



# Northumberland

## County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL  
RIGHTS OF WAY SUB-COMMITTEE  
29 June 2022

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

#### ALLEGED PUBLIC BRIDLEWAY No 31 PARISH OF ANCROFT

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

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#### **Purpose of report**

In this report, the North Northumberland Local Area Council Rights of Way Sub-Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public bridleway rights over a route from the B6354 road south-west of West Ancroft, in a general easterly direction, to the C8 road, west of Ancroft Manor.

#### **Recommendation**

**It is recommended that the sub-committee agrees that:**

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route N-O;**
- (ii) there is sufficient evidence to show, on a balance of probabilities, that public vehicular rights exist over the route O-P;**
- (iii) the Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the whole N-O-P route;**
- (iv) the N-O-P route be included in a future Definitive Map Modification Order as a restricted byway.**

#### **1.0 BACKGROUND**

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

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

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

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

- 1.3 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.”

- 1.4 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 May 2019, Diane Holmes of Ulgham made a formal application seeking to modify the Definitive Map of Public Rights of Way by adding a public bridleway (partly upgrading an existing public footpath to bridleway status) over a route between the B6354 road, 1060 metres south-west of West Ancroft, in a general easterly direction, to the C8 road, 750 metres west of Ancroft Manor.

- 2.2 Ms Holmes supplied the following analysis of the evidence to accompany her application:

“The route

“1. The application route is in the parish of Ancroft. It follows the line of FP 203/018 for nearly half of its length (C-D). The remainder of the route is unrecorded (A-C). It can be seen on OS Explorer 339 Kelso & Coldstream.

“2. At its western end (A), it leaves the B6354 at GR NT 956 449. It goes in an easterly direction to cross a minor farmac road, the U2110,

at GR NT 966449 (B) and ends in Ancroft village on the C810 at GR NT 990453 (D).

"3. The eastern section (C-D) follows a wide hedged lane consisting of a stone track with wide grass verges. At C it turns north, still following a wide stone track. The application route then turns west for the remainder of its distance. This middle section is now filled with coniferous woodland. There is however a wide stone track along its south side all the way to (B). West of (B) it follows a grass margin, before it meets the road from Berwick, having turned up a short lane (A).

"4. From an examination of the maps described below it can be seen that the tree planting in the central part of the route took place sometime between 1845 (tithe plan) and 1866 (OS 1st ed).

"5. Both the east and the west sections are labelled 'Long Loanen' on the old maps and are still labelled with that name on the OS today. This suggests that it was a well known through route between the village of Ancroft and the turnpike road (indicated by the MP – milepost shown on the OS) to Berwick, now B6354.

"5. Its length is 3.75 kms and the average width of the old lane is 5 – 8 metres.

See photographs showing its character.

The documentary evidence.

"1. 1819 Berwick, Norham & Islandshire Turnpike Trust.

On the plan of turnpike roads in the North East of England shown on the website [www.turnpikes.org.uk](http://www.turnpikes.org.uk) the road between Berwick and Etal (the B6354) is shown with its date being given in the key. This is the turnpike road that the application road meets at its western end.

"Attempts to find the original turnpike plan have failed at both Woodhorn and Berwick.

See extract

"2. 1820 Fryer's Map of Northumberland

The full length of the route is shown on this early county map, showing the farm, Long Dike, at the eastern end and the point where it crosses the minor road (B) which goes to Ancroft South Moor farm, as it does today. It is shown in the key as an 'other road', joining a turnpike road at its west end (A).

See extract

"3. 1824 Rule's Map of Norham and Islandshire in the County of Durham and the Liberties of Berwick on Tweed.

This map can be seen in the Berwick Archives. It is produced from an actual survey by Robert Rule. The title on the map says 'To the trustees of the Berwick and North Durham Turnpike Roads, this map is respectfully dedicated by their much obliged and obedient servant and surveyor, Robert Rule.'

This map shows the entire length of the application route. The fact that this map was surveyed specially for those local people involved in the funding and management of turnpike roads in the area suggests that

the application route was an integral part of the network of minor public roads in the early 19th century, leading to one of these turnpike roads. See photocopy of a section of this map

"4. 1827 Cary's Map of Northumberland

The full length is also shown on a map by this well known cartographer. It overlaps two sheets so is less easy to see.

See extract

"5. 1828 Greenwood's map of Northumberland

By this time only the eastern section (B-D) is shown. The key indicates that it is a 'cross road', that is a minor road linking two roads of greater importance.

"The fact that this route is shown on these three county maps, which were sold to the more wealthy literate members of society, suggests that it was an important route providing access for the residents of Ancroft and the surrounding area to the turnpike road to Berwick to the north and to Ford and Etal to the south, at a time when other roads were less well developed.

"Its width also suggests that it may have been used as a droving route providing farmers with livestock access to markets in Berwick, while avoiding the Great North Road (the current A1) which would have been busy with long distance traffic such as stage coaches, mail coaches and other faster moving vehicles.

See extract

"6. 1845 Tithe award for the township of Ancroft

The tithe plan shows the full length of the application route following the same line as on Fryer and Cary. It is shown in the same manner as the current county roads that pass through this area. It is not numbered and in the apportionment it is not shown as belonging to any particular farmer. This suggests it was recognised as a through route for public use, leading to the turnpike road to Berwick at its west end and to the local road through the village of Ancroft at its east end.

See extract

"7. 1866 OS 1st ed 25"

These sheets are missing from Woodhorn, however they can be seen on [www.old-maps.co.uk](http://www.old-maps.co.uk), from where the extract is taken. The application route is shown to be in the parish of Holy Island, township of Ancroft. The planting of trees within the bounds of part of this historic route shows up for the first time on this map.

"The whole length of the application route is clearly shown with the exception of where it passes through a field at the extreme west end. It is labelled 'Long Loanen' in two places, indicating its reputation as a public road.

"Sheet VI/15, shows the western section of the route from A-B and sheet VI/16 shows the eastern section from B-D.

"Plot 162, the wide lane between C & D is described as 'public road' in the OS Book of Reference for that parish and township.

The OS 1st ed 6" can be seen on Roll 2 at Woodhorn.

See extracts

"7. 1898 OS 2nd ed Scale 1:10,560 (6")

The application route is shown on this later edition and is labelled 'Long Loanen' as before. It is not annotated as either FP or BR, which

suggests it was known to be of higher status, that is as a horse and cart route.

See extracts

#### "8. 1910 Finance Act Plan

The application route passes through the hereditaments listed below.

There is a deduction in tax for 'right of way or user' in all of them bar the one now filled with trees, indicating that in spite of the route's decreasing importance in local life by this time, it was still recognised as a route with public rights:

Pt 128 Ancroft Moor	Owner Earl Grey, William Whittle	Deduction £54
Pt 45 Ancroft South Moor	Owner Earl Grey, James Green	Deduction £40
Pt 46 Plantation & game	Owner Earl Grey	No deduction
Pt 45 Ancroft Town Farm	Owner Earl Grey, John Mitchell	Deduction £175

"It would appear that Earl Grey was happy to claim the tax deduction for the route where it followed a lane or passed around the edge of fields but he was not prepared to admit that public rights existed in the section which had been planted, for which the entry suggests was important as providing cover for game.

See extract

#### "9. 1925 OS 3rd ed Scale 1:10,560 (6")

The application route is shown on this 20th century edition as well. It is still labelled 'Long Loanen' and is not annotated as a FP, even though a FP is shown branching off the route from C, going to Ancroft South Moor Farm. This also suggests that it was recognised to have a higher status than that of public footpath.

See extracts

#### Conclusion

"The evidence suggests that this was a locally important route in the early 19th century but one that gradually fell into disuse, so much so that the local landowner felt he could fill it in with trees. As a result the full length of the historic line is not now available, but there is a wide track on the south side of the wooded section onto which the historic line could be diverted.

"Please will you consider if there is sufficient evidence of public rights in the past for this route to be added to the definitive map as a public bridleway?"

### 3. LANDOWNER EVIDENCE

- 3.1 By letter, dated 17 July 2020, Edwin Thompson (Chartered Surveyors) responded to the consultation on behalf of JW Gray Ltd of Felkington Farm, stating:

"We refer to your email dated 14 July and confirm that we have liaised with our clients, the directors of JW Gray Ltd, and have inspected the alleged public bridleway in so far as it runs through Felkington Farm, viz from the minor unclassified public road serving Ancroft Southmoor to the point marked "N" on your plan and, accordingly, comment as follows:

"1. We have not viewed the historical evidence referred to in your letter dated 17 September 2019, but note that most of it refers to nineteenth century documentation and the most recent to the Third Edition OS 6 inch plan of 1925. As you have commented in your letter, the information is indeed "historical" and there is no evidence whatsoever to suggest that this route has been used either by horses or pedestrians in recent years. Indeed, we have spoken to the previous owner, Mr C Martin, who lived at Felkington for approximately 60 years and who owned the land in question for 25 years or thereabouts and he has confirmed that throughout that period this route was, to his knowledge, never used either as a footpath or bridleway.

"2. With reference to the numbered plan attached:

A. The proposed route would follow a 6 metre field margin which forms part of a Countryside Stewardship Scheme. As you know, one is not allowed to break the sward on a Stewardship margin and accordingly, were this land to be designated a bridleway it could prejudice the integrity of the Stewardship Scheme.

"B. More importantly, the proposed bridleway at this point would run through a mixed hardwood plantation which appears to be approximately 25 – 30 years old.

"C. At this point the proposed bridleway would run through a mature mixed hardwood plantation which has clearly been in place for very many years.

"Confirmation of this route as a bridleway running through two woods and across a Stewardship margin would not make sense from any perspective, particularly health and safety. Additionally, there is no evidence on the ground to suggest that this route has been used as a bridleway for many years, if ever.

"There is an existing footpath along the long loanen from the point marked "P" on your plan to the point marked "O". Thereafter the footpath runs in a south-westerly direction to Ancroft Southmoor. We can see no particular reason for intensifying the footpath / bridleway network in this immediate area, most particularly when it was clear on the ground that the alleged bridleway has not been used for many years, if ever. We can quite understand that the owners of West Ancroft would prefer the existing footpath to be re-routed along the line of the now extended long loanen track to the public road rather than running, as it does now, across the middle of their fields to Ancroft South Moor, but that is perhaps a separate matter. Referring back to the long loanen itself, we should perhaps add that the author of this letter was responsible in the 1980s for extending the long loanen in a westerly direction past the point marked "O", but not as far as the Cuddy Plantation. The current owners, Messrs Douglas, have further extended the track to connect them to the minor public road. Again, the point that we are making is that there was no semblance of a track along this part of the alleged route until relatively recently when the long loanen was extended.

"Accordingly, we object to the proposed bridleway for the reasons noted above."

#### **4. CONSULTATION**

- 4.1 In September 2019, 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". Two replies were received and are included below.
- 4.2 By email, in October 2019, the British Horse Society responded to the consultation, stating:

"Parish of Ancroft  
Alleged public bridleway 31  
There are very few bridleways in Ancroft parish and most of them lead to the A1. So they are of little use to vulnerable roads users, specially horse riders. This route, which appears to have been an important one in the past, links the village to quieter roads and so would enable riders to take exercise and to enjoy the countryside in greater safety."

- 4.3 By email, on 15 October 2019, Ancroft Parish Council responded to the consultation, stating:

"Ancroft Parish Council have agreed to submit no objections to the proposed changes to Public Bridleway No 31 in Ancroft Parish."

#### **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 Ancroft, itself, is shown on this map, there is no evidence of a road or track resembling the route of alleged Bridleway No 31 (or of the U 20 road which runs roughly parallel to the north).

1820 Fryer's County Map

There is clear evidence of a road or track over the route of alleged Bridleway No 31 (and also of the U20 road, running roughly parallel, to the north and of the U21 road between West Ancroft and Ancroft Southmoor).

1827 Cary's Map

There is clear evidence of a road or track over the route of alleged Bridleway No 31 (and also of the U20 road, running roughly parallel, to the north and of the southern half (only) of the U21 road between West Ancroft and Ancroft Southmoor).

1824 Rule's Map (supplied by applicant)

There is clear evidence of an enclosed road or track over all but the very western end of the alleged bridleway route.

1828 Greenwood's County Map

There is clear evidence of a road or track over the easternmost two thirds of the route of alleged Bridleway No 31 (and also of the U20 road, running roughly parallel, to the north and of the U21 road between West Ancroft and Ancroft Southmoor).

1844 Tithe Award (Township of Ancroft) (supplied by applicant)

There is clear evidence of what appears to be an enclosed road or track over the route of alleged Bridleway No 31.

c.1865 Ordnance Survey Map: Scale 1:2500 (supplied by applicant)

There is clear evidence of an enclosed road / track along the eastern part of the claimed route and evidence of a field edge track along the field immediately east of Point O. The enclosed eastern end is identified with parcel number "162". In the accompanying Book of Reference, in the Township of Ancroft, this corresponds with the entry "Public road". The section of alleged public right of way east of the U21 road is identified with the parcel number "212", and that west of the U21 road with the parcel number "207". In the Book of Reference these parcels are identified as "Plantation & stream" and "Plantation", respectively. Both appear to be depicted as narrow, enclosed wooded strips on the OS map. The western end of the route is neither identified as a track, nor as an enclosed wooded strip. Both the enclosed track and the wooded strip (or the eastern part of that strip, at least) are annotated as "Long Loaning".

c.1865 Ordnance Survey Map: Scale 1:10,560

There is no evidence of track over the western end of the claimed route. There is evidence of what appears to be an enclosed wooded strip across the top of two fields to the west of the U21 road and two more fields to the east of the U21 road. The wooded strip is labelled "Long Loaning". There is no evidence of a track over the short north-south section roughly half way along the route. There is evidence of what appears to be an unenclosed track across the top of the next field, then clear evidence of an enclosed track (again labelled "Long Loaning") over the eastern part of the route.

1899 Ordnance Survey Map: Scale 1:10,560

Very similar to the c.1865 map, there is no evidence of track over the western end of the claimed route. There is evidence of what appears to be an enclosed wooded strip across the top of two fields to the west of the U21 road and two more fields to the east of the U21 road. The wooded strip is now labelled "Long Loanen". There is no evidence of a track over the short north-south section roughly half way along the route. There is evidence of what appears to be an unenclosed track



across the top of the next field, then clear evidence of an enclosed track (again labelled "Long Loanen") over the eastern part of the route.

#### Finance Act 1910 plan

There is clear evidence of a path / track over the route of existing Public Footpath No 18. The enclosed eastern end of the route is not separated from the surrounding land by coloured boundaries (we would have expected it to be, if the route had been accepted to be a public road, at that time). The enclosed western part of the route (i.e. the wooded strip) is not separated from the surrounding land by a coloured boundary either; it is identified with its own coloured boundary. Again, this indicates that, at that time, the claimed route was not acknowledged (by the landowners) to be a public road.

#### 1925 Ordnance Survey Map: Scale 1:10,560

As with the 1899 map, there is no evidence of track over the western end of the claimed route. There is evidence of what appears to be an enclosed wooded strip across the top of two fields to the west of the U21 road and two more fields to the east of the U21 road. The wooded strip is labelled "Long Loanen". There is no evidence of a track over the short north-south section roughly half way along the route. There is evidence of what appears to be an unenclosed track across the top of the next field, then clear evidence of an enclosed track (again labelled "Long Loanen") over the eastern part of the route.

#### 1932 Norham & Islandshires RDC Handover Map

Although the eastern 'half' of the claimed route is identified as a track on the base map, no part of the claimed route is coloured so as to identify it as a publicly maintainable road.

#### c.1938 Restriction of Ribbon Development Act 1935 Map

Although the U21 road is shown (coloured green and labelled "47"), the claimed route was not identified as a public highway that needed to be protected from ribbon development.

#### 1951 Highways Map

The eastern (existing public footpath) section is shown on the base map, but no part of the route is coloured so as to indicate that it was considered to be publicly maintainable highway.

#### c.1952 Definitive Map – original Survey Schedules & Map

The O-P part of the claimed route was originally identified for inclusion as a Road Used as a Public Path (Carriage Road Footpath). The N-O part of the claimed route was not identified for inclusion as a public right of way of any description.

#### Draft Map

The O-P part of the claimed route is now coloured purple, meaning it has been identified for inclusion on the Definitive Map as a public

footpath. As with the Survey map, the N-O part of the claimed route was not identified for inclusion as a public right of way of any description.

#### Provisional Map

As with the Draft Map, the O-P part of the claimed route is now coloured purple, meaning it has been identified for inclusion on the Definitive Map as a public footpath. As with the Survey map, the N-O part of the claimed route was not identified for inclusion as a public right of way of any description.

#### 1962 Original Definitive Map and Statement

The O-P portion of the claimed route is identified as being part of Public Footpath No 18 in the Parish of Ancroft. There are no public rights of way identified over the N-O section.

#### 1964 Highways Map

The eastern (existing public footpath) section is shown on the base map, but no part of the route is coloured so as to indicate that it was considered to be publicly maintainable highway.

#### 1968 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an enclosed track / path over most of the eastern third of the alleged bridleway route. There is evidence of an enclosed wooded strip over the majority of the western two-thirds of the alleged bridleway route. Both sections appear to be labelled "Long Loanen". There is no evidence of a track or path across the two fields immediately east of the B6354 road.

#### First Review Definitive Map

The situation with regards to the claimed route remained the same as that shown on the original Definitive Map.

#### 1988 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of an enclosed track / path over most of the eastern third of the alleged bridleway route. There is evidence of an enclosed wooded strip over the majority of the western two-thirds of the alleged bridleway route. Both sections appear to be labelled "Long Loanen". There is no evidence of a track or path across the two fields immediately east of the B6354 road.

#### 2005 Ordnance Survey Explorer 339 Map: Scale 1:25,000

There is evidence of a path / track over the eastern (existing public footpath) part of the claimed route. There is evidence of a field edge track over the short central north – south portion of the route. There is no evidence of a track over the western end of the claimed route or over the long east – west section between Ancroft Northmoor and Ancroft Southmoor. The narrow, enclosed strip is coloured green (to

denote woodland). At the eastern end of this wooded strip, there is evidence of a parallel, field edge track just south of woodland.

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

No part of the N-O-P route was identified as a publicly maintainable highway.

## **6. SITE INVESTIGATION**

- 6.1 From Point P on the C8 road at Langdyke, through a double field gate, with pedestrian gap alongside, a 3 metre wide stone surfaced track, in an 11 to 12.19 metre wide corridor proceeds in a southerly direction for a distance of 130 metres. Thereafter, a 2.5 metre wide stone / earth / grass surfaced track, within a 9.75 to 11 metre wide corridor, proceeds in a westerly direction for a distance of 945 metres. The route then continues, as a 3 to 3.5 metre wide stone / earth / grass surfaced field edge track, in a westerly direction for 375 metres. Up until this point, the route has been part of existing Public Footpath No 18. Footpath No 18 (no longer visible on the ground) continues in a south-westerly direction across cropped fields, but the alleged bridleway turns north, following a 3.5 metre wide stone / earth field edge track in a northerly direction for 160 metres. At this point, the stone / earth track continues in a westerly direction, but the alleged bridleway continues northerly for a further 15 metres, into a narrow wooded strip. The historical route (if one existed) then proceeds through this 12.19 to 17 metre wide woodland strip, in a westerly direction, for a distance of 1100 metres, to a junction with the U21 road. On the other side of this road, the alleged bridleway continues in a westerly direction, within a 12.19 to 13.75 metre wide woodland strip for a further 570 metres. At this point, the wooded strip ends, and the alleged bridleway proceeds in a westerly direction, along a 3 metre wide grass track in a 6 to 7.5 metre wide headland, for a further 335 metres. A 2 to 2.5 metre wide stone / earth / grass surfaced track, in a not especially clearly defined circa 6 metre wide corridor proceeds north-westerly for 70 metres, to join the B6354 road, 1065 metres south-west of West Ancroft.

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

- 7.1 In June 2021, a draft copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments.
- 7.2 By email, on 9 June 2022, Edwin Thompson (Chartered Surveyors) made the following comments:

“Thank you for your email with attachments.

“The original correspondence from Mr McErlane referred to a proposed public bridleway. I note that in your draft report that you are referring to a restricted byway – am I right in thinking that that would embrace both the bridle path and motorised vehicles or have I misunderstood your recommendations? In either event, I have not, at this stage, anything material to add to my letter to Mr McErlane dated 17 July 2020 which is entirely specific in respect of the three fields (A, B and C) relating to that part of Felkington Farm which is owned by my client, J W Gray Ltd. Your proposed route has clearly not been used for any form of public

access for many years and the previous owner, Mr Martin, who sold Felkington to J W Gray Ltd in circa 2015 has previously confirmed that in the 60 years that he lived at Felkington this property was never used as a footpath or a bridleway. Accordingly I think that your proposal to have some form of public access along this route is entirely bizarre.

"I would also point out that my letter was submitted to the then definitive map officer in July 2020. Then, nearly two years later, I receive a letter from yourself, completely out of the blue, giving me seven days in which to respond to your proposals. I am on holiday next week and, under all the circumstances, seven days is entirely unreasonable.

"Accordingly, we are not prepared to accept your proposal in respect of Felkington Farm. There is no recent evidence (by which I mean over the last 60 years) to support your contention. I would also request your written confirmation that my letter of July 2020 will be shown to the sub-committee – I look forward to hearing from you on that point."

- 7.3 By email, on 13 June 2022, Edwin Thompson (Chartered Surveyors), responding to the Council's reply in relation to their earlier email, made the following additional comments:

"Thank you for your explanatory email and I note all the points that you have made. I attach a copy of the plan referred to in my letter of July 2020. *[N.B. A copy of this plan is appended, early, in the report].*

"As you know, J W Gray Ltd are objecting to this proposal for all the previous reasons set out. I understand that the points made in your email below in respect of historical documentary evidence, but to reinstate public access across land which clearly has not been utilised as such for very many years does seem to me to be bizarre."

## 8. DISCUSSION

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

that a right of way, which is not shown in the Map and Statement, subsists or is reasonably alleged to subsist over land in the area to which the Map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic [53(3)(c)(i)];

or

that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description [53(3)(c)(ii)].

- 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 Although Ms Holmes' application only sought to record this route as a public bridleway, when determining this application, the Council must consider all the available evidence. It is sometimes the case that the evidence which is gathered may point to the existence of higher (or lower) public rights than those that were originally applied for.
- 8.4 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.
- 8.5 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930. At this stage, there is no evidence to suggest that any of these saving provisions would apply in this case.
- 8.6 The route is clearly identifiable on Fryer's County Map of 1820, Rule's Map of 1824, Cary's Map of 1827 and (mostly) on Greenwood's County Map of 1828. On the plans produced in association with the Finance Act of 1910, neither the enclosed eastern end of the route, nor the plantation section were shown as being separated from the surrounding land by coloured boundaries. If they had been, this would have been a good indicator that the route was considered to be a public vehicular highway, at that time.
- 8.7 The route of alleged Public Bridleway No 31 has been consistently identified on Ordnance Survey maps since c.1865. The eastern part has always been depicted as an enclosed track. The long east-west section, north of Ancroft Southmoor, has always been shown as enclosed wooded strips. The maps have shown no track west of the wooded strips and, until recently, the maps have not shown any track along the short north-south section north of Point O.
- 8.8 On the extract of the Ancroft Tithe Award, that accompanied the application, the alleged bridleway route is clearly depicted as an enclosed track. This doesn't necessarily mean the route was considered to be a public one – enclosed private roads would be non-tithable in just the same way as public ones.
- 8.9 In the Book of Reference, accompanying the Ordnance Survey 1<sup>st</sup> Edition map, the eastern end of the route is identified as a "Public road", whilst the central woodland strips are identified as "Plantation". These descriptions, supplied by the surveyors, were based upon observation and local inquiry, but they should not be considered authoritative. The "Public road" section need not be public and, whilst the plantation sections were clearly wooded by the

time of the survey, this doesn't mean (necessarily) that those strips weren't also public highway.

- 8.10 On the Survey maps produced in association with preparation of the first Definitive Map of Public Rights of Way, in the early 1950s, the O-P section of the route was identified as a Road Used as a Public Path (or, more specifically, as a "Carriage Road used mainly as a Footpath". On the accompanying Survey schedule, the ground for believing this route to be public was given as "Public user". This might help to explain why, at the next (Draft Map) stage, the status had been amended to that of public footpath – the "user", presumably having been pedestrian. The route remained identified as just a public footpath through the Provisional and Definitive Map stages.
- 8.11 Edwin Thompson, acting for the owner of Felkington Farm (the western end of the claimed route) has commented that there is no evidence of any recent public use of the route. Edwin Thompson reiterated this point, when commenting on the Draft report and, certainly, anyone trying to traverse the wooded strips would find these parts very challenging. This application has been made on the basis of historical documentary evidence – not user evidence. In the circumstances, the applicant isn't asserting, nor are they required to demonstrate, that the route has necessarily been used within living memory. The comments regarding potential effect on Countryside Stewardship payments and impact on the woodland areas reflect entirely understandable concerns, but these aren't factors which can be taken into account when determining whether or not public rights actually exist.
- 8.12 The applicant has noted that a farm track exists parallel with, and to the south of, the plantation strips. Edwin Thompson has indicated approximately when this track was created. The existence of these parallel alternatives isn't relevant when determining whether or not public rights exist over the claimed route, though it does offer an alternative route, for any public right of way to, potentially, be diverted onto, if public rights are, ultimately, found to exist over the historical route.
- 8.13 Until the Counties (Detached Parts) Act 1844, Norham & Islandshires was a detached part of County Durham. Northumberland Record Office would be unlikely to have any Quarter Sessions records relating to the stopping-up or diversion of this route prior to 1844. Looking at the online register of Durham County Council's Quarter Sessions records for this period, the three stopping-up / diversions which do occur, within Norham & Islandshires, do not appear to relate to the alleged bridleway route.
- 8.14 Based upon the documentary evidence available, it does appear that during the early to mid 1800s a significant route existed over the alleged Bridleway No 31 route. This route might not, necessarily, have been a public one, though its depiction on so many early maps (and the consistent naming as "Long Loanen") suggests that it probably was, and that it was most likely a vehicular highway (given its width, particularly through the plantation sections). By the 1860s, based on the detailed Ordnance Survey, identifying large sections of the route as "Plantation", it seems the route was no longer being used by the public, and that the portion that isn't currently part of Footpath No 18, may not have been used by the public since then. It would have been no surprise to find that this route was an old public road, and that at some point between 1840 and 1860 the road had been stopped up as unnecessary (perhaps with public footpath rights retained over the Footpath No 18 section, though possibly not – the footpath rights having been re-established, later, on

the basis of long unchallenged user). Although this would have been no surprise, the Quarter Sessions indexes at Durham and Northumberland records offices do not appear to identify any closures or diversions in the immediate vicinity of this route. It may be that, for some reason, the route simply fell into disuse (perhaps the parallel route to the north was improved and thereafter became the clearly preferred route); but if the route was once, as seems likely, a public vehicular right of way then, if those rights were never lawfully extinguished, they must be presumed still to exist (subject to the effects of NERC Act 2006).

- 8.15 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. 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. On that basis, it is proposed that the enclosed, 1075 metre long, eastern section of the route and that the wooded strip sections of the route be identified with widths of between 9.75 and 12.19 metres and between 12.19 and 17 metres, respectively, and that the remainder of the route (although, seemingly, enclosed in the past, now lacking sufficiently detailed evidence to identify a width) be identified with the Council's standard default width of 5 metres (i.e. wide enough for two vehicles, travelling in opposite directions, to pass each other).

## **9. CONCLUSION**

- 9.1 Although the application sought to record public bridleway rights, in light of the documentary evidence available, it appears that public vehicular rights have been reasonably alleged to exist over the N-O part of the route of alleged Public Bridleway No 31 and shown to exist, on a balance of probabilities, over the O-P part of the route.
- 9.2 The Natural Environment and Rural Communities Act 2006 would appear to have extinguished any public motor vehicular rights that might have existed over the N-O-P route. This would leave the route as a restricted byway.
- 9.3 Given the obvious practical difficulties of re-establishing a restricted byway through the plantation, prior to including the route in any definitive map modification order, officers explore the possibility of making a concurrent public path order (or orders) to divert the public rights of way onto the adjacent farm track.

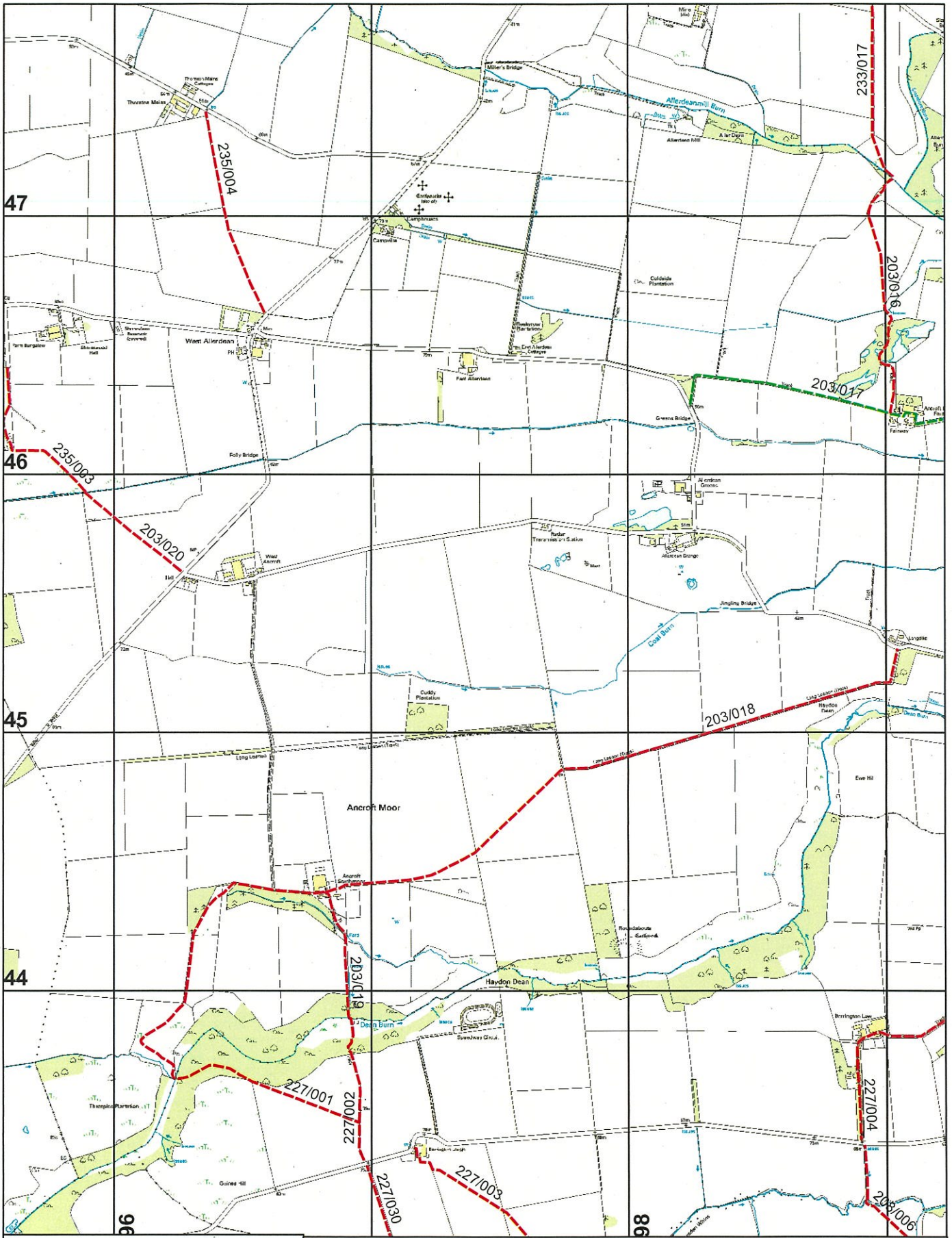
## **BACKGROUND PAPERS**

Local Services Group File: B/3/31z

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







**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

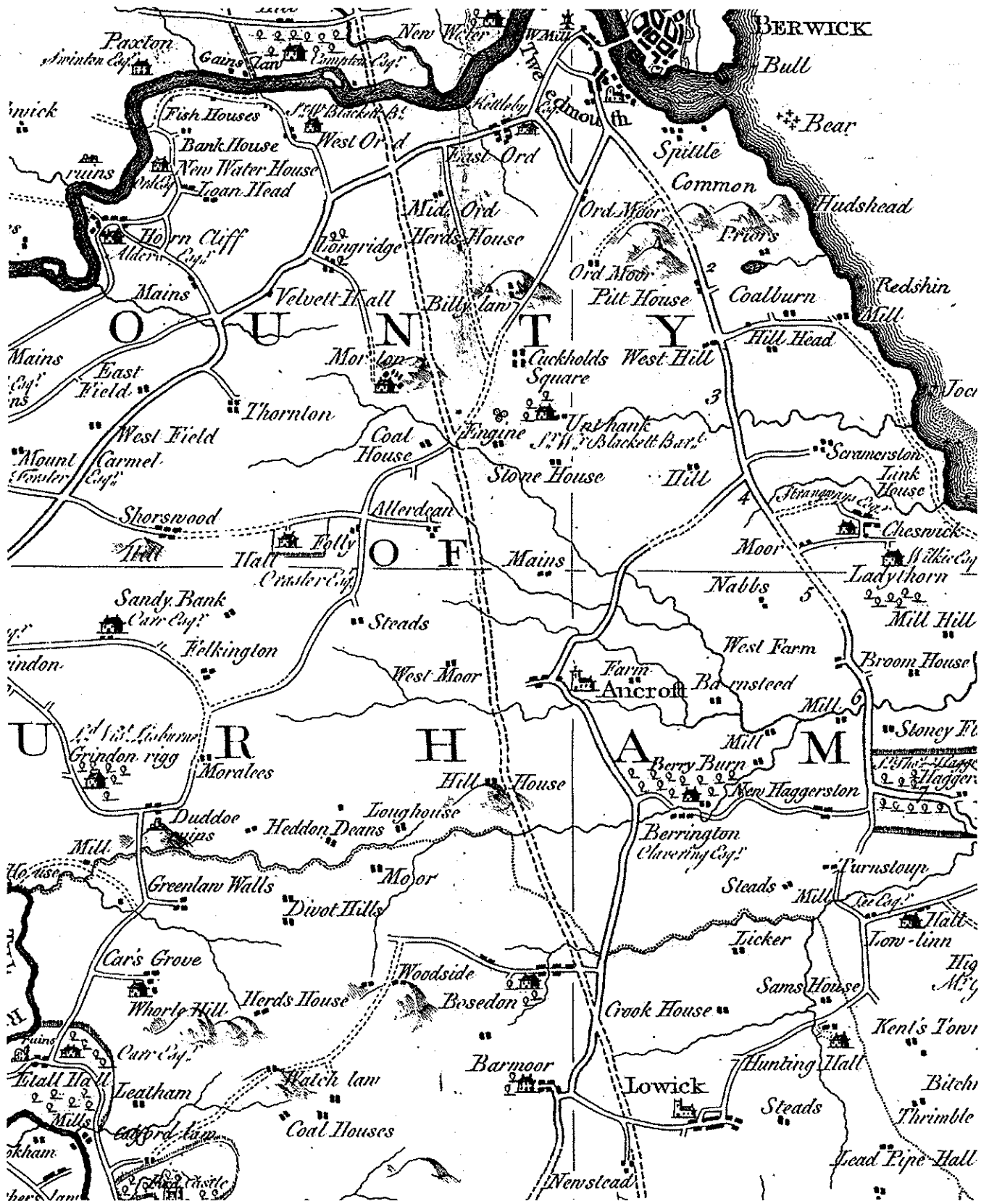
This is a computer generated extract of the Working Copy of the Definitive Map of Public Rights of Way

Scale: 1:10,000

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Armstrong's County Map  
1769





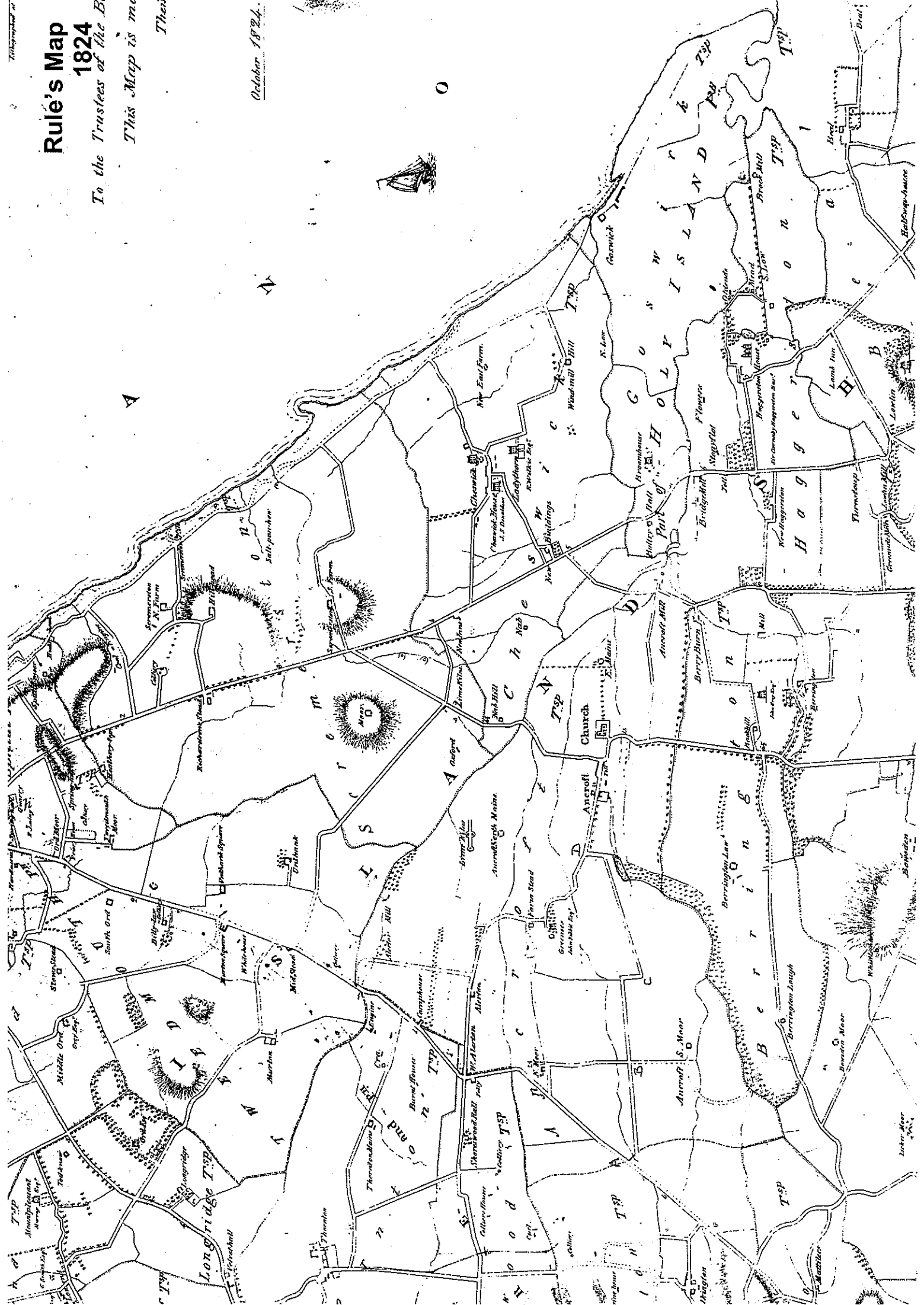
# Rule's Map 1824

To the Trustees of the B.

This Map is made

These

October 1824.



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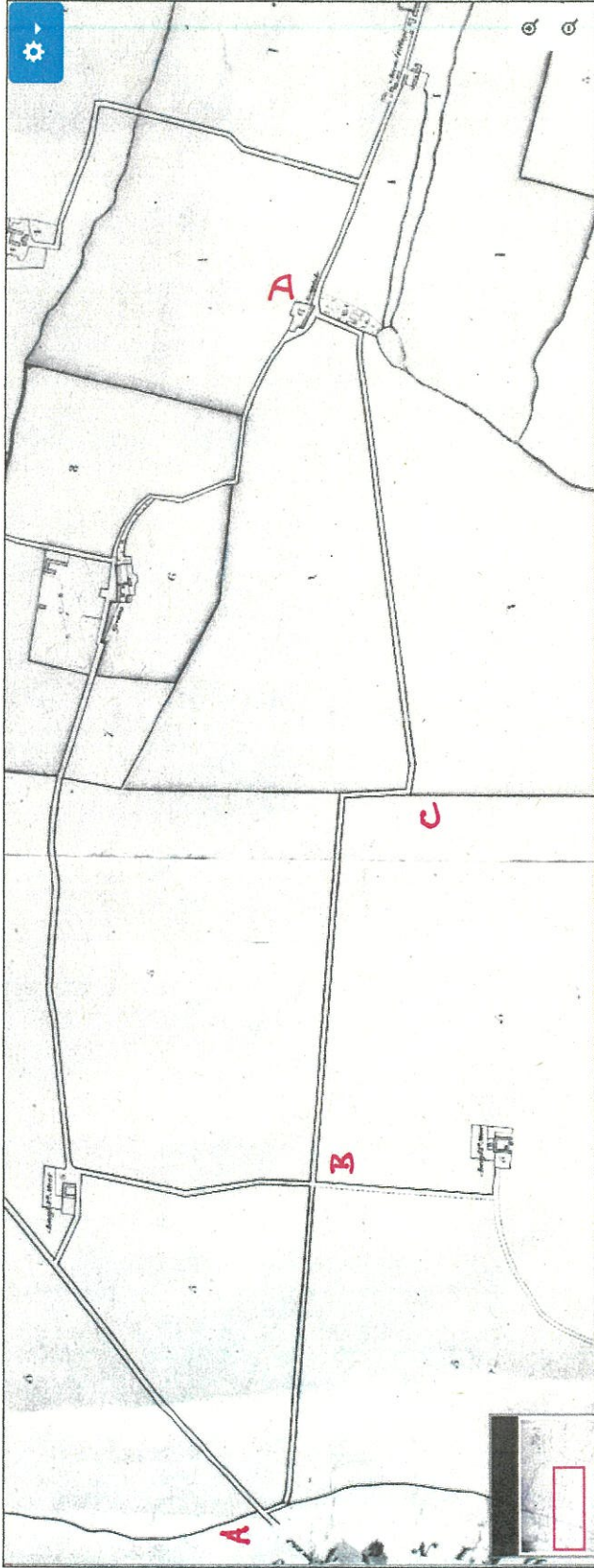
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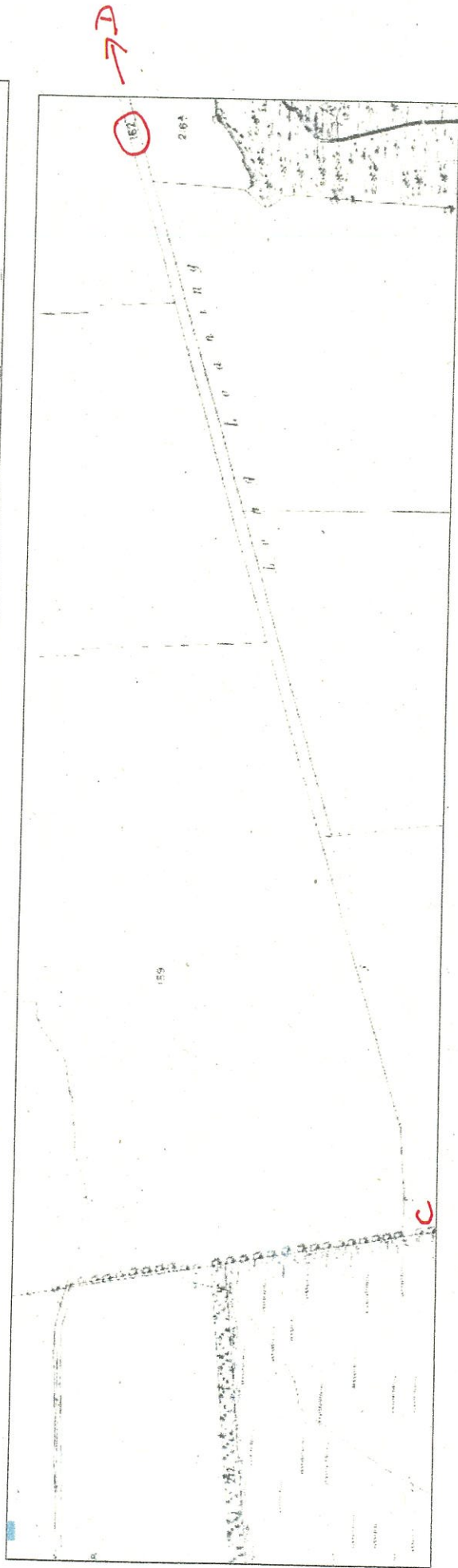
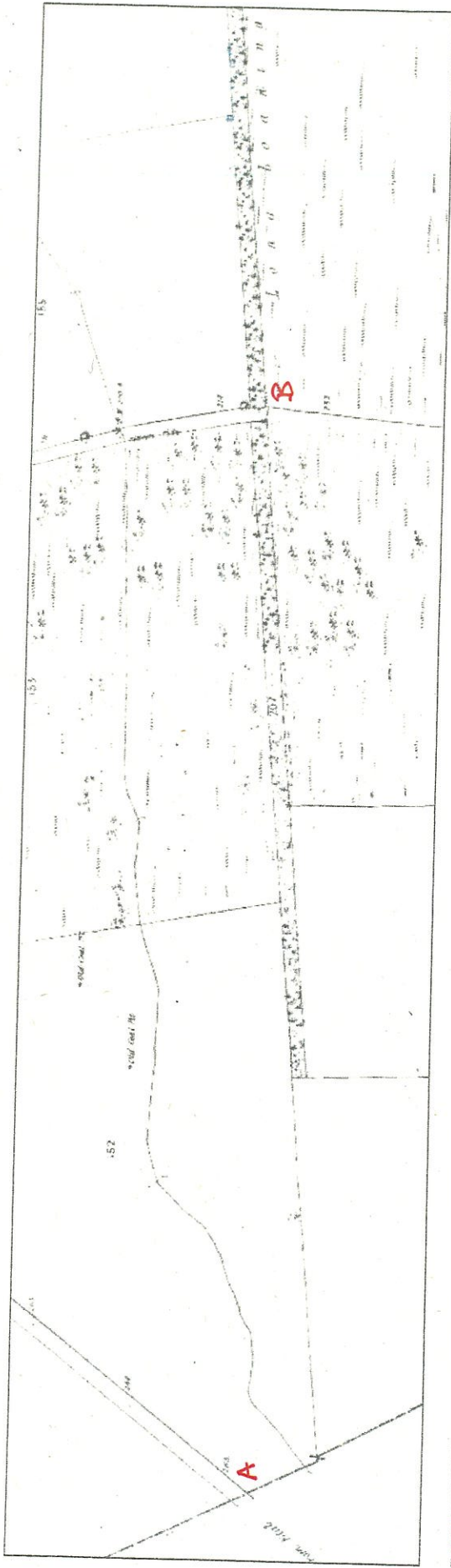
1844 Tithe award for the township of Ancroft





1895 OS 1<sup>st</sup> ed revd Scale 1:2,500 (25")

from [www.old-maps.co.uk](http://www.old-maps.co.uk)



# Ordnance Survey Book of Reference

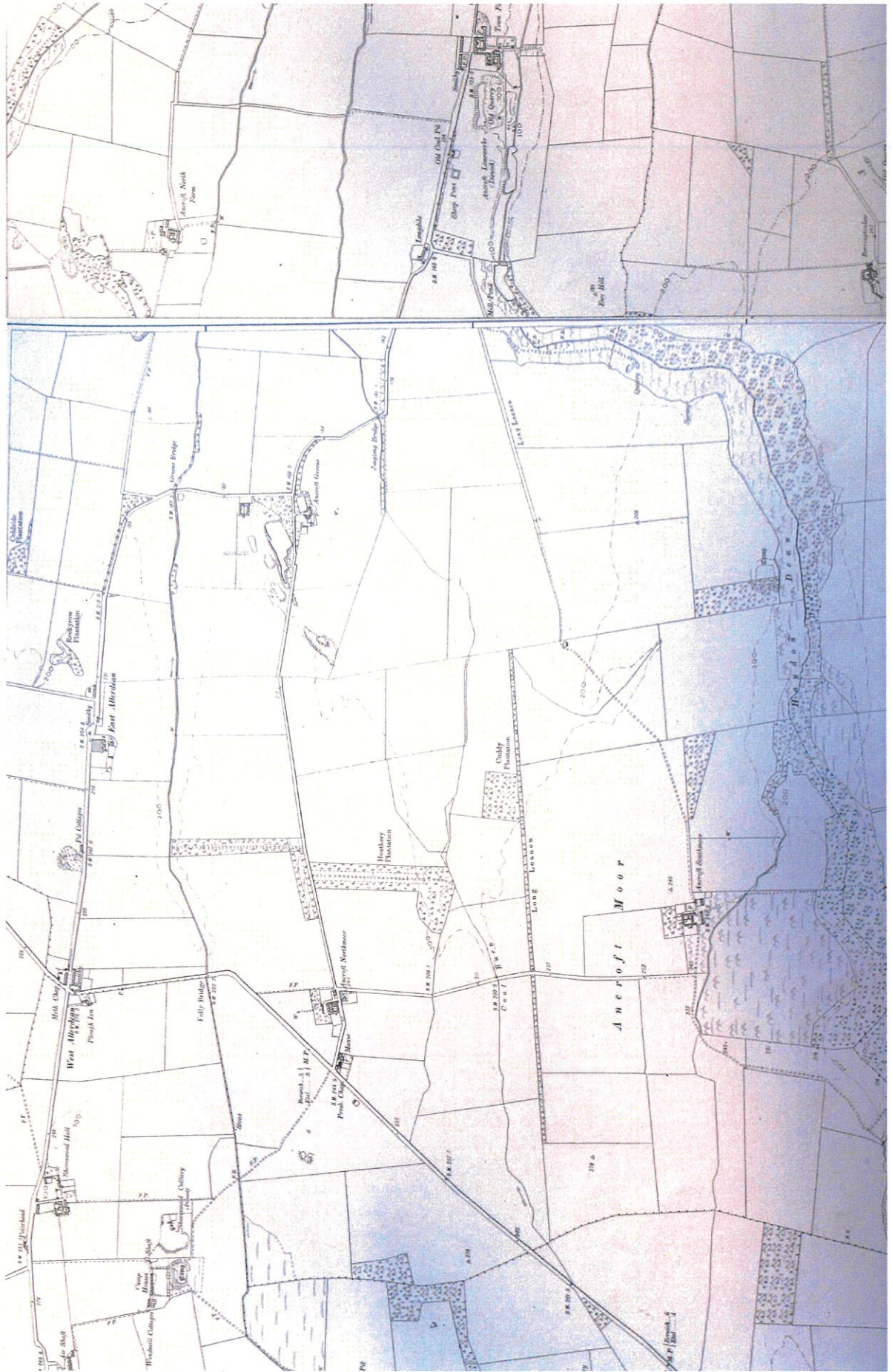
TOWNSHIP OF ANCROFT.			
No. of Sheet.	No. on Plan.	Area in Acres.	Description.
		1776-109	<i>Brought forward.</i>
VII. 9.	142	23-589	Arable & stream.
"	143	21-071	Arable & stream.
"	144	111	Arable.
"	145	41-182	Arable.
VII. 10.	146	1-896	Rough pasture & stream.
"	147	060	Pond.
"	148	18-325	Arable.
"	149	10-349	Plantation.
VII. 11.	150	3-860	Plantation.
"	151	40-858	Arable.
VI. 15.	152	36-552	Pasture.
"	153	37-889	Rough pasture & stream.
VI. 12.	154	1-941	Private road.
VI. 16.	155	19-673	Arable & stream.
"	156	17-590	Arable & stream.
"	157	4-739	Plantation.
"	158	19-356	Arable & stream.
"	159	45-964	Arable & stream.
VI. 12.	160	33-195	Arable & road.
"	161	30-199	Arable.
VI. 16.	162	2-870	Public road.
VII. 9.	163	1-958	Plantation.
"	164	670	Plantation.
"	165	120	House & garden.
VII. 13.	166	51-172	Arable & road.
"	167	118	Pond.
"	168	007	House.
"	169	021	House.
"	170	17-276	Rough pasture, stream, &c.
"	171	1-796	Arable & stream.
"	172	1-508	Farmstead.
"	173	587	Private road.
"	174	191	Plantation.
"	175	1-423	House, garden, farmstead, &c.
"	176	786	House & ornamental ground.
VII. 9.	177	1-155	Cottages, gardens, & yards.
"	178	3-149	Pasture.
"	179	1-490	Cottages, gardens, & yards.
VII. 13.	180	19-833	Rough pasture & stream.
"	181	5-667	Public road.
"	181a	020	House & garden.
"	182	607	Houses, gardens, & yards.
"	183	075	Private road.
"	184	430	House, garden, & yard.
"	185	1-701	Church & graveyard.
VII. 9.	186	2-795	Arable.
"	187	28-591	Arable, stream, & road.
"	188	26-168	Arable & stream.
VII. 13.	189	1-936	Arable & stream.
"	190	29-771	Arable & stream.
		2267-997	<i>Carried forward.</i>

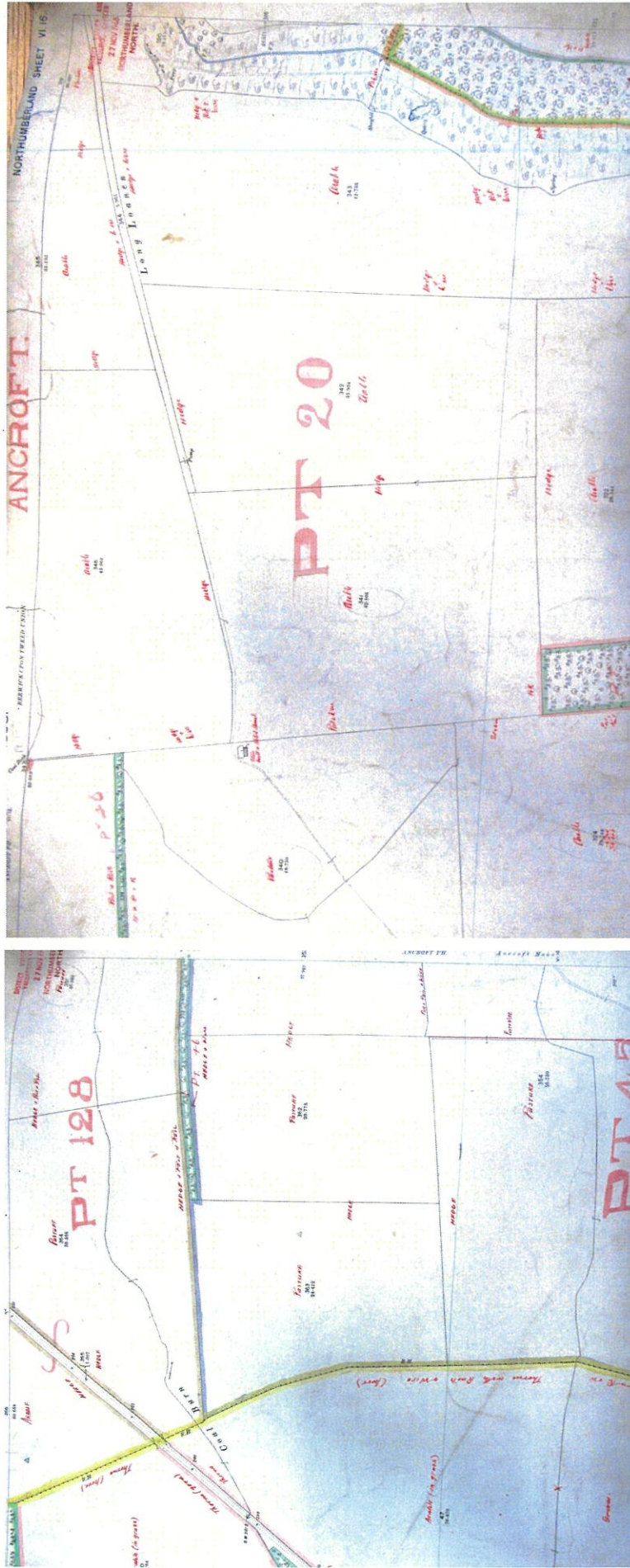
TOWNSHIP OF ANCROFT.			
No. of Sheet.	No. on Plan.	Area in Acres.	Description.
		2267-997	<i>Brought forward.</i>
VII. 13.	191	1-463	Plantation.
VII. 9.	192	1-143	House, garden, &c.
"	193	1-471	Farmstead.
"	194	221	Arable.
"	195	320	Wood & pasture.
"	196	1-337	Pasture.
"	197	542	Houses & garden.
"	198	089	Garden & yard.
VII. 13.	199	12-367	Arable & stream.
VII. 10.	200	394	Private road.
"	201	11-597	Arable & stream.
"	202	27-512	Arable.
"	203	18-111	Arable.
VII. 14.	204	19-151	Arable.
VI. 15.	205	24-412	Arable.
"	206	20-778	Arable.
"	207	1-833	Plantation.
VI. 16.	208	16-083	Arable.
"	209	83-060	Rough pasture & road.
"	210	2-412	Plantation.
"	211	4-759	Rough pasture & stream.
"	212	1-331	Plantation & stream.
"	213	42-196	Arable & road.
"	214	65-994	Arable.
"	215	42-753	Arable.
"	216	41-009	Rough pasture, stream, & marsh.
"	216a	2-077	Arable.
VII. 13.	217	1-310	Mill-pond.
"	218	1-690	Plantation & road.
"	219	24-371	Arable & road.
"	220	20-103	Arable & road.
"	221	20-296	Arable & road.
"	222	23-793	Arable & road.
"	223	6-799	Arable.
"	224	9-357	Arable.
"	225	5-142	Arable.
"	226	4-346	Arable.
"	227	5-316	Arable.
"	228	27-942	Arable.
"	229	21-682	Arable.
"	230	3-378	Arable.
"	231	3-345	Public road.
VII. 14.	232	28-751	Arable.
"	233	7-721	Arable.
"	234	27-280	Rough pasture & stream.
"	235	2-320	Public road.
"	236	1-216	Rough pasture & stream.
"	237	011	Pond.
"	238	011	Garden.
"	239	6-546	Rough pasture, road, &c.
		2291-993	<i>Carried forward.</i>

1st Edition 6" O.S. Map  
c.1865

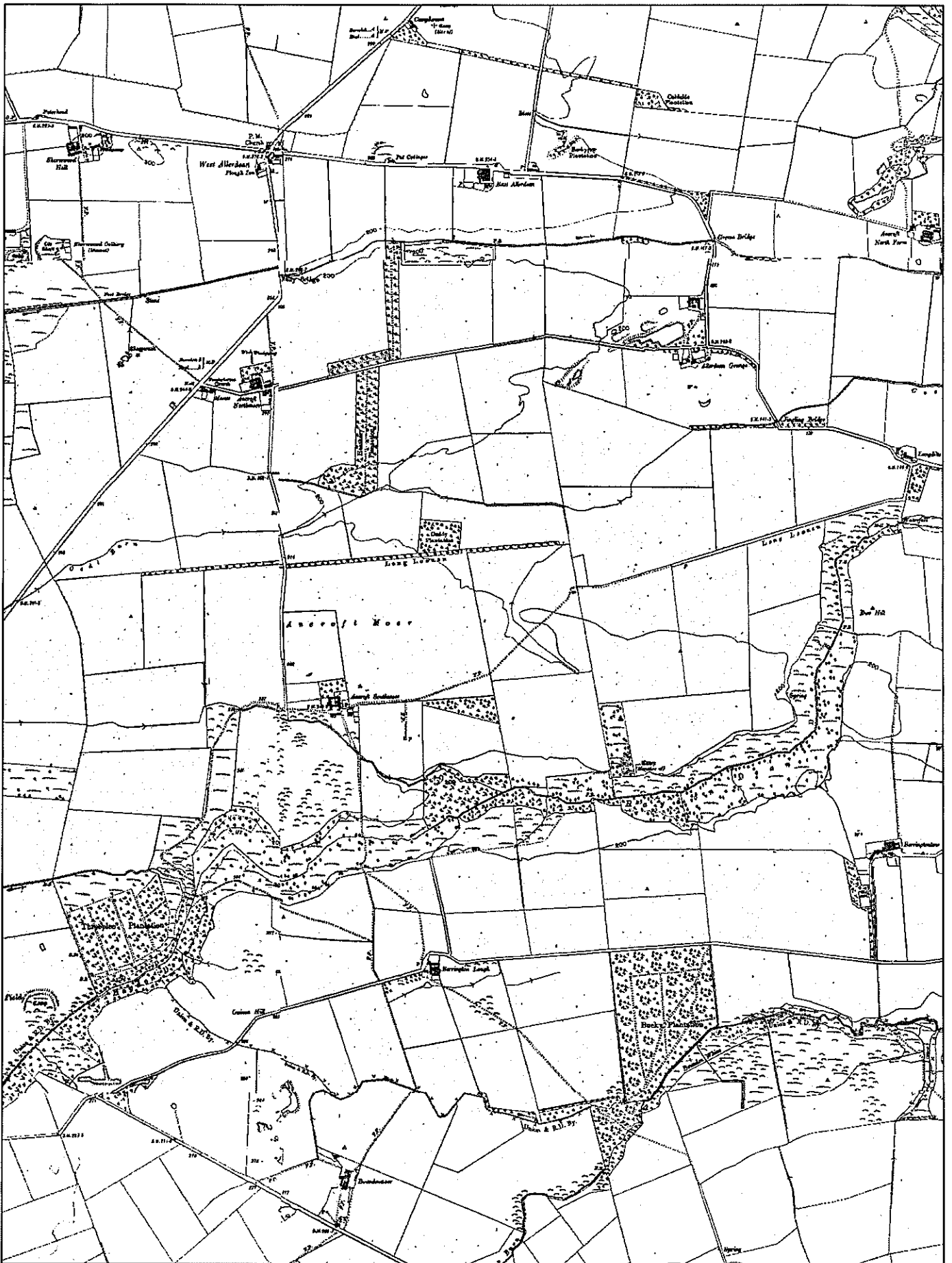


2nd Edition 6" O.S. Map  
1899





(Extracts)



SCALE 1:20,000

  
Northumberland  
County Council

Ordnance Survey 3rd Edition 6" map (1925)

# Norham & Islandshires RDC Handover Map 1932

H I R E

1932

B E R W I C K U P O N I W E E D



2' 11' NORTHUMBERLAND 2' 8' 2' 7' 2' 6' 2' 5' 2' 4' 2' 3' 2' 2' W. Lon. 2' 1'

(BERWICK UPON I W E E D)

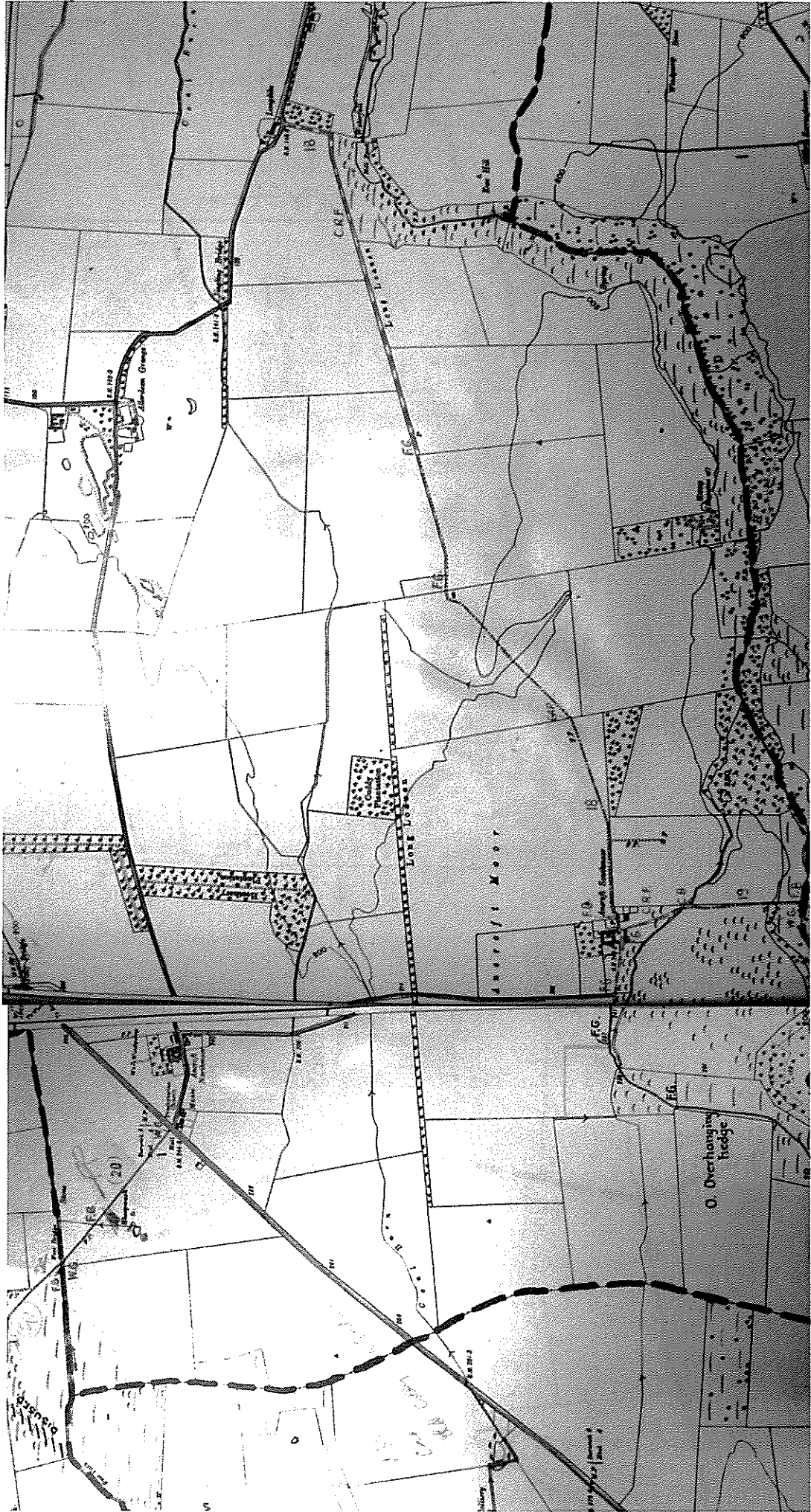




Extract from the Council's 1951 Highways Map



# Survey Map



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.  
SCHEDULE ACCOMPANYING SURVEY MAPS.

Parish of ANCROFT in the Rural District of \_\_\_\_\_

Borough } of Norham + Islandshire  
Urban District }  
~~RURAL~~ (Delete whichever is inapplicable).

1. Number of highway on Map 18 2. Kind of Path (i.e., F.P., B.R.) F.P. v C.R.P.
3. Starts at CB at Longdike road to Threaples Plantation
4. Name of Path (if any) -
5. Is the Path well defined? Yes
6. Is the Path metalled? If so, define length Yes throughout Long Lane
7. If its width can be stated, insert here F.P. 3ft, C.R.P. 10 feet
8. What is the present condition of the path, stiles, etc.? Poor
9. Is it subject to being ploughed out? Yes
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known  
NIL
11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant  
Public Use
12. Have persons been prevented using the highway? NO
13. Give particulars of any obstructions Overhanging ledge
14. Names of owners of freehold and previous owners, if known, for past 30 years  
Lord Astor, Plymouth  
JR Blunell, Ord, Whitefield
15. What maps have been consulted, and where are they deposited?
16. What records have been consulted, and where are they deposited?
17. Any other relevant information

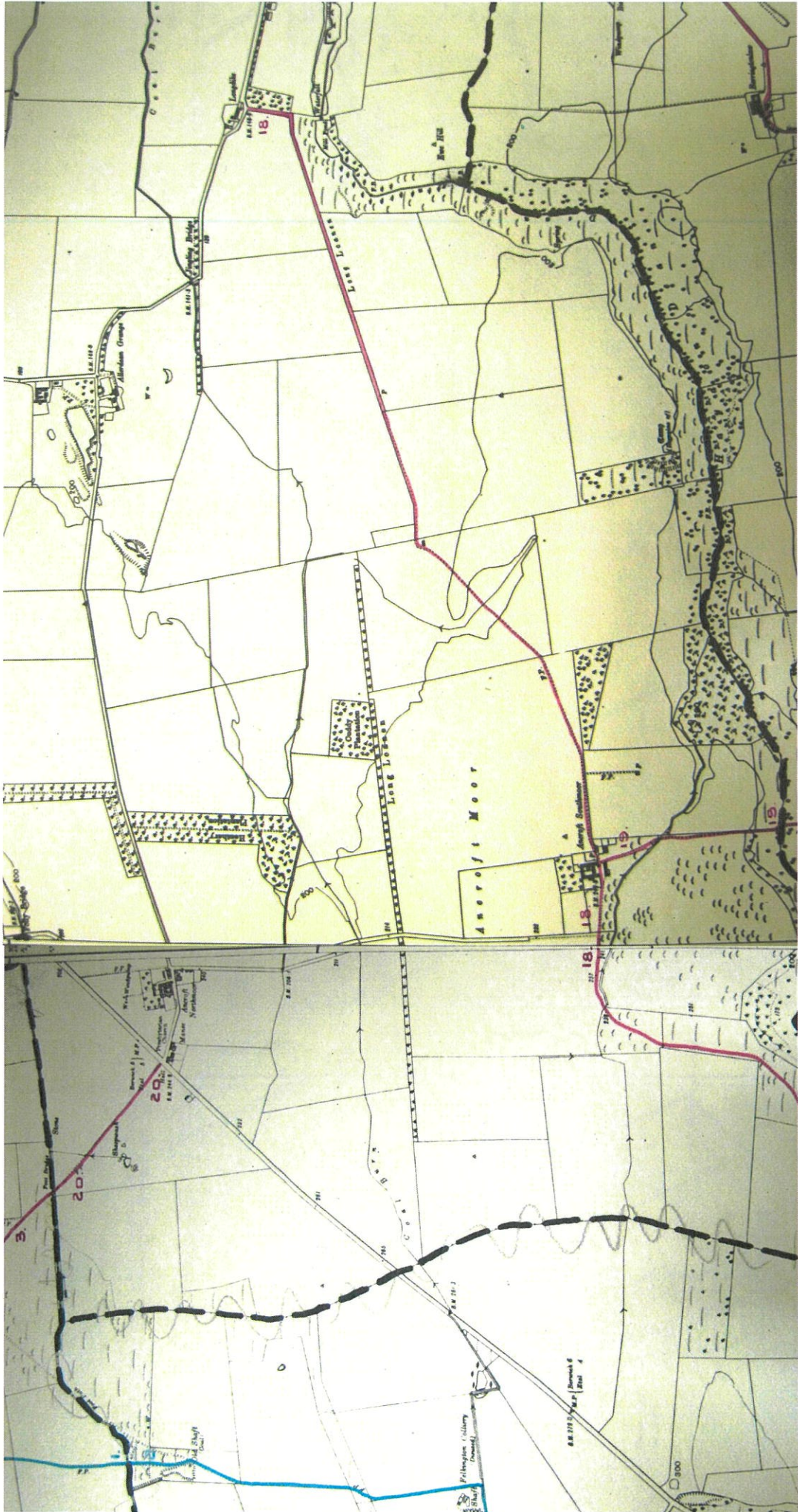
Surveyed by	Address	Dates of Survey
<u>R Smith</u>	<u>Kypie Comhill Road</u>	<u>25/7/54</u>

Important :—Sheet No. of Map on which Highway is shown  
836 1, N.V.I., NW & 6 N.E.

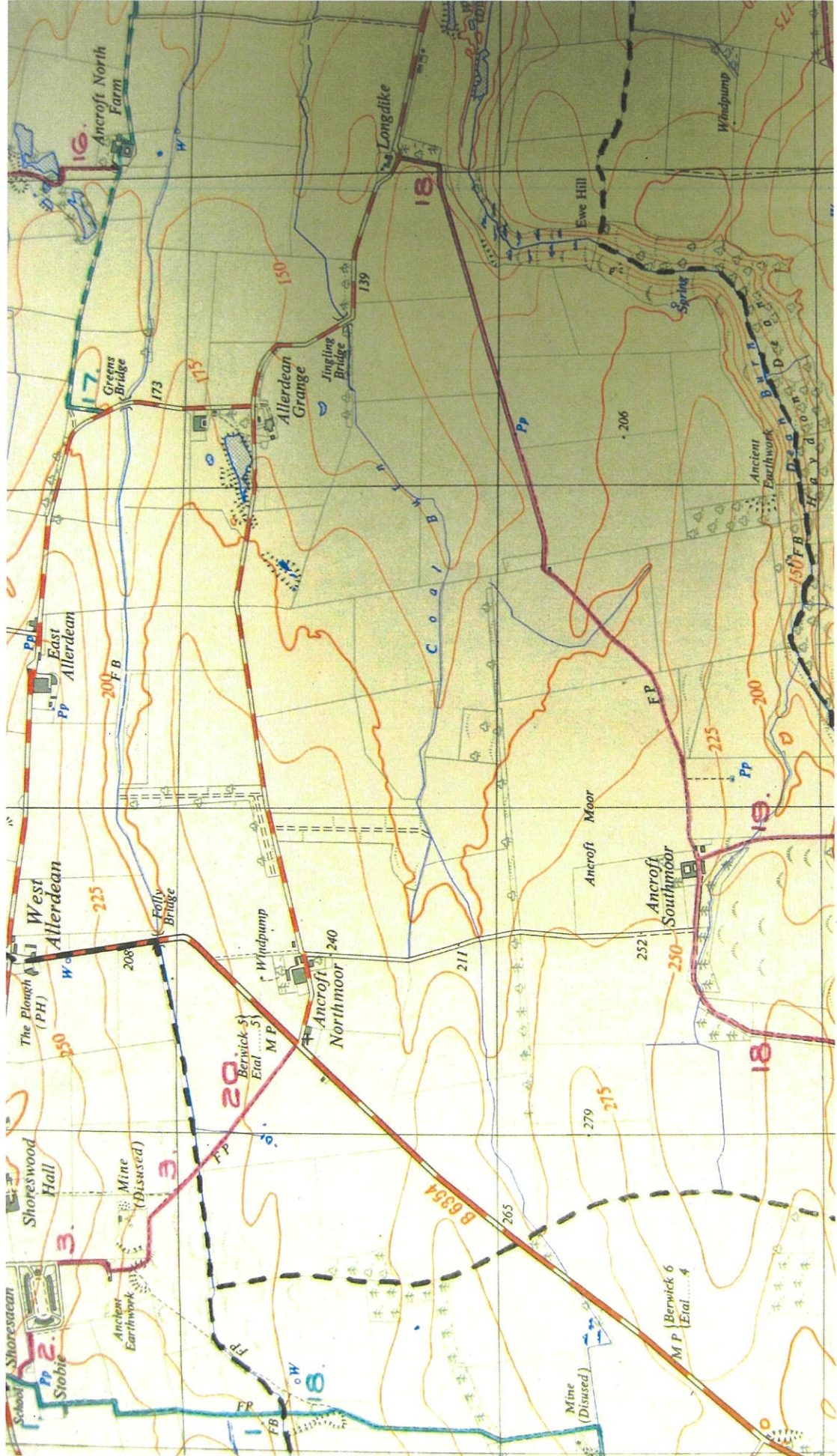
Draft Map



# Provisional Map



Original Definitive Map



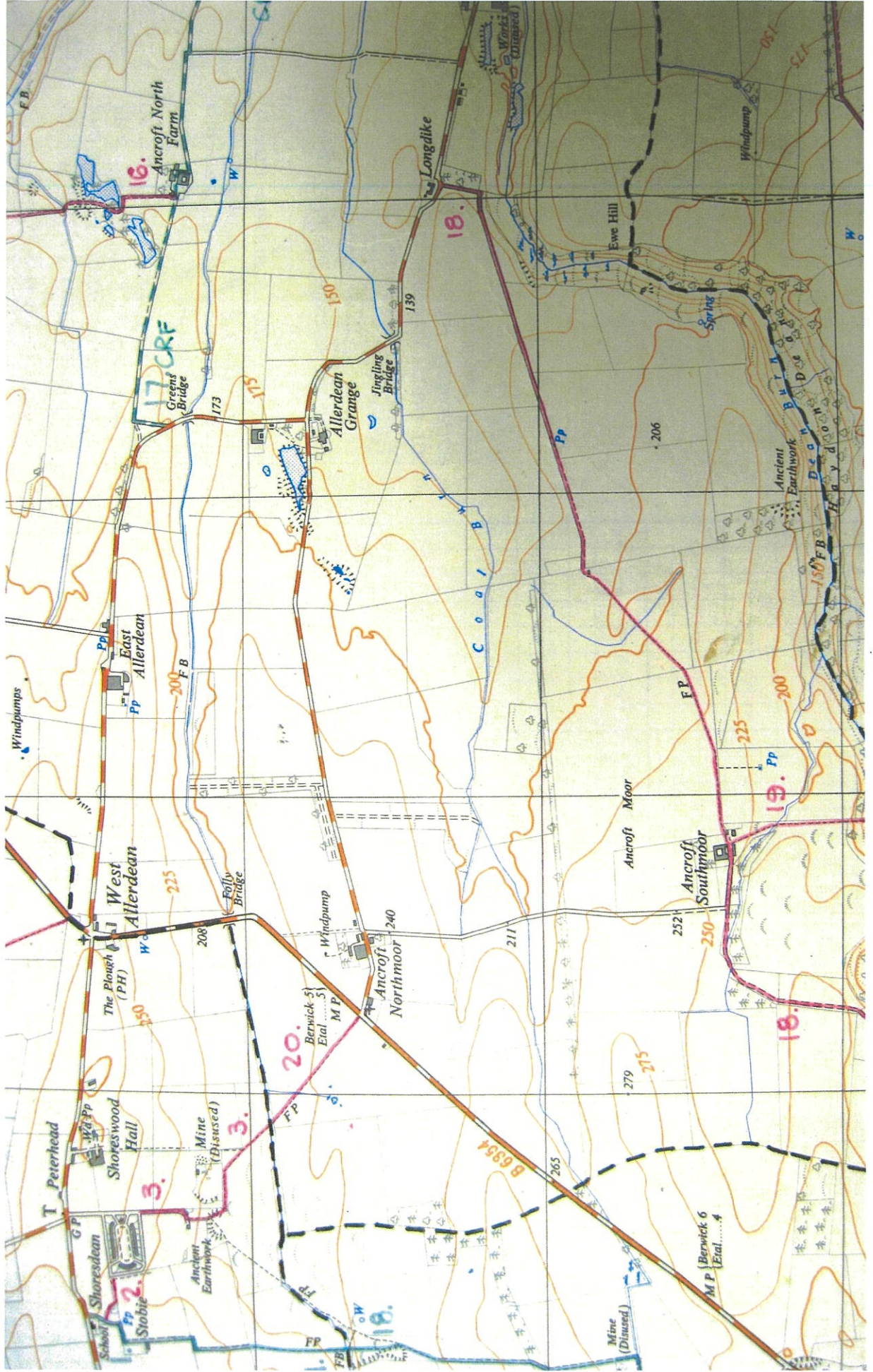
Extract from the Council's 1964 Highways Map







# First Review Definitive Map (1963)

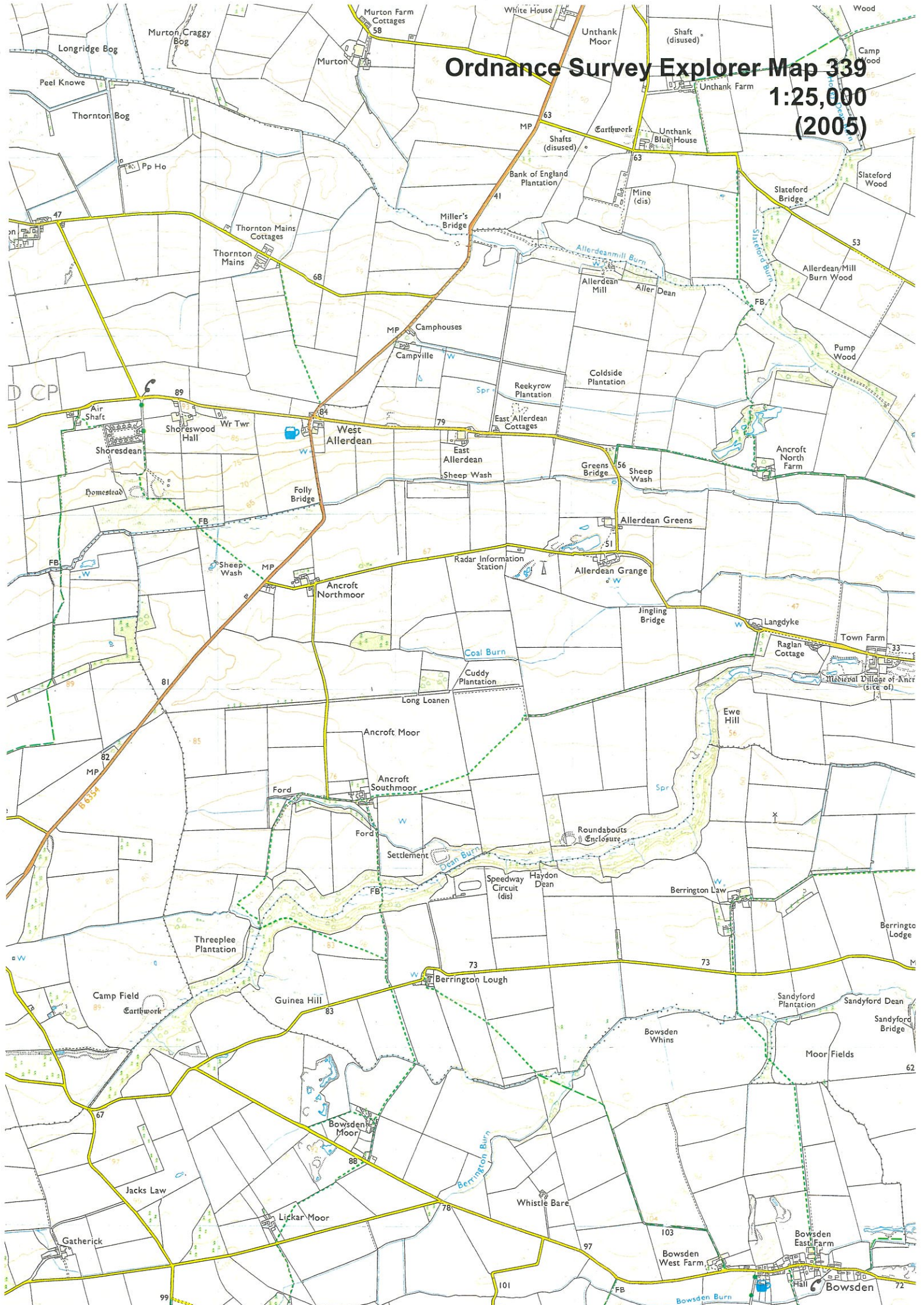


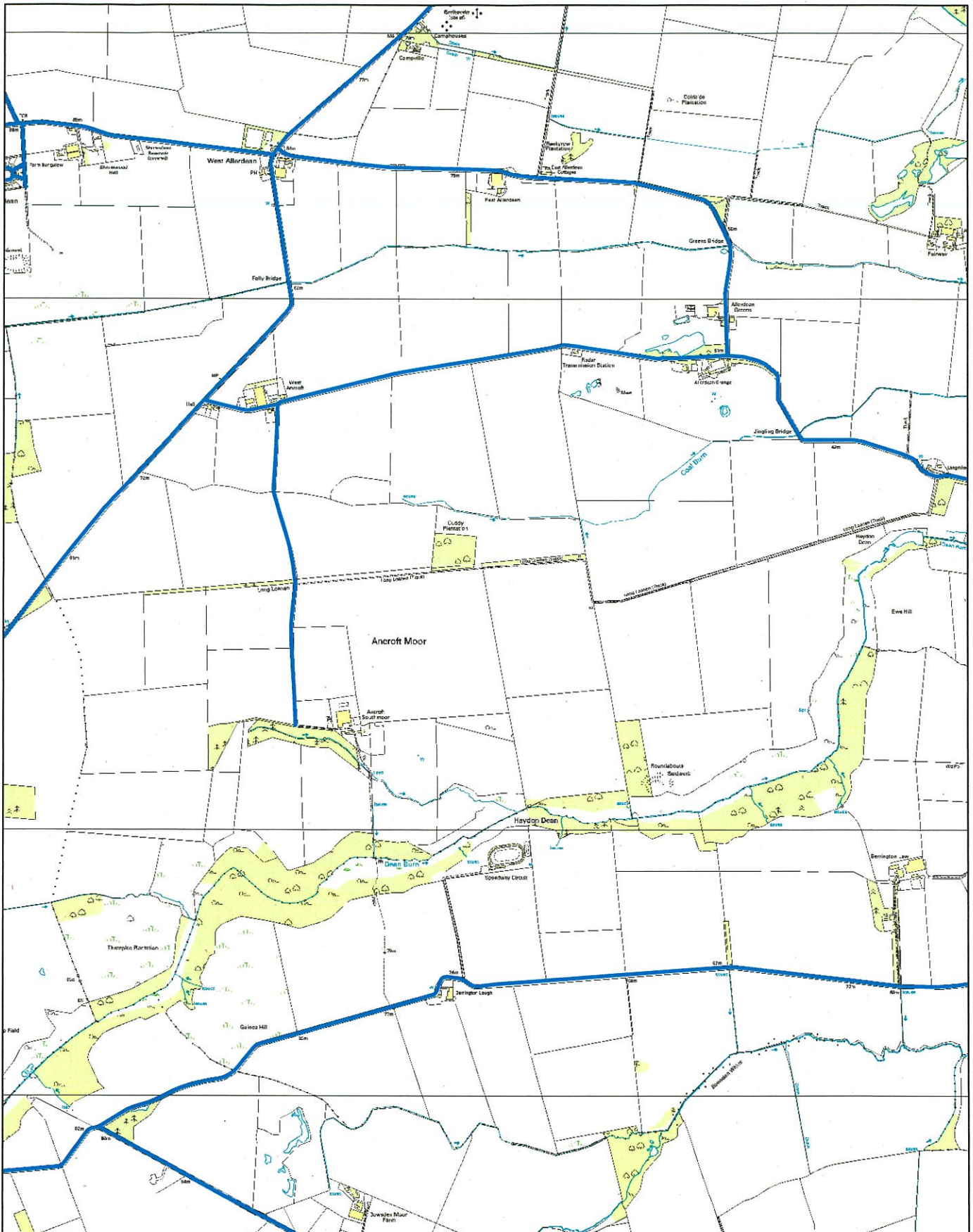
1:10,000 O.S. Map  
1988



# Ordnance Survey Explorer Map 339

1:25,000  
(2005)





**Network Management  
Information System**

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

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Drn:	Date:	Scale:
AB	June 2022	1:20,000