



Northumberland

County Council

NORTH NORTHUMBERLAND LOCAL AREA COUNCIL RIGHTS OF WAY SUB-COMMITTEE

26 October 2021

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

ALLEGED PUBLIC BYWAY OPEN TO ALL TRAFFIC No 13 PARISH OF KILHAM

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 vehicular rights over parts of Public Footpaths Nos 5 and 3, between the existing southern end of Byway Open to All Traffic No 13, south-west of Thompson's Walls, and Elsdonburn Shank.

Recommendation

It is recommended that the sub-committee agrees that:

- (i) there is sufficient evidence to show, on a balance of probabilities, that public vehicular rights exist over the A-B-X-Y route, but not the Y-C section;**
- (ii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the A-B-X route;**
- (iii) the Natural Environment and Rural Communities Act 2006 would appear to have extinguished the public's motorized vehicular rights over the X-Y route;**
- (iv) the A-B-X route be included in a future Definitive Map Modification Order as a byway open to all traffic;**
- (v) the X-Y 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 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 the late 1980s the County Council carried out consultations regarding proposals to add a number of unsealed tracks in the north of the County to the Definitive Map as byways open to all traffic on the basis that the routes were included in the County Council's "List of Streets" as unclassified County roads (UCR). The rationale for doing so was that it would not be obvious to members of the public (particularly horse riders, walkers and cyclists) that they were legally entitled to use routes such as these (which were considered to have vehicular status), because their physical appearance might suggest otherwise.
- 2.2 The view, held by those officers of the Council responsible for maintaining the 'List of Streets' for the County of Northumberland was (and still is) that only public roads (not public bridleways or public footpaths) were shown on this List. The only exceptions to this are the surfaced paths and alleyways providing pedestrian links between roads, in urban areas. Thus, tracks in rural settings, which have their own unique reference numbers (e.g. the 'U1017' road), were considered to be all-purpose public highways maintainable at public expense.
- 2.3 Shortly afterwards, the processing of applications from third parties seeking to record public footpath or public bridleway rights was afforded a higher priority. Later on, the process of recording UCRs as byways open to all traffic was effectively suspended because the Ordnance Survey indicated that they would be showing such routes on their published maps as being an "Other route with public access". Although, on that basis, members of the public would still be unclear as to precisely what rights they had over routes identified in this fashion.
- 2.4 The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis. In view of this advice, it is considered prudent to evaluate the status of the U1017

unclassified County road based upon more than simply its inclusion in the List of Streets.

- 2.5 This route was originally considered by the Council's Rights of Way Committee at its meeting in July 2012. At that time, the 1968 highway dedication by the College Valley Estate was not available – possibly it had been mis-filed – and only the contemporary dedication for the section of road between Longknowe and Point A was supplied to me, and presented to the Committee. The Committee approved the officer recommendation that, on a balance of probabilities, public vehicular rights had been shown to exist over the Longknowe to Point A section, and that they had not been shown to exist over the current A-B-X-Y-C route. The Longknowe – Point A section was included in Definitive Map Modification Order (No 23) 2012. This Order attracted a number of objections resulting in it being referred to the Secretary of State for determination. Following a Public Local Inquiry, the Order was confirmed, as made, by an Inspector appointed by the Secretary of State. Now that the College Valley 1968 highway dedication has come to light, it is considered appropriate to re-examine the status of the A-B-X-Y-C route.

3. LANDOWNER EVIDENCE

- 3.1 By letter, dated 30 March 2018, S & J Court of Newcastle upon Tyne responded to the consultation stating:

"Thank you for your letter dated 9th February 2018 relating to the Wildlife and Countryside Act 1981 and the Review of the Definitive Map and Statement of Public Rights of Way.

Parish of Kilham Byway Open to All Traffic No 13.

"When we purchased Elsdonburn Shank (EBS) in 1988 we understood from College Valley Estates that the road right up to the house was adopted by NCC and there were public rights of way over it (see Appendix 1, Fig 3 and Fig 4 point B).

"In relation to the period May 2001 – May 2006, the evidence we gave about use up the road to EBS from Longknowe via Thompson's Walls submitted to NCC and the Planning Inspector in 2014 (see Appendices 1-4 attached) is relevant to your current enquiry.

"We stated that over that period the use of this road was predominantly by motor vehicles, that horse riders used the fields rather than the road and that walkers tended to walk across rather than up the road (see appendix 1). Motor vehicles were driven to EBS to start walks in the hills and on the common access land, to picnic, to look at the striking view and to watch the hunt. This was and is particularly important to those who are elderly, have young children or are disabled as they can access the hills and views without a steep up hill walk.

"Most vehicular use during that period was supported by statements of others sent to NCC during the previous consultation about the route from Longknowe up towards EBS and in responses to the Planning Inspector prior to the Public Enquiry. Mrs Riddell's statement indicates that motor vehicular access predominated over walkers and horse riders (Appendix 2) and the letter from the Hang Glider Association also confirms the use of the route by motor vehicles right up to EBS (Appendices 3).

"We also presented a list of local walking and cycling guides that did not direct walkers and cyclists up the road to EBS (Appendix 4), which indicates that the route to EBS was not, and is not, one of the established walks of the area.

"In relation to the past 5 years

"The Waugh family (Thompsons Walls Limited) purchased Thompsons Walls in 2009 and at that time we believe they understood that the route from Longknowe through Thompson's Walls to EBS was a private road. Since that time and up to the final decision of the Public Enquiry motor vehicles, with the exception of those having business at EBS, were actively discouraged from using the route. This inevitably led to a reduction in motor vehicular traffic by the public at least up until the Inspectors decision.

However, hunt followers in cars and on quad bikes, who can be numerous, do drive up the route in question parking in our paddock (Appendix 1 Fig 1 photo taken in 2014). Other cars are now also driving up to EBS to park. As are we do not live permanently at EBS it is not possible for us to accurately estimate the number of cars vs walkers or riders using the route.

"We support the route to EBS being open to public vehicular use.

"This is for two main reasons. Firstly this allows people, particularly those less physically able, to access the top of the Kilham Valley. This is especially important as access to the neighbouring College Valley is restricted. Secondly we were given to understand from College Valley Estates when we bought EBS that the route was adopted by NCC and in respect to the part of the route which is enclosed within our property the conveyance was granted subject to "all rights of the public and the Highway Authority in respect of the road."

"We return Plan 64 with indication of who owns which sections of land adjacent to the road / path in question."

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 22nd April 2018, Ms S Rogers responded to the consultation on behalf of the British Horse Society, stating:

"Kilham Parish

"Alleged byway open to all traffic 13 (Elsdonburnshank)

"This is a well defined track extending the line of an existing BOAT along the line of an existing unclassified road. It is also supported by the highway dedication of a past landowner as well as 19th century maps. This would support the case for it to be added to the definitive map."

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 road or track resembling the route of either existing Byway No 13 or its alleged extension.

1820 Fryer's County Map

There is no evidence of a road or track resembling the route of either existing Byway No 13 or its alleged extension.

1827 Cary's Map

There is no evidence of a road or track resembling the route of either existing Byway No 13 or its alleged extension.

1828 Greenwood's County Map

There is evidence of a road / track resembling the route of both existing Byway No 13 and its alleged extension.

c.1864 Ordnance Survey Map: Scale 1:2500

There is clear evidence of an unenclosed road / track over the route of both existing Byway No 13 and its alleged extension. The track passes through land parcel numbers 14 and 15. In the accompanying Book of Reference, in the Township of Thompson's Walls, parcel number 14 is described as "Arable & road" and number 15 as "House, garden & yards".

1866 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed road / track over the route of both existing Byway No 13 and its alleged extension.

1899 Ordnance Survey Map: Scale 1:10,560

The map is rather poor quality. Nevertheless, there is clear evidence of an unenclosed road / track over the route of both existing Byway No 13 and its alleged extension.

1924-5 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed road / track over the route of both existing Byway No 13 and its alleged extension.

1932 Glendale RDC Handover Map

On the handover map, a publicly maintainable highway, proceeding south-westwards from Kilham, terminates at Longknowe (north-east of Thompson's Walls). The proposed A-B-X-Y-C extension to Byway No 13 is not identified as publicly maintainable highway.

1939 Restriction of Ribbon Development Act 1935 Map & Schedule

No map for the Glendale RDC area appears to have survived. In the Schedule, the description for Road No 30 states:

30. Road from the Akeld – Kilham road B6351 at Kilham south-westwards to Longknowe.

1951 Highways Map

Neither the route of existing Byway Open to All Traffic No 13, nor its alleged (A-B-C) extension are coloured purple so as to identify them as publicly maintainable road.

c.1952 Definitive Map – original Survey Map

The route of the alleged Byway Open to All Traffic No 13 extension exists on the base map, but it is not coloured brown (known public roads were generally coloured brown to indicate what the extent of the road network was considered to be) and, apart from the short B-X-Y-C section at Elsdonburn Shank, wasn't identified as a public right of way of any description.

Draft Map

The route of the alleged Byway Open to All Traffic No 13 extension exists on the base map but, apart from the short B-X-Y-C section at Elsdonburn Shank, 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).

Provisional Map

The route of the alleged Byway Open to All Traffic No 13 extension exists on the base map and, now, all of it is identified as public footpath.

1957-8 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of an unenclosed road / track closely resembling the route of both existing Byway No 13 and the alleged extension.

1958 County Road Schedule

In this Schedule, the entry for the U1017 road states:

“U1017 Longknowe Road
From B6351 at Kilham to Longknowe.”

The length of the U1017 road is identified as 1.53 miles.

1959 Bridges and Roads Committee minutes

The following extract from the County Council's Bridges and Roads Committee (15 June 1959) minutes is relatively self explanatory:

“Glendale Rural District – College Valley Estate Roads.
The College Valley Estate Limited have applied for the adoption of certain roads and the Sub-Committee have met Sir Alfred Goodson and his agent and inspected the roads.

“The roads concerned are:-

(1) The continuation of the existing County road from Kilham to Longknowe for a distance of approximately 1¼ miles serving two cottages at Thompson's Walls and one house and buildings at Elsdonburn Shank.

(2)

“All these roads are scheduled as rights of way. The continued occupation of these isolated dwellings enables wide areas of land to be used for food production and the sub-committee recommend that, subject to the roads being made up to a satisfactory standard, they be adopted.”

The minutes show that the Decision of the Committee was:

“That subject to the roads being completed to the satisfaction of the County Surveyor, they be taken over as highways repairable by the inhabitants at large and that the necessary notices be signed by the Clerk of the Council and fixed up therein pursuant to Section 19 of the Private Street Works Act, 1892.”

1962 Original Definitive Map

The route of the alleged Byway No 13 extension exists on the base map. The A-B section is identified as part of Public Footpath No 5 and the B-X-Y-C section is identified as part of Public Footpath No 3.

First Review Definitive Map

As with the original Definitive Map, the route of the alleged Byway No 13 extension exists on the base map. The A-B section is identified as

part of Public Footpath No 5 and the B-X-Y-C section is identified as part of Public Footpath No 3.

1964 Highways Map

As with the 1951 Highways map, neither the route of existing Byway Open to All Traffic No 13, nor its alleged (A-B-C) extension are coloured purple so as to identify them as publicly maintainable road.

1964 County Road Schedule

In this Schedule, the entry for the U1017 road states:

“U1017 Longknowe Road
From B6351 at Kilham south-westwards to Longknowe.”

The length of the U1017 road is identified as 1.53 miles.

1968 Highway dedication

The College Valley Estates Limited appears to have dedicated a public highway with a carriageway 9-15 feet wide and with verges 6 feet wide over the A-B-X-Y part of the alleged byway.

1974 County Road Schedule

In this Schedule, the entry for the U1017 road states:

“U1017 Kilham – Elsdonburn Shank
From B6351 at Kilham (NT885326) south-westwards via
Longknowe, Thompson’s Walls to Elsdonburn Shank
(NT863293).”

The length of the U1017 road is identified as 2.67 miles.

1976-82 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of an unenclosed road / track over the route of the alleged extension to existing Byway No 13.

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

There is clear evidence of a road / track over the route of the alleged extension to Byway No 13. Both the route of existing Byway No 13 and also the route of the alleged extension are shown as public footpath (as per the Definitive Map, at that time). They are not marked with green dots, signifying that they are an “Other route with public access” (i.e. an ORPA).

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

The route of the alleged byway (the southern end of the U1017) is clearly identified as publicly maintainable highway.

Most of the historical evidence contained in this current report was previously considered by the committee in 2012. The significant difference between the section that was progressed then (i.e. existing Byway No 13), and the section being reconsidered now, was that the former was supported by Sir Alfred Goodson's 1968 highway dedication, whilst the latter did not have the corresponding College Valley Estate 1968 highway dedication behind it.

2015 Inspector's Decision regarding DMMO (No 23) 2012

In paragraphs 14 - 24 of her decision letter, the Inspector addresses the applicability of the various saving provisions contained within section 67 of the Natural Environment and Rural Communities Act 2006, including an explanation of why she did not consider the 1968 highway dedication document to satisfy the requirement of s67(2)(c). In paragraphs 48 – 57 of the decision letter, there is an explanation of why the Inspector believes the saving provision contained within s67(2)(d) does apply. These aspects are discussed in section 8 of this report.

6. SITE INVESTIGATION

- 6.1 From Point A, at the existing southern end of existing Byway Open to All Traffic No 13, 775 metres south-west of Thompson's Walls, at a field gate, with a cattle grid behind it, a 2 to 2.3 metre wide tarmac road, situated 2 to 2.75 metres east of the boundary wall, proceeds in a southerly direction along the route of existing Public Footpath No 5, for 305 metres to another field gate. Thereafter, a 2.1 to 2.3 metre wide tarmac road continues in a south-westerly direction, still along the route of FP No 5 for a further 115 metres to Elsdonburn Shank (Point B). Then a 2.7 metre wide tarmac track proceeds in a westerly direction for 15 metres. Finally, a 4 to 5 metre wide grass track continues westerly for 15 metres to a point where it comes level with the start of the north facing gable end of that property. This is where, according to the 1968 College Valley highway dedication, the 'new' road appears to have ended, though the grassy track continues westerly for another 5 metres or so to a field gate and the Council's List of Streets, as at 2 May 2006, appears to show the route extending at least 10 metres west of that gate.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1 In October 2021, a draft copy of the report was circulated to those landowners / occupiers who responded to the initial consultation for their comments.

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 [53(3)(c)(ii)].

- 8.2 When considering an application / proposal for a modification order, Section 32 of the Highways Act 1980 provides for "any map, plan or history of the locality or other relevant document" to be tendered in evidence and such weight to be given to it as considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.
- 8.3 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 the alleged Byway Open to All Traffic No 13 extension is identified on the County Council's current List of Streets as being part of the U1017 road. The route was not identified on the Council's 1951 and 1964 Highways Maps nor on the 1958 and 1964 County Road Schedules. It was identified on the 1974 County Road Schedule. The route was not shown on the 1932 Handover Map nor was it identified in the Schedule produced under the Restriction of Ribbon Development Act 1935.
- 8.5 The route has been consistently identified as an unenclosed path / track on Ordnance Survey maps since c.1864. The route is not shown on Armstrong's or Fryer's County Maps of 1769 and 1820, or on Cary's Map of 1827, but would appear to be shown on Greenwood's County Map of 1828. On the plan produced in association with the Finance Act on 1910, the A-B-X-Y-C route was neither shown as being separated from the surrounding land by coloured boundaries (unsurprising, since the route is not an enclosed one) nor otherwise annotated to indicate public vehicular status.
- 8.6 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown – just that they could be. It must, therefore, be entirely proper to consider each UCR on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by other means. In Northumberland there is no evidence to suggest that public footpaths and public bridleways were deliberately shown on the 1958, 1964 or 1974 County Road Schedules (forerunners of the modern day List of Streets). The fact that a route is shown on the last of these three schedules must, therefore, be evidence of some weight that public vehicular rights exist.
- 8.7 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.
- 8.9 As indicated above, neither the route of existing Byway No 13 nor the alleged

A-B-X-Y-C extension were identified as publicly maintainable highway in the Glendale Rural District Handover Map of 1932, or in the Restriction of Ribbon Development Act 1935 Schedule produced in 1938, or in the early County Highway maps and schedules. It is only after the 1968 highway dedications that the route is identified as a highway maintainable at public expense (with the 1974 County Road Schedule amended to take account of this). It is reasonably clear that it was these dedications which prompted that change.

8.10 Unfortunately, in the 1968 College Valley Estate dedication document it does not specify precisely what public highway rights were being dedicated. Those highway rights need not necessarily be vehicular ones. Public footpaths and public bridleways are also "highways". There are several reasons why it could reasonably be argued that the landowner's actual intention was to dedicate a public vehicular highway:

- Firstly, persons unfamiliar with highway law are unlikely to be aware that public footpaths and bridleways are public highways; the term "highway" – in everyday usage – is generally used to refer to a vehicular route.
- Secondly, given the width of the highway being dedicated (between 4.57 and 6.4 metres), it seems unlikely that the landowner was dedicating something less than a public vehicular right of way.
- Thirdly, the dedication plan specifically makes mention of a carriageway with verges. Carriageway certainly implies a right for passage with vehicles.
- Fourthly, since the route was already a recognized, publicly maintainable public footpath, there would be no need for the landowners to dedicate public footpath rights over this section and since there were no recognized bridleway routes connecting with it, creating a cul-de-sac public bridleway seems very unlikely.
- Fifthly, the main driver for the dedications by Sir Alfred Goodson and College Valley Estates appears to have been a desire to improve the standard of vehicular access up the valley, for residents. This could only be achieved if it was a vehicular highway that was being dedicated.

8.11 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Under section 67 of the Act, any existing, but unrecorded, public rights of way for mechanically propelled vehicles were extinguished unless one of the 'saving' provisions applied. In brief, these saving provisions were: (a) if the main lawful public use between 2001 and 2006 was with motor vehicles; (b) if the route was on the List of Streets (on 2 May 2006) and not also on the Definitive Map as something less than a byway open to all traffic; (c) the route was legally created expressly for motor vehicular use; (d) the route was a road deliberately constructed for public motor vehicular use; or (e) the vehicular highway came about as a result of unchallenged motor vehicular use before December 1930. A not insignificant amount of time was devoted to this topic when DMMO (No 23) 2012 was being determined, in relation to (what is now) existing Byway No 13, and the Inspector's decision letter in relation to this Order has often been referred to in subsequent committee reports.

8.12 Of the saving provisions above, the main one (b), will not apply to this section of the U1017 road. Where a route is shown on the Definitive Map as a footpath, bridleway or restricted byway, then the fact that it is shown on the

List of Streets will not be sufficient to prevent the public's motor vehicular rights from being extinguished.

- 8.13 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. Although it is obvious what the College Valley Estate intended, when they made their 1968 highway dedication, as discussed in paragraph 8.10, above, this dedication did not explicitly dedicate a vehicular public right of way.
- 8.14 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 clear evidence regarding the balance of public user during this 5 year period. Although the U1017 is a tarmac road, it is a vehicular cul-de-sac. It is clearly used reasonably often by the landowners, but it seems doubtful that this use constitutes "use by the public".
- 8.15 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.
- 8.16 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 was the saving provision that the Inspector, determining the existing Byway No 13 definitive map modification order, considered to have saved public motor vehicular rights in that instance, and which would seem to have very direct relevance to the A-B-X-Y route, now. This part of the 1968 dedication route was made up (i.e. constructed) as a sealed road so that it could be used by motor vehicles. Although vehicular rights were also dedicated (as per the dedication plan) over the X-Y section, this portion of the road would not appear to have been "constructed", so the saving provision seems unlikely to apply to this short length.
- 8.17 For a route to be a byway open to all traffic, it has to be (i) a public motor vehicular right of way and (ii) a route which is nevertheless used (or is likely to be used) by the public mainly for the reasons which footpaths and bridleways are used. The relative proportion of public vehicular and non-vehicular use of this route is difficult to estimate. The Courts (who own Elsdonburn Shank as a second home) admit that they aren't there most of the time, but their impression is that the alleged byway route is infrequently used by non-vehicular users. Although this route has a drivable tarmac surface, and is clearly in fairly regular use by the owners of Elsdonburn Shank, and their visitors, it is not of a particularly good quality, and it would not readily be assumed, by the public, to be a part of the ordinary road network. Applying a character test, the route would seem to fit the criteria for being recorded on the Definitive Map as a byway open to all traffic. Furthermore, at present the route is recorded on the Definitive Map as a public footpath. There is no mechanism for simply deleting the footpath from Definitive Map altogether. If the Council doesn't upgrade the route (to correctly identify the public vehicular rights which appear to exist) its only other option is to leave things just as they are at present – with the route misleadingly identified as only a public footpath.

- 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. The 1968 dedication set out a carriageway width of 9 to 15 feet (i.e. 2.75 to 4.57 metres) with verges of a further 6 feet (i.e. 1.83 metres). This makes the width, overall, in the range 4.57 to 6.4 metres. It is suggested that the maximum width be attributed to the short section with the passing place, immediately south of Point A (identified by Point X on the 1968 dedication plan itself) and that the remainder of the route be recorded as 4.57 metres wide. This would also correspond with the recorded width of the existing byway north of Point A.

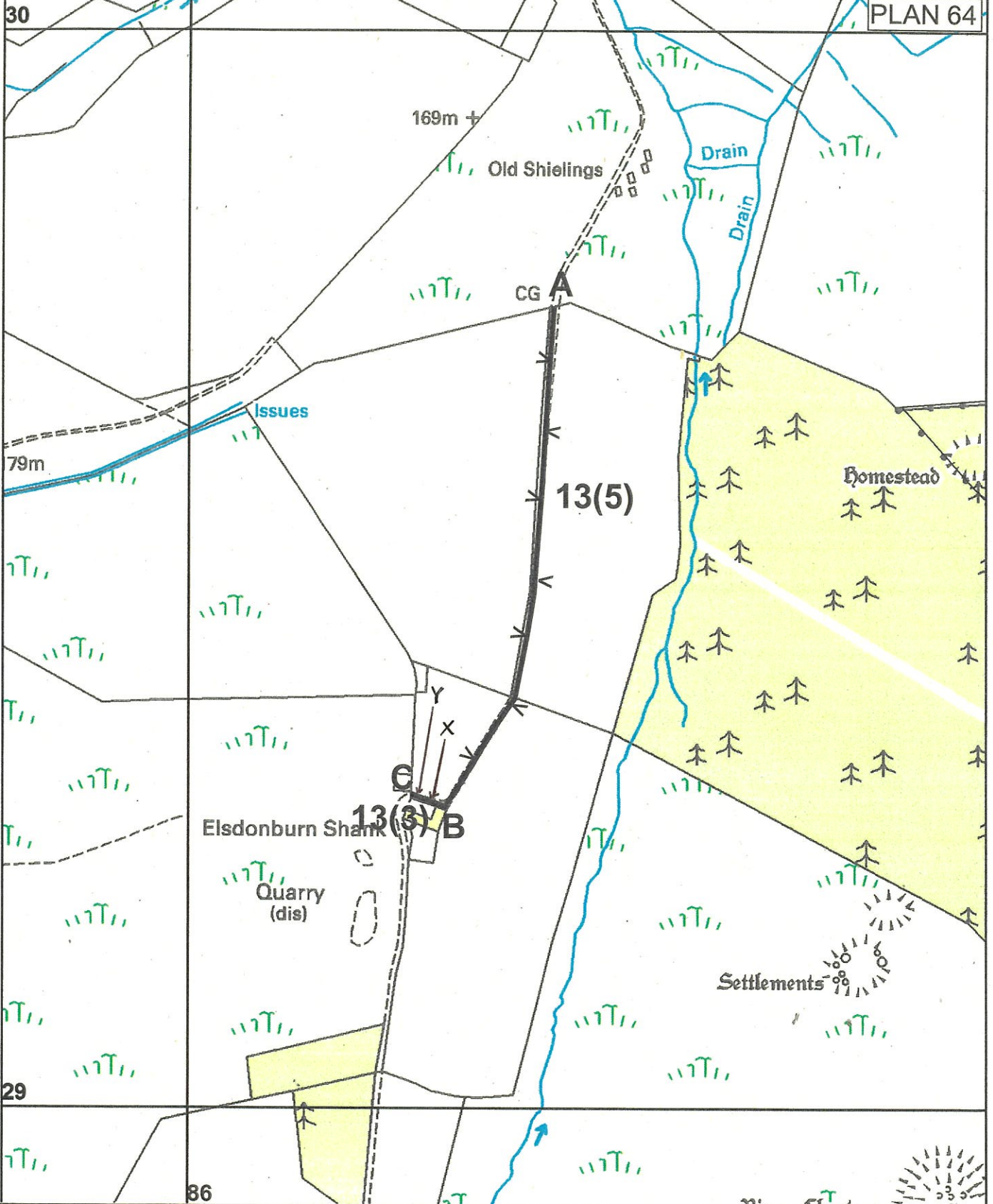
9. CONCLUSION

- 9.1 In light of the documentary evidence available, it appears that, on a balance of probability, public vehicular rights have been shown to exist over the A-B-X-Y part of the alleged Byway No 13 extension, though not the short Y-C section, or indeed anything extending slightly further west of Point C.
- 9.2 The Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motor vehicular rights over the tarmacked A-B-X part of the route, but would appear to have extinguished public motor vehicular rights over the short X-Y (grass surfaced) section.
- 9.3 The A-B-X section of the route would appear to satisfy the character test for being recorded on the Definitive Map as a byway open to all traffic and it would, therefore, be appropriate to recognize those public rights by recording them on the Definitive Map.
- 9.4 Although seemingly of very little practical benefit, it would also be correct to recognize the public remaining non-motor vehicular rights over the short X-Y section, by recording them on the Definitive Map as a restricted byway.

BACKGROUND PAPERS

Local Services Group File: B/25/13z

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Wildlife and Countryside Act 1981 Public Rights of Way



Alleged Byway Open to All Traffic

Former District(s)
Berwick

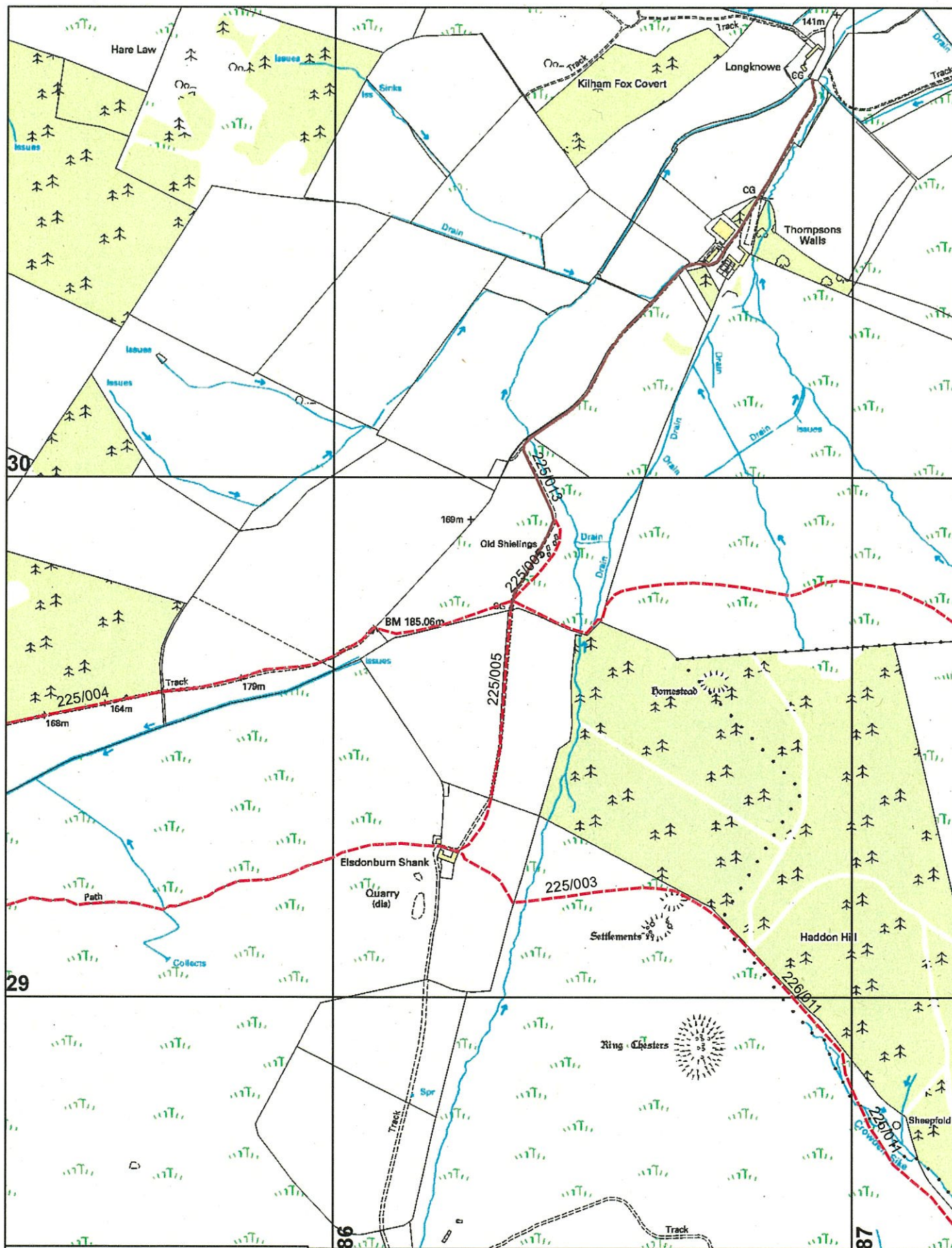
Parish(es)
Kilham

Scale
1:5,000

Def. Map No.
35

O.S. Map
NT 82 NE

Date
August 2017




Northumberland
 County Council

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

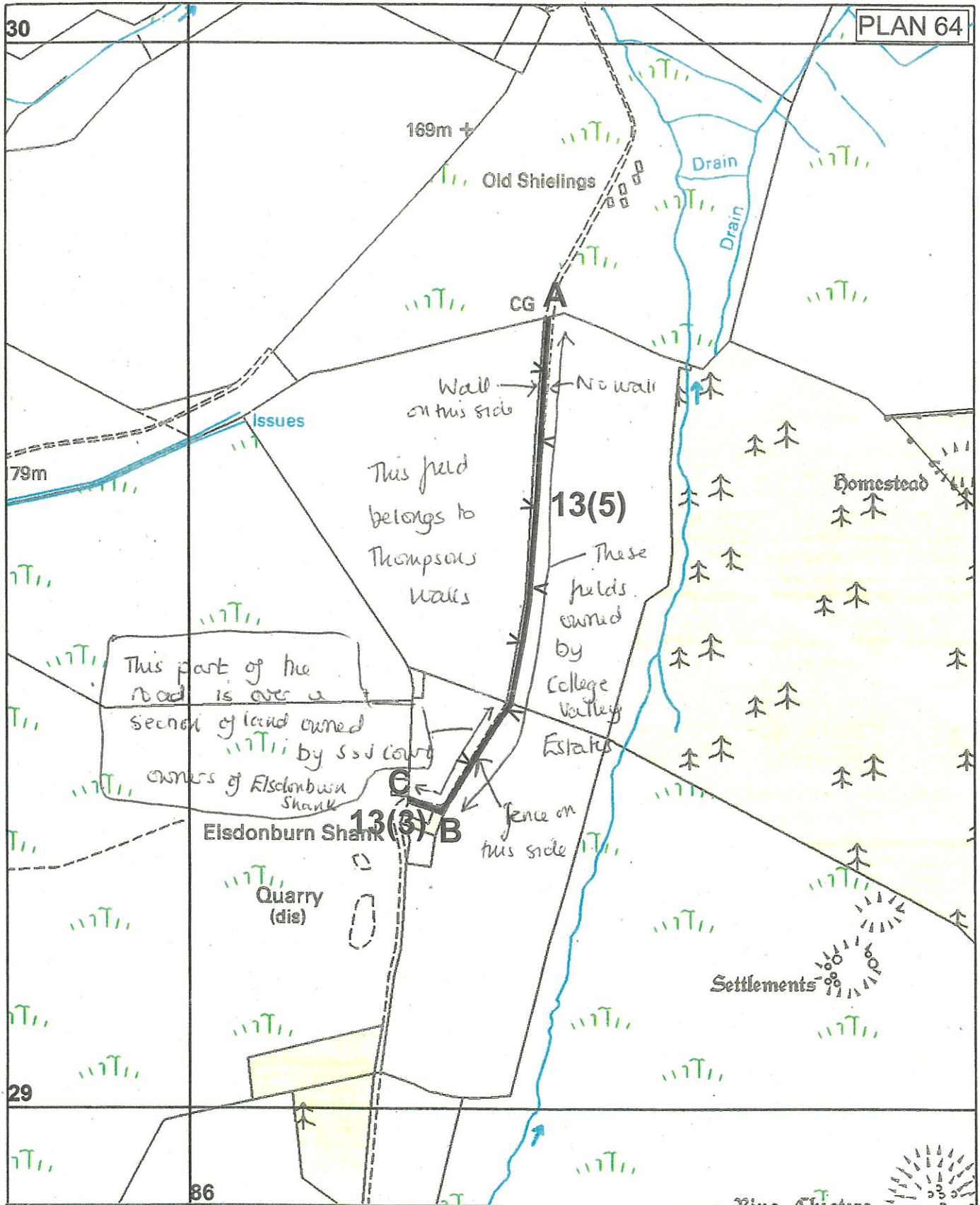
Legend

- Footpath
- Bridleway
- - - x - - - Restricted Byway
- Byway Open to All Traffic

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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Northumberland

Northumberland County Council

Infrastructure
Local Services

County Hall Morpeth Northumberland
NE61 2EF
Telephone 0845 600 6400

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Wildlife and Countryside Act 1981 Public Rights of Way



Alleged Byway Open to All Traffic

Former District(s)
Berwick

Parish(es)
Kilham

Scale
1:5,000

Def. Map No.
35

O.S. Map
NT 82 NE

Date
August 2017

Appendices attached to S & J Court's 2018 consultation response

Appendix 1

13 Elmfield Road
Gosforth
Newcastle upon Tyne
NE3 4AY
7th June 2014

Your ref FPS/P2935/7/34

Definitive Map Modification Order (No 23) 2012
Byways Open to all Traffic No 13 (Parish of Kilham)

Dear Ms Baylis,

Thank you for your letter dated 5th June. We would like to respond in relation to sub-section 67(2)(a).

We have owned Elsdonburn Shank (EBS), situated at the far end of the byway in question, since 1988. It is our second home, so that we have been the prime users. It has not been used as a holiday let. In the five year period prior to May 2006 we used the house frequently, staying most weekends and having extensive summer holidays there, notably during times when most public visits to the valley took place (and still take place).

During this time the road to EBS through Thompsons Walls farm and land was used regularly by motor vehicles. Not infrequently people would come and park near EBS to have picnics, start their walks in the surrounding hills and/or just sit to admire the view. As you mention in your letter a number of people wrote to NCC to confirm this. This road provides access to common access land for those who are not the fittest walkers, like the more elderly or very young. Hunt follows also used the road during this period and parked in our field to watch the riders, horses and dogs (beagles and hound trailing as well as with horses). (This still occurs see image 1.) Hang gliders used the road to access the hills behind EBS and Duke of Edinburgh support vehicles used the road to collect young people. In addition to this postmen, electrical and telephone contractors, builders, roofers, removal lorries and delivery vans used this road during the period in question, without hinderance or restriction.

In contrast over that period walkers, cyclists and horse riders less frequently used this road. Walkers tended (and tend) to walk at a direction 90 degrees to it (roughly East to West). A number of marked footpaths cross the road in this direction. For example people walk from the College valley or Kirknewton via

Appendices attached to S & J Court's 2018 consultation response

Elsdonburn and Elsdonburn Shank to Yetholm. We have seen almost no cyclists use this road. Most horse riding during 2001-2006 was related to the hunt and riders used the fields and hills not the road, except to ferry horses in boxes pulled by motor vehicles.

The byway under discussion has clearly been used for motor vehicles over a long period. See Figure 2, an aerial view taken in the 1960s. The car in question came from College Valley.

Finally when we purchased EBS in 1988, College Valley Estates considered that the whole byway/road through Thompsons Walls to EBS had been adopted by the local authority (see Figs 3. Details supplied by Sale and Partners advertising EBS, see second page last sentence and Fig 4. see para 3 and section B). These documents clearly imply that people around Kilham, including the College Valley Estates, whose land in part borders the byway in question, considered that it was a road with vehicular access for the general public. And indeed this road has been maintained by NCC, including during the period in question, again indicating public motor vehicular access.

We hope that we have gone some way to assure you that the byway through Thompson's Walls to Elsdonburn Shank was used during 2001-2006 by the general public mainly for motor vehicles.

We are about to visit our daughter in New Zealand, not returning to the UK until the end of July. If there is anything further you require from us please email us on j3nnycourt@googlemail.com

Yours sincerely,

Simon and Jenny Court

Appendices attached to S & J Court's 2018 consultation response

Fig 1. Hunt followers' cars at EBS



Fig 2. Car from College Valley at EBS (in yard) in 1960s



Appendices attached to S & J Court's 2018 consultation response

Fig 3. First two pages of sale particulars for Elsdonburn Shank produced by Sale and Partners on behalf of College Valley Estates. See last sentence on page 2.

Sale & Partners	
Chartered Surveyors - Valuers - Land & Estate Agents	
18-20 Glendale Road, Wooler, Northumberland NE71 6DW Tel: Wooler (0668) 81611 Fax: (0668) 81113	
<div><div>NORTH NORTHUMBERLAND</div><div>Near Wooler</div><div><u>Elsdonburn Shank Farmhouse</u></div></div>	
<div>Kelso - 12 miles</div> <div>Wooler - 11 miles</div>	<div>Berwick - 30 miles</div> <div>Newcastle - 55 miles</div>
<div>Small Farmhouse and Steading in magnificent setting deep in the Cheviot Hills, with superb views to the Coast and the Scottish Border.</div> <div>Dining Room Sitting Room Kitchen</div> <div>Stabling & outdoor lofts. 1½ acre Paddock</div>	
<div><u>SELLING AGENTS</u></div> <div>Sale & Partners, 18/20 Glendale Road, Wooler, Northumberland. Tel: 0668 81611</div>	<div><u>SOLICITORS</u></div> <div>Wilkinson Maughan, 27 Grainger Street, Newcastle upon Tyne. NE1 5JY Tel: 091 261 1841</div>
<div>Your attention is drawn to the notice overleaf.</div> <div>Also at South Northumberland Office, Blagden Estate Office, Seaton Burn, Newcastle-upon-Tyne, NE13 6DF. In Association with <u>Humberis</u>, 25 Grosvenor Street, London W1A 9FL.</div> <div>R.M. Landale F.R.C.S., C.A. Matheson F.R.C.S., W.M. Wood F.R.S., F.V.M., C. J. G. A.M.C.E., Farm Management, D.L. Attridge M.A. (Contab.), Dip. A.M., Building Department: R.V. E. Lisle O.S. Eng., C. J. G. A.M.C.E., Farm Management, D.L. Attridge M.A. (Contab.), Dip. A.M., Consultants: L.W. Sale F.R.C.S., M.A. Lydon Skeggs F.R.C.S.</div>	

Appendices attached to S & J Court's 2018 consultation response

INTRODUCTION

Elsdonburn Shank is situated in the heart of Cheviot hill country and offers an unusual opportunity for anyone wishing to own a secluded retreat in this picturesque part of Northumberland. The house has been very popular for holiday lettings over the last few years but would be equally suitable as a permanent home and smallholding. It is approached via a tarmac road off the B6351 Wooler-Kirk Yetholm road.

The property is built of stone and whitewashed; the roof is part slate and part pantile.

ACCOMMODATION

Side entrance to lobby with Belfast sink; space for freezer, coats and boots etc.

Bathroom with panelled bath, wash hand basin and W.C.

Dining Room (16' x 15' approx.) Facing North West
Open fire with tiled surround. Night store heater. Pay Telephone.

Kitchen with stainless steel sink unit with double drainer. Drawers and cupboards below. Electric cooker control. Walk-in Larder with deep shelving.

Bedroom 1 (19' x 16' approx.) Facing North East

Short flight of stairs from dining room lead to:

Bedroom 2 (12' x 10' approx.) Facing North West
Hanging cupboard.

Bedroom 3 (18' x 11' approx.) Facing North West

From dining room steps down to:

Sitting Room (18' x 16' approx.) Facing North West
Open fire with wood surround and tiled inserts. Night store heater.
Large walk-in cupboard.

OUTSIDE

Adjoining the house to the east is a range of stabling and byres together with a large corrugated Barn with separate sliding door. The buildings surround a concrete apron on 3 sides with a stone wall enclosing this on the north. The buildings give access to a small walled enclosure on the south suitable for livestock or garden area as required.

There is a separate grass paddock of approximately 1½ acres partly bounded by stone walls. The Purchaser will be responsible for erecting a fence along the roadside (A-B-C on the plan) with a 12' gate at B. The Vendors reserve a right of access (B-C on the plan) to gain access to the hill.

* The tarmac access road to Elsdonburn Shank has been adopted by the Local Authority.

Fig 4. Letter relating to a fence line at EBS from College Valley solicitors' pages of For sale details for Elsdonburn Shank 1988. See third para and section B.

WILKINSON MAUGHAN
SOLICITORS
27 Grainger Street
Newcastle upon Tyne NE1 5JY
Telephone (091) 261 1841

Document Exchange
DX 61184 Newcastle upon Tyne

Our Ref: GBC.JMB.BS

Telefax: 537477
Telefax: (091) 261 6267 (Groups 1, 2 & 3)
Telecom Gold: 74: NFLO85

Your Ref: SDR.AT.C16

8th February 1989

Messrs Simon Rutherford & Co.,
8 Causey Buildings,
Causey Street,
Gosforth,
Newcastle upon Tyne,
NE3 4DL

Mr Bayly

Dear Sirs,

Re:- Elsdonburn Shank Farmhouse - College Valley Estates Limited to Court

We are instructed by College Valley Estates Limited to write to you in connection with the problem which has arisen regarding the erection of a fence along the eastern boundary of the field recently sold to your clients as part of the above transaction.

As you will recall a covenant was included in the Conveyance to the effect that your clients would erect a fence between the points A and B. Subsequently it transpired that there was a British Telecom cable running along this line which would preclude the erection of such a fence.

It has now been proposed that the fence should be erected along the other side of the road. Our clients are not entirely happy with this since it would entail a part of their land, albeit comprising to a large extent an adopted road, being included within your client's boundary fence.

We are accordingly instructed to propose that a further Conveyance be prepared whereby a strip consisting of the road together with a verge on either side should be conveyed to your clients subject to:-

A. reservation of rights of way in favour of our clients, the party to whom they have sold the adjoining farm land to the west and any parties to whom they may subsequently sell other farmland to the south.

* B. all rights of the public and the Highway Authority in respect of the road.

Our clients suggest that the consideration should be £1 and that each party should pay its own costs.

We look forward to receiving confirmation that this proposal meets with your client's approval. If so we suggest that we should dispense with the Contract and that you should prepare a draft Conveyance for our consideration.

Yours truly, *W. M. Maughan*

STL. HARBOTTLE
N. CALVERT, Noury

C.N. ALLENDALE
W.F. ARMSTRONG
G.J. BAKER CRESSWELL
SIR DEKER BRADBEE

R.B. BRADBEE
N.C.D. CRAIG
E.C. CRAVEN
A.J. DAVISON

D. HARDMAN
R.H. KELLEY
J.Y. LUKE
CLAIRE MORGAN

M.T. ORD
R. PICKERSGILL
D.S. PRIESTLEY, Noury
M.L. FRIGGS

A.C. STOREY
HELEN TAYLOR
C.J. THOMPSON

CONSULTANTS: G. E. CHANTLER • J. CHAPMAN • TIMOTHY KIRKHOPE M.P. • H. P. SOLOMON

Wilkinson Maughan is regulated by the Law Society in the conduct of investment business

Appendices attached to S & J Court's 2018 consultation response

Appendix 2. Statement of case by Alison Riddell

Statement of Case

Ref FRS/P2935/7/34M1

Mrs Alison Riddell

I lived at Thompsons Walls, Kilham between 1987-2007. Over this period my late husband was the shepherd. We were always in residence, even at holiday times we stayed on the farm because of our own livestock. The house at Thompsons Walls overlooks the road in question and we could see passing traffic. Further, our dogs alerted us to any traffic or walkers on the road.

During 2001-2006 (as in the years before) the road in question between Longknowe and Elsdonburn Shank was used several times (up to twelve times) a year by the motor vehicles of the College Valley Hunt followers. This hunt had a big following of approximately 20 motor vehicles, which would drive along the road and park at various points along it, especially at Elsdonburn Shank where the view is extensive. Followers from other hunts also used the road depending on the flow of the hounds. Hunt horse riders did not generally use the road, but followed the road cross-country.

The Dummer Beagle Association came annually between 2001-6 with 20-30 vehicles and drove along the road, parking between Longknowe and Thompsons Walls.

The hang-gliders used the road between Thompsons Walls and Elsdonburn Shank with motor vehicles most weekends in the summer. They parked their vehicles at or near Thompsons Walls and Elsdonburn Shank or on the hill beyond Elsdonburn Shank.

Walkers frequently drove along the road to park at Thompsons Walls or Elsdonburn Shank to walk directly onto the hills. Between 2001-2006 1-3 cars would have done this weekly.

Many sightseers would drive up the valley and park on the road, picnic and walk on the hills. Some Northumbrians knew the Kilham valley as the "Green Valley" and it was recognised as a place to drive along to Elsdonburn Shank and look at the impressive view (of the Scottish borders and Northumberland coast).

In contrast, very few people on foot walked along the road. Rather people walked across the road on designated paths between Yetholm and the College Valley and the College Valley and Kirk Newton. In all the time I was at Thompsons Walls only a handful of cyclists and horse riders ever used the road.

Alison Riddell of 2, East Horton Cottages, Wooler, NE71 6EZ

Appendices attached to S & J Court's 2018 consultation response

Appendix 3. Letter from Hang Gliding Club secretary

Dear Sir,

I write to confirm Northumbria Hang Gliding and Paragliding Club members regularly used motor vehicles on the road between Kilham and Elsdonburn Shank for many years up to and including 2006. Club members used the road to access Longknow and Coldsmouth hills where we would fly, due to the nature of the equipment we use, access on foot would not have been practical.

The links below are to the club site guide giving members information on how to access there hills. Although the information on Coldsmouth hill needs to be updated it was accurate during the period in question.

If you require any further information please get in touch.

Regards

Chris Foster

Membership Secretary.

Northumbria Hang Gliding and Paragliding Club

<http://aerositesguide.dyndns.org/sitedetail.jsp?SiteID=944>

<http://aerositesguide.dyndns.org/sitedetail.jsp?SiteID=937>

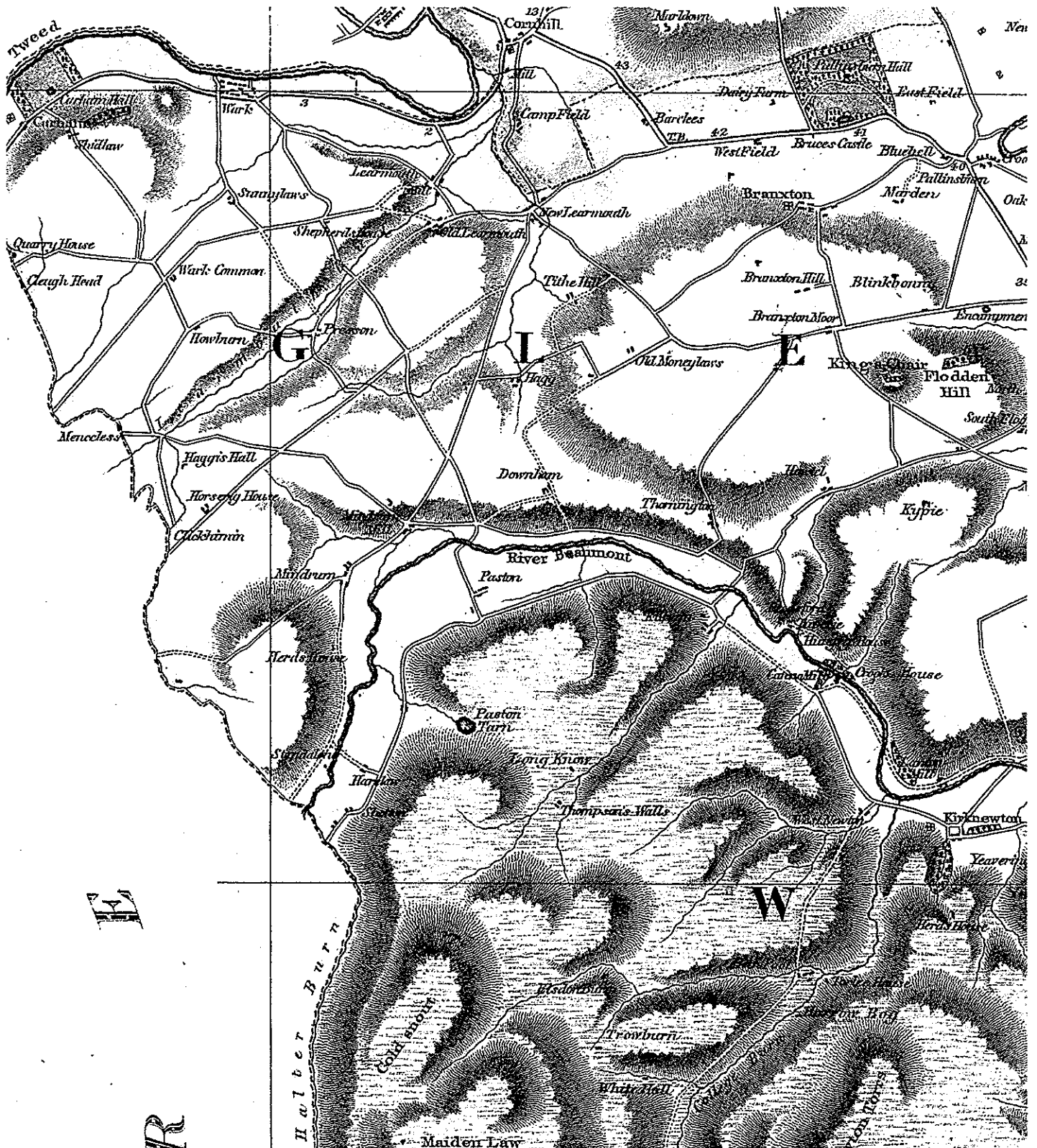
Appendix 4 List of local walking and cycling guides (relevant excerpts presented in Appendix 5)

1. Walking the Cheviots: Classic Circular Routes" by Edward Baker 1996
2. Walks in the Cheviot Hills Northumberland National Park and Countryside publications 1982.
3. Six of the best walks: WOOLER, Designed, printed and published by Glen Graphics 2009 (originally published 2003).
4. Border Country: A Walker's Guide by Alan Hunt (Cicerone) Originally published 1995, Editions 1999 and 2005
5. 100 Walks in Northumberland by Charles Emmett (Crowood Press) Revised Edition 1994
6. Mountain Bike Guide By Derek Purdy (Ernest Press) 1996
7. Kilham Longknowe farm walk, Northumberland National Park
8. Kilham Hill Trail Northumberland, National Park

Armstrong's County Map 1769



Fryer's County Map 1820

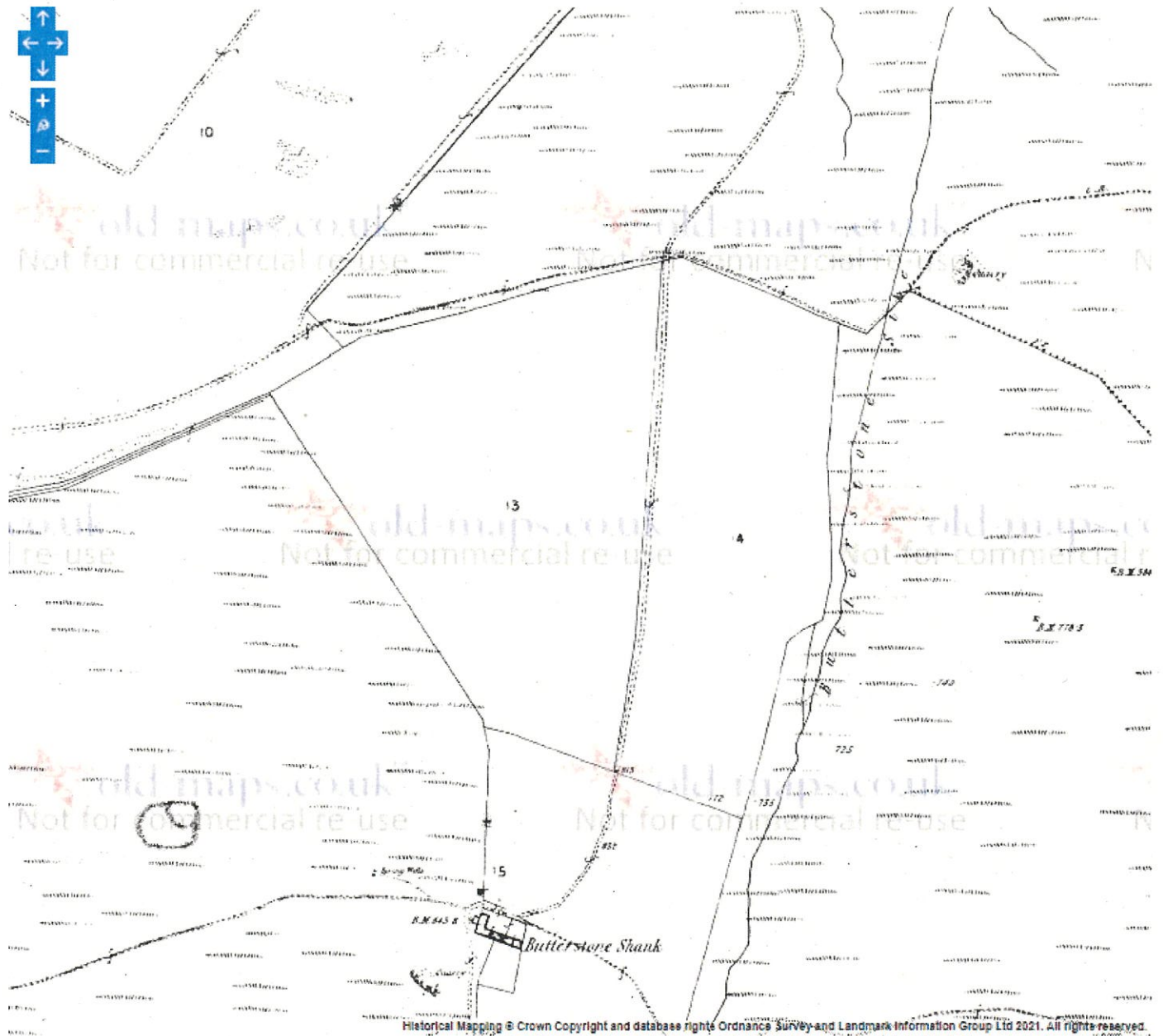


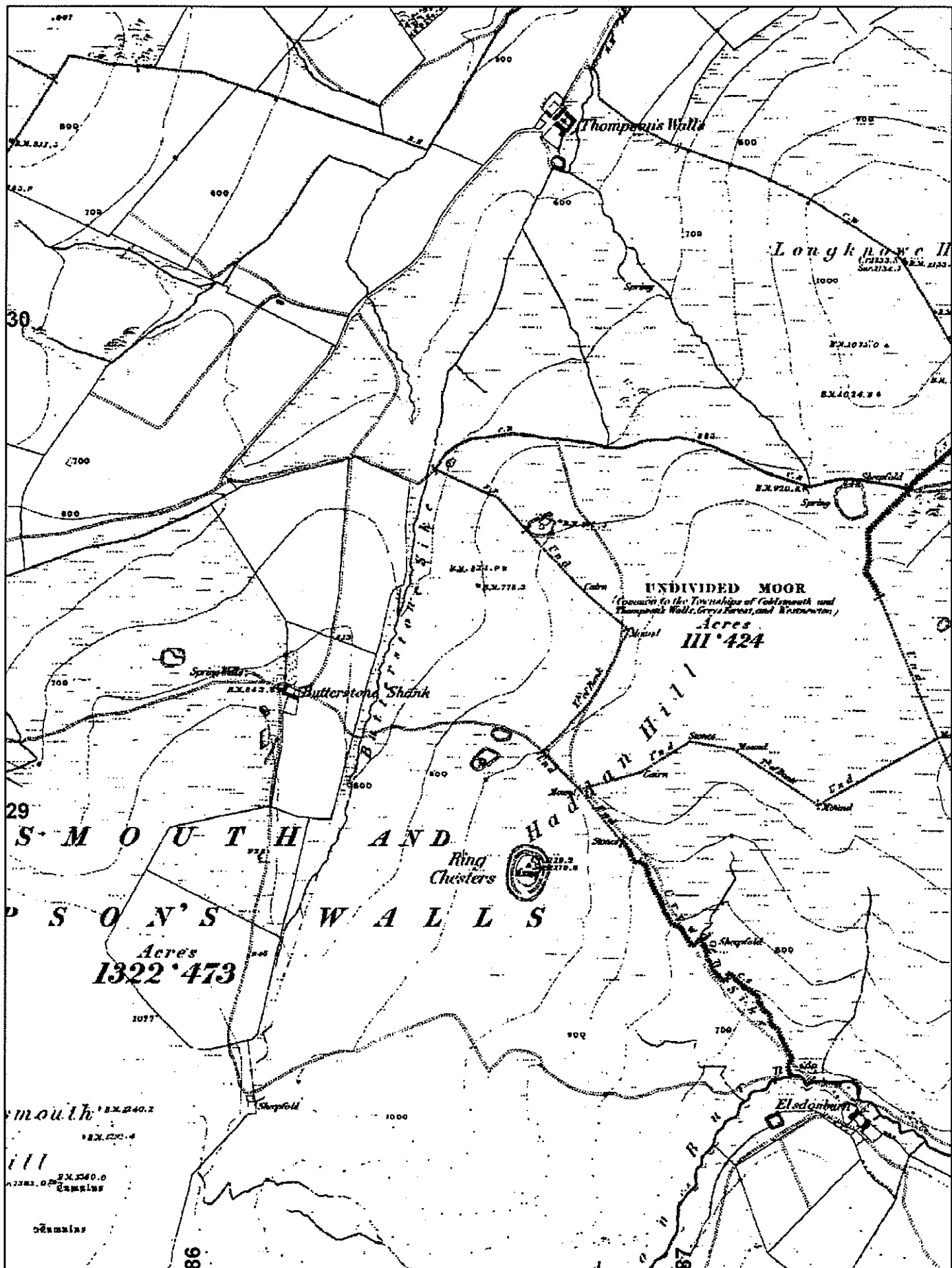


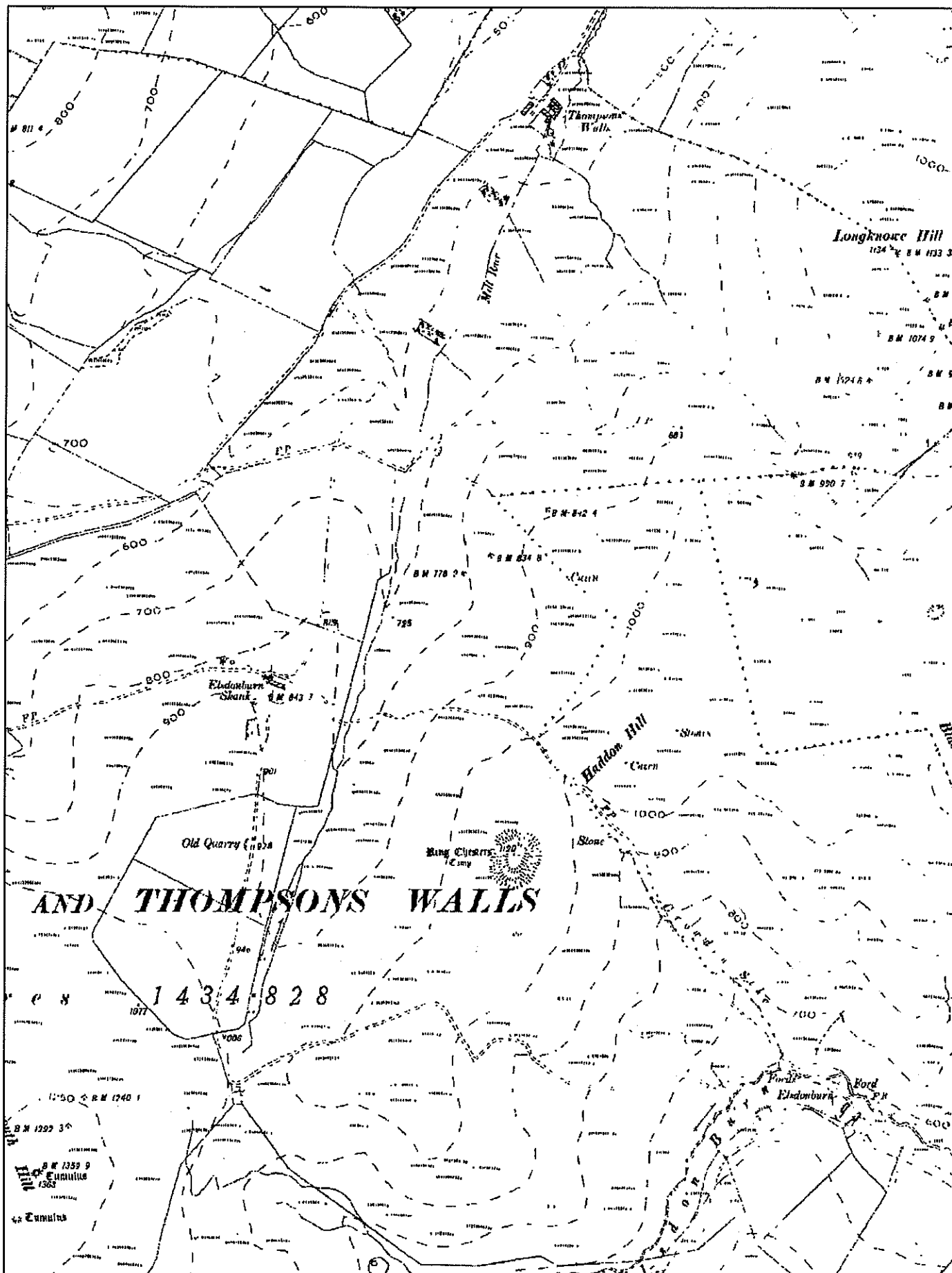
Greenwood's County Map 1828



1st Edition 25" O.S. Map
c.1864



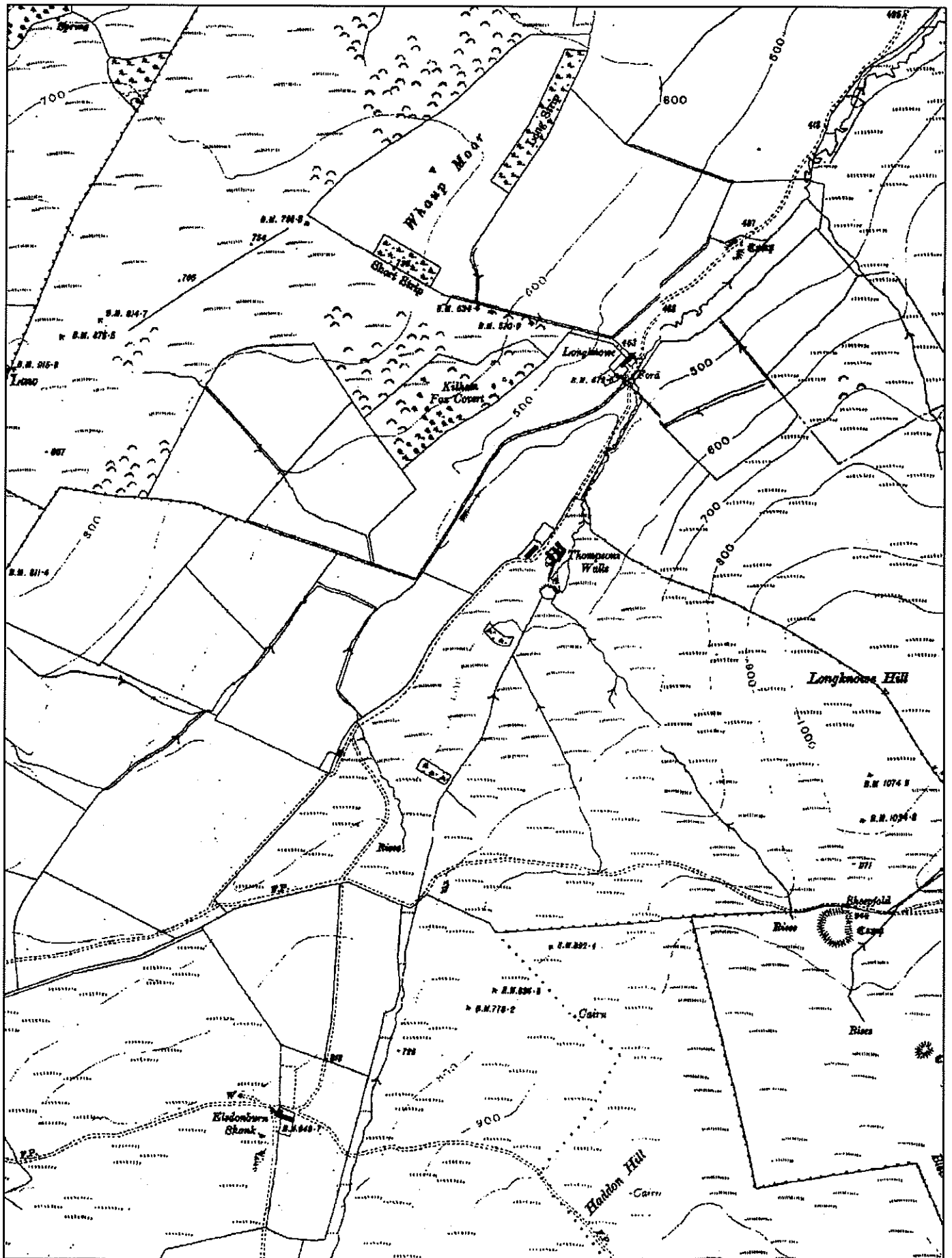




Northumberland
County Council

SCALE 1:10,560

Ordnance Survey 2nd Edition 6" map (1899)



Northumberland
County Council

SCALE 1:10,560

Ordnance Survey 3rd Edition 6" map (1924-5)

1932



Restriction of Ribbon Development Act 1935 schedule for Glendale RD area

APPENDIX B.

GLENDALÉ RURAL DISTRICT.

UNCLASSIFIED ROADS IN AND ADJACENT.

1. Road from a point on the Morpeth-Cornhill road A.697, $\frac{1}{2}$ mile south-east of Bareles via East Learmouth to the Flodden-Town Yetholm road B.6352 at Mindrummill.
2. Road from a point on the Bareles-Mindrummill road, 1,000 yards north-east of Mindrummill via Mindrum Station to the Flodden-Town Yetholm road B.6352 at Mindrum Council School (with the exception of 177 yards thereon at Mindrum L. & N.E. Railway Bridge).
3. Road from the Bareles-Mindrummill road at East Learmouth War Memorial to East Learmouth Farm Cottages, on the road to Campfield.
4. Road from the Bareles-Mindrummill road at East Learmouth via Lightpipell, Wark Common Farm and Warkcommon Covert to the Northumberland County Boundary, 750 yards south-west of the entrance to Wark Westcommon.
5. Road from a point on the East Learmouth-Wark Westcommon road, 920 yards west of East Learmouth Smithy via West Learmouth to the Cornhill-Carham road B.6350 at West Learmouth road end, $\frac{3}{4}$ mile south-west of Cornhill.
6. Road from the Bareles-Mindrummill road at East Learmouth War Memorial via Panama Cottage to a point on the West Learmouth-Cornhill road, 350 yards north of West Learmouth Railway Viaduct.
7. Road from the East Learmouth-Wark Westcommon road at Lightpipell to the East Learmouth-West Learmouth road at West Learmouth.
8. Road from the East Learmouth-Wark Westcommon road, $\frac{3}{4}$ mile east of Wark Common Farm via Sunilaws to the Cornhill-Carham road B.6350 at Wark.
9. Road from a point on the Cornhill-Carham road B.6350, 60 yards east of Wark School southwards for a distance of 103 yards to The Goat.
10. Road from the Cornhill-Carham road B.6350 at the west end of Wark Post Office north-eastwards for a distance of 123 yards.
11. Road from the Cornhill-Carham road B.6350 at Wark Farm northwards to the River Tweed.
12. Road from the Cornhill-Carham road B.6350 at Wark Farm, south-eastwards for a distance of 533 yards to the sheepwash at Tree Burn.
13. Road from the East Learmouth-Wark Westcommon road at Wark Common Farm via Shidlaw to the Cornhill-Carham road B.6350 at Carham (with the exception of 51 yards thereon at Shidlaw L. N.E. Railway Bridge).

14. Road from a point on the Sunilaws-Wark road, 150 yards north-west of Sunilaws Station south-westwards to a point on the Wark Common Farm-Carham road, 280 yards north-west of Wark Common Farm cross roads.
15. Road from a point on the Wark Common Farm-Carham road, 500 yards south of Shidlaw L. & N.E. Railway Bridge westwards towards Hadden for a distance of 820 yards to the Northumberland County Boundary.
16. Road from a point on the East Learmouth-Wark Westcommon road, $\frac{1}{2}$ mile west of East Learmouth Smithy via Pressen and Howburn towards Pressenhill to a point thereon 800 yards south-west of Howburn Mission Church.
17. Road from the East Learmouth-Wark Westcommon road at Wark Common Farm southwards to the East Learmouth-Pressenhill road at Howburn.
18. Road from a point on the Mindrummill-Pressenhill road B.6396, 1,600 yards east of Pressenhill via Horse Rigg to the Northumberland County Boundary at No Man's Land Wood.
19. Road from a point on the Morpeth-Cornhill road A.697, 260 yards east of Pallinsburn via Lookout towards Heaton Moor to a point thereon 370 yards south-east of Heaton Moor.
20. Road from the Morpeth-Cornhill road A.697 at Pallinsburn via Braxton and Braxton Buildings to a point on the Morpeth-Cornhill road A.697, $\frac{3}{4}$ mile south-east of Bareles.
21. Road from the Morpeth-Cornhill road A.697 at Fishes Stead via Encampment and Braxtonmoor to the Flodden-Town Yetholm road B.6352 at Thornington.
22. Road from a point on the Fishes Stead-Thornington road, 300 yards south-west of Braxtonmoor north-westwards to the Bareles-Mindrummill road at East Learmouth.
23. Road from a point on the Braxtonmoor-East Learmouth road $\frac{1}{2}$ miles south-east of East Learmouth Farm via East Monilaws and Hagg to a point on the Bareles-Mindrummill road $\frac{1}{4}$ miles north of Mindrummill.
24. Road from the Pallinsburn-Braxton-Bareles road at Braxton via Flodden Field Monument to a point on the Braxtonmoor-East Learmouth road 500 yards north-west of Monilaws road end.
25. Road from the Pallinsburn-Braxton-Bareles road at Braxton via the entrance to Braxtonhill to a point on the Fishes Stead-Thornington road, $\frac{1}{2}$ mile east of Braxtonmoor.
26. Road from the Flodden-Town Yetholm road B.6352 at West Flodden via Braxton Allotment to the Fishes Stead-Thornington road at Braxtonmoor.
27. Road from a point on the Flodden-Town Yetholm road B.6352, $\frac{1}{2}$ mile west of West Flodden northwards to a point on the West Flodden-Braxton Moor road, $\frac{1}{2}$ mile south-east of Braxton Allotment.
28. Road from the Flodden-Town Yetholm road B.6352 at Bowmont Presbyterian Church southwards to Reedford.
29. Road from a point on the Flodden-Town Yetholm road B.6352 $\frac{1}{2}$ mile south-east of Thornington Lodge south-westwards to the Akeld-Kilham road B.6351 at Kilham railway sidings.

Restriction of Ribbon Development Act 1935 Schedule for Glendale RD area

BRIDGES AND ROADS—26TH JUNE, 1939.

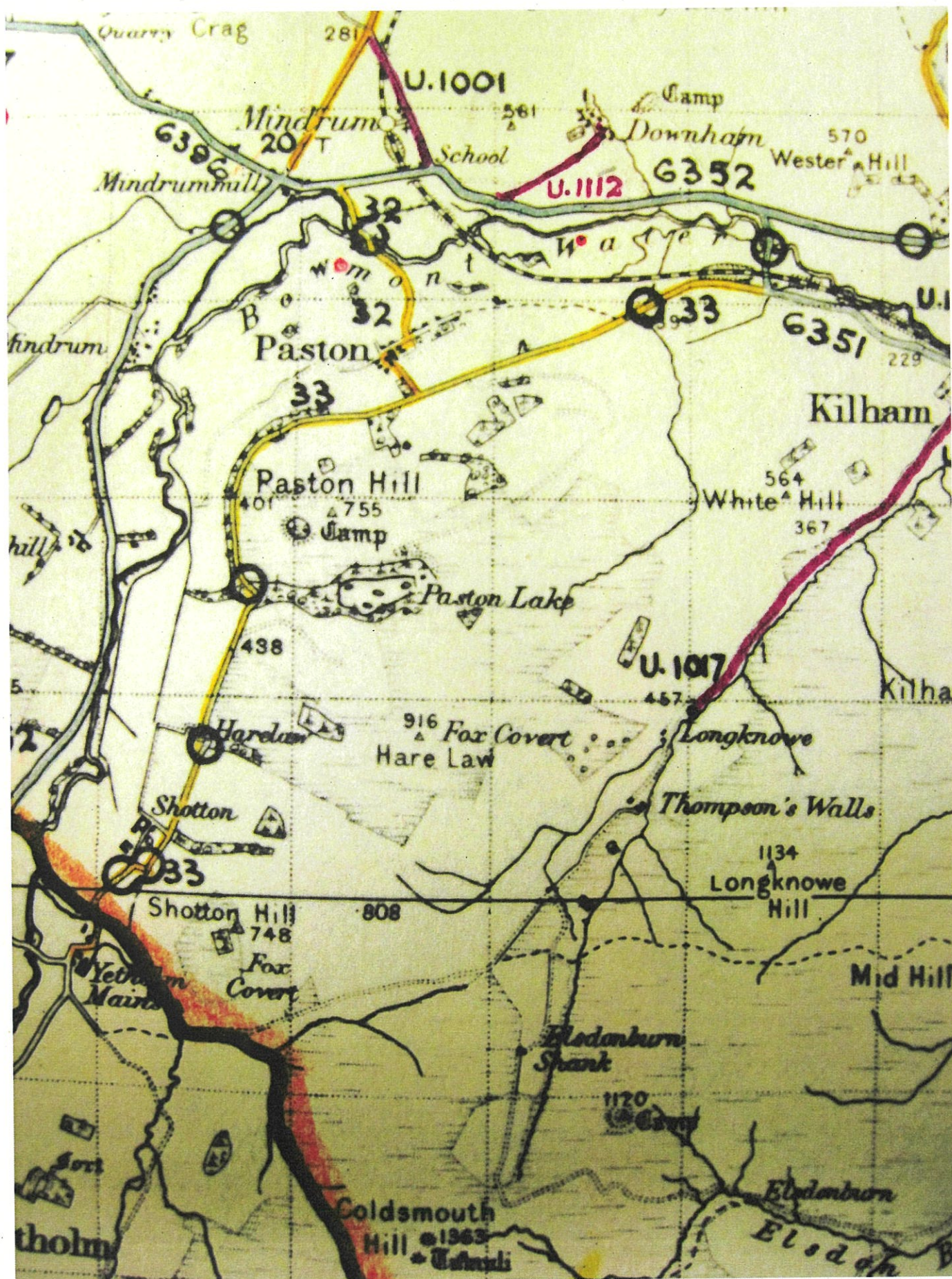
BRIDGES AND ROADS—26TH JUNE, 1939.

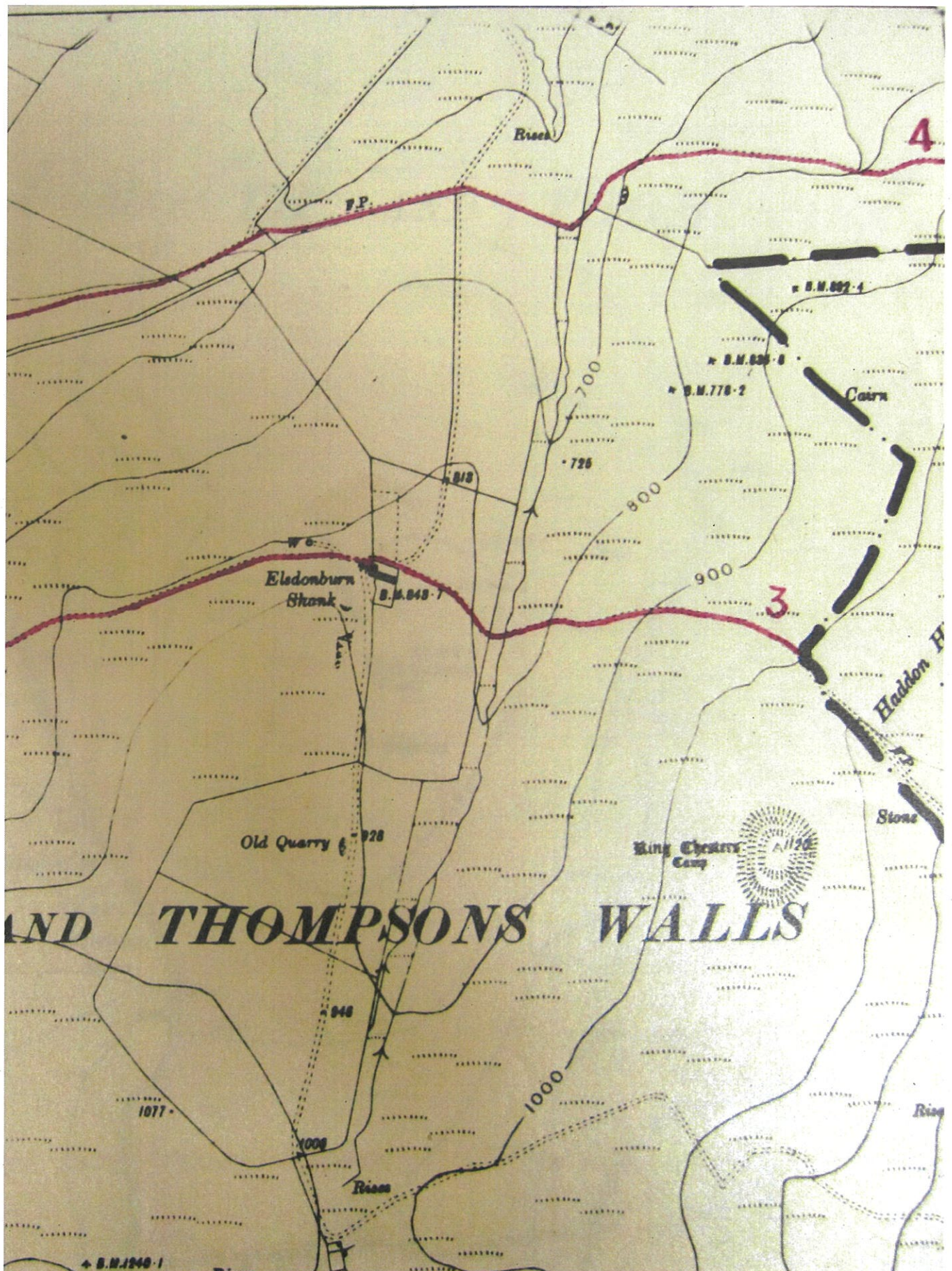
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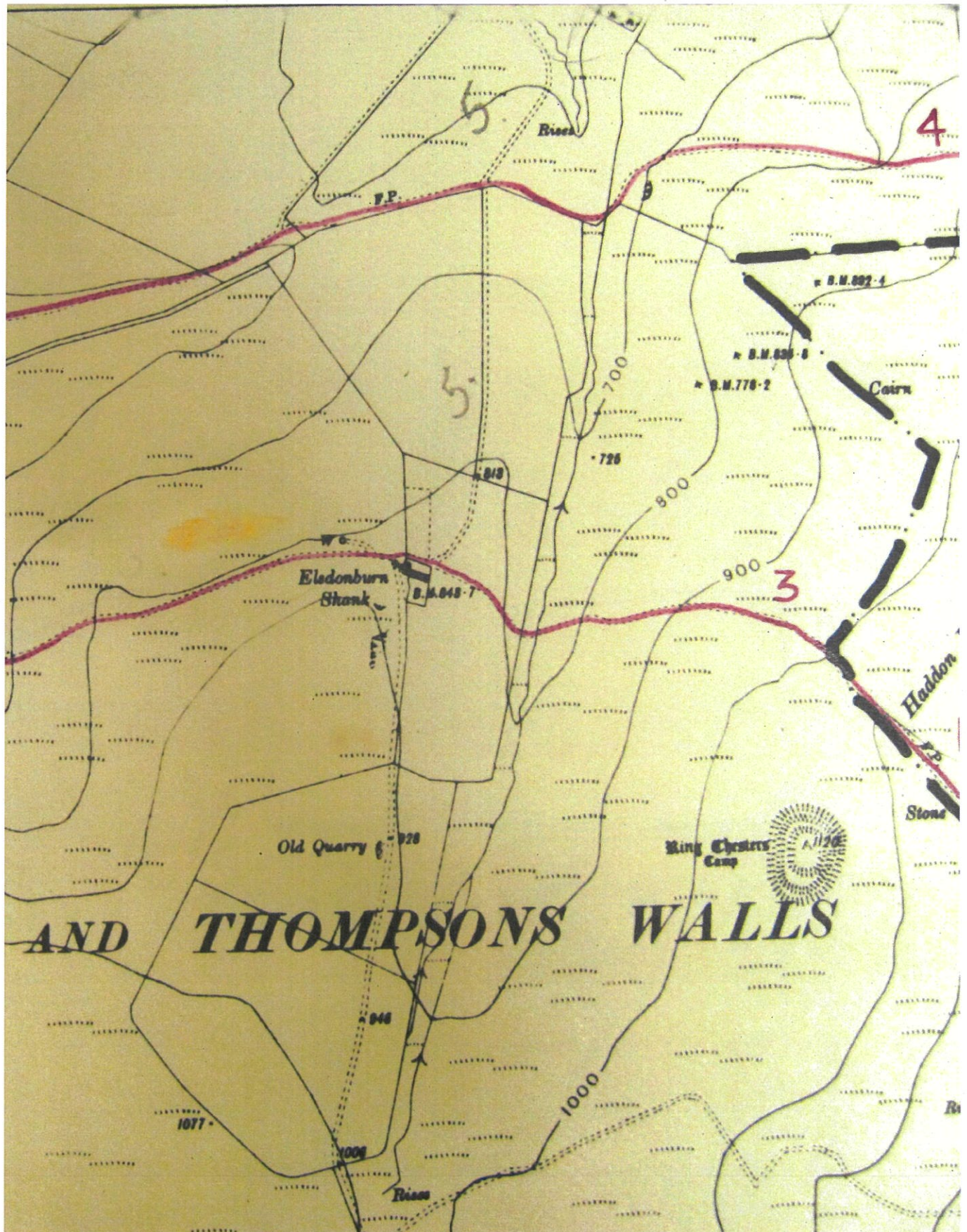
30. Road from the Akeld-Kilham road B.6351 at Kilham south-westwards to Longknowe.
31. Road from a point on the Akeld-Mindrummill road B.6351 at Langham crossing via Langham, Harelaw and the entrance to Shotton to the Northumberland County Boundary 20 yards north of the Bridge over the Shotton Burn.
32. Road from the Flodden-Town Yetholm road B.6352 at Mindrummill via Paston to a point on the Langham-Shotton road 1½ miles west of Langham.
33. Road from a point on the Morpeth-Cornhill road A.697 ¼ mile north of the Red Lion Inn, Milfield via Milfieldhill to the Flodden-Town Yetholm road B.6352 at West Flodden.
34. Road from the Morpeth-Cornhill road A.697 at Milfield via Sandy House and Lanton to Lanton Mill.
35. Road from a point on the Morpeth-Cornhill road A.697 550 yards south of Redscar road end via Marleyknowe and Coupland to the Morpeth-Cornhill road A.697 at Coupland Lodge.
36. Road from the Milfield-Lanton Mill road at Lanton, eastwards to the Marleyknowe-Coupland road at Coupland Castle North Lodge, including both forks at the junction.
37. Road from the Akeld-Kilham road B.6351 at Yeaveering via Yeaveering crossing, the fordway through the River Glen, and Coupland Farm to the Marleyknowe-Coupland Lodge road at Coupland Castle.
38. Road from the Akeld-Kilham road B.6351 at Kirknewton via Kirknewton crossing and the fordway through the River Glen to a point on the Milfield-Lanton Mill road, ¼ mile west of Lanton.
39. Road from the Akeld-Kilham road B.6351 at Kirknewton School southwards via St. Gregory's Church for a distance of 97 yards.
40. Road from the Akeld-Kilham road B.6351 at Westnewton to Hedhpool.
41. Etal Village road from the Berwick-Etal road B.6354 via Etal Castle and the Parsonage to the fordway through the River Till.
42. Road from a point on the Berwick-Ford road B.6354, ¼ mile south of Etal via Errol Hut, Slainsfield and Hay Farm to a point on the Berwick-Ford road B.6354, ¼ mile north of Ford Castle West Lodge.
43. Road from a point on the Errol Hut-Hay Farm road, 180 yards east of Slainsfield north-eastwards for a distance of 267 yards..
44. Road from the Berwick-Ford road B.6354 at Ford Forge via Heatherslaw to a point on the Crookham-Lowick road B.6353 ¼ mile east of Oakhall.
45. Road from a point on the Wooler-Berwick road, A.6111, 250 yards south of Bowsden Burn Bridge via Bowsden and Bowsdenmoor Farm Cottages towards Mattieles to a point thereon 1,280 yards east of this road's junction with the Berwick-Etal road B.6354 at Mattieles.

46. Road from a point on the Bowsden-Mattieles road 1,160 yards north-east of Bowsdenmoor Farm Cottages eastwards towards Berrington Lough to a point thereon 810 yards west of Berrington Lough.
47. Road from the Crookham-Lowick road B.6353 at Barmoor Ridge via Woodside Moor and Coal Harbour to the Bowsden-Mattieles road at the entrance to Whistebare.
48. Road from a point on the Barmoor Ridge-Whistebare road, ¾ mile north of Coal Harbour via Woodend to a point on the Bowsden-Mattieles road 1,300 yards east of that road's junction with the Berwick-Etal road B.6354 at Mattieles.
49. Road from the Bowsden-Mattieles road at its crossing of the Berrington Burn via Lickar Moor towards Old Greenlaw Walls to a point thereon ¼ mile east of Old Greenlaw Walls.
50. Road from the Morpeth-Cornhill road A.697 at Redscar road end, ¾ mile south-east of the Red Lion Inn, Milfield, via Redscar Bridge, Kimmerston Farm Cottages and Fordmoss to a point on the Crookham-Lowick road B.6353, 600 yards southwest of Fordcommon.
51. Road from the Milfield-Fordcommon road at Kimmerston Farm Cottages via Kimmerston Farm and Ford Kennels to the Crookham-Lowick road B.6353 at St. Michael's Church, Ford.
52. Road from a point on the Milfield-Fordcommon road, 500 yards east of Kimmerston Farm Cottages via Roughing Linn and Barmoor to the Wooler-Berwick road A.6111 at Barmoor Southmoor.
53. Road from the Wooler-Berwick road A.6111 at the north end of Doddington Village via Nesbit and Fenton Town to the Milfield-Fordmoss road at Redscar Wood.
54. Road in Doddington Village from the Wooler-Berwick road A.6111 at Doddington Post Office via the School and the Smithy to the Doddington-Redscar Wood road at Doddington North Farm.
55. Road from the Doddington-Redscar Wood road at Fenton Town via the entrance to Fenton Mill to a point on the Milfield-Fordcommon road 300 yards east of Kimmerston Farm Cottages.
56. Road from a point on the Fenton Town-Kimmerston road ½ mile north of Fenton Town via Fentonhill road end to a point on the Kimmerston-Barmoor road, 1 mile east of Kimmerston Farm Cottages.
57. Road from the Morpeth-Cornhill road A.697, at the north end of Akeld Bridge over the River Glen, via Akeld Steads, Ewart Park, and Woodbridge to a point on the Milfield-Fordcommon road 200 yards southwest of Redscar Bridge.
58. Road from the Morpeth-Cornhill road A.697 at Bender via Beador Crossing and Glenlee Ford to the Akeld Bridge-Ewart Park road at Akeld Steads.
59. Road from the Crookham-Lowick-Kyloe road B.6353 at the White Swan Inn, Lowick, via East Dryburn and Lickar to Lickar Dean Bridge.

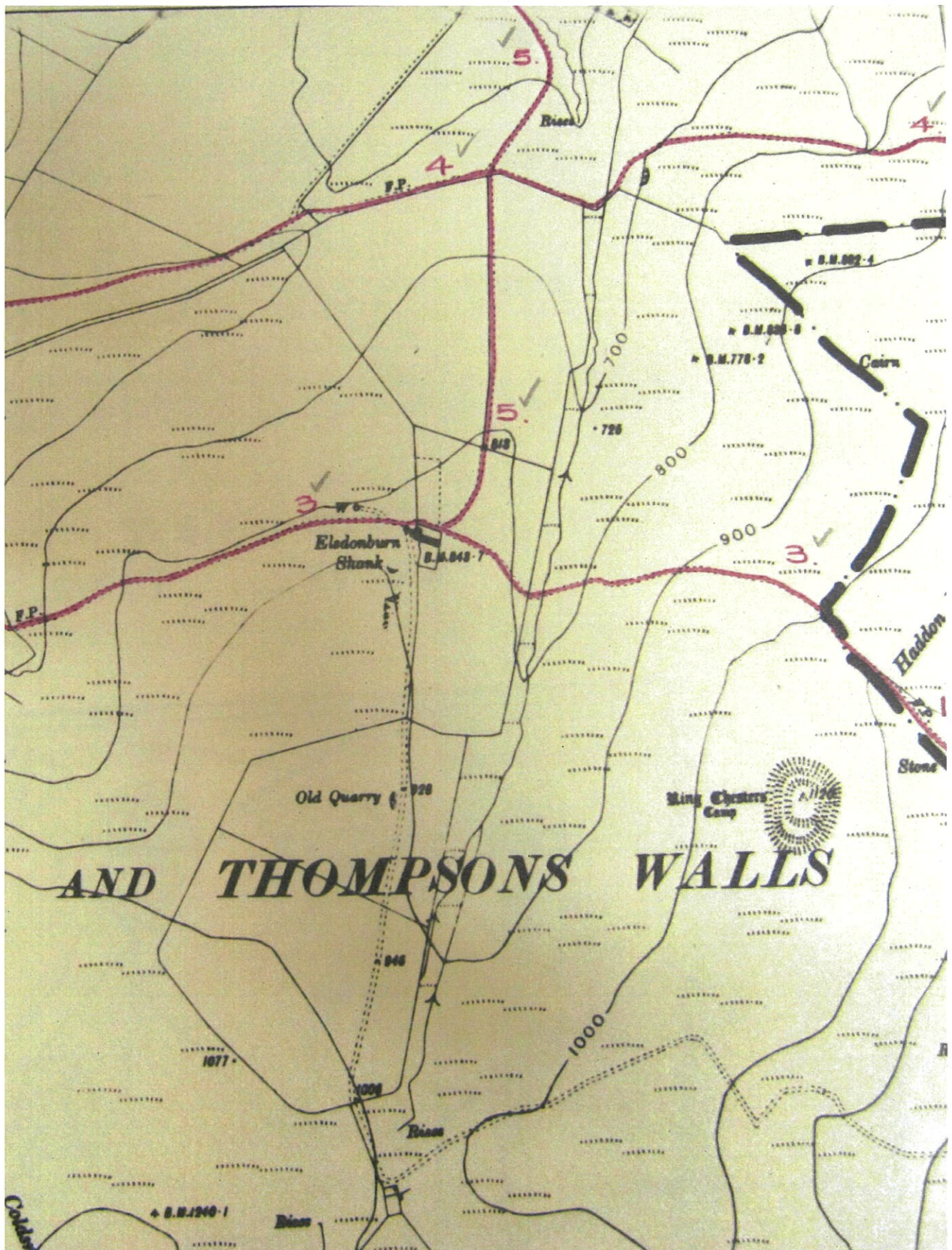
Extract from the Council's 1951 Highways Map







Provisional Map



1958 County Road Schedule

BERWICK DIVISION

Unclassified Roads in Glendale Rural District

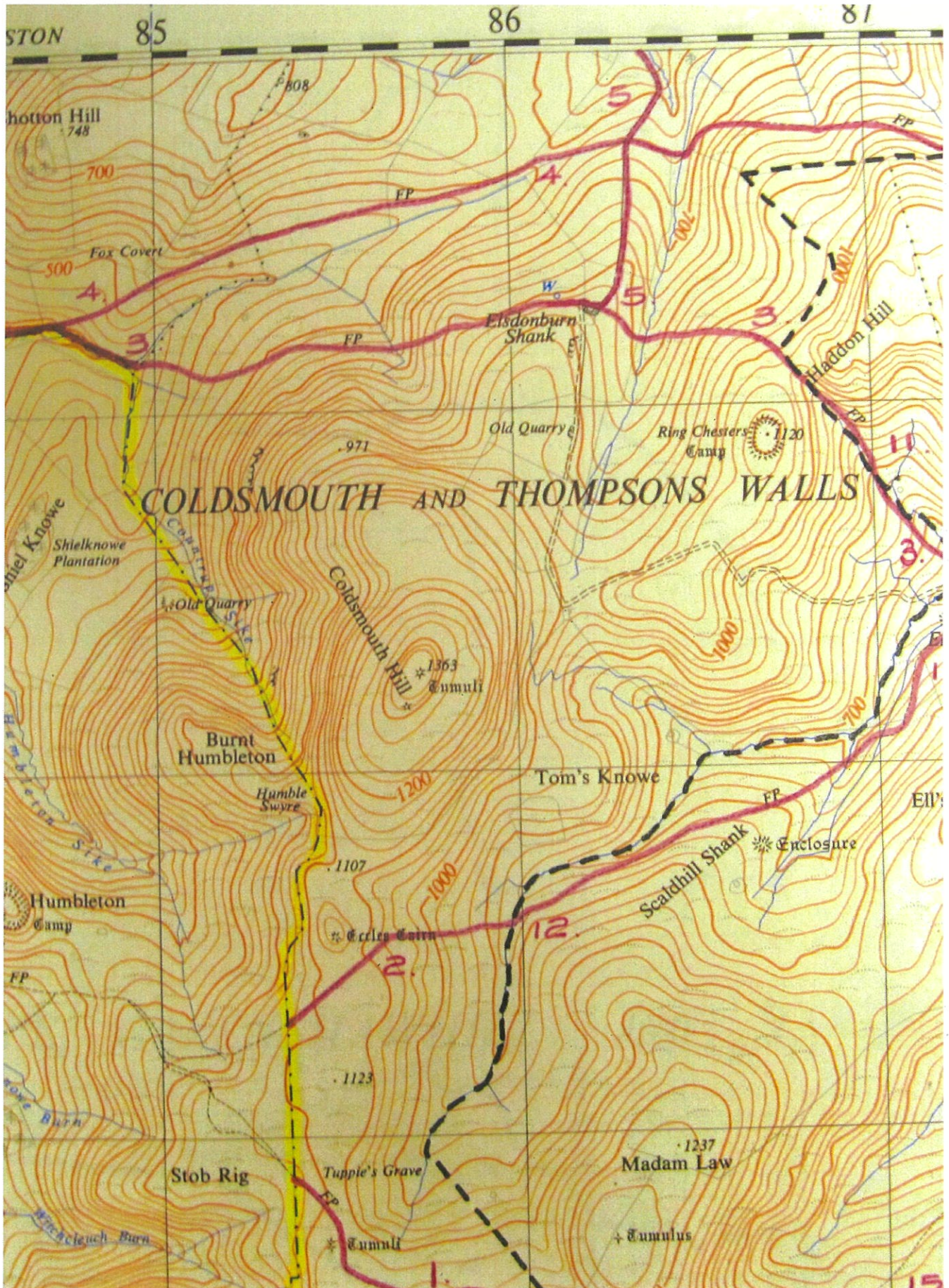
U.1001	Mindrum Station Road	From C.20 Mindrummill via Mindrum Station to B.6353 at Downham School	0.42
U.1002	West Learmouth Road	From C.21 at Tree Burn via West Learmouth to C.23.	0.64
U.1003	Sunilaws Station Road	From B.6450 at Mark via Sunilaws Station to C.23.	1.25
U.1004	Road to the Goat.	From B.6350 near School to the Goat.	0.06
U.1005	Road adjoining Mark P.O.	From B.6350 near Post Office North East	0.07
U.1006	Road to Ford	From B.6350 at Mark Farm to Ford.	0.11
U.1007	Mark - West Learmouth	From B.6350 at Mark to U.1002 at West Learmouth.	1.49
U.1008	Mark Common - Sunilaws.	From C.25 near Treeburn Ford via Mark Common to U1003 at Sunilaws Station	0.79
U.1009	Nottylees - Treeburn Ford.	From County Building to C.25 at Treeburn Ford.	0.48
U.1010	B.6396 to Howburn and Willow Burn.	From B.6396 at County Boundary near Holefield via Howburn and Presson to C.23 at Willow Burn.	3.72
U.1011	Presson Farm.	From M.1010 at Presson Farm southwards.	0.345
U.1012	Mark Common Farm - Howburn.	From C.23 at Mark Common Farm to U.1010 at Howburn.	0.45
U.1013	Hagg - Moneylaws Road.	From C.20 near Hagg to C.29 near East Moneylaws.	1.70
U.1014	Flodden Edge - Southwards	From C.31 Flodden Edge to B.6352 near West Flodden.	0.48
U.1015	Reeds Ford Road.	From B.6352 at Bowmont Presbyterian Church to Reeds Ford.	0.65
U.1016	Kilham - Howtel Road.	From B.6351 at Kilham to B.6352.	0.39
U.1017	Longknowe Road.	From B.6351 at Kilham to Longknowe.	1.33
U.1018	Millfield - Lanton - Lanton Mill Road.	From A.697 at Millfield via Sandy House to Lanton Mill.	2.78
			<u>17.355</u>

Forward

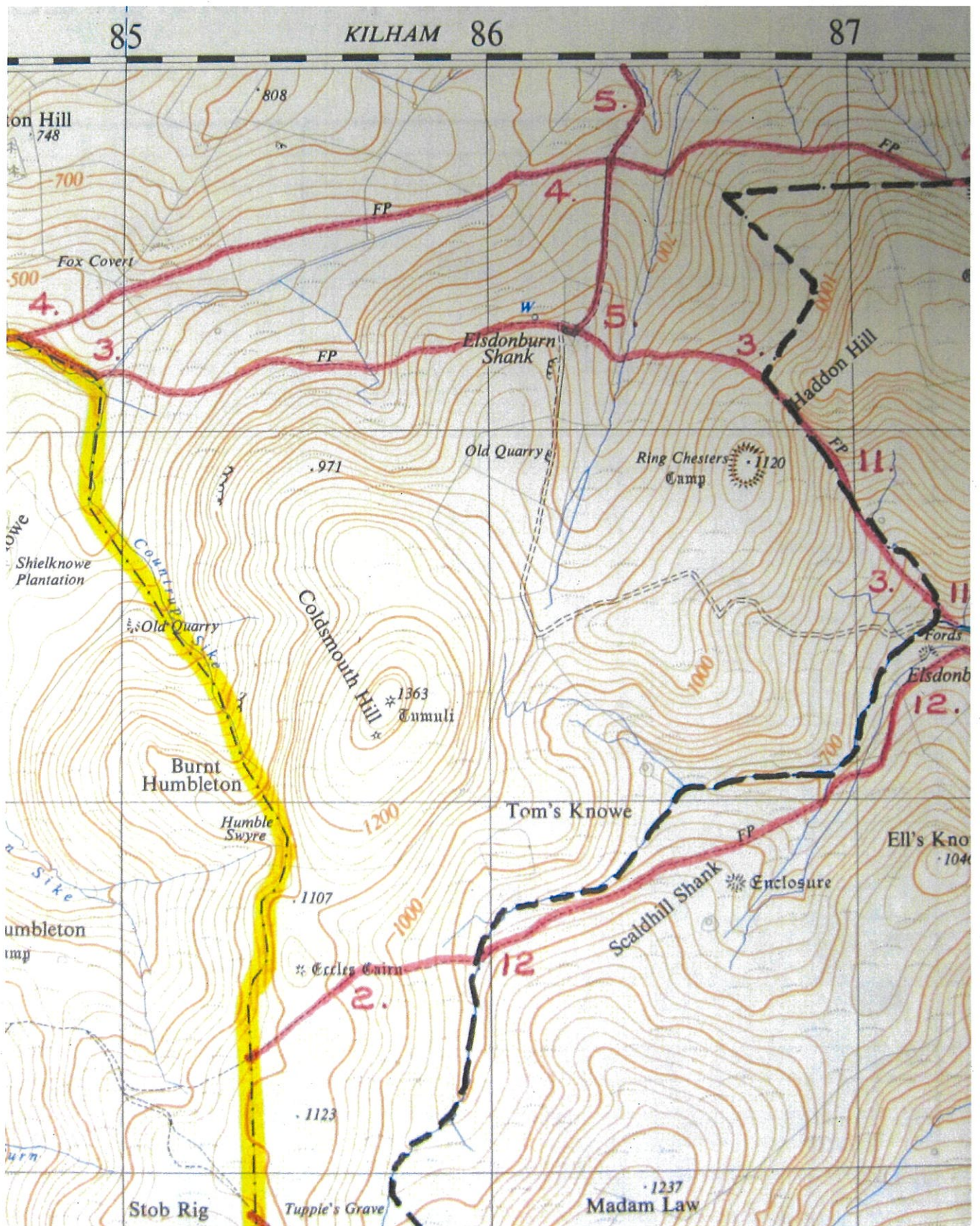
REPORTS OF COUNTY SURVEYOR—continued.	Decision of the Committee.
made to get the remaining section made up to a satisfactory standard and adopted. Any making up would involve contributions in respect of the School, the Police House, the cottages and by the County Council, as highway authority, in respect of the right of way.	
<i>New Delaval Level Crossing, Blyth.</i> The Blyth Town Council asked that a sub-way for pedestrians should be provided at this crossing and the Sub-Committee inspected the site with representatives of the Blyth Council. At the busiest period the crossing is used by 650 pedestrians per hour and a census showed that in the 14 hours 8 a.m. to 10.0 p.m. the crossing was closed for a total period of 3½ hours. There were 73 closures in this period and the worst conditions occurred in one hour when the crossing was closed for a total period of 31 minutes. The approximate estimated cost of providing a foot-bridge is £6,000 against £9,300 for an 8ft. x 8ft. sub-way. In view of the fact that even with these numerous closures most of the pedestrians would still use the crossing, the Sub-Committee considered that a footbridge would meet the needs, but the Blyth representatives intimated their preference for a sub-way. In any case it would not be possible to proceed in the current financial year and the Sub-Committee consider that before a final decision is made, the County Surveyor should report further on the position, particularly as regards other level crossings in the County where similar facilities might be asked for.	Deferred pending a further report.
<i>Newbiggin-by-the-Sea—Proposed Shelter and Convenience.</i> The Newbiggin Urban District Council submitted proposals for the erection of a public convenience and shelter near the junction of the main road and the road leading to the beach opposite "Dixon's Corner." An improvement has recently been carried out here and the proposed shelter would be on land acquired to provide a sight line at the road junction. It was considered that the shelter, as proposed, would unduly obstruct the sight line, but the Sub-Committee considered that a revised layout could be prepared, if possible using vacant land behind the highway boundary, which would not obstruct the sight line and, subject to a satisfactory layout being submitted, the Sub-Committee recommend that the Committee agree to the erection of the shelter and convenience on the highway.	Approved.

REPORTS OF COUNTY SURVEYOR—continued.	Decision of the Committee.
<i>Widdowburn Rural District—College Valley Estate Roads.</i> The College Valley Estates Limited have applied for the adoption of certain roads and the Sub-Committee met Sir Alfred Goodson and his Agent and inspected the roads. The roads concerned are:— (1) The continuation of the existing County road from Kilham to Longknowe for a distance of approximately 1¼ miles serving two cottages at Thompson's Walls and one house and buildings at Elsdonburn Shank. (2) The continuation of the existing County road from West Newton to Heithpool for a distance of approximately 1¼ miles to Elsdonburn, with a link of about 1½ miles to Trowupburn. All these roads are scheduled as rights of way. The continued occupation of these isolated dwellings enables wide areas of land to be used for food production and the Sub-Committee recommend that, subject to the roads being made up to a satisfactory standard, they be adopted. <i>Doxford Rural District—Doxford Farm Road.</i> The Doxford Estates have applied for the adoption of this road, which serves a large farm and several cottages. Subject to its being made up to a satisfactory standard, the Sub-Committee recommend its adoption. <i>Bellingham Rural District—Manchester Square, Bellingham.</i> At the last meeting of the Committee an enquiry was made as to the extent of the County Council's liability for maintenance in Manchester Square, Bellingham, particularly as regards the footpath on the east side and this matter has also been raised by the Bellingham Rural District Council. At present the County Council maintain two lengths of unclassified road leading from the main road to exits to the north and south end of the Square and they also maintain, as part of a public path, the steps leading into the Square at the south-west corner. There is no definition on the ground of any boundary between the areas treated as County roads and the remainder of the Square. The Square, including the footpath, has been open to the public from time immemorial and in the past some maintenance has been carried out by the County Council on behalf of the Parish Council. After considering all the circumstances, the Sub-Committee consider it reasonable that the County Council, as highway authority, should accept liability for the maintenance of the Square and the footpath and they recommend accordingly.	That subject to the roads being completed to the satisfaction of the County Surveyor they be taken over as highways repairable by the inhabitants at large and that the necessary notices be signed by the Clerk of the Council and fixed up therein pursuant to Section 19 of the Private Street Works Act, 1892.

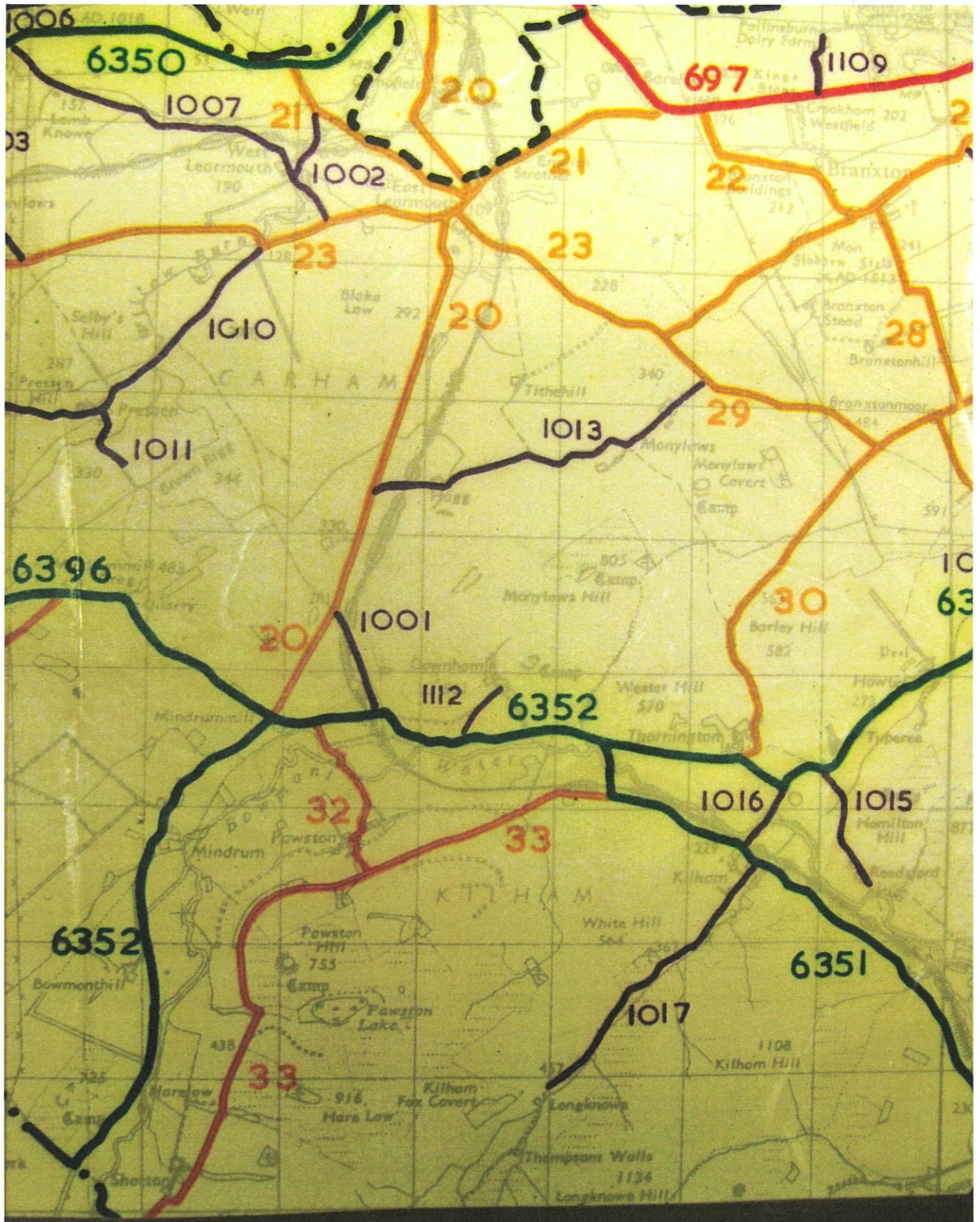
Original Definitive Map



First Review Definitive Map



Extract from the Council's 1964 Highways Map



1964 County Road Schedule

- 61 -

Route No.	Name of Road.	Description.	Responsible Division or Authority.	Mileage.	Total Mileage.
U.1015	Reedsford Road.	From B.6352 at Bowmont Presbyterian Church southwards to Reedsford.	Wooler.	0.65	
U.1016	Kilham-Howtel Road.	From B.6351 at Kilham north-westwards to join B.6352.	Wooler.	0.39	
U.1017	Longknowe Road.	From B.6351 at Kilham south-westwards to Longknowe.	Wooler.	1.53	
U.1018	Milfield-Lanton-Lanton Mill.	From A.697 at Milfield south-eastwards and southwards via Sandy House and Lanton to Lanton Mill.	Wooler.	2.78	
U.1019	Milfield-Yeavinger Road.	From A.697 south of Milfield via Coupland to B.6351 at Yeavinger.	Wooler.	1.71	
U.1020	Lanton-Coupland.	From U.1018 at Lanton to U.1019 at Coupland.	Wooler.	0.69	
U.1021	Coupland-West Lodge.	From U.1019 at Coupland to A.697 near West Lodge.	Wooler.	0.62	
U.1022	Kirknewton-Lanton.	From B.6351 near Kirknewton north-eastwards to U.1018 west of Lanton.	Wooler.	0.68	
U.1023	Church Road, Kirknewton.	From B.6351 at Kirknewton School southwards.	Wooler.	0.06	
U.1024	Hethpool Road.	From B.6351 at Westnewton south-westwards to Hethpool.	Wooler.	1.60	
U.1025	Ethal Village Road.	From B.6354 at Ethal westwards and north-westwards to River Till.	Wooler.	0.24	
U.1026	Erral Hut-Stainsfield-Hay Farm.	From B.6354 at Ethal via Erral Hut, Stainsfield and Hay Farm to rejoin B.6354 near West Lodge and including 260 yards long spur road towards Ethal Moor.	Wooler.	2.78	
U.1027	Old Heatherslaw Road.	From B.6354 at Ford Forge via Old Heatherslaw to B.6353, (O.024 Private Bridge).	Wooler.	0.79	
U.1028	Road adjacent to Black Bull Inn, Bowsden.	From C.14 at Black Bull Inn, Bowsden, southwards.	Wooler.	0.19	

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do hereby declare that
~~I~~/We have dedicated to
the use of the public as
a highway that portion of
land at Elsdonburn Shank
in the Parish of Kilham in
the County of Northumber-
land which is coloured red
hereon as from today's
date.

Signed Victor K. Kuntz 6
Witness J. A. Thompson
Address Nearby Home
St. Helens
Jimmy C. I.

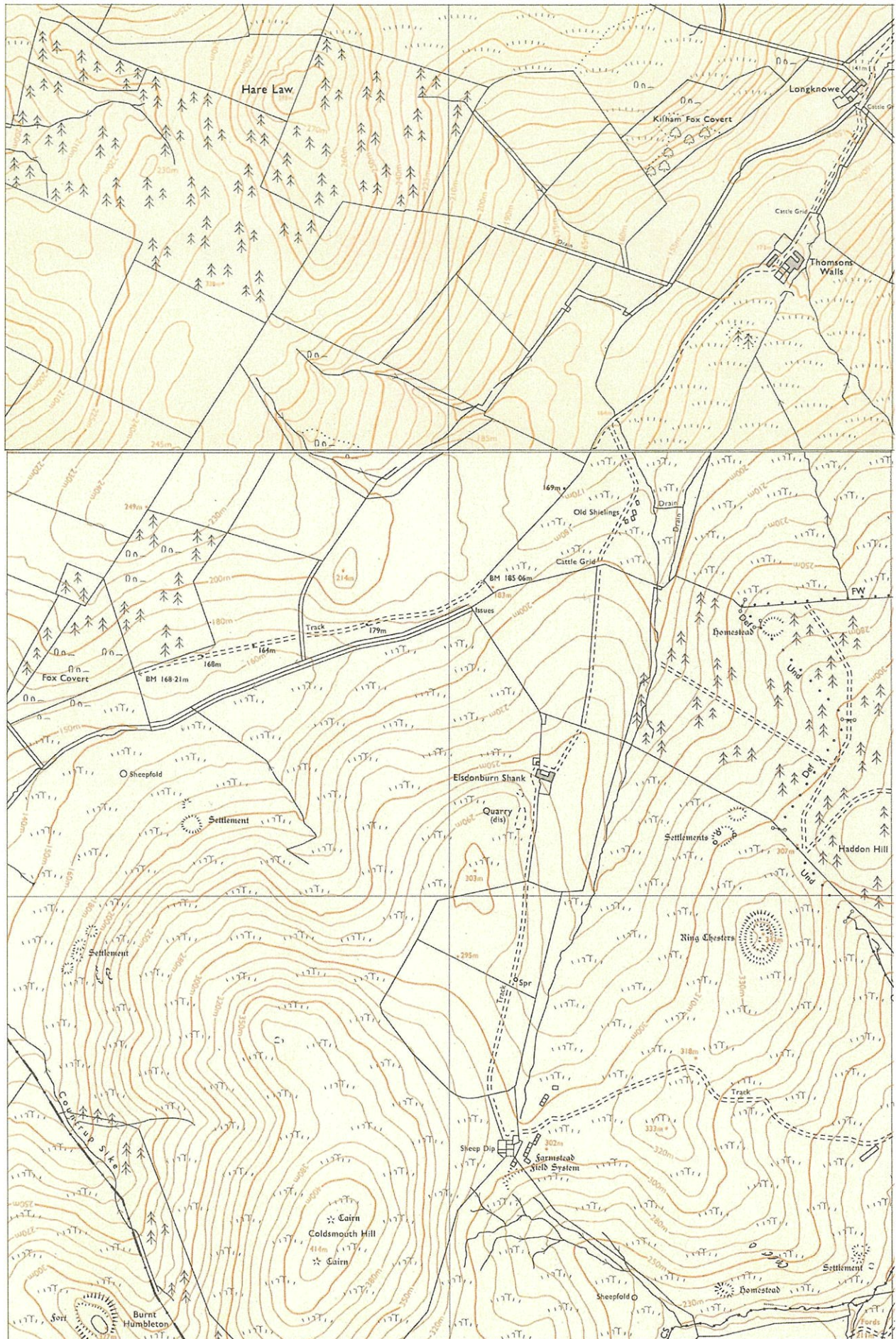
Address *Harvey House*
 *St. Helier*

 *Jimmy C. F.*

1974 County Road Schedule

Route No.	Name of Road	Description	Responsible Division or Authority	Mileage	Total Mileage
U. 1013	Hagg-Moneylaws Road.	From C.20 near Hagg (NT.856353) eastwards to C.29 near East Moneylaws (NT.881362).	Wooler Division.		1.70
U. 1014	Flodden Edge South.	From C.31 at Flodden Edge (NT.905352) southwards to join B.6352 near West Flodden (NT.907346).	Wooler Division.		0.48
U. 1015	Reedsford Road.	From B.6352 at Brompt United Reformed Church (NT.890333) southwards to Reedsford (NT.894325).	Wooler Division.		0.65
U. 1016	Kilham-Howtel Road.	From B.6351 at Kilham (NT.884327) north-eastwards to join B.6352 (NT.887332).	Wooler Division.		0.39
U. 1017	Kilham-Elsdonburn Shark.	From B.6351 at Kilham (NT.885326) south-westwards via Longknoe; Thomson's walls to Elsdonburn Shark (NT.863293).	Wooler Division.		2.67
U. 1018	Milfield-Lanton-Lanton Mill.	From A.697 at Milfield (NT.924339) southwards and westwards via Sandy House and Lanton to Lanton Mill (NT.912308).	Wooler Division.		2.78
U. 1019	Milfield-Yeaving Road.	From A.697 south of Milfield (NT.943326) southwards via Coupland to B.6351 at Yeaving (NT.937303).	Wooler Division.		1.71
U. 1020	Lanton-Coupland.	From U.1018 at Lanton (NT.927313) eastwards to U.1019 at Coupland (NT.935314).	Wooler Division.		0.69
U. 1021	Coupland-West Lodge.	From U.1019 at Coupland (NT.937313) eastwards to A.697 near West Lodge (NT.947316).	Wooler Division.		0.62

1:10,000 O.S. Map
1976-82

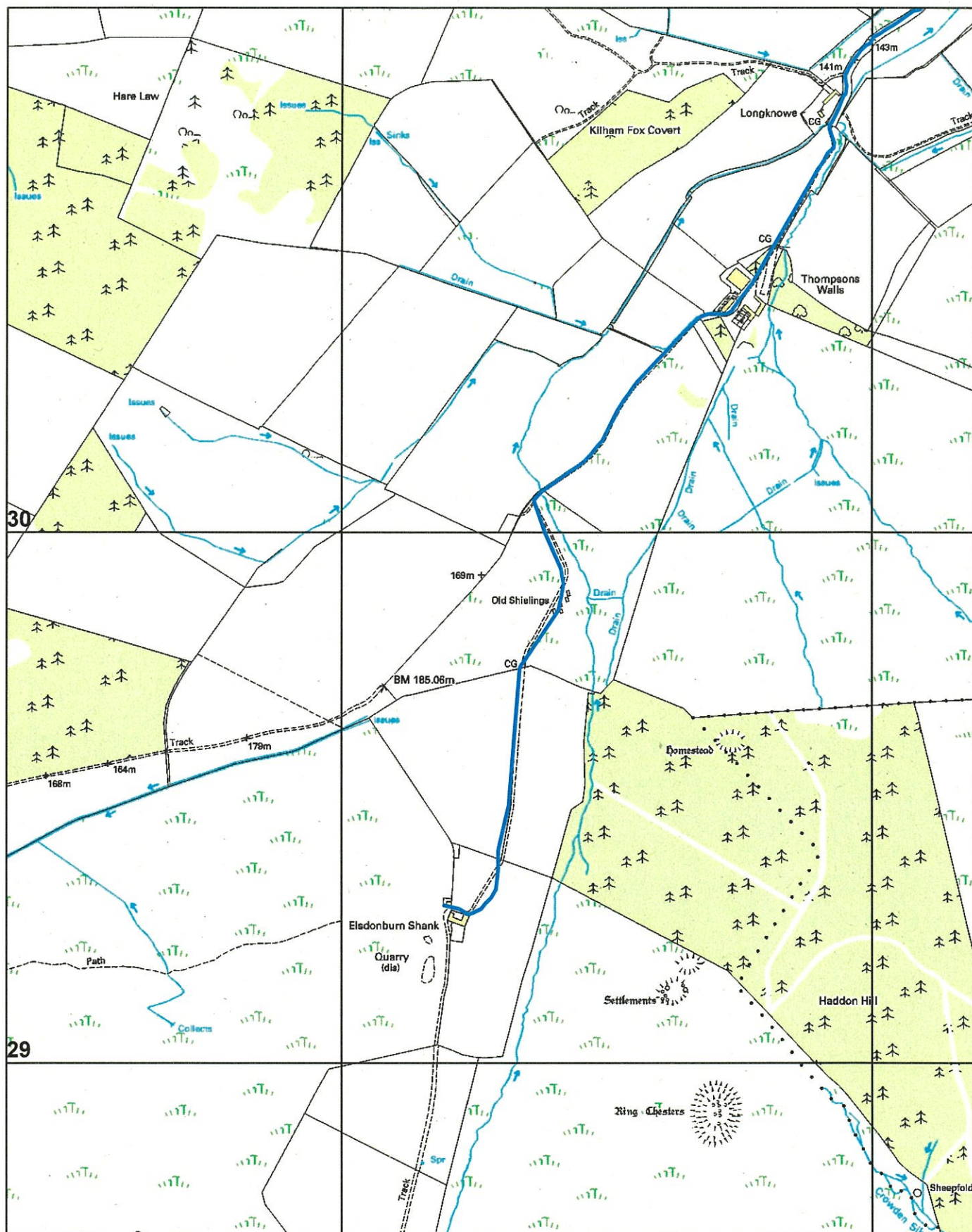


Ordnance Survey Explorer Map OL16

1:25,000

(2005)





NORTHUMBERLAND

Northumberland County Council

RIGHTS OF WAY COMMITTEE

20 July 2012

PUBLIC RIGHTS OF WAY

ALLEGED BYWAY OPEN TO ALL TRAFFIC No 5

PARISH OF KILHAM

Report of the Corporate Director of Local Services

Executive Member: Councillor Simon Reed, Infrastructure & Environment

Purpose of report

In this report, the Committee is asked to consider all the relevant evidence gathered in support and in rebuttal of the existence of public vehicular rights over part of the U1017 road, between Longknowe and Elsdonburn Shank.

Recommendations

It is recommended that the Committee agree that:

- (i) there is sufficient evidence to indicate that, on a balance of probability, public vehicular rights have been shown to exist over the A-X part of the route;
- (ii) there is not sufficient evidence to indicate that, on a balance of probability, public vehicular rights have been shown to exist over the X-B-C part of the route;
- (iii) the Natural Environment and Rural Communities Act 2006 would not appear to have extinguished the public's motorized vehicular rights over the A-X part of the route;
- (iv) the A-X section be included in a future Definitive Map Modification Order as a Byway Open to All Traffic.
- (v) the X-B-C part of the route should continue to be recorded as a public footpath.

Key Issues

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.
2. The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis.
3. The route of alleged Byway Open to All Traffic No 5 is identified on the County Council's List of Streets as being part of the U1017 road. This part of the U1017 is not identified as being publicly maintainable on the 1932 Glendale Rural District Council Handover Maps nor is it shown on the schedule prepared under the Restricted Ribbon Development Act 1935. The route has been consistently identified on Ordnance Survey maps since 1865/6, and is also shown on Greenwood's County Map of 1828. It has also been recorded as a public footpath on the Definitive Map, since that map was first prepared in the 1950s.
4. In December 1968, Sir Alfred Goodson dedicated a public vehicular highway over the northernmost 1295 metres of the route. The remaining 515 metres of the route does not appear to have been within his ownership, and was not part of the dedication. Although this section may have been the subject of a separate dedication, no evidence of such has been found.
5. Although this route has a tarmac surface along almost its entire length, on a balance of probability, public vehicular rights would not appear to extend beyond the southern limit of Sir Alfred Goodson's 1968 dedication. On that basis, the southernmost 515 metres of alleged Byway Open to All Traffic No 5 should continue to be recorded as public footpath.
6. Existing public footpath (and possibly unrecorded public bridleway) rights do continue in a southerly, westerly and easterly direction from the southern end of the 1968 dedication. It is therefore considered that use of the route, by the general public, will primarily be on foot, horseback or by bicycle. On balance, it would therefore appear to satisfy the criteria for being recorded as a byway open to all traffic on the Definitive Map.

Report Author

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Alex.Bell@Northumberland.gov.uk

RIGHTS OF WAY COMMITTEE

20 July 2012

PUBLIC RIGHTS OF WAY

ALLEGED BYWAY OPEN TO ALL TRAFFIC No 5

PARISH OF KILHAM

1. 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 footpath on the Definitive Map and Statement to be a byway open to all traffic, 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 recommendation is in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

2. PUBLIC EVIDENCE

- 2.1 During summer 2011, uncertainty arose, locally, regarding the status of the U1017 road / Footpath No 5 between Longknowe and Elsdonburn Shank. The owners of Thompson's Walls queried whether members of

the public had a right to drive vehicles along the track which crosses their land. This track is recorded as being part of the U1017 road (between Kilham and Elsdonburn Shank) but is also recorded on the Definitive Map of Public Rights of Way as being Public Footpath No 5 (and a small part of Public Footpath No 3).

- 2.2 Officers recognize that this 'dual classification' is causing uncertainty and in October 2011 consulted with interested parties to gather evidence in a bid to determine what the true status of this route is.
- 2.3 The view, held by those officers of the Council responsible for maintaining the 'List of Streets' for the County of Northumberland is that only public roads (not public bridleways or public footpaths) were shown on this List. The only exceptions to this are the surfaced paths and alleyways providing pedestrian links between roads, in urban areas. Thus, tracks in rural settings, which have their own unique reference number (e.g. the 'U1017'), are considered to be all-purpose public highways maintainable at public expense.
- 2.4 The most recent advice from DEFRA (paragraph 4.42, Rights of Way Circular 1/09) is that inclusion on the List of Streets may provide evidence of vehicular rights but that this should be examined on a case by case basis. In view of this advice, it is considered prudent to evaluate the status of the disputed southern part of the U1017 unclassified County road by considering all the available evidence.
- 2.5 The consultation process generated a number of responses from members of the public who though not directly consulted themselves, wished to make known their views and past use of the route.
- 2.6 By letter, dated 23 November 2011, C and M Andrews of Rose Cottage, High Humbleton, wrote to the Council stating:

"Parish of Kilham – Road U1017.

We have read the above paragraph in your schedule and are astonished that uncertainty has arisen regarding the status of this route. We have known the Kilham Valley for over 45 years and there has never, to our knowledge, been any doubt, private or public, about the road's status as a vehicular right of way.

"Some years ago the then owner of the land on either side, Sir Mark Goodson, established with the County Council that the whole road should be repaired by them. Their agreement to maintain it for vehicular traffic would seem to be conclusive.

"Any attempt to suggest downgrading the status of the route could be construed as an attempt at enclosure which would violate the spirit of the National Park and damage the interests of the local tourist industry. Downgrading to footpath status only

would change the nature of the valley, making access to this attractive area less inviting.

- 2.7 By email, dated 16 January 2012, J Andrews and P Walker of Longknowe, Kilham, responded to the consultation stating:

"We are writing in response to your letter of October 27th re the NCC consultation on the status of the U1017. We have owned The Longknowe for the past 21 years, which lies about half way along this road. The house is currently used by us regularly, and run as a business, being let out as holiday accommodation, which has allowed many people over the years to enjoy this remote part of the Cheviot Hills.

"Our vendor was Alan Goodson, who was then the owner of Thompson's Walls and thus owned all the surrounding land. We were told that the council had maintained the road but it was unclear as to whether adjoining landowners were liable to pay the cost of maintenance. In those circumstances we were asked, and agreed, to a covenant under which we undertook to pay an appropriate share of the cost of maintenance. Thompson's Walls was later sold to Lilburn Estates, who sold it to the current owners. At no time since our purchase of Longknowe has any owner of Thompson's Walls made any reference to this covenant, or suggested to us that there is in fact any actual liability under the covenant. On the contrary, throughout our period of ownership of Longknowe the road has been treated by everyone as a public one in its entirety. So far as we have been aware the local authority has also accepted this, carrying out repairs along its full length and maintaining responsibility for cattle grids and culverts. At no time have we, or any others that we have been aware of, had to seek any form of permission to use the road to drive a vehicle along it either between Kilham and Longknowe or between Longknowe and Elsdonburn Shank. We feel it is important that this should remain the case for a number of reasons, outlined below, and we would oppose any move which prevented the public from using the road, whether on foot, on horseback, or in vehicles.

"1: There is no current conflict between any of these uses. The Kilham valley is a remote place, the road is not in frequent use, walkers can use the road without any risk - in fact they are more likely to suffer exposure than be run over. There simply isn't the pressure that there is in the College or Ingram Valleys as this is not currently a tourist destination and there is no need to take action at present to exclude cars.

"2: The fact that the road is a public one is important so that local people can continue to visit others without the need to seek permission, and the postman, builders, deliveries etc, can arrive easily.

"3: Until recently there was generous access to all to the paths and fields throughout the valley (within reason) This is no longer the case in the upper valley: the current owners of Thompson's Walls have said that they will only permit access to public paths and the CROW lands. Apart from the road itself there is currently only one public path running across Thompson's Walls land. It goes from Shotton to West Newton, and forms the only access point to the local CROW land. Apart from this there is no access at all to the CROW lands behind Longknowe, running back to Pawston Lake. This has restricted public enjoyment and access in the upper part of the valley. However because the road is a public one, it is still possible to drive to Elsdonburn Shank (and park with the permission of the owners of Elsdonburn Shank) and walk from there on College Valley land, and onto CROW lands. If the road ceases to be a public one, open to vehicles, then those lower down the valley who want to walk on such land or the public path crossing Thompson's Walls will have to walk over a mile from Kilham. This will have a serious impact on the elderly, the disabled, and families with young children who will effectively lose access to the College Valley and CROW lands in the upper valley."

2.8 By email, dated 19 January 2012, D & W Green and family stated the following:

"I understand that there are questions being raised about the status of the road leading from Kilham, by Longknowe, and up the Elsdonburn Shank in Northumberland National Park. Our family have been visiting this particular valley and using this road regularly for the past twelve years. On average we have stayed in the valley around four times per year over that time, making full use of the road to visit the owners of Elsdonburn Shank and mount expeditions into the foothills of the Cheviot. We have always been encouraged to drive up to Elsdonburn Shank and park by the barn to facilitate these explorations, and have regarded this right of way as a public road. Indeed, at certain times of the year, the traffic can be surprisingly busy. The upkeep of the road surface and the placing of signs, for example at the ford, also lead us to view this as a road, rather than a path.

"In order to maintain this important link to the upper part of the valley, it would seem imperative to ensure that the status of this right of way remains as a road, and that there is no downgrading or any neglect of the highway to discourage appropriate usage."

- 2.9 By letter, dated 19 January 2012, Prof Sir Alan Craft of Embleton, stated the following:

"Re Elsdonburn Shank

I confirm that my wife and I have used the road from Kilham to Elsdonburn Shank on many occasions. Sometimes this is to visit Dr and Mrs Court but on others we have used it for access to the wonderful walks over Coldsouth Hill and on to higher up the Cheviots."

- 2.10 By email, dated 20 January 2012, Mr B Redhead of 3 Kilham Cottages, stated the following:

"I writing to express my disapproval about the road closure to E.B.S we live in Kilham, and use the road often, I can't believe the council are even considering to close the road."

- 2.11 By email, dated 21 January 2012, Mr P Podmore stated the following:

"I understand that some difficulties have been raised with regard to access to Elsdonburn Shank, Kilham by the metalled access road. As a painter living nearby I have been using this access for many years the owners of Elsdonburn Shank being very accommodating about cars being parked in the neighbourhood of their house. As with the hang gliders who have also used the road to glide off Coldsouth Hill it is very useful to be able to bring materials and equipment close to where I want to work. It is also a very convenient point of access to the higher reaches of Coldsouth Hill and to the very important and unusual archaeological feature at Ring Chesters. Anyone bringing heavy photographic equipment to the site would need that facility to get close to their objective.

"I hope that future access to Coldsouth Hill will be maintained by the proper upkeep of the present roads and that no restrictions will be applied to visitors to the area."

- 2.12 By email, dated 23 January 2012, Ms S Brophy stated the following:

"I have, for many years, used the road to Elsdonburn Shank when starting walks in the hills. It would be a great shame if it was no longer open to public access."

- 2.13 By email, dated 28 January 2012, Mr N Hodgson stated the following:

"As a born Northumbrian who has roamed the land and written poetry about the charm of the landscape and people who inhabit it, I find it rather lame for an outsider to wish to preclude vehicle access to the upper region of the Kilham valley. When I lived there traffic was not a problem. There were certainly no 'boy'

racers around! Those who drove the road did so for genuine reasons, visiting the 'Shank' or simply as a means to walk the surrounding hills with respect and wonder. I often used to drive my elderly mother to the top of the road to enjoy the views. Her maternal ancestors were 'Boot makers' from Kilham. Does the new Landlord have such an affinity that this right is to be removed, particularly to those unable to walk there? In a song written by the American singer Greg Brown, he has a line worth remembering - 'ain't no road a good road until it is free to everyone'. Of course, it is a very social sentiment. But it does shed some finer truth. To close the road to the general public would, I perceive, be an act of selfishness - not something Northumberland needs or deserves."

- 2.14 By letter, dated 31 January 2012, The Glendale Gateway Trust made the following comments:

"Kilham valley – U1017

It has been brought to our attention that the above road may be re-classified.

"We have had a number of Glendale residents approach us expressing concern at the prospect of restricted access. Many of them have used this road to walk in the valley for year some of them with family connections.

"Through the Tourist Information Service which we operate from our community building in Wooler we have also been told anecdotally of visitors (again some with a family connection) who use this road as far as Elsdonburn Shank and value the remoteness and tranquillity the valley offers.

"We think there is therefore a case for the status of the road to remain as it is."

- 2.15 By email, dated 1 February 2012, Mr Kit Collins, owner of Longknowe Farm, stated the following:

"I understand that the status of the road between Kilham and Elsdonburn shank is under review.

"I am writing to provide information that may be of use in resolving this problem.

"I first came to work at Kilham in 1975. At that time the occupants of 'The Shank' a separate holding which was part of College Valley Estates worked full time.

"The vehicular access for this holding was the Kilham Valley road, there was never any question of the occupants using any

other road or track.

"This road has been used by the local community throughout the time (some 36 years) that I have been involved with Kilham.

"As far as I am aware the road has always been accessible by vehicles.

"At no time has any barrier been fixed across this road apart from in emergencies due to floods, snow or fence failures.

"I would regard any change in the use or classification of this road as completely unreasonable and without basis."

2.16 By email, dated 1 February 2012, Mr Christian Collins, stated the following:

"I understand that there is to be a review regarding the status of the road between Kilham and Elsdonburn Shank.

"I believe that I have lived in the Kilham valley longer than anyone else currently living here and therefore can provide you with information about the use of this road since the early 1970's when I lived here as a child.

"Throughout the last 40 years the road has been used freely by any vehicles where people have needed access up and down the valley regardless of the changing ownership during this time. I have no reason to believe that this marked any change from the previous years. There has never been any question of there not being access for any person or their vehicle, only weather conditions would create any barrier to this access.

"I would not support any change to the status quo as there are many people who would wish to have access to the countryside surrounding Elsdonburn Shank who would not be able to reach this location by foot, and I would very much regret any limitations on the free access that we currently enjoy and have enjoyed for as long as I can remember."

2.17 By email, dated 11 March 2012, Ms A Logan, stated the following:

"I understand that there are issues about public usage of the road to Elsdonburn Shank.

"I occasionally drive up the road and park near Elsdonburn Shank, usually to go for a walk. Walking on access land, this provides easy access to the Border Ridge via Sheep Dip and Eccles Caim and to the Ringchesters/Mid Hill/Kilham Hill ridge which provides a good circular walk.

"Although I am a fit walker myself, I think it is worthy of note that for members of the public interested in archaeology but not able to walk long distances, using the top stretch of the Kilham to Elsdonburnshank road provides the easiest access on foot to the scheduled ancient monuments at Ringchesters and on Coldsmouth Hill.

"I have heard from more than one source that there are now access problems by road in the vicinity of Thompson Walls. It is a shame as this information in itself will deter previous users of the road from continuing to do so as most people want to avoid unpleasantness."

2.18 By letter, dated 13 March 2012, Ms A Gallico, of Black Bull Cottage, Kilham, stated the following:

"I write as an interested party to the consultation currently under way in relation to public vehicular access to the upper Kilham valley beyond Longknowe as far as Elsdonburn Shank..

"I am a resident of Kilham and I provide holiday accommodation which is well used and contributes to the local economy. The vast majority of my guests are couples who come to enjoy the countryside; some tenants are middle aged, but a significant number are elderly with a limited capacity for rough walking.

"In the light of this I am concerned to hear of the proposal to gate the road up the Kilham valley just beyond Longknowe. The road has very little use but those cars that do venture up are making their way to Elsdonburn Shank to walk or just to enjoy the views. I understand that the owners of Elsdonburn Shank are happy for people to park sensibly on their land; the land all round them has a policy of open access for walkers.

"It seems that visitors are banned from walking anywhere other than on the one public footpath running to the far end of the Waugh's property; we walked up the road last weekend and the gate on the track running through their property has a waymark that indicates that it is a walkers route; there is a car parking area just inside the gate with the implication that vehicles are not permitted to go any further. If this is still a public vehicular road, no waymark is necessary. As I understand it, no determination has yet been made about the status of this road and any attempt to restrict vehicle access is therefore entirely out of order.

"When we tried to drive up the valley some weeks ago, the owner of the property came out to ask us where we were going. I regard this as unnecessary and off-putting, especially to

visitors who do not know of the present uncertainties surrounding the road.

"To allow the Waughs to gate the road above Longknowe would be to restrict access to the less active people who come to Kilham to benefit from its beauty. The number of cars going up the valley is very small even in Summer, and this attempt to change the status of the road and prevent this small number of people carrying out a perfectly harmless and lawful activity can only be regarded as regrettable and inexplicable. Farms throughout the county have gated roads, but allow vehicular access without any detrimental effects on either the countryside or their livestock and it is difficult to see what will be achieved by shutting off access to Elsdonburn Shank by this route."

3. REBUTTAL / LANDOWNER EVIDENCE

- 3.1 By letter, dated 21st January 2012, S and J Court of Newcastle upon Tyne (the owners of Elsdonburn Shank) responded to the consultation stating:

"Thank you for your letter dated 1st November 2011 asking for evidence in relation to the road between Kilham and Elsdonburn Shank (U1017). We would like to highlight the following:

"1. We purchased Elsdonburn Shank (EBS) in October 1988 from College Valley estates (CVE). At that time we were told by them (via Sale & Partners and Wilkinson and Maughan, acting for them) that the tarmacked, single lane road from Kilham to EEBS was an adopted road with public rights (see attached paperwork marked [1]).

"2. In a note to Jo Andrews dated August 2011 David Brookes makes it clear that currently the road from Kilham to EBS (designated U1017) is a public road (attached marked [2]).

"3. Over the years we have owned EBS Northumberland Count[y] Council (NCC) have scraped grass and repaired potholes on the road up to EBS on a number of occasions (see copies of emails relating to a recent occasion [3]). Further, approximately five years ago a large section of the road between Long Knowe and Thompson Walls (TW) was resurfaced by NCC.

"4. It is evident that this road was used by vehicles in connection with EBS for decades prior to to our purchase (see Aerial photograph marked [4] dated 3.6.1969, with points B and C, as marked on the Northumberland County Council (NCC) map, indicated.

"5. During our ownership, EBS has been served by a wide range of motor vehicles: postman, the electrical company (there is a large electrical supply post immediately in front of EBS), British Telecom (EBS has a land line), builders, heating engineers, sweeps, coal and wood merchants and removal vans. Numerous friends and neighbours (from Kilham and the surrounding areas) have also used the road to visit us.

"6. Over the last 23.5 years we have observed consistent use by the public driving up to EBS. Individuals doing this have included walkers, mountain bikers, hang gliders, picnickers, support vehicles for Duke of Edinburgh participants, hound trailers, and hunt followers (see a recent photograph of hunt followers and their vehicles parked on the small paddock in front of EBS marked [5]).

"We consider that changing the rights over this road would be unjust.

"It would severely limit the use of this area of the National Park to walkers, particularly those less physically able, the old and young.

"It would undermine the rights of the people of Kilham and the surrounding area to visit each other freely.

"If U1017 is no longer maintained as a road for vehicular access it will compromise the access to our property and hence its potential use and value.

"Further, we understand that some consideration has been given, by the present owners of TW, to putting an electronic gate across the road at TW. This would make access more restricted and / or troublesome for tradesmen and friends coming to EBS.

"As we mentioned previously we would be happy to sign a relevant statutory declaration.

"We hope that in due course the road from Kilham to EBS (U1017) will be added to the definitive map as a public right of way with vehicular access."

3.2 By letter, dated 31 January 2012, Messrs Waugh of Thompson's Walls Farm responded to the consultation stating:

"Attached are the title deeds of Thompson's Walls Farm and your map which we have marked red where the alleged road passes through our land, as you requested.

"Please find our response below which contains information that we hope the Northumberland County Council's (NCC) Rights of Way Committee will take into consideration when it reviews the

Definitive Map and Statement of Public Rights of Way in relation to uncertainty

"It is likely that we will have additional information relating to this issue in the near future and hope that you will be able to take that into consideration once we are able to provide it to you.

"Background

We are the owners of Thompson's Walls and Elsdonburn Shank Farms, now collectively known as Thompson's Walls Farm (TWF). We bought TWF in 2009 from Mr. and Mrs. Duncan Davidson of Lilburn Farms who had owned TWF since 1988. As requested, we have marked on the map provided by you the area, which lies in our ownership.

We have been farming TWF in-hand since 2009 and therefore have been able to monitor the daily use of the route in question since that date.

"Usage

During the time that we have been managing TWF the only people to have used the route in question are: -

- The owners of TWF;
- Invited guests and family of the owners of TWF;
- Suppliers and clients of TWF;
- Members of various organisations such as the Northumberland National Park (who always ask our permission to access the route by car) and The College Valley Hunt, permitted or invited by the owners of TWF;
- The owners of Elsdonburn Shank Cottage and, occasionally, their invited guests and family;
- The Postman who delivers letters to the TWF cottages but never goes beyond this to the holiday house at Elsdonburn Shank; (The NCC's garbage disposal team pick up TWF's rubbish over a mile away in Kilham village)
- Invited horse riders; and
- Occasional walkers using the footpath.

In addition, we have, very occasionally, come across members of the public who have driven along the route because they are lost. Inevitably they stop in at the farmhouse and ask for directions. The last such incidence being a Canadian family in the summer of 2011 who drove up to the farmhouse and explained that they were completely lost and asked for directions to Kelso.

Another issue relating to use of the route in question arose from the London based owner of the holiday house at Longknowe who claimed that her paying guests were entitled to drive along the route in a car all the way to the holiday house at Elsdonburn Shank (ES) and park there due to a standing invitation from the Newcastle based owners of the holiday house at ES to do so. We reminded the owners of the holiday house at ES that their

title deeds contained a covenant such that they were unable to give such permission. Once the owners of the holiday house at ES realised their error we believe that they rescinded the standing invitation thus preventing the owner of the holiday house at Longknowe from attempting to "enlarge" their easement for access for her commercial gain.

In addition, the owner of the holiday house at Longknowe claimed that the previous owners of TWF, Lilburn Farms, had allowed her and her guests access to the farms. We asked Lilburn Farms whether this was the case and they informed us that they had never given any such permission or right, either verbal or written.

"Gate system

We would also like to point out that there is a series of gates and cattle grids that lie across the route. These have been in place as they are today for many decades, possibly centuries. They are vital for the management of livestock, particularly sheep and cattle, which is the main activity of TWF and has been so for many centuries. The occasional walkers that use the footpath are very diligent when it comes to opening and closing the gates, conscious of the importance of such an act so as to keep TWF's livestock in the fields to which they have been assigned.

"Maintenance of the route

Since we took over TWF and having assumed that the route was a private route as supported by the only publically available document, the Definite Map and Statement of Public Rights of Way, we have maintained the route in the best possible condition as we have been able to. This has included general maintenance such as snow clearance, road salting, cattle grate clearance, pothole repairs and the up keep of verges, stone walls, fencing, etc. We believe that the previous owners, Lilburn Farms, also took responsibility for the maintenance of the route in question during the 21 years that they owned TWF.

"Issues relating to Sir Alfred Goodson's Dedication dated 11th December 1968

The dedication from Sir Alfred Goodson, dated 11th December 1968, applies to the entire route from Kilham to the cattle grid found at the end of two fields north of the holiday cottage at ES. The remainder of the route in question between this cattle grid and the holiday house at ES was not on land owned at that time by Sir Alfred Goodson but instead on land partly owned by Mr. Rowland Lishman and partly owned by College Valley Estates Limited. Therefore, we believe that Sir Alfred Goodson's dedication was only relevant up to the cattle grid mentioned above. Thereafter, the route in the first field is privately owned by College Valley Estates Limited and the route in the second

field leading to the holiday house at ES is privately owned by the owners of said holiday house.

"In addition, we have attached the official land registry deeds for TWF (Title number ND87270 : Edition date 04.07.1995 see attached). In this document on Page 4, Clause 5, it discusses several covenants placed on TWF relating to provision of access to the current owners of the holiday house at Longknowe as given by Mr. Alan Goodson, grandson and inheritor of the land owned by Sir Alfred Goodson, dated 6 March 1990. Of particular interest is the section within the 2nd paragraph where it clearly states that the current owners of the holiday house at Longknowe are allowed by the owner of TWF,

"...a right of way with or without vehicles at all times of day or night for all purposes connected with the use and enjoyment of the property (i.e. the holiday house) over and along the access road shown tinted blue on the said plan annexed hereto the Purchasers or their successors in title paying a fair proportion of the costs incurred in maintaining and repairing the same."

"If one looks at the map referred to (Page 9 of the attached deeds entitled *PLAN REFERRED TO – THE OLD KENNELS THOMSONS WALLS* and dated 6 March 1990) one can see the tinted blue road mentioned is from the cattle grid at the beginning of the TWF's land (i.e. several hundred metres to the east of Longknowe) to Longknowe itself. No mention is made of permissible access beyond this point i.e. beyond the cattle grid at Longknowe towards TWF's farm buildings and beyond. This map also refers to this blue tinted portion of the road as a PRIVATE ACCESS ROAD. The implication of this is that Mr. Alan Goodson, the grandson and inheritor of Sir Alfred Goodson, believed that as at the 6th March 1990 the entire route lying within TWF's land was a private route, thus requiring a covenant in TWF's deeds to permit the new owners of the holiday house at Longknowe access along this "PRIVATE ACCESS ROAD". In addition, the deeds state that both TWF and the owners of the holiday house at Longknowe have a shared duty in paying for the "costs incurred in maintaining and repairing the same", which also implies that this was a private road in Mr. Alan Goodson's view at that time. It seems that the TWF deeds imply that on the 6th March 1990 Mr. Alan Goodson either did not acknowledge his grandfather's dedication or realized that such a dedication had lapsed many years prior to this date due to a lack of use."

4. CONSULTATION

- 4.1 In October 2011, the Council carried out a consultation with the Parish Councils, 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". Three replies were received and are included below.

- 4.2 By letter, dated 8 November 2011, Erica Bamford responded to the consultation on behalf of the Ramblers' Association, stating:

"Kilham FPs 3 and 5 This is a tarmac road from Longknowe to Elsdonburn Shank and is used by vehicles for access to Thompson's Walls and Elsdonburn Shank. As such it would stand up to vehicular use. It would however be a dead end as a Byway open to All Traffic."

- 4.3 By email, on 26 January 2012, Mrs S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

"3. Kilham FPs 3 & 5, upgrading to BOAT: The BHS supports this proposal as this is a tarmac road with good documentary evidence that it is a public route. In addition, it links with two alleged bridleways linking West Newton to Yetholm Mains, a historic swire (cross border route).

"The route from West Newton is recorded as BW 6 Kirknewton. This changes to public footpath at the boundary with Kilham parish although the nature of the path does not change. It meets the proposed BOAT, north of Elsdonburn Shank and continues westwards to Yetholm Mains along a route that is easily identifiable on the ground and again recorded as a public footpath. It is hoped that research to support the upgrading of this FP to BW will be done sometime in the future."

- 4.4 By email, on 29 January 2012, County Councillor Anthony Murray responded to the consultation, enquiring as to how the process operates, but without offering any information or evidence at this stage.

5. DOCUMENTARY EVIDENCE

- 5.1 A search has been made of archives relating to the area. Evidence of Quarter Sessions Records, Deposited Plans, 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 approximating to the claimed route, though the farms at Thompsons Walls and Long Know are both shown.

1820 Fryer's County Map

There is no evidence of a track approximating to the claimed route, though the farms at Thompsons Walls and Long Know are both shown.

1828 Greenwood's County Map

There is clear evidence of a track approximating to the claimed route.

1866 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a path or track over the claimed route.

1899 Ordnance Survey Map: Scale 1:10,560

There is evidence of a track over the claimed route.

1924-5 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a track over the claimed route.

1932 Glendale Rural District Handover Map: Scale 1:63,360

There is evidence of a track over the claimed route. However, only the section of road between Kilham and Longknowe is coloured so as to identify it as a publicly maintainable road.

Restricted Ribbon Development Act 1935 Map

No maps would appear to have been prepared for the Glendale area.

1957 / 58 Ordnance Survey Map: Scale 1:10,560

There is clear evidence of a track or path over the claimed route.

1959 Bridges & Roads Committee Minutes (15th June 1959)

It is recorded in the minutes that "The College Valley Estates Limited have applied for the adoption of certain roads and the Sub-Committee have met Sir Alfred Goodson and his agent and inspected the roads." One of these roads is "The continuation of

the existing County road from Kilham to Longknowe for a distance of approximately 1¼ miles serving two cottages at Thompson's Walls and one house and buildings at Elsdonburn Shank."

It is noted in the minutes that "All these roads are scheduled as rights of way. The continued occupation of these isolated dwellings enables wide areas of land to be used for food production and the Sub-Committee is recommended that, subject to the roads being made up to a satisfactory standard, they be adopted."

The Committee resolved "That subject to the roads being completed to the satisfaction of the County Surveyor, they be taken over as highways repairable by the inhabitants at large and that the necessary notices be signed by the Clerk of the Council and fixed up therein pursuant to Section 19 of the Private Street Works Act 1892."

1968 Highway Dedication

There is clear evidence that a public vehicular highway was dedicated by the then landowner (Sir Alfred L Goodson Bart), from the ford at Longknowe and the field boundary 480 metres north of Elsdonburn Shank.

1976 / 82 Ordnance Survey Map: Scale 1:10,000

There is clear evidence of a track over the claimed route.

5.2 The entry for the U1017 road, in the 1974 County Road Schedule is:

"Kilham -- Elsdonburn Shank
From B6351 at Kilham (NT 885 326) south-westwards via longknowe, Thompsons' Walls to Elsdonburn Shank (NT 863 293).

The length of the U1017 road is identified as being 2.67 miles.

5.3 The entry for the U1017 road, in the Schedule of unclassified roads identified under the provisions contained within the Restricted Ribbon Development Act 1935 is:

"30. Road from the Akeld -- Kilham road B6351 at Kilham south-westwards to Longknowe."

6. SITE INVESTIGATION

- 6.1** From a point on the U1017 road, 20 metres south-east of Longknowe, at a 2.7 metre wide cattle grid with 4.5 metre bypass gate, a 2.5 metre wide tarmac track proceeds in a general south-westerly direction for a distance of 260 metres to a cattle grid and field gate combination with a 4.5 metre wide bypass gate alongside. A 2.5 to 2.8 metre wide tarmac track continues in a south-westerly direction for a further 160 metres, then in a westerly direction for a distance of 55 metres, to a 4.6 metre wide field gate. The track continues in a south-westerly direction for a distance of 20 metres to a 4.5 metre wide field gate. From this point a 2.1 to 2.2 metre wide tarmac track continues in a south-westerly direction for a distance of 425 metres to a 3.6 metre wide field gate. Through the gate the track continues in a general south-easterly then south-westerly direction for a distance of 375 metres to a 2.9 metre wide field gate and cattle grid combination, with a 3.6 metre wide bypass gate alongside. At this point the road leaves Thompson's Walls' land. Thereafter a 2.1 metre wide tarmac track proceeds in a southerly direction for a distance of 365 metres to a 3.6 metre wide field gate. Through the gate a 2 to 2.1 metre wide tarmac track proceeds in a south-westerly direction for a distance of 120 metres, then a 4 to 4.5 metre wide grass surfaced track proceeds in a westerly direction along the front of Elsdonburn Shank (now following the route of existing Footpath No 3 as opposed to Footpath No 5) for a distance of 30 metres to a 2.9 metre wide field gate.

7. COMMENTS RECEIVED ON THE DRAFT REPORT

- 7.1** In May 2012, a 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)(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 Byway Open to All Traffic No 5 is identified on the County Council's List of Streets as being part of the U1017 road. This part of the U1017 was not identified as being publicly maintainable on the 1932 Glendale Rural District Council Handover Maps or in the schedule prepared under the Restricted Ribbon Development Act 1935.
- 8.5 In June 1959, following an approach from Sir Alfred Goodson, owner of (at least part of) the track, the County Council's Bridges and Roads Committee indicated that the Council would be prepared to take the road over as a highway repairable at public expense provided it was first made up to a satisfactory standard. Nine years later, on 11th December 1968, Sir Alfred Goodson would then appear to have dedicated a 1450 yard (i.e. 1326 metre) long public highway between Longknowe and a field boundary 480 metres north of Elsdonburn Shank.
- 8.6 The County Council accepts that, given the way the regulations were written with regard to the way highway authorities could include publicly maintainable highways in the List of Streets, there was no impediment to public bridleways and public footpaths also being included. That is not to say that any bridleways or footpaths were so shown – just that they could be. It must, therefore, be entirely proper to consider each UCR on a case by case basis, but that does not mean that we should begin with the assumption that each UCR is no more than a public footpath unless higher rights can be proven by other means. In Northumberland there is no evidence to suggest that public footpaths and public bridleways were deliberately shown on the List of Streets (with the exception of the surfaced paths and alleyways providing pedestrian links between roads, in urban areas). The fact that a route is shown on the List of Streets must, therefore, be evidence of some weight that public vehicular rights exist.
- 8.7 Letters from DEFRA, dated 2003 and November 2006, and Rights of Way Circular 1/09 set out the approach Inspectors and order making authorities should take in determining the status of routes included on the List of Streets. In summary, the guidance states that the inclusion of a route on the List of Streets is not a record of what legal rights exist over that highway but may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. Highway Authorities are recommended to examine the history of such routes

and the rights that may exist over them on a case by case basis in order to determine their status.

- 8.8 Whilst it is clear that the "Thompson's Walls" part of the route must have been added to the List of Streets as a consequence of Sir Alfred Goodson's 1968 dedication, it is not at all clear on what basis the "Elsdonburn Shank" part of the route was added as it did not form part of the 1968 dedication by Sir Alfred. It has been suggested that the reason for this was that he was not the owner of this portion of the route, and therefore had no capacity to dedicate public rights over it. In 1959, his approach to the Council seemed to envisage dedication / adoption of the whole route. The Elsdonburn Shank portion may have been added to the List of Streets as the result of a contemporaneous dedication made by some other party, the documentation for which has subsequently been lost. It is also possible it was added as the result of an error, perhaps influenced by the wider scope of the earlier discussions.
- 8.9 The test which the Council must apply, in deciding whether or not to make an Order, is whether or not higher rights have, on a balance of probability, been shown to exist. It would not be appropriate to apply the lesser test (i.e. have vehicular rights been reasonably alleged to exist) in this case, because this route is already shown on the Definitive Map as a public footpath.
- 8.10 In the absence of evidence that procedures to extinguish vehicular rights were carried out, any rights which previously existed must be presumed still to exist. In law, the maxim is 'once a highway, always a highway'.
- 8.11 The Natural Environment and Rural Communities Act 2006 (NERC Act 2006) had a major impact upon the recording of byways open to all traffic based upon historical documentary evidence. Subject to a certain exceptions, in narrowly defined circumstances, all unrecorded motor vehicular rights were extinguished by this Act. The most widely applicable exception is found in s.67(2)(b) of the Act, where a route was (when the Act came into force on 2 May 2006) recorded on a highway authority's List of Streets. This exception will not apply, however, in situations such as this one, where the route was also shown on the Definitive Map as something less than a byway open to all traffic.
- 8.12 Although, in this case, inclusion on the List of Streets did not 'save' the public's motor vehicular rights, officers consider that another exception, namely s.67(2)(c) of the Act, nevertheless applies. Where the vehicular right of way "was created (by enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles" the public's motor vehicular rights will not have been extinguished. Sir Alfred Goodson dedicated this route, to the public, as a vehicular highway in 1968. In doing so, he must

clearly have anticipated it being used by mechanically propelled vehicles. It could perhaps be argued that the dedication of the route "as a highway" does not identify, specifically, what rights Sir Alfred was dedicating (technically speaking, footpaths and bridleways are highways too). That said, in everyday language, the term 'highway' is more generally applied to vehicular routes. He was clearly not dedicating a public footpath, because the route was already a recorded as such on the Definitive Map. The width of highway being dedicated would be unusually great for a footpath or bridleway. The dedication plan identifies a width for the "carriageway" and the term 'carriageway' is very much a vehicular one. Finally, looking back nine years to when Sir Alfred initially approached the Council requesting that the route be adopted, it was clearly with vehicular access to the properties in mind.

- 8.13 Although this route has a metalled surface, given that public vehicular rights do not appear to extend beyond Point X (or, alternatively, beyond Elsdonburn Shank), but that public footpath rights (and perhaps public bridleway rights) do extend beyond this point, and that it is also a means of gaining entry onto Access Land, it is considered that this highway is one which is likely to be used by the general public mainly for the purposes for which footpaths and bridleways are so used; thereby satisfying the criteria for being recorded as a byway open to all traffic.
- 8.14 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. Usually there is a boundary to boundary presumption for public highways. Where a highway is not enclosed, the council has tended to adopt a standard width of 5 metres (wide enough for two vehicles to pass each other). In this instance however, Sir Alfred Goodson's dedication sets out the width of the public highway. The carriageway itself is described as being 9 to 15 feet (i.e. 2.74 to 4.57 metres wide). In addition to this the verges extend the highway by a further 6 feet (i.e. 1.83 metres). Thus, the width of the public highway varies from 4.57 to 6.4 metres. It is, therefore, proposed to record the byway open to all traffic with a width of 6.4 metres between Point A and Thompson's Walls and a width of 4.57 metres between Thompson's Walls and Point X.
- 8.15 As this process is only concerned with establishing what public rights of way exist it should be clear that any private vehicular rights of way, enjoyed by the owners of Elsdonburn Shank and / or others, will be unaffected by this process.

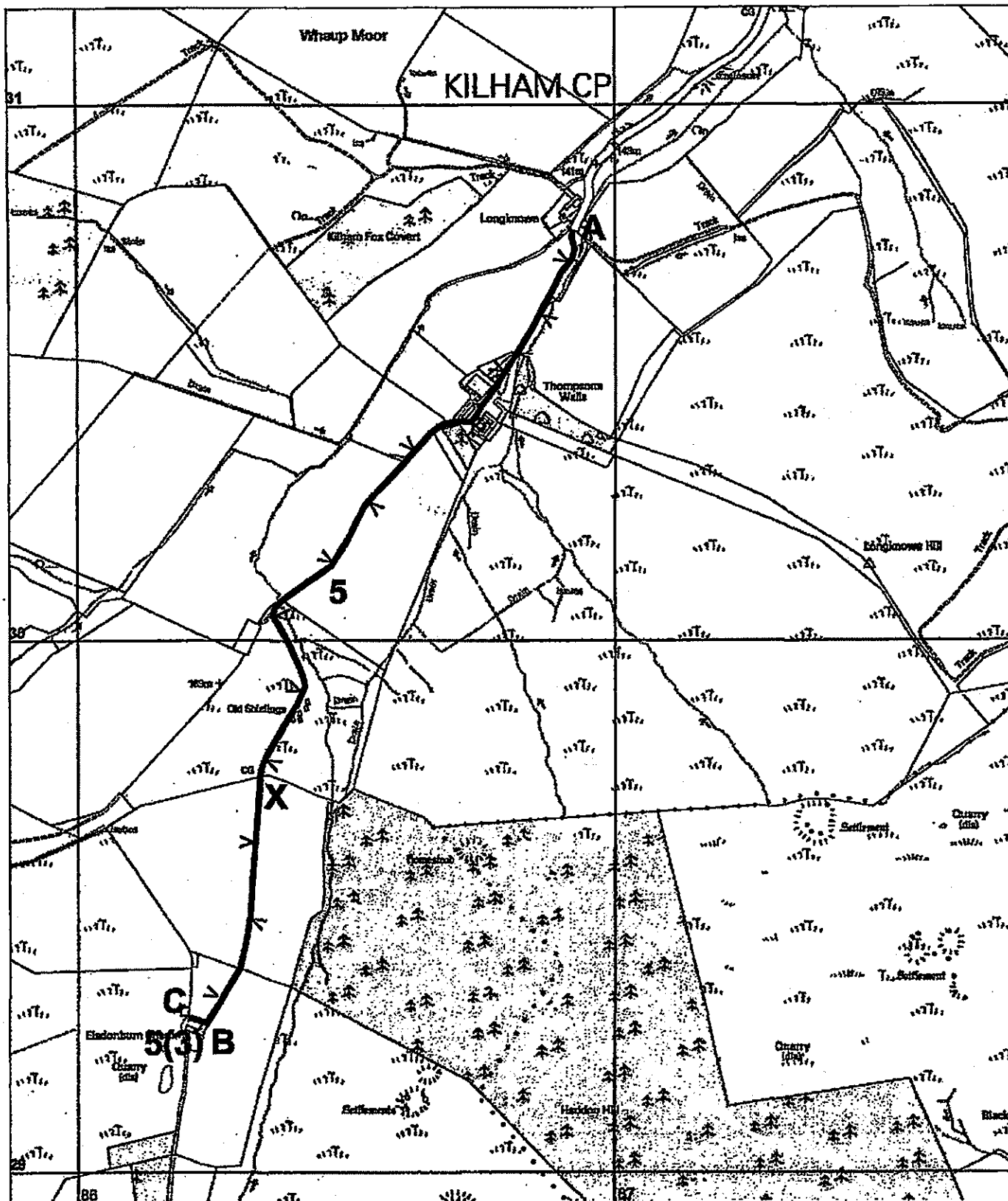
9. CONCLUSION

- 9.1 In light of the user and documentary evidence submitted, it appears that, on a balance of probability, public vehicular rights have been shown to exist over the northern part of the alleged byway (between

Points A and X) but not over the southern part of the route (between Points X and C). As the Natural Environment and Rural Communities Act 2006 would not appear to have affected these rights, it would, therefore, be appropriate to recognise the public's vehicular rights by recording the northern part of the route as a Byway Open to All Traffic.

BACKGROUND PAPERS

Local Services Group File B/25/5z



NORTHUMBERLAND

Northumberland County Council

Sustainable Transport
Local Services

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Wildlife and Countryside Act 1981 Public Rights of Way

Alleged Byway Open to all Traffic



O.S. Map NT 83 SE/ 82 NE

Definitive Map No 18/26

Scale: 1/10,000

Former District(s) Berwick

Parish(es) Kilham

Date: July 2012



Order Decision

Site visit on 19 June 2014; Inquiry held on 2 June 2015

by Sue Arnott FIPROW

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

Decision date: **29 JUN 2015**

Order Ref: FPS/P2935/7/34M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Northumberland County Council Definitive Map Modification Order (No 23) 2012.
- The Order is dated 15 November 2012. It proposes to modify the definitive map and statement for the area by recording a byway open to all traffic from Longknowe towards Elsdonburn Shank via Thompsons Walls in the Parish of Kilham, as shown on the Order map and described in the Order schedule.
- There was one letter of objection outstanding when Northumberland County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(1) of Schedule 15 to the Wildlife and Countryside Act 1981 I gave notice of my proposal to confirm the Order with modifications to alter the status of the Order route from byway open to all traffic to restricted byway. Six objections were submitted in response to advertisement of this proposed modification together with two representations and one letter of support.

Summary of Decision: The Order is confirmed as originally made.

Preliminary Matters

1. If confirmed with the modification proposed in paragraph 40 of my interim Order Decision issued on 8 August 2014, the Order would record the route in question on the definitive map and in the definitive statement as a restricted byway rather than as a byway open to all traffic.
2. This modification has been duly advertised and six objections have been submitted. Whilst initially a supporter of the Order, Northumberland County Council (NCC) took a neutral stance as regards the proposed modifications.
3. Although the extent of the 'new' evidence now before me is limited, information has been provided by both objectors to and supporters of the changes proposed, including details that I have not previously considered.
4. The majority of this was submitted in advance of the proceedings. However at the start of the inquiry, Mr Kind produced additional written material concerning walks in the area. This evidence was challenged by Mrs Court who argued that it fell outside the Rules¹; all other parties had adhered to the statutory timetable and Mr Kind should have produced these extracts earlier. Whilst I agreed with Mrs Court in principle, I accepted both documents since it appeared to me that they may have some relevance. I therefore adjourned for a short period in order to allow the documents to be read and considered.

¹ Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007

5. Ms Andrews stated that some local people had not been notified of the inquiry. Responding on behalf of NCC, Mr Bell explained the normal procedure for notification and why some may not have received direct communication from the Council. Site notices, informing the Parish Council and 'word of mouth' seem to have ensured that all interested parties had become aware of the event. I am satisfied that the statutory requirements have been adhered to.

The Main Issues

6. In my interim Order Decision, I noted that there were two main issues to be considered: firstly whether the evidence shows that a public right of way for vehicles has been established along the Order route (shown on the map as A-X), and secondly whether any such rights still exist for *motor* vehicles that should be recorded on the definitive map and statement.
7. On the basis of the documentary evidence previously considered, I reached the conclusion that the public acquired a vehicular right of way over the Order route by express dedication in 1968. Therefore on the 1 May 2006 this route might have been categorised correctly as a carriageway over which any member of the public could walk, ride, or drive any kind of vehicle.
8. No evidence or submissions have been made since the issue of my interim Order Decision to dispute this finding.
9. However the question remains whether, on 2 May 2006, Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) extinguished the public's right to use mechanically propelled vehicles (MPVs) on this carriageway.
10. Subsection 67(1) of that Act provides that upon that date any existing public right of way for MPVs was extinguished if it was over a way which, immediately before 2 May 2006, was not shown in the definitive map and statement or was shown as either a footpath, bridleway or restricted byway, unless such rights were saved by virtue of falling into one of the categories for exemption.
11. On the date in question, the Order route was recorded on the definitive map and statement as a public footpath (whilst also appearing on NCC's list of maintainable highways known as the 'list of streets').
12. I previously concluded that the evidence did not show the Order route qualified as an exception to this statutory extinguishment of MPV rights, and therefore the appropriate categorisation for the road would be 'restricted byway'².
13. Amongst the objections and representations submitted in response to advertisement of my proposal to modify the status of the route to be recorded by the Order, further evidence and submissions address the question of whether or not one or more of the categories for exemption are satisfied.
14. The main issue for me to consider now is whether the evidence before me is sufficient to show, on a balance of probability, that the public right to drive MPVs on the Order route has been saved. Consequently I shall examine all the evidence relating to the exemptions provided in sub-section 67(2) of the 2006 Act which are summarised as follows:

² A restricted byway is a way over which the public has a right of way on foot, on horseback or leading a horse, and with vehicles other than MPVs.

Sub-section 67(2)(a) – excepts ways that have been lawfully used more by motor vehicles than by other users in the five years preceding 2 May 2006;

Sub-section 67(2)(b) – excepts ways that are both (i) recorded on the “list of streets” as being maintainable at public expense and (ii) are not recorded on the definitive map and statement as rights of way;

Sub-section 67(2)(c) – excepts ways that have been expressly created or constructed for motor vehicles;

Sub-section 67(2)(d) – excepts ways that have been created by the construction of a road intended to be used by MPVs, and

Sub-section 67(2)(e) – excepts from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive ‘off-road’.

Reasons

15. I previously noted at paragraph 36 of the interim Order Decision that sub-sections 67(2)(b) and 67(2)(e) do not apply here; that is still the case. The Order route is recorded on NCC’s ‘list of streets’ but it also appears on the definitive map and statement as a public footpath, thereby failing the test in subsection 67(2)(b). As regards subsection 67(2)(e), the public’s right to use the route with vehicles does not date back to 1930.
16. I will therefore examine more closely the requirements of subsections 67(2)(a), 67(2)(c) and 67(2)(d) but will begin with 67(2)(c) since this was the basis on which NCC originally made the Order.

Whether the route was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for MPVs

17. No additional evidence was produced which is relevant to sub-section 67(2)(c). However further submissions were made in relation to the evidence I previously considered.
18. Mr and Mrs Court submitted that my interpretation of what constitutes “on terms that expressly provide for [the byway] to be a right of way for mechanically propelled vehicles” was too narrow, and that it conflicts “with any reasonable interpretation of the law and the English language”.
19. Whilst they argued that neither the published guidance³, nor the 2006 Act requires a specific expression of the type of vehicular use envisaged, I disagree. I fully accept that the aim of this legislation was to exempt from the effects of Section 67 the ‘ordinary roads network’ as explained in the Guidance, but the same document goes on to state: “*There have to be express words in order for this exception to apply.*”
20. The objectors submit that the word ‘highway’, used in Sir Alfred’s 1968 dedication is an inclusive rather than exclusive word and that there was no need to specify that a ‘public highway’ could be used by motorised vehicles because that was generally understood by the term ‘highway’. Further, the use of the word ‘carriageway’ on the attached map, the stated width of the road

³ ‘Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways: A guide for local authorities, enforcement agencies, rights of way users and practitioners’ published by Defra; Version 5 issued May 2008 (‘the Guidance’)

and the provision of passing places made it clear that the dedicated route was intended to accommodate motor vehicles.

21. Mr Bell advised that the 1968 documentation used wording that was typical of the period. He conceded that it was not sufficiently precise but NCC had accepted that identification of the route as a "carriageway" on the plan was sufficiently 'express' since it encompasses MPVs. NCC now accepts there is a distinction to be made here although it was clear that use of the road by MPVs would have been envisaged in 1968.
22. I consider the words used in subsection 67(2)(c) to be explicit: the statutory extinguishment "does not apply to an existing public right of way if ... (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles".
23. There is no evidence to dispute my finding that Sir Alfred intended to dedicate the Order route as a full vehicular highway. Indeed the instrument by which this was formally recorded in 1968 utilised the terms 'highway' and 'carriageway'. It is not surprising to find no specific reference to motorised or mechanically propelled vehicles at that time and I accept that it was probably 'taken as read' that such vehicles should be at liberty to use the road in addition to any horse-drawn traffic.
24. However my view remains the same: the omission of such a reference is fatal. The implication of motorised user is no substitute for "terms that expressly provide for it to be a right of way for (MPVs)". I therefore conclude that the requirements of subsection 67(2)(c) are not satisfied and that the public's right to use the Order route with MPVs is not saved from extinguishment by this provision.

Whether the Order route has been lawfully used more by motor vehicles than other users between May 2001 and May 2006

25. In my interim Order Decision I addressed briefly the possibility that subsection 67(2)(a) could apply. I found the evidence before me at that time was not sufficiently detailed to enable me to reach a conclusion, nor did it focus particularly on the period in question.
26. Since then I have received further information in writing from the objectors and have had the benefit of hearing the accounts of those who appeared as witnesses at the inquiry.
27. I heard from Mr and Mrs Court who have a second home at Elsdonburn Shank. Mrs Court explained that her father had died in 2002 and that year they had spent a great deal of time at the property including a six-week holiday. Thereafter they were there most weekends until they retired in 2005 after which they had spent a lot of time at Kilham. Consequently they were able to give a good account of use of the road during the relevant five year period.
28. Mrs Court acknowledged that the general level of walking had increased in recent years and that they saw walkers mostly during the summer and at weekends. She felt that this valley was not one that naturally directed walkers along it since it does not connect with other routes at Kilham, yet footpaths cross it at higher levels. The 2014 walk details provided by Mr Kind show that the route now is better promoted than during the relevant period pre-2006 when it did not feature in any of the local guidebooks she had checked.

29. Mrs Court also referred to the written evidence of Chris Foster on behalf of the Northumbria Hang Gliding and Paragliding Club which regularly used the road between Kilham and Elsdonburn Shank for many years, up to and including 2006. She highlighted the distinction between access onto the hillside with vehicles for which permission was given and use of the road which was used freely as a highway.
30. Mrs Riddell presented both written and oral evidence of living at Thompsons Walls from 1987 to 2007, thus including the relevant period. Her late husband had been shepherd for the Davidson family (who owned the Lilburn Estate). They had few holidays so were always on the farm. Mrs Riddell was well aware of use of the road since the farmhouse over-looked it, the farm dogs would bark whenever anyone came through and it was in the nature of a shepherd to be observant. It was her clear recollection that the road was used more by vehicles than by people on foot. Other than those taking part in the hunt, horse riders were rare and cyclists even more so. Mrs Riddell was also certain that most people (then) drove up to Elsdonburn Shank to start their walks; few made the journey uphill on foot. She also recalled that hang gliders would drive up every weekend in the summer.
31. Mrs Riddell knew that she and her husband were obliged to allow the hunt over their land but she was never aware of permission being given by the Davidsons, either for the hunt or hunt followers (of which there were many who used the road in cars and quad bikes, parking at various points along it).
32. Although Mrs Riddell had visited Thompsons Walls only occasionally since leaving in 2007, it was her impression that walking in the area had increased generally in recent years, mostly prompted by promotion of the St Cuthbert's Way.
33. Mrs C Andrews has a holiday cottage in the locality which is frequently let to walkers. She reported that people regard the Order route as a valuable vehicular access to a drop-off point high in the hills where walkers could be taken by car to start their journey back towards Wooler on foot without the challenging uphill climb. She knew walking to be popular in the area, especially given the upsurge in interest in the archaeology of the Kilham valley, but in her experience people had tended to drive up to Elsdonburn Shank rather than walk up. Mrs Andrews herself found it too far to walk but she recalled driving up there many times, including between 2001 and 2006.
34. Ms J Andrews and her family own 'The Longknowe' which is used regularly as a holiday home. When she first came to Kilham in 1990 she understood there to be free access up the valley and she was aware that many people drove up to Elsdonburn Shank to park there and walk. She and her family did so on a repeated basis, probably 6 or 7 times a year, both with small children and elderly parents. Further, instructions to holiday makers in the cottage advised that they could drive up the valley to walk since it was a public road. Ms Andrews knew that many regular visitors did just that.
35. Mrs Collins had not been resident in the area during the relevant five years but had lived in Kilham both before and after, totalling over 50 years. As far back as she could remember the road had always been used by vehicles and there was no restriction on public access. Although she could not see the road directly from her cottage, she observed that people do still drive up the road although she agreed there seemed to be more walkers in recent years.
36. Although he did not give evidence in person at the inquiry, Mr Kit Collins provided written evidence of his involvement with the management of land in the valley. His recollections included regular use of the road by the hang-gliding

club, the parascending club, the badger watch group, and by walkers who drove along it to park for the old Kilham Farm Trail and various other walks including the Hill Fort Trail. Whilst his information is helpful, he is not specific about activity between 2001 and 2006.

37. Responding to this new evidence, Mr Waugh explained that he himself was unable to give evidence to directly counter the recollections of the witnesses at the inquiry since he had no knowledge of the area before purchasing Thompsons Walls from the Davidsons in 2009. Nevertheless he challenged the veracity of some of the statements made.
38. He drew attention to the fact that the Courts lived in Newcastle and Ms Andrews in London so neither could give a full account of use of the road. Mrs Collins was out of the country during this period and in any event could not see the road from her home. Only Mrs Riddell could give an informed view but she would not have been aware of any permissions granted by the Davidson family as owners. For example, he submitted that it was usual for the hunt to secure permission for both riders and followers and therefore all these vehicles should be excluded from the assessment. Likewise, tradespeople visiting Elsdonburn Shank would have licence to use the road as visitors and would not qualify as members of the public. Once these vehicles were disregarded, then the balance of public user altered significantly in favour of non-vehicular use.
39. Similarly Mr Kind had no direct evidence to challenge the submissions of the objectors on the nature of use of the Order route between 2001 and 2006. Nevertheless he questioned the sufficiency of the evidence to show that the number of vehicles exceeded the number of non-motorised users during that period. His estimate, based on the witness evidence, was that somewhere in the region of 200 cars per year used the road and submitted that in a popular walking area this could easily have been outnumbered by walkers.
40. He drew attention to the difference in the availability of information about walks in the area, contrasting the ease in which internet searches can now produce a range of options compared with the reliance on guidebooks and leaflets 10 – 15 years ago. He produced a list of local walks from a simple internet search although this revealed none which included the Order route. However he did find evidence of a walk recorded by the St Edwards ABC Fellwalkers on Saturday January 4 2014 which did use Order route.
41. Mr Kind submitted that the Order route is a dead-end road for motors yet the Kilham area had always been popular for walking and its omission from walkers' guidebooks did not mean that people did not walk it. In fact it had been recorded on the definitive map and statement as a footpath since the 1950s and would therefore be known to the public through inclusion on Ordnance Survey maps, yet the 1968 dedication as a vehicular road would not be widely known. Mr Kind did, however, accept that the balance of user may have changed in recent years, especially given the change of approach to vehicles by the new owners of Thompsons Walls, but he highlighted the words of the Judge in the case of *Fortune v Wiltshire* [2011]⁴ (His Honour Judge McCahill QC) who said: "It is common ground between the parties that the burden of proving that the public vehicular right has not been extinguished lies upon the First Defendant."

⁴ *Fortune v Wiltshire County Council* [2010] EWHC B33 (Ch) at Paragraph 996

42. In conclusion Mr Kind submitted that satisfying the terms of subsection 67(2)(a) does not necessarily require a simple arithmetical tally of 'user evidence forms' to establish the balance of user during the relevant period. Instead there may be a need to look at far less objective data to reach a view.
43. This seems to me to be the only practical approach to the issue as the passage of time makes the availability of precise counts increasingly unlikely.
44. I take on board the doubts raised by Mr Waugh over the comprehensiveness of the picture of public use compiled from residents who are not present all year round, but I share his view that the evidence of Mrs Riddell is more reliable insofar as her observation of the road was more continuous throughout the key five years. However her evidence was entirely consistent with that of other witnesses; all said that the road was used more by vehicles than by walkers at that time. No evidence has been provided to dispute this.
45. Mr Waugh postulated that use of the road (as opposed to the adjacent land) by the hunt was authorised by the landowners and should be discounted but no evidence was produced to substantiate the granting of permission. Given that I have already concluded that until 1 May 2006 the public enjoyed a full vehicular right of way over the Order route on the basis of Sir Alfred's dedication, I reject any suggestion that use of the road by motor vehicles should be disregarded when, in the absence of evidence to the contrary, it was ostensibly in the exercise of a public right.
46. I recognise that the evidence of use of the road is largely anecdotal rather than the more scientific quantitative survey that could prove the point well beyond the balance of probability, but there is no evidence to challenge it other than assumptions about the general popularity of walking. On balance I am satisfied that the information now provided and centred on the relevant five year period is sufficient to show that between May 2001 and May 2006 the Order route was used lawfully more by motor vehicles than by other users.
47. That leads me to conclude that the rights of the public to drive MPVs on the Order route between points A and X on the Order map were not extinguished on 2 May 2006.

Whether the Order route was created by the construction of a road intended to be used by MPVs

48. In relation to the saving provided by sub-section 67(2)(d), there is relevant evidence although it is limited. As Mr Kind pointed out, this provision was directed at preserving 'estate roads' rather than the type of road at issue here. Nevertheless, the way in which this road became established as a publicly maintainable carriageway appears to have the potential to fulfil the criteria.
49. I noted previously (at paragraph 20) that the process by which the road to Elsdonburn Shank was formally adopted for maintenance purposes was recorded in the Minutes of NCC's Bridges and Roads Committee dated 15 June 1959. It was noted "*That subject to the road(s) being completed to the satisfaction of the County Surveyor, they be taken over as highways repairable by the inhabitants at large and that the necessary notices be signed by the Clerk of the Council and fixed up therein pursuant to Section 19 of the Private Street Works Act 1892*".

50. Whilst Mr Kind helpfully drew a distinction between the procedures in Sections 19 and 20 of the Private Street Works Act 1892, the Council's minutes make clear that it was the former that was to operate here.
51. The minutes also noted that *"All these roads are scheduled as rights of way⁵. The continued occupation of these isolated dwellings enables () areas of land to be used for food production and the Sub-Committee recommend that, subject to the roads being made up to a satisfactory standard, they be adopted."*
52. Thus it appears the road was to be 'made up to a satisfactory standard'. In this context I take that to mean it was to be constructed to a standard suitable for use by motor vehicles and all other traffic.
53. At paragraph 27 of my interim Order Decision I noted:
- "... the time delay between the Committee resolution to conditionally adopt the road in 1959 and the declaration by the owner of his express dedication in 1968 raises a number of procedural questions for which no direct evidence is available to provide the answers. However, given the subsequent evidence in the County Surveyor's records, I consider the simple explanation offered by NCC to be the most likely: that the condition in the 1959 resolution required the road to be made up before being adopted; that those works had not been complete by 1964 (since the road is not shown in records until 1974); that at some stage during the process the question arose as to what type of highway was being adopted and that the declaration by Sir Alfred was intended to put the matter beyond doubt that it was a carriageway."*
54. The road was 'adopted' sometime between 1964 and 1974 but there is no record of the date the Section 19 notice was fixed on site declaring the road to be publicly maintainable. The notice would not be erected until the works to construct the new road were complete and to the required standard. There is no evidence to confirm whether this occurred before or after Sir Alfred's dedication in 1968 although on balance I consider it more likely the notice was issued after that.
55. The Guidance advises that the provisions of subsection 67(2)(d) inextricably links the construction of a road intended to be used by MPVs to its creation so these events must have taken place contemporaneously.
56. I am in no doubt that the road was constructed between 1964 and 1974 with the intention that it carry motorised vehicles and all other types of traffic. I have already concluded that Sir Alfred intended the highway that was the subject of his 1968 dedication to be a public carriageway for all vehicles including MPVs. Although these two events are inextricably linked, there is no evidence to confirm that they took place at the same point in time although it is entirely possible – even probable – that they did.
57. I am not aware of any legal precedent setting the limits of an acceptable timeframe for describing the construction and creation as being synchronous. However the underlying aim of the exemption provided by sub-section 67(c)(d) appears to be satisfied here. I therefore find that the rights of the public to use the Order route with MPVs were (also) saved on the basis of this provision.

⁵ The Order route was shown in the definitive record as a footpath.

Whether the Order route is correctly classified as a byway open to all traffic

58. Having concluded that the Order route has retained its vehicular right of way including rights for MPVs on the basis of the provisions in subsections 67(2)(a) and (d), a further question arises as to its precise status.
59. The Order proposes to record it as a byway open to all traffic (BOAT). This is defined in Section 66 of the Wildlife and Countryside Act 1981 as "a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used."
60. The Guidance explains that the test in sub-section 67(2)(a) of the 2006 Act was introduced to complement this definition so that "If a highway satisfied the user test in subsection 67(2)(a) of the NERC Act, it should not satisfy the 'BOAT test' in section 66 of the Wildlife and Countryside Act 1981."
61. However, the main user for the purposes of qualifying for exemption from MPV extinguishment needs to be assessed during the five year period 2001 to 2006, whereas the main user for determining its status as a BOAT must be judged at the relevant date stated in the Order; in this case that is 1 October 2012.
62. I accept Mr Kind's submission that the 'character test' was introduced in the Masters' case⁶ only because there was no actual use by the public from which to judge the main use of the route. Here, there has been and still is use of the Order route although no survey data is available to quantify the types of traffic that have used it at the relevant times. As I have already accepted, the information is largely anecdotal yet not refuted.
63. In this case I find no difficulty in concluding that the main public user at present and, on a balance of probability, in 2012 was by walkers, despite having concluded that between 2001 and 2006 the main use was probably vehicular. I consider changes in ownership and the availability of promotional information on walks in the area are factors which have effected the change. I am therefore satisfied that the Order route should be classified as a BOAT.

Conclusion

64. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed as originally made and without the modifications previously proposed in my interim Order Decision.

Formal Decision

65. I confirm the Order as originally made.

Sue Arnott

Inspector

⁶ *Masters v SSETR* [2000] 2 All ER 788, (CA) [2000] EWCA Civ 249, (CA)[2000] 4 All ER 458, (CA)[2001] QB 151

APPEARANCES

In support of the proposed modifications

Mr A Kind
Mr A Waugh

Opposing the modifications

Mrs J A Court
Mr S Court
Mrs C Andrews
Ms A Riddell
Mrs C Collins
Ms J Andrews

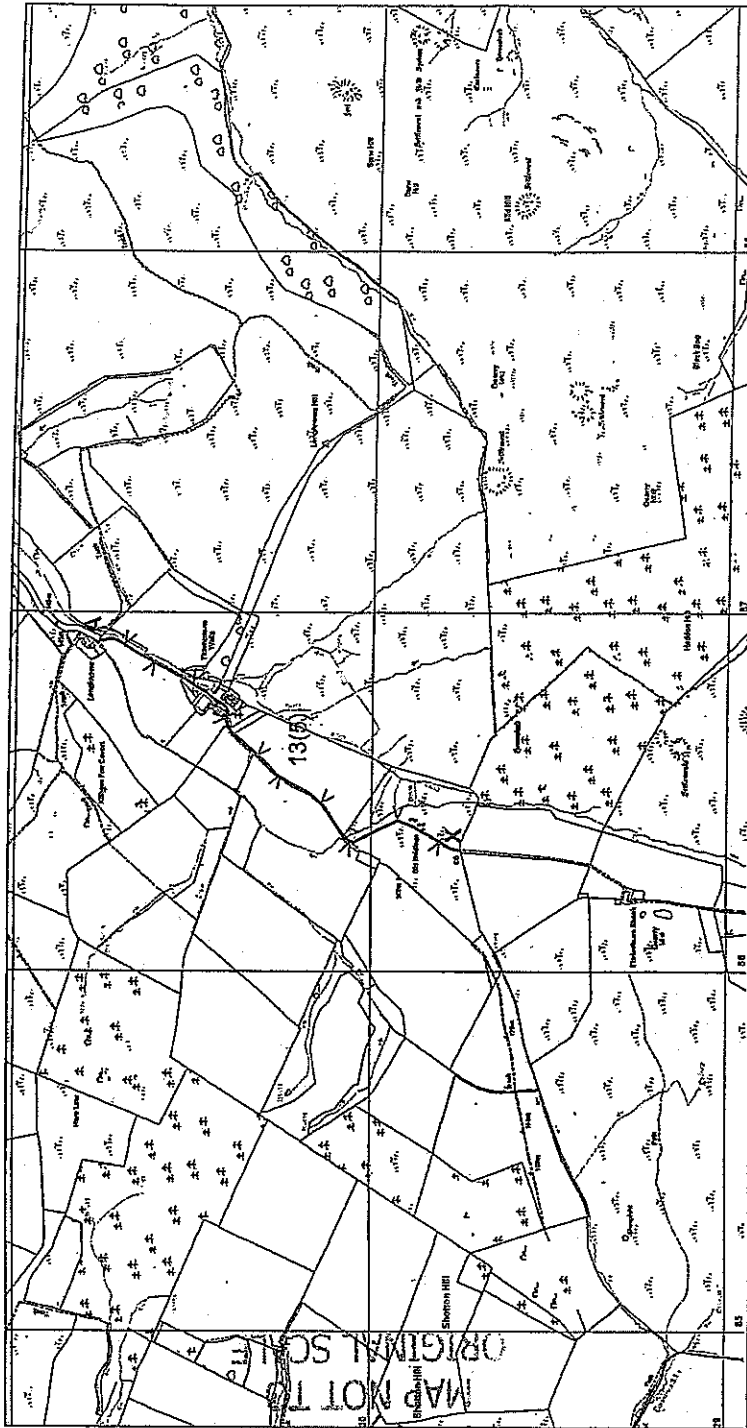
Appearing in a neutral capacity

Mr A Bell Definitive Map Officer, Northumberland County Council

DOCUMENTS

Submitted since the issue of the interim Order Decision:

1. Letters of objection to proposed modifications: Mr C Foster (2 October 2014); Ms J Andrews (3 October 2014); Mrs J & Mr S Court (6 October 2014); Mrs A Riddell (7 October 2014); Mr N Hodgson (8 October 2014); Mrs C Collins (8 October 2014); Mrs C Collins (10 October 2014); Mr C Collins (14 October 2014)
2. Statements of case of Mrs A Riddell (14 January 2015); Mrs C Collins (16 January 2015); Mrs J Court (28 January 2015); Mr A Kind (5 February 2015); Mrs C Andrews (7 February 2015); Ms J Andrews (8 February 2015)
3. Proofs of evidence from Mrs A Riddell (25 April 2015); Mr S & Mrs J Court (28 April 2015); Mrs C Andrews (29 April 2015); Mrs C Collins (1 May 2015)
4. Submitted by Mr Kind: List of walks in Elsdonburn area downloaded from www.go4awalk.com and walk sheet for fell walk on 4 January 2014 incorporating the Order route
5. Submitted by Mr Kind: Notes on Matters of Law Arising from the Objections and Statements of case put to the inquiry



Northumberland
 Northumberland County Council
 Sustainable Transport
 Local Services
 County Hall, Morpeth, Northumberland
 Telephone 0845 800 6400 NES1 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.23) 2012**

Public Right of Way closed
 Public Footpath
 Public Bridleway
 Resurfaced Byway
 Byway Open to All Traffic

02 Dec NT 63 SE 82 NE
 Former (Ordnance Survey) Benwick

02 Dec NT 63 SE 82 NE
 Benwick 1976
 Benwick 1976
 Benwick 1976

Scale: 1:10,000
 Date: September 2012