Book
(1858)



INDEX TO PLACES.

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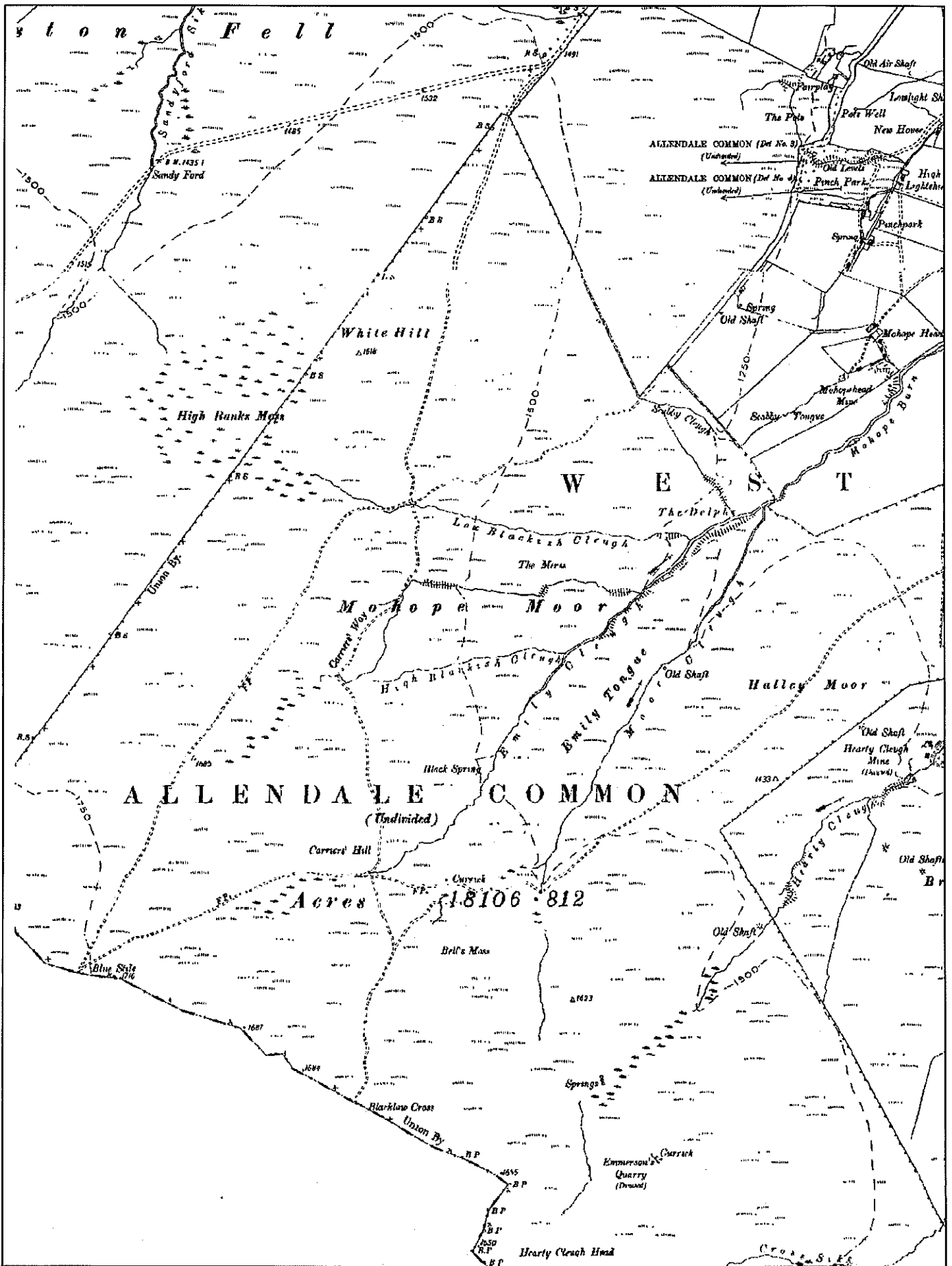
Name of Place.	No. of Sheet.		Descriptive Remarks.
	6 inch scale.	25-344 in. scale.	
Cow's Hole	CII.	11	A house.
Carriers Way		13	A road.
Chapel Bank	CVI.	4	
Church (Per. Curacy)	"	4	A farm house.
Corryhill	"	4	A farm house.
Crawberry Hill	CVII.	2	A ravine.
Crawberry Cleugh	"	2	Cottages.
Clint Hill	CVI.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



Northumberland
County Council

SCALE 1:12,000

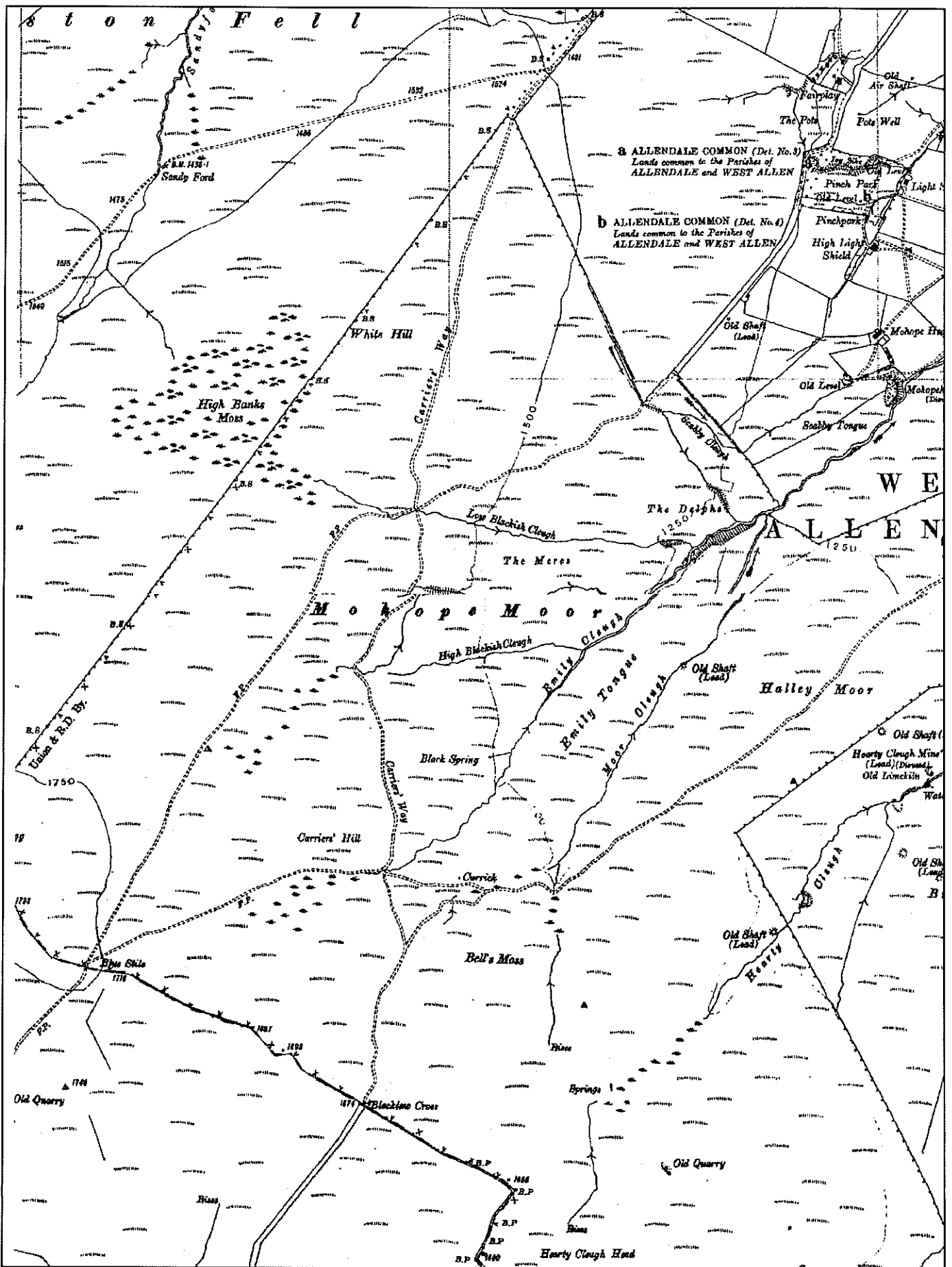
Ordnance Survey 1st Edition 6" map (1865)



Northumberland
County Council

SCALE 1:12,000

Ordnance Survey 2nd Edition 6" map (1898-99)

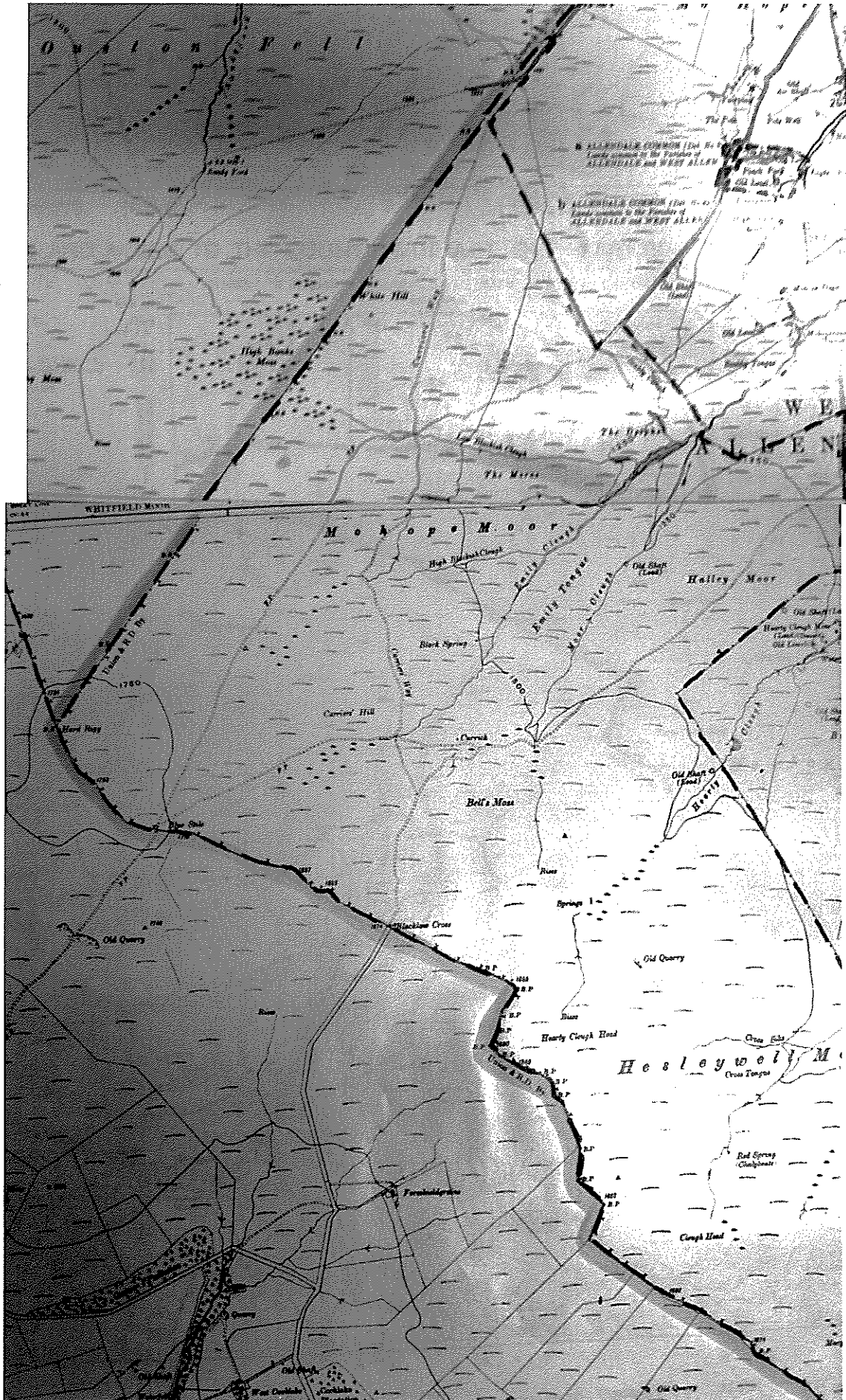


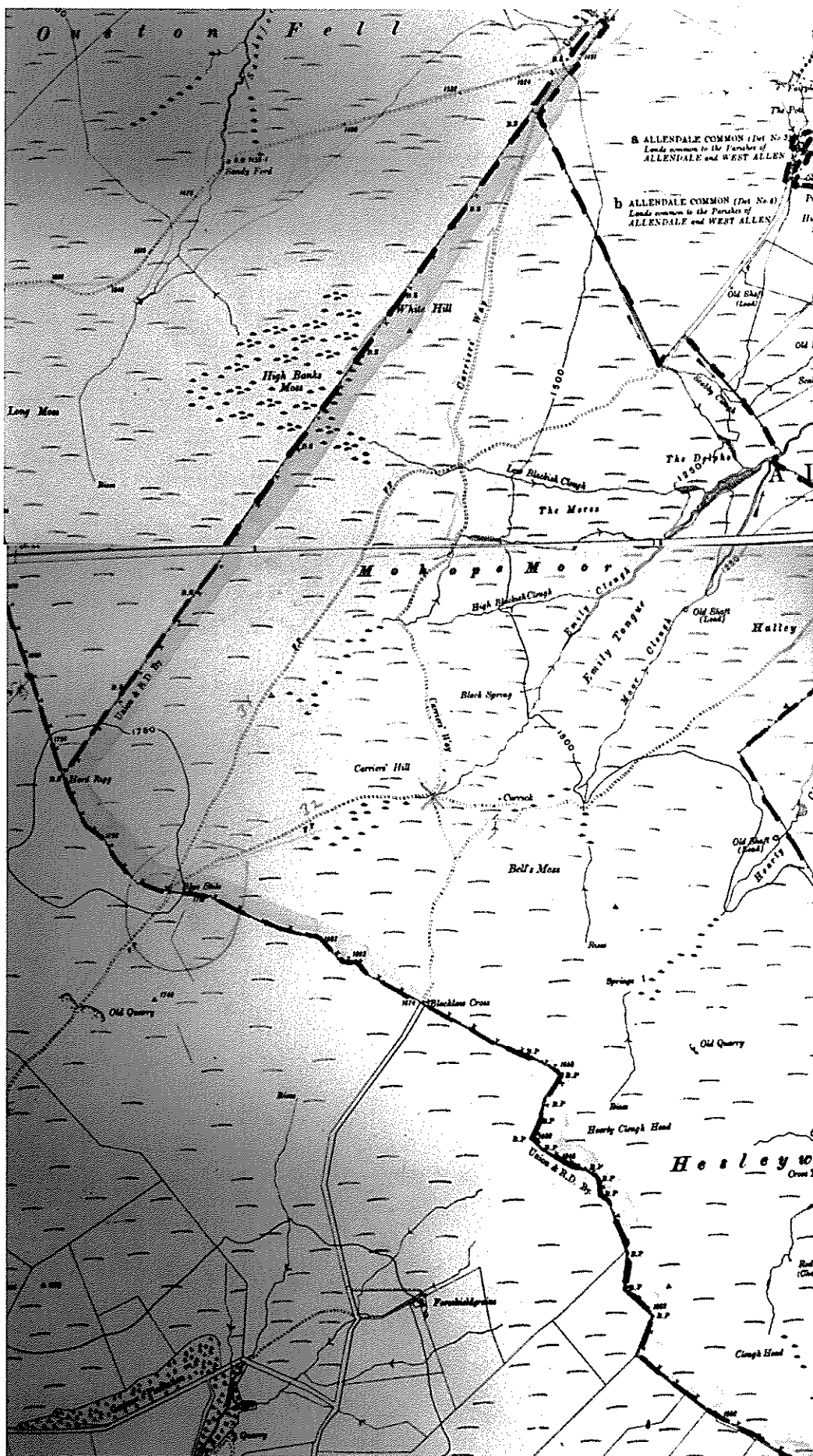
Northumberland
County Council

SCALE 1:12,000

Ordnance Survey 3rd Edition 6" map (1924-6)

Survey Map





Path No.	Representation made by.	Recommendation.
Slaley, F.P. 23		The inclusion of a path from the Dukesfield Bridge road south of Dukesfield Mill following the Devil's Water by Crag Nook to join Path No. 17 at Wrae's Bank.
Hexham Low Quarter, F.P. 10		The inclusion of a path from the Hexham-Whitley Chapel road about 120 yards north-west of Sunnyside Lodge entrance in a south-western direction through the plantation to join Newbiggin Bridge-Linnel's Cottage road at the ford north of Lamb Shield.
Hexham Low Quarter, F.P. 11	C. D. Wood, Esq.	The inclusion of a path from Lamb Shield in an east and northerly direction by Hazelhurst to join the Linnel's road north of Hazelhurst.
Hexham Low Quarter, F.P. 12		The inclusion of a path from Path No. 14 in the Hexham Urban District at Hole House southwards across the West Dipton Burn along the south bank of the Burn in an easterly direction then south to Hill Road at Newbiggin Hill.
Hexham Low Quarter, F.P. 13		The inclusion of a path from Path No. 14 in the Hexham Urban District at Hole House in a westerly direction to join Path No. 16 at the Hexham Urban District boundary north-east of Dipton Bridge.

The County Surveyor has carefully considered the large number of representations made by the Ramblers' Association for the inclusion of paths on the draft map for the Rural Districts of Belford, Castle Ward, Haltwhistle, Hexham and Norham and Islandshires, and his recommendations on these are based upon the evidence he has been able to obtain from local sources.

The Sub-Committee are accordingly recommended to approve the inclusion in the draft map of the footpaths set out below, and consequent upon the Sub-Committee's approval the modifications will be advertised

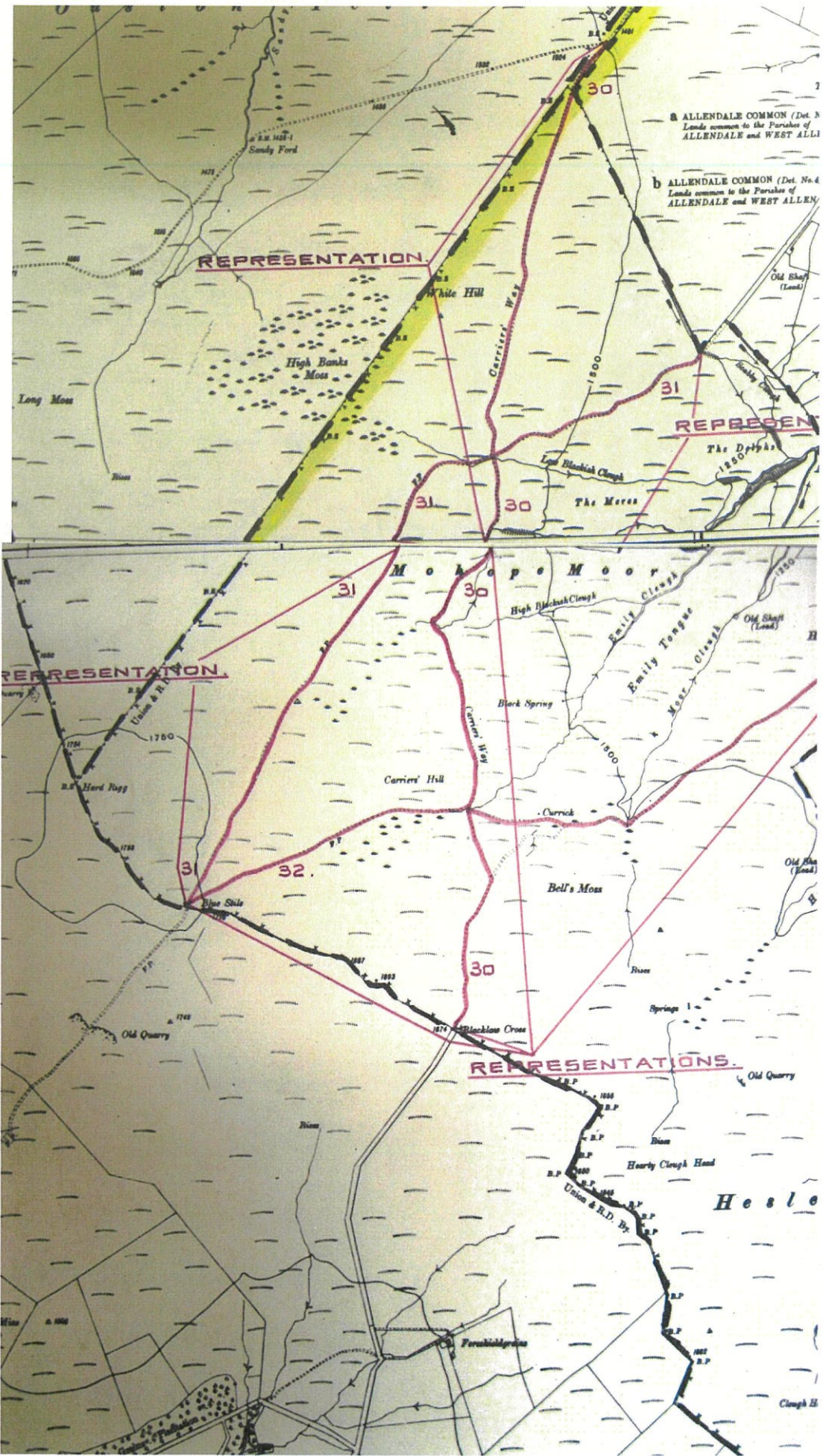
and any objections which are made will be heard in accordance with the procedure laid down in the Act:—

Path.	Description.
<i>Belford Rural District.</i> Bradford, F.P. 3	From the Goldenhill-Lucker Road at Goldenhill West of Farm buildings in a north-westerly direction to join the Bradford-Bamburgh Road north-east of Bradford.
Detchant, F.P. 12.	From Path No. 6 at Lower Swinhoe Lane north-west by Swinhoe Crag to join B.R. No. 1 at Greynare Farm.
Detchant, F.P. 11.	From Detchant-Fenwick Road at Detchant Park west through Detchant Wood to join Path No. 2 at Glendale Rural District boundary.
Detchant, F.P. 13.	From Path No. 11 in Detchant Wood at light railway crossing north-west to Glendale Rural District Boundary to join Path No. 53 at that boundary.
Detchant, F.P. 12.	From the Swinhoe-Tughall road south of Swinhoe in an easterly direction to join Path No. 8 at the Beadnell Parish boundary.
<i>Castle Ward Rural District.</i> East Shaftoe, F.P. 4	From Path No. 1 at the Morpeth Rural District Boundary in an easterly direction following the boundary to about 180 yards west of Salters Nick, then south-westerly by Shaftoe Grange, south-easterly via Pipers Chair, east along the crest of Tailor and His Man then south by Ferney Chesters to join the Newcastle-Otterburn Road.
East Shaftoe, F.P. 3	From Path No. 2 at the Morpeth Rural District Boundary in a southerly direction via the lake and East Shaftoe Hall to the Bradford Parish Boundary to join Path No. 4 in that Parish.
Bradford, F.P. 4	From Path No. 3 at the East Shaftoe Parish Boundary in a southerly direction to join the West Toft Hill-Makemerick Road about 200 yards north-east of the Newcastle-Otterburn Road junction.
Whalton, F.P. 2	From Path No. 2 Rivergreen at the Morpeth Rural District Boundary in a southerly direction by Whalton North Farm to join the Meldon-Whalton Road at the south boundary of the plantation.
Gallowhill, F.P. 2.	From the Bolam-Meldon Road about 200 yards south-west of Lane House at the Morpeth Rural District Boundary in a southerly direction to the Riplington Parish Boundary, joining Path No. 1 in that Parish.
Riplington, F.P. 1.	From Path No. 2 Gallowhill at the Parish Boundary in a southerly direction by Dark Plantation, Riplington Plantation and Howburn Hill to the ford at the Trewick Parish Boundary, joining Path No. 3 in that Parish at the How Burn.

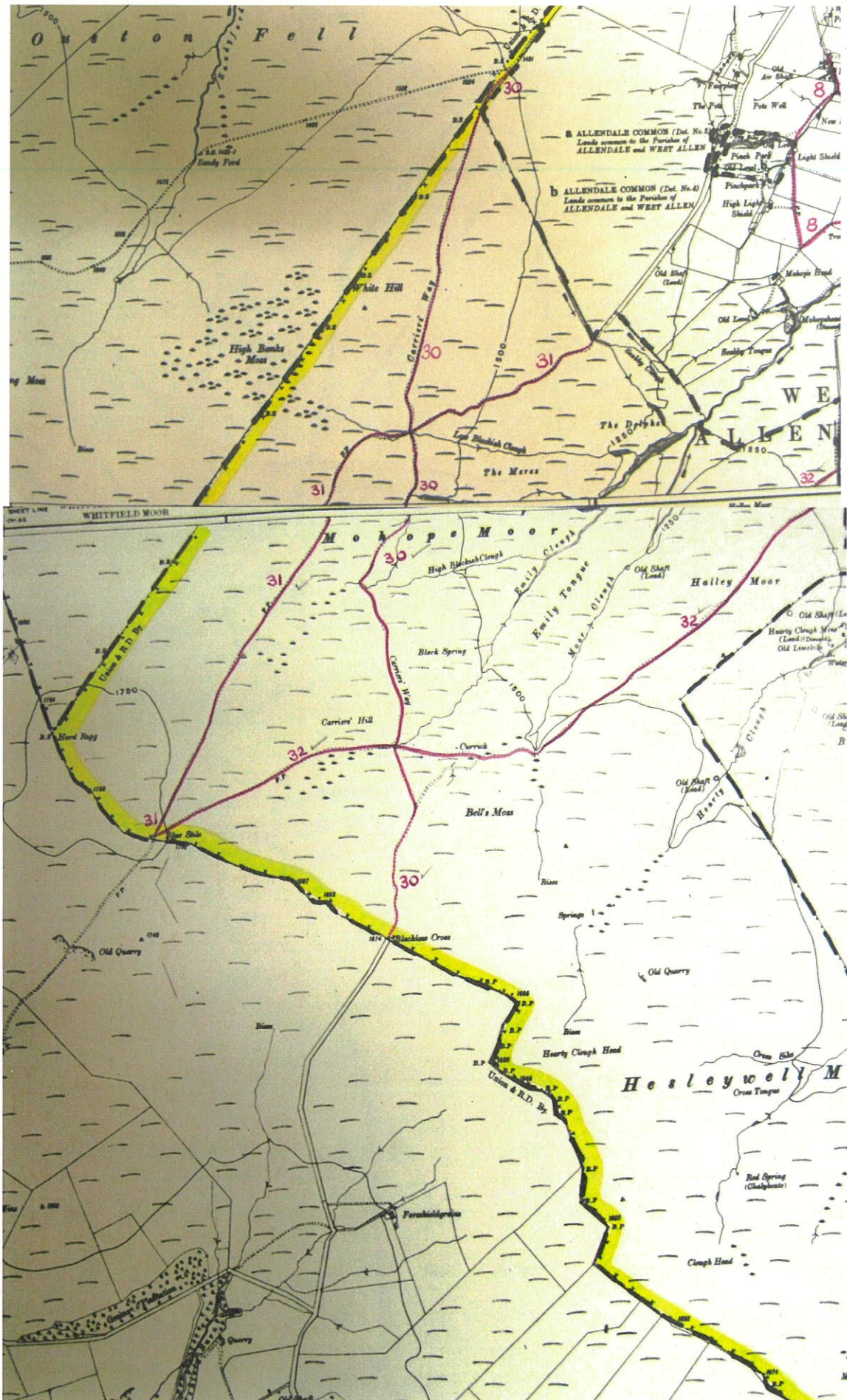
Path No.	Description.
Hexhamshire West Quarter and Detached, F.P. 4 Hexhamshire West Quarter and Detached, F.P. 5 Hexhamshire West Quarter and Detached, F.P. 6	From the Lowes Fell-Low gate road south-east of Lowes Fell in a northerly and north-easterly direction past Path No. 6 and Coastley Fell House to join Path No. 3 north-west of Coastley. From the Branchend-Stublick Colliery road south-west of Stublick Hill in a south-easterly direction to the boundary of Lands Common to Allendale and West Allen. From the Keepers Shield-Greenshaw Plain road near the Newbrough Parish boundary in a south-westerly direction over the Hexham and Allendale Branch Railway through Glen Dhu Wood then southerly and south-easterly south of Glen Dhu to join Path No. 4 south-west of Coastley Fell House.
Hexhamshire West Quarter and Detached, F.P. 7 Warden, F.P. 18 Dilston, F.P. 7	From the boundary of Lands Common to Hexhamshire High Middle and West Quarters and Path No. 9 in a north-westerly direction by Low Stublick to the Hexham-Allendale road. From Path No. 9 east of Laverick Plantation in a north-easterly direction to the camp. From Path No. 6 south of Dilston South Park in a south-westerly, south-easterly and westerly direction to the Hexham Urban District boundary to join Path No. 31 in that District. From Path No. 24 Slatley in a northerly direction to join Path No. 4 east of Linnoldswood Farm. From Path No. 13 Corbridge in a south-westerly, westerly, southerly, south-easterly and south-westerly direction to join Path No. 2 at the Slatley Parish boundary.
Dilston, F.P. 8 Dilston, F.P. 9 Whittle, F.P. 6	From Path No. 1 at Gills Crag in a south-easterly direction by Eddybroth Well to join Path No. 4 near the Ovingham Parish boundary. From Path No. 5 Hexhamshire West Quarter in a south-easterly direction to cross Path No. 1 east of Rebel Hill then in a southerly direction to join Path No. 2 south-east of Gaterly Hill.
Lands Common to Allendale and West Allen, F.P. 29	From the Powstile Bridge-Long Cross road near the West Allen and Whitfield Parish boundaries in a southerly direction by the Carriers Way across Path No. 31 near Carriers Hill and on to the County boundary at Blacklaw Cross. From the end of the county road near Scabby Cleugh in a south-westerly direction to Blue Stile on the Cumberland County Boundary.
Lands Common to Allendale and West Allen, F.P. 31 Lands Common to Allendale and West Allen, F.P. 32	From Blue Stile on the Cumberland County Boundary in a north-easterly direction across Path No. 30, by Halley Moor to the West Allen Parish boundary joining Path No. 25 of that Parish.

Path No.	Description.
Lands Common to Allendale and West Allen, F.P. 33 Lands Common to Allendale and West Allen, F.P. 34 Lands Common to Allendale and West Allen, F.P. 35	From Path No. 26 on the West Allen Parish boundary in a south-easterly direction to the county road west of Greenleycleugh Crags. From Path No. 16 at Little Hill in a north-westerly direction by Jacksons Moss, Middle Riggs and Quarry Hill to join Path No. 8 West Allen. From the Allendale Parish boundary at Dodd Top and Path No. 82 in that Parish in an easterly direction to Path No. 11 then from a point further north on Path No. 11, in an easterly direction across Westend Burn to join the county road at Bird Pot.
Lands Common to Allendale and West Allen, F.P. 36 Lands Common to Allendale and West Allen, F.P. 37	From Path No. 56 Allendale in a south-westerly direction across Path No. 22 to join Path No. 15 at Philipsons Fold. From the county road at Byerhope Bridge in a south-easterly direction to the Allendale (Detached) Parish boundary at the north-east corner of Woodhead Plantation joining Path No. 85 of that Parish.
Lands Common to Allendale and West Allen, F.P. 38 Lands Common to Allendale and West Allen, F.P. 39 Lands Common to Allendale and West Allen, F.P. 40	From the county road east of Allenheads, at a point north-west of Shorngate Cross Currtick, in a north-westerly direction by the old quarries to Dodd End then in a northerly, north-easterly and north-westerly direction to the Allendale Parish boundary and Path No. 90 in that Parish. From Path No. 92 at the Allendale Parish boundary in a south-easterly direction to join Path No. 40. From Path No. 7 north of Sipton Bridge in an easterly, north-easterly, northerly and easterly direction by Sipton Burn, Sinderhope Carrs and the Long Drag to the boundary of Lands Common to Allendale and West Allen and Path No. 11.
West Allen, F.P. 25 West Allen, F.P. 26	From Path No. 32 on the boundary of Lands Common to Allendale and West Allen in an easterly and north-easterly direction via Appletree Shield to join Path No. 8 near Nether House. From Path No. 11 at the footbridge over River West Allen in a south-easterly direction across the Farneside-Dents Linn road by Taylorburn to the boundary of Lands Common to Allendale and West Allen west of Greenleycleugh Crags to join Path No. 33.
West Allen, F.P. 27	From the junction of Path No. 3 and Path No. 2 near Gate House in a southerly direction by Gate House, Green Sike and Whamlands to join the Leadgate-Ashes Bridge road north east of Ashes Bridge.

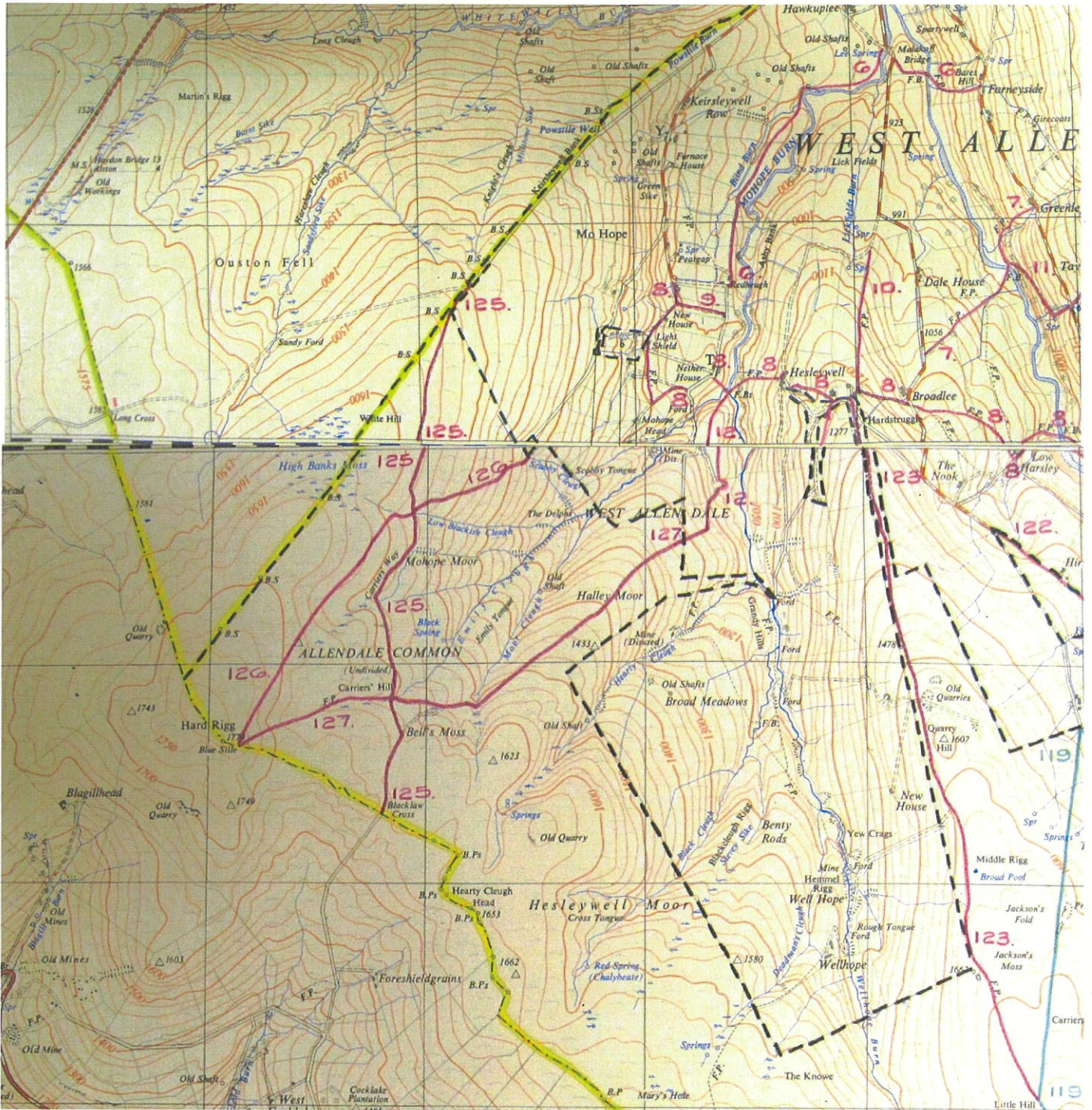
Draft Map (Modified)

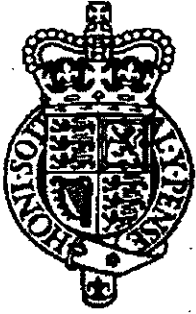


Provisional Map



Original Definitive Map





Order Decision

Inquiry opened on 6 April 2004

by Alan Beckett BA, MSc, MIPROW

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

The Planning Inspectorate
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Temple Quay House
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Temple Quay
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inspectorate.gov.uk

Date 10 SEP 2004

Order Ref: FPS/R2900/7/30

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

Summary of Decision: The Order is not confirmed.

Procedural Matters

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

The main issues

7. The requirements of Section 53 (3) (c) (ii) namely, the discovery of evidence which when taken with all other relevant evidence available shows that a highway shown in the map and
-

statement as a highway of a particular description (namely Footpath No. 26 West Allen) ought to be there shown as a highway of a different description (namely as a BOAT).

Reasons

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

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

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

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

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

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

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

Conclusions on the evidence

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

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

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

Other matters

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

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

Overall conclusion

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

Formal Decision

38. The Order is not confirmed.



INSPECTOR

APPEARANCES

For Northumberland County Council

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

In Support of the Order:

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

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

For the Objectors

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

who called

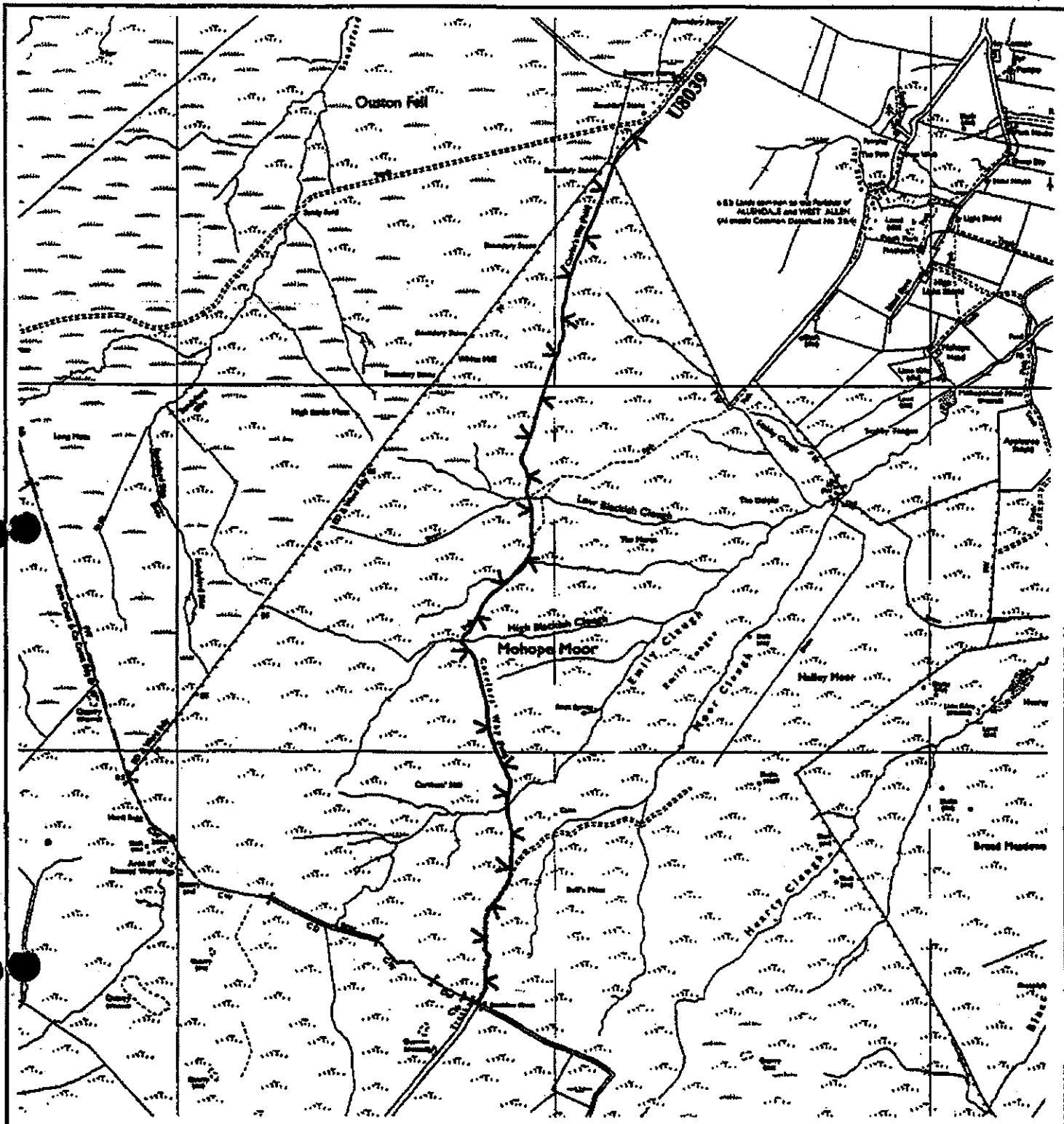
Mrs E Sobell, Turf House, Steel, Hexhamshire NE47 0HP

Interested Party

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

INQUIRY DOCUMENTS

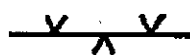
1. Attendance list 6 April 2004.
2. Attendance list 7 April 2004.
3. Letter from Mr K Lord.
4. Certificate of completion of procedural requirements.
5. Satellite photographs of Mohope Moor.
6. Letter from Ms Atkins & Ms Morris.
7. Letter from Ms Elliott and Mr Wenham.
8. Standard letter completed by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



Northumberland
COUNTY COUNCIL

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

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



Claimed upgrading to Byway Open to All Traffic

O.S. LICENCE No. 076775
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reproduction infringes Crown Copyright and may
lead to prosecution or civil proceedings.
Date: 1999 Scale: 1:15,000

District(s)	Tynecliffe	Parish(es)	West Allen	Scale	1:15,000
Def. Map No.	2271237	O.S. Map	NY74NE/75SE	Date	March 1999



Appeal Decision

by **Rory Cridland LLB (Hons), Solicitor**

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

Decision date: 19 December 2018

Appeal Ref: **FPS/P2935/14A/5**

- This appeal is made by Mr Alan Kind ("the Appellant") under section 53(5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the Act") against the decision of Northumberland County Council ("the Council") not to make an Order under section 53(2) of the Act.
- The application is dated 22 November 2016 and was refused by the Council by letter dated 16 November 2017.
- The Appellant claims that the definitive map and statement of public rights of way should be modified by upgrading to a restricted byway Footpath No 26, West Allen from the Cumbria County boundary at Blacklaw Cross to where it joins Byway Open to all Traffic No 37 at Kiersleywell Bank.

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. This appeal has been determined on the basis of the papers submitted.
2. A Definitive Map Modification Order dated 12 May 2003 and known as the Northumberland County Council (Public Rights of Way) Modification Order (No.10) 2003 was made by the Council to upgrade this part of Footpath No 26 to a Byway Open to All Traffic (BOAT). Following a number of objections to that order, a public inquiry was held ("the 2004 Inquiry") after which a decision was issued not to confirm the order. I have been provided with a copy of the Order Decision¹ and have had regard to it in my determination of this appeal.
3. My attention has been drawn to the fact that the Appellant may not have served notice of the application on all of the occupiers of the land affected as required by Schedule 14(2) of the Act. However, Schedule 14(2) does not require strict compliance and I consider the publicity requirements in respect of any order subsequently made would be sufficient to remedy any deficiency in this respect. I do not therefore consider any party would be materially prejudiced.

Main Issues

4. With regard to section 53(3)(c)(ii) of the Act, the main issue is whether the evidence discovered, when considered with all other relevant evidence available, shows that Footpath No 26 ought to be shown as a restricted byway.

¹ Order Ref: FPS/R2900/7/30.

Reasons

5. The appeal route is currently shown recorded in the Definitive Map and Statement as forming part of Footpath No 26, West Allen and runs from Blacklaw Cross in a generally northerly direction to the U8039 at Kiersleywell Bank. The application seeks to upgrade this section of Footpath No 26 to a restricted byway.
6. Most of the evidence upon which application is based was considered in detail as part of the 2004 Inquiry. While I note the Appellant has challenged some of the conclusions reached by the Inspector in that case, these were arrived at following detailed consideration of the evidence and with the Inspector having had the benefit of hearing oral arguments. I have seen nothing which would lead me to reach a different conclusion on that evidence. However, the Appellant has identified two additional pieces of evidence – the Alstone Moor Inclosure Act 1803 and a copy of the Ordnance Survey (OS) Boundary Sketch Map of 1858 - which, when taken with the 2004 evidence, he claims shows that Footpath 26 ought to be recorded as a restricted byway.
7. The relevant trigger for section 53(3)(c)(ii) is the 'discovery of evidence' and while I note that the 2004 Inquiry considered the OS evidence available at the time, additional information has been discovered which, for whatever reason, was not available in 2004. Similarly, while I note that the Alstone Moor Inclosure Award was considered as part of the 2004 Inquiry, the 1803 Alstone Moor Inclosure Act itself, now provided by the Appellant, was not. I accept the Appellant's argument that the discovery of evidence in this context should be given its ordinary or literal meaning. As such, I am satisfied that the additional evidence provided is sufficient to constitute the 'discovery of evidence' for the purposes of section 53(3)(c)(ii).
8. Nevertheless, the 2004 Inquiry established that the evidence available at that time was insufficient to show that Footpath No 26 was incorrectly recorded. Indeed, the Inspector commented² that the evidence in favour of an all-purpose highway at this location was 'meagre'. I agree with that assessment and as such, consider the central question to be whether the additional or 'newly discovered' evidence, when taken with all the other relevant evidence available, is sufficient to show that Footpath 26 ought to be recorded as a restricted byway. I consider this new evidence further below.

The OS evidence

9. OS mapping from the nineteenth century shows the claimed route as a double pecked line feature annotated as Carrier's Way. It is described in the OS Book of Reference as a 'cart road' and this evidence was available at the 2004 Inquiry. At that time, the Inspector considered that, while it provided evidence of the physical existence of a route at the time of the survey, no evidence was presented to assist in the determination of why this feature was considered to be a cart road or from whom authority for such a description was sought.
10. As part of the present application, the Appellant has produced additional evidence in the form of the OS Boundary Sketch Book dated 1858 which shows the claimed route as a continuation of Blacklaws Road and annotates it as Carrier's Way. I agree with the Appellant that it supports the proposition that

² At paragraph 32.

there was a continuation of some sort of route over the county boundary. However, it provides no detail as to its status or use.

11. Furthermore, while I note that the Appellant has produced some useful articles including one which indicates field recording was not a chance or casual process but rather one which was carried out by an independent specialist whose main task was to verify the accuracy of the detail of the survey, the accuracy of the work depended very much on the skill of the examiners and their classification of land use was not subject to close scrutiny. While I accept it adds some further weight to this evidence and the suggestion that a highway of some sort has been in long-standing existence on the ground, it does not shed any additional light on its status and provides very little support for upgrading the route to a restricted byway.

The Alstone Moor Inclosure Act 1803.

12. The Appellant has also submitted a copy of the Alstone Moor Inclosure Act 1803 and extracts from the 1820 award which establishes Blacklaws Road as a highway which runs to the county boundary. Although the 1803 Act itself was not available at the 2004 Inquiry, it is clear from the decision letter that the argument put forward by the Appellant is essentially the same, i.e. that the Commissioners would not have awarded a public road in this location, with the maintenance and repair falling to the Alstone Parishioners, if there was no onward access beyond the county boundary. He refers to the 'through route presumption'³ which can be summarised as being that where two highways are linked by a short section of uncertain status, it can be presumed that its status is that of the two highways linked by it.
13. However, this argument was considered by the Inspector at the 2004 Inquiry and the decision letter makes clear⁴ that, while the presumption is something that can be added into the balance, it does not weigh heavily in favour. I have seen no evidence as part of this appeal that would lead me to reach a different conclusion. As such, I do not consider this additional evidence provides any meaningful support for the Appellant's case or alters the assessment carried out in 2004. As with the OS evidence above, it provides little information as to the status of the route and does not provide any additional support in favour of upgrading it to a restricted byway.

Summary

14. I have found above that the additional, or 'newly discovered', evidence submitted by the Appellant provides some support for the claim that a route of some sort has been in long-standing existence on the ground. However, I have also found that it sheds little light on its status and provides very little support for upgrading the route to a restricted byway. Furthermore, while I accept that it links two other vehicular ways and as such, benefits from the 'through route presumption', I agree with the conclusions of the Inspector in 2004 that the evidence in support is so meagre that this presumption does not weigh heavily in favour.
15. Accordingly, I do not consider that it has been demonstrated on the balance of probabilities that Footpath 26 ought to be shown as a restricted byway. As such, the appeal must fail.

³ See *Eyre v. New Forest Highway Board* [1892] 56 JP 517.

⁴ at paragraph 32 of the decision.

Conclusion

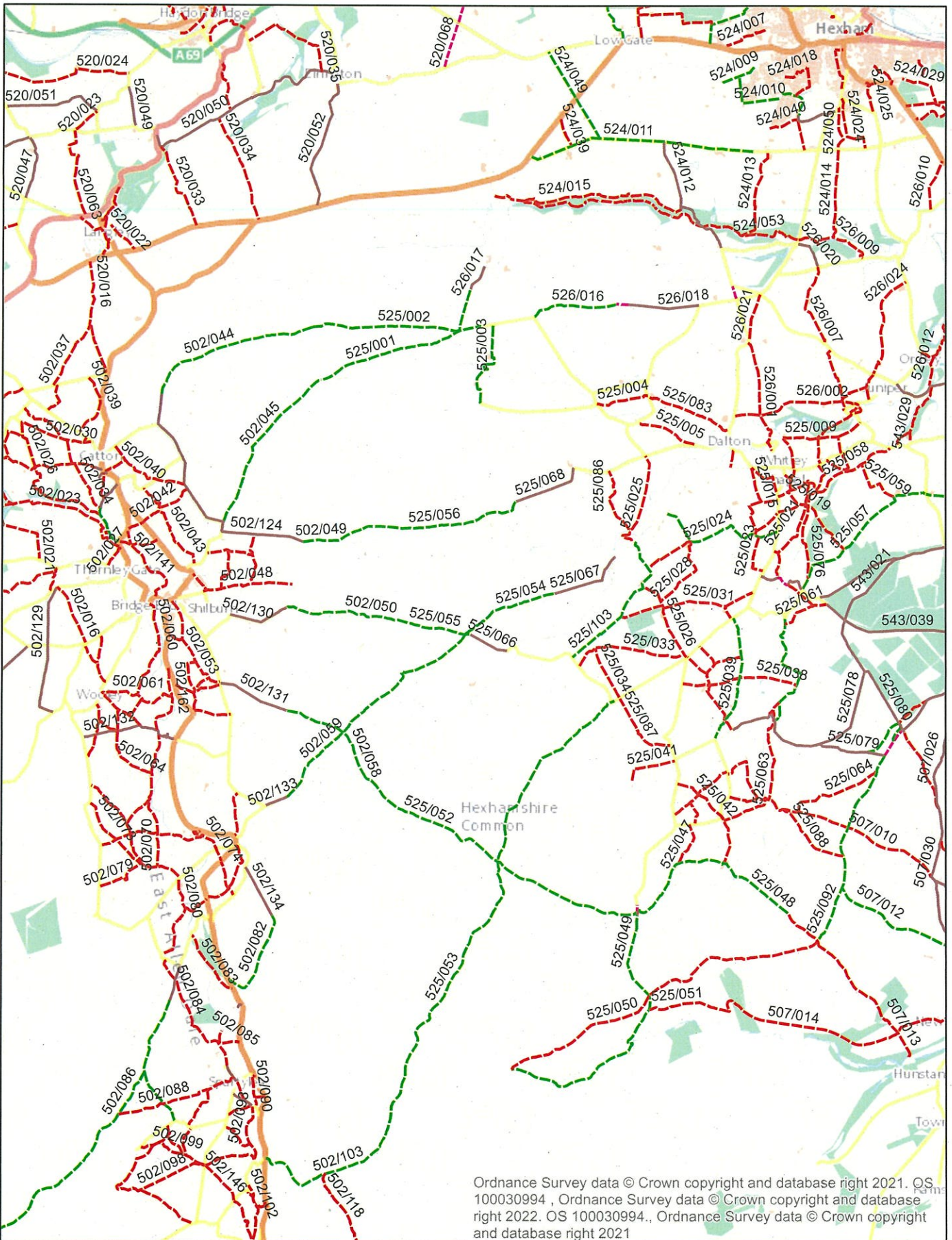
16. Having regard to these, and to all other relevant matters raised in the written representations, I conclude that the appeal should be dismissed.

Formal Decision

17. The appeal is dismissed.

Rory Cridland

INSPECTOR



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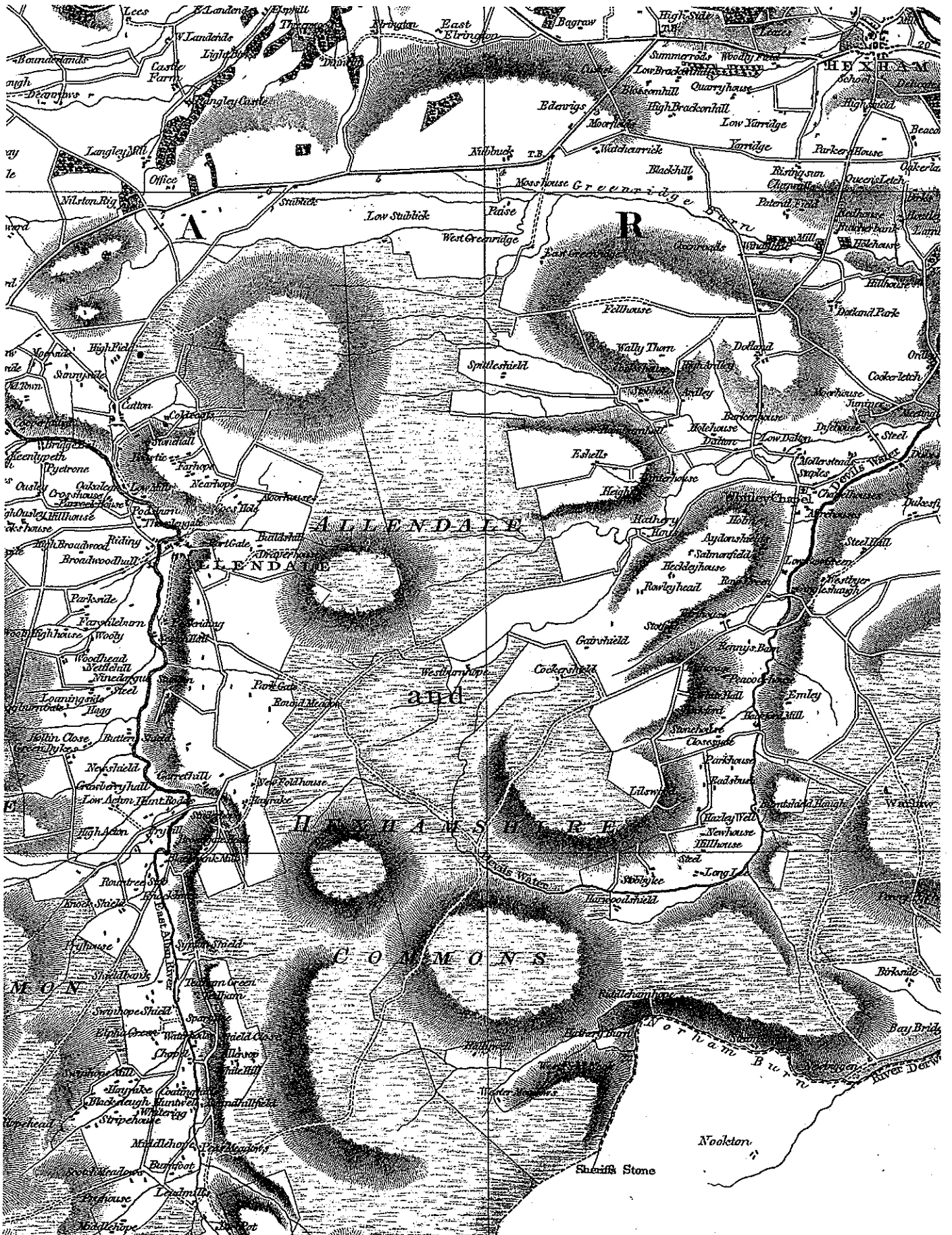
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Location Map

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Fryer's County Map 1820



Greenwood's County Map 1828

