



Northumberland

County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL RIGHTS OF WAY SUB-COMMITTEE 25 August 2021

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

ALLEGED RESTRICTED BYWAY / PUBLIC FOOTPATH No 13 PARISH OF SNITTER

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 rights over a route from the C172 road, south-west of Flotterton Cottages, in a general north-westerly direction, to the U4025 road (alleged Byway Open to All Traffic No 12) at Plainfield.

Recommendation

It is recommended that the sub-committee agrees that:

- (i) there is sufficient evidence to indicate that public vehicular rights have been reasonably alleged to exist over the route R-T-U;**
- (ii) the Natural Environment and Rural Communities Act 2006 *would* appear to have extinguished the public's motorized vehicular rights over the R-T-U route;**
- (iii) the route be included in a future Definitive Map Modification Order as a restricted byway.**

1.0 BACKGROUND

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

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

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

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

- 1.3 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 Ever since the Definitive Map of Public Rights of Way was first published, in 1962, an anomaly has existed with Public Footpath No 1 in the Parish of Snitter. There is no recognised public right of way continuation, beyond the western end of the footpath (Point T).

3. LANDOWNER EVIDENCE

- 3.1 By note and map, received 30th April 2018, FT Walton of Flotterton responded to the consultation identifying an interest in the southernmost three quarters of the route, and stating:

“T footpath unused.
Therefore T-U makes more sense.”

4. CONSULTATION

- 4.1 In February 2018, 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, on 26th February 2018, Ms H Evans responded to the consultation on behalf of Cycling UK, stating:

“Ted has now looked at these and come back to me with the attached and also the comment that “Most are standard changes to confirm existing BOATs but a few are really good gains to the access network. No comment means we support and no comments are necessary”.

Cycling UK did not make any comments in relation to this particular proposal.

- 4.3 By email, on 8th May 2018, Ms S Rogers responded to the consultation on behalf of the British Horse Society, stating:

"Parish of Snitter
Alleged public footpath 13 (Flotterton)

"The BHS believes that the line of this alleged route has a higher status than that of footpath. On the ground, it has the appearance of an old road. The evidence so far suggests that it should be recorded as a public bridleway or a restricted byway.

"On the 1895 OS 2nd ed map a footpath labelled FP, which is recorded on the definitive map (133/001), joins the alleged route, which does not bear that the label itself. This suggests that the existing FP is joining a route of higher status. Currently the recorded footpath is a dead end.

"Some initial evidence has been found on the following:

1820 Greenwood's map of Northumberland

1895 OS 1st ed 1" from the NLS website

1899 OS 2nd ed 6" from the NLS website

1954 OS 2½" from the NLS website

"More evidence may be available when further research has been done at Woodhorn."

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

Plain Field is identified on the map, but there is no evidence of a track resembling the route of alleged Footpath No 13.

1820 Fryer's County Map

Although Plainfield is identified on the map, there is no evidence of a track resembling the route of alleged Footpath No 13.

1827 Cary's Map

Although Plainfield is identified on the map, there is no evidence of a track resembling the route of alleged Footpath No 13.

1828 Greenwood's County Map

There is clear evidence of road or track resembling the route of alleged Footpath No 13.

1866 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a predominantly unenclosed track over the route of alleged Footpath No 13. Only the short sections at the northern and southern ends appear to be enclosed.

1899 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a predominantly unenclosed track over the route of alleged Footpath No 13. Only the short sections at the northern and southern ends appear to be enclosed.

Finance Act 1910 plan

There is clear evidence of a mainly unenclosed path or track over the route of alleged Footpath No 13. Unsurprisingly, given that it is predominantly unenclosed, the route is not shown as being separated from the surrounding land by coloured boundaries. If it had been, this would have been good evidence in support of vehicular highway rights. The route does, however, appear to be labelled as a "Public awarded Bye Road" at a point roughly midway between Plainfield and Flotterton.

1925-6 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a predominantly unenclosed track over the route of alleged Footpath No 13. Only the short sections at the northern and southern ends appear to be enclosed.

1932 Rothbury RDC Handover Map

No handover map appears to have survived for the former Rothbury RDC area.

c.1938 Restriction of Ribbon Development Act 1935 Map & Schedule

No map or schedule for the Rothbury RDC area appears to have survived.

1951 Highways Map

The route of alleged Footpath No 13 is not coloured purple so as to identify it as a publicly maintainable road.

c.1952 Definitive Map – original Survey Schedules & Map

The route of alleged Footpath No 13 exists on the base map, and is coloured brown. Known public roads were generally coloured brown to indicate what the extent of the road network was considered to be. In the Schedule for existing Snitter Footpath No 1 (at that time identified for inclusion as Flotterton Footpath No 2) the right of way is identified as starting at "Flotterton" and terminating at "Plainfield".

Draft Map

The route of alleged Public Footpath No 13 exists on the base map. It is not identified for inclusion on the Definitive Map as either a public

footpath, public bridleway or Road Used as a Public Path (RUPP), although a public footpath (numbered "2") is identified terminating on the alleged footpath.

Provisional Map

As with the Draft Map, the route of alleged Public Footpath No 13 exists on the base map. It is not identified for inclusion on the Definitive Map as either a public footpath, public bridleway or Road Used as a Public Path (RUPP), although a public footpath (numbered "2") is identified terminating on the alleged footpath.

1957 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a predominantly unenclosed path / track over the route of alleged Footpath No 13.

1962 Original Definitive Map

The route of alleged Footpath No 13 exists on the base map, but it is not identified as a public footpath, public bridleway or Road Used as a Public Path (RUPP).

1962 Original Definitive Statements

The original Definitive Statement for the public right of way intersecting with the alleged byway open to all traffic states:

Public Footpath No 1

"From the Harbottle – Thropton Road at Flotterton in a north-westerly direction to join the Flotterton – Plainfield Road south-east of Fox Covert."

1964 Highways Map

The route of alleged Footpath No 13 is not coloured purple so as to identify it as a publicly maintainable road.

1979 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of a predominantly unenclosed track over the route of alleged Footpath No 13.

2005 Ordnance Survey Explorer OL16 Map: Scale 1:25,000

There is clear evidence of a path / track over the route of alleged Footpath No 13, although it is not depicted as a public right of way. A public footpath, proceeding north-westerly from Flotterton, is, however, depicted and this footpath is shown terminating on the alleged footpath route.

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

The route of the alleged footpath is not identified as publicly maintainable highway.

6. SITE INVESTIGATION

- 6.1 From Point U on the C172 road, 130 metres south-west of Flotterton Cottages, a 3 to 3.5 metre wide stone / rough tarmac track in a 6 metre wide corridor proceeds in a north-westerly direction for 70 metres. Thereafter, an unenclosed 3 metre wide stone / earth / grass track continues in a north-westerly direction around the edge of the field for 325 metres. Here, a 3 metre wide stone / earth track in a 7.5 to 8 metre wide corridor proceeds in a northerly direction for a distance of 50 metres, then continues within a 4.5 to 5 metre wide headland for a further 60 metres, to a junction with existing Footpath No 1, at Point T. The 3 metre wide earth / stone track continues in a 4.5 to 5 metre wide headland for an additional 60 metres. Thereafter, a 2 metre wide grass path in the 4 to 4.5 metre wide headland continues in a northerly direction for a further 200 metres, then a 1 metre wide earth / grass path in a 4.5 to 6 metre headland proceeds in a westerly direction for a distance of 260 metres to the corner of the field. A 2 metre wide, unenclosed, stone / grass track continues westerly for a further 90 metres. There was no defined path as the alleged footpath proceeded northwards for 75 metres through an area of pasture. Beyond a field gate, a 2 metre wide grass then stone / grass track continues northerly for 55 metres. Thereafter, a 4.5 to 6.4 metre wide enclosed stone track proceeds northerly for 45 metres, then a 4.5 to 5.5 metre wide stone / tarmac road in a 6 to 8.2 metre wide corridor continues northerly for 75 metres to join U4025 / alleged Byway No 12, at Point R, 85 metres north of Plainfield.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In July 2021, a draft copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments. No additional comments have been received.

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 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 Footpath No 13 is not identified on the County Council's current List of Streets as being a publicly maintainable highway of any description. The route was not identified on the Council's 1951 and 1964 Highways Maps and does not appear to be included in the 1958, 1964 and 1974 County Road Schedules. No 1932 Handover Maps or Maps and Schedules produced under the Restriction of Ribbon Development Act 1935 appear to have survived for the Rothbury Rural District area.
- 8.5 The route has been consistently identified as a mainly unenclosed road / track on Ordnance Survey maps since 1865. The route would not appear to be shown on Armstrong's County Map of 1769, Fryer's County Map of 1820, or on Cary's Map of 1827, but is depicted on Greenwood's County Map of 1828. The route appears to have been labelled as a "Public Awarded Bye Road" on the plans produced in association with the Finance Act 1910.
- 8.6 When the original Definitive Map was first being prepared, in the 1950s, this was a three stage process. The first formal stage was the "Draft Map". This was publicly advertised and there was a period of time in which anyone could make objections or representations in relation to the inclusion, exclusion, status or alignment of public rights of way. After objections / representations in relation to the Draft Map were resolved, a "Provisional Map" was then published. Owners and occupiers of the land had a second opportunity to make objections to the inclusion, status or alignment of the routes shown. Once this final round of objections and representations were resolved, the resulting Map was published as the "Definitive Map". But before the Draft Map was published, an initial survey was carried out to identify paths which ought to be included in the process. These paths were marked up on "Survey Maps". The Survey Maps appear to have had roads pre-coloured in brown before potential rights of way were added.
- 8.7 The route of alleged Public Footpath No 13 was coloured in brown on the Survey Map for this area. Firstly, this indicates that whoever was responsible for marking up these survey plans, during the early 1950s, believed that this route to be a public road. Secondly, the fact that the route was coloured brown (to identify it as a public road) would almost certainly have discouraged (though it did not entirely prevent) the route from also being identified as a public footpath, public bridleway or road used as a public path. On the Draft Map, existing Footpath No 2 is shown terminating on the alleged Footpath No 13 route. There is no apparent reason why members of the public might want to travel along Footpath No 2 if, having reached the end of it, all they can do is turn around and go back the way they have come. There is no well, no view point, no other place of public resort, at its western end. It seems that the public footpath was probably identified as terminating here because it was assumed that the continuation (i.e. the route R-T-U) was a public road (those rights being recognised elsewhere). There do not appear to have been any representations at the Draft Map or Provisional Map stages, from anyone concerned that a rather pointless cul-de-sac footpath was being identified, despite the fact that the R-T-U route was not, in fact, apparently recorded elsewhere. When the Definitive Map process was completed, in 1962, the Definitive Statement for Snitter Footpath No 1 identified the route as starting on the Harbottle – Thropton Road and ending on the Flotterton – Plainfield Road.

- 8.8 In its February 2018 consultation schedule, the Council identified this route as an alleged public footpath. This was on the basis that (as a bare minimum) the public footpath rights which are present along existing Public Footpath No 1, most likely extend along the R-T-U route, too. In its response to that consultation, the British Horse Society has argued that the R-T-U route is more than just a public footpath, and the historical documentary evidence currently available is considered to support that view.
- 8.9 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of vehicular rights of way based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930.
- 8.10 Of the saving provisions above, the usual one (b), will not apply to this route (it was not on the List of Streets on 2 May 2006) so it is necessary to see whether or not one of the other saving provisions might apply.
- 8.11 Under section 67(2)(c) of NERCA 2006, the public's motor vehicular rights would not be extinguished if those rights had been created on terms that expressly provided for a right of way for mechanically propelled vehicles. There is no evidence of any express dedication for this route – so this provision is unlikely to apply.
- 8.12 Under section 67(2)(a) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way whose main lawful use by the public during the period of 5 years between 2nd May 2001 and 2nd May 2006 was with mechanically propelled vehicles. The difficulty here is that the Council has no real evidence regarding the balance of public user during this 5 year period. The road is not a through route for vehicles, whilst it is for horse riders, cyclists and pedestrians. What vehicular use it does get is likely to be from the associated property holders themselves, their visitors and invitees; all people who it could be argued have a private right or permission to use the route (i.e. who might not qualify as being "the public"). For these reasons, it may be difficult to demonstrate that public motor vehicular use outweighed pedestrian (and equestrian and cycle use).
- 8.13 Under section 67(2)(e) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive 'off-road'. There is no evidence of long-standing public motor vehicular use before 1930 in this instance.
- 8.14 Finally, under section 67(2)(d) of NERCA 2006, the public's motor vehicular rights would not be extinguished if they are over a way that had been created by construction of a road intended to be used by MPVs. This, supported by relevant entries in the Council Bridges and Roads Committee minutes and highway dedication documents signed by the landowner, is what occurred at

Kilham and elsewhere. Officers aren't aware of any supporting paperwork to suggest that this occurred in relation to the R-T-U route.

- 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. It is only the northern and southern ends of this route which are constrained by boundaries. It is proposed to identify the southernmost 70 metres with a width of 6 metres, and the northernmost 120 metres with a width of 4.5 to 6.4 metres, as identified in paragraph 6.1 above. It is proposed to record the remainder of the route with the Council's standard default width of 5 metres (i.e. wide enough for two vehicles, travelling in opposite directions, to pass each other).

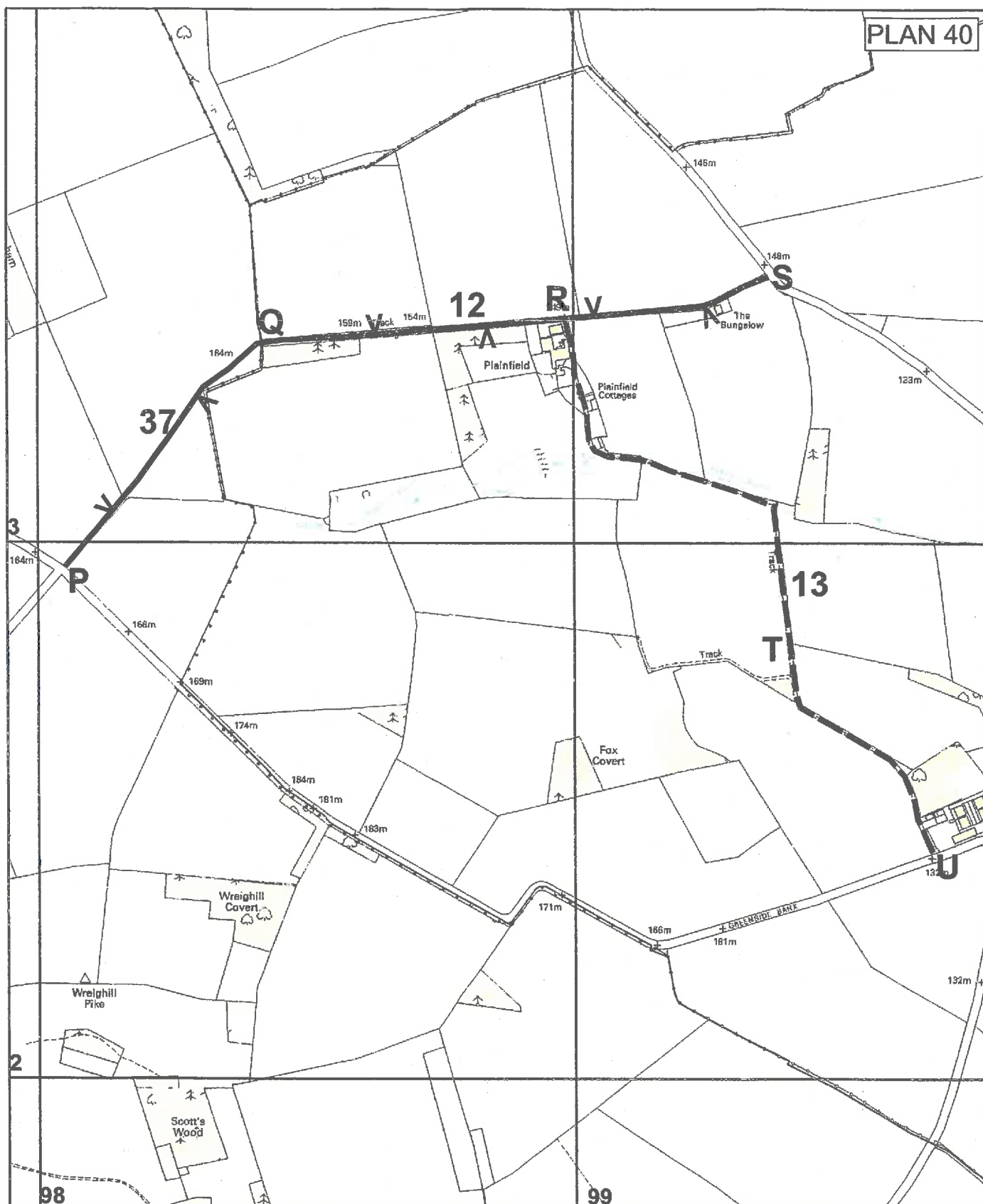
9. CONCLUSION

- 9.1 In light of the documentary evidence available, it appears that public vehicular rights have been reasonably alleged to exist over the route of alleged Public Footpath No 13.
- 9.2 The Natural Environment and Rural Communities Act 2006 would, however, appear to have extinguished the public's motor vehicular rights over the R-T-U route. It would be appropriate to recognise the public's remaining rights over this route by recording them on the Definitive Map as a restricted byway.

BACKGROUND PAPERS

Local Services Group File: A/33/13z

Report Author Alex Bell – Definitive Map Officer
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Wildlife and Countryside Act 1981 Public Rights of Way



Alleged Byway Open to All Traffic



Alleged Public Footpath

Former District(s)

Alnwick

Parish(es)

Hepple/Snitter

Scale

1:10,000

Def. Map No.

92

O.S. Map

NT 90 SE

Date

October 2016

Armstrong's County Map 1769



Fryer's County Map
1820



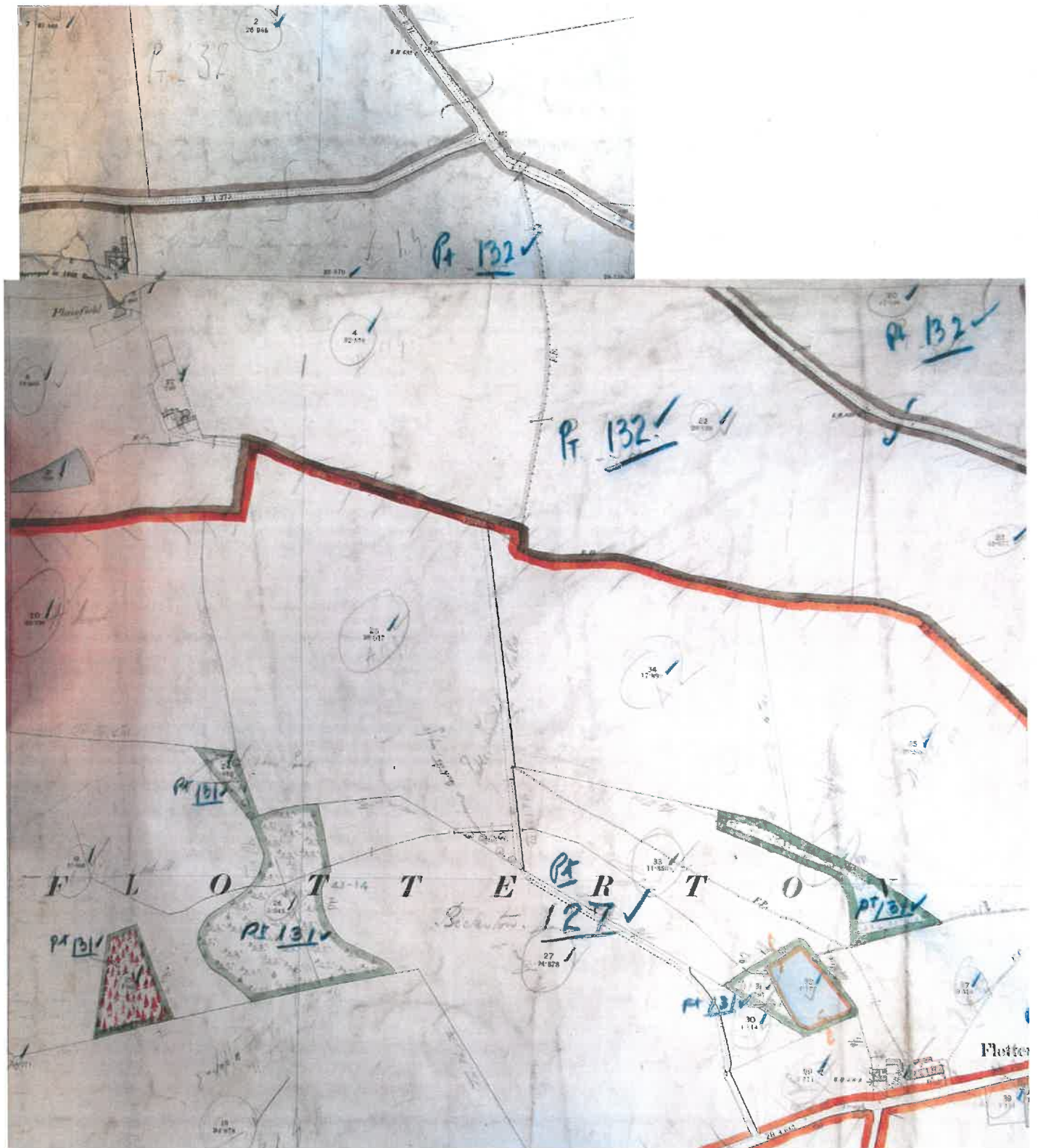


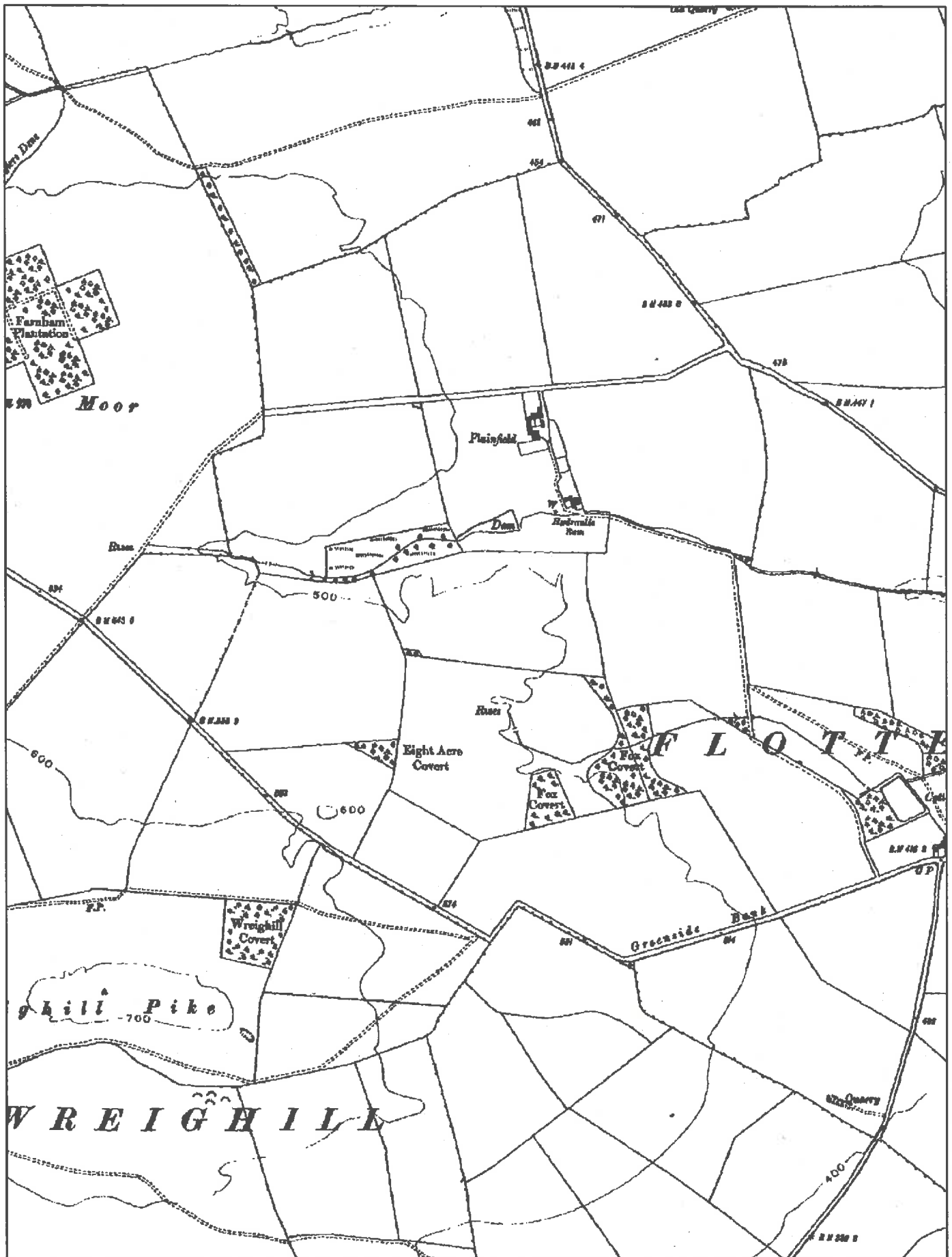
Greenwood's County Map 1828





Finance Act 1910 Plan





[illegible]



NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
SCHEDULE ACCOMPANYING SURVEY MAPS.Parish of FLOTTERTON in the Rural District of
ROTHBURYBorough }
Urban District } of _____
(Delete whichever is inapplicable).

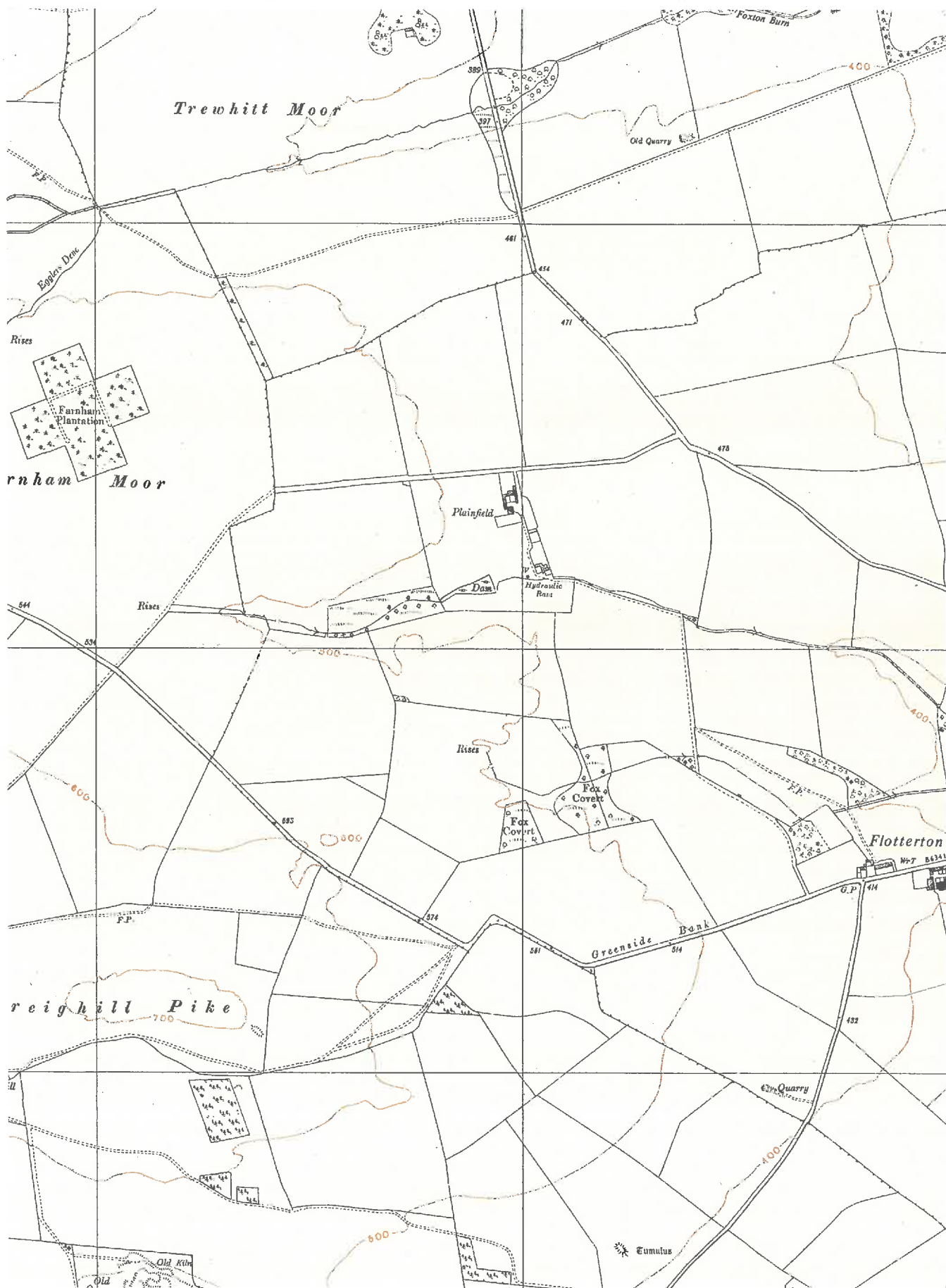
1. Number of highway on Map 2.
2. Kind of Path (i.e., F.P., B.R.) F2.
3. Starts at FLOTTERTON to PLAIN FIELD
4. Name of Path (if any) _____
5. Is the Path well defined? No
6. Is the Path metalled? If so, define length _____
7. If its width can be stated, insert here _____
8. What is the present condition of the path, stiles, etc? ROUGH GRASS
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 NONE
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
EVIDENCE OF OLD INHABITANT
12. Have persons been prevented using the highway? No
13. Give particulars of any obstructions _____
14. Names of owners of freehold and previous owners, if known, for past 30 years
MA F WALTON FLOTTERTON
FORMAN 10 HILLIPS
15. What maps have been consulted, and where are they deposited? _____
16. What records have been consulted, and where are they deposited? _____
17. Any other relevant information _____

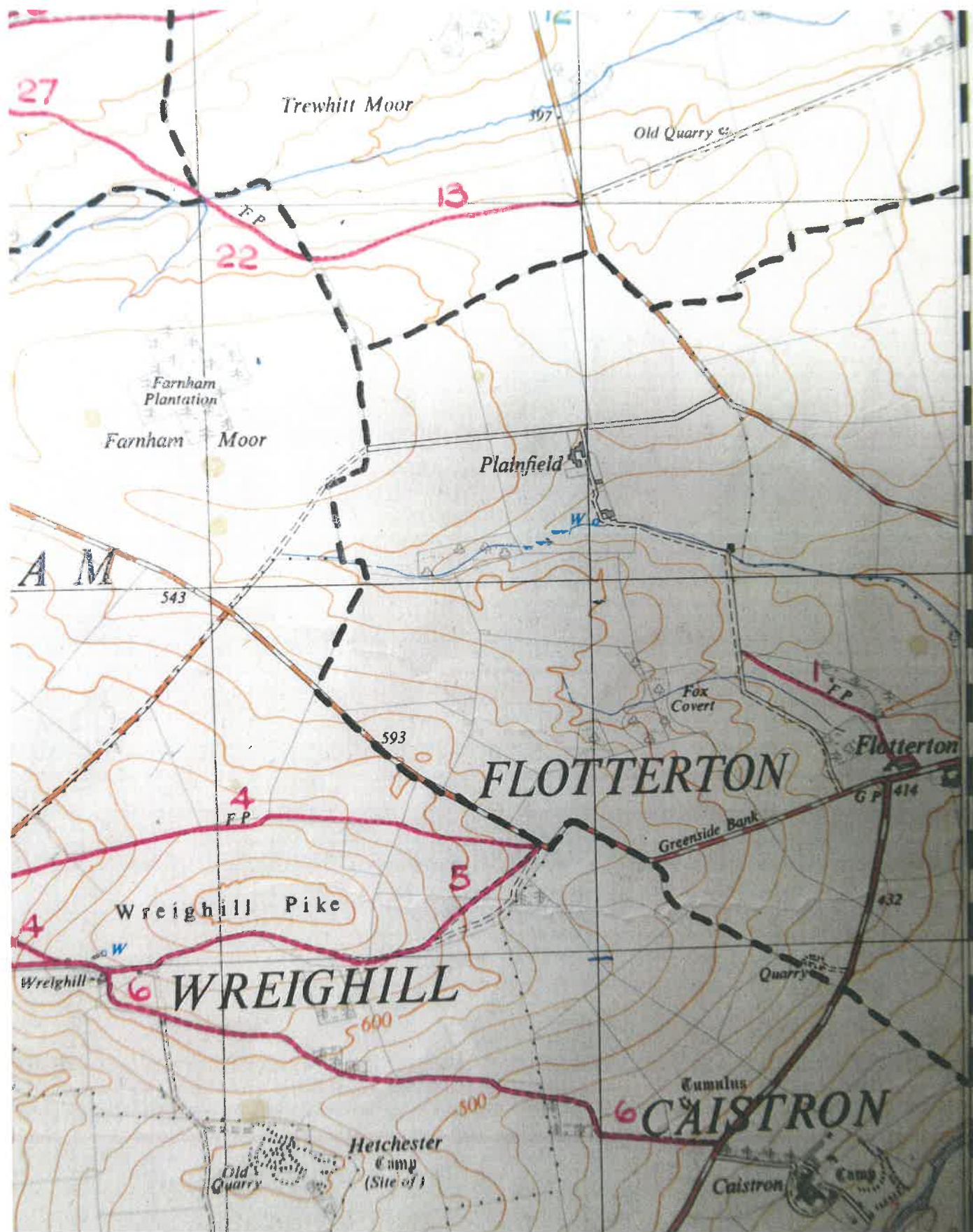
Surveyed by	Address	Dates of Survey
<u>E.W. Brown</u>	<u>6 Percy Terrace</u> <u>Alnwick</u>	<u>24/7/54</u>

Important:—Sheet No. of Map on which
Highway is shown
OST 914
N. XL1 S.W.









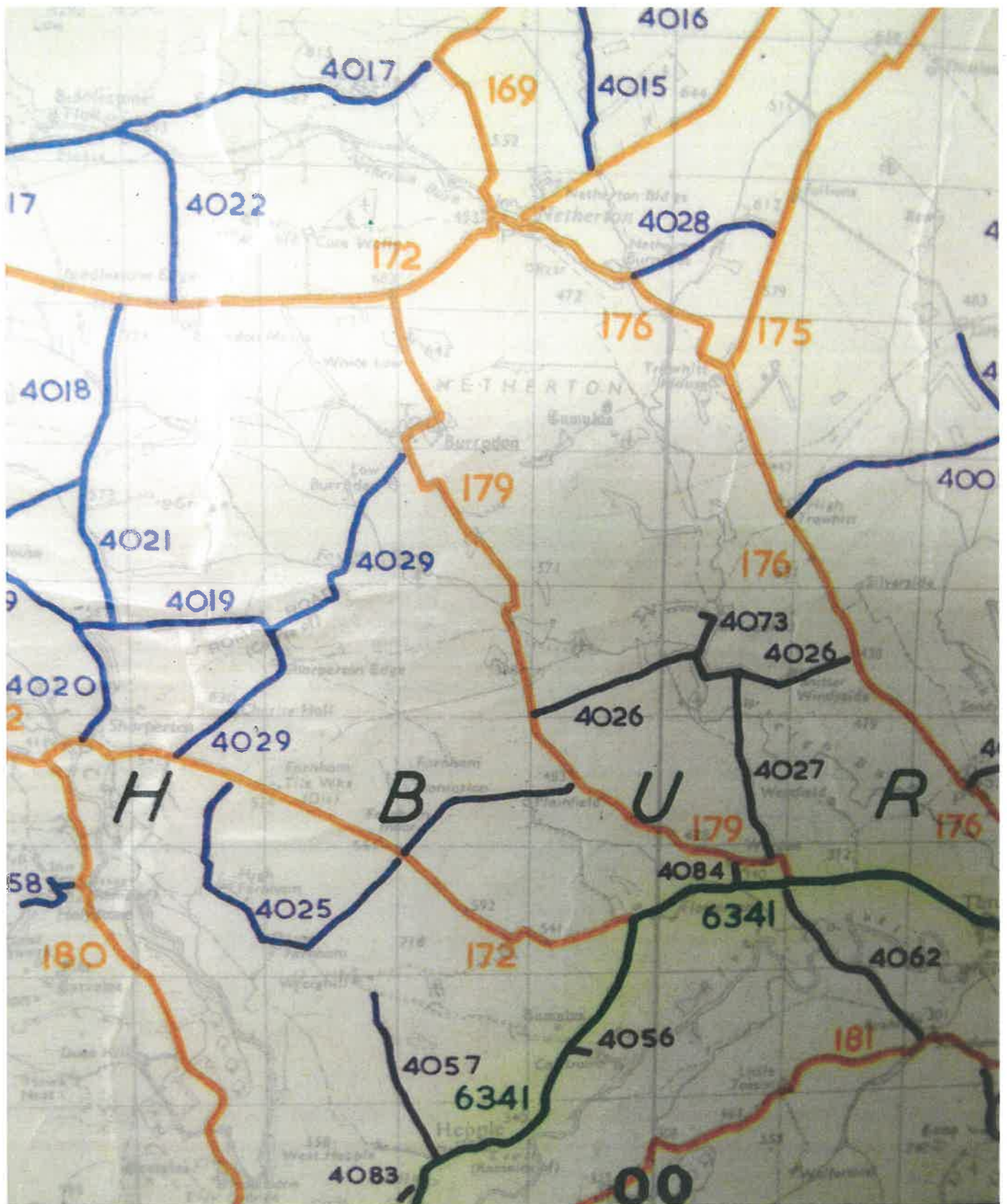
NORTHUMBERLAND COUNTY COUNCIL.

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

PUBLIC RIGHTS OF WAY - STATEMENT.

1. ~~Borough~~
~~Urban district~~
Rural district ROTHBURY
2. Parish SNITTER
3. Number of Footpath on Map 1
4. Name of Path
5. Kind of Path (i.e. (FP/BR) F.P. (2'0" wide)
6. General Description of Path From the Harbottle - Thropton Road at
Flotterton in a north-westerly direction to join the Flotterton -
Plainfield Road south-east of Fox Covert.
.....
.....
.....
7. Other relevant information
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.....
.....
.....
.....

Extract from the Council's 1964 Highways Map



NETHERTON CP
Ordnance Survey Explorer Map OL 16
1:25,000
(2005)



HARBOTTLE CP

HEPPLE CP

ALNWICK DISTRICT
NORTHUMBERLAND

