



Northumberland County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL RIGHTS OF WAY SUB-COMMITTEE

14 December 2022

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

ALLEGED BRIDLEWAY No 43 PARISH OF TOSSON

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

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 part of existing Public Footpath No 40, from the U4061 road at Great Tosson, in a general south-westerly direction, to its junction with existing Public Bridleway No 39, east of Burgh Hill.

Recommendation

It is recommended that the sub-committee agrees that, on a balance of probabilities, there is not sufficient evidence to indicate that public bridleway rights have been shown to exist over the route P-Q.

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 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 December 2020, Alan Kind of Newcastle made a formal application seeking to modify the Definitive Map of Public Rights of Way by upgrading, to public bridleway status, part of the existing public footpath (Tosson FP 40), from the public road in Great Tosson, to its junction with Public Bridleway No 39.

- 2.2 Mr Kind supplied the following evidence in support of his application:

1. Location map.
2. Extract from the 1899 First Revision Ordnance Survey map.
3. Extract from Fryer's Map of Northumberland 1820.
4. Extract from John Carry's Improved Map, Plate 62, 1827.
5. Aerial Photograph (current).
6. Photograph of the application route.
7. A statement of grounds in support of this application.

- 2.3 In his accompanying "Submission Regarding the Evidence" Mr Kind states (N.B. This part of Footpath No 136/005 was actually renumbered as 136/040 by Definitive Map Modification Order (No 15) 2014 and the new bridleway is 136/039, rather than 136/009):

"8. This is an application to modify the definitive map and statement to record Footpath 136/005 Tosson to bridleway status.

"9. Footpath 136/005 runs from a sharp corner on Bridleway 136/009 and runs largely northeastwards to the sealed public road in Great Tosson.

"10. Bridleway 136/009 was added to the definitive map and statement following an order and inquiry process, finishing in 2017. The corner where 136/005 makes a junction with 136/009 was called 'Point A1' by the Inspector on the modified order plan.

"11. The bridleway was added on the basis of it being set out in the Tosson Common and Hepple Common Inclosure award (not dated in the interim decision letter, but the enabling act of parliament is given as 1805). There is no dispute about the correctness of this bridleway recording.

"12. The whole of the bridleway route must be older than 1807. The inclosure award names the route as 'Cambo Bridle Road', and Cambo is about 7 miles from the southern boundary of the inclosure area.

"13. At Point A1, the ground drops away quite steeply towards Great Tosson, and there is a distinct and well-worn, and partly overgrown,

hollow-way near enough (visually) on the line of the footpath. The hollow-way traverses the slope, thereby lessening the effective gradient, and thus making it an easier proposition for horse traffic travelling uphill. The topography of the land, and how the hollow way fits into it, is itself evidential.

"14. Fryer's Map of Northumberland 1820 shows an "other road" that connects Cambo northwards to Great Tosson, taking in part of the inclosure award line of Cambo Bridle Road, up to Point A1, and then continuing on the route in this application. The inclosure award route eastwards from Point A1 is not shown.

"15. John Cary's Improved map of England and Wales with a considerable Part of Scotland at a Scale of Two Miles to One Inch. 1820-32, Plate 62, 1827, also shows this route as a "parochial road". The inclosure award route eastwards from Point A1 is not shown.

"16. The 1899 (publication) First Revision Ordnance Survey map (at 6" and 25" scale) shows the route much as Fryer has it, labelled 'B.R.', which is indicative that the OS surveyor saw the route as being a way fit for horses.

"17. 2 other points come out of the OS map. Firstly, the way (now Bridleway 136/009) runs in a clear corridor through the wooded area. This suggests that the route was still, and remained, in use when the map was surveyed [query: what does the First Edition show?]. secondly, the bridleway eastwards from Point A1 is not shown as any sort of 'track' on the OS map. This indicates that it was not visible to the surveyors, and that is some indication that it was not used, or at least not heavily used, in the last quarter of the 19th Century.

"18. Taken as a whole, the evidence indicates that, on the balance of probabilities, the application route was a northern branch alternative of the awarded Cambo Bridle Road."

2.4 Mr Kind raised this issue during proceedings in relation to the determination of DMMO (No 15) 2014. In Paragraph 31 of his 25 May 2016 Interim Decision Letter, Inspector Martin Elliott stated:

"Notwithstanding the issues raised by Mr Kind as to the alignment of the Order route he suggests that in any event the northern termination point of the Order route is not at Point A but that the route continues along the route of public footpath 5 into Great Tosson. I note the arguments raised but in my view the award plan is clear that the northern termination point is at Point A.

The Inspector appears to have been satisfied that the long distance bridleway route set out in the 1806 Inclosure Award was the one now recorded as Public Bridleway No 39, not the route which is now the subject of this application. That is not to say there are no higher rights over the current application route, but the Inspector was satisfied that in determining DMMO (No 15) 2014, he did not need to consider any additional linking routes. Given that Mr Kind had argued for the recognition of public bridleway rights over the existing P-Q public footpath route, during the determination of DMMO (No 15) 2014, this application should be seen as his logical next step in the pursuit of that goal.

3. LANDOWNER EVIDENCE

- 3.1 By letter, dated 2 March 2021, Mr MT Snaith of Great Tosson Farm responded to the consultation, stating:

"I wish to lodge an objection against the change of footpath to bridleway Parish of Tosson Alleged Public Bridleway No 40 (points P-Q).

"The terrain and gradient of this footpath is totally unsuited to horses and have not been used by horses in the past. The path shows as a foot track on the ordinance survey map 1841 – 1952. When Northumberland National Park was established in 1956 it was designated a footpath and has not been challenged since.

"The footpath leads to Simonside forestry and joins the forest tracks. I believe the forest tracks may roughly align with an old drove road, and historically this could have been the foot route to join the drove road.

"My concern is that the terrain is so unsuitable that people using it, other than on foot, would try to find a safer route down the hill. This would potentially lead to disturbance of ground nesting birds and livestock.

"I hope you will see fit to reject this application."

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". Two replies were received and are included below.

- 4.2 By email, in March 2021, the British Horse Society responded to the consultation, stating:

"Parish of Tosson

Alleged public bridleway no 40

"The line of BW 136/039 recorded on the definitive map represents the one confirmed at a public inquiry held a few years ago based on evidence from an inclosure award.

"If the purpose of this proposal is to improve access from the village to the confirmed route, it is suggested that it could be achieved more effectively by a diversion order onto the forest track linking to the minor road to the east rather than going through the farmyard and over the difficult ground followed by FP 136/005."

- 4.3 By email, on 27 April 2021, Whitton & Tosson Parish Council responded to the consultation, stating:

"The Whitton & Tosson Parish Council wish to object to the proposal to upgrade this footpath to a bridleway. The terrain and gradient are not suitable for horses, and this path has never been used as anything other than a footpath. It shows on historic ordinance survey maps as a footpath and was designated as a footpath on the formation on Northumberland National Park in 1956.

"This footpath does join an ancient drove road but would have been the foot access to the path around the hill as it is too steep for carts. On the ground there is no evidence that vehicles have ever used this footpath."

5. DOCUMENTARY EVIDENCE

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

1769 Armstrong's County Map

There is no evidence of a track resembling the route of alleged Bridleway No 43 (or existing Bridleway No 39).

1806 Tosson Common Inclosure Award

There is clear evidence of a track over the route of existing Public Bridleway No 39. There is no evidence of a path or track over the route of alleged Bridleway No 43.

1820 Fryer's County Map

There is clear evidence of an "Other Road" resembling the route of alleged Bridleway No 43.

1827 Cary's Map

There is clear evidence of a "Parochial Road" resembling the route of alleged Bridleway No 43.

1828 Greenwood's County Map

There is clear evidence of a "Cross Road" resembling the route of existing Public Bridleway No 39, but not the route of alleged Public Bridleway No 43.

1840 Ryehill & Great Tosson Tithe Award

There is clear evidence of a road or track over the route of existing Public Bridleway No 39, but not the route of alleged Public Bridleway No 43.

c.1866 Ordnance Survey Map: Scale 1:2500

There is clear evidence of a mainly unenclosed path / track over the route of alleged Bridleway No 43. It doesn't appear to have its own

reference number, but passes through two plots of land, labelled as plots "85" and "107". In the accompanying Book of Reference, Plot numbers 85 and 107 in the Township of Great Tosson and Ryehill are identified as "Pasture & c." and "Rough Pasture", respectively. There is no evidence of a track over the recently added east-west section of Public Bridleway No 39, just inside the northern boundary of the forestry.

c.1866 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a mainly unenclosed path / track over the route of alleged Bridleway No 43. There is no evidence of a track over the recently added east-west section of Public Bridleway No 39, just inside the northern boundary of the forestry.

1897 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an unenclosed path / track, labelled "BR" over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path depicted over the middle section – though there is a connection identified passing adjacent to the farm buildings.

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed path / track, labelled "BR" over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path depicted over the middle section – though there is a connection identified passing adjacent to the farm buildings.

Finance Act 1910 plan

There is clear evidence of a mostly unenclosed path or track over the route of alleged Bridleway No 43 on the OS base map. Unsurprisingly, given that it is largely unenclosed, the route of the alleged bridleway is not shown as being separated from the surrounding land by coloured boundaries (if it had been, this would have been good evidence of public highway rights), nor is it annotated as being a public bridleway (or footpath).

1923 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an unenclosed path / track (labelled "BR" slightly further to the south) over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path depicted over the middle section – though there is a connection identified passing adjacent to the farm buildings.

1926 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed path / track (labelled "BR" slightly further to the south) over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path depicted over the middle section –

though there is a connection identified passing adjacent to the farm buildings.

c.1952 Definitive Map – original Survey Map

Most of the route of existing Footpath No 40 / alleged Bridleway No 43 exists on the base map and is coloured purple, to indicate public footpath status.

Draft Map

The route of existing Footpath No 40 / alleged Bridleway No 43 exists on the base map. Being coloured purple, it is identified for inclusion on the Definitive Map as a public footpath.

Provisional Map

As with the Draft Map, the route of existing Footpath No 40 / alleged Bridleway No 43 exists on the base map. Being coloured purple, it is identified for inclusion on the Definitive Map as a public footpath.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed path / track (labelled "FP" slightly further to the south) over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path depicted over the middle section – though there is a connection identified passing adjacent to the farm buildings.

1962 Original Definitive Map

Most of the route of existing Footpath No 40 / alleged Bridleway No 43 exists on the base map, and all of it is coloured purple and identified as part of Public Footpath No 5.

First Review Definitive Map

Most of the route of existing Footpath No 40 / alleged Bridleway No 43 exists on the base map, and all of it is coloured purple and identified as part of Public Footpath No 5.

Definitive Map Modification Order (No 15) 2014 (confirmed 18/9/17)

This DMMO added Public Bridleway No 39 (Parish of Tosson) to the Definitive Map. Parts of Bridleway No 39 were upgrades of parts of existing Public Footpath No 5, and parts of it were new routes (running roughly parallel to sections of existing Footpath No 5). Parts of existing Footpath No 5 (including the northern end, at Great Tosson) were renumbered as Footpath No 40.

6. SITE INVESTIGATION

- 6.1 From Point P, on the U4061 road at Great Tosson, a 2.7 to 3 metre wide stone surfaced track, within a 6 metre (initially), reducing to 5 metre wide (3.6 metre

wide in one place) enclosed lane, proceeds in a westerly direction for a distance of 120 metres to Great Tosson Cottages. Thereafter, a 1 metre wide earth / grass path, in a 3 metre wide 'corridor' proceeds in a general south-westerly direction for a distance of 80 metres to a kissing wicket gate. Then continuing in a south-westerly direction for a further 210 metres, as a 1 metre wide trodden earth path through an area of gorse, then as a 1 to 2 metre wide trodden earth / grass path in an up to 4 metre wide 'corridor' to join existing Bridleway No 39 at Point Q, 405 metres south-west of Tosson Tower.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In November 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 letter, dated 25 November 2022, Mr Kind (the applicant) made the following comments in relation to the Draft report:

"Thank you for your letter of 24 November and the draft of your report, inviting me to comment. I do so comment below, and ask please that I see any revised report sufficiently ahead of the committee meeting.

"If I can provide any further information please ask."

1. You will remember that I asked your Chief Executive if Northumberland County Council complies with the law in all highway matters. The reply was an unequivocal 'yes'. I will take parts of your draft report in turn, referencing your paragraphs thus: [XXX].

2. [1.3] "All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendations are in accordance with the law and proportionate, having regard to individuals rights and the public interest."

3. You speak of 'proportionality' as a test to be applied to the evidence in your (that is the surveying authority) determining the application. With respect, there is no proportionality filter for you to apply here. You cite no case law. There is no case law that I can find to indicate that there is such a filter. If I may respectfully point you to a paper in The Student: Journal of Law, which explains this better than I can in my own words. If you disagree with what is written here will you please tell me where and why?

<https://sites.google.com/site/349924e64e68f035/issue-3/proportionality>

4. You speak of "competing rights and interests". Competing with what, please? This application and the order sought are founded on evidence admissible under s.32 of the Highways Act 1980, and the process set out in s.53 of the Wildlife and Countryside Act 1981, particularly (3)(c) "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -"

5. This indicates an assessment of 'competing evidence' rather than 'competing rights and interests', and to factor-in the latter would be a misdirection as to the law.

6. You say "The recommendations are in accordance with the law ..."
That may be so, but if it is so you have not set this law out in the report, and that vitiates your objective presentation of the evidence. You also make observations on the various pieces of evidence which require challenge. I set these matters out below, each referenced to your draft.

7. [2.4] You misrepresent the points I made in submissions regarding the order to add the bridleway 'Cambo Bridle Road' (CBR). If you remember, the definitive map modification order application by the BHS misrepresented the historical alignment of CBR and 'claimed' the curving open track through the woods as being the historical line. Your reports and ultimate order continued this misrepresentation, and it was my submissions that persuaded the Inspector to modify the order to show CBR on the true alignment. My own initial thoughts were that the historical line was the one in this application, but on a proper consideration of all the evidence I quickly revised my view as to the order line, but maintained my view as to this application line being an alternative, outwith-award, line.

8. [5.1] Tosson Common Inclosure Award 1806. "There is clear evidence of a track over the route of existing Public Bridleway No39. There is no evidence of a path or track over the route of alleged Bridleway No 43." That is factually correct, but given the boundaries of the inclosed land, and what is generally shown outwith those boundaries, why would the inclosure plan show this? Unless you present a balanced view of the inclosure plan, what you say is misleading through omission.

9. Fryer's County Map 1820. "There is clear evidence of a track resembling the route of alleged Bridleway No 43." No. Fryer shows this application route as part of an "Other Road", and that 'Other Road' runs from Great Tosson southwards to the Gallows Hill tee-junction, and south from there as a turnpike road to Cambo. Fryer's road does not completely match currently recorded bridleways around Green Leighton, but this is more probably because those bridleways were not founded on their being CBR. Whatever, Fryer's road from Great Tosson to Cambo is a largely straight alignment, 10 miles long. 10. Neither have you noted how well Fryer's depiction of the 'Other Roads' at and around Great Tosson closely match the public road network today.

11. Cary's Map 1827. "There is clear evidence of a track resembling the route of alleged Bridleway No 43." No, Cary does not show a 'track', rather he shows a "Parochial Road". This map is in the series "Improved map of England and Wales with a Considerable Part of Scotland at a Scale of Two Miles to One Inch. 1820-32." You are well aware of this because this case law has been put in to various public inquiries in Northumberland over the years.

12. Cary's half-inch maps series is accompanied by a 'key' that shows his conventional signs for roads. One road depiction is for 'parochial

roads', and in the High Court case of *Commission for New Towns v. J J Gallagher* [2002] EWHC 2668 (Ch); [2003] 2 P&CR 3., two leading cartographic experts, Dr Yolande Hodson and Professor Roger Kain, disputed the evidential meaning and weight of 'parochial road', with the Judge ultimately preferring Dr Hodson's view that such a road is more likely to be a public vehicular road than, as Professor Kain suggested, a public bridle road. Such a depiction on Cary's map is only one piece of evidence, not of itself of particularly great weight, and open to being overwhelmed by contradictory evidence from other sources, but it is a solid starting point. Unless you have reason to disagree with the Judge, you should take the position that Cary provides evidence in favour of bridleway or carriageway status. The question then is whether other evidence overwhelms this view.

13. Ryehill & Great Tosson Tithe Award 1840. You do not say whether this is a first class or second class tithe award plan, nor whether it was newly surveyed, or based on an existing plan. In any case, given the nature of the ground and the nature of the track(s) on the ground here, would a tithe plan, concerned with the produce of the ground, show any 'track'?

14. Ordnance Survey Map 1866 1:2500 Scale. "There is clear evidence of a mainly unenclosed path / track over the route of alleged Bridleway No 43. It doesn't appear to have its own reference number, but passes through two plots of land, labelled as plots "85" and "107". In the accompanying Book of Reference, Plot numbers 85 and 107 in the Township of Great Tosson and Ryehill are identified as "Pasture &c." and "Rough Pasture", respectively. There is no evidence of a track over the recently added east-west section of Public Bridleway No 39, just inside the northern boundary of the forestry."

15. That summary of what this map shows is correct insofar as it goes, but there is more. Richard Oliver in his book *Ordnance Survey Maps: A Concise Guide For Historians* (again, you are aware of this) states that this map was first surveyed in the period 1855-1864. We can reasonably take it that what the surveyors saw on the ground is what is shown in this map. So: 15.1. There is a track across open ground that corresponds as closely as map scales permit to the 'Other Road' on Fryer, and the "Parochial Road" on Cary. 15.2. This is a road or track directly connecting Great Tosson southwards to Cambo. The area affected by the 1806 inclosure award aside, this is probably Cambo Bridle Road. 15.3. This OS map shows the inclosure that is now forested as open land marked with OS standard "Rough Grassland" symbols. 15.4. The route inside the northern wall boundary for CBR on the 1806 inclosure plan is not shown. The OS surveyor could not see a track fit to mark here, where he could see the north-south CBR and the application line down to Great Tosson.

16. The 6"-scale OS maps were made from the same survey information as the principal 25"-scale maps. Differences in depiction were driven by constraints on space.

17. Ordnance Survey Map Second Edition 1897 1:2500 Scale. "There is clear evidence of an unenclosed path /track, labelled "BR" over the southern part of the route of alleged Bridleway No 43, and of an enclosed east-west track over its northern end. There isn't a path

depicted over the middle section - though there is a connection identified passing adjacent to the farm buildings." Yes. The depicted track is now seen by the OS as being physically usable by horse traffic, and although the current footpath route has gone in part as a track, its inclosing features are still shown. That indicates some diligence in surveying and mapping.

18. By the time of survey two large areas of woodland have appeared, with a clear and wide corridor shown for the 'B.R.' to run through. This suggests that this run of 'track' was viewed as a highway to be respected: part of the CBR.

19. This is the right place in which to consider [5.1] Greenwood's County Map 1828. It is correct that Greenwood shows the 1806 award route locally, and also the longer route southwards to Cambo. You now know how generally accurate and informed Greenwood was from the submissions put in for the Fowberry order. It is a key question then as to why Greenwood shows the award route in 1828, when Fryer 1820, Cary 1827, and the Ordnance Survey in 1866 and 1897 show no trace of the east-west awarded route, but do show this application route, and the north-south part of the awarded route, and the continuation (some of it also awarded) southwards towards Cambo. The probable explanation is that Greenwood did not see his route hereabouts on the ground, but rather that, in his diligent gathering of information, he was aware of the 1806 award and mapped the awarded route accordingly. It is hard rationally to accept that the east-west awarded route physically appeared after Fryer, in time for Greenwood, and then promptly disappeared again in time for the OS surveyors. There is no doubt that the east-west awarded route existed as a highway after 1806. This explanation also addresses the draft report in [8.7].

20. Finance Act 1910 Plan. "There is clear evidence of a mostly unenclosed path or track over the route of alleged Bridleway No 43 on the OS base map. Unsurprisingly, given that it is largely unenclosed, the route of the alleged bridleway is not shown as being separated from the surrounding land by coloured boundaries if it had been, this would have been good evidence of public highway rights), nor is it annotated as being a public bridleway (or footpath)." That OS base map is the 1897 map (above). The Finance Act valuers did not generally, if at all, 'annotate' bridleways and footpaths (life might be a lot simpler if they had). The comment about the route not being 'coloured out' is misleading. Colour lines denote plot boundaries. There are no plot boundaries alongside the application route (but there are just to the south) and so there is no expectation that the route would be coloured out.

21. Finance Act Field Books 1910. These are not mentioned in the draft report. Do they exist at Woodhorn Colliery CRO?

22. [6.1] Site Investigation. The term 'corridor' is misleading. As the photograph in the application shows, there is a 'braid' of worn tracks and substantial holloways. This is consistent with long-period horse traffic on a steep hill. The gradient is no steeper than on other established and recorded horse routes. A pattern of multiple

holloways is commonplace, for example The Broadway in Northumberland, and Hexham Lane in County Durham.

23. So, on a more-detailed consideration, there is no great "inconsistency" in how the application route, and the longer historical CBR, are shown from Fryer in 1820, right up to the introduction of the definitive map and statement. And to bolster this point, even today the east-west awarded route is not represented by the Ordnance Survey as existing on the ground.

Summary

24. Cambo Bridle Road must have existed as a through entity before, and at the time of, the inclosure award in 1820. If it did not, the inclosure commissioners had no power to make a highway outwith the scope of the award and so they could not have brought a route to Cambo into being.

25. The inclosure commissioners had no power to stop-up, either expressly, or by general wording of the Act of Parliament, the application route if it was then a public highway.

26. The commercial and OS mapping from 1820 to the present day presents a long and physically existing 'road' (or track) from Great Tosson to Cambo (and beyond). Consider the view of the Court of Appeal in *Fortune v. Wiltshire Council* [2012] EWCA Civ 334.

27. Lord Justice Lewison at paragraph [98], "We deal first with the argument that the judge should have ignored what he called the "small scale maps" entirely; and should have concentrated only on the large scale maps (i.e. principally the 1784 map). We reject that submission. First, it conflicts with the statutory instruction in section 32 of the 1980 Act which says that the court "shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified". Second, the consistency of treatment of Rowden Lane and Gipsy Lane in commercially produced maps for well over a century showed, if nothing else, the reputation enjoyed by Rowden Lane. Section 12 of the Planning Inspectorate Consistency Guidelines (2nd revision June 2008) (which Prof Williamson produced) concludes by quoting a paper by Christine Willmore dealing with old maps:

28. "What is looked for is a general picture of whether the route seemed important enough to get into these documents fairly regularly. A one-off appearance could be an error ... consistent depiction over a number of years is a positive indication.

29. [99] "That is the approach that the judge adopted, testing each provisional conclusion against what had come before and what came after. In our view the judge's approach to "consistent depiction" was fully justified."

30. The whole through route, Great Tosson to Cambo, has been consistently depicted for 200 years, and the great majority of that route is accepted as public road or public bridleway. It is improbable that it changed status to public footpath at the north end (and

remember that it changed further south before the recent confirmed order modifying the status).

31. There is no doubt that the inclosure commissioners set out the east-west part of CBR as a public highway. But that of itself does not mean that the direct line down into Great Tossion (as evidenced by what appears to be long-term traffic wear and tear) was not also a public bridle road. Fryer's and Cary's maps suggest that it was. Cary raises a degree of rebuttable starting position, and that has not been rebutted. The topography and consistent depiction bolster the rational conclusion that the application route was an earlier, and/or concurrent, northern end of Cambo Bridle Road.

32. The evidence, properly weighed as a whole, satisfies the balance of probabilities test, and the order should be made on this basis."

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 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.

8.4 The route of alleged Public Bridleway No 43 is currently identified on the County Council's Definitive Map of Public Rights of Way as part of Public Footpath No 40. The same route was identified as part of Public Footpath No 5 on the original Definitive Map published in the early 1960s, and (as part of Footpath No 2) on the Draft and Provisional Maps which preceded this.

8.5 Until Definitive Map Modification Order (No 15) 2014 was confirmed by an Inspector appointed by the Secretary of State, in September 2017, the public right of way south of Point Q was recorded on the Definitive Map as part of Public Footpath No 5. DMMO (No 15) 2014 was made, following an application by David Roberts, who argued that higher rights existed over a route known, historically, as Cambo Bridle Road. The Inspector established that public bridleway rights did exist, though he also determined that the alignment of the route needed to be modified.

8.6 The current route of Bridleway No 39 is the one which was set out in the

Tosson Common Inclosure Award of 1806 as a public bridle road (six feet wide). Much of that route coincided with the route that was recorded as Public Footpath No 5, but some of it didn't, suggesting that the 'used' route had altered, slightly, over time. In common with many upland routes, this bridleway's importance, as a public highway, appears to have diminished, over time. By the 1860s, the section of Cambo Bridle Road, proceeding eastwards from Point Q, wasn't depicted as a physical feature on Ordnance Survey maps. Although the section south of Point Q was still identified as "BR" (i.e. bridleway) on the 1890s and 1920s OS maps, by the 1950s it was being identified simply as "FP" (i.e. footpath). If, by the 1950s, the route had become altogether less well used, and less well used by equestrian traffic in particular, it's not hard to see how its true bridleway status might have been overlooked when the first Definitive Maps of public rights of way were being prepared, during the 1950s. Although the bridleway may have stopped being used by horse riders, by the 1950s, lack of use doesn't mean the higher rights are lost. In the absence of evidence that the bridleway rights were lawfully extinguished, they must be presumed still to exist – hence the decision made by the Inspector appointed by the Secretary of State, in 2017.

- 8.7 The Inclosure Award plan of 1806, Greenwood's County Map of 1828 and the Tithe Award plan of 1840 all show a route proceeding eastwards from Point Q (now recorded as part of Public Bridleway No 39). None of them show a track proceeding along the route of alleged Bridleway No 43. In the case of the Inclosure Award plan, this could be because the point Q sits on the boundary of the land being enclosed and any continuation north of point Q would be outwith the area of land subject to inclosure. That said, the beginnings of other tracks also lying just outside the award boundary are identified and labelled "To Morpeth" and "To Rothbury". Greenwood's County Map was primarily concerned with showing known vehicular highways, and though a small number of known public bridleways are also shown, most are not, and public footpaths (there would be too many of them to show in any meaningful way) do not appear to be shown at all. Given that the route of Cambo Bridle Road was shown on Greenwood, if public bridleway rights had been considered to exist over the alleged Bridleway No 43 route too, we might have anticipated that this route would also have been depicted, but we shouldn't necessarily be surprised if it was not.
- 8.8 Alternatively, Fryer's Map of 1820 and Cary's Map of 1827 both do appear to show a route entering Great Tosson from the west side, and don't show any route proceeding easterly from Point Q (the newly recorded north-eastern end of Bridleway No 39). On the face of it, this could simply be attributable to the scale of Fryer's and Cary's maps, and what they were intending to depict was the same highway set out in the inclosure award (and on Greenwood's Map and the tithe award), but the much more detailed 1:25 inch OS map, published c.1860, supports the Fryer's Map alignment. It, and all subsequent OS maps fail to identify any route proceeding directly eastwards from Point Q, which suggests that this route had, perhaps, fallen into disuse by this time.
- 8.9 A further inconsistency arises with this mapping, where existing Footpath No 40 (alleged Bridleway No 43) enters Great Tosson. On the 1st edition OS, the route north of Point Q divides, as it descends the slope and reaches the settlement, with one limb continuing (broadly) northwards, to join the enclosed track immediately west of Great Tosson, on a route similar to the existing footpath / alleged bridleway, and the other limb branching eastwards, then northwards, to join the enclosed track, slightly further to the east, within Great Tosson itself. On the 2nd and 3rd edition OS maps (1890s and 1920s) and on

the 1957 OS map, the first limb isn't shown – only the second (easterly then northerly) route is depicted. Despite this, when the route of what became Footpath No 40 was surveyed for inclusion on the Definitive Map in the early 1950s, it was the non-depicted westerly route which was identified, and it was this route which continued through at the Draft Map, then Provisional Map stages and which was ultimately recorded on the original Definitive Map. The question remains, was this westerly route identified, in the 1950s, simply because it was the route that was favoured by walkers in the few decades leading up to this (the longer route's bridleway origins having been entirely forgotten), or was this always, historically, the correct route – notwithstanding that it was not identified as part of the bridleway route on the 1890s and 1920s OS maps.

- 8.10 Mr Snaith, of Great Tosson Farm, does not support this route being upgraded to public bridleway status and nor does Witton and Tosson Parish Council. Both of them have indicated that they believe this route to be unsuitable for horses. It's not entirely clear whether they are arguing the route should not be recorded as a bridleway because it is unsuitable for horses now (which isn't, strictly, relevant when determining what public rights exist) or that the route's characteristics indicate that it would not have been suitable for or used by horses in the past, or a combination of the two. The applicant is only suggesting that this route carries public bridleway rights – he does not appear to be arguing that the route is a vehicular one, previously used by carts.
- 8.11 Both Mr Snaith and the parish council have suggested that, historically, this route was just a local short cut for foot traffic, wishing to join the longer bridleway / droving route. They have both indicated that the route is identified only as a footpath on old ordinance survey maps. This latter point isn't quite correct; the route isn't labelled as anything on the 1860s OS maps, but is clearly labelled as "BR" on the 1890s and 1920s maps.
- 8.12 Although the route was recorded as a public footpath when the Definitive Map was being prepared, in the 1950s (this was by Northumberland County Council, not the Northumberland National Park Authority), this was always without prejudice to any higher rights that might exist. Routes were typically identified for inclusion at the local / parish level. If higher rights were no longer being exercised, it wasn't uncommon for some vehicular routes to be misidentified as bridleways, some bridleways to be misidentified as footpaths and for some footpaths to be overlooked altogether.
- 8.13 The British Horse Society consultation response is entirely neutral on the matter of whether or not public bridleway rights actually do exist. From a horse rider utility point of view, the BHS suggests that more could be achieved by expediting proposals to divert the newly recorded (though obstructed by forestry) section of bridleway east of Point Q onto the nearby (more readily available) forest track.
- 8.14 In paragraph 3 of his comments, in relation to the draft version of this report, Mr Kind indicates that I have stated that "proportionality" is a test to be applied to the evidence when determining the application. I don't believe this report does suggest this. This is not and never has been my view. Proportionality is applied to the recommendation – not to the evidence itself. The same response is applicable in relation to his criticism in relation to "competing rights and interests".
- 8.15 In paragraph 7 of his comments, Mr Kind suggests I have misrepresented the

points he made in submissions regarding the DMMO to add Bridleway No 39. I don't think I did and that certainly wasn't my intention. I was merely trying to make the point that he gave early warning, then, during that earlier DMMO process, that he believed that bridleway rights existed over the P-Q route, and that this current application was him following up on those earlier assertions. I have altered the wording of 2.4 to make this clearer. I did not write the earlier reports re the British Horse Society's Cambo Bridle Road application, nor did I draft the resulting definitive map modification order.

- 8.16 In paragraph 8 of his comments, Mr Kind concedes that my initial observations regarding what the inclosure award plan shows may be factually correct, but that this doesn't present a balanced view. I believe my unmodified Paragraph 8.7 provides that balance.
- 8.17 Mr Kind's comments at paragraphs 9 and 11 are factually correct. I don't think this makes any difference to the value we have placed upon this evidence, but I have amended the report to more accurately reflect how the routes are actually identified in the Fryer's, Cary's and Greenwood's Maps' keys.
- 8.18 Mr Kind suggests, in his paragraph 20, that the draft report was misleading in the way it addressed the Finance Act 1910 plan. I don't believe it is / was. I entirely agree with him, that it is the plots of land that are coloured with boundaries - I don't think I have suggested otherwise. The internal (to any particular farm) plot boundaries are almost always drawn where there is a physical boundary. Where an enclosed road or lane is separated from all the surrounding land by the coloured boundaries (which are enclosing all the surrounding land) this is generally considered to be good evidence in support of a vehicular right of way. The most easterly one third of the alleged bridleway route was an enclosed lane, which could have been separated from the surrounding land by coloured boundaries, but wasn't - it was simply included within the same parcel as the land surrounding it. From time to time, we do discover 'internal' routes that are nevertheless labelled as public highway (examples of these exist at Branton and at Edlingham). I would certainly agree that it is unfortunate that more examples of this don't exist.
- 8.19 The applicant's position is that Cambo Bridle Road (a long distance public bridleway) clearly existed and pre-dated the inclosure award process concluded in 1806. Whilst the Inclosure Commissioners (and the Inspector determining DMMO (No 15) 2014) acknowledged the existence of public bridleway rights from Point Q eastwards to the public road south-east of Tosson Tower, this did not preclude the existence of additional public bridleway rights on a more direct route P-Q. This route was outside the area of land being subject to inclosure (so the Inclosure Commissioners could ignore it in 1806) and it was not necessary for the Inspector determining DMMO (No 15) 2014 to reach any conclusions as to its correct status because the route eastwards from Point Q was a closer fit to replace the incorrect one that had originally been identified in the DMMO. There would be nothing to take issue with here, and I haven't felt any need to change my paragraphs 8.20 to 8.22, below, to take account Mr Kind's comments.
- 8.20 As indicated in paragraph 8.1 above, it is the higher level "balance of probabilities" test which needs to be applied when determining this application. Because the route is already recorded as a public footpath, the "reasonably alleged to exist" test doesn't apply.

8.21 The main points in favour of public bridleway rights over the application route (P-Q) would appear to be:

- i. Clearly a public bridleway (Cambo Bridle Road) did exist in this immediate area.
- ii. The application route is shown on Fryer's and Cary's Maps of 1820 and 1827.
- iii. There is some physical evidence of a route (the hollow way).
- iv. The inclosure awarded route, east of Point Q, is not shown on any maps from the 1860s onwards. The implication is that this section fell into disuse and was replaced by the application route.
- v. The application route is partly identified as bridleway on the 1890s and 1920s OS maps.

8.22 The main points against public bridleway rights existing over the application route (P-Q) would appear to be:

- i. Just because Cambo Bridle Road existed, this doesn't mean linking paths necessarily had the same status.
- ii. The application route isn't shown on the Inclosure Award plan, on Greenwood's Map of 1828 or on the tithe award plan.
- iii. The route would be physically challenging for horses – it is difficult to see why they would favour this route over the original (inclosure awarded) route.
- iv. The hollow way isn't necessarily an indicator of heavy traffic. Water runoff, down the hill, may have made a significant contribution towards this.
- v. The disappearance of the inclosure awarded route, east of Point Q, might reflect a more general decline in equestrian use of this route. If only pedestrians were using it – they might favour the more direct (though steeper) existing footpath route.
- vi. Although identified as a bridleway on the 1890s and 1920s OS maps, this reflects the impression that was given to the surveyor – not some detailed study of the actual public rights which existed. The section south of Point Q may, then, have retained the appearance of a more substantial bridleway track, even if the section east of Point Q had seemingly disappeared. The bridleway rights would still exist over it (they hadn't been extinguished) but public use might conceivably be only pedestrian now. Whether they would have identified the section south of Point Q as bridleway, and the section north of it as footpath is unknown – it's possible they might have aggregated the whole route as "BR".
- vii. Finally, the bridleway routes identified on the 1890s and 1920s OS maps don't follow the route of existing Footpath No 40, in the immediate vicinity of Great Tosson Farm. As highlighted previously, they show a route entering Great Tosson from the south, rather than from the west (as the existing Footpath No 40 does).

8.17 This is far from a clear cut decision but, ultimately, officers do not believe that the balance of probabilities threshold has been met. Fundamentally, it is impossible to determine, given the scale of Fryer's and Cary's maps, precisely where the routes they are depicting enter Great Tosson. As I have already set out, even if it is accepted that they were definitely intending to show a route entering Great Tosson from the west (and this wasn't just a slightly schematic interpretation of the inclosure award route) how can we be satisfied, on a balance of probabilities, that the existing footpath route is the correct one for the public bridleway and not alternative route which enters Great Tosson at its

south-west corner? Both routes are shown on the 1860s OS maps, but only the one entering from the south-west (which isn't the application route) is shown on the 1890s and 1920s OS maps.

- 8.18 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. The officer recommendation is that bridleway rights have not, on a balance of probabilities, been shown to exist over the application route, but if the sub-committee disagrees with this, and determines that they have been, it would seem reasonable to identify the 120 metre long section west of Point P with a width of 3.6 to 6 metres and the remainder 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 bridleway rights have not been shown to exist over the route of alleged Bridleway No 43.

BACKGROUND PAPERS

Local Services Group File: A/36/43z

Report Author Alex Bell – Definitive Map Officer
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Alex.Bell@Northumberland.gov.uk



Northumberland
County Council

Infrastructure Records, Local Services
County Hall Morpeth Northumberland
NE61 2EF Telephone 0345 600 6400

Wildlife & Countryside Act, 1981

—|—|—|—|— Alleged Public Bridgeway

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Former District	Alnwick	Parish	Tosson	Scale	NAS
Def. Map. No.	93	O.S. Map	NU00SW	Date	January 2021

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

To: Northumberland County Council of: County Hall, Morpeth NE61 2EF

I, Alan Kind, of 1 Foxley Close, Newcastle upon Tyne, NE12 6FX hereby apply for an order under section 53(2) of the Wildlife & Countryside Act 1981 modifying the definitive map and statement for the area by

Modifying (upgrading) Footpath 136/007 Parish of Tosson to bridleway.

from 02550-00453 at the junction with Bridleway 136/009 Tosson, northeastwards for about 400 yards to 02806-00589, where it meets the public road in Great Tosson.

and shown on the map accompanying this application.

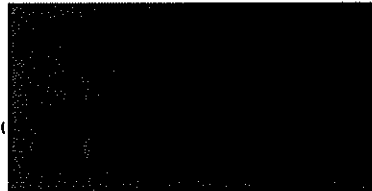
I attach copies of the following documentary evidence in support of this application.

List of documents

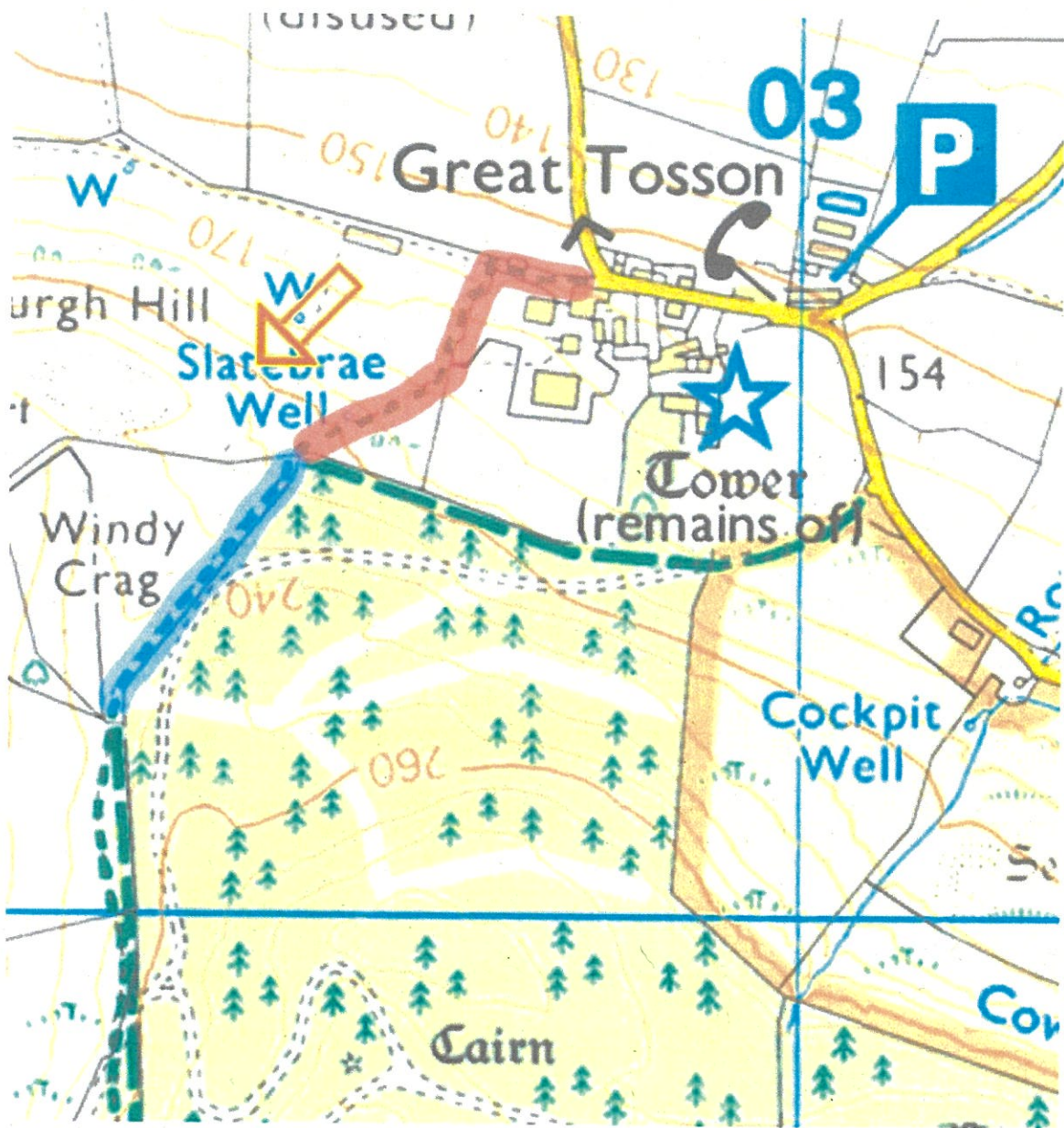
1. Location map
2. Extract from the 1899, First Revision Ordnance Survey map.
3. Extract from Fryer's Map of Northumberland 1820.
4. Extract from John Cary's Improved Map, Plate 62, 1827.
5. Aerial Photograph (current).
6. Photograph of the application route.
7. A statement of grounds in support of this application

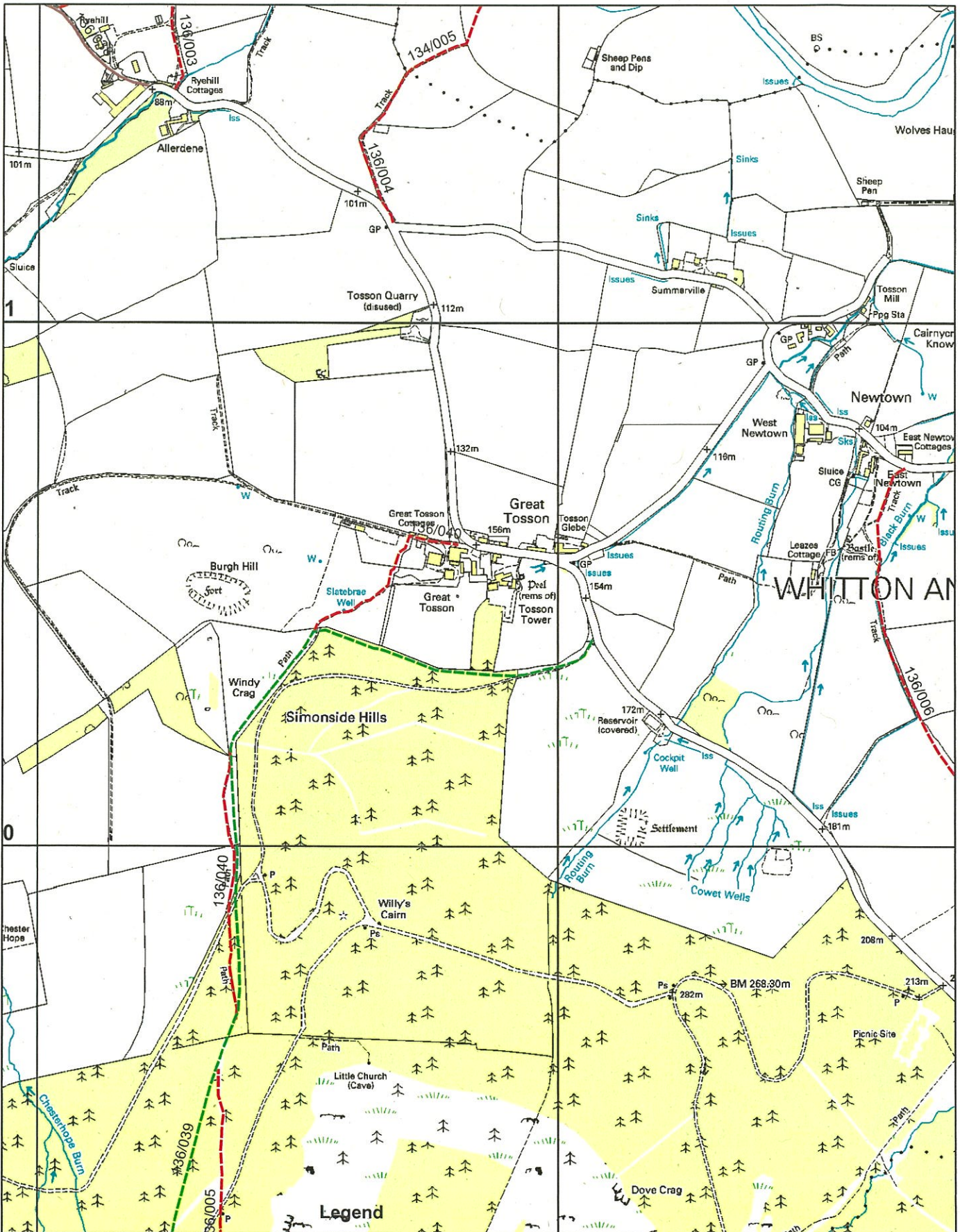
Dated: 17 December 2020

Signed



Location Plan






Northumberland
 County Council
 Sustainable Transport
 Local Services
 County Hall Morpeth Northumberland
 NE61 2EF Tel: 01670 533000

- - - 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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Supplied by Mr Kind in support of his application

Satellite Photograph

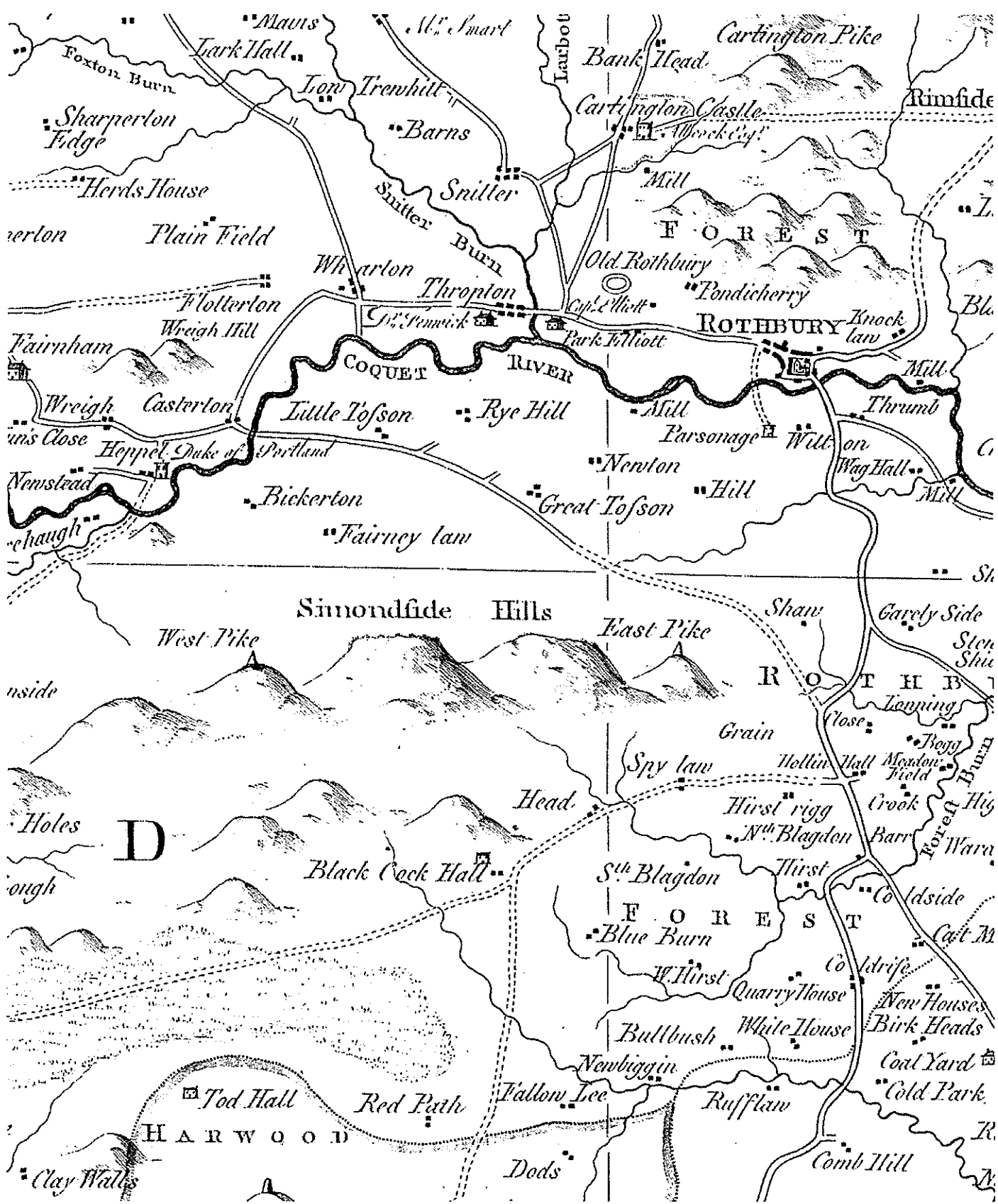


Supplied by Mr Kind in support of his application

Photograph of the Topography

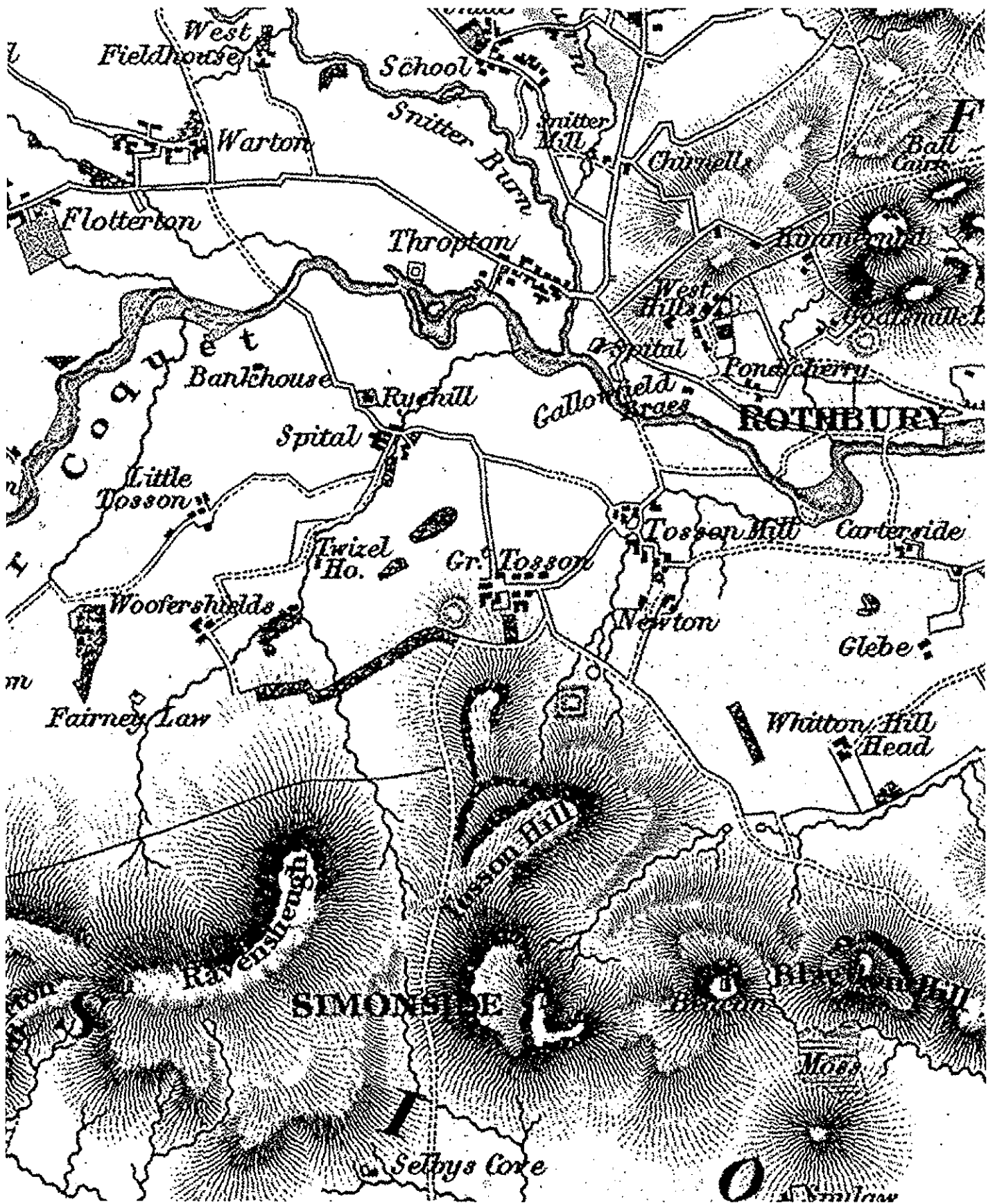


Armstrong's County Map
1769

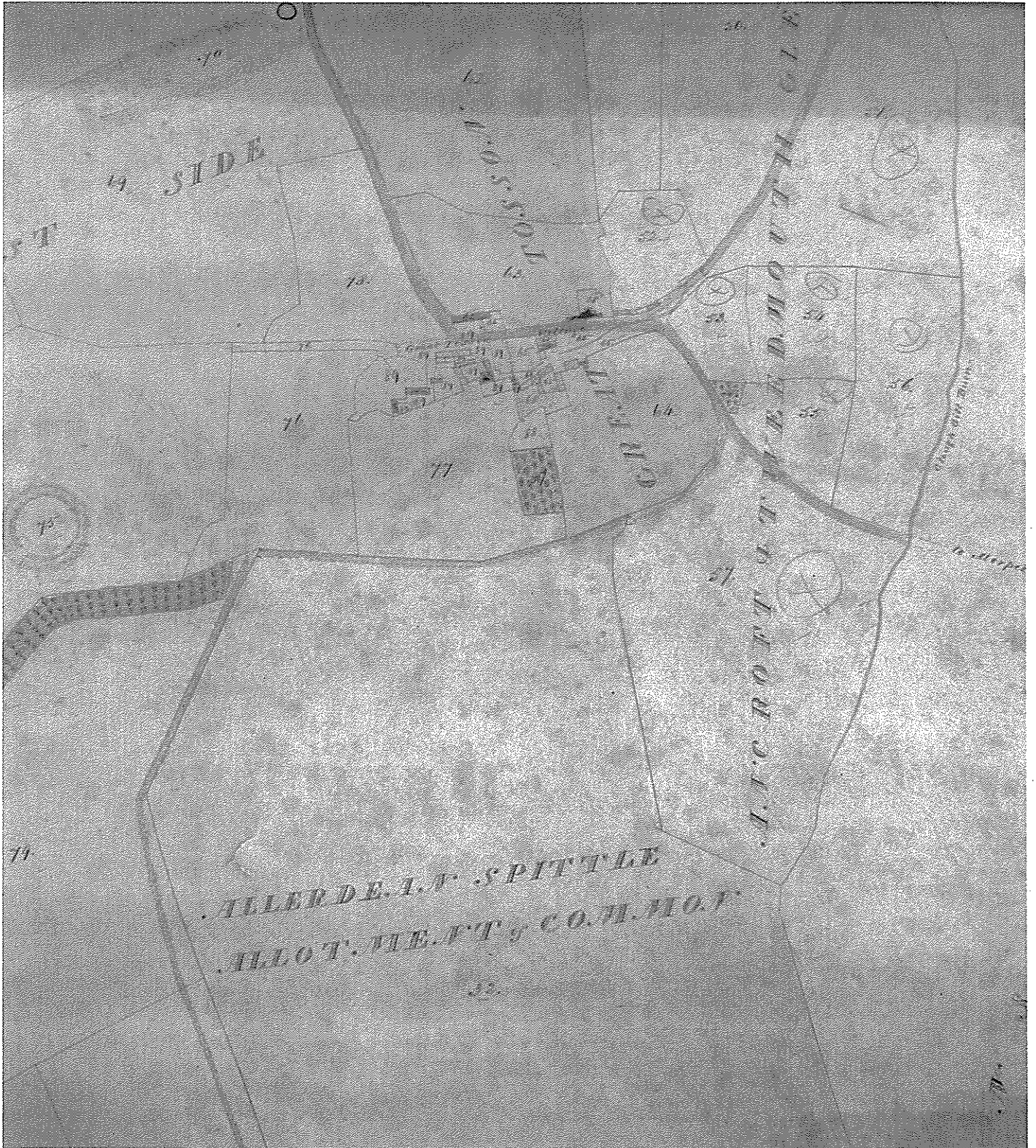


Fryer's County Map
1820





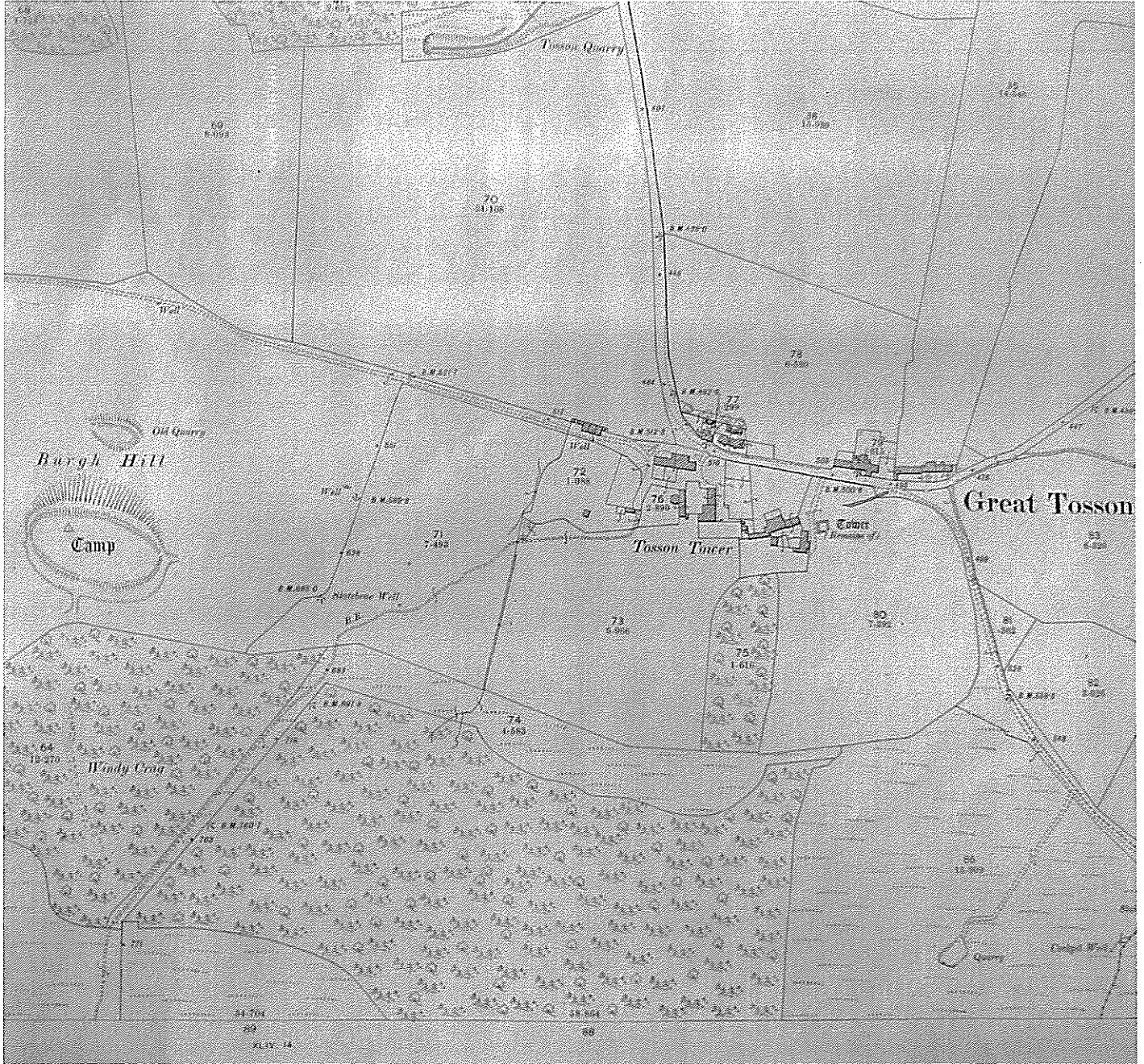
Ryehill & Great Tosson Tithe Award
1840

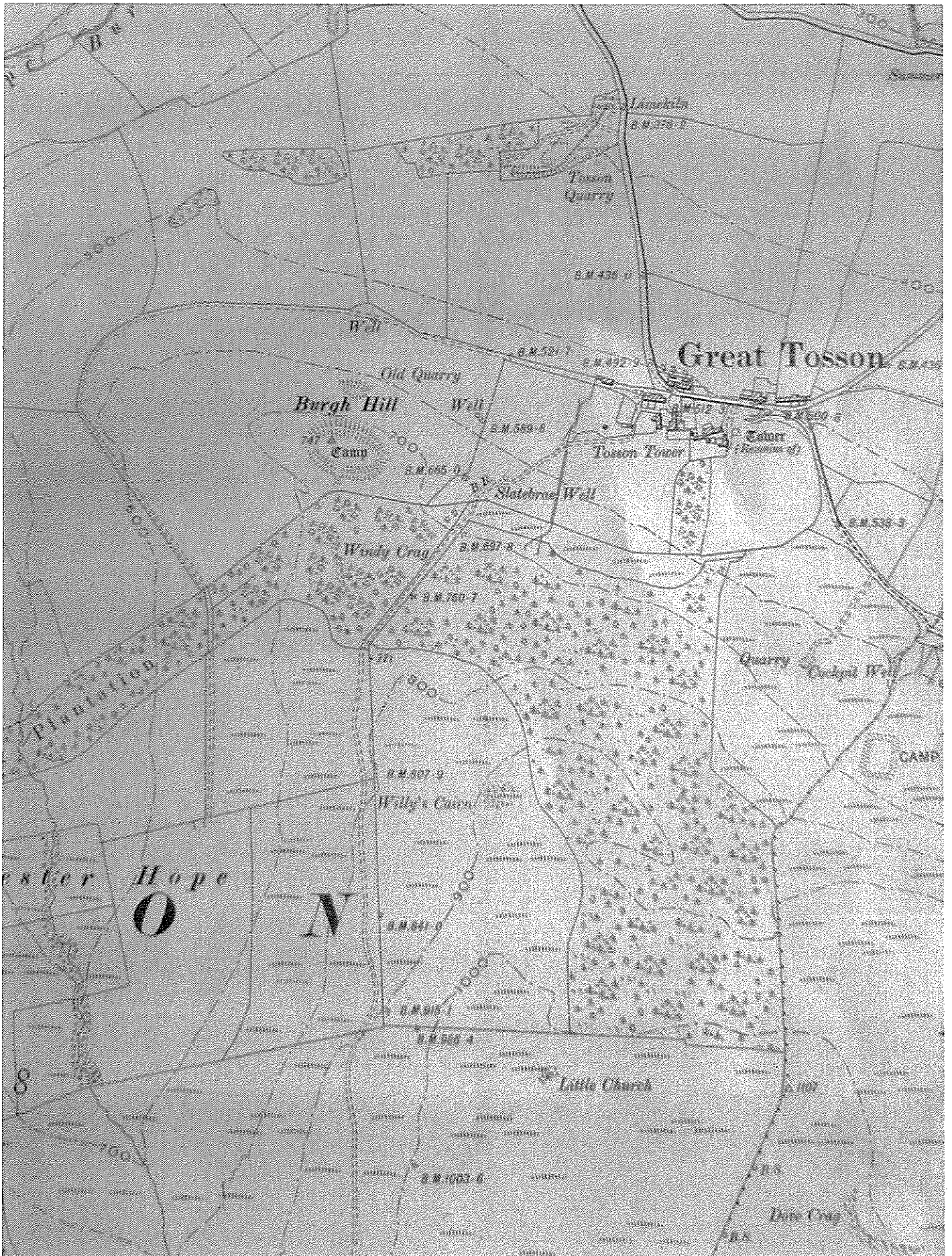


1st Edition 25" O.S. Map
c.1860





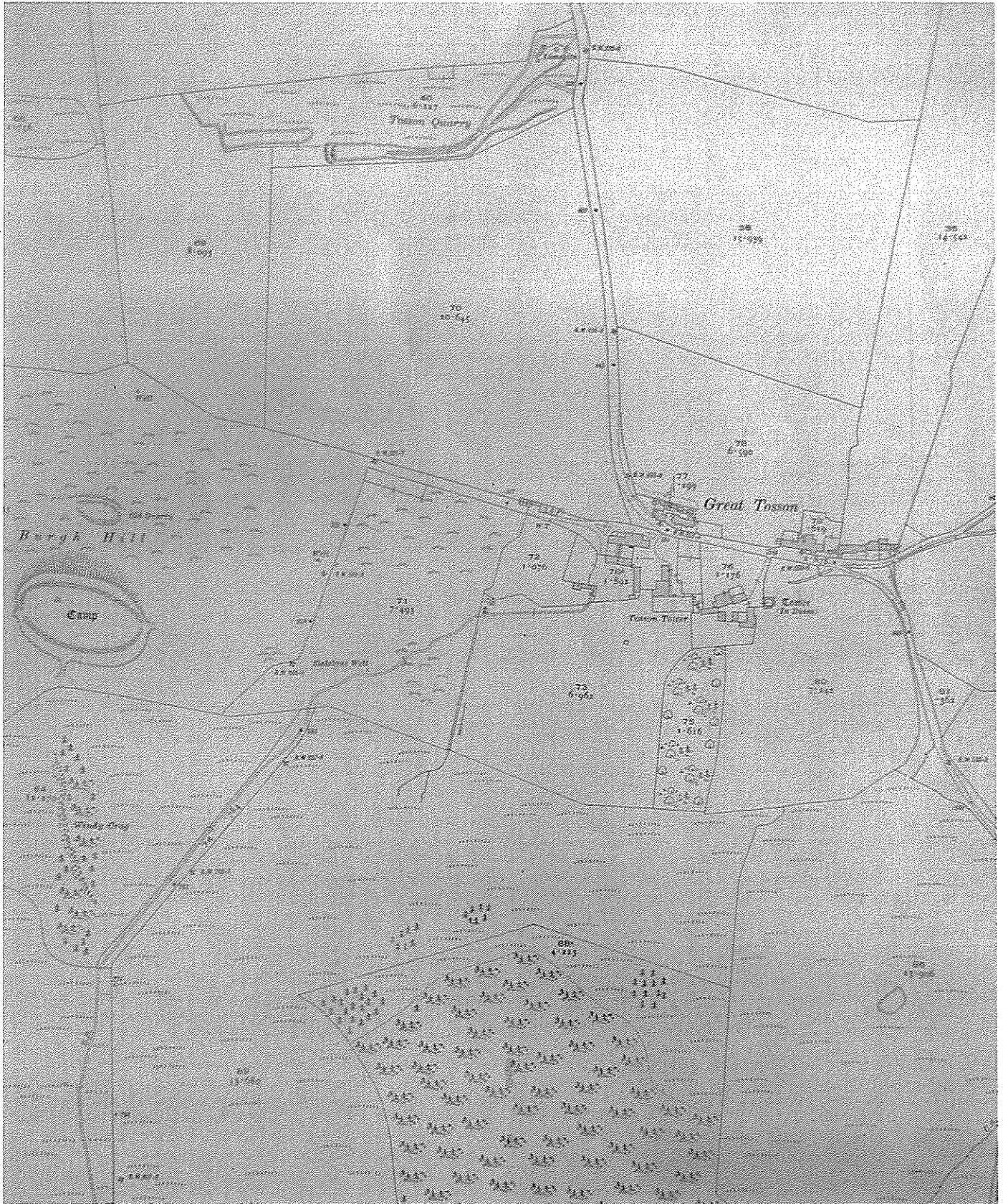


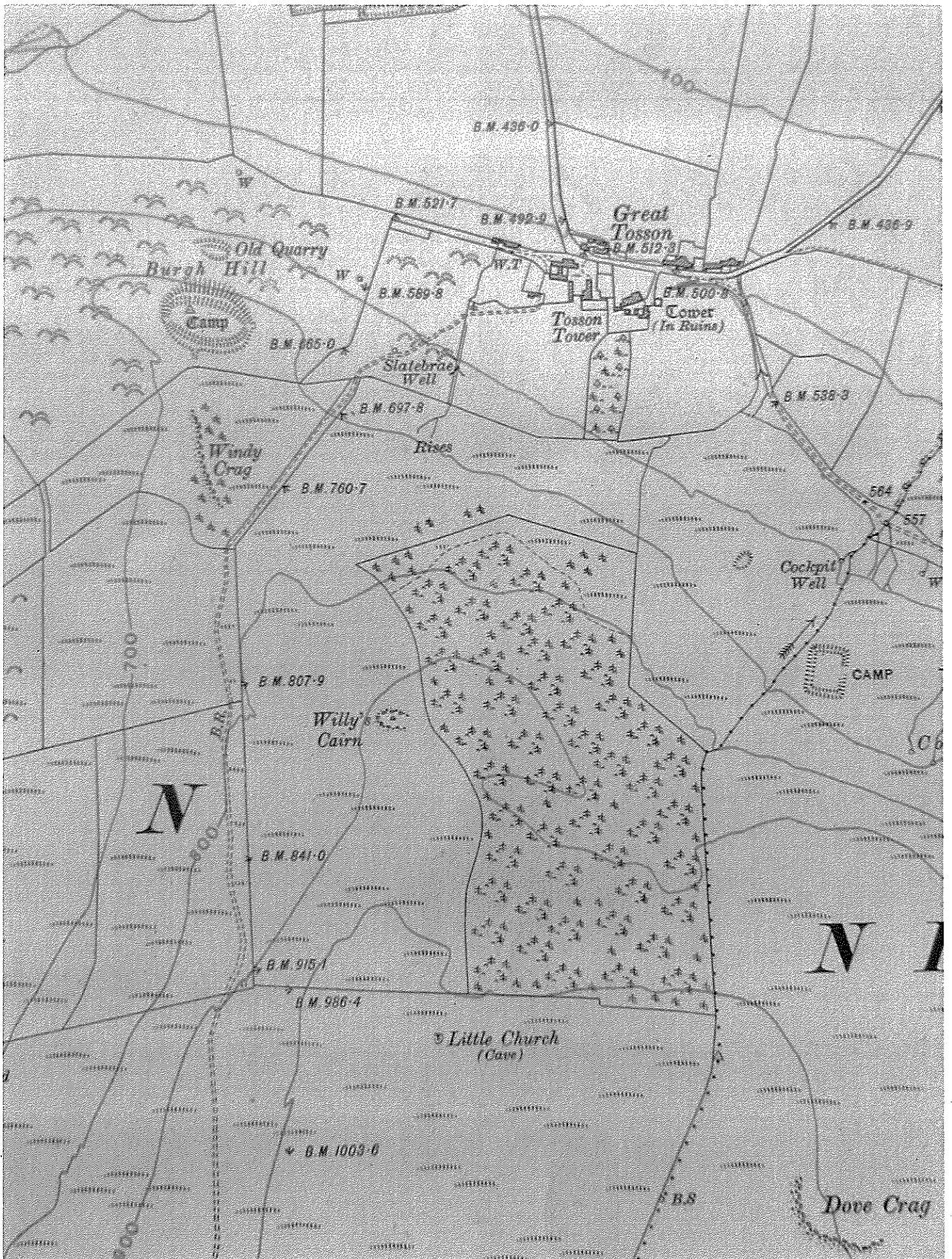


Finance Act 1910 Plan

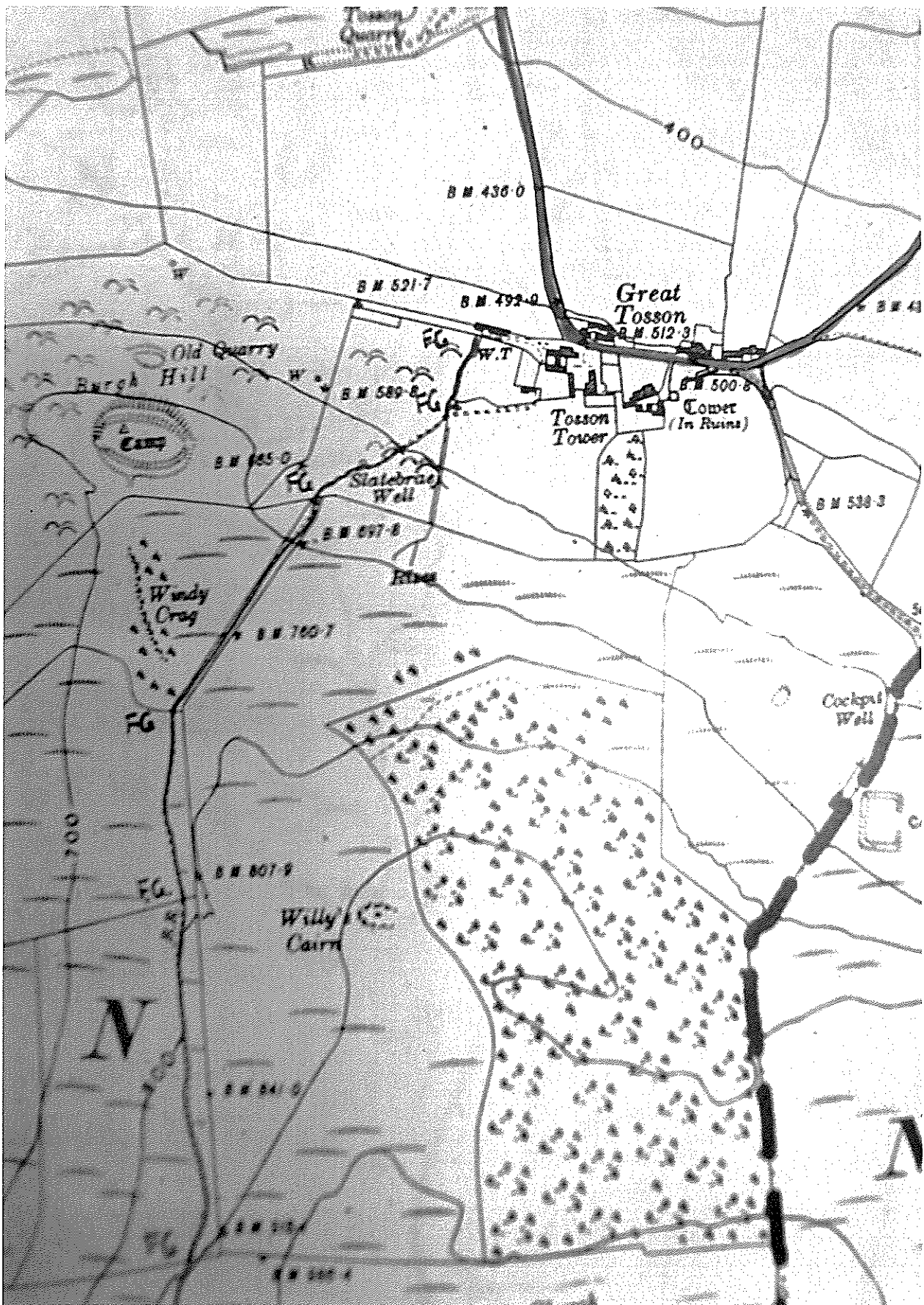


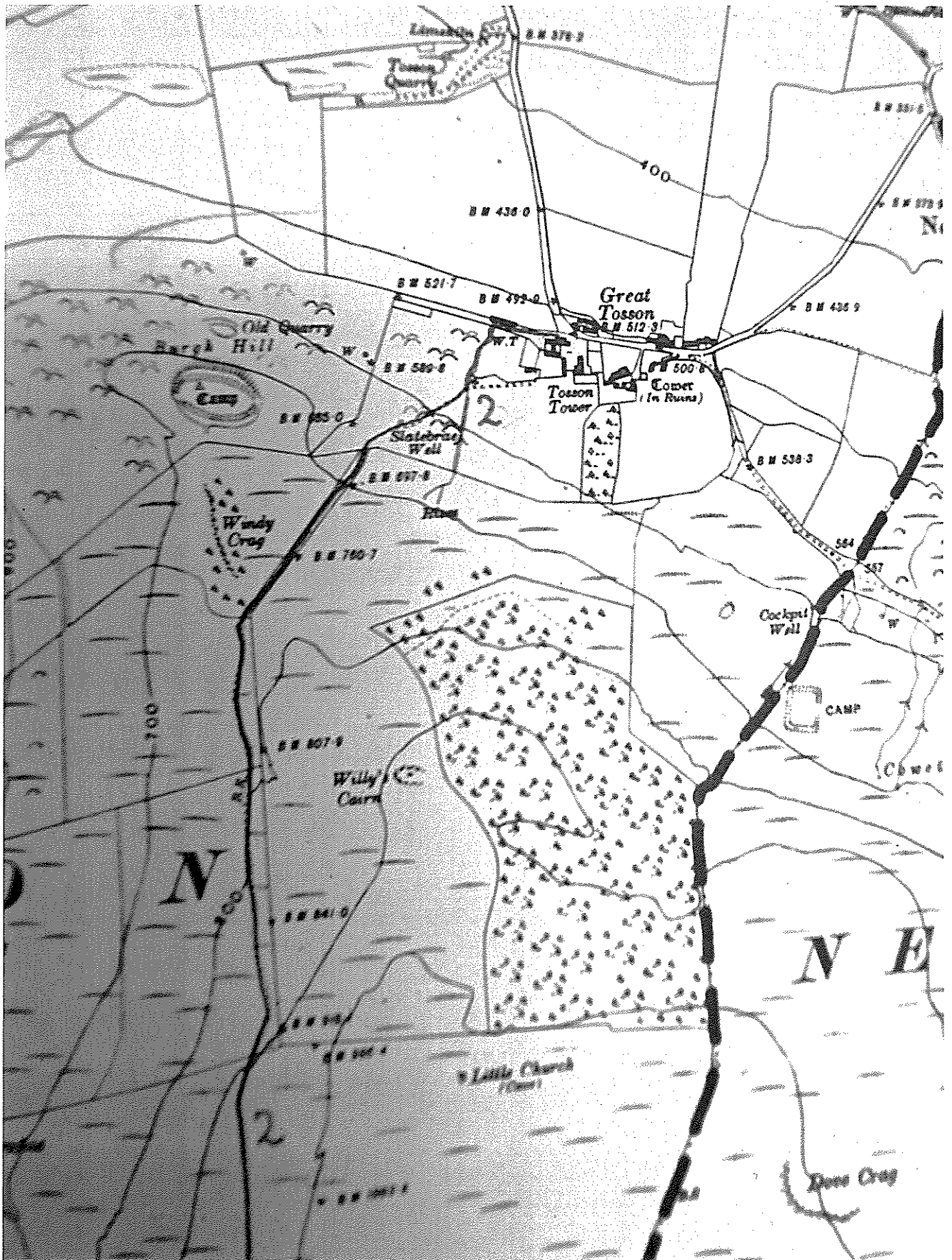
3rd Edition 25" O.S. Map
1923



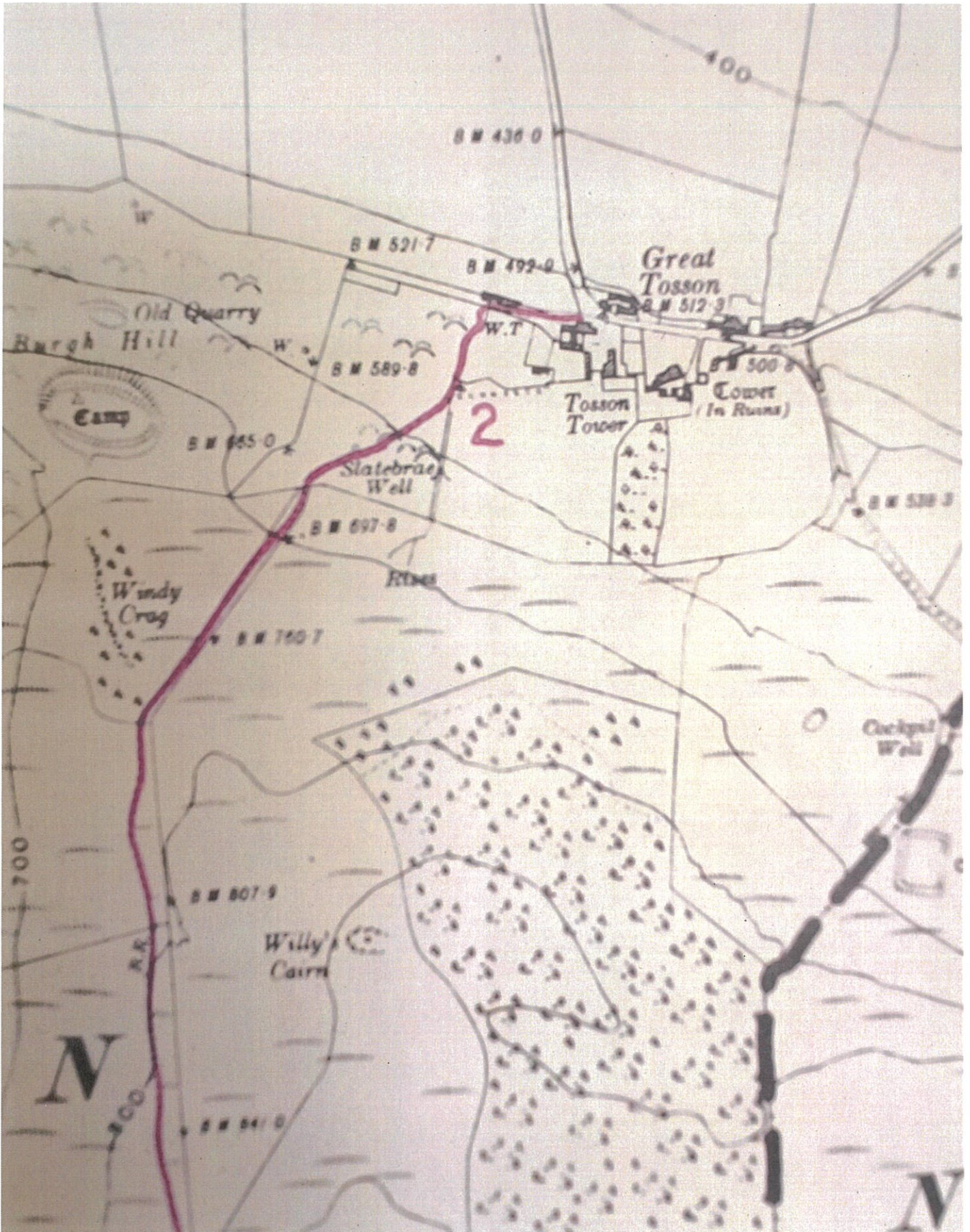


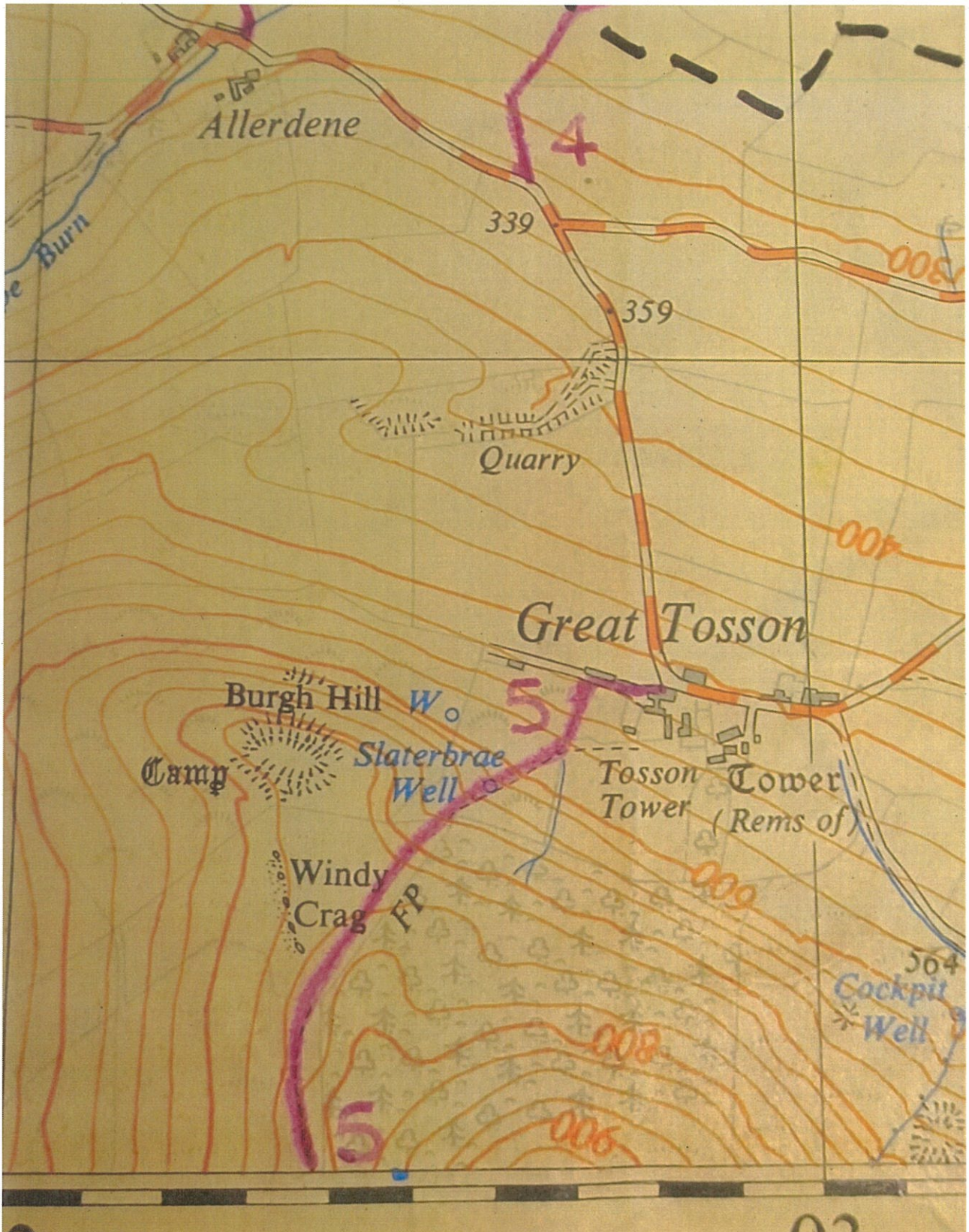
Survey Map

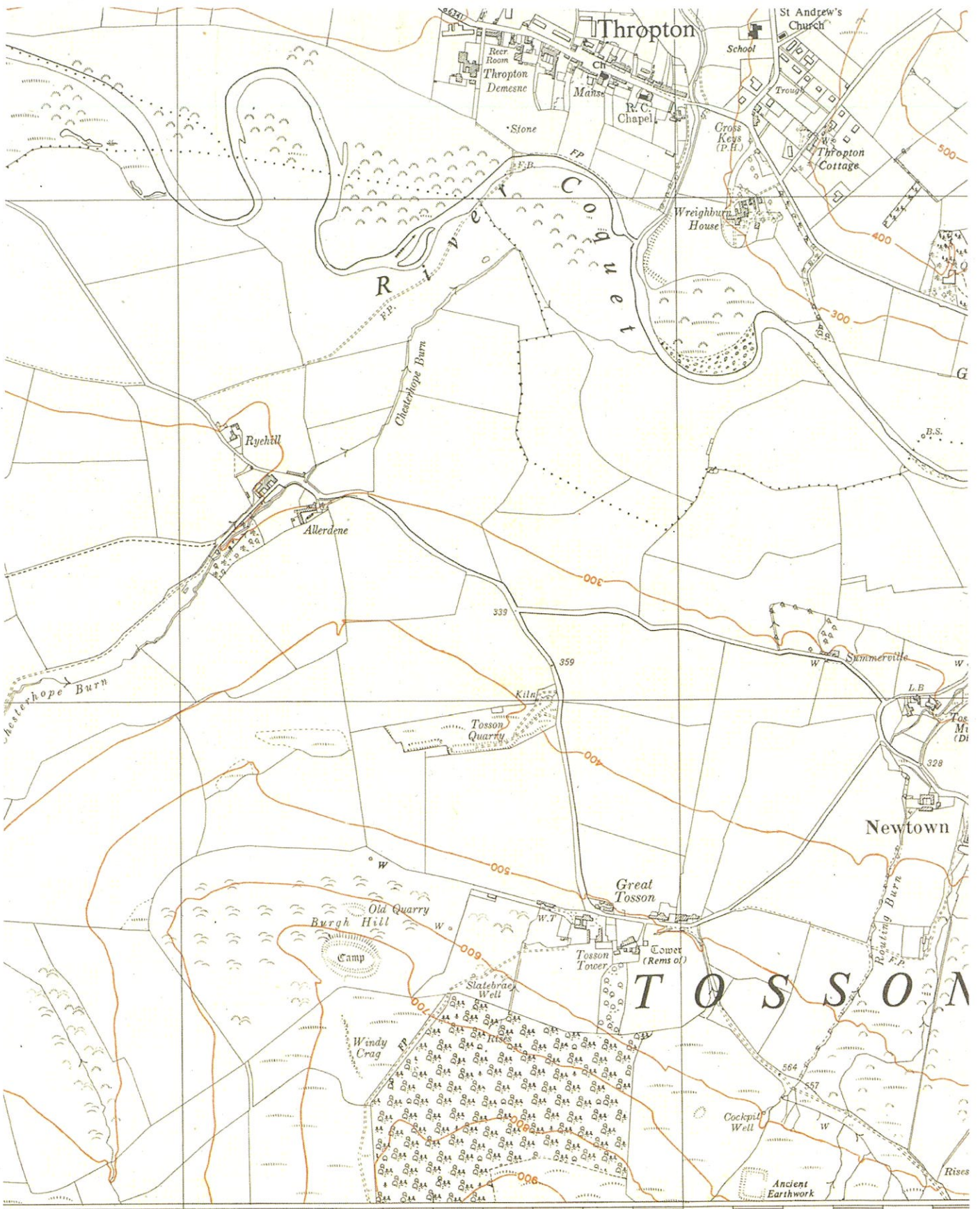




Provisional Map





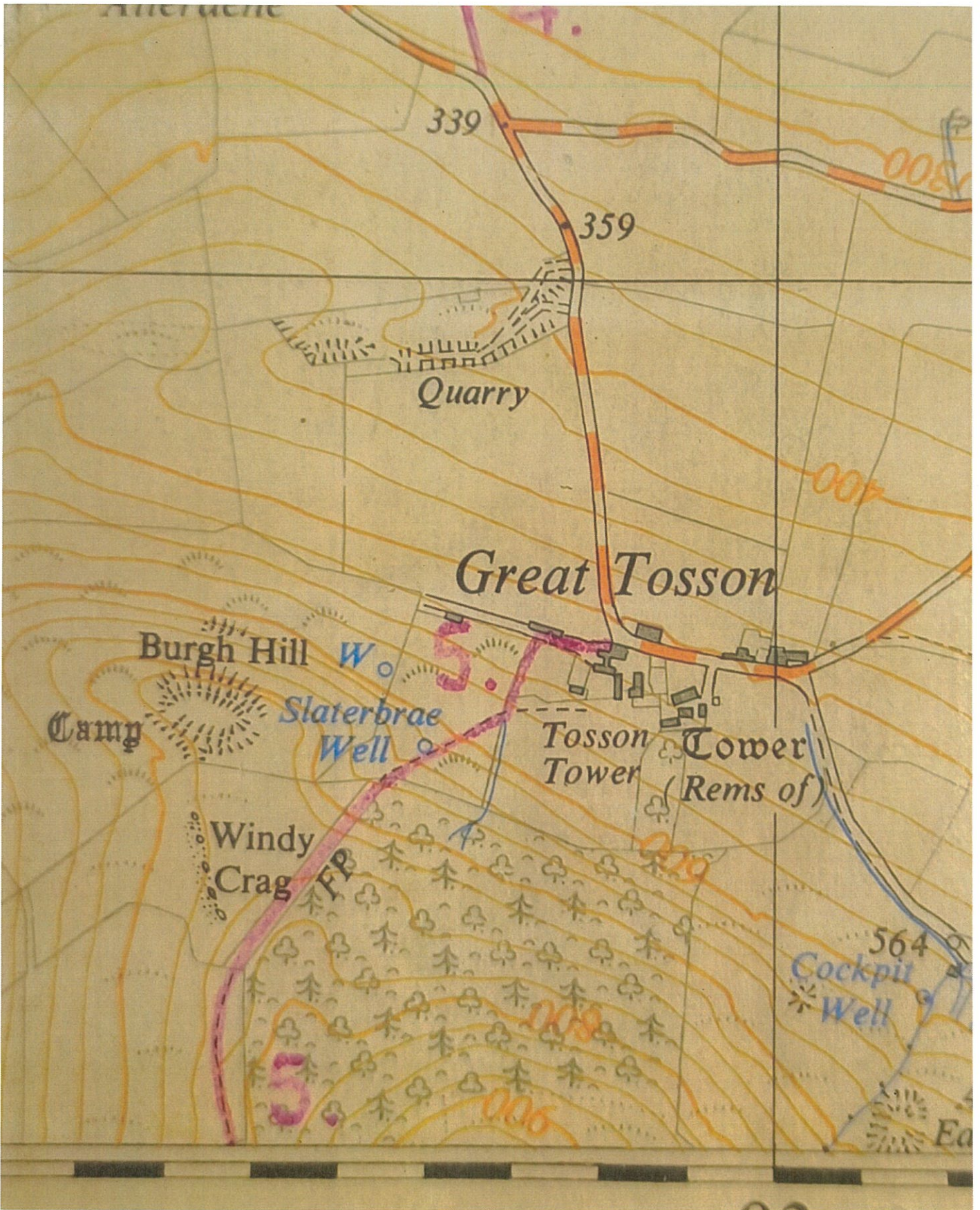


02

58'

03

57'



Wildlife and Countryside Act 1981

**Definitive Map and Statement of Public Rights of Way
for the County of Northumberland**

The Northumberland County Council

Definitive Map Modification Order (No 15) 2014

Public Bridleways Nos 37 & 39 (Parishes of Hollinghill & Tosson)

This Order is made by Northumberland County Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement of Public Rights of Way for the County of Northumberland require modification in consequence of the occurrence of events specified in Section 53(3)(c) (i), (ii) and (iii), namely, 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; and 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; and that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The authority has consulted every local authority whose area includes the land to which the order relates. The Northumberland County Council hereby order that:

1. For the purposes of this Order the relevant date is 1 July 2014.
2. The Definitive Map and Statement of Public Rights of Way for the County of Northumberland shall be modified as described in the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Northumberland County Council Definitive Map Modification Order (No 15) 2014.

Modification Order (No 15) 2014

Index

Former Alnwick District

Parish	Path No.	Modification	OS Map Nos.	Definitive Map Nos.
Tosson	Bridleway No 39	Addition & Upgrade of part of FP 5	NU 00 SW NZ 09 NW	93 108
Tosson	Footpath No 5	Amend Statement Delete (part)	NZ 09 NW	108
Tosson	Footpath No 40	Renumbering of Part of FP 5	NU 00 SW NZ 09 NW	93 108
Hollinghill	Bridleway No 37	Addition	NZ 09 NW	108

Modification Order (No 15) 2014

Description of Modification to Definitive Map and Statement

Former Alnwick District

Parish of Tosson

Bridleway No 39

(NU00SW / NZ09NW)

Part I Map: Adding thereto, a public bridleway, from a point marked A on the U4035 road 180 metres south-east of the remains of Tosson Peel Tower in a westerly and southerly direction for a distance of ~~4220~~ ⁴²¹⁰ metres to a point marked B on Parish of Hollinghill alleged Public Bridleway No 37, 850 metres north-east of Blackcock Hall.

alongside the field boundary for a distance of 390 metres to its junction with Public Footpath No 5 then on the north-west and west side of the field boundary in a south-westerly and southerly direction for 800 metres to re-join

Part II Statement: To be prepared as follows:
A 2 metre wide public bridleway from the U4035 road 180 metres south-east of the remains of Tosson Peel Tower in a westerly direction as a headland path for a distance of 170 metres to a field gate then continuing in a westerly direction as a ~~woodland track~~ for a distance of ~~460~~ metres then southerly for a distance of ~~450~~ metres to join Public Footpath No 5 then continuing in a southerly direction passing to the west of Bob Pyle's Studdie and to the east of Cove Glen and Selby's Cove for a distance of ~~3230~~ ²⁸⁵⁰ metres to join Public Bridleway No 37 in the Parish of Hollinghill, 850 metres north-east of Blackcock Hall.

Parish of Hollinghill

Bridleway No 37

(NZ09NW)

Part I Map: Adding thereto, a public bridleway, from a point marked B on Parish of Tosson alleged Public Bridleway No 39, 850 metres north-east of Blackcock Hall in a southerly direction for a distance of ~~480~~ ⁵⁰⁰ metres to a point marked C on Parish of Hollinghill Public Bridleway No 17, 470 metres north-east of Blackcock Hall.

Part II Statement: To be prepared as follows:
A 2 metre wide bridleway from Public Bridleway No 39 in the Parish of Hollinghill, 850 metres north-east of Blackcock Hall in a southerly direction for a distance of ~~480~~ ⁵⁰⁰ metres to join Public Bridleway No 17, 470 metres north-east of Blackcock Hall.

Parish of Tosson

Footpath No 5

(NU00SW / NZ09NW)

Part I Map:

parts A1 to A2 and parts D1 to D2
Deleting thereto, the footpath from a point marked ~~D~~ on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn to a point marked ~~E~~ on Public Footpath No 40, 670 metres north of Selby's Cove, as a consequence of this ^{case} section being upgraded to public bridleway (Bridleway No 39) status.

Renumbering thereto, the footpath from a point marked F, on the U4061 road at Great Tosson, to a point marked ~~D~~ on alleged

A1, 150 metres east of Burgh Hill Fort and from a point marked A2, 250 metres south of Burgh Hill Fort to a point marked D1, 260 metres south-west of Willy's Cairn

Part II

Statement:

To be amended as follows: *380 metres south west of Willy's Cairn.*
From Public Bridleway No 39, ~~670 metres north of Selby's Cove~~ in a southerly direction for a distance of ~~1800 metres~~ ³³⁰⁰ by Selby's Cove to join Public Footpath No 18 in the Parish of Hollinghill north of Blackcock Hall.

Parish of Tosson

Footpath No 40

(NU00SW / NZ09NW)

Part I Map:

Administrative amendment
Renumbering of northern parts of FP 5.

Part II Statement:


To be prepared as follows:
From the Great Tosson - Allerdene Road at Great Tosson in a westerly, south-westerly and southerly direction by Slaterbrae Well and Windy Craggs for a distance of ~~970 metres~~ to join Public Bridleway No 39, ~~210 metres west of Willy's Cairn.~~

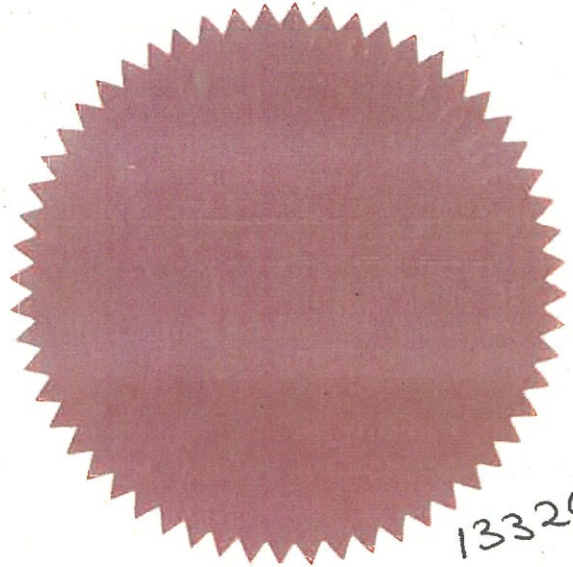
for a distance of 380 metres to join Public Bridleway No 39 north-east of Windy Craggs then leaving the Public Bridleway No 39 to the south of Windy Craggs in a southerly direction for a distance of 510 metres

270 metres south west

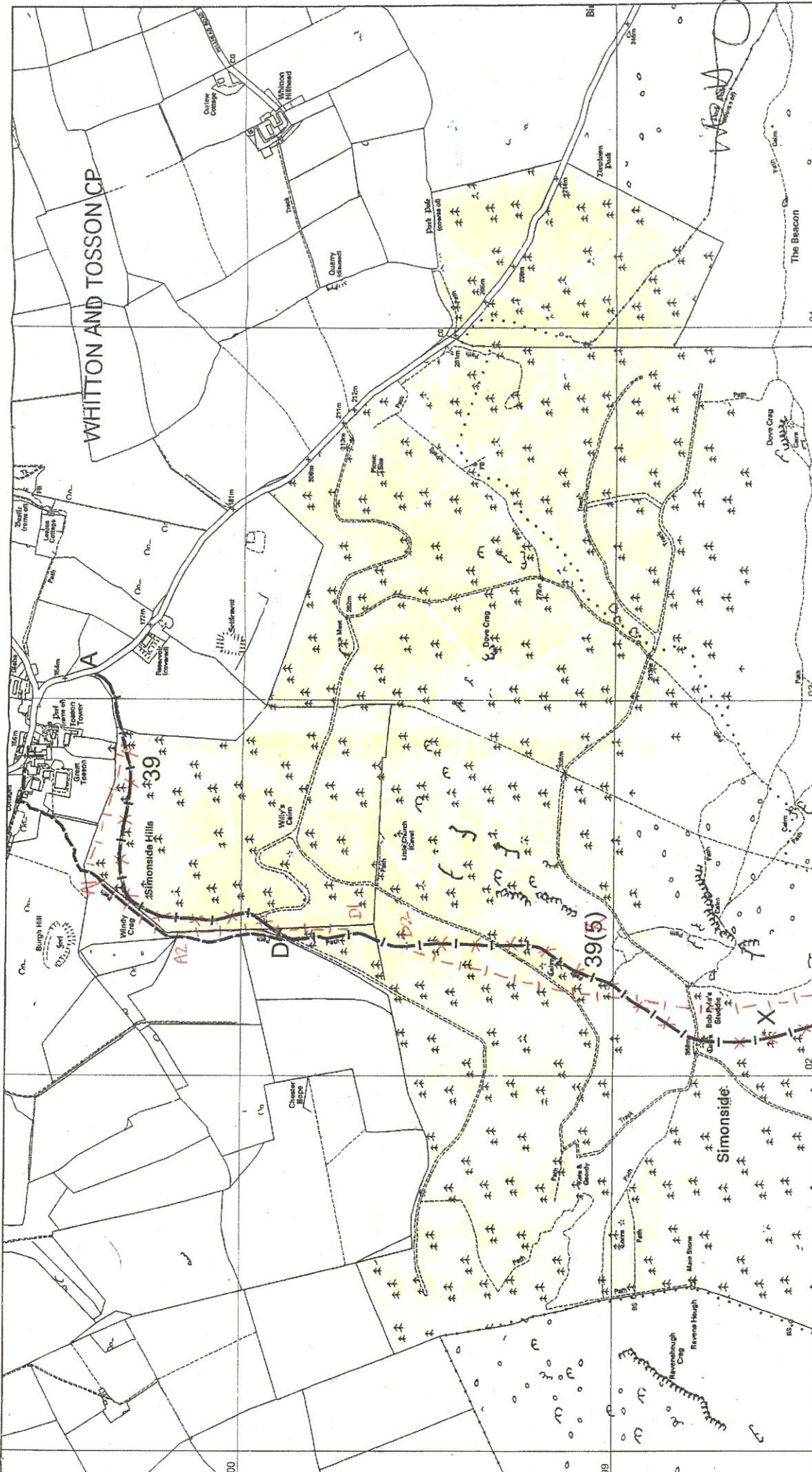
IN WITNESS whereof the Common Seal of the County Council of Northumberland was hereunto affixed on the 18th day of August 2014

The Common Seal of the County Council of Northumberland Was hereunto affixed in the presence of :-


Duly Authorised Officer



The foregoing order is hereby confirmed subject to the red ink modifications thereon
Martin Elliott 18 SEP 2017
An Inspector appointed by The Secretary of State for Environment, Food and Rural Affairs



NORTHUMBERLAND
 Northumberland County Council
 Sustainable Transport
 Local Services
 County Hall Morpeth Northumberland
 Telephone 0845 600 6400 NE61 2EF

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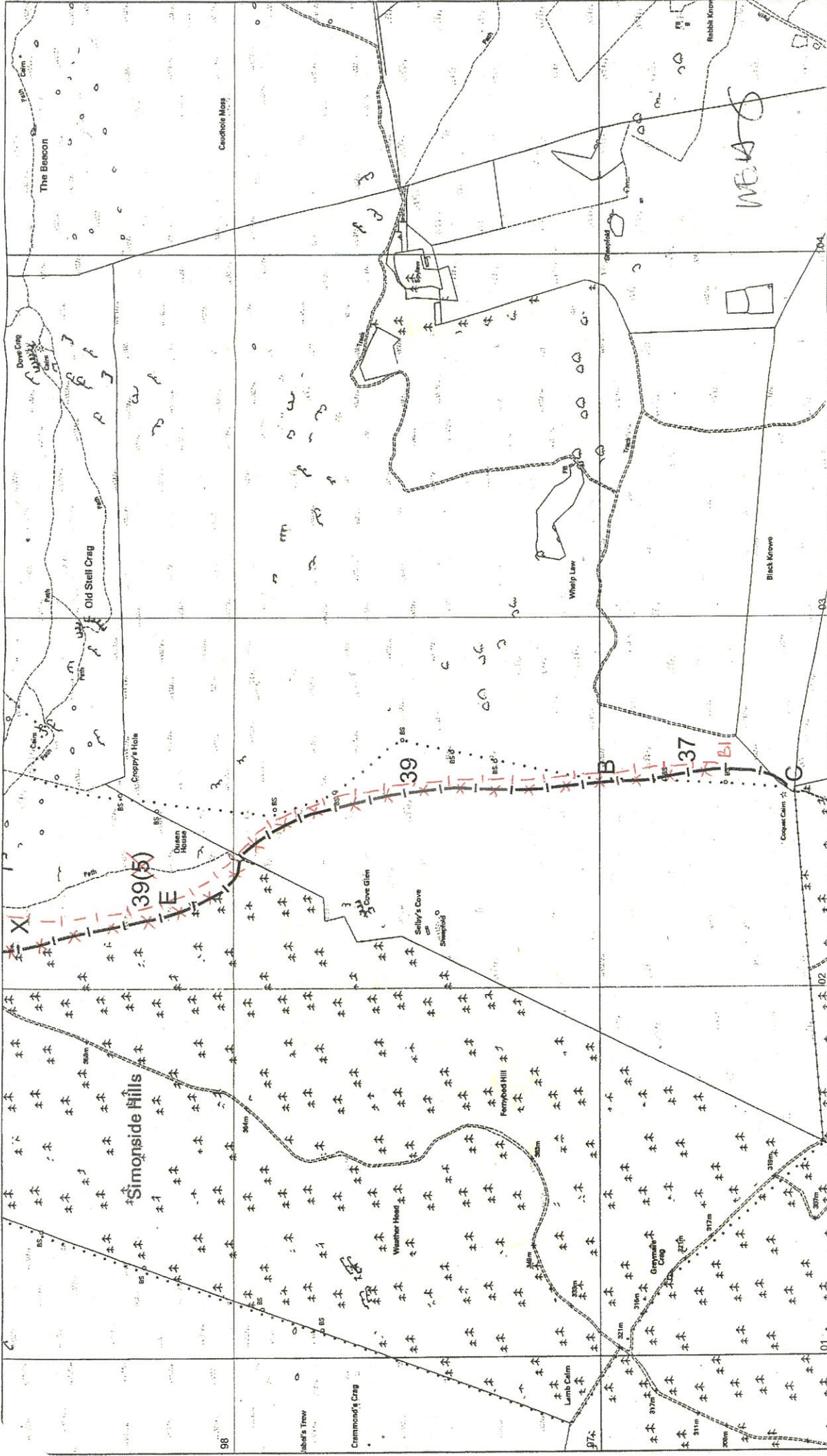
Wildlife and Countryside Act, 1981

Definitive Map of Public Rights of Way for the County of Northumberland

The Northumberland County Council

Modification Order (No. 15) 2014

Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
O.S. Map NU 00 SW	Definitive Map No 93/108/	Scale: 1/10,000		
NZ 09 NW	Parish(es) TOSSON	Former District(s) Alnwick		
			Date: June 2014	



NORTHUMBERLAND
 Northumberland County Council
 Sustainable Transport
 Local Services
 County Hall Morpeth Northumberland
 Telephone 0845 600 6400 NE61 2EF

Wildlife and Countryside Act, 1981

Definitive Map of Public Rights of Way for the County of Northumberland

The Northumberland County Council

Modification Order (No. 15) 2014

Public Footpath to be deleted	Public Footpath	Public Bridleway	Restricted Byway	Byway Open to All Traffic
O.S. Map NZ 09 NW	Definitive Map No 108	Scale: 1/10,000	Former District(s) Alnwick	Parish(es) Hollinghill/Tosson
				Date: June 2014

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Order Decision

Site visit made on 27 April 2016

by **Martin Elliott BSc FIPROW**

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

Decision date: **25 MAY 2016**

Order Ref: **FPS/P2935/7/46**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 15) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 5 Tosson to a bridleway and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- There was one objection outstanding when Northumberland County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site visit on 27 April 2016. Between points E and C on the Order map there is no discernible route on the ground. Given this and the terrain it was difficult to follow the precise line of the Order route. Nevertheless I am satisfied that I can make my decision on the basis of my site visit and the evidence before me.
2. The objector (Northumberland Estates) notes that the Order route is different to the route applied for in an application under section 53(5) of the 1981 Act. The decision of the Council in respect of the making of an order and the route shown in the original application are not matters for my consideration. I have been appointed to determine the Order before me.
3. I note that in Part 1 of the Schedule to the Order, in respect of Bridleway 39, the total length does not accord with the sum totals of the route given in Part II of the Schedule. There is nothing to indicate that anyone will have been misled or prejudiced by this discrepancy. The Order, if confirmed, will be modified accordingly.

The Main Issues

4. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i), (ii) and (iii) of the 1981 Act.
-

5. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show on the balance of probability that:
 - (i) a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates; and
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; and
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
6. In effect the Order proposes to add a public bridleway along a route which is unrecorded and to upgrade part of a public footpath to a public bridleway forming part of a longer route. The Order provides for consequential amendments to the definitive map and statement.
7. A new interested party (Mr Kind) made representations following the Notice of Order. As well as making observations on the evidence he raises issues as to the alignment of the Order route. I consider this latter issue further at paragraphs 29 to 33 below.

Reasons

Armstrong's County map 1769

8. The map does not show any route over land crossed by the Order route.

Tosson Common and Hepple Common Inclosure Award

9. The award sets out and appoints a 'Public Bridle Road 6 feet in breadth' (1.83 metres) leading from the south end of Great Tosson Lane to Browns Cross where the bridleway enters the ancient lands of Spylaw. The route is called Cambo Bridle Road and the award states that the route is staked and set out. The award map identifies the route with a double peaked line marked 'Cambo Bridle Road'.
10. The local Act¹, under which the award was made, imports the provisions of the General Inclosure Act of 1801 as such the setting out of the route was within the scope and powers of the inclosure commissioners.
11. In my view the inclosure award provides conclusive evidence as to the existence of a bridleway along the route described and shown on the award plan.
12. The objector makes the point that the award does not identify the route beyond Browns Cross, with no clarity as to whether or not the route was via Coquet Cairn. Whilst the award refers to Browns Cross the route is described as entering into the adjacent lands of Spylaw. This suggests to me that the route continued past Browns Cross; this is as shown on the inclosure plan although it is accepted that the route is not shown linking to Coquet Cairn.

¹ An Act for inclosing Lands in the Parishes of Rothbury and Elsdon, in the County of Northumberland (12 March 1805) a copy of which was provided by Mr Kind.

18. Ordnance Survey maps were produced to record topographical features and were not intended to record public rights. The maps show the existence of a route which corresponds with the route of public footpath 5 which in parts is concurrent with the Order route. The 1898/9 and 1925/6 maps show that the route of public footpath 5 was a route which could be traversed by horses. However, by 1957 the route was identified as a route which could not be mistaken for a route traversable by horses or wheeled traffic.

Thomas Bell survey 1850

19. Whilst the map does not show the Order route or the application route it must be noted that the survey is of Northumberland Estates. The map appears to have been produced to identify land holdings of the estate. There is nothing to indicate that the survey was required to record public rights of way. The absence of the Order route from the map does not preclude the existence of public rights but nevertheless the map does not provide any information in support of public rights.

Survey, draft, provisional and definitive maps

20. The objector has submitted extracts from the various maps which it is suggested do not show the Order route but show a route which corresponds with the application route.

21. It is accepted that the maps do not show the Order route however, the maps are Ordnance Survey plans with additional markings placed thereon showing routes regarded to be public. I revert to my previous comments on Ordnance Survey maps which are equally applicable. Whilst the route was not recorded under the survey carried out under the National Parks and Access to the Countryside Act 1949 this would not preclude the existence of public rights. Nevertheless it would appear that the route was not considered to be public at the time of the survey otherwise it would have been marked on the maps as was public footpath 5.

Deposit under section 31(6) of the Highways Act 1980

22. The objector refers to a deposit made by the Estate which the Council identify was made in October 1997. Whilst this deposit may demonstrate a lack of intention to dedicate a public right of way along the Order route the deposit has no effect on pre-existing rights.

Other evidence

23. The objector refers to the indications of a Mr Harrison, a tenant of the Estate. It is stated that the land between E and C is exceptionally wet and boggy and exceptionally difficult to traverse over. Whilst, as I noted on my site visit, the land is wet and boggy this does not mean that a public right of way cannot subsist; the route of public footpath 5 over this land also passes through some wet and boggy terrain. It is also noted that Mr Harrison has not seen people using the Order route between points E and C save for gamekeepers/farmers and tenants. Again this does not preclude the existence of public rights and bearing in mind that the route is not recorded as a public right of way the absence of use is not unexpected.

24. Mr Kind provides a copy of a chapter 'Roads, Tracks and Railways' from a commercial book the title and author of which is unknown. The chapter

However, it should be noted that from Browns Cross the route crosses land not subject to the award and therefore the absence of the route is not unsurprising. It is also of note that the route is called 'Cambo Bridle Road'. Given that Cambo is a settlement some 10 km to the south it is clear that the route continued southwards although the route is not identified. I consider this issue further at paragraph * below.

Commercial maps 1820 to 1832

13. Fryer's county map of 1820² shows a road leading from the western side of Great Tosson village over the land crossed by the Order route. Whilst the mapping is not particularly detailed the route to the south of Simonside Hill is to the east of Selbys Cove, Black Cock Hall and corresponds with the Order route.
14. Greenwood's map of 1828 shows a crossroad leading from the road leading south eastward from Great Tosson proceeding southwards to the east of Selbys Cove and Black Cock Hall and again corresponds with the Order route.
15. Cary's map of 1827 shows a route to the east of Selbys Cove and Black Cock Hall and identifies the route as a parochial road. As with Fryer and Greenwood the route corresponds with the Order route. From the extracts provided it is not possible to ascertain the route at its northern end at Great Tosson. The 1832 edition shows the route in an identical fashion. No extract is provided of the 1832 map covering Great Tosson. In *Commission for New Towns v J J Gallagher Ltd [2003] 2 P&CR* it is indicated that in the case of Beoley Lane, a route under consideration in that case, the identification of the route as a parochial road suggested that the route was a public carriageway. Nevertheless Neuberger J. adds that it is by no means clear what the expression means. Whilst the term parochial road may be suggestive of a public carriageway this evidence needs to be considered in the context of all other evidence.

Ryehill and Great Tosson Tithe Award 1840

16. The tithe map shows a route leading from point A on the Order map to and beyond Browns Cross and is marked Bridle Road to Cambo. The depiction on the map is highly suggestive that the route was public and is consistent with the inclosure award evidence. The map does show the route continuing beyond Browns Cross although the extent of the route is not clear, the extract provided does not extend as far as Coquet Cairn although I note the assertion of the objector that this location is shown on the map.

Ordnance Survey mapping

17. The 1866 edition shows a route leading from Great Tosson which corresponds with the route of what is now recorded as public footpath 5 and therefore part of the Order route. The map does not show the Order route between points A and D or to the south of point E near to Ousen House. The 1898/9 and 1925/6 maps are similar to the 1866 map although public footpath 5 is annotated 'B.R.' The 1957 map shows a route as on the earlier maps although the route of footpath 5 is now annotated 'F.P.' The 1978 map shows parts of the Order route although there is no indication of a route to the south of Ousen House.

² I note that the Fryer's and Greenwood's map have been incorrectly identified in the original application

30. The Council suggest that between points A and D the route follows a forest track which physically appears to have some antiquity and has the appearance of an old 'Lonnen'. Although I note this contention there is nothing to support the antiquity of this section of route marked on the Order map. The route shown on the award map is consistent with the route shown on Greenwood's map. None of the Ordnance Survey maps submitted provide any evidence as to the existence of a track through the forested area which corresponds with the Order route until the 1978 edition. The Ordnance Survey mapping indicates that the track along which the Order route is marked between A and D is a more recent feature.
31. Notwithstanding the issues raised by Mr Kind as to the alignment of the Order route he suggests that in any event the northern termination point of the Order route is not at point A but that the route continues along the route of public footpath 5 into Great Tossion. I note the arguments raised but in my view the award plan is clear in that the northern termination point is at point A.
32. Mr Kind also raises an issue as to the true route of the bridleway. It is suggested that the route shown on the Ordnance Survey mapping, annotated 'B.R.' is near enough to the current public footpath and as close as scale permits to the line shown on Fryer and Cary. Although I note this point, from my examination of the maps, I do not consider that the route shown on Fryer and Cary represents the route shown on the Ordnance Survey maps. The route shown on Fryer and Carey is some distance to the east of Selbys Cove whereas the Ordnance Survey maps depict a route which runs immediately adjacent to Selbys Cove. Whilst the Ordnance Survey maps show the existence of another route from Great Tossion the inclosure award and commercial maps depict a route to the east which is the route set out in the inclosure award as the Cambo Bridle Road and, subject to my comments at paragraph 29 above, the Order route.
33. In view of my conclusions as to the evidence I conclude that the Order should be confirmed subject to modifications in respect of the route.

Conclusions

34. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modifications.

Formal Decision

35. The Order is proposed for confirmation subject to the following modifications:
- At Part I of the Schedule to the Order, in respect of Bridleway 39 at line 3 delete '4220' and insert '4350' and at Part II from line 4 delete '*as a woodland track for a distance of 460 metres then southerly for a distance of 450 metres*' and insert '*alongside the field boundary for a distance of 380 metres to its junction with Public Footpath No 5 then on the north west and west side of the field boundary in a south westerly and southerly direction for 570 metres*'.
 - At Part I of the Schedule to the Order, in respect of Footpath 5, at line 1 of the first paragraph after '*the footpath from*' insert '*points D1 and D2 and*' and at line 2 of the second paragraph after '*to a point marked*' insert '*D1 and between D2 and*'.

includes a photograph of a 'Grooved track for packhorses in the Simonside Hills'. Mr Kind also provides a photograph of the same and I noted the feature on my site visit on part of the Order route currently recorded as public footpath 5. It is suggested that the bedrock has been tooled, probably to improve the grip for horses. This is quite possible but, in the absence of details as to its origins, it is difficult to give this any weight.

25. Mr Kind suggests that the topography of the land should be considered. Whilst I note the contention that the mapped old road is a pass this does not necessarily mean that the route is public, the status needs to be determined on the evidence before me.

Conclusions on the evidence

26. Having regard to the above, the inclosure award provides conclusive evidence as to the existence of a public bridleway. The route is shown to varying degrees on the commercial mapping although the route is not shown on the Ordnance Survey mapping, with the exception of the part of public footpath 5 to be upgraded and a section recorded on the 1978 map. The tithe map is highly supportive of the existence of a public bridleway. Looking at the evidence as a whole it is sufficient to show that, on the balance of probabilities, a public bridleway subsists.
27. I am aware that the inclosure award does not show a route extending to Coquet Cairn (point C). However, the inclosure award and tithe map evidence indicates that the route shown is part of a longer route. Further, Fryer, Carey and Greenwood all show a route continuing to the south beyond the limits of the route shown on the inclosure and tithe maps. Given the existence of a continuation of the route it is, on the balance of probabilities, more likely than not that the route continued to Coquet Cairn.
28. Mr Kind raises the issue that the width identified in the Order is not sufficient for two unladen horses to meet and pass let alone laden pack horses. It is contended that a bridleroad in use by packhorses would need to be 10 feet wide (3.05 metres). Whilst I note this point, the inclosure award sets out a bridleway 6 feet wide (1.83 metres). There is nothing to indicate a greater width has been dedicated, for me to reach such a conclusion I would need evidence of the same.

Alignment issues

29. Mr Kind contends that the route shown on the Order plan does not match the awarded route.
- i) At point B it is suggested that there is a distinct kink in the Cambo Bridle Road. From my examination of the map I do not agree.
 - ii) To the north of point D it is contended that the award plan shows the route to the west of the boundary of Donkin & Pott's Allotment just inside the Rev'd Andrew Boulton's Allotment whereas the Order route is on a curvaceous route on what appears to be a modern forestry road. I concur with this view and the Order should be amended to follow the awarded route.
 - iii) From near to Windy Crag to the northern terminus of the Order route the inclosure awarded route is inside the northern boundary of Donkin & Pott's Allotment. Again I concur with this view.

- At Part II of the Schedule to the Order, in respect of Footpath '40, delete from line 3 *'and Windy Crags for a distance of 970 metres'* and insert *'for a distance of 400 metres to join public bridleway No 39, leaving the public bridleway to the south of Windy Crags and continuing in a southerly direction for a distance of 290 metres'*.
 - On the Order map insert points D1 and D2 and between these points insert cross hatchings along the route shown as a public footpath so as to identify a public bridleway. Further, from a point 170 metres southwest of point A, where the Schedule describes a field gate, to point D1 and between points D2 and D insert a route to identify a public bridleway. Between the point 170 metres southwest of point A to point D delete the public bridleway.
36. Since the confirmed Order would affect land not affected by the Order and not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector



Order Decision

Site visit made on 27 April 2016

by **Martin Elliott BSc FIPROW**

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

Decision date: 06 June 2017

Order Ref: FPS/P2935/7/46M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 15) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 5 Tosson to a bridleway and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. In my interim decision dated 25 May 2016 I proposed to confirm the Order subject to modifications in respect of the location of the Order route and to address a discrepancy in the total length of public bridleway 39 as specified in Part I of the Schedule to the Order. One objection was received to the proposal to modify the Order.
2. Following the 'Notice of Order' correspondence was received from a new party. The correspondence raises concerns as to the need to carry out works to bring the modified order route into a useable condition. The correspondence also notes the availability, and existing use by walkers and cyclists, of the unmodified Order route along the forest track. The correspondent does not dispute the existence of the Order route along its proposed modified alignment or its unmodified alignment. Subsequent correspondence states that the modified route A to A1 (as marked on additional maps submitted by the Council) is impassable for anyone on a horse and a struggle on foot. The point is again made that, although requiring clearance works, there is an obvious route marked A to D on a forest track. Whilst I note these matters I am unable to take them into consideration in determining the Order. The purpose of the Order is to record existing public rights of way on the definitive map and statement. The issue is whether public rights subsist along the Order route.
3. I was due to hold a hearing on 15 March 2017 in connection with the objection to the proposed modifications and the determination of the Order. However, following discussions between the Council and the objector, the objector

withdrew his request to be heard and for an accompanied site visit. Following the withdrawal the parties to the Order were asked if they were agreeable to the hearing being cancelled. None of the parties asked to be heard and the hearing was cancelled. The objection to the Order and the proposed modifications has therefore been considered by way of written representations.

4. I carried out an unaccompanied site visit on 27 April 2016. I did not carry out a further site visit in consideration of the objection to the proposed modifications. The objection makes the point that I did not follow the route shown on the inclosure award¹ plan. Whilst, in the main, I did not follow the route of the bridle road shown on the inclosure award plan I carried out, as far as possible, an inspection of the Order route and the surrounding area; this was subject to constraints of environmental factors such as existing and felled plantations and boggy terrain. My original site visit also involved walking the route of footpath 40 between points D² and F from which I was able to observe part of the route of the inclosure awarded bridleway. On the basis of my initial site visit I did not consider it necessary to revisit the site. I am satisfied that I can make my decision based on my initial site visit and the evidence before me.
5. Correspondence between the objector and the Council indicates that the Council does not disagree with the objector in respect of points ii and iii (paragraph 6 below). The letter 30 January 2017 states that the Council would be prepared to draft an amendment to the statement to satisfy any modification to the Order route in respect of point ii and assist in preparing a modified Order plan in respect of point iii. In the light of this I asked the Council to provide an amended Order, with suggested wording, and Order plan. This was circulated to the parties and I have had regard to the additional comments in reaching my decision. If I propose to confirm the Order with further modifications I will use the location points identified by the Council in the amended statement and plan.

The Main Issues

6. The objection is made on three heads:
 - i) That 'point A' on the award plan is 80 metres away from point A on the Order plan. In essence the commencement of the Cambo Bridle Road is some 80 metres to the southwest of Point A and the first 80 metres should be recorded as a restricted byway.
 - ii) The Order still seeks to modify the status of the existing footpath south of point D2 whereas this should be a bridleway addition.
 - iii) Much of the Order route (not proposed to be modified) is considerably off the route shown in the award plan.
7. The main issue is whether the proposed modifications should be pursued or whether the Order should be modified further. The test to be applied to the evidence is 'on the balance of probabilities'.

¹ Tossion and Hepple Commons Inclosure Award 1806

² Letters A to F including D1 and D2 refer to points on the Order map as proposed to be modified in my interim decision.

Reasons

The commencement point of the Cambo Bridle Road (point i)

8. The objector cites section 7 of the local Act of 1805 which indicates that any tribunal determining what the inclosure award provides must look to the plan for clarification if the words in the award do not of themselves provide a sufficiently clear answer. Further, it should be presumed that what is on the plan is 'truly delineated' and that delineation must be 'distinct'. What the plan plainly and distinctly shows is the information that can properly be used to assist in the interpretation of the words in the award. The objector makes the point that the award sets out Cambo Bridle Road as starting at the 'southend of Great Tosson Lane' and that this lane is not identified on the plan. It is suggested that it is hard to see that the road at point A identified as 'to Morpeth' would, as a whole, be Great Tosson Lane.
9. The objector considers that the interpretation which makes the plan sit comfortably with the award is a road feature shown on the plan which heads largely south and then southwest from Great Tosson ending at the 'Glebe' allotment; this is considered to be Great Tosson Lane. It is thought likely that this lane is as ancient as the road 'to Morpeth' but the shape suggests that it had a character distinct from this road.
10. As regards the south end of Great Tosson Lane it is contended that this is at the northernmost corner of the 'Glebe' land on the plan. This, it is argued, sits comfortably with the distinct delineation of the Cambo Bridle Road on the plan.
11. In consequence the objector submits that the Cambo Bridle Road is as shown on the award plan and that between that point and point A the 'lane' is most probably a vehicular road because it connected with the Morpeth Road. It is suggested that as the lane is caught by section 67(2) of the Natural Environment and Rural Communities Act 2006 the lane should be recorded as a restricted byway. In the alternative, although not the option preferred by the objector, the lane is part of the Morpeth Road, is not caught by section 67(2) and the termination point of the Order route needs to be moved accordingly.
12. Great Tosson Lane is not specifically identified on the award map but the award sets out the Cambo Bridle Road as starting at the south end of this lane. The Order identifies the bridle road as commencing at point A which is the tarmac surfaced road leading from Great Tosson. The award plan shows the initial section of the Order route as 'open' to the road network at the junction with the route identified 'to Morpeth'. It is possible that the initial section of the Order route could form part of Great Tosson Lane and I note that this section is distinctly different from the route 'to Morpeth'. However, the Cambo Bridle Road is described as leading from the southern end of Great Tosson Lane which in my view could equally describe the location of point A where the route continues as the road 'to Morpeth'.
13. As regards the depiction of the Cambo Bridle Road on the inclosure award map the route clearly runs to the 'angle' in the boundary line as marked on the copy of the plan at paragraph 2.3.3.9 of the objector's final comments. This is to the east of the point which the objector contends is the end of Great Tosson Lane. Although the enlarged copy of the award plan submitted by the Council appears to show 'dashes' continuing beyond that point it is not clear that this

amounts to a depiction of the Cambo Bridle Road; the 'dashes' are clearly less distinct than the dashes depicting the remainder of the route. It should be noted that the interpretation of the award plan should properly be considered at the scale at which it has been produced and not as an enlarged image. In any event these 'dashes' do not continue to point A.

14. Although the inclosure plan may assist in the interpretation of the award I am not persuaded that the evidence as a whole is sufficient, on the balance of probabilities, to show that the end of Great Tosson Lane, and the beginning of the Cambo Bridle Road, is as asserted by the objector. Nevertheless, the evidence supports the existence of a route from point A which on the balance of probabilities is a public bridleway. As such I do not propose to modify the Order in respect of the 80 metre section of the Order route from point A

Route to the south of point D2 (point ii)

15. In my interim decision I proposed to modify the Order to show the bridleway to be added between D2 and D as running to the east of the existing footpath. Having re-examined the inclosure award plan I take the view that the Order should be further modified to the south of point D to show Cambo Bridle Road continuing to the east of the existing footpath to the point identified by the objector as D3 (D1 on the Council's amended Order plan). This is how the route is depicted on the award plan.

Alignment of the Order route (not proposed to be modified) (point iii)

16. The objector suggests that much of the Order route (not proposed to be modified) is considerably off the alignment shown in the award plan. The Council do not disagree on this point and have provided an amended Order plan. No adverse comments have been made in respect of the amended plan.
17. I have not been provided with the methodology used to plot the amended route but there is nothing to indicate that the route shown does not correspond with that shown on the award plan. From my visual inspection of the award plan the route does appear to correspond with the modified Order plan.
18. I sought comments on the route between points B and C. It is noted that the section of Order route south of Browns Cross is outwith the inclosed land. However, as noted by the objector, whilst the commissioners had no remit or powers to alter the existing route in Spylaw Grounds, it is reasonable to conclude that the Cambo Bridle Road matched up with any continuation. Other map evidence suggests that the route continued southwards to Coquet Cairn and beyond. On balance, it is more likely than not, that the route from point B continued in the curve mapped on the award plan to point C.

Other Matters

19. The objector suggests that the holloway leading to Great Tosson from the proposed point D may well on the evidence be a public bridle road but acknowledges that this is a matter for a separate Order. This is not a matter for my consideration but it should be noted that the route between D and D1 on the interim modified Order map is identified as a bridleway to be added.

Conclusion

20. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modifications previously proposed and further modifications.

Formal Decision

21. The Order is proposed for confirmation subject to modifications previously proposed and further modifications:

- In the Index to the Order under the column 'Modification', in respect of Bridleway 39 and Footpath 40, insert the letter 's' after the word '*part*' so as to read '*parts*'
- At Part I of the Schedule to the Order, in respect of Bridleway 39 at line 3 delete '*4220*' and insert '*4210*' and at Part II from line 4 delete '*as a woodland track for a distance of 460 metres then southerly for a distance of 450 metres to join*' and insert '*alongside the field boundary for a distance of 390 metres to its junction with Public Footpath No 5 then on the north-west and west side of the field boundary in a south-westerly and southerly direction for 800 metres to re-join*'. At line 8 delete '*3230*' and insert '*2850*'.
- At Parts I and II of the Schedule to the Order in respect of Bridleway 37 at line 4 delete '*480*' and insert '*500*'.
- At Part I of the Schedule to the Order, in respect of Footpath 5, at line 1 of the first paragraph after '*the footpath from*' delete '*a point marked D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn to a point marked E on Public Footpath No 40, 670 metres north of Selby's Cove*' and insert '*points A1 to A2 and points D1 to D2*' and at line 4 delete '*this section*' and insert '*these sections*'. At paragraph 2 from line 2 delete '*D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn*' and insert '*A1, 150 metres east of Burgh Hill Fort and from a point marked A2, 250 metres south of Burgh Hill Fort to a point marked D1, 260 metres south-west of Willy's Cairn*'.
- At Part II of the Schedule to the Order, in respect of Footpath 5, at line 1 delete '*670 metres north of Selby's Cove*' and insert '*380 metres south-west of Willy's Cairn*'. At line 2 delete '*1800*' and insert '*3300*'.
- At Part I of the Schedule to the Order, in respect of Footpath 40, delete '*part*' and insert '*parts*'.
- At Part II of the Schedule to the Order, in respect of Footpath 40, delete from line 3 '*and Windy Crag for a distance of 970 metres*' and insert '*for a distance of 380 metres to join Public Bridleway No 39 north-east of Windy Crag then leaving the Public Bridleway No 39 to the south of Windy Crag in a southerly direction for a distance of 510 metres*'. At line 4 delete '*210 metres west*' and insert '*270 metres south-west*'.
- On the Order map insert points A1, A2, D1, D2 and B1 and between the point 170 metres southwest of point A, where the schedule for bridleway 39 identifies a field gate, and point D delete the bridleway to be added. Further, between the point 170 metres southwest of point A, through A1 and A2, to

point D1 insert a line to denote a public bridleway. Between D and D1 delete the cross hatchings so as to denote a public footpath.

- On the Order map from point D2 to point B1 delete the section of Order route identified as a bridleway and insert a new line to show the route of the bridleway and delete '(5)'.
22. Since the confirmed Order would affect land not affected by the Order and not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector

Order Decision

Site visit made on 27 April 2016

by **Martin Elliott BSc FIPROW**

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

Decision date: 18 September 2017

Order Ref: **FPS/P2935/7/46M2**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Northumberland County Council Definitive Map Modification Order (No 15) 2014.
- The Order is dated 18 August 2014 and proposes to modify the Definitive Map and Statement for the area by upgrading part of public footpath 5 Tosson to a bridleway and adding a public bridleway as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed and set out below in the Formal Decision.

Procedural Matters

1. In my second interim decision dated 2 June 2017 I proposed to confirm the Order subject to modifications in respect of the location of the Order route. No objections were received in response to the proposal to modify the Order.

Conclusion

2. Bearing in mind the above I conclude that the Order should be confirmed subject to modifications previously proposed in my second interim decision.

Formal Decision

3. The Order is confirmed subject to the following modifications:
 - In the Index to the Order under the column 'Modification', in respect of Bridleway 39 and Footpath 40, insert the letter 's' after the word 'part' so as to read 'parts'.
 - At Part I of the Schedule to the Order, in respect of Bridleway 39 at line 3 delete '4220' and insert '4210' and at Part II from line 4 delete 'as a woodland track for a distance of 460 metres then southerly for a distance of 450 metres to join' and insert 'alongside the field boundary for a distance of 390 metres to its junction with Public Footpath No 5 then on the north-west and west side of the field boundary in a south-westerly and southerly direction for 800 metres to re-join'. At line 8 delete '3230' and insert '2850'.

- At Parts I and II of the Schedule to the Order in respect of Bridleway 37 at line 4 delete '480' and insert '500'.
- At Part I of the Schedule to the Order, in respect of Footpath 5, at line 1 of the first paragraph after '*the footpath from*' delete '*a point marked D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn to a point marked E on Public Footpath No 40, 670 metres north of Selby's Cove*' and insert '*points A1 to A2 and points D1 to D2*' and at line 4 delete '*this section*' and insert '*these sections*'. At paragraph 2 from line 2 delete '*D on alleged Public Bridleway No 39, 210 metres west of Willy's Cairn*' and insert '*A1, 150 metres east of Burgh Hill Fort and from a point marked A2, 250 metres south of Burgh Hill Fort to a point marked D1, 260 metres south-west of Willy's Cairn*'.
- At Part II of the Schedule to the Order, in respect of Footpath 5, at line 1 delete '*670 metres north of Selby's Cove*' and insert '*380 metres south-west of Willy's Cairn*'. At line 2 delete '*1800*' and insert '*3300*'.
- At Part I of the Schedule to the Order, in respect of Footpath 40, delete '*part*' and insert '*parts*'.
- At Part II of the Schedule to the Order, in respect of Footpath 40, delete from line 3 '*and Windy Craggs for a distance of 970 metres*' and insert '*for a distance of 380 metres to join Public Bridleway No 39 north-east of Windy Craggs then leaving the Public Bridleway No 39 to the south of Windy Craggs in a southerly direction for a distance of 510 metres*'. At line 4 delete '*210 metres west*' and insert '*270 metres south-west*'.
- On the Order map insert points A1, A2, D1, D2 and B1 and between the point 170 metres southwest of point A, where the schedule for bridleway 39 identifies a field gate, and point D delete the bridleway to be added. Further, between the point 170 metres southwest of point A, through A1 and A2, to point D1 insert a line to denote a public bridleway. Between D and D1 delete the cross hatchings so as to denote a public footpath.
- On the Order map from point D2 to point B1 delete the section of Order route identified as a bridleway and insert a new line to show the route of the bridleway and delete '(5)'.

Martin Elliott

Inspector