

## **RIGHTS OF WAY COMMITTEE AGENDA**

**Monday, 23 March 2020 at 4.30 pm in the Bridges Room - Civic Centre**

---

From the Chief Executive, Sheena Ramsey

---

Item	Business
<b>1</b>	<b>Apologies for Absence</b>
<b>2</b>	<b>Minutes</b> (Pages 3 - 6)  The committee is asked to approve the minutes of the previous meeting held on 18 November 2019.
<b>3</b>	<b>Declarations of Interest</b>
<b>4</b>	<b>Application for a Definitive Map Modification Order to delete part of public footpath RY/47</b> (Pages 7 - 58)  Report of the Strategic Director, Corporate Services and Governance
<b>5</b>	<b>Progress on Rights of Way Matters</b> (Pages 59 - 66)  Report of the Strategic Director, Corporate Services and Governance and the Strategic Director, Communities and Environment

This page is intentionally left blank

## GATESHEAD METROPOLITAN BOROUGH COUNCIL

### RIGHTS OF WAY COMMITTEE MEETING

Monday, 18 November 2019

**PRESENT:** Councillor K Wood (Chair)

Councillor(s): S Dickie, D Bradford, A Geddes, M Ord,  
J Simpson and A Wheeler

#### **RW30 CONSTITUTION OF THE COMMITTEE**

RESOLVED - That the constitution of the Committee for the 2019/20 municipal year be noted.

#### **RW31 DECLARATIONS OF INTEREST**

There were no declarations of interest.

#### **RW32 MINUTES**

RESOLVED - That the minutes of the meeting held on 18 March 2019 be approved as a correct record.

#### **RW33 RIGHTS OF WAY APPLICATIONS**

The Committee received a report on an Application for a Definitive Map Modification Order to upgrade the status of public footpath LA33 to bridleway.

- RESOLVED -
- (i) That the making of a definitive map modification order to add the claimed bridleway at Clarty Lane, Kibblesworth as shown with a broken black line from point A to point B on the plan at the appendix to the minute onto the Definitive Map and Statement of Public Rights of Way be approved.
  - (ii) That delegated authority be granted to the Strategic Director of Corporate Services and Governance to undertake the following:
    - To consult statutory consultees and make a definitive map and modification order to add the bridleway at Clarty Lane as shown from point A to Point B as an appendix to the minutes.
    - If no objections are received to confirm the order, if

objections are received and not subsequently withdrawn to send the order to the Secretary of State for confirmation as an opposed order.

(iii)that the possibility of the Bowes Valley Nature Reserve dedicating bridleway access from the claimed bridleway into the reserve be explored.

**RW34            PROGRESS ON RIGHTS OF WAY MATTERS**

The Committee were updated with regards to the following Legal Matters.

With regards to the claim for a Footpath at Sherburn Towers, Rowlands Gill, the objector has withdrawn their objection, there will now not need to be a Public Enquiry and the Secretary of State can now confirm the order.

Principal Works carried out between March 2019 and September 2019, include works at:

- Footpath Lamsley 9, construction of two stiles where they had        previously been removed.
- Bridleway Felling 44, Lingey Lane to South Tyneside, removal of K Barriers and metal chicane bollards and fence repairs.
- Bridleway Felling 44/3. Access from Ridgeway, Leam Lane, installation of handrail and repair to steps.
- The annual strimming programme has also taken place as is agreed with the contractor.

RESOLVED - That the information contained within the report be noted.

**Chair.....**

**Proposal:**

Application for a Definitive Map Modification Order to upgrade the status of public footpath LA/33 to a bridleway.

**Declarations of Interest:**

<b>Name</b>	<b>Nature of Interest</b>
None	None

**List of speakers and details of any additional information submitted:**

Barbara Herd - Applicant

**Decision(s) and any conditions attached**

- (i) That the making of a definitive map modification order to add the claimed bridleway at Clarty Lane, Kibblesworth as shown with a broken black line from point A to point B on the plan at the appendix to the minute onto the Definitive Map and Statement of Public Rights of Way be approved.
  
- (ii) That delegated authority be granted to the Strategic Director of Corporate Services and Governance to undertake the following:
  - To consult statutory consultees and make a definitive map and modification order to add the bridleway at Clarty Lane as shown from point A to Point B as an appendix to the minutes.
  - If no objections are received to confirm the order, if objections are received and not subsequently withdrawn to send the order to the Secretary of State for confirmation as an opposed order.
  
- (iii) that the possibility of the Bowes Valley Nature Reserve dedicating bridleway access from the claimed bridleway into the reserve be explored.

**Any additional comments on application/decision**



**Proposed upgrade Clarty Lane Footpath to Bridleway  
STATUS**



— Footpath    
 — Bridleway    
 A-B | | | | Proposed upgrade to Bridleway

## Report for Rights of Way Committee

23 March 2020

**TITLE OF REPORT:** Application for a Definitive Map Modification Order to delete part of public footpath RY/47

**REPORT OF:** Strategic Director, Corporate Services and Governance

---

### Summary

This report to committee sets out, summarises and evaluates the evidence gathered and submitted to determine whether there is sufficient evidence to make a definitive map modification order to delete part of public the section of footpath RY/47/1 and the whole section of RY/47/2 from the Definitive Map and Statement.

---

### 1. Purpose of the report

To investigate an application and evidence for a definitive map modification order as to whether there is an error on the Council's Definitive Map and Statement and part of the section of footpath RY/47/1 and the whole of section RY/47/2 should be deleted as shown by a broken black line on the plan at Appendix 2 to the report.

### 2. Background

2.1 By virtue of Section 53(2)(b) of the Wildlife and Countryside Act 1981, the 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 in consequence of events described in Section 53(3).

2.2 The relevant statutory provision that applies where an existing public right of way requires modification is Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981. This requires the Council, as surveying authority, to modify the definitive map and statement following:

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

- 2.3 The evidence can consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed before a conclusion is reached. Any other issues, such as safety, security, suitability, desirability, cost or the effects on property or the environment are not relevant to the decision.
- 2.4 The legal test for deleting a public right of way is somewhat different than for claiming a public right of way or for applications to change the status or alignment of a route. In particular, there are specific case law tests and government guidance notes to be considered when examining deletion cases.
- 2.5 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.

### **The Application**

- 2.6 The Council received an application dated 29<sup>th</sup> November 2018 which was registered on 3<sup>rd</sup> January 2019 to amend the definitive map and statement of public rights of way by deleting part of a footpath. The applicant submitted historical map evidence to support the claim. The historical map evidence is set out at Appendix 3 to the report.
- 2.7 Following receipt of the application, the Council displayed notices along the current footpath route requesting any persons who use it to complete a user evidence form. The local user groups were also contacted to determine if any of their members used the claimed right of way and wanted to submit evidence. Following this, 2 user evidence forms were received. A detailed assessment of the user evidence is set out at paragraph 4 below. The user evidence is set out in a table at Appendix 4.
- 2.8 On investigating the claim, the Council in its capacity as Surveying Authority, inspected documentary evidence and this is set out at paragraph 4 below.
- 2.9 In addition to the above investigations, the landowners of the claimed right of way were also sent landowner evidence forms to determine whether they recognised the claimed right of way as a footpath. The landowner evidence is assessed at paragraph 5 below and their evidence is set out in a table at Appendix 4.
- 2.10 This report was due to be presented at the Rights of Way Committee on 18<sup>th</sup> November 2019, however, it was withdrawn from the agenda at the request of the applicant. The applicant has now indicated through their

solicitors on 15<sup>th</sup> January 2020 that the item could now proceed to Rights of Way Committee.

### **3 Site Investigation**

- 3.1 The footpath which is subject to the claim is indicated on the plan at Appendix 2 from point A to point B. The part of the footpath that is Ryton 47/1 runs from the northerly corner of the field has a muddy surface. From grid reference NZ11846246 head in a northerly direction through a metal farmgate then continues in an easterly direction through the farmyard where the surface becomes hardstanding along to another metal farmgate. The route continues through the farmyard to another metal farmgate where Ryton 47/1 ends. Once through the metal farmgate the path becomes Ryton 47/2 grid reference NZ11926251. The route continues along the hardstanding surface, through a wooden gate until it reaches the road which is at grid reference NZ11956253.
- 3.2 On site visits by the officer, the public footpath was obstructed by locked gates, this has now been resolved with the landowner, but there was also metal fencing within the farmyard which was present on three site visits. On each site visit the officer was unable to continue through the farmyard section of the public footpath.

### **4 Consideration of the Application**

- 4.1 In determining the application, the committee must decide the following:
- (a) if the evidence in support of the claim demonstrates significant and robust evidence to overturn the presumption that the definitive map and statement are correct.

The burden to prove this falls on the applicant to establish on the balance of probabilities that the footpath has been wrongly recorded.

#### **DEFRA Rights of Way Circular 1/09**

- 4.2 This circular is advice and guidance on public rights of way and is not legislation, but seeks to give an overview within a policy context.
- 4.3 The circular states at para 4.33 that;

“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.”

**Trevelyan v Secretary of State for the Environment, Transport and Regions [2001]**

- 4.4 In this case the Court of Appeal held that where an application was made to delete a path from the definitive map and it fell to the Secretary of State or an inspector to decide whether the right of way did exist, he had to start with an initial presumption that it did. Some evidence of substance had to be put in the balance if it was to outweigh the initial presumption that the way had been correctly included. There had to be some evidence that was ‘beyond the realms of credibility that a right of way existed’.

**Planning Inspectorate Rights of Way Section Advice No 9: general guidance to inspectors on public rights of way matters, 11<sup>th</sup> Revision April 2019**

- 4.5 The advice sets out that the purpose of definitive map modification orders and reclassification orders is to ascertain what rights exist. Further, that once a highway has come into being, by whatever means it continues indefinitely no matter whether it is used or not.

**Documentary Evidence**

- 4.6 The application was submitted with the following documentary evidence:

a) OS Map NZ16SW 1967

This shows the public footpath and is labelled path, when it meets the farmyard the way joins a road that continues to the road on the other side of the farm.

b) OS Newcastle upon Tyne 1947

No footpath is depicted.

c) OS Hexham 1947

No footpath is depicted.

d) OS Blaydon NZ16 1952

This shows a footpath, it runs parallel with the hedge as it continues northward, which is a different alignment to the present day public footpath. The footpath joins the road in the farmyard and continues through the farm to the road on the other side of the farm.

- e) OS NZ16SW 1951  
This shows the public footpath in its present alignment, it continues to the entrance of the farmyard which is open. A road continues after the buildings and joins the road on the other side of the farm.
- f) OS Northumberland XCVI.SW 1899  
This shows a footpath labelled on a similar alignment to the 1952 OS Blaydon map above. Officers note that there is a well depicted where the footpath runs alongside a road. The road continues through the farmyard where it meets the road at the other side.
- g) OS Newcastle upon Tyne 1898  
No footpath is depicted.
- h) Gateshead 1965 Definitive Map  
This shows the public footpath in its present alignment.
- i) Gateshead 2018 Definitive Map  
This shows the public footpath in its present alignment.
- j) Google distance measurement.  
This shows measurements of the footpath using the present day alignment.

**Further evidence was submitted on 24<sup>th</sup> October 2019**

- k) Durham V 1921 map  
This shows a footpath, it runs parallel with the hedge as it goes northward, which is a different alignment to the present day public footpath. The footpath meets the road in the farmyard.
- l) OS map 1951  
This shows a footpath, it runs parallel with the hedge as it goes northward, which is a different alignment to the present day public footpath. The footpath meets the road in the farmyard and the road continues through and meets a road at the other side.
- m) Google distance measurement  
This shows measurements of the footpath, however, the officers note it is measuring a different alignment to the present day public footpath.
- n) “Information map”  
This shows the path with measurements, however, using a different alignment to the present day public footpath but also states ‘we propose providing a much better and linking route that would also be suitable for people with disabilities’. No other route is highlighted on the information map.  
The council adopted highway and private drive are also highlighted.  
The location of the gate that has been locked for over 60 years is also marked on the map.

o) Letter from Neighbour

This is a letter from a neighbour who lives at West Wing, Kyo Close, which is at the end of footpath Ryton 47/2, has known that gate has been locked for the past 14 years. This is while she has lived there but also during the period her aunt lived there between 1956-2014. This neighbour has a key to the gate.

p) Fingerpost evidence

This shows a photograph of a fingerpost on Kyo Bog Lane which states that Westwood is 500 metres from that point along with measurements on google maps. However, the alignment measured is a different alignment to the present day public footpath.

4.7 In addition to studying the documentary evidence submitted in support by the Applicant, the Council also carried out its own research.

a) OS Northumberland XCVI.10 1897

This shows a footpath, it runs parallel with the hedge as it goes northward, which is a different alignment to the present day public footpath. The footpath meets the road in the farmyard where it also shows a well.

b) OS Administrative Area Series of Great Britain 45/16-A 1947 and key

This shows the footpath, however on a slightly different alignment as it runs parallel with the hedge as it goes northwards. It then meets the road as it goes through the farmyard. The road carries on through to the road at the other side of the farmyard. Looking at the key, it is labelled as F.P. and the road that runs through the farmyard is 'other road (not classified by Ministry of Transport).

c) OS Hexham 7<sup>th</sup> Series Sheet 77 1956

This shows the footpath on a slightly different alignment to the current public footpath. This depicts the footpath terminating in front of a building. According to the key it is a "footpath and track".

d) Gateshead Definitive Statement 1965

This is the first recorded evidence of the footpath that is subject to this application from points A to B. The description of the footpath says 'Leave Kyo Bog Lane by stone stile at Hag Hill, leading N. across grass field to wood stile into Westwood Farmyard and lane leading to main road'. It is also note that 'farmyard' is also mentioned under the details of features entry at number 4. Further, Line 11 says 'unrestricted use for 20 years'. This entry sets out how the route came to be entered onto the definitive map and statement. This would mean that it is not based on documentary evidence but has achieved its status through long usage.

e) Gateshead Definitive statement 2018

The description of the route says 'From Hag Hill, Kyo Bog Lane, proceeds north across field to stile, turns east along south side of hedge to stile into West Wood farmyard to eastern corner'. Line 10 states the length of path is 600 metres.

f) CAMs 2019

This is the Council's computer system which shows the public footpath in its present alignment.

g) Photo Fingerpost 2013

This shows a damaged fingerpost at the Kyo Close end of footpath Ryton 47/2.

h) CAMs Furniture Report 2019

This shows that on the footpath between A and B there are two metal gates as well as a fingerpost. Grid references are also noted.

i) Google street view 2009

This shows a damaged fingerpost where you can make out the words 'Kyo Bog Lane' at the Kyo Close end of footpath Ryton 47/2.

### **Conclusion of documentary evidence**

4.8 After assessing the documentary evidence above, it is noted that some of the maps show the footpath in its current alignment and some show a different alignment. Where the footpath meets the road, people would not turn around and go back, walkers and indeed the footpath would continue along the side of the road. It is the road that would be depicted as this has a higher highway status than a footpath. OS maps are good evidence of the physical existence of routes, but not necessarily of status. The Council were not able to find any other maps e.g. tithe map, finance act map or other evidence. Further an internal search of council records no files or contemporaneous notes were found.

4.9 As mentioned above, a different alignment is shown on many of the maps. The reason why the current footpath is on a different alignment is because the reason the route became a footpath is based on 'unrestricted use for 20 years'. This means that it was based on user evidence of the alignment of the footpath as shown now and not based on the historical map evidence.

### **Landowner Evidence**

4.10 Landowner 1 owns West Wood Farm Cottage, this has footpath Ryton 47/2 at the front of the property. They state that they have always known this to be a public right of way as their partner had used it for many years when he lived and worked on West Wood Farm. They then purchased West Wood Farm Cottage in 1994 again stating that they have always known the public right of way was there. They state that they have seen members of the public using the footpath but when landowner 1 has

used it she has been shouted at and landowner 1 also states there are locked gates along footpath Ryton 47/2. Landowner 1 submitted a letter supporting the footpath.

- 4.11 Landowner 2 owns West Wing, Kyo Close. This is at the end of footpath Ryton 47/2. They state that this route is not a public right of way but it has been used as a public right of way for at least 80 years and they have seen members of the public using it for the last 15 years. It is also stated that there are locked gates.
- 4.12 Landowner 3 owns the land that footpath Ryton 47/1 passes on. On the completed form from Landowner 3 it only includes from Kyo Bog Lane to West Wood Farm, so this does not include the route marked on the application A-B. They state that this route is known as a public right of way, but the length of time is unknown. It is also stated that there are gates on this route that were not locked.
- 4.13 Landowners 4 and 5, who are the applicants, state that in their opinion the route marked in the application from A-B is not a public right of way and they have informed members of the public on two occasions of this but allowed them to continue. They also state they have erected signs saying 'Footpath No 47 correct finishing point here' earlier this year. It is also stated that there are locked gates within the route marked A-B in the application.

#### **Conclusion of Landowner evidence**

- 4.14 There is mixed evidence in relation to the footpath between A-B and its existence. It is clear that users of the footpath are being deterred from using the public footpath, which is not appropriate where a footpath is on the Definitive Map and Statement. As a result of this, usage has declined over the years. In such applications, current use of the footpath is not integral to the determination of the application.

#### **User Evidence**

- 4.15 There were 2 completed user evidence forms submitted, which are attached at Appendix 4. Of the user evidence, 1 has used the footpath regularly for at least 6 years on a less than monthly basis stating that he had occasionally encountered a locked gate but also stating that one gate was always locked which he would climb. This user also confirmed that he has been told that the route is not a public right of way, but he did proceed. The other completed user evidence form indicated that they had only used the route once, which was last year, and stating that he had come across a locked gate which he climbed.
- 4.16 Evidence was also received from Councillor Kelly:
- (a) a detailed plan of walking footpath Ryton 47 on 15<sup>th</sup> May 2019 is broken up into stages.

- (b) Right of Way post removed-It was to the right of this tree as we look eastwards. My walk started from the bypass and up the lane to the farm and outlying buildings. I spoke to the person who lives in the first building on the right. She said the right of way signpost had been removed by the person disputing the right of way.
- (c) The next stage was to negotiate the farm yard as the path passes through the middle of it. A chain and padlock meant climbing over the gate.
- (d) At the other end of the farm yard were these metal fences that I had to be climbed over. The path route is toward the open field ahead.
- (e) As I was walking my way across the field a man by the wooden cabin to the left of this picture shouted at me that I had trespassed by walking across the farm yard and it was all a mistake by Gateshead council that would soon be confirmed.
- (f) Here at the corner of the field are more metal fences to be climbed over. After getting through the route is bare sharp left heading southwards....no signs!
- (g) The path across the field heads towards this gate near Kyo Bog Lane turns sharply. The view looks northwards back along the path.

### **Conclusion of User Evidence**

- 4.14 Deletion applications are fairly rare and therefore detailed analysis of user evidence forms, which are most useful when a claim is made for a public right of way, are of little evidence value. Further, the fact that a footpath is not being used, is not part of the test or a denial that the footpath exists.

## **5 Conclusion**

- 5.1 The historical evidence examined does not in this case show that a clear mistake has occurred and so is not sufficient to meet the high legal test as outlined above. The test is high because in order for a public right of way to appear on the Definitive Map and Statement it has already gone through a lengthy process with opportunities for objections/corrections. Consequently some very clear evidence of substance has to be provided or found to overturn the legal presumption, which has not been the case here.
- 5.2 The applicant sets out in their application that there is a 'line overrun on the map' and this is not the correct termination point of the footpath. The Council concludes, that whilst there are several opinions made by the applicant that there may have been an error in recording the footpath subject to this application, it is concluded that there is not sufficient evidence that an error did occur in recording the route. The route subject to this application was entered onto the definitive map and statement based on 'unrestricted use' this means that it was not based on historical map evidence but instead based on long usage of the way. Further, the description of the way includes details of the

farmyard, which you would not expect to see if it was simply a 'line overrun'.

- 5.3 As a separated point, there are various other statutory methods available to the applicant to explore if they are looking to develop their property or would like to see the footpath stopped up or diverted.

## **6 Recommendation**

Approval is sought from the Public Rights of Way Committee for the following:

- 6.1 That an order not be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete a footpath from the Definitive Map and Statement as shown between points A and B on the Plan at Appendix 2.
- 6.2 The reason for refusal of the application is on the ground that there is not robust evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

---

Contact: Umi Filby Ext. 2219

---

**1 FINANCIAL IMPLICATIONS**

None

**2 EQUAL OPPORTUNITIES IMPLICATIONS**

None

**3 STAFFING IMPLICATIONS**

None

**4 ACCOMMODATION IMPLICATIONS**

None

**5 CRIME & DISORDER IMPLICATIONS**

None

**6 ENVIRONMENTAL IMPLICATIONS**

None

**7 HUMAN RIGHTS IMPLICATIONS**

The applicable rights to be considered are the right to protection of property, right to a fair trial and right to respect for private life. However the Wildlife and Countryside Act 1981 and the Highways Act 1980 provides a legal basis for interference with these rights and the risk of these rights being infringed is addressed via the fact that any orders made are subject to an objection period and the statutory legal process.

**8 WARD IMPLICATIONS**

Crawcrook and Greenside

**9 BACKGROUND INFORMATION**

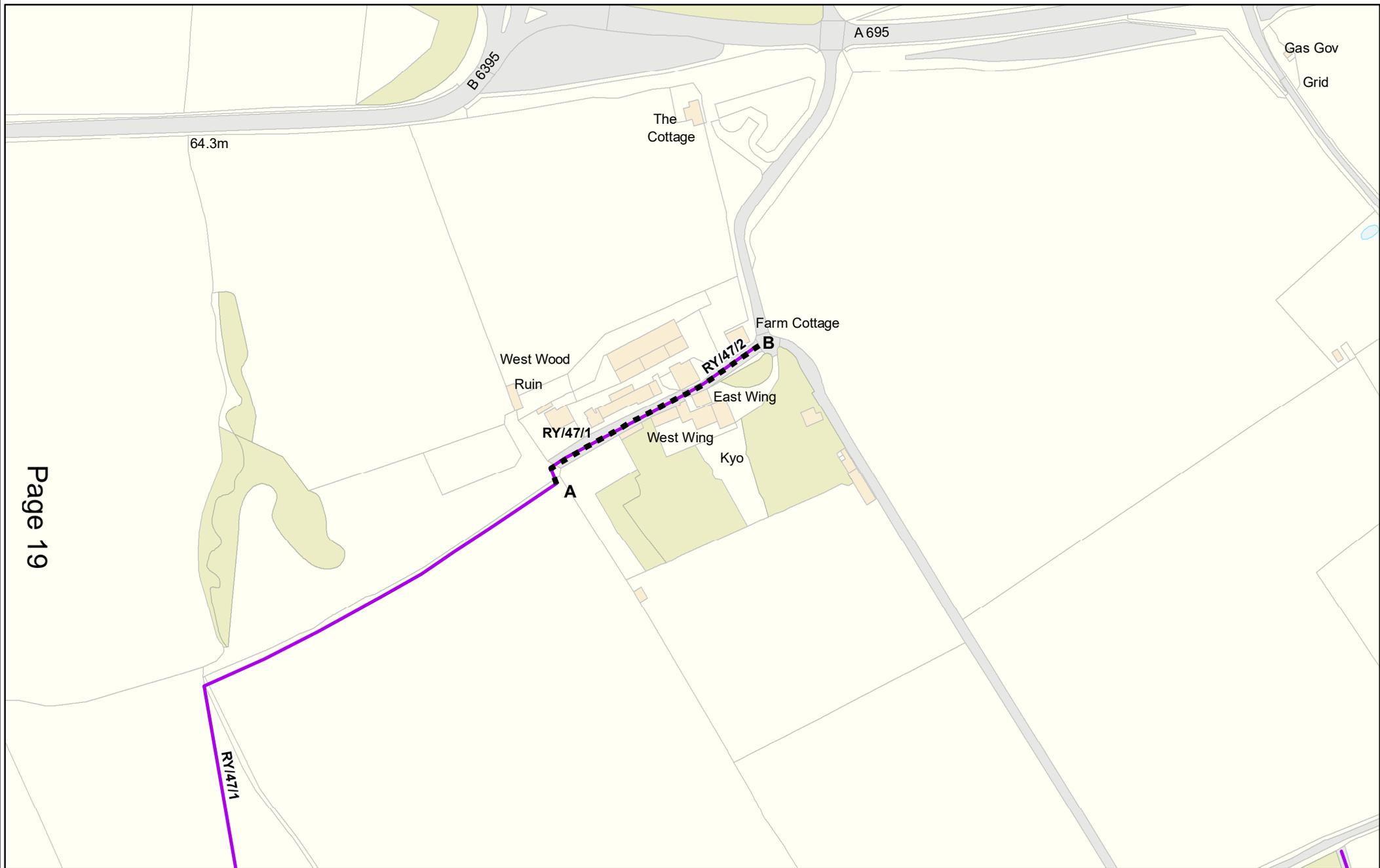
None

---

Contact: Umi Filby Ext. 2219

---

**Appendix 2 – Plan of the claimed route**  
**Appendix 3 – Map evidence**  
**Appendix 4 – User evidence**  
**Appendix 5 – Landowner evidence**



### Proposed amendment to Footpath Ryton 47

— Footpath      - - - - - A-B Proposed Amendment

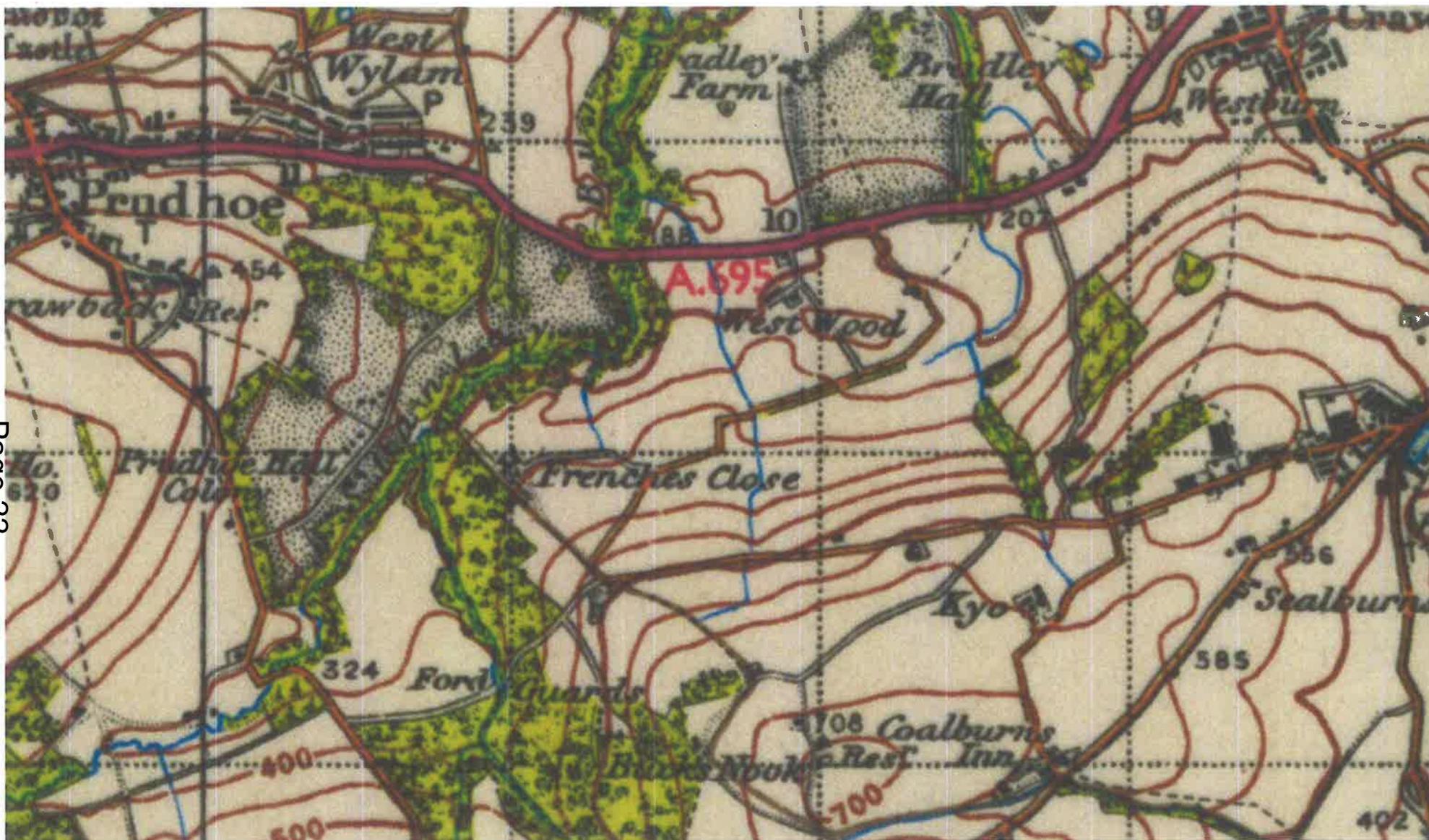


This page is intentionally left blank



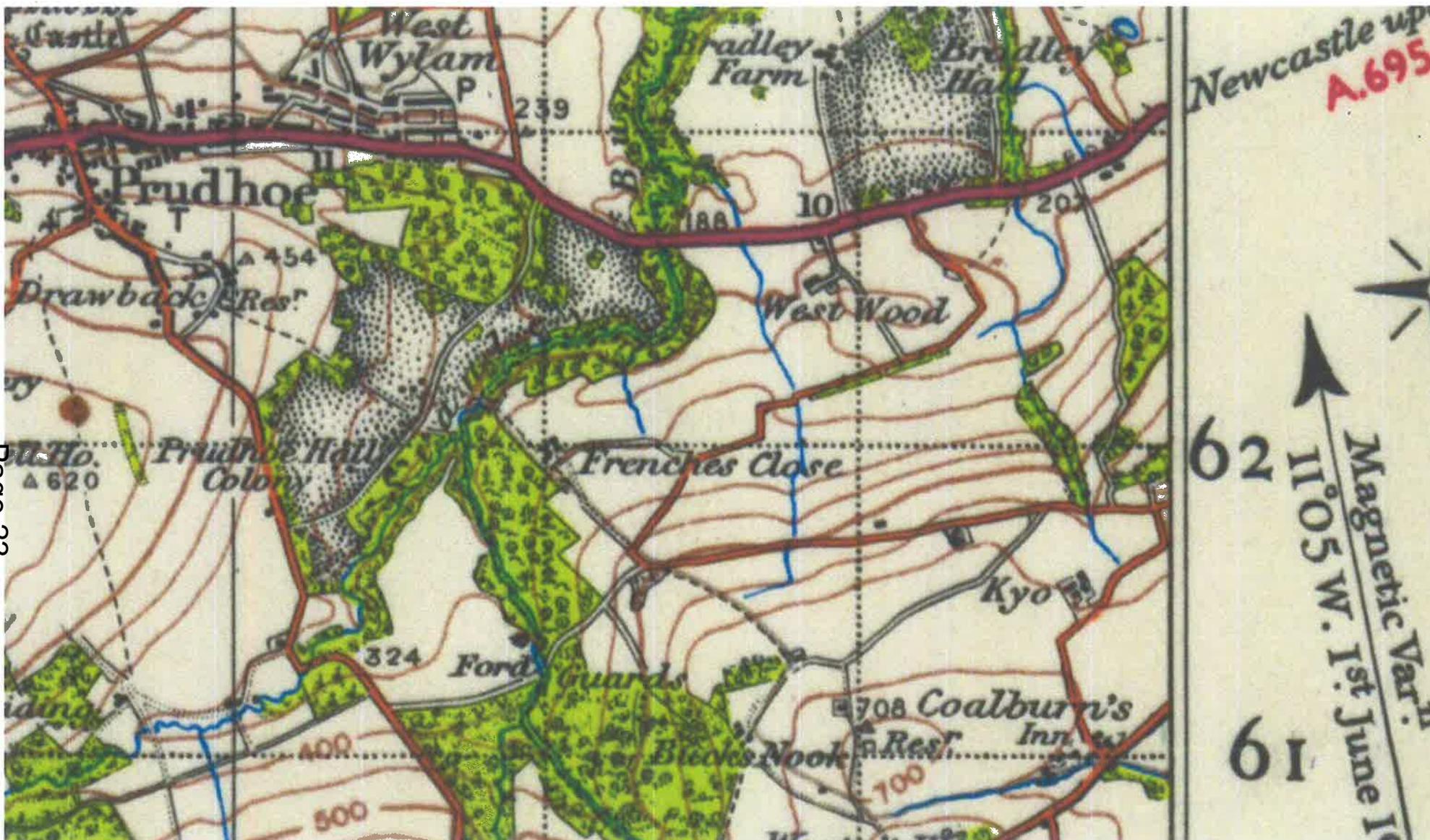
Page 21

NZ16SW OS  
**1967**



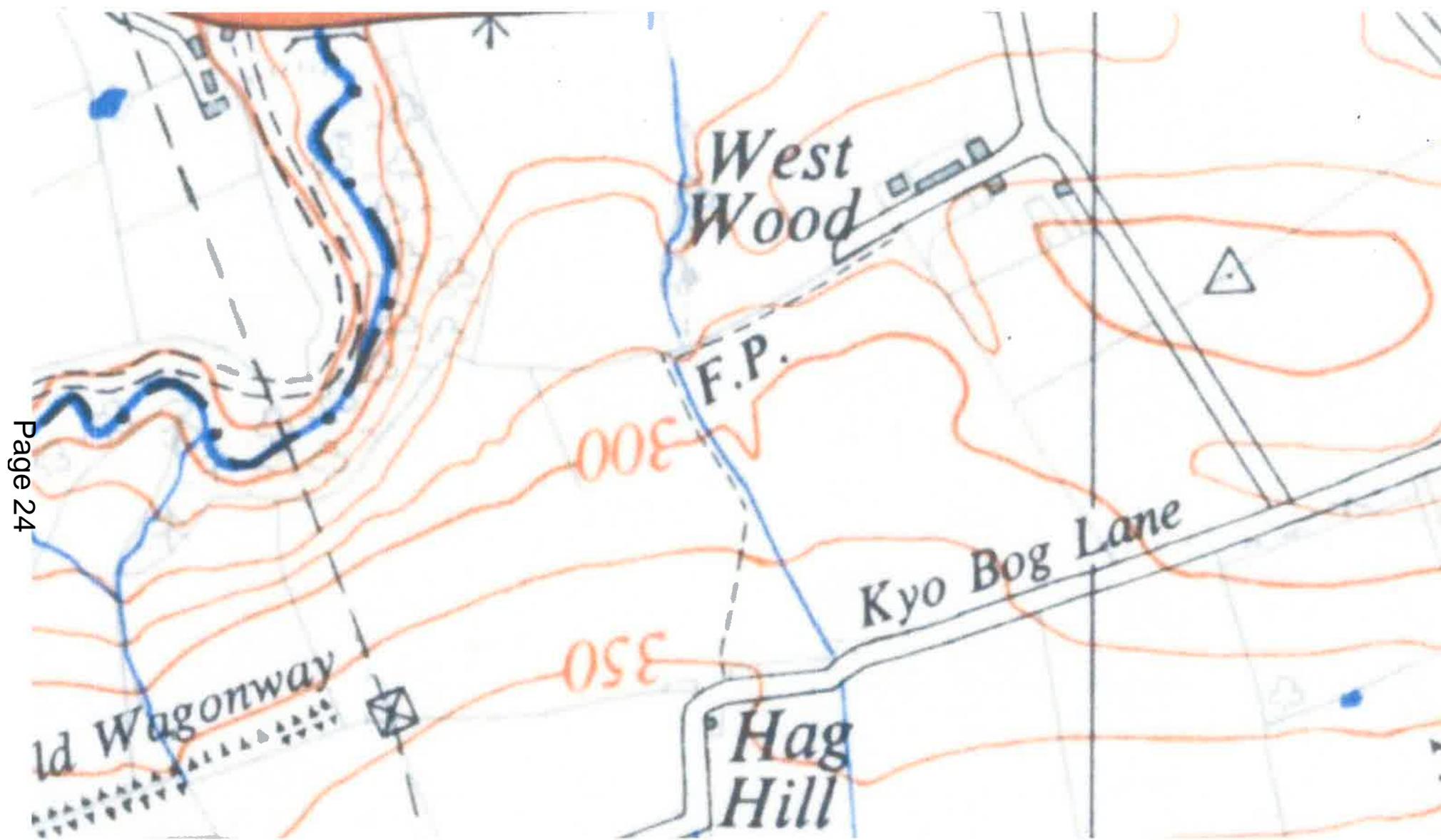
Page 22

Newcastle upon Tyne OS  
**1947 (no footpath)**



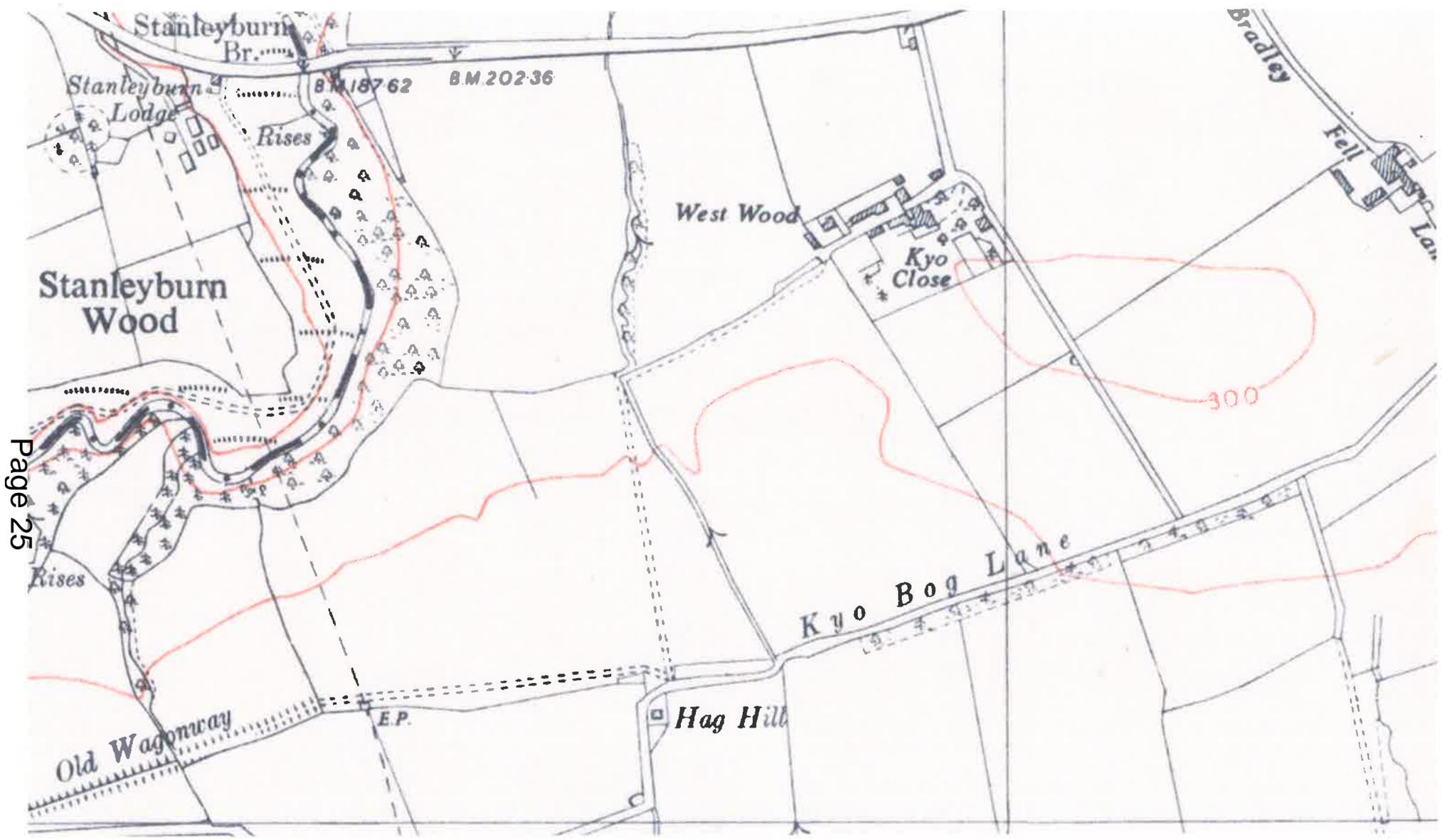
Page 23

Hexham OS  
1947 (no footpath)



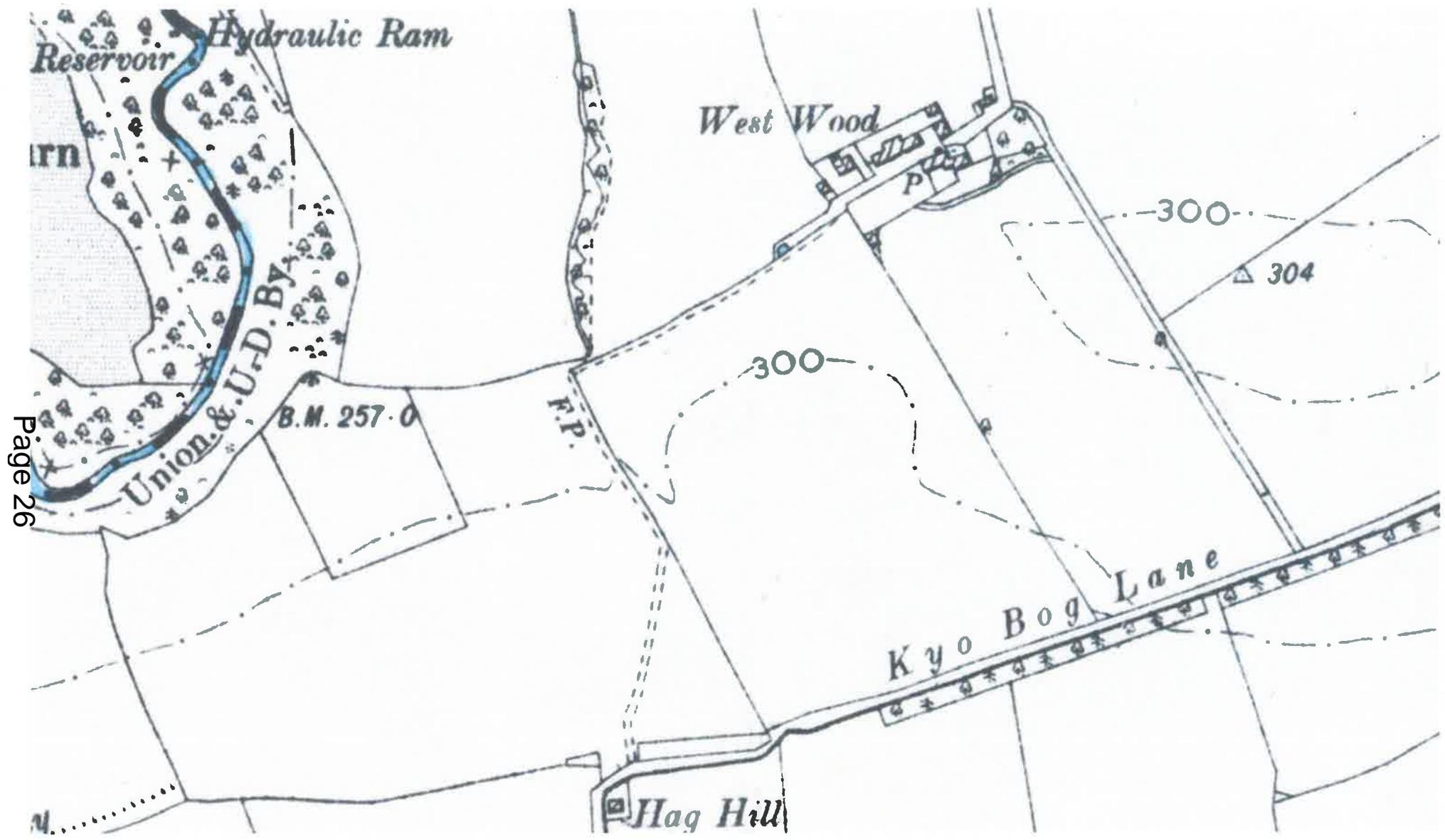
Page 24

NZ16 Blaydon OS  
**1952**



Page 25

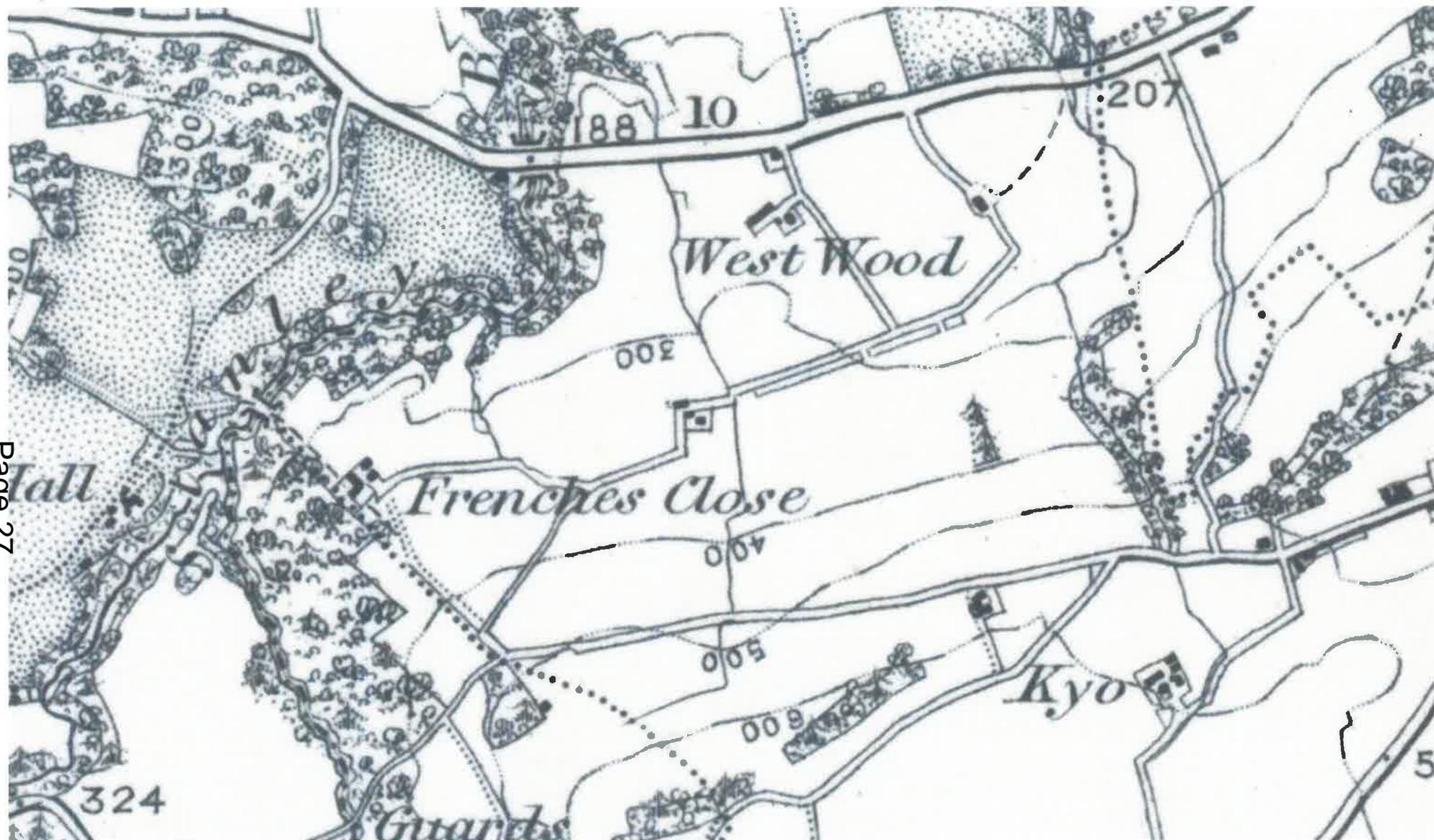
NZ16SW OS  
**1951**



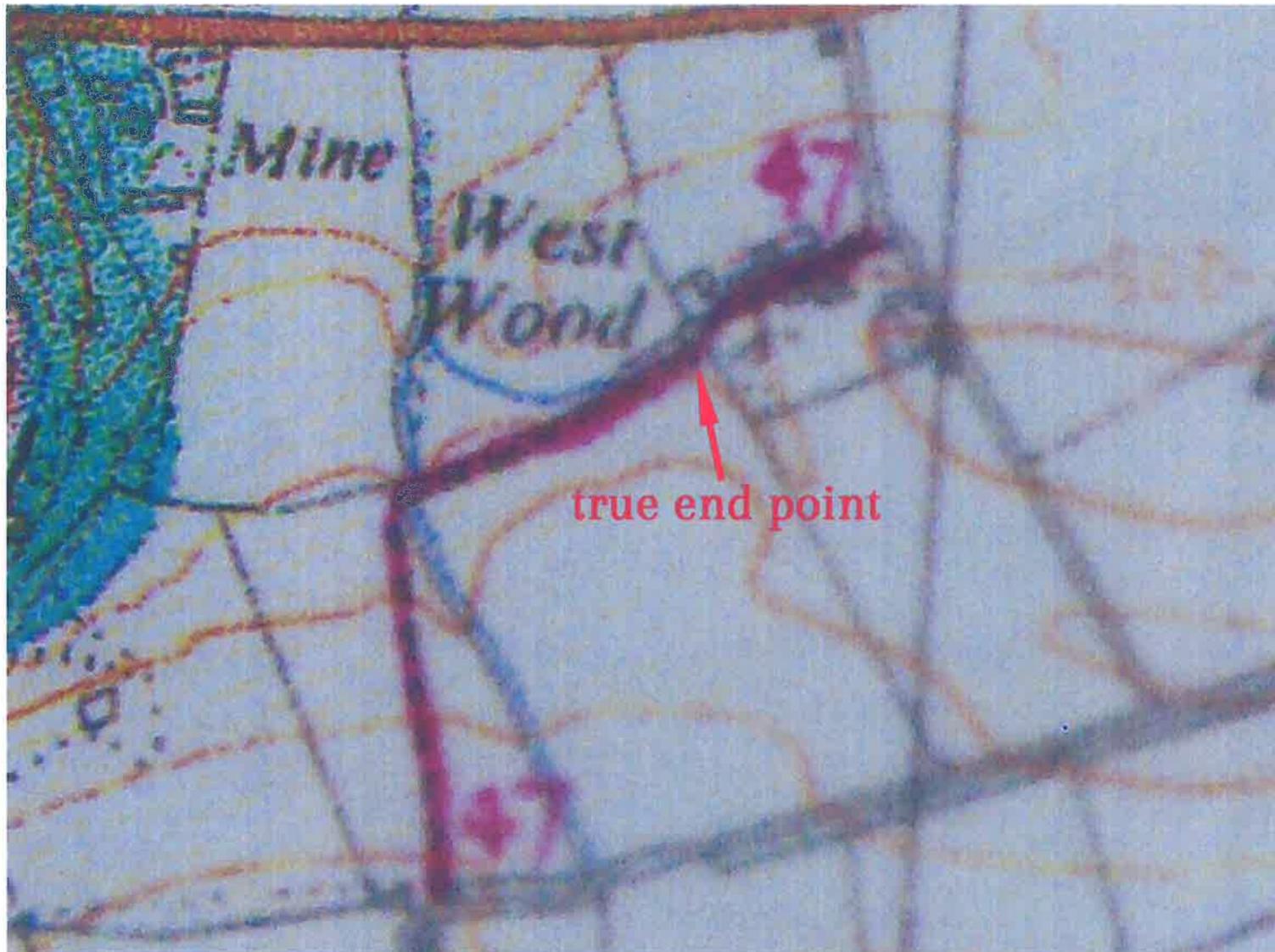
Page 26

Northumberland XCVI.SW OS  
**1899**

Page 27



Newcastle upon Tyne OS  
**1898 (no footpath)**



Gateshead Council's  
Public Rights of Way Definitive Map (1)



Gateshead Council's  
Public Rights of Way Definitive Map (2)



Footpath no. 47 approx. 458 metres

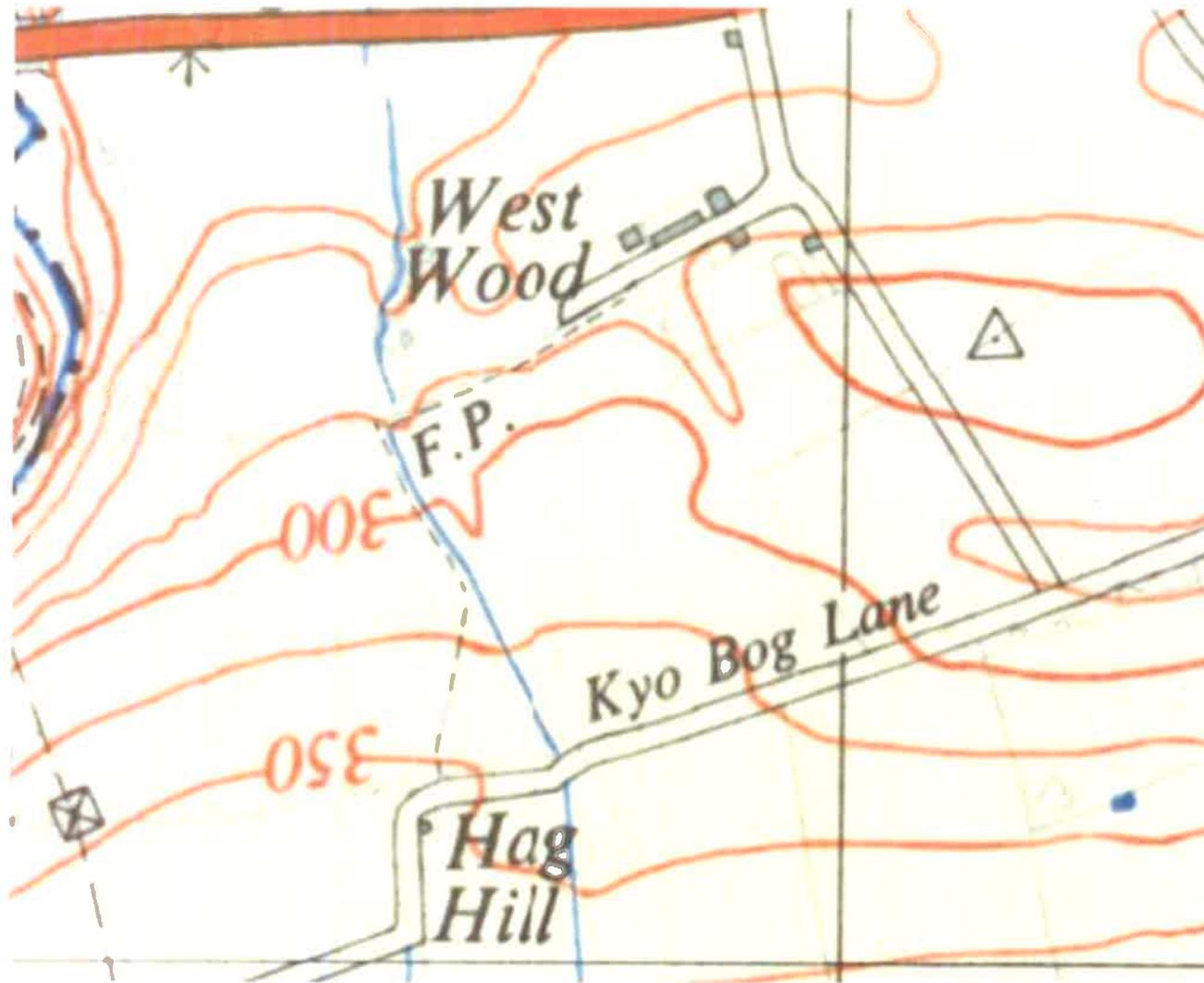
To the Public Rights of Way Committee  
regarding Definitive Map Modification Order application no. TS/1272

## 1921 MAP EVIDENCE OF FOOTPATH 47'S ORIGINAL ROUTE



Durham V 1921

## 1951 MAP EVIDENCE OF FOOTPATH 47'S ORIGINAL ROUTE



1951 OS National Library of Scotland



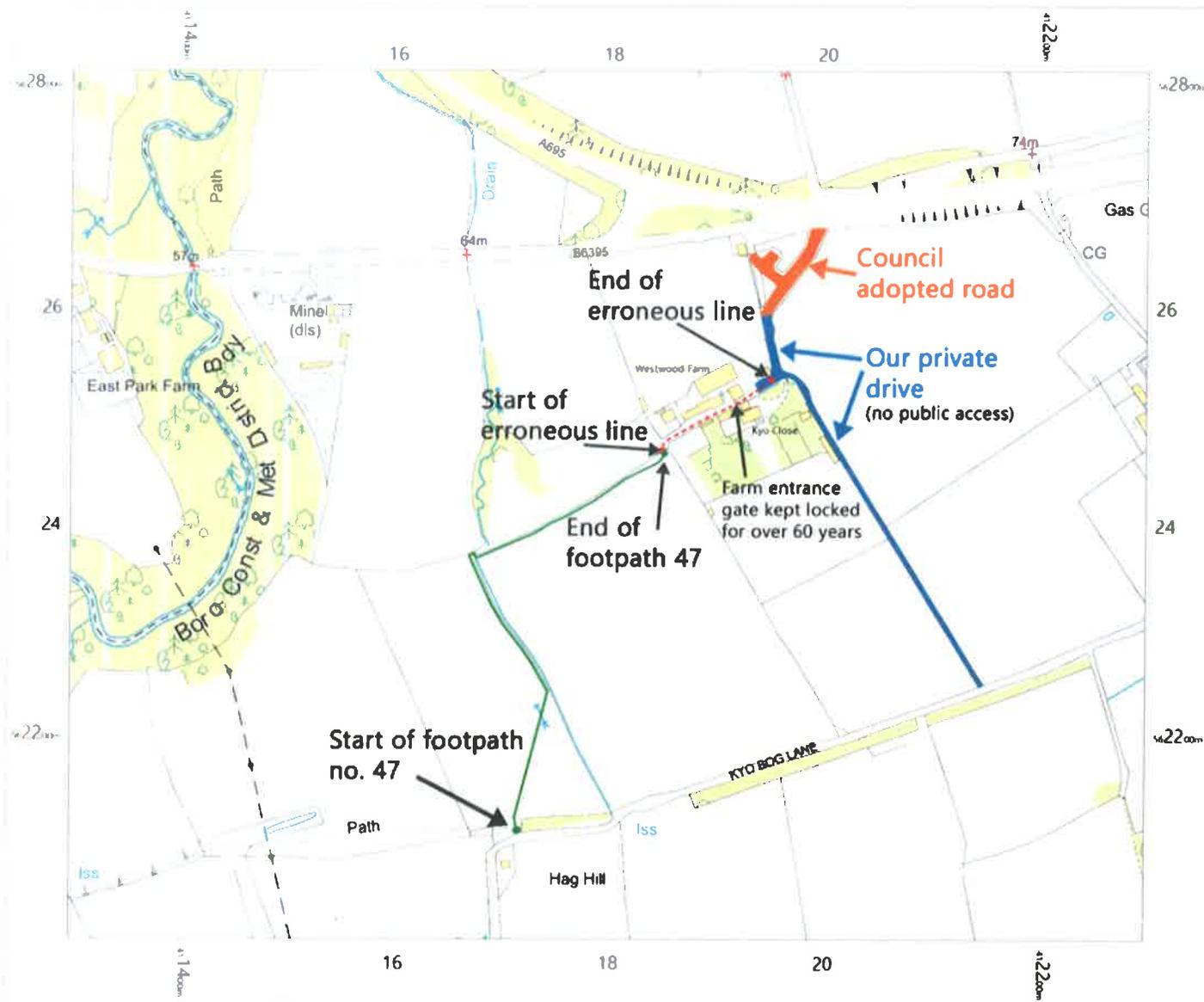
Imagery ©2019 Bluesky, Getmapping plc, Infoterra Ltd & Bluesky, Maxar Technologies, Map data ©2019 50 m

Measure distance

Total distance: 500.00 m (1,640.44 ft)

# To the Public Rights of Way Committee regarding Definitive Map Modification Order application no. TS/1272

Information  
Page 34  
Map



OS VectorMap Local - Landplan Style  
Friday, October 18, 2019. ID:  
BW1 00835344  
www.blackwellmapping.co.uk

1:5000 scale print at A4, Centre:  
411798 E, 562417 N

© Crown Copyright Ordnance  
Survey Licence no. 100041041

**BLACKWELL'S  
MAPPING SERVICES**  
SURVEYING & DEVELOPMENT SERVICES  
www.blackwellmapping.co.uk

TEL: 0800 151 2612  
maps@blackwell.co.uk

*\* We propose providing a much better and linking route that would also be suitable for people with disabilities*

EAST WING  
KYO CLOSE  
WYLAM  
NORTHUMBERLAND  
NE41 8JW  
Tel: 0191 4132252  
Mob: 07798 724631  
Email: Hiphog@aol.com

To whom it may concern  
Gateshead Council  
Your Ref: TS/1272/UF

15th October 2019

Dear Sir/Madam

**Ref: Wildlife and Countryside Act 1981, Schedule 14 paragraph 2 (2)  
Application for a Definitive Map Modification Order at Westwood Farm**

With reference to the above application, I can confirm that during my occupation of Kyo Close over the past 14 years the farmyard gate has always been locked and I have been supplied with a key to open the gate if necessary. During the period that my aunt lived at Kyo Close in my lifetime (roughly 1956 - 2014), the gate was locked and she had a key.

I hope this helps to clarify the situation.

Yours sincerely,

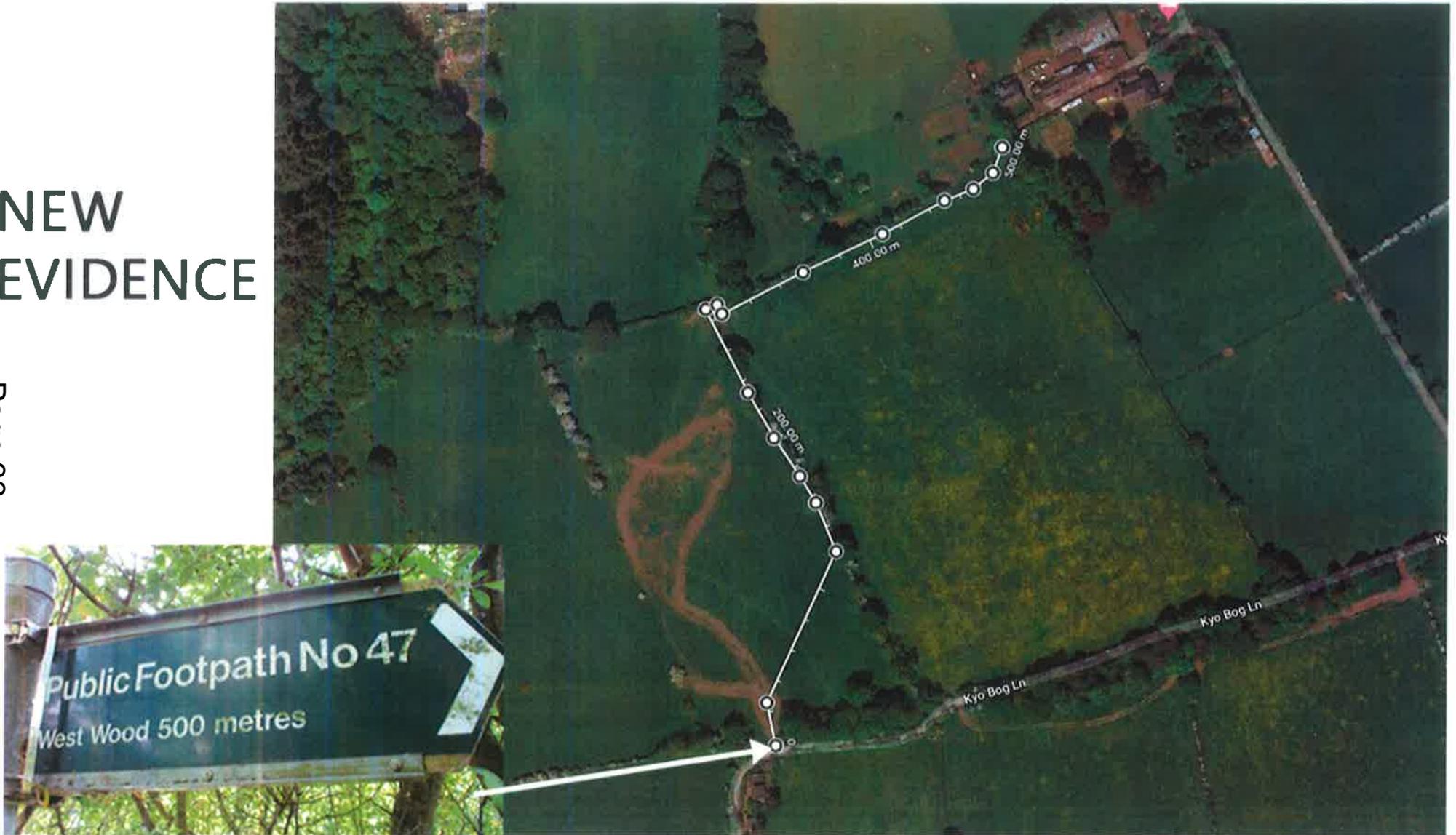
A handwritten signature in black ink, appearing to read 'Fiona Oomes', with a horizontal line underneath the name.

Mrs Fiona Oomes

To the Public Rights of Way Committee  
regarding Definitive Map Modification Order application no. TS/1272

## NEW EVIDENCE

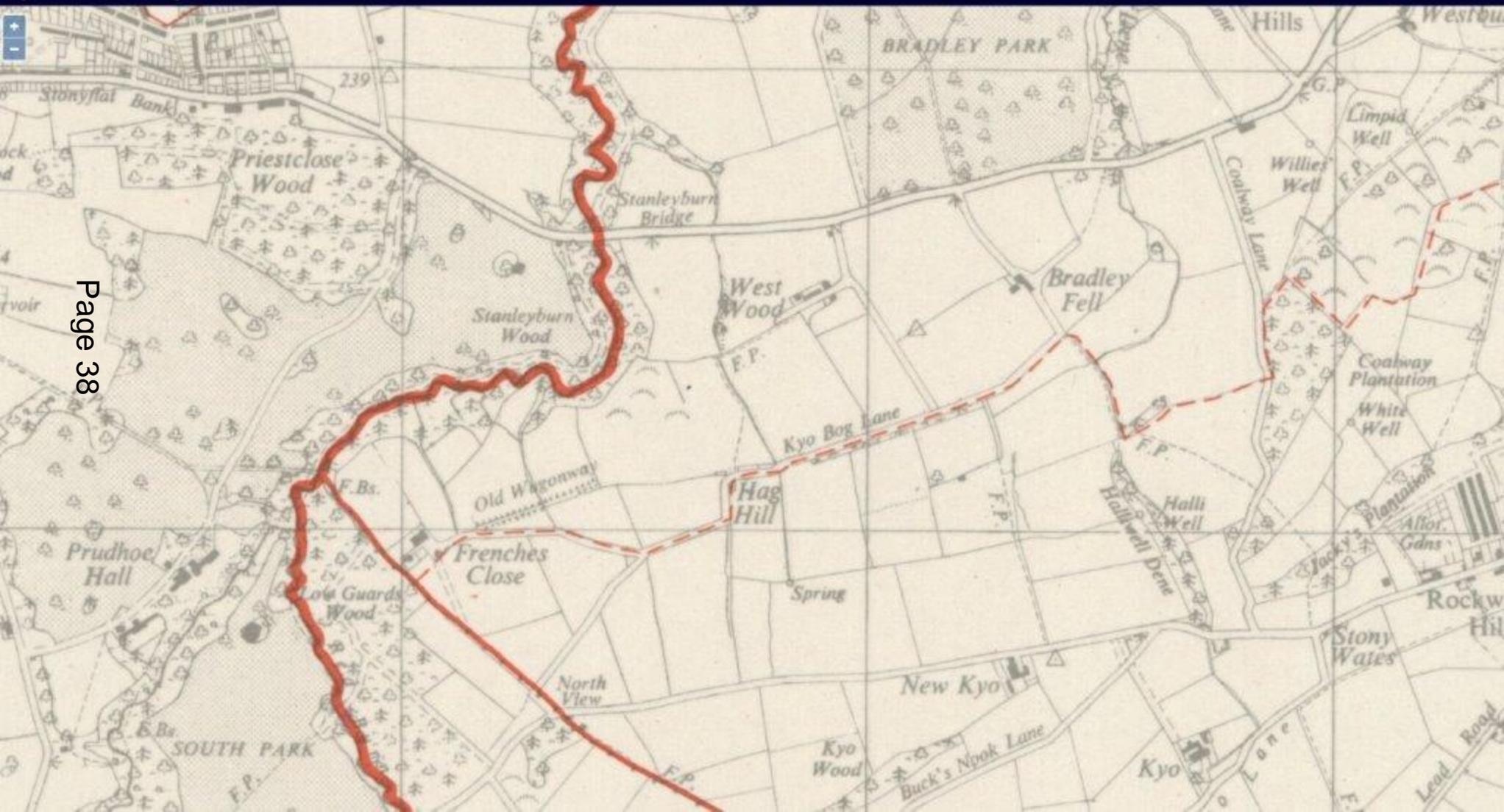
Page 36

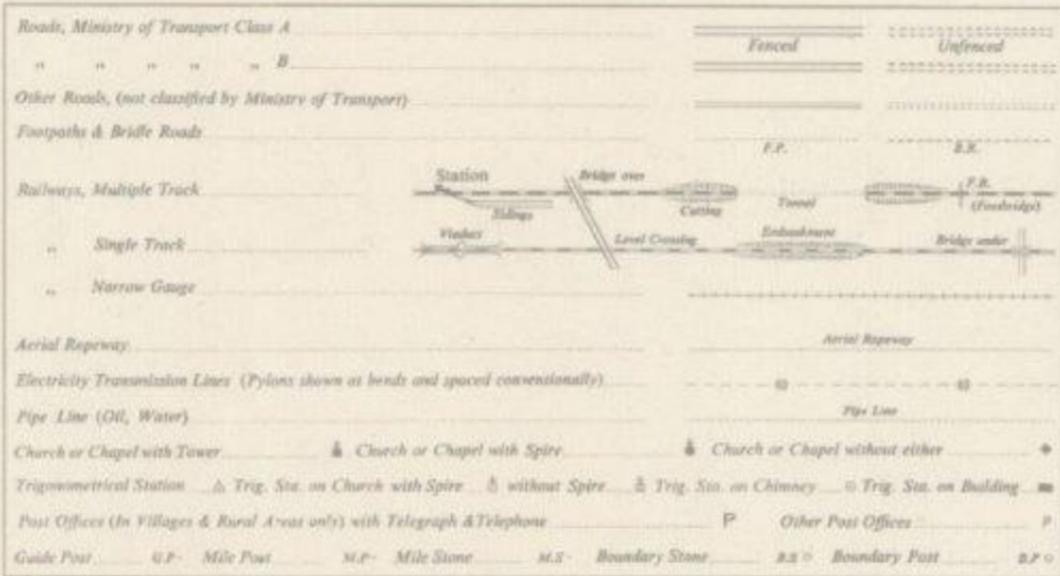


Footpath no. 47 is 500 metres long, as shown on the signpost at the start of the footpath on Kyo Bog Lane. Following the actual and original route, 500 metres measures exactly to the northeast corner of field 2.



Page 37

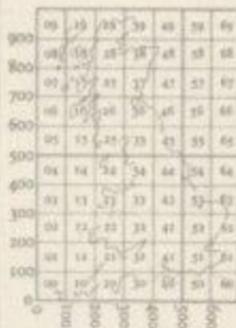
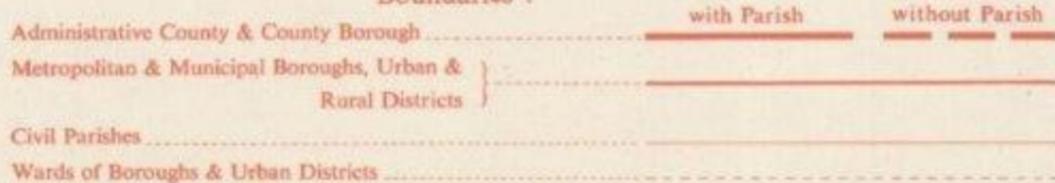




AA

**Administrative Areas : England & Wales.**

**Boundaries :**



The GRID lines on this sheet are as shown above. Heights are in feet above Mean Sea Level at Newlyn. Heights of Bench Marks and Trigonometrical Stations may be obtained on application to the Director General, Ordnance Survey.

**THE NATIONAL GRID**

Projection : Transverse Mercator  
 Spheroid : Airy  
 True Origin : Lat. 49°N. Long. 2°W.  
 False Origin : 400 Kms. West  
 100 Kms. North

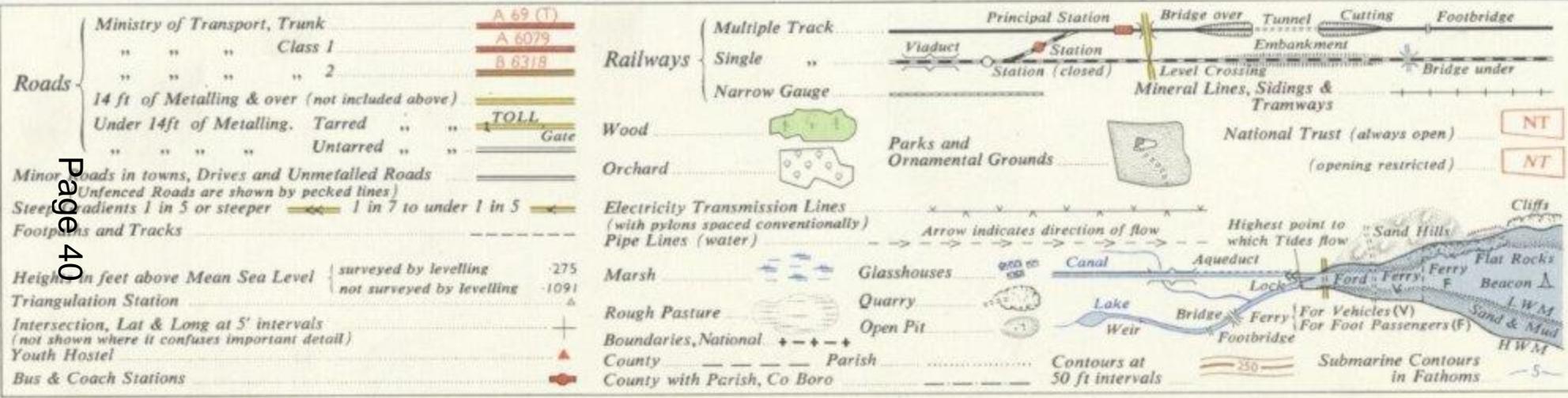
**TO GIVE A GRID REFERENCE ON THIS SHEET**

<b>EXAMPLE</b>		Herburn Station	
<b>East</b>		<b>North</b>	
Take west edge of square in which point lies and read the large figures printed opposite the line on north or south margin.	16	Take south edge of square in which point lies and read the large figures printed opposite the line on east or west margin.	65
Estimate inches westward	5	Estimate inches northward	2
<b>East</b>	165	<b>North</b>	652
<b>REFERENCE 165652</b>			

Similar references occur at intervals of 100 Kilometres i.e. in each of the squares in the Diagram.

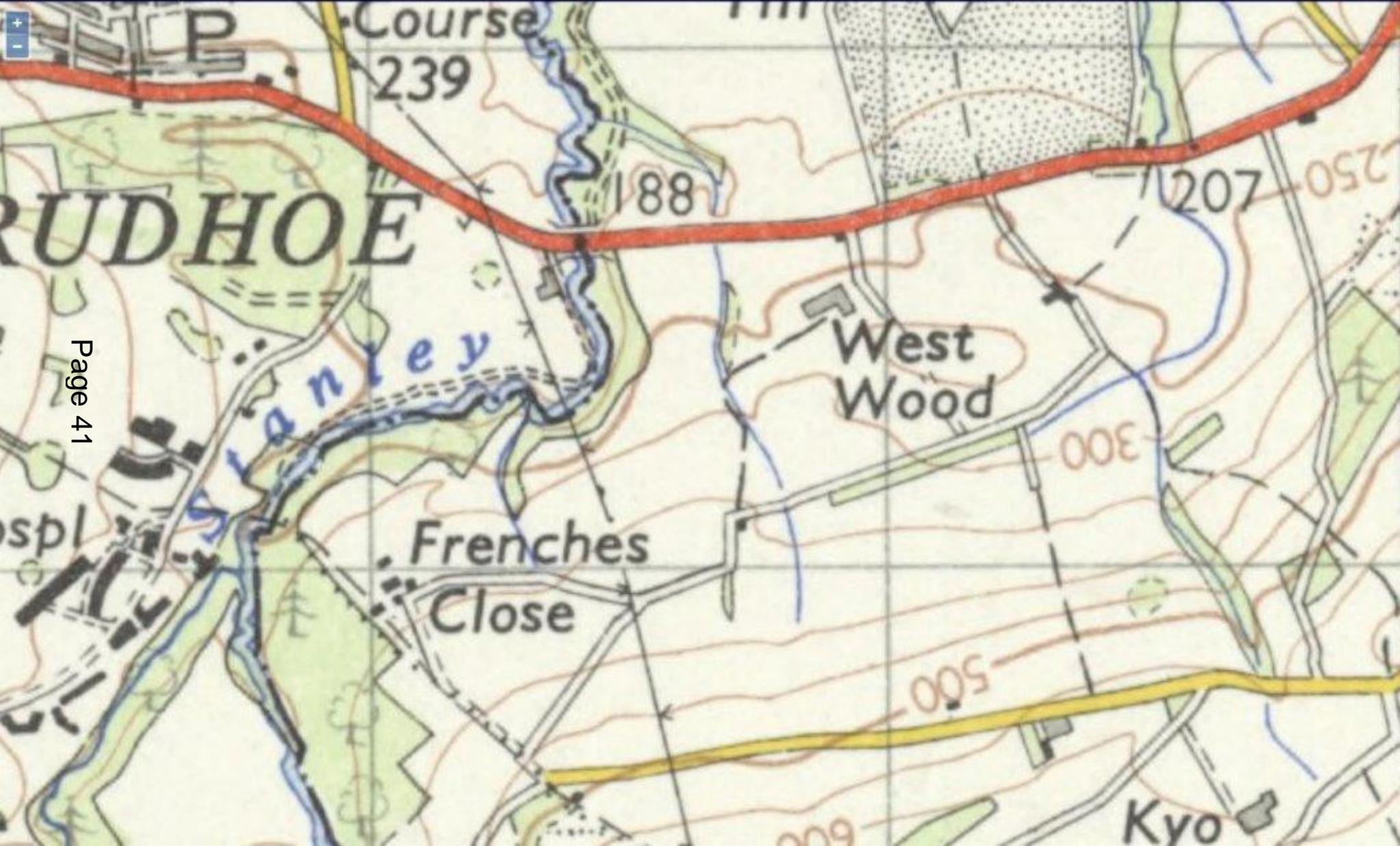
Grid North at the centre of this sheet is 0° 11' 31" E. of True North.  
 Magnetic Variation is 11° 17' W. of Grid North for June 1947  
 Annual Change 10"E.

The approval of the Director General, Ordnance Survey, and of the Controller, H.M. Stationery Office, in whom Crown Copyright is vested, is necessary before any Ordnance Survey map or plan can be copied. Reference to the Director General, Ordnance Survey, will be made in the first instance.



The representation on this Map of a Road, Track, or Footpath is no evidence of the existence of a right of way.

Page 40



~~Borough~~ Urban District of Ryton Path No. 47

Name of Path

Status Footpath

Ordnance Sheet—Durham (6") V.3 (2 1/2") 45/16

1. Starting Point Kyo Bog Lane at Hag Hill

2. Description of Route Leave Kyo Bog Lane by stone stile at Hag Hill, leading N. across grass field to wood stile, turning E. along S. side of hedge to wood stile into Westwood Farmyard and lane leading on to main road.

3. Ultimate Destination Westwood Farm

4. Details of Features Two stiles - Farmyard

5. Width of Path Not defined

6. Type of Construction Earth and grass

7. Sections Metalled non metalled

8. Sections Ploughed Not ploughed

9. General Condition of :

(a) Path Fairly good

(b) Stiles and Gates Fairly good

(c) Bridges

(d) Stepping Stones

10. Details of any notice boards

11. Unrestricted use for 20 years.

GATESHEAD METROPOLITAN BOROUGH COUNCIL

PUBLIC RIGHTS OF WAY DEFINITIVE STATEMENT

Parish/District Ryton  
Path Number 47  
Name of Path -  
Status Footpath  
Ordnance Sheet No NZ 16 SW  
Start 1171 6212  
Finish 1197 6254

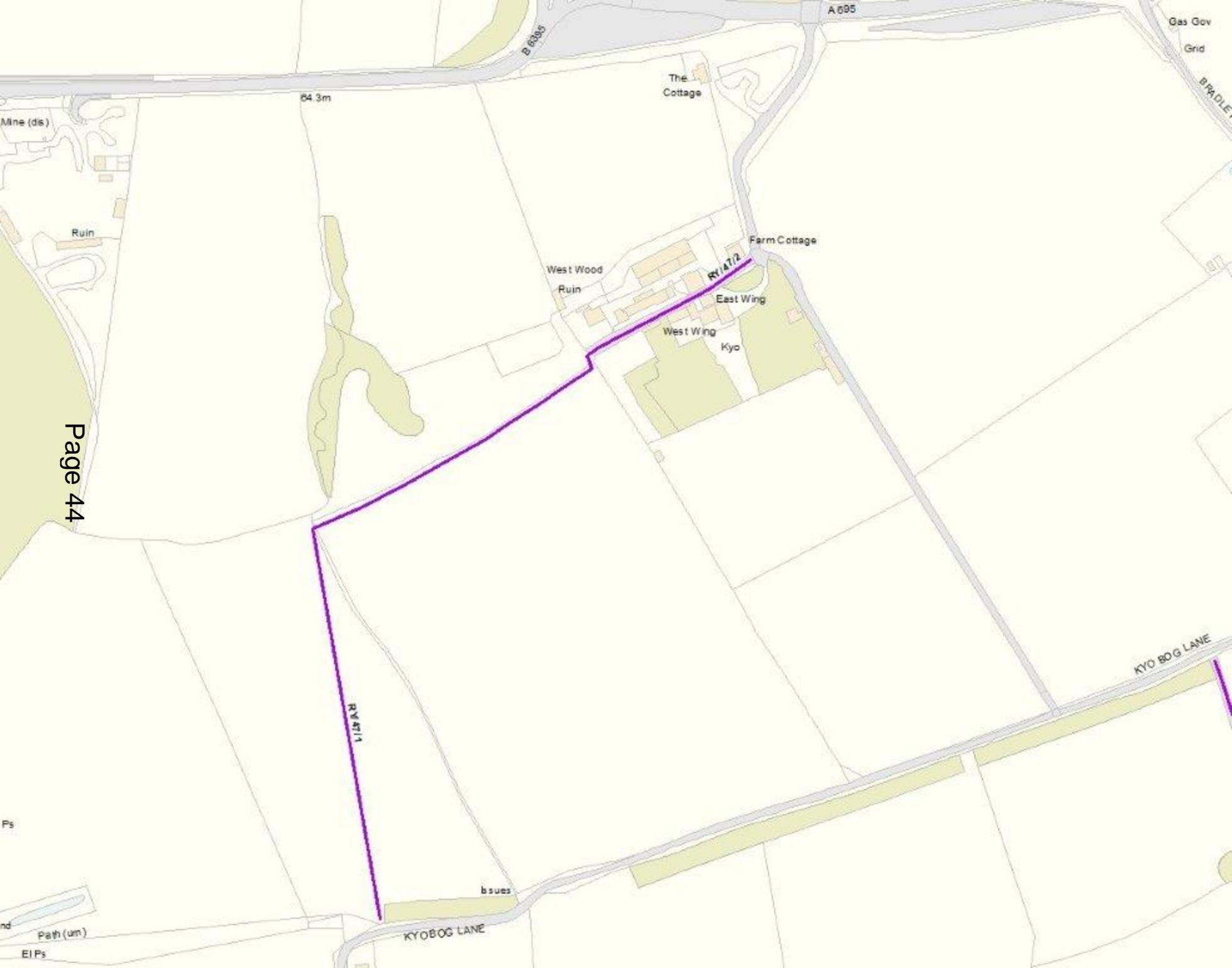
Description of Route From Hag Hill, Kyo Big Lane, proceeds north across field to stile, turns east along south side of hedge to stile into West Wood Farmyard to eastern corner.

Details of Features

Length of Path 600 metres

Width of Path

Notes



# Survey Form - Resurvey

Admin Area: Ryton

Route: RY/47/1

Status: Footpath

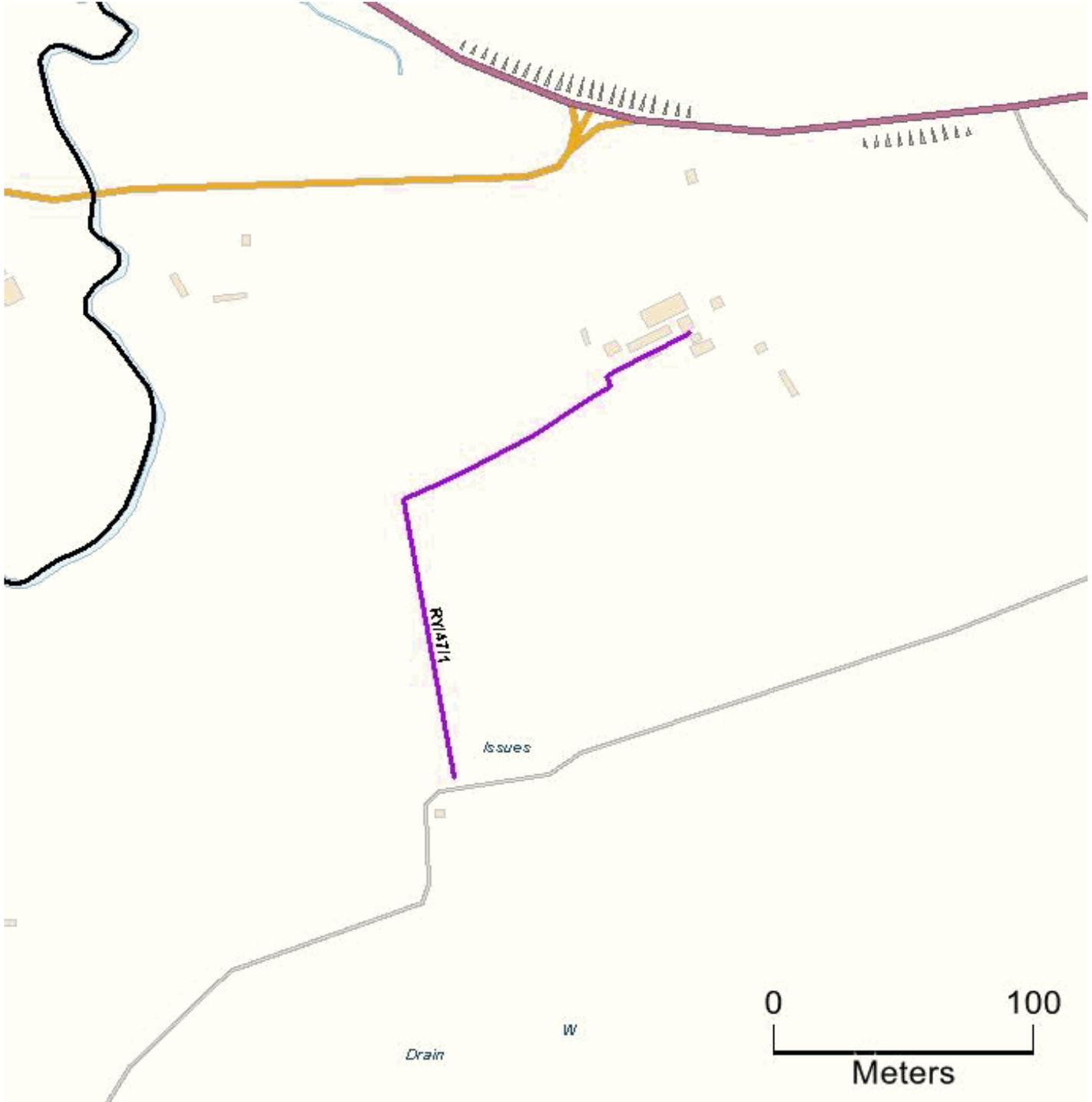
Legal Type

ROW

## Geographic Information

Length (m) 546 metres

Start of Path NZ11716211 End of Path: NZ11916251



Scale 1:2,300

Reproduced from an Ordnance Survey map with the permission of the Controller of HMSO © Crown Copyright. 2019

# Survey Form - Resurvey

Admin Area: **Ryton**

Route: RY/47/2

Status Footpath

Legal Type

ROW

## Geographic Information

Length (m) 39 metres

Start of Path NZ11916251

End of Path: NZ11956253



Scale 1:2,300

Reproduced from an Ordnance Survey map with the permission of the Controller of HMSO © Crown Copyright. 2019



## Links Inventory Report (with Condition)

**Admin Group:** Gateshead District

**Admin Area:** Ryton

**Summary of Public Right of Way:** RY/47/1

<u>Status</u>	<u>Priority</u>	<u>Legal Type</u>	<u>Validation Status</u>
Footpath	[N/A]	ROW	

### Geographic Information

Length (m) 546 metres

Start of Path NZ11716211 End of Path: NZ11916251

### Furniture

<u>Furniture Code</u>	<u>Type</u>	<u>Date Inspected</u>	<u>Grid Reference</u>
RY/382	Other/FixedPointPhoto	20/02/2013	NZ11776241
RY/383	Gate/>2m/Metal	20/02/2013	NZ11866248
RY/384	Gate/>2m/Metal	20/02/2013	NZ11916251
RY/385	SignRoad/Fpost/Metal	20/02/2013	NZ11726211
RY/386	Gate/>2m/Wood	20/02/2013	NZ11716211
RY/387	Other/Gap	20/02/2013	NZ11676236

### Outstanding Issues

<u>Issue Code</u>	<u>Type</u>	<u>Date Received</u>
01078	Terrain/Muddy	20/02/2013
01077	Terrain/Muddy	20/02/2013
01076	Terrain/Muddy	20/02/2013

### Surfaces

<u>Surface Code</u>	<u>Type</u>	<u>Length (m)</u>	<u>Av Width (m)</u>	<u>Grid Reference</u>
---------------------	-------------	-------------------	---------------------	-----------------------

### Condition

<u>SurveyDate</u>	<u>Surveyor</u>	<u>RouteCondition</u>	<u>BVPI Pass/Fail</u>
20/02/2013	exeGesIS Surveyor	Red	False

Report Creation Date  
06/11/2019

# Gateshead Council



Rights of Way, Civic Centre, Regent Street, Gateshead, NE8 1HH  
0191 433000

## Links Inventory Report (with Condition)

**Admin Group:** Gateshead District

**Admin Area:** Ryton

**Summary of Public Right of Way:** RY/47/2

<u>Status</u>	<u>Priority</u>	<u>Legal Type</u>	<u>Validation Status</u>
Footpath	[N/A]	ROW	

### Geographic Information

Length (m) 39 metres

Start of Path NZ11916251 End of Path: NZ11956253

### Furniture

<u>Furniture Code</u>	<u>Type</u>	<u>Date Inspected</u>	<u>Grid Reference</u>
RY/459	Other/FixedPointPhoto	20/02/2013	NZ11936252
RY/460	SignRoad/Fpost/Metal	20/02/2013	NZ11956254

### Outstanding Issues

<u>Issue Code</u>	<u>Type</u>	<u>Date Received</u>
-------------------	-------------	----------------------

### Surfaces

<u>Surface Code</u>	<u>Type</u>	<u>Length (m)</u>	<u>Av Width (m)</u>	<u>Grid Reference</u>
---------------------	-------------	-------------------	---------------------	-----------------------

### Condition

<u>SurveyDate</u>	<u>Surveyor</u>	<u>RouteCondition</u>	<u>BVPI Pass/Fail</u>
20/02/2013	exeGesIS Surveyor	Red	False



User	Do you use the route	How often	Why use it	How do you use it	Any obstructions	Did you ask permission	Are there any notices on route? Have you been stopped from using it?	Private Access right across land	Any other information
User 1	Yes	2013-Present  Frequency unrecorded.	Leadgate or Penny Hill to Wylam	Foot	Yes-Open west end farm yard, locked centre farm yard, occasionally locked at Kyo Bog Lane always. Locked gates-climbed.	No	12/01/2019-told by a male-presume the farmer/occupant of the land was not a public right of way. He did however allow me to proceed.	No	No other information recorded.
User 2	Yes	2018 Once.	Kyo Bog Lane near Hagg Hill to West Wood.	Foot	Locked gate I had to climb over.	No	No	No	I have nearly finished walking all 620 miles of footpaths on the Ordnance Survey Map of Newcastle upon Tyne, I only have one leg. These path restrictions make it very difficult for me to complete this challenge.

3. At the other end of the farm yard were these metal fences that had to be climbed over. The path route is toward the open field ahead.



1. RIGHT OF WAY POST REMOVED - It was to the right of this tree as we look eastwards. My walk started from the by pass and up the lane to the Farm and outlying buildings. I spoke to the person who lives in the first building on the right. She said the right of way signpost had been removed by the person disputing the right of way.



4. As I was making my way across the field, a man working by the wooden cabin to the left of this picture shouted at me that I had trespassed by walking across the Farm yard...and it was all a mistake by Gateshead Council that would soon be confirmed. I waved my map at him and walked on.



2. The next stage was to negotiate the farm yard as the path passes through the middle of it. A chain and padlock mean't climbing over the gate.



5. Here at the corner of the field are more metal fences to be climbed over. After getting through the route is bear sharp left heading southwards ...no signs!



6. The path across the field heads towards this gate near to where Kyo Bog Lane turns sharply. This view looks northwards back along the path



# Cllr Hugh Kelly A walk along Footpath Ryton 47 on 15th May 2019

Landowner Evidence Table

Owners and Occupiers of the land the claimed right of way runs across	Ownership and control of claimed route	Do members of the public use this route?	Have you erected signs warning people not to cross your land?	Have you stopped people crossing your land?	Have you ever obstructed the route?	Have you ever put gates or stile on the route?	Have you deposited s31(6) HA 1980 Statement/declaration?	Have you required people to ask for your permission before crossing your land?	Additional Information
<b>Landowner 1</b> Page 53	Owner West Wood Farm Cottage. Kyo Close. 47/2 runs in front of property	Yes. I also walk it as a short cut to Hagg Hill. Walking groups. Lone walkers.	No Refer to letter	No I have been shouted at when I have used footpath Ryton 47/2 and have been asked 'where I think I am going'.	No	No	No	No People have asked directions	There are 3 locked gates since 2012. Attached letter
<b>2</b>	West Wing, Kyo Close. Title Deed TY470585	Yes, during the past 15 years.	No	No	No	No	No	No	Locked Gates. Path has been used as a public footpath for at least 80yrs
<b>3</b>	Owns land that includes Ryton 47/1 Title Deed ND186408	No	No	No	No	No	No	No	Knows that Kyo Bog Lane to West Wood Farm to be a PROW.

<p style="text-align: center;"><b>4</b> Amended form</p> <p style="text-align: center;">Page 54</p>	<p>Owner west Wood Farm For 22 years. Title Deed TY549951 TY557846</p>	<p>To my knowledge the 'correct' route isn't used, however on two occasions this year members of the public were seen in our farmyard, which is the section that is not a PROW.</p>	<p>Earlier this year at the 'correct' finishing point.</p>	<p>The police stopped the men with rifles in our farmyard when we called after hearing gunshots.</p>	<p>No</p>	<p>Yes. There are 4 gates, 6 if we are using the sheep pens along the section of our farmyard that is not a public right of way. One of the gates has always been</p>	<p>No</p>	<p>Erroneous section On two occasions this year when we saw people on our property. Permission was given to continue through the farmyard. It was pointed out where the footpath actually was and that the line on the map showing that it extended through the farmyard was incorrect-also that we were in the process of</p>	<p>Form filled in to include 'correct route' and 'erroneous section' Anyone using the footpath must turn around at the end and go back. The erroneous added section doesn't join any public right of way as the line ends on our private driveway.</p>
---	--	---	--	--	-----------	---	-----------	--	--

								having the error rectified	
5 Amended form	Owner west Wood Farm For 2 years. Title Deed TY549951	To my knowledge the 'correct' route isn't used, however on two occasions this year members of the public were seen in our farmyard, which is the section that is not a PROW.	Earlier this year at the 'correct' finishing point.	The police stopped the men with rifles in our farmyard when we called after hearing gunshots.	No	Yes. There are 4 gates, 6 if we are using the sheep pens along the section of our farmyard that is not a public right of way. One of the gates has always been	No	Erroneous section- On two occasions this year when we saw people on our property. Permission was given to continue through the farmyard. It was pointed out where the footpath actually was and that the line on the map showing that it extended through the farmyard was incorrect- also that we were in	Form filled in to include 'correct route' and 'erroneous section' Anyone using the footpath must turn around at the end and go back. The erroneous added section doesn't join any public right of way as the line ends on our private driveway.

								the process of having the error rectified.	
--	--	--	--	--	--	--	--	--	--

Westwood Farm Cottage,  
NE41 8JW

07/06/2019

Dear Sir or Madam,

Re Public Right of Way ..... Ref. TS/1272/UF  
Application for a Definitive map modification order at Westwood Farm, Wylam. NE41 8JW

I am Not Surprised at receiving your letter regarding Mrs Catherine Henderson( ne Stonehouse ) wanting a modification order to DELETE the public pathway that runs through their farmyard.

I have received NO Notice from the applicant, pending this claim for a Modification, as they do not speak to me due to boundary issues.

My Deeds say that I am responsible for a third of the lane, so this walkway goes past the front of my Cottage and ' I OPPOSE ' The or Their request, of the removal, of this rural Public Right of Way.

My partner Keith Ormston now deceased, 19/01/2012, lived & worked on this farm for the then Mrs. Elizabeth ( Libby ) Stonehouse from the age of 14, his family will back this. We bought The Farm Cottage off the Farm 1994.

There WAS a sign post at the top of our lane, on the left by an old dead tree stating ..... Public Right of Way with a number, pointing towards Westwood Farm, entrance.

I knew from Keith that this was a recognized & used PR of W. I was also a where the farm discouraged the knowledge of this PR-W, wanting to keep it Private & under farm instruction, Keith TURNED the council sign ( Stating – Public Right Of Way ), that pointed through the farmyard, NOW Toward the Lane ( also owned by The Farm ) that comes out at Kyo Bog Lane, between Kyo House & Mr. John Armed's fields, hence Diverting walkers & Ramblers. The other end sign, near Hag Hill Cottage on Kyo Bog Lane, was removed years ago. I know this from Keith but will be denied by the Henderson's.

A couple of years ago I saw Mr. Ken Pringle & another man, Removing & TAKING AWAY the said sign post, of Public Right of Way. They were working under instruction from Mr. John Armed, who thought he had ownership of the farm lane & he erected 5 bar gates at both ends, his claim was revoked & sign post NOT returned.

I am asked regularly by walkers, ' Where is TPR-W ' but when they go to walk it, usually elderly people, they turn back as there are 3 gates ALL LOCKED or TIED & Very High & Difficult to climb, NO GOOD SOLID STYLES .

I myself when go to walk through, am met with abuse from Catherine Stonehouse, as they want no one to walk this route, not even neighbor's.

I was also asked by a very nice gentleman called Hugh Kelly. I directed him to the path, firstly showing him by way of Kyo House garden, so he wouldn't stray from the correct route. He told me he was a Councilor & I believe he took photos of the locked gates along route.



My late dear friend Ms Sonia Boystones of Kyo House, also knew of this PR-W we walked it when rescuing her stray sheep or when we needed Simon from Hag Hill Cottage, to do his fox eliminating skills, Ms Sonia was in her 90's when she died.

Mine & Keith's 2 girls also walked, played & quad biked along this PR-W too. As far as I am aware, This has been a Public Right of Way as told by my Kieth & my friend Sonia Boystones for at least 80 years & I'm Happy for it to continue.

Maybe the fact that Mr & Mrs Henderson, want to do a farm building conversion, might be a contender into the reason, WHY they wish to remove TPR-W & have miraculously found an old plan that does NOT include this footpath, going through their said farmyard, which could prove an irritant to prospective buyers.

I also advise checking the authenticity of this new found map, as computers can add & delete at will of the person or persons skills in technology. The farm belonged to, The Bradley Hall estate & was sold to Catherine & Michael Stonehouse's grandparents, Catherine Hunter. There must be archived copies of public right of ways ?

I am privileged to live where I do, on the outskirts of Gateshead. I can walk out of my door & experience Gateshead's very few green belts, with unspoilt natural beautiful countryside. It gladdens me when I meet people outside my cottage, who have taken the time & energy to walk up the bank from the main road, to appreciate what I see every day. This is why we NEED these walkways, so people with children can forage the hedge ways see hidden wildlife & pick blackberries.

My grandchildren can, can yours, I want them too. This is a small rare hidden gem, You can touch on a real farm yard & learn to respect farm animals & then come out onto a quaint winding field path. Once you are on Kyo Bog Lane, you can turn right & meander up to Greenside, where you come out at The Coal Burns Pub. Stop, have refreshment here, or at any local business. This is how they get their revenue, people exploring the countryside.

SAVE THIS PUBLIC RIGHT OF WAY, PLEASE :)

I would be willing to come to your Committee meeting, please keep me informed, thank you.

Yours with best wishes

Ursula Elisa GEISLER



Westwood Farm Cottage, 07/06/2019  
Wylam.  
Northumberland.  
NE41 8JW

07498 44 96 96



## Report to Rights of Way Committee

23 March 2020

**TITLE OF REPORT:** Progress of Rights of Way Matters

**REPORT OF:** Strategic Director, Corporate Services and Governance and Strategic Director, Housing Environment and Healthy Communities

---

---

### **Purpose of the Report**

1. To update Committee on the progress of Rights of Way cases, plus the principle works carried out on the network between November 2019 and March 2020.

### **Background**

2. The rights of way matters and completed matters are set out in Appendix 2.

### **Recommendations**

3. It is recommended that the Committee note the report and the updates highlighted in bold.

---

Contact: Umi Filby extension 2219 and Zoe Jones extension 3094

---

**1. FINANCIAL IMPLICATIONS**

Nil

**2. RISK MANAGEMENT IMPLICATIONS**

Nil

**3. HUMAN RESOURCES IMPLICATIONS**

Nil

**4. EQUALITY AND DIVERSITY IMPLICATIONS**

Nil

**5. CRIME AND DISORDER IMPLICATIONS**

Nil

**6. SUSTAINABILITY IMPLICATIONS**

Nil

**7. HUMAN RIGHTS IMPLICATIONS**

Nil

**8. WARD IMPLICATIONS**

Chopwell and Rowlands Gill, Blaydon, Ryton Crookhill and Stella, Whickham North, Lamesley, Crawcrook and Greenside, Dunston Hill and Whickham South and Sunnyside, Winlaton and High Spen

**9. BACKGROUND INFORMATION**

Nil

## Current Matters

Item No	Case	Ward	Application/ Proposal	Progress/Action
1	North View	Winlton & High Spen	Definitive Map Modification Order	The order has been made but objections have been received. The Order will need to be sent to the Secretary of State for the Environment, Food and Rural Affairs. This is being prepared to be submitted in due course.
2	Application to add a bridleway between RB 44 and Derwent Walk.	Whickham North, Blaydon	Definitive Map Modification Order	The definitive map modification order has been drafted and waiting for instruction to advertise it.
3	Claim at Thomas Street Eighton Banks Right of Way 62	Lamesley	Definitive Map Modification Order	The order has been made but objections have been received. The papers have been prepared and the Order will be sent to the Secretary of State for the Environment, Food and Rural Affairs for confirmation in due course.
4	Claim for a Footpath at Sherburn Towers, Rowlands Gill	Rowlands Gill, Blaydon	Definitive Map Modification Order	An application was received on the 18 <sup>th</sup> August 2015 to record a footpath onto the definitive map and statement at Sherburn Towers, Rowlands Gill, which was approved by committee on 18 <sup>th</sup> March 2016. The order was made on the 9 <sup>th</sup> June 2016 and the objection period for that order expired on 3 <sup>rd</sup> August 2016. One objection was received to the order, which was not withdrawn. The papers were sent to Secretary of State for the Environment, Food and Rural Affairs on 18 <sup>th</sup> December 2018. The public Inquiry was withdrawn as the objector withdrew their objection. <b>The decision from the Secretary of State was received on 22<sup>nd</sup> January 2020. The order was confirmed and a copy of the Inspector's Decision is attached as an appendix to this report.</b>
5	Creation Agreement for Footpath Ryton 120	Ryton	Public Path Creation Agreement	Committee approved the making of a public path creation agreement on 12 <sup>th</sup> October 2012. The draft agreement was sent to the landowner's agent on the 31 October 2017 but they have indicated that they will not be responding until opportunities for the land to the south of the development site are considered.
6	Clarty Lane Upgrade public footpath LA/33 to bridleway	Lamesley	Definitive Map Modification Order	<b>Following committee on 18<sup>th</sup> November 2019, instructions are with legal to progress making the order.</b>
7	Cushy Cow Lane Upgrade public footpath RY/27 to bridleway.	Ryton Crookhill Stella Crawcrook Greenside	Definitive Map Modification Order	<b>Waiting to be passed to legal.</b>

## Completed Matters

None

**PRINCIPAL WORKS CARRIED OUT ON THE RIGHTS OF WAY NETWORK – November 2019 and March 2020**

<b>November 2019</b>	<b>Keelmans Way, Clara Vale. Ryton 76</b>	New fencing of edge of footpath due to River Tyne erosion.
<b>November 2019</b>	<b>Pennyfine road, Sunnyside. Footpath Lamsley 6</b>	Reinstated footpath with access improvements.
<b>December 2019</b>	<b>Washingwell Lane, Whickham. Restricted Byway Whickham 74</b>	Surface improvements.
<b>December 2019</b>	<b>Fellside Road, Whickham. Bridleway Whickham 119</b>	Surfacing improvements
<b>January 2020</b>	<b>Old Hexham Road, Blaydon. Footpath Blaydon 82</b>	Access improvements.
<b>January 2020</b>	<b>Derwent Country Park. Blaydon 85</b>	Drainage clearance then surface improvements.
<b>January/February 2020</b>	<b>Woodhouse Lane, Whickham. Sections of Footpaths Whickham 48 and 49.</b>	Drainage and surface improvements as part of Land of Oak and Iron access projects
<b>February 2020</b>	<b>Blaydon Burn Footpath Blaydon 70</b>	Access improvements.



## Order Decision

Site visit on 10 December 2019

**by Paul Freer BA(Hons) LLM PhD MRTPI**

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

**Decision date: 22 January 2020**

---

### **Order Ref: ROW/3219085**

- This Order is made under Section 53(2) of the Wildlife and Countryside Act 1981. It is known as The Borough Council of Gateshead (Footpath Blaydon 121) Definitive Map and Statement Modification Order 2016.
- The Order is dated 10 June 2016. It proposes to modify the definitive map and statement for the area by adding a public footpath linking Hollinhall Lane with Bridleway Blaydon 120, in the Parish of Blaydon, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when The Borough Council of Gateshead submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed.**

---

### **Procedural matter**

1. The points raised by the sole objector to the Order were scheduled to be heard at a Public Inquiry to be held on 10 December 2019. However, the sole objection outstanding was withdrawn on 8 November 2019. I have therefore made my determination based on the papers on file, together with an unaccompanied site visit.

### **Main Issues**

2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). If I am to confirm it, I must be satisfied that, on a balance of probability, the evidence shows that a public right of way on foot subsists along the route described in the Order.
3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980. For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to when the right to use the way was brought into question, thereby raising a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.

4. The main issue here is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public footpath can be presumed to have been dedicated.

### **Reasons**

5. The Order was made in response to an application dated 18 August 2015 from Mr A.J.Cowell, supported by eleven forms giving evidence of use.

#### *Bringing into question*

6. I am satisfied that the status of the Order route was brought into question by the application made by Mr Cowell dated 18 August 2015. Consequently I need to examine use by the public during the period between August 1995 and August 2015.

#### *Assessment of the evidence*

7. In addition to the eleven user evidence forms submitted with the application, a further user evidence form was added subsequently. However, one of those user evidence forms must be discounted on the grounds that the route shown on the attached plan is different to the Order route.
8. Eight of the user evidence forms cover the entire period from August 1995 to August 2015, and indicate that those respondents walked the whole route for dog walking or as part of a circular walk. The earliest use of the route recorded in the user evidence forms dates to 1940, with another user recording having walked the route from 1968. These forms refer to use of the route for periods of 75 years and 46 years respectively. Another evidence form records use of the route for a period of 51 years commencing in 1963, of which 19 years were within the relevant period. The evidence forms, including those covering only part of the relevant period, all refer to walking the entire length of the route. Analysis of the user evidence forms reveals that the respondents used the route on a regular basis, many on a weekly basis. Others record using the route on a monthly basis, but some less frequently.
9. There is additionally a witness statement dated 8 March 2016 by Mr Robert Hindhaugh, Rights of Way Officer at TBCG, detailing telephone conversations that he had with users of the route in February of that year. The evidence recorded in that witness statement confirms that some of the users had continued to walk the route throughout 2015 and into 2016. However, the evidence relates to only one short part of the relevant period and also is short on detail. For those reasons, I have attached only limited weight to this evidence.
10. There is repeated reference in the user evidence forms to two locked gates across the route, one at the northern end of the route at the junction with Hollinhill Lane (Point A) and the other to the south of Sherburn Tower Farm (Point D). The user evidence forms consistently refer to a stile next to the latter, and to the presence of Red Kite Trail markers on the posts of the locked gate at Point A. The users do not indicate that these gates prevented them from following the route and it would therefore appear that the route remained passable at all times, notwithstanding these obstructions.
11. None of users report being stopped from using the path by the landowner. There is reference in just one user evidence form to the recent appearance of a

notice saying "private road" at the entrance to Sherburn Tower Farm and to another sign at the 'entry to the woods' of a sign saying "Private Road, no access" (Point D). I will return to the erection of these signs in more detail below but, on the whole, there is no meaningful evidence to suggest that those completing the user evidence forms were ever challenged whilst using the path, by notice or otherwise, or used the route in secret or with express permission.

12. In addition to the user evidence forms, two letters have been received in support of the Order. The first of these letters is from Mr Ken Sanderson on behalf of the Friends of Red Kites (FoRK) and is dated 8 August 2019. In his letter, Mr Sanderson explains that FoRK used the Order route to monitor the movements and activities of Red Kites in the area. However, no detail is provided about the frequency of those walks on this particular footpath or the period of time over which those walks took place. Consequently, I attach only limited weight to this letter.
13. The second letter is from Mr William Gallon and is dated 16 October 2019. In his letter, Mr Gallon explains that he had walked the route as a member of the Whickam Pathfinders from the 1970s and later as a member of the Durham Countryside Voluntary Ranger Service. Mr Gallon then goes on to explain that sections of the Order route were used in connection with walks along the Tyne and Wear Heritage Way. The lack of detail regarding dates limits the weight that I can attach to Mr Gallon's letter, but his letter nonetheless supports other user evidence relating to the Order route.
14. Having regard to the user evidence in its totality, I am satisfied that the use was 'as of right', regular, and without interruption. I therefore conclude that the evidence raises a presumption of dedication.

*Intentions of the landowner*

15. Although the sole objection to the Order has been withdrawn, there is reference in the material submitted with that objection to the locked gates and notices referred to in the user evidence forms. It is therefore convenient to set out the background to the erection of these notices here.
16. In a letter dated 10 February 2016, the agent acting for the tenant farmer confirmed that both the gate at Point A and the gate at Point D have been in situ and locked for the preceding 20 years. The reason given for the erection of the gates was to prevent fly-tipping. There is no indication in that letter that the intention of the tenant farmer or the landowner was to prevent walkers from using the route. The presence of a gap beside the locked gate at Point A and a stile next to the locked gate at Point D are consistent with that, and with the user evidence that they continued to walk the route notwithstanding the presence of the locked gates.
17. The letter also confirms that the notices at Point D and at the entrance to Sherburn Tower Farm were both erected during 2015. However, no precise date is given for the erection of these signs and the photographs taken by the agent date to October 2015, outside of the relevant period. I therefore cannot discount the possibility that these notices were only erected after the end of the relevant period.
18. Furthermore, the notice at Point D expressly says "Private Road, no access" and makes no reference to access on foot. It is entirely possible that users

confronted with that sign would assume that the restriction applied to use by vehicles only and that there was no restriction on access by foot. Such a conclusion would be reinforced by the presence of the stile beside the locked gate.

19. The original notice at the entrance Sherburn Tower Farm appears to have been erected in or around 1990 and was subsequently (and somewhat crudely) embellished with the words "private road". In my view, the wording and placement of the original notice is more akin to a name plate to identify the farm. This would be consistent with the location of the notice, given that it is only visible having walked a substantial portion of the Order route from whichever direction it is approached. It is therefore reasonable to conclude that the addition of the words "private road" at a later date were intended to indicate that the short of stretch of surface between the farm buildings and the Order was a private road giving access to the farm, rather than any attempt to indicate a lack of intention to dedicate.
20. Having regard to the above, I consider that there is insufficient evidence to show that any landowner demonstrated a lack of intention to dedicate. I therefore conclude that the statutory dedication is made out.

*Historical evidence*

21. Successive editions of the Ordnance Survey maps show the route in existence from 1856 to the present day. In addition, the Winlaton Tithe Map of 1838 shows a route that is approximate to the Order route although, on the copy made available to me, the quality is not sufficient to discern the precise route followed at that time. The evidence provided by the Ordnance Survey maps, and to a lesser extent the Winlaton Tithe Map, tends to support the claim that a footpath subsists on the Order route.

**Conclusion**

22. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

23. I confirm the Order.

*Paul Freer*

INSPECTOR