



Northumberland County Council

RIGHTS OF WAY COMMITTEE

25 October 2023

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

ALLEGED PUBLIC BRIDLEWAY No 31 PARISH OF KIRKWHELPINGTON

Report of the Director of Environment and Transport
Cabinet Member: Councillor John Riddle, Roads and Highways

Purpose of report

In this report, the Rights of Way Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public bridleway rights over a route from the existing northern end of Public Bridleway No 31, north of Kirkwhelpington, in a north-westerly direction to join the C195 road north of Middle Whitehill.

Recommendation

It is recommended that the committee agrees that:

- (i) there is insufficient evidence to indicate that public bridleway rights have been reasonably alleged to exist over the route T-S;**
- (ii) there is sufficient evidence to indicate that public bridleway rights have been reasonably alleged to exist over the route T-X;**
- (iii) the T-X route be included in a future Definitive Map Modification Order as a public bridleway.**

1.0 BACKGROUND

- 1.1 By virtue of section 53 of the Wildlife and Countryside Act, 1981 the County Council is required to keep the Definitive Map and Statement under continuous review and make modification orders upon the discovery of evidence, which shows that the map and statement need to be modified.
- 1.2 The relevant statutory provision which applies to adding a public right of way to the Definitive Map and Statement, based on historical documentary evidence, is Section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. This

requires the County Council (as Surveying Authority) to modify the Definitive Map and Statement following:

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

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

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

2.0 PUBLIC EVIDENCE

- 2.1 In June 2019, Diane Holmes of Ulgham made a formal application seeking to modify the Definitive Map of Public Rights of Way by adding a public bridleway over a route between the C195 road, north of Middle Whitehill, and the existing northern end of Public Bridleway No 31, north of Kirkwhelpington.

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

"The application route

"1. The route is in the parish of Kirkwhelpington. It would add a short unrecorded link from the north end of a recorded public bridleway, which is currently a dead end for no apparent reason.

"2. Its northernmost point is on the C 195 at GR NY993858. It goes in a south easterly direction to GR NY 996 855 where it meets the northern end of bridleway 530/031.

3. it is a largely unfenced stone track about 2-3 m wide. It is 285m long.

4. It can be seen on OS Explorer OL43.

See photographs showing its character

Documentary evidence

1. 1769 Armstrong's map of Northumberland

The application route is shown as part of the only route leading north from Kirk Whelpington. It leaves from the east end of the village as it does today and the name 'White Hill' is shown on this early map with the route passing close by. This shows that the through route from the village to the road from Knowesgate is one of considerable antiquity.

See extract

2. 1820 Fryer's map of Northumberland

The application route is also shown on this later map as an unfenced route as it is today, starting at the east end of Kirk Whelpington and ending close to Whitehill, which is labelled. By this time a route, currently a recorded bridleway, between the west end of the village and the Knowesgate road is also shown.

See extract

3. 1828 Greenwood's map of Northumberland

The application route is shown following the same line on this well known map too. The cartography is more accurate by this time as shown by the slight bend in the recorded route. This line shows up clearly on the ground too (see photograph).

These three county maps indicate routes that were available to the public who travelled in carriages. They were commercial maps created for the benefit of the landowning classes so the publishers could not afford to make any errors. The fact that the whole route from the village of Kirkwhelpington through to Knowesgate Road is shown on all three of these maps is strong evidence that it was well known as a public road at that time.

See extract

"4. 1844 Tithe plan for the township of Kirkwhelpington DT 280 M

Although tithe plans were produced in order to show the amount of tithe payable on each individual's land, it was also necessary for non-titheable land, ie non-productive land, to be shown as well. This included tracks and roads.

"On this plan, with the exception of the labelling of the new turnpike road, now the A696, and the road from Knowesgate labelled 'to Morpeth', there is no evidence that other tracks were public. However the fact that the two routes, shown on the earlier county maps are shown linking the village to the road 'to Morpeth' suggests that their public rights were recognised. The footpath leading north east from the application route is labelled as such (and is recorded on the current definitive map). This is further evidence that the public rights along the application route were recognised.

See extract

"5. 1863 1st ed OS scale 1:2,500 (25") sheet LXX/1

The route is shown to be in the parish and township of Kirkwhelpington. It is shown to pass through plot 43, this is where it ceases to have public rights today. Plot 43 is recorded as 'pasture &' in the relevant OS Book of Reference for this parish and township. This is the way that unfenced routes across pastureland are normally recorded. In this case it includes the area crossed by the recorded bridleway as well as the application route.

It can also be seen at a scale of 1:10,560 (6") on roll 12.

See extracts

"6. 1895 2nd ed OS scale 1:10,560 (6") sheets LXX NW and LXX SW

From this edition, it can be seen that a quarry was affecting the route was opened up between 1863 and 1895. In 1895 the historic route is shown continuing into the early quarry workings, with Middle Whitehill to the west as is the situation today.

"By looking at OS maps for this small area over time, one can see the influence of a working quarry on the application route. For most of the 19th century there was no quarry and the ancient route, as shown on the early county maps, continued northwards to meet the road from Knowesgate.

"From just before the turn of the century a quarry was developed and this will have impinged on or maybe even totally obstructed the public rights. No evidence of any formal extinguishment of them has been found.

"Over the following decades, the quarry expanded and then slowly declined with a route through the old workings eventually becoming clear again. By 1959, there is no evidence of the workings and the route is again clearly shown linking to the road.

"During the period in the early 1950s when the survey work was done by parish councils for the first draft of the definitive map, the presence of the quarry would have been well known and it could explain why no route was shown linking the bridleway to the road. Either it was accepted that it was not possible for the public to get through at the time or maybe the route used for extraction of material from the quarry was presumed to be a public road.

"Today all signs of the quarrying activity have disappeared and a well made through route can be clearly seen on the ground linking the current dead end public bridleway to the road from Knowesgate.
See extracts

"7. 1910 Finance Act Plan NRO 436/LXX/1
The application route is shown to be in hereditament 106, owned by the Rev RR Hedley and occupied by W Forster of Glebe Farm. No deduction for 'right of way or user' was claimed but then none was claimed for any of the plots in the relevant field book NRO 2000/22 even though there are many rights of way and unfenced county roads crossing the area. This situation is not unusual in Northumberland.

"Conclusion
From the evidence given above, it would appear that the application route is only a small section of a historic route. Most of this route is already recorded as a public bridleway. A possible explanation for this missing link is connected to the presence of quarry workings in the immediate area. These workings are now long gone and the restoration work has been completed. So a clear route exists on the ground linking the dead end bridleway to the road.

"Please can you consider the evidence in the hope that bridleway rights can be recorded to enable this ancient route from the village to link to the road to the north near Knowesgate as in days gone by?"

3. LANDOWNER EVIDENCE

- 3.1 By letter, dated 27 November 2019, the NFU responded to the consultation on behalf of Mr JJ Brown of East Whitehill Farm, stating:

"Further to the application for modification by Diane Holmes, in connection with the alleged bridal way we would like to confirm that having looked at all the maps supplied by our member, Mr JJ Brown of East Whitehill Farm we cannot agree with her evidence. We would request that the modification order be rejected as the application is based on incorrect information. The right of way to which Diane Holmes is referring runs to the east of the old site of East Whitehill Farm and the former quarry and not the west of the former quarry / farm site.

"We have also looked at the photographic evidence that she has supplied and are slightly concerned that the first photograph appears to have been taken from private land. If this is the case, there has been a trespass committed as the road is clearly marked as private with a locked gate at the end of the track onto the C195. This gate is clearly labelled with a private property sign confirming no public right of way. The track shown on the photograph is used as regular access by our member to the fields where he has his livestock. It has never been used as a footpath or right of way.

"We hope that you will take full account of the evidence sent to you by Mr Brown which we strongly believe confirms there isn't any right of way connecting to the C195. The footpath to the east of East Whitehill Farm travelling towards Mary Castle, is the one shown on the evidence provided by Diane Holmes."

3.2 By letter, dated 30 November 2019, Mr JJ Brown of East Whitehill Farm responded to the consultation, stating:

"Further to your letter dated the 17th of September 2019, I am submitting evidence to show that there is no public right of way from Points T to points S on the map sent by yourself to the main road C195 as stated by Diane Holmes of 3 Manor Farm, Ulgham in her notice for a modification order.

"Having looked at the evidence submitted from Diane Holmes with maps dated 1769, 1820 and 1828 they show the location of where East whitehill farm was previously situated. Looking at all the maps she has submitted as evidence it shows that the right of way passes East whitehill (old steading) to the east side directly towards Mary castle following the line of the footpath currently in existence.

"We are submitting three maps, one dated 1863, 1st edition OS, which shows the former location of East whitehill farm with a footpath ending at the farm steading but also showing a footpath running to the east of the farm towards Mary castle. We are also submitting a map edition of 1924 which clearly shows the bridal way finishing at the bottom end of the quarry but a footpath passing again to the east of the quarry towards Mary castle. In addition to that, we also supply a map which is the 1922 3rd edition OS, again showing the bridal way ending at the bottom of the quarry but a footpath travelling across the field to the east of the old farm steading again towards Mary castle.

"Finally, we supply you with a lease for the land and quarry between the Reverent Philip Ellis and Northumberland county council dated 6th of may 1897 which again shows the right of way terminating at the old

steading of East whitehill farm. None of the maps we have submitted show the right of way extend past the old East whitehill steading on the west side as suggested by Diane Holmes and then connecting to the main road C195.

"The current road into the field and the water filtration system was put in by Northumberland county council before surrender of the refuse site lease on 30th September 1997. This road was put in to provide private access for the county council to the water installation and for ourselves to access our land where we keep our farm animals. It has never been a right of way and was never intended to be a right of way.

"Further to this we would inform you that the current site of East whitehill farm is a new steading built in 1913 and was originally called the Glebe. It is important therefore that when looking at the maps given in evidence it must be understood that the footpath ran to the site of the original farm steading as seen in the maps submitted in evidence by Diane Holmes and by myself.

"In addition to the maps I am offering in evidence, I would like to point out that the gate from the main road (C195) to our private track has not been used for public access at any time. The first lease given to the council to start works in the quarry was the 7th march 1986 and the access has been padlocked everyday since that date. Therefore there has been no public access to the track and the padlocks can only be unlocked by the phone mast company, the county council and myself. "I would like to ask that you take full consideration of my evidence which I believe is clear and that the public right of way has never connected with the C195, and currently ends at the south gate (points T). there is clearly a footpath that runs to the east of the land in question, across fields towards Mary castle and we believe that this is the right of way shown in the evidence supplied by Diane Holmes.

"We also like to point out that a current bridleway exists, leaving Kirkwhelpington village and follows the line of the St Oswald way, which proceeds through west whitehill and terminates at the C195.

"I await confirmation that you have accepted my evidence and that the information that I have supplied to you is accurate and in good faith."

4. CONSULTATION

4.1 In September 2019, the Council carried out a consultation with the Parish Council, known owners and occupiers of the land, the local County Councillor and the local representatives of the "prescribed and local organisations" listed in the Council's "Code of Practice on Consultation for Public Path Orders". Two replies were received and are included below.

4.2 By email, in October 2019, the British Horse Society responded to the consultation, stating:

"Parish of Kirkwhelpington, alleged public bridleway 31
At present BW 31 is a dead end in the middle of a field. This is likely to have been an error made in the 1950s when the definitive map was being drafted. Its continuation northwards to join the next road exists

on the ground so it seems logical that it should be recorded on the definitive map.”

- 4.3 By email, on 4 December 2019, Kirkwhelpington Parish Council responded to the consultation, stating:

“Kirkwhelpington Parish Council wish to object to the above application.

“The Parish Council believe there has never been a public right of way through the quarry, and the applicant appears to have been confused by the change of names of the two farms; The Glebe, now known as East White Hill and the previous East White Hill situated inside the old Quarry.

“There are concerns that if a number of horse riders wanted to use the bridleway (if it were granted) where would they be parking their horse boxes? - the Parish Council regularly receive complaints about congested parking in the village, and horse boxes etc are much larger than the average family car.”

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 evidence of a “Country Road” over a route resembling both existing Bridleway No 31 and its alleged extension.

1820 Fryer's County Map

There is clear evidence of an “Other Road” over a route resembling both existing Bridleway No 31 and its alleged extension.

1827 Cary's Map

There is clear evidence of a “Parochial Road” over a route resembling both existing Bridleway No 31 and its alleged extension.

1828 Greenwood's County Map

There is clear evidence of a “Cross Road” over a route resembling both existing Bridleway No 31 and its alleged extension.

1844 Tithe Award (Township of Kirkwhelpington)

There is clear evidence of what appears to be an unenclosed road or track over the route of existing Bridleway No 31 and its alleged extension.

c.1860 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an unenclosed track / path along the route of existing Public Bridleway No 31, but not over the route of the alleged bridleway extension. A broadly parallel route, some 20 to 40 metres east of the alleged bridleway is depicted, but this stops at the former site of East Whitehill, which appears to have been situated some 30 to 40 metres east of the current masts.

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

There is clear evidence of an unenclosed track / path along the route of existing Public Bridleway No 31, but not over the route of the alleged bridleway extension. A broadly parallel route, some 20 to 40 metres east of the alleged bridleway is depicted, but this stops at the former site of East Whitehill, which appears to have been some 30 to 40 metres east of the current masts.

1897 Ordnance Survey Map: Scale 1:2500

As with the 1860s maps, there is clear evidence of an unenclosed track / path along the route of existing Public Bridleway No 31, but not over the route of the alleged bridleway extension. A broadly parallel route, some 20 to 40 metres east of the alleged bridleway is depicted and, unlike the 1860s maps, there is now a connection between East Whitehill and the C195 road. There is also, now, a quarry, on the line of most of the alleged Bridleway No 31 extension. Although existing Public Footpath No 30 (which connects with existing Bridleway No 31, south-east of Middle Whitehill) is labelled as a footpath ("FP"), existing Bridleway No 31 is not labelled, which suggests the Ordnance Survey surveyor believed the route was of a higher status. The alleged continuation isn't shown (it goes through a quarry).

1897-8 Ordnance Survey Map: Scale 1:10,560

This map shows broadly the same as the 1:2500 scale version, just at a smaller scale.

Finance Act 1910 plan

There is clear evidence of a path / track over the route of almost all of existing Public Bridleway No 31 on the Ordnance Survey base map. No 18. The enclosed southern end of the existing bridleway (at Kirkwhelpington village) is separated from the surrounding land by coloured boundaries. This is a good indication of public highway status. The remainder of the existing bridleway route, and the claimed extension through to the C195 road is not enclosed and therefore, unsurprisingly isn't separated from the surrounding land by coloured boundaries. Nor is it annotated with any remarks relating to its status.

1922 Ordnance Survey Map: Scale 1:2500

There is evidence of a track as far as Middle Whitehill (this is existing Bridleway No 31). There is no evidence of a path or track over the route of the alleged northerly extension to Bridleway No 31 (this goes

through a quarry). The quarry has expanded, easterly, to incorporate the track which previously connected East Whitehill to Bridleway No 31.

1924 Ordnance Survey Map: Scale 1:10,560

This map shows broadly the same as the 1:2500 scale version, just at a smaller scale.

c.1952 Definitive Map – original Survey Schedules & Map

Although existing Bridleway No 31 was identified for inclusion as a public bridleway, its alleged continuation, northwards beyond a field gate and through the quarry was not identified for inclusion.

Draft Map

Existing Bridleway No 31 was identified for inclusion as a public bridleway (numbered "9"). As with the Survey map, the claimed route was not identified for inclusion as a public right of way of any description.

Provisional Map

As with the Draft Map, existing Bridleway No 31 was identified for inclusion as a public bridleway (numbered "9"). Once again, the claimed route was not identified for inclusion as a public right of way of any description.

1962 Original Definitive Map and Statement

Existing Bridleway No 31 is clearly identified as a public bridleway. It begins at the southern boundary of the quarry and the Definitive Statement described the route "From the south end of the Quarry east of Middle Whitehill ...". No public rights are identified over the alleged bridleway extension. Existing Public Footpath No 30 is also shown and it proceeds north-easterly, towards Mary Castle, from a point roughly 150 metres south of the existing northern end of Bridleway No 31.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed track / path over the existing bridleway route (though, now, it is labelled "FP"). There is now evidence of a track resembling the route of the alleged bridleway extension, through the quarry.

First Review Definitive Map

The situation with regard to existing Footpath No 30 and Bridleway No 31, and the alleged bridleway extension, remained the same as that shown on the original Definitive Map.

1980 Ordnance Survey Map: Scale 1:10,000

Neither the route of existing Bridleway No 31 nor that of existing Footpath No 30 are shown on the base map. A track resembling the

alleged Bridleway No 31 extension is, however, depicted, proceeding north-westerly, through the quarry to the C195 road.

6. SITE INVESTIGATION

6.1 The T-S route

Where existing Public Bridleway No 31 crosses the open pasture, it is largely undefined on the ground. On a field gate, south-east of (Middle) Whitehill, there is a small sign saying "Private No Public Right of Way". The existing public bridleway actually extends some 50 metres beyond this sign / gate. From the gate, existing bridleway No 31 follows a 2.5 metre wide stone / earth / grass surfaced track in a north-westerly direction for 50 metres. There is nothing on the ground to mark the actual point where the existing bridleway ends and the alleged bridleway begins. The alleged bridleway continuation follows the same 2.5 metre wide stone / earth / grass surfaced track through the former quarry for a distance of 185 metres, to another field gate. Beyond that field gate, the 2.5 metre wide track, within a 4.5 to 5.5 metre wide corridor, continues north-westerly for a further 65 metres to another field gate. The alleged bridleway continues north-westerly (initially over a track, but latterly over a wider tarmac splay) for a further 35 metres to join the C195 road 155 metres south of 'new' East White Hill.

6.2 The T-X route

From the northern end of existing Public Bridleway No 31, the alternative (more historically accurate) route of the alleged public bridleway proceeds, undefined, in a north-westerly then northerly direction across a grass field for a distance of 195 metres, in a general north-westerly direction through an area of dense woodland for a distance of 60 metres, then across a small field for a further 45 metres to join the C195 road, around 75 metres east of where the application route meets that road. The woodland is bounded by a wire fence on its south side and by a several metre high former quarry side and another wire fence on its north side.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

7.1 In March 2023, a draft copy of the report was circulated to the applicant and those landowners / occupiers who responded to the initial consultation for their comments.

7.2 By email, on 21 March 2023, James Copeland of the NFU, responded stating:

"Further to your letter and draft report sent to our member Mr JJ Brown on 13 March 2023, and his conversations with yourself and the NFU, I hope you can help clarify the current position of the draft report. As he has explained, we note the conclusion that 'public bridleway rights have not been reasonably alleged to exist over the application route between points T and S' as submitted by the applicant and the parameters that have formed the basis of communication with our member since September 2019. However, our member was only informed on 13th March 2023, that you have now 'reasonably alleged to exist over a slightly different route, between points T and X'.

"Furthermore, the notification that 'given the obvious practical difficulties of re-establishing a bridleways on the T-X route' that you are

recommending that the bridleway is diverted back to the dismissed alleged public bridleway route. He has also raised safety concerns in relation to the Northumberland County Council landfill site that this alleged route would cross, which I assume has been discussed with your waste team.

"For us to advise our member, we have asked our member to seek the deferral of this report going to the April 2023 Tynedale Local Area Council meeting and an extension to the deadline for additional information of the 27 March 2023. I believe he has already spoken with you, but he wasn't able to confirm if a deferral and extension has been granted. Can you kindly confirm if our members request has been granted."

7.2 By email, on 24 March 2023, James Copeland of the NFU, made a further response stating:

"I understand from our farming member Mr Brown, that you were unable to make the agreed site meeting today, due to you contracting COVID and that the deadline for your report will be extended. I hope you are feeling better soon, and we look forward to your communication, to our member, with an updated timeline for the draft report.

"Further to your letter 13.03.23 (Ref: E/30/31z), and draft report you intended to submit to the Tynedale Local Area Council meeting in April. I would first like to reiterate our members request and our request (email dated 21.03.2023) for an extension to the deadline of the 27/03/2023 for additional information.

"Our farming member, Mr Brown has worked constructively with the Council Officers since 2019 on the alleged public bridleway DMMO application from point T to S as outlined in the application. But we both wish to object to the Officers conclusion, and their new proposal, that a new route from T to X (presented to our member for the first time on 13.03.2023) and then a potential concurrent public path order to divert your suggested route (T to X), to the dismissed alleged public bridleway route (T to S), and request for further information in 2 weeks is unworkable. Mr Brown has also raised surprise, in that this new proposed route has been made by the same Officer reviewing the case, and is keen to understand how impartiality has been maintained? We therefore reiterate our request for more time to provide further evidence in support of our objection.

"In the absence of any formal written confirmation of an extension from the Officer, and without prejudice, based upon the limited evidence we have been able to collate in 2 weeks. We wish to raise the below information, in opposition to the Officers conclusion and recommendations, for consideration and review by the Tynedale Local Area Council.

"The proposed alleged route made by the applicant (27 June 19) proposed a route from point T to S along a private track (as per their application map) has been dismissed (section 9.1 of the report)

"The Officers report (section 8.14) also states that the applicants route from points T to S or any suggestion of user use/presumed dedication is unlikely to be successfully claimed

"The Officer also suggest that if any public bridleway rights from points T to S do exist, then they will exist on a route before quarrying took place

"Turning to the preparation of the definitive map in the 1950's (section 8.13), the Officer explores the creation of the 'cul-de-sacs' and ending of the bridleway at point T. The Officer suggests that the bridleway route was physically blocked by the functioning quarry to the land North of point T and so would include land within alleged route T to X.

"Evidenced within the OS maps dated 1922, 1924 and 1957, all clearly show an active quarry on the site that includes the proposed route (T to S) , but also the alleged new route from T to X. Alleged route T to X on page 10 of the report (+++++ Historical Bridleway Route), runs to the west of the foundation of the old bothy on road C195, heading South through the wood, before heading West again towards Middle White Hill, before aligning with route T to S. OS maps dated 1922 and 1942 (below), both show the location of the bothy and the quarry enveloping all the land to the South and includes the alleged new route T to X. Furthermore, this route is captured in the 1957 map, when the definitive map was being produced, and reflects the decision to stop the bridleway at the edge of and active quarry as outlined by the Officer.

"The East Whitehill Quarry, was then leased to Northumberland County Council for landfill – Knowesgate Waste Disposal Site. Planning application C/93/CC/001 | Revised details of restoration | Knowesgate Waste Disposal Site <https://publicaccess.northumberland.gov.uk/online-applications/caseDetails.do?caseType=Application&keyVal=0020411045732> clearly shows the quarried area and area landfilled as part of the restoration plans (see attached). This includes a range of infrastructure that is managed by North County Council Waste Team and covers the entire route from point T to X.

"In addition to the plans, you can clearly see the quarry side (a c.12ft cliff face) along the Northern side of the wood that is present today (see below). We can along assume that this is what the Officer is referring too, when they suggest "*given the obvious practical difficulties of re-establishing a bridleways on the T-X route*".



"As we also raised in our initial letter 27.11.2019, access to the private land to the North of point T has not been allowed. This is to ensure the safety of people as the quarried land and landfill site (including points T to S and T to X) is subject to random and unpredictable subsidence or sinkholes (as can clearly be seen in the below areal map and photos). Any proposal to allow public access to the land, would have to be considered in relation to the know safety concerns we have expressed.

"Below is the view from the private track, showing the subsidence and quad bike in one of the many holes.

"Below is the view from the two holes, facing towards the private track.

"Can you kindly confirm that you have received the above information before the initial proposed deadline (27.03.2023), and that Tynedale Local Area Council will be able to review the above information."

8. DISCUSSION

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

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

- 8.2 When considering an application / proposal for a modification order, Section 32 of the Highways Act 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 8.3 Although Ms Holmes' application only sought to record this route as a public bridleway, when determining this application, the Council must consider all the available evidence. It is sometimes the case that the evidence which is gathered may point to the existence of higher (or lower) public rights than those that were originally applied for.
- 8.4 The representation of a path or track on an Ordnance Survey Map is not evidence that it is a public right of way. It is only indicative of its physical existence at the time of the survey.
- 8.5 The route of existing Bridleway No 31, and its alleged extension to the C195 road, is readily identifiable on Armstrong's, Fryer's and Greenwood's County Maps of 1769, 1820 and 1828 and on Cary's Map of 1827. Whilst Armstrong's map may not be sufficiently detailed for us to be able to say, with any great confidence, precisely where he had the route joining the C195 road, it is clear that the other three maps are all showing the route connecting at Whitehill, not

Mary Castle, and there is no good reason to assume that Armstrong's intention was to show something different from the other three. It is common for Armstrong's, Fryer's Cary's and Greenwood's maps to be presented as evidence in support of additional public rights. Where a route is shown on one or two of these maps, this is generally viewed as decent evidence in support of public highway rights (usually vehicular but, potentially, just bridleway). Where a route is depicted on all four maps the cumulative effect of this is considered to be particularly persuasive.

- 8.6 On the plans produced in association with the Finance Act of 1910, the enclosed southern end of existing Bridleway No 31 is shown as being separated from the surrounding land by coloured boundaries. This is a good indication that this part of the route was considered to be a public vehicular highway, at that time. The remainder of the Bridleway No 31 route and also the alleged extension were not shown as being separated from the surrounding land, though this is almost certainly because these sections weren't physically separated, crossing mostly open pasture.
- 8.7 The route of existing Public Bridleway No 31 has been consistently identified on Ordnance Survey maps between c.1860 and 1957. A route resembling that of the alleged Bridleway No 31 extension has only been shown on Ordnance Survey maps quite recently. In 1957, there was a route shown through the quarry, but it's not quite the same as the alleged bridleway route. The route shown on the 1980 Ordnance Survey map is similar, but nevertheless slightly different, immediately north-east of Middle Whitehill. The route depicted now, is a bit different again, staying closer to the western boundary line than previously. On the 1897 through to 1924 maps, the route of the alleged bridleway proceeds through a working quarry site and, unsurprisingly, no physical evidence of it is identified on these maps. On the 1897 OS map, a track which is a close match for the one shown on the pre-quarry 1860s OS maps, skirts the eastern boundary of the quarry to East Whitehill, then continues north-westerly to join the C195 road. On the 1860s OS maps, the short East Whitehill to C195 road link is, curiously, missing.
- 8.8 In the Kirkwhelpington Tithe Award, the existing bridleway route is clearly depicted as a track, as is a northerly continuation to the C195 road, which broadly follows the one identified on the 1860s and 1890s OS maps. A "Foot Road" branches off this track, following the route of existing Public Footpath No 30, to Mary Castle.
- 8.9 On the Survey maps produced in association with preparation of the first Definitive Map of Public Rights of Way, in the early 1950s, the existing route of Public Bridleway No 31, was identified terminating at a field gate, on the (then) quarry boundary. No continuation through, or around, the quarry was shown. On the accompanying Survey schedule, dated January 1953, the ground for believing this route to be public was given as "General use" and, lower down, "Local knowledge", but it was also indicated that the Tithe Map of 1844 was consulted. The existing Bridleway No 31 route remained identified as a cul-de-sac public bridleway through the Provisional and Definitive Map stages.
- 8.10 Both Mr Brown of East Whitehill and the NFU, supporting him, have suggested that the documentary evidence supplied by the applicant reflects the existing public footpath route between existing Bridleway No 31 and the C195 road at Mary Castle, rather than an additional bridleway route through the former quarry. They believe that the applicant may have been misled by the re-siting of East Whitehill Farm to the opposite side of the C195 road, in 1913. The

disappearance of the old East Whitehill Farm at the quarry, and its re-emergence further to the north might have the potential to confuse the unwary, but I don't have any reason to believe that is the case in terms of this application. It is reasonably clear that the Tithe Award map of 1844 and the earlier OS maps show two routes. The main one continues north-westwards, to join the road at Whitehill and a more minor footpath offshoot proceeds more north-easterly to join the road at Mary Castle. Although the earlier Armstrong, Fryer, Cary and Greenwood maps only show one route, it clearly isn't the Mary Castle footpath one. Armstrong's, Fryer's, Cary's and Greenwood's maps typically show roads (and a small number of public bridleways), not public footpaths. Mr Brown has also supplied an extract of a lease between the Rev Philip Ellis and Northumberland County Council, dated 6 May 1897, which appears to relate to two small parcels of land west of the 'old' East Whitehill. This land appears to form part of the original quarry, as shown on the 1890s OS maps.

- 8.11 The other consultation responses were conflicting. The British Horse Society has noted that the existing Public Bridleway No 31 is an improbable cul-de-sac, ending in the middle of a field. They have suggested that since a continuation of this route does, in fact, exist on the ground, this continuation ought to be recognised as the logical extension of the existing bridleway. Whilst the comment regarding the improbability of the cul-de-sac is sound, cul-de-sacs can nevertheless exist, and it doesn't follow, given the extensive quarrying operations which have taken place, here, in the past, that the route which exists, now, is necessarily the same route that any public bridleway continuation may have followed, historically. The Parish Council does not believe there has ever been a right of way through the quarry. They also suggest that the applicant may have been confused by the farm name changes, and voice concerns that extending the bridleway might lead to additional horse boxes being parked in the village, making an existing congestion problem, there, even worse. Whilst concerns about parking are entirely understandable, and the existing parking problem may (but might not) be made worse by the outcome of this process, this matter isn't relevant when determining whether or not public rights exist over the claimed route.
- 8.12 Based on the historical map evidence available, it appears that, prior to the Otterburn Turnpike Road being constructed (presumably between 1828 (Greenwood) and 1842 - see the 1842 Tithe Award map), anyone wishing to travel northwards from Kirkwhelpington would have had to use either the route now recorded as Public Bridleway No 28 (through West Whitehill) or the route now recorded as Public Bridleway No 31 (passing to the east of Middle Whitehill). Both are shown on Fryer, Cary and Greenwood, though only the more easterly route appears to be shown on Armstrong. It appears almost certain that the route passing West Whitehill would have been a vehicular one. Possibly the one passing Middle Whitehill was of lesser importance (being no more than a public bridleway), in much the same way that the spur off this route (the footpath to Mary Castle) was of lesser importance, being a short cut for pedestrian traffic. When the turnpike road was constructed, the importance of the West Whitehill and Middle Whitehill routes is likely to have diminished, but the public's rights over them won't have changed, unless these were formally stopped up or diverted. Examining the Quarter Sessions indexes, I couldn't find any evidence that public rights were removed from the Middle Whitehill route. The route pre-dates the quarry. It seems that the earliest quarry operations didn't directly impact the through route (on the 1890s OS maps, the connection past 'old' East Whitehill still exists); but this wasn't the case later on. In more modern times, it has been possible for public

highways to be temporarily closed to allow mineral extraction to take place. The public rights aren't removed, they still exist, but the right to use them is suspended. Possibly public rights were formally suspended in a similar fashion to allow the quarrying operations, or it could be that the path was closed more informally. With increasing motor vehicular use and a decline in horse drawn / ridden traffic, it's quite possible that a gradual expansion of the quarry may have gone largely unchallenged. Pedestrians would probably favour the shorter footpath link to Mary Castle anyway, because it offered a direct connection with (what is now) Footpath No 25 on the other side of the road. What remaining equestrian traffic there was, could still use (what is now) Public Bridleway No 28, further to the west.

- 8.13 It is not at all clear why Bridleway No 31 was identified as beginning at the southern boundary of the quarry, when the original Definitive Map was being prepared in the 1950s. Cul-de-sacs most commonly occur at parish boundaries, where one parish has identified a route to their side of the boundary and the adjacent parish did not, but they can also be deliberate, ending at places of public resort, such as hill tops, the coast and river banks. The south side of a private quarry would not usually be considered a place of public resort. The applicant has suggested this situation might have come about because the track through the quarry was believed to be a public road. This is possible, but it seems unlikely, particularly if the quarry was still functioning and the way through it was physically blocked. I would suggest it is more likely that the bridleway was begun at this location because the local people responsible for identifying public rights of way were unclear of the route's status, and / or alignment through the quarry and were therefore, not unnaturally, reluctant to create difficulty or cause conflict by recommending a route that was unusable at that time. Of course, they could have tried to duck the issue altogether, by cheating and recording a single footpath between the east end of the village and Mary Castle, but it seems they were unwilling to do this, perhaps fully aware that higher rights did exist over part of this route and that it was entirely proper that these rights be recognised.
- 8.14 Significantly, though, if these public bridleway rights do exist, then they will exist on the route which existed before quarrying took place. This historical alignment does not appear to match the route applied for by Diane Holmes. Her application seeks to record public bridleway rights over the track which physically exists now. Mr Brown asserts (and I have no evidence to contradict him) that the gate south of Point S has been padlocked every day since March 1986, so it seems unlikely that any public bridleway rights could be successfully claimed over the T-S route on the basis of unchallenged user / presumed dedication (nor is the applicant apparently suggesting that they could be). The pre-quarry route identified on the Tithe Award plan, 1860s and 1890s Ordnance Survey maps follows a roughly 'parallel' alignment, slightly further to the east, and joining the C195 road some 85 metres east of Point S.
- 8.15 Advice from the Planning Inspectorate in their 'consistency guidelines' states that it is important to have the correct width, where known, recorded in the definitive statement. Where no width can be determined by documentary means (such as an Inclosure Award, Highway Order or dedication document), there is usually a boundary to boundary presumption for public highways. The historical line of the Bridleway No 31 extension no longer appears to exist on the ground, and the map evidence suggests that the route wasn't previously enclosed by boundaries anyway. On that basis, it is proposed that the bridleway be identified 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).

- 8.16 The NFU has advised Mr Brown that he should try to get determination of this application deferred, on the basis that the route which the Council is proposing is slightly different from the one which was originally proposed in Ms Holmes' June 2019 application, and he hasn't been given sufficient time to consider this alternative alignment. With respect, this isn't a matter which warrants a deferral. In determining any application, it is not at all uncommon for the balance of the evidence to show that public rights, if they do exist, are most likely on a different alignment and / or with a different status. This is all a normal part of the process. My recommendation that public bridleway rights have not been reasonably alleged to exist over the application route arises directly from my conclusion that the historical line of the public bridleway was not the same as the route which is available now. This report was originally on the agenda to be considered by Tynedale Local Area Council, at its meeting in April. The report had to be withdrawn, on a procedural technicality. A site visit, with the landowner and his NFU representative, subsequently took place, but no further comments have been submitted by them. If members do accept my recommendations then, as per paragraph 9.2, below, further dialogue with the landowner and wider consultations with other interested parties are already envisaged.

9. CONCLUSION

- 9.1 Based on the documentary evidence available, it appears that public bridleway rights have not been reasonably alleged to exist over the application route between points T and S, but have been reasonably alleged to exist over a slightly different route, between points T and X.
- 9.2 Given the obvious practical difficulties of re-establishing a bridleway on the T-X route, prior to including the route in any definitive map modification order, officers should explore the possibility of making a concurrent public path order (or orders) to divert the public bridleway onto an acceptable alternative route.

BACKGROUND PAPERS

Local Services Group File: 530/031z

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



Northumberland
County Council

Infrastructure
Local Services
County Hall Morpeth Northumberland
NE61 2EF
Telephone 0845 600 6400

Wildlife and Countryside Act 1981 Public Rights of Way

—|—|—| — Claimed Public Bridleway

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Former District(s) Tynedale	Parish(es) Kirkwhelpington	Scale 1: 10,000
Def. Map No. 137	O.S. Map NY 98 NE	Date March 2023



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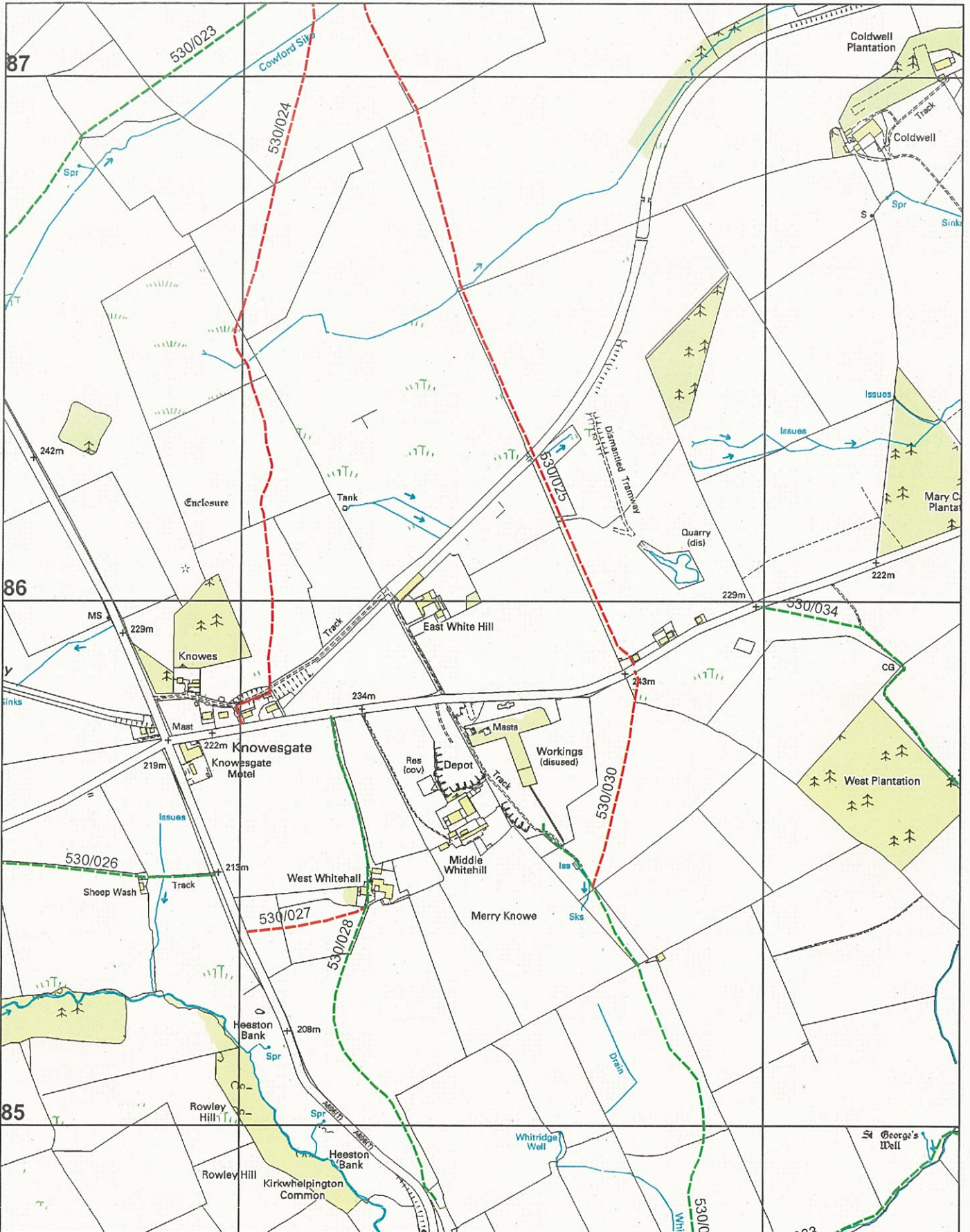

Northumberland
 County Council
 County Hall, Morpeth, NE61 2EF
 Contact: Highway Search Team
 EMail: Highwaysearch@northumberland.gov.uk

Legend

- — — Existing Public Footpath
- | — Existing Public Bridleway
- ● ● ● Application Bridleway Route
- ✚ ✚ ✚ ✚ Historical Bridleway Route

Scale: 1: 2500

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Northumberland
 County Council

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

Legend

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

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

Scale: 1:10,000

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PUBLIC RIGHTS OF WAY

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

APPLICATION FOR MODIFICATION ORDER

Former Borough/District

Parish Kirkcubbington Rights of Way No.
(on Definitive Map)

To: Asset & Infrastructure Manager
Northumberland County Council
County Hall
Morpeth
Northumberland
NE61 2EF

I/We DIANNE HOLMES (Name)
of 3 MANON TANN, ULSHAM, MORPETH (Address)
NORTHUMBERLAND NE61 3RH

hereby apply for an order, under Section 53 (2) of the Wildlife and Countryside Act 1981, modifying the Definitive Map and Statement for the County of Northumberland, by:-

- 1. Adding the (footpath) (bridleway) (~~restricted byway~~) (~~byway open to all traffic~~) (*Delete whichever is inapplicable*)
from C 195 road at GR NY 993 858
to GR NY 996 855 where it meets B6 530/031
- 2. (Upgrading) (downgrading) to a (footpath) (bridleway) (restricted byway) (byway open to all traffic) the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (*Delete whichever is inapplicable*)
from
- 3. Deleting the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (*Delete whichever is inapplicable*)
from
- 4. (Varying) (adding to) the particulars relating to the (footpath) (bridleway) (restricted byway) (byway open to all traffic) (*Delete whichever is inapplicable*)
from

by providing that
as shown on the plan attached.

I/We attach copies of the following documentary evidence (including statements of witness) set out overleaf in support of this application.

Dated 27th June 19 Signed Dianne Holmes

NOTE: This application must be accompanied by a map showing the right(s) of way applied for. Legally such a map must be at a scale of not less than 2½" to 1 mile, but 6" to 1 mile (being the scale at which the Definitive Map is to be prepared and maintained) will normally be preferable.



Northumberland
County Council

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

Wildlife & Countryside Act, 1981



Claimed Public Right of Way

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Former District	Tynedale	Parish	Kirkwhelpington	Scale	NTS
Def. Map. No.	137	O.S.Map	NY98NE	Date	June 2019

Character of the route near Whitehill

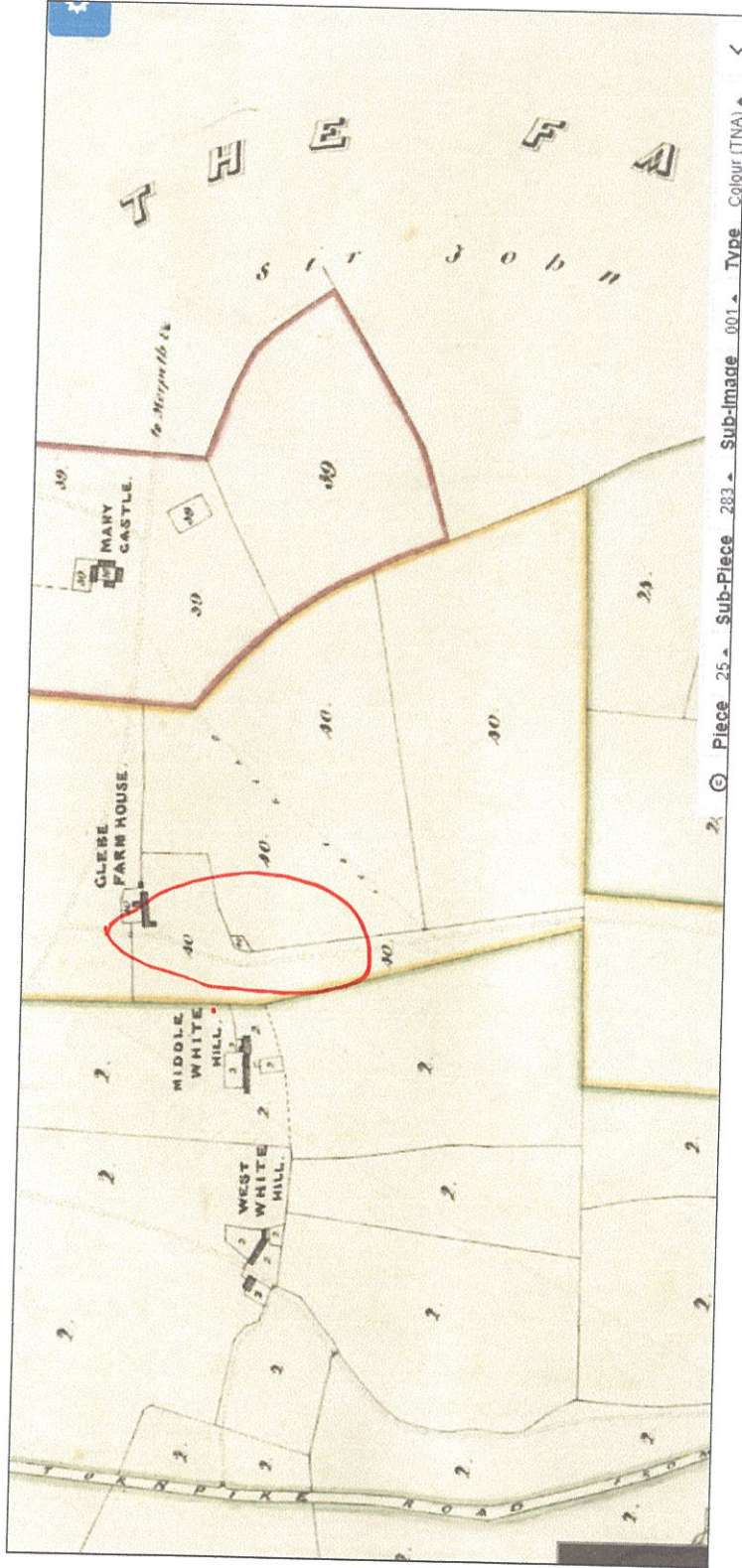


Looking south along the unrecorded section of the route from the road near Knowesgate

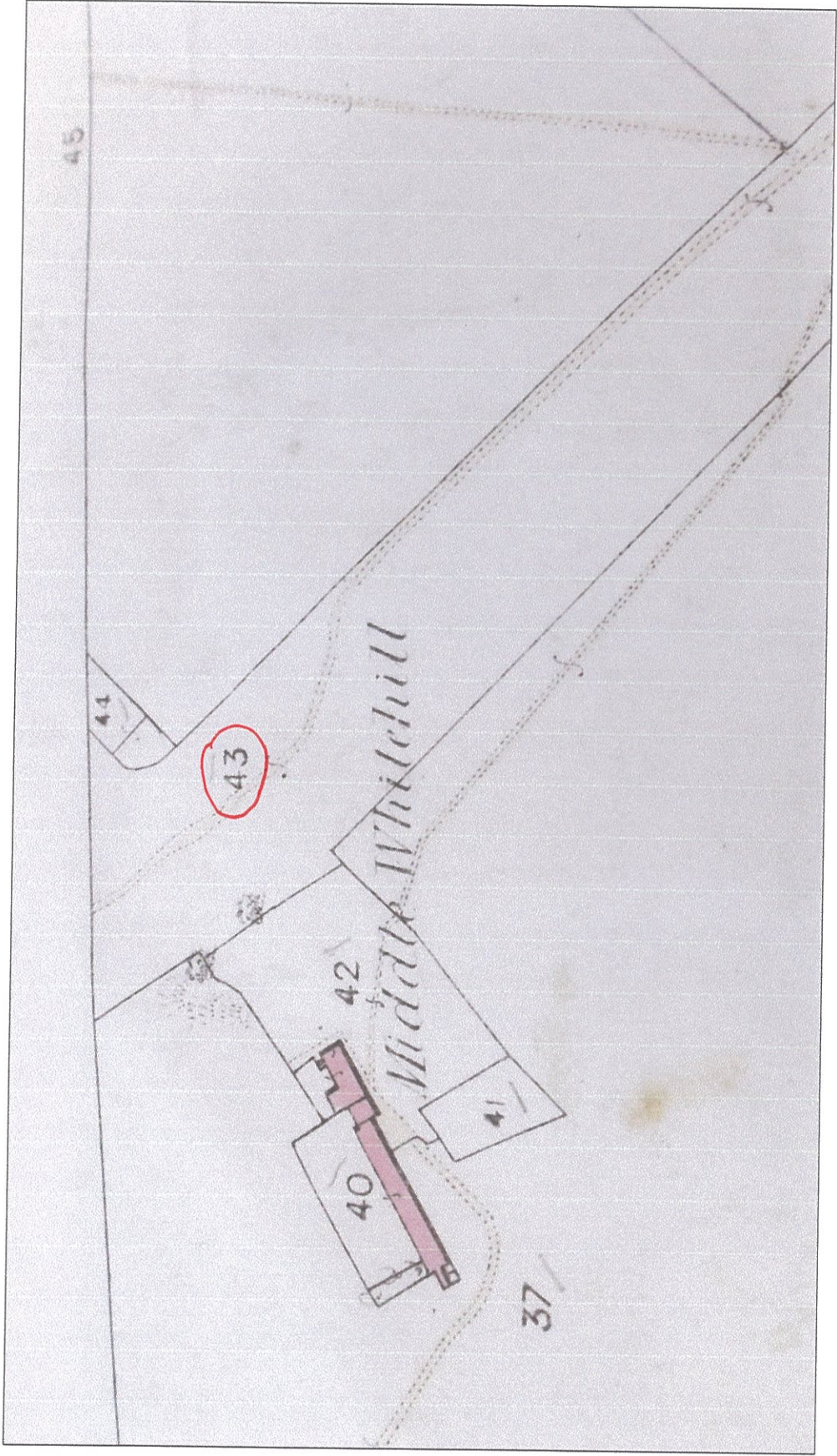


Looking south down the recorded bridleway section of this route

1844 Tithe plan for the township of Kirkwhelpington

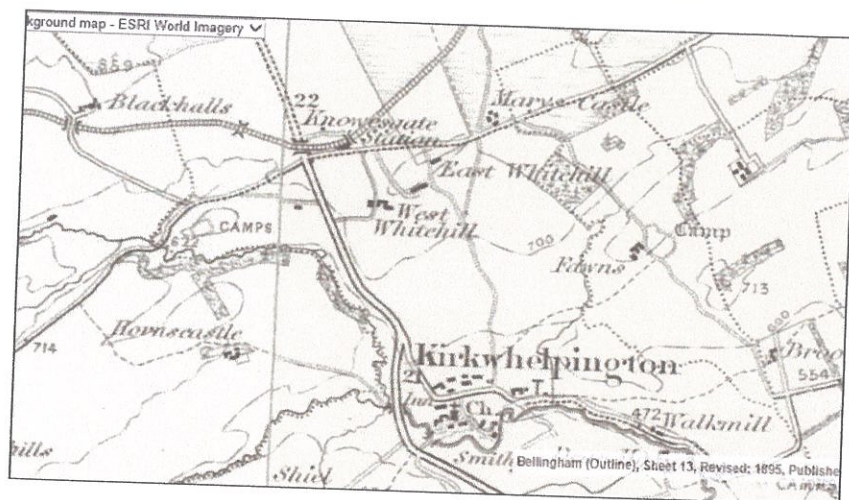


1863 OS 1st ed scale 1:2,500 (25")

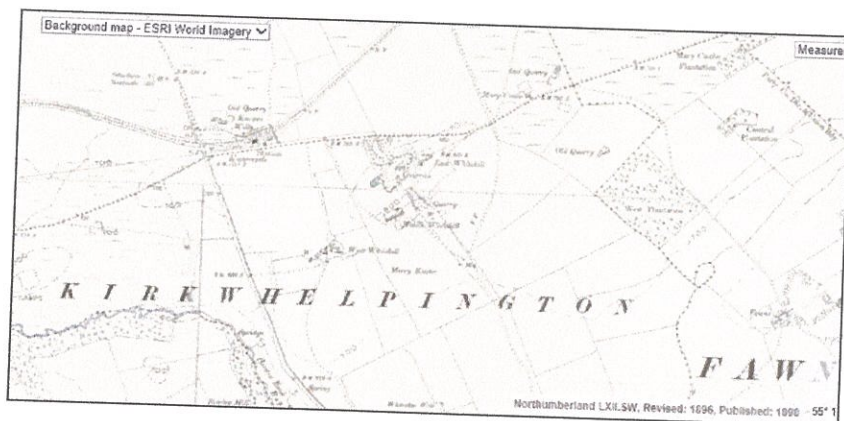


OS maps showing changes over time

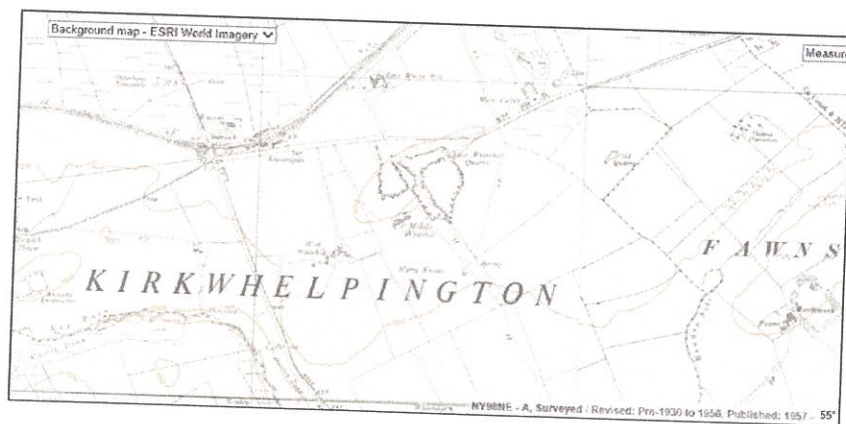
extracts from National Library of Scotland



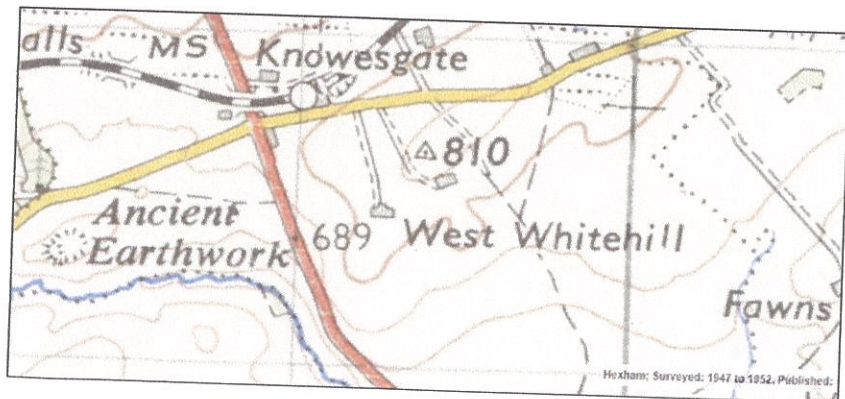
1895
Scale 1" to a mile



1896
Scale 6" to a mile



1957
Scale 6" to a mile



1959
Scale 2 1/2 " to a mile

MR BROWN'S PLAN

Quarry

Mary Castle

B.M. 780.4



789

798

C195

803

798

30°

789

M.

East Whitehill

B.M. 817.1



773

M.P. MORPETH. 15

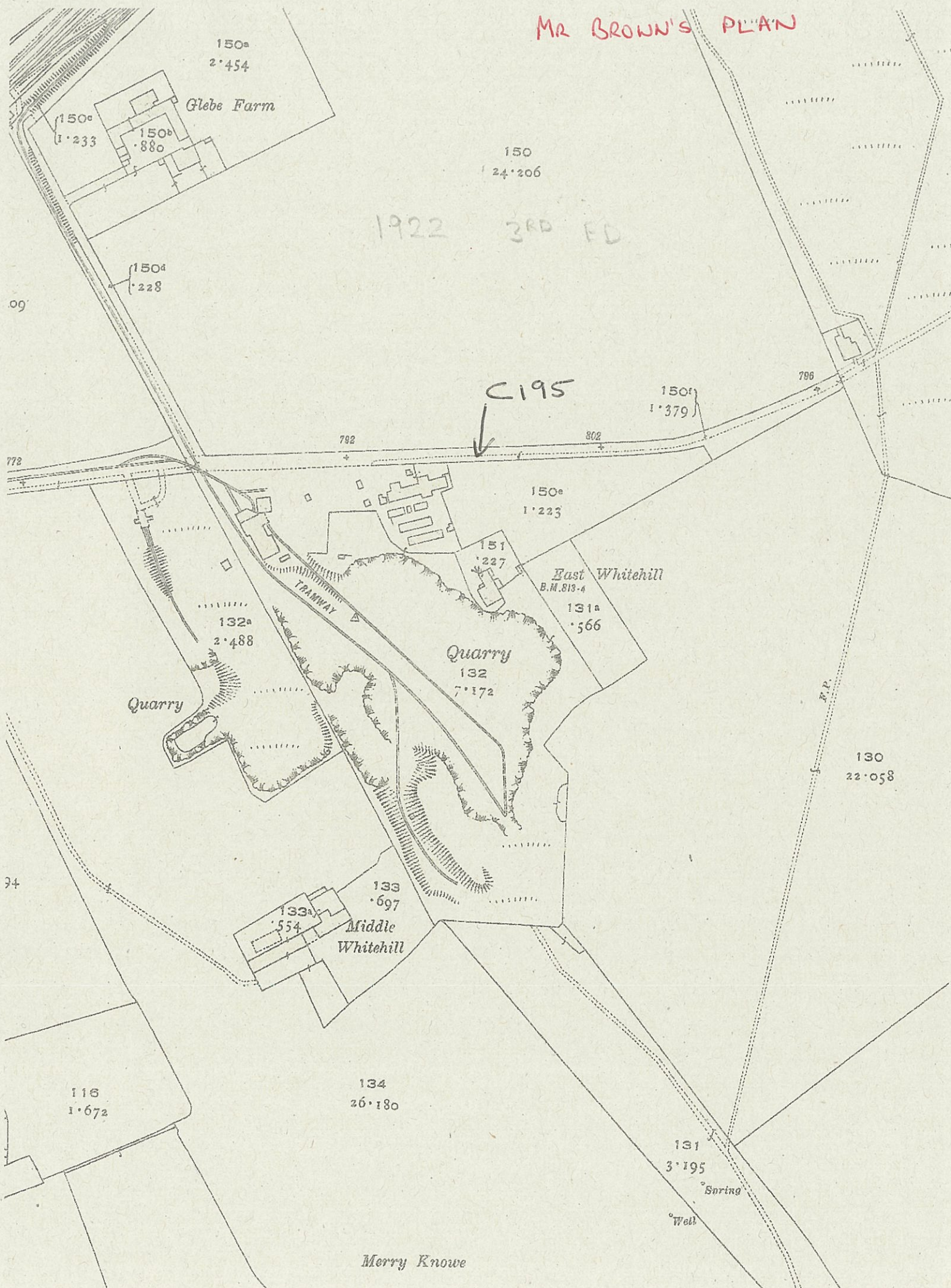
1863 1st ED

20

19



MR BROWN'S PLAN

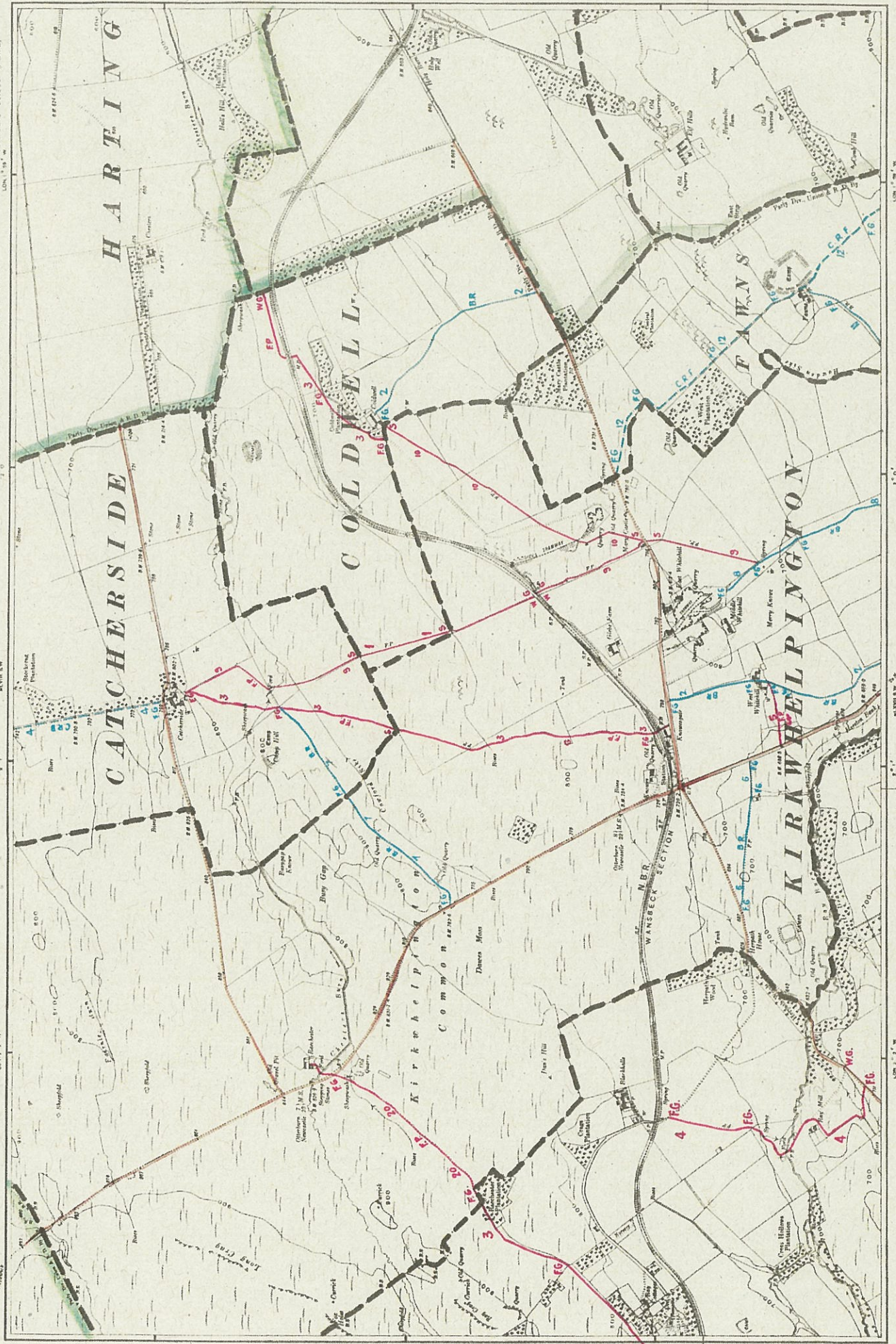


V H E L P I N G T

EDITION OF 1924.

OS.T. No. 965
NORTHUMBERLAND. [NEW SERIES] SHEET XLXVII. N.W.
RERWICK DIVISION. THREED DIVISION. ROTHBURY UNION & R.D.

MR BROWN'S PLAN



MAP [NEED] No.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. PART IV.—PUBLIC RIGHTS OF WAY.

HUMBERLAND COUNTY COUNCIL

273.633

DATED

1897.

75/1/156

KIRKWHELPINGTON VICARAGE.

THE REV. PHILIP ELLIS with the consents within mentioned.

TO

THE NORTHUMBERLAND COUNTY COUNCIL.

(DUPLICATE.)

Lease

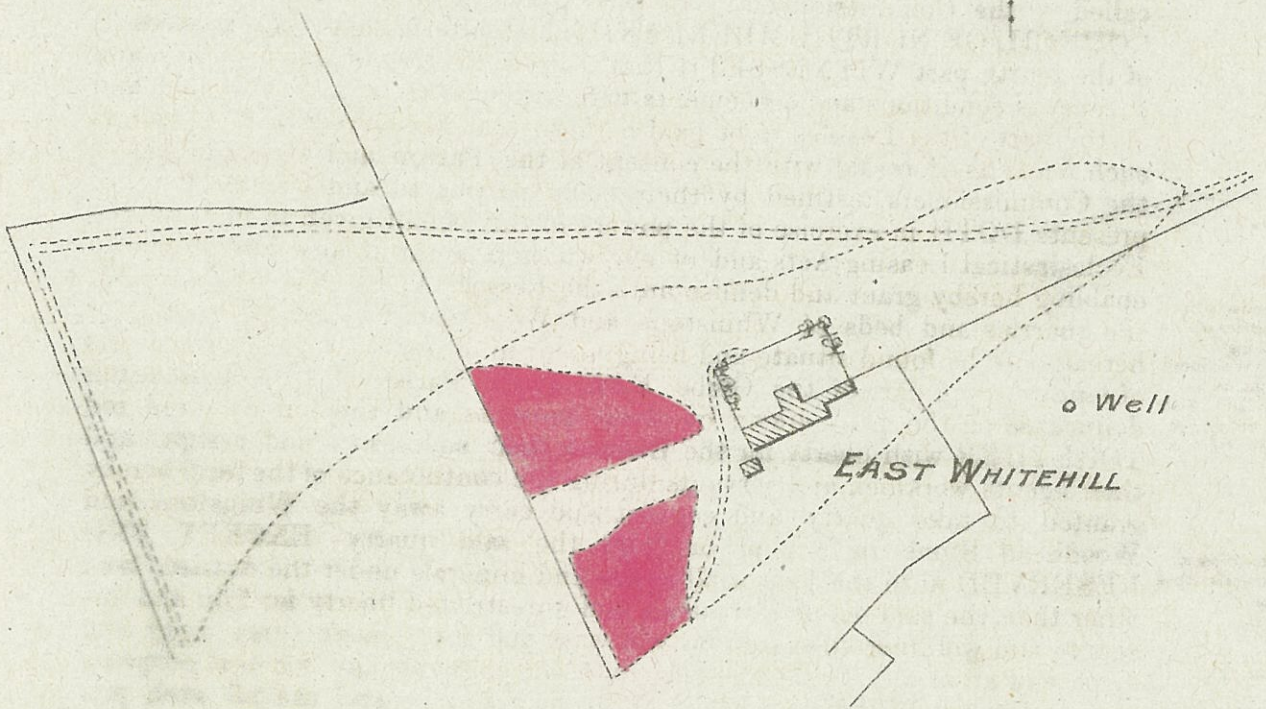
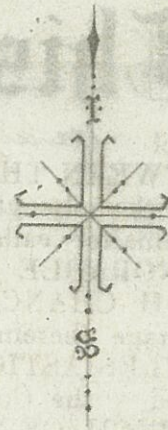
OF

Glebe Whinstone Quarry

MILLES, JENNINGS-WHITE & FOSTER,
S. Whitehall Place, S.W.



Plan referred to.

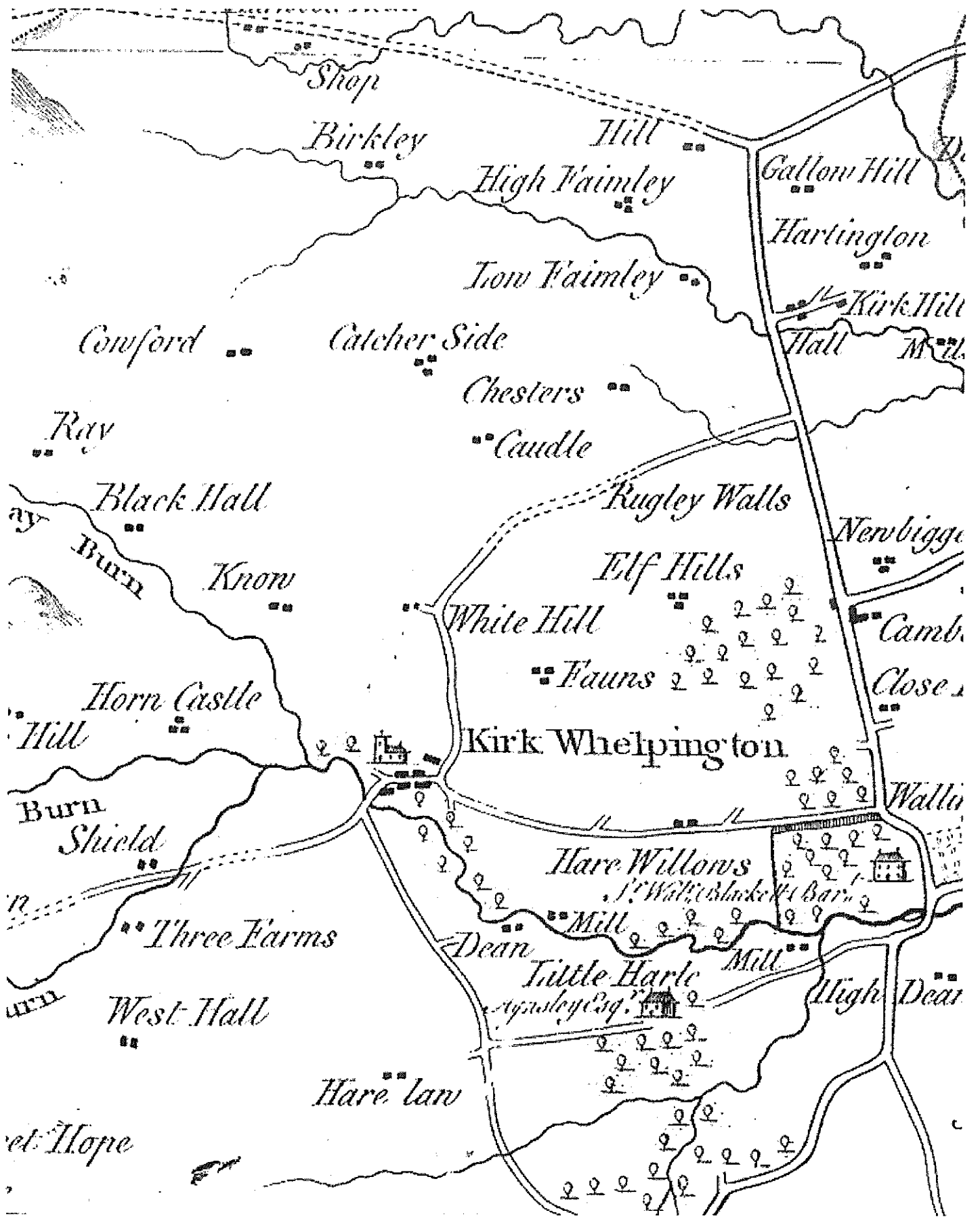


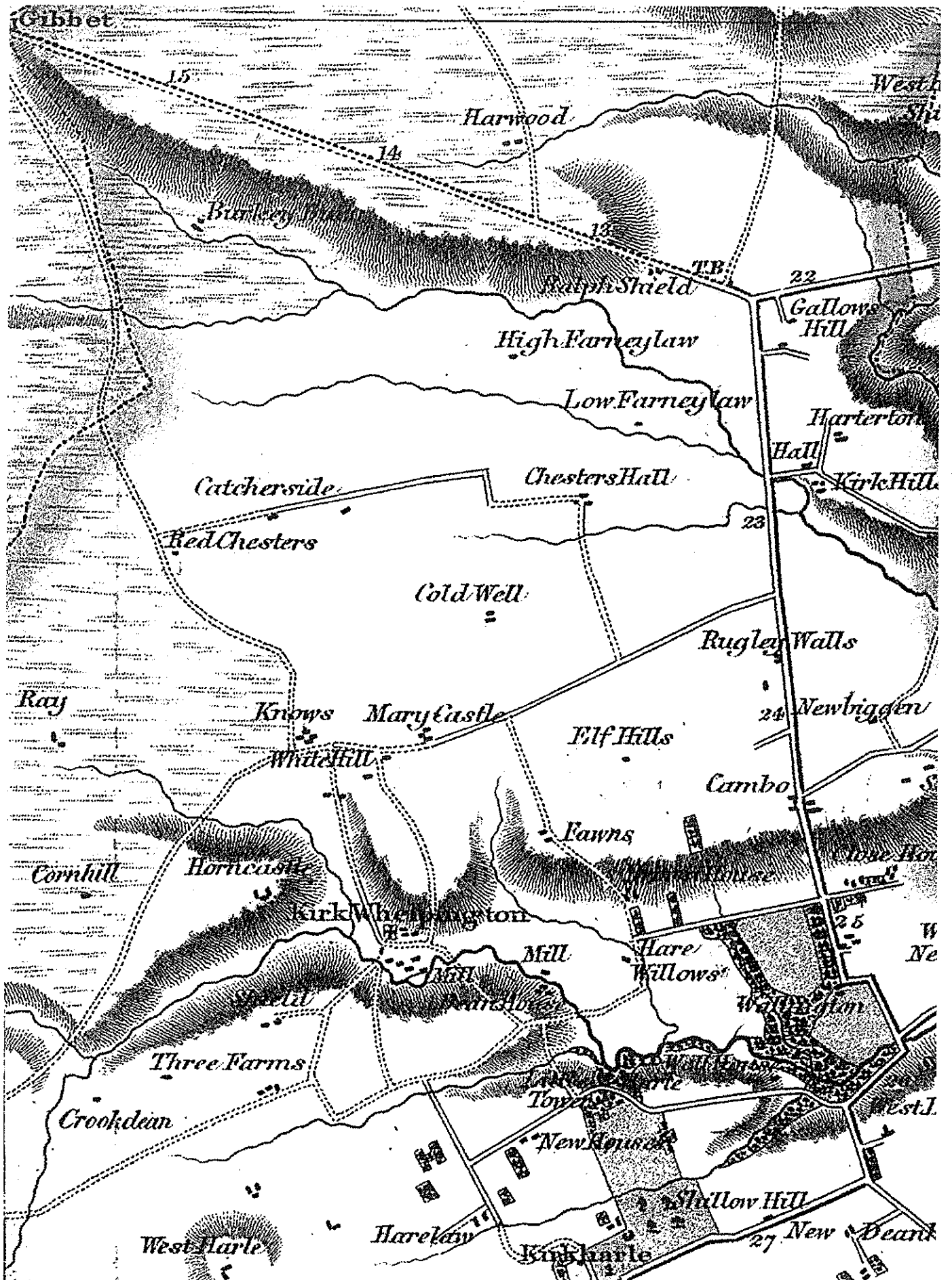
MR BROWN'S PHOTO

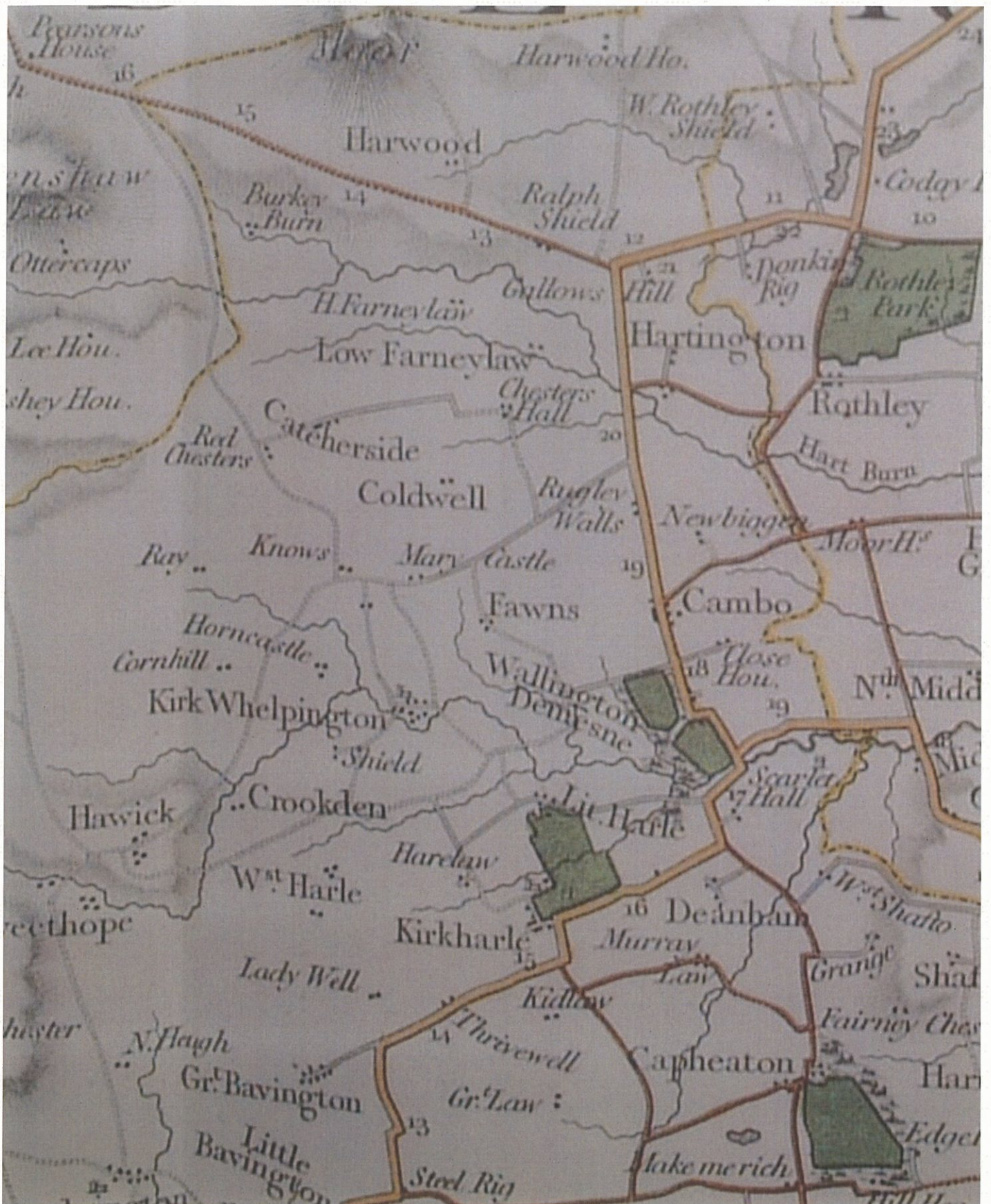


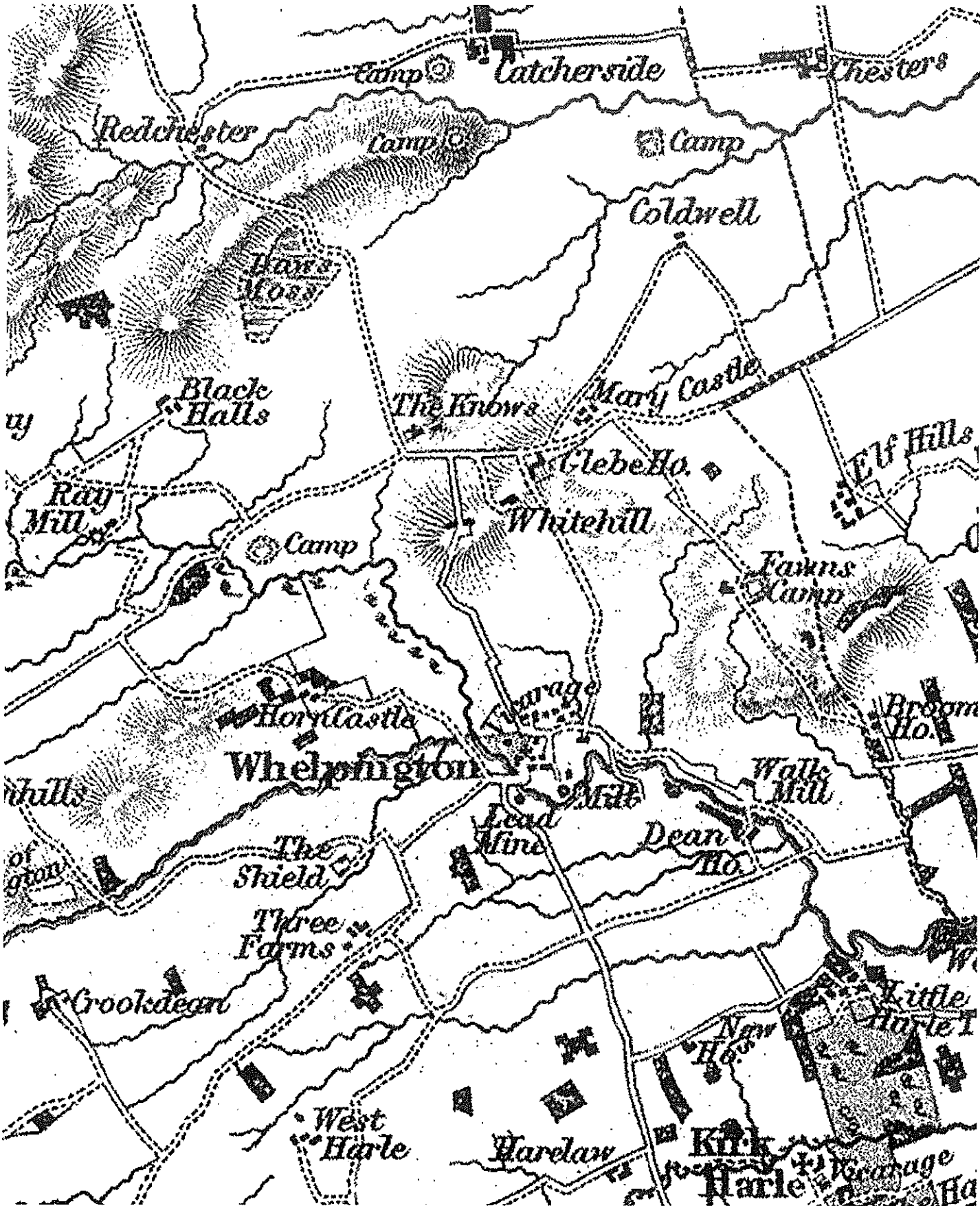
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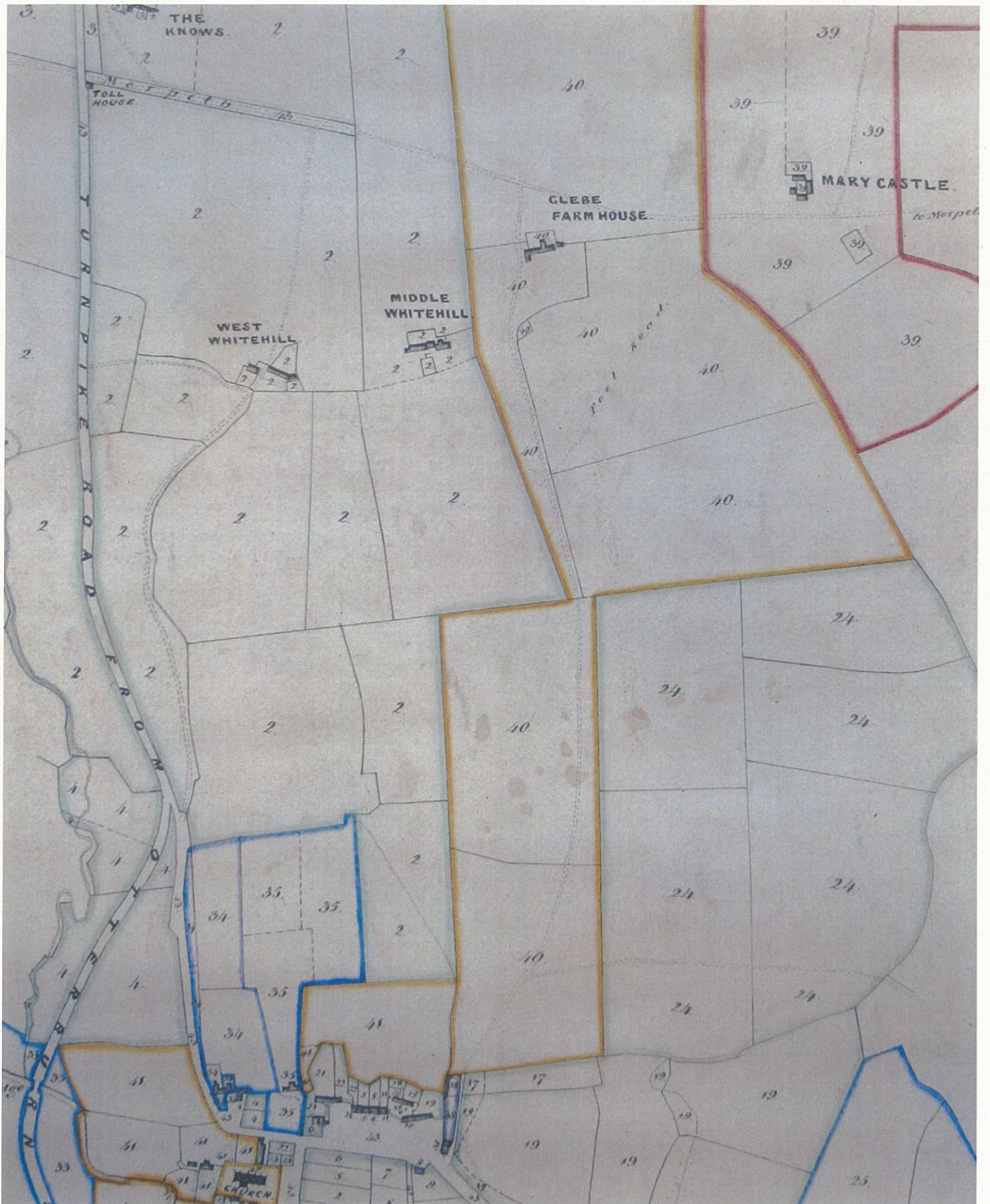




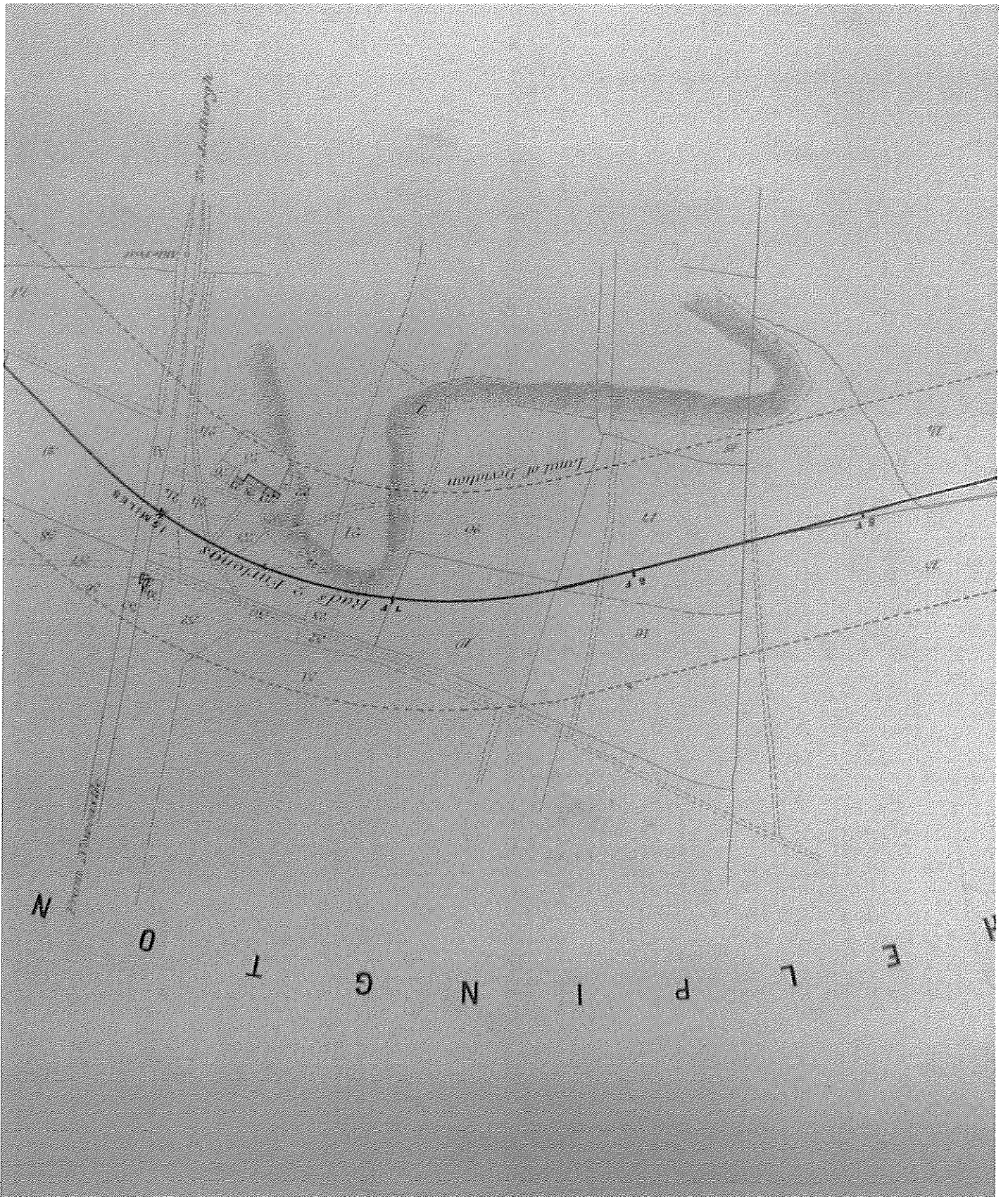


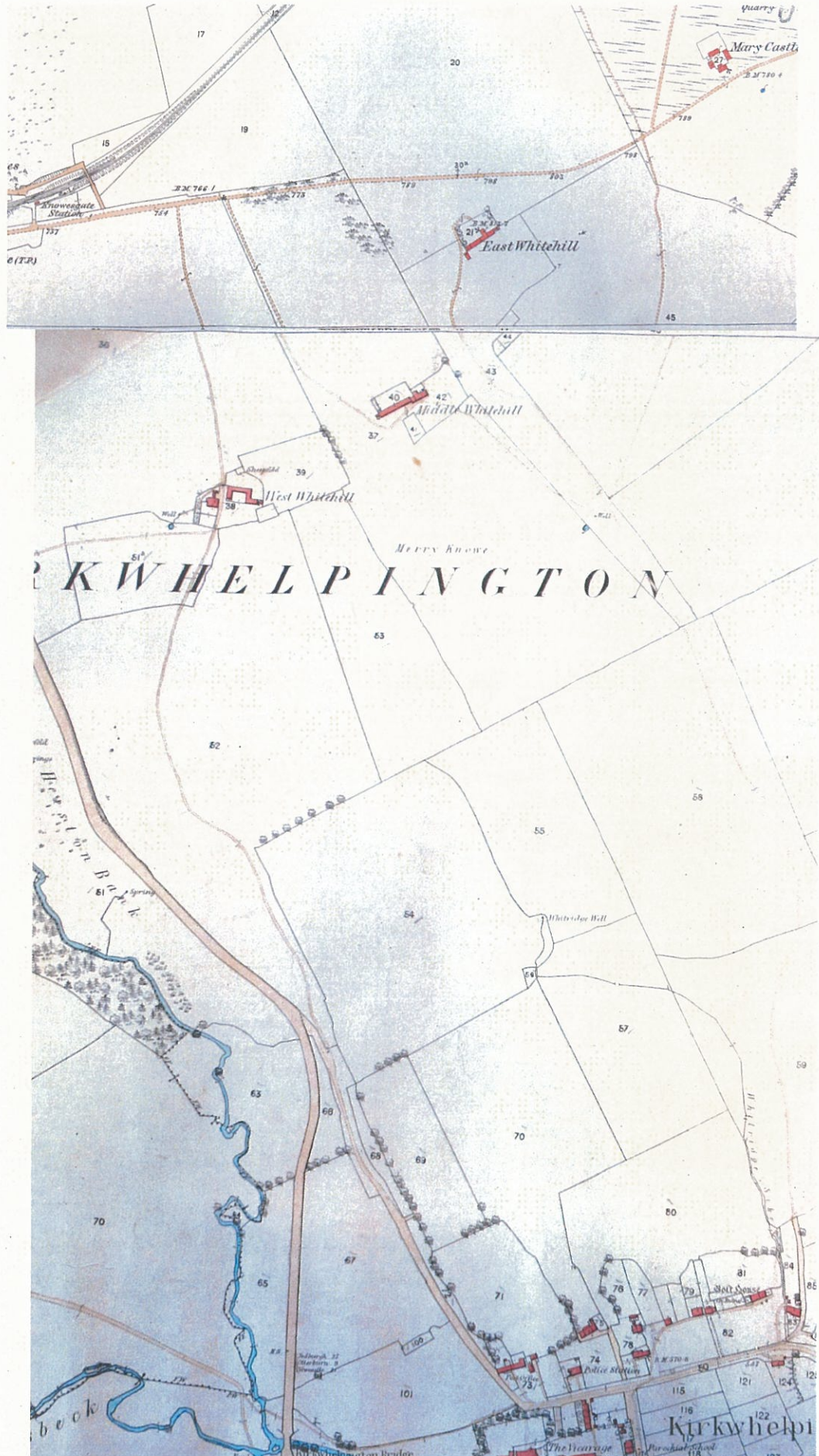


Kirkwhelpington Tithe Award 1842

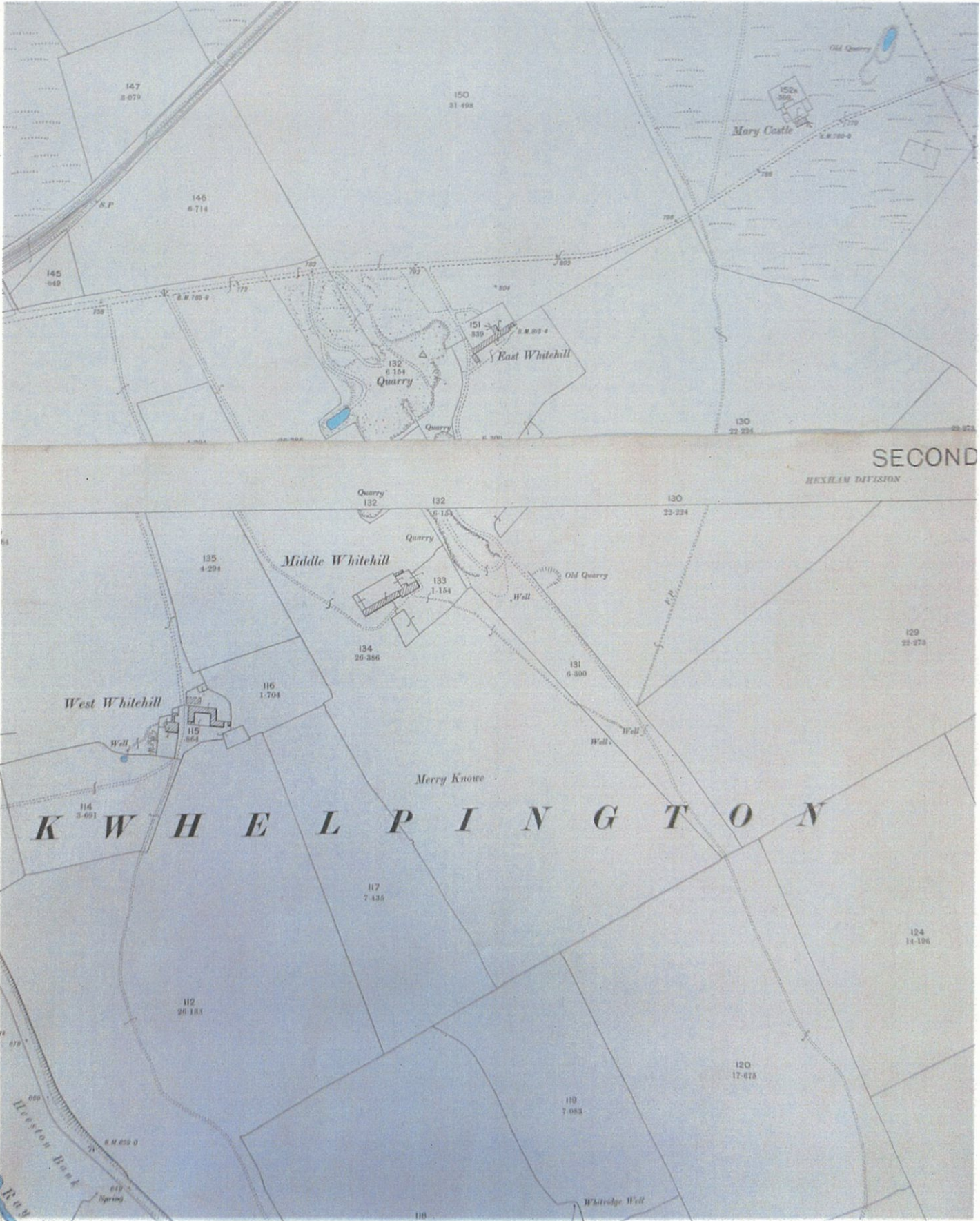


Wansbeck Railway
Deposited Plan
1858

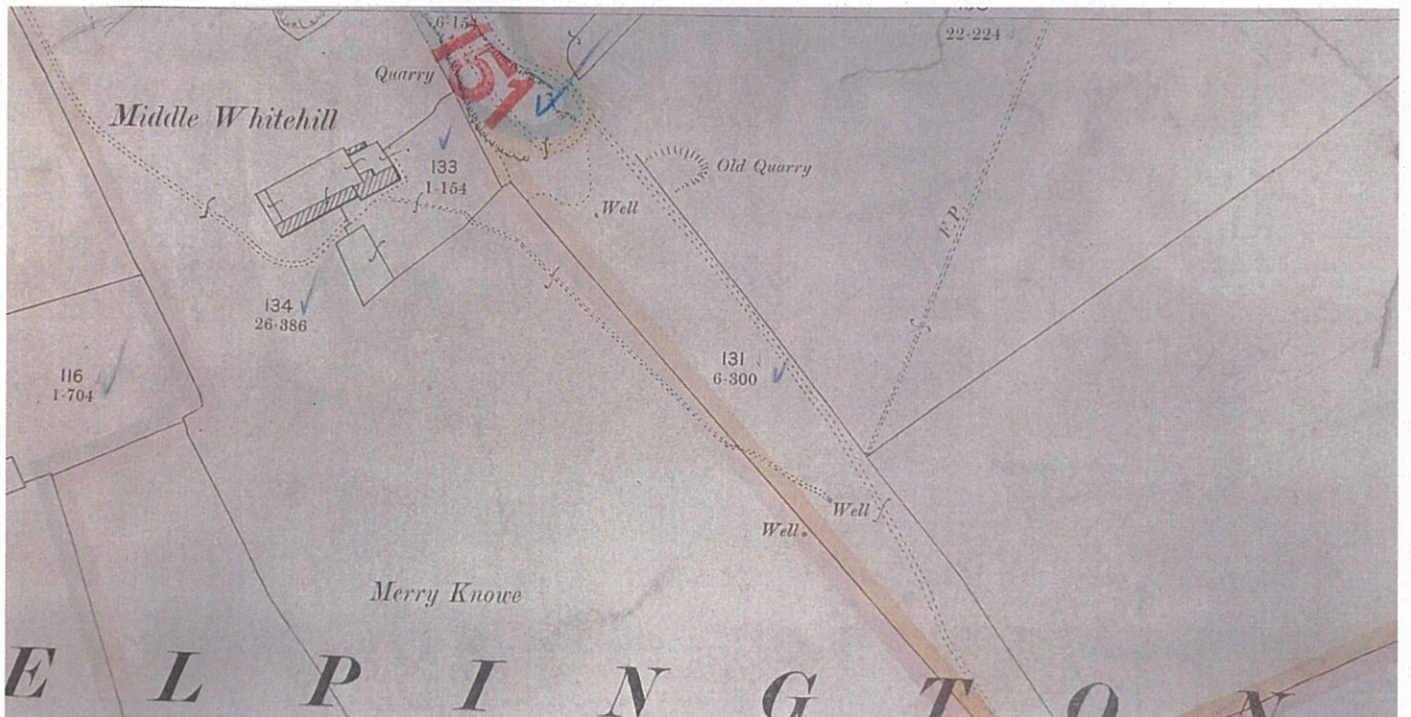
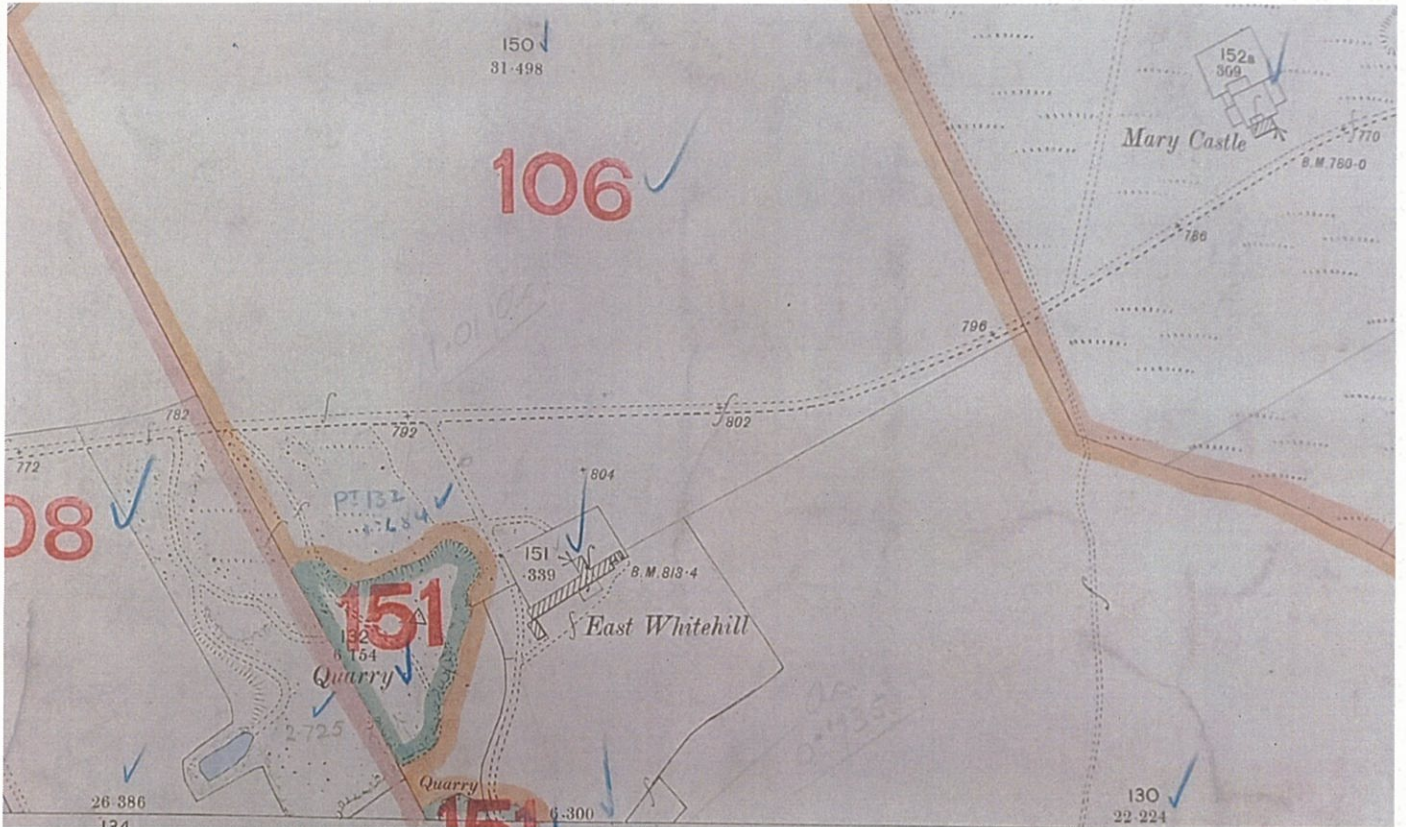


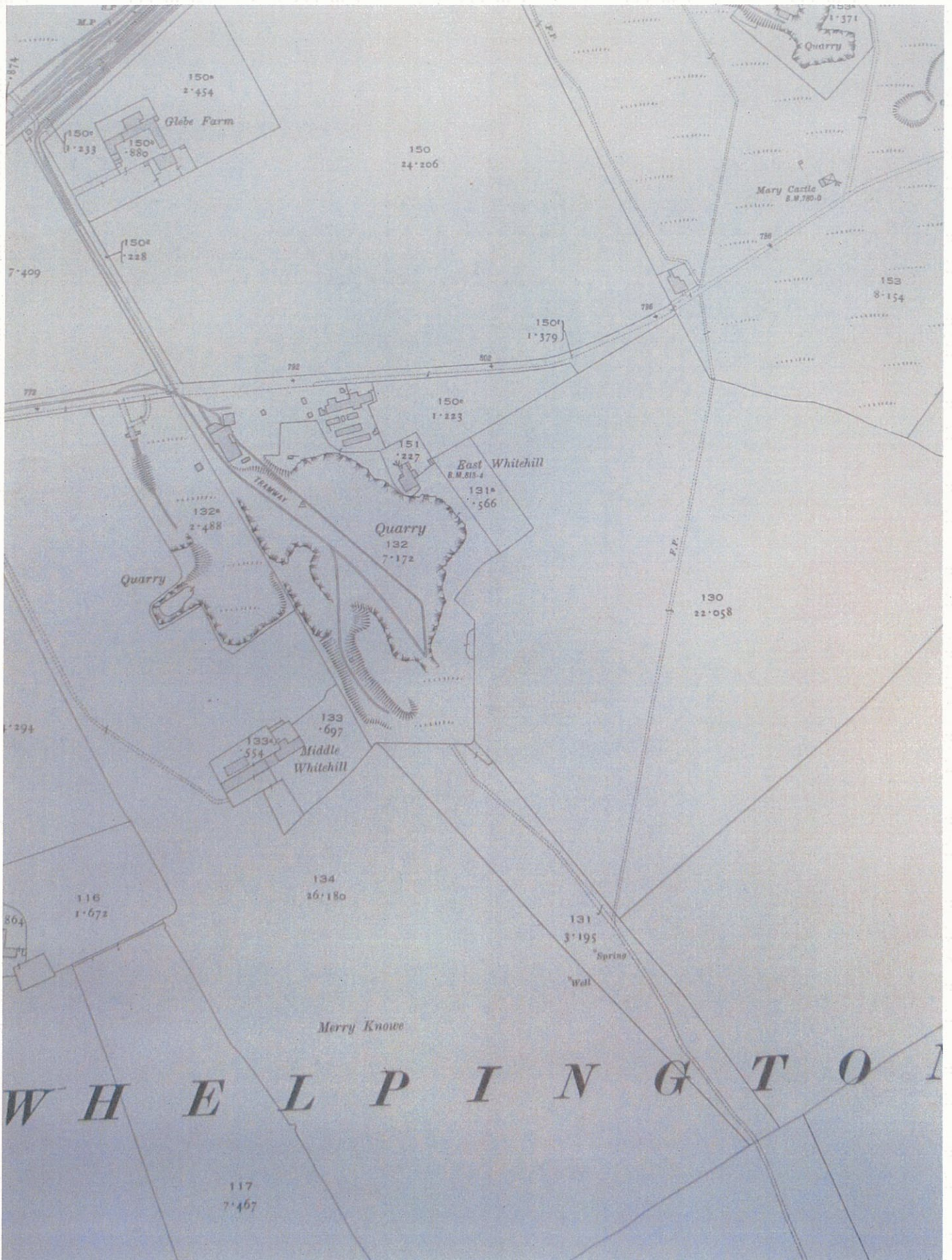






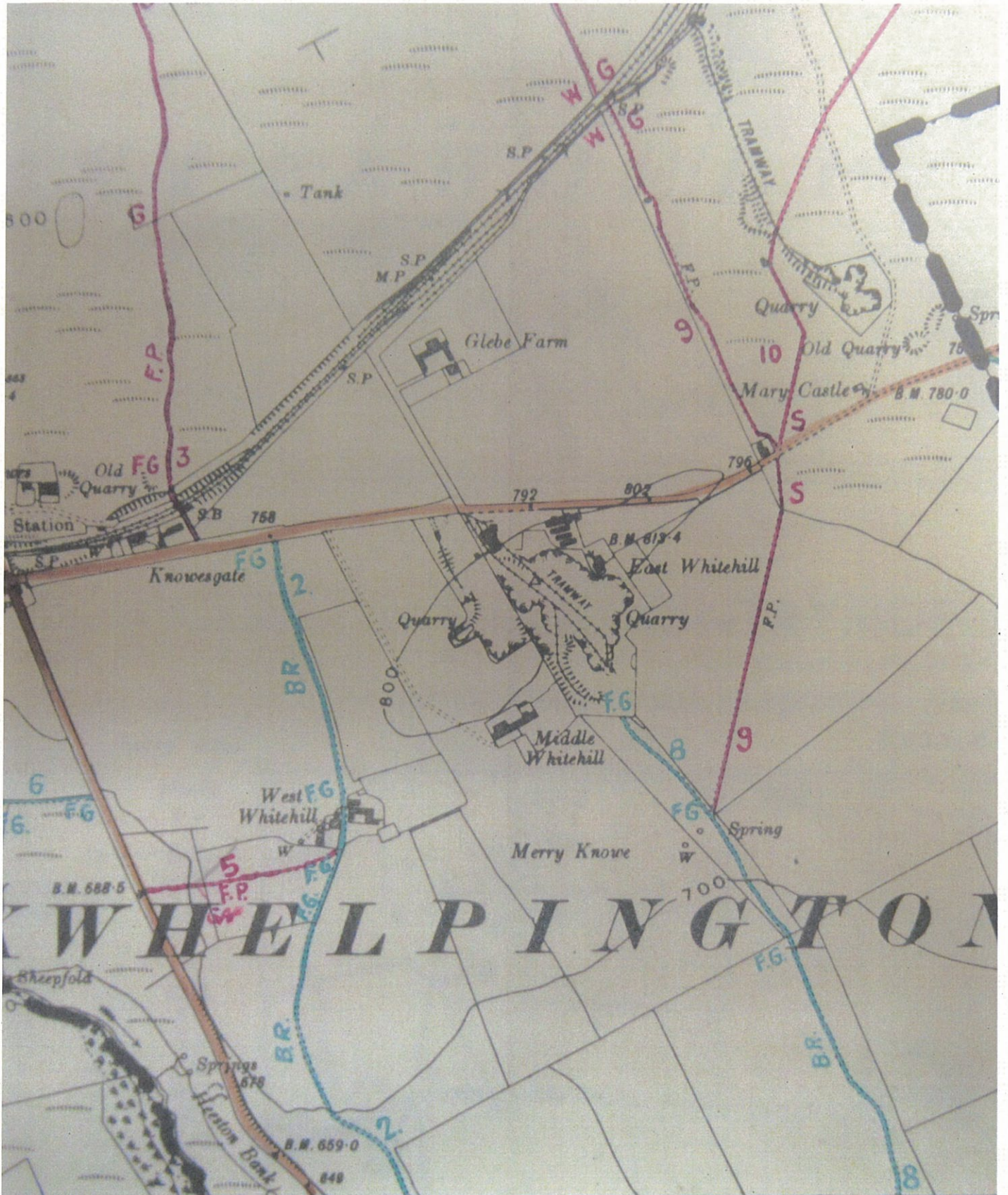








Survey Map



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

Parish of Hickwhelpington in the Rural District of Bellingham

Borough }
Urban District } of _____
(Delete whichever is inapplicable).

9

1. Number of highway on Map 8
2. Kind of Path (i.e., F.P., B.R.) B.R.
3. Starts at Hickwhelpington to Margate Farm Road
4. Name of Path (if any) Quarry Path
5. Is the Path well defined? yes
6. Is the Path metalled? If so, define length part 100'
7. If its width can be stated, insert here 2'-4'
8. What is the present condition of the path, stiles, etc.? good
9. Is it subject to being ploughed out? no
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known
nil
11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant
general use
12. Have persons been prevented using the highway? no
13. Give particulars of any obstructions none
14. Names of owners of freehold and previous owners, if known, for past 30 years
J. Brown, Mable Farm
15. What maps have been consulted, and where are they deposited?
Title Map 1844
16. What records have been consulted, and where are they deposited?
local knowledge.
17. Any other relevant information
nil

Surveyed by	Address	Dates of Survey
<u>J. M. Henderson</u>	<u>Hickwhelpington</u>	<u>15 Jan '53</u>

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

<u>215</u>	<u>16</u>	<u>67SW/4</u>
<u>215</u>	<u>16</u>	<u>67NW/3</u>

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

Parish of Kirkwhelpington & Cateherside in the Rural District of Bellingham

Borough }
Urban District } of _____
(Delete whichever is inapplicable).

728

1. Number of highway on Map 9 2. Kind of Path (i.e., F.P., B.R.) F.P.
3. Starts at Spring below Kamesgate Quarry to Cateherside
4. Name of Path (if any) none
5. Is the Path well defined? partly
6. Is the Path metalled? If so, define length no
7. If its width can be stated, insert here 12"
8. What is the present condition of the path, stiles, etc.? fair - bad walking
9. Is it subject to being ploughed out? no
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known N.A.

11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense" (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant

Local knowledge

12. Have persons been prevented using the highway? no

13. Give particulars of any obstructions none

14. Names of owners of freehold and previous owners, if known, for past 30 years
J. Brown, P. Brown - Swinburne, Major Gow, Sir Chas. Swinburn

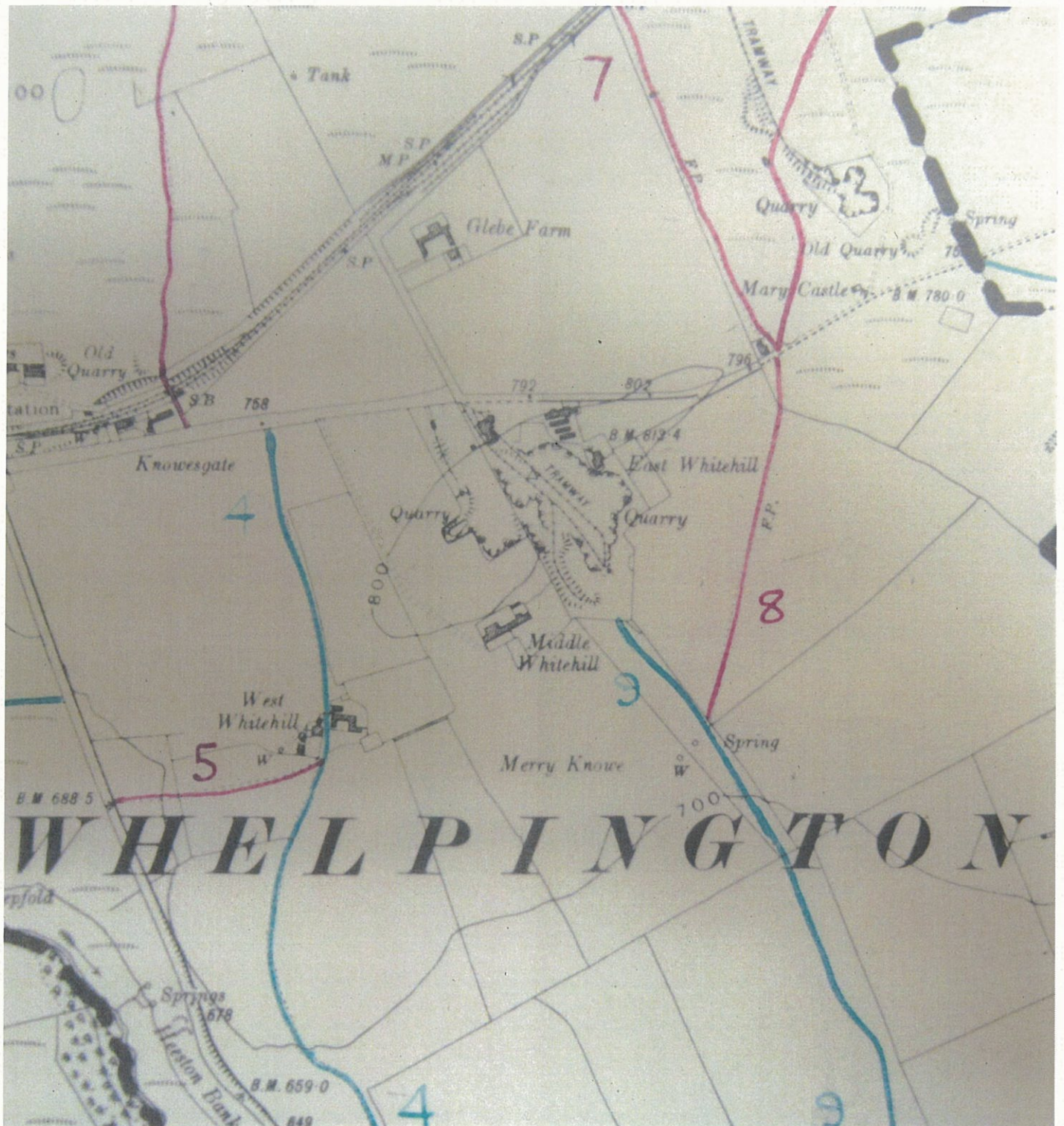
15. What maps have been consulted, and where are they deposited?
Litho Map 1844

16. What records have been consulted, and where are they deposited?
Local evidence

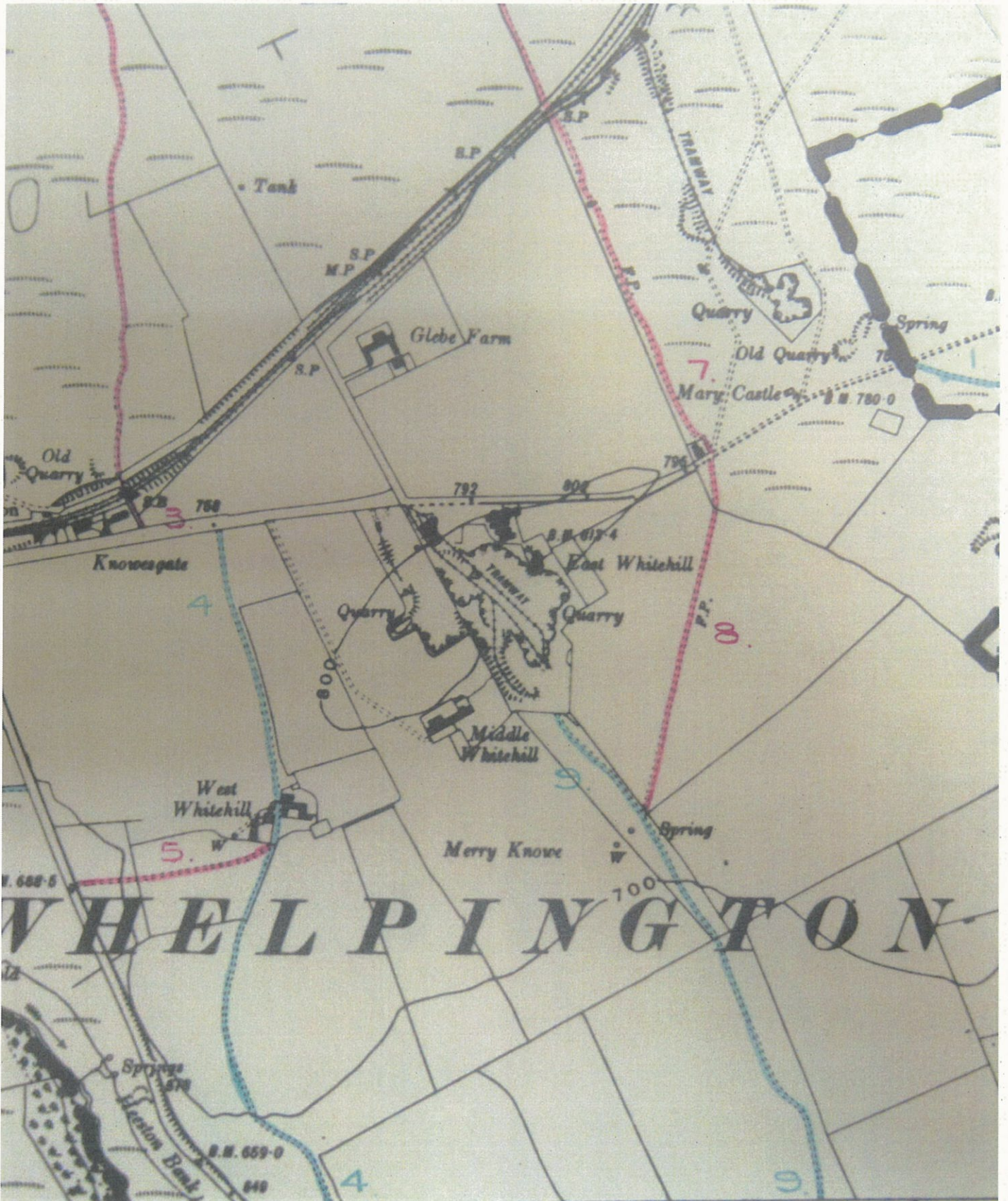
17. Any other relevant information

Surveyed by	Address	Dates of Survey
<u>J. A. Sambell</u>	<u>Kirkwhelpington</u>	<u>18 Jan '53</u>

Important:—Sheet No. of Map on which Highway is shown
215 | 16 | 67NW/3



Provisional Map





NORTHUMBERLAND COUNTY COUNCIL.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
PART IV.

PUBLIC RIGHTS OF WAY - STATEMENT.

1. Borough
Urban District
Rural District **BELLINGHAM**

2. Parish **KIRKHELPIGTON**

3. Number of Footpath on Map **91**

4. Name of Path **Quarry Path.**

5. Kind of Path (i.e. FP/BR) **B.R.**

6. General Description of Path **From the south end of the Quarry east of Middle Whitahill in a south-easterly and southerly direction by the Spring and crossing the footbridge over the Wellburn to join the Kirkhelpington Road at the east end of Kirkhelpington at Belt House.**

7. Other relevant information **Footbridge at White Ridge recorded on County Council Schedule as F.B. 5033.**

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