



RIGHTS OF WAY COMMITTEE AGENDA

Friday, 18 March 2016 at 3.30 pm in the Bridges Room - Civic Centre

From the Chief Executive, Jane Robinson

Item Business

1. Apologies for Absence

2. Minutes (Pages 3 - 6)

The Committee is asked to approve the minutes of the meetings held on Friday 2 October and Monday 14 December 2015, respectively.

3. Claimed Public Right of Way - Sherburn Tower Farm, Rowlands Gill (Pages 7 - 48)

Report of the Strategic Director, Corporate Services and Governance

4. Dedication of a Bridleway at Bucks Hill, Whickham (Pages 49 - 54)

Report of the Strategic Director, Communities and Environment

5. Changes to the Rights of Way Proposals at Bill Quay, Gateshead (Pages 55 - 74)

Report of Strategic Director, Communities and Environment

6. Progress on Rights of Way Matters (Pages 75 - 86)

Report of the Strategic Director, Corporate Services and Governance and the Strategic Director, Communities and Environment

Contact: Sonia Stewart, email: soniastewart@gateshead.gov.uk, Tel: 0191 433 3045,
Date: Friday, 11 March 2016

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RIGHTS OF WAY COMMITTEE

DATE: 2 October 2015

PRESENT: Councillor K Wood (Chair)

Councillor A Wheeler

RW10. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor B Bradley, A Geddes, J Hamilton, J Turnbull and M Ord.

The meeting was opened and declared as being inquorate and re-arranged for Monday 14 December 2015 at 4.30 pm.

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RIGHTS OF WAY COMMITTEE

14 December 2015

PRESENT: Councillor C Bradley (Vice-Chair)
Councillor J Hamilton

RW11. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors M Ord and J Turnbull

The meeting was opened and declared as being inquorate and re-arranged for Friday 18 March 2016

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Report for Rights of Way Committee

18 March 2016

TITLE OF REPORT: **Claimed Public Right of Way: Sherburn Tower Farm, Rowlands Gill**

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

Summary

This report to Committee sets out, summarises, and evaluates the evidence, alleging the dedication of a public footpath alongside Sherburn Tower Farm and into Sherburn Green Wood, Spen Burn.

Purpose of the report

- 1) To seek authority from the Rights of Way Committee for the making of a Definitive Map Modification Order in respect of a claimed footpath, at Sherburn Tower Farm, Rowlands Gill, Gateshead.

Background

- 2) The route which is the subject of the claim is indicated on the plan at Appendix 2 from Point A to Point D. It is approximately 1290 metres in length and commences at Point A in Sherburn Green Wood, Spen Burn, on a steep track, where it proceeds to an unlocked gate and fence, which has a broken sign on it which did read: "Private Road No Entry", which is shown at Point P on the plan at Appendix 2. It then continues to a gate at the top of the Wood that is locked with a stile to the side of it, as indicated on the plan at Appendix 2. There is a sign on the gate that states: "Private Road – No access without permission". It then continues on an old stone track that runs past Sherburn Tower Farm and through an open double gate, with the fence to the side of that gate with a sign stating "Sherburn Tower Farm Private Road". It then continues round a bend, at Point B on the plan at Appendix 2 on a hard stone surface, where it proceeds to and crosses Footpath Blaydon 59 at Point C on the plan at Appendix 2. From this point it forms part of the Red Kite Trail to another locked gate which has a gap to the side of it at Point D on the plan at Appendix 2 where it joins Hollinhill Lane opposite Thornley Kennels.
- 3) An application to register the claimed right of way was made and registered on the 18 August 2015. After receiving the Schedule 9 Certificate on 21st August 2015 (service of notice of the claim on affected owners and occupiers of the land the claimed right of way runs across);

the Council was under a duty to investigate the claim. The applicant had submitted in March 2014, 11 user evidence forms but the application was not formally made until 18th August 2015. Those 11 user evidence forms are part of the application along with an additional user evidence form that was submitted in 2015 and all that evidence is set out in the table at Appendix 3. Members are advised that they are exercising a quasi-judicial function when determining this claim, and can only have regard to the statutory and evidential matters arising from section 31 of the Highways Act 1980 and section 53 and Schedule 14 of the Wildlife and Countryside Act 1981.

- 4) On investigating this claim the Council in its capacity as Surveying Authority, inspected the Tithe Maps online and the Ordnance Survey plans from 1856 to the present day. Copies of Ordnance Survey plans are at Appendix 4. An investigation was also undertaken at the Tyne and Wear Records Office but no information relating to the claimed public right of way was identified. Notices were displayed along the claimed right of way requesting any persons who use it to complete a user evidence form. One user evidence form was submitted, namely user evidence form 12. In addition user evidence forms were sent out to Thornley Kennels, but no response was received from them. 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. However no responses were received from them. A detailed assessment of the user evidence submitted is set out at paragraphs 10 to 26 below.
- 5) In addition to the above investigations, the landowners of the claimed right of way were also sent a landowner evidence form to determine whether they recognised the claimed right of way as a public right of way or whether they had done anything to rebut any presumption of dedication of the claimed right of way. The landowner evidence is assessed at paragraphs 27 to 38 below, and their evidence is set out in a table at Appendix 5.

The statutory requirements to add a public footpath to the definitive map of public rights of way.

- 6) The process of adding a public right of way to the Council's Definitive Map and Statement of Public Rights of Way is set out in the Highways Act 1980, and the Wildlife and Countryside Act 1981. The Highways Act deals with the type and character of the evidence put forward to 'claim' the right of way in question, whilst the Wildlife and Countryside Act sets out the way in which this evidence becomes part of, in turn, an 'application', and then – if the Committee so decides – an 'order'.
- 7) Section 31(1) of the Highways Act provides:

“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any

presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

In this case, the two important issues in this section are, i) the need for a period of 20 years public use without interruption, and, ii) absence of evidence that the landowner(s) had no intention to dedicate the right of way.

8) Section 31(2) provides:

“The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question ...”

9) The Committee are therefore asked to determine:

- a. Was there an ‘event’ that brought the claimed right of way into question and, if there was, when was it?
- b. Is there a full 20 years of evidence of public use of the claimed right of way, ‘as of right’, stretching back from that date? And, if yes,
- c. Is there any evidence that the landowner(s) has given sufficient evidence of their intention not to dedicate the claimed right of way to the public?

According to User Evidence

A) The Date of a ‘Bringing Into Question’.

10) In order to determine whether the claimed right of way has been dedicated in accordance with Section 31 of the Highways Act 1980, it first needs to be determined how the use was brought into question. An event which can bring a claimed right of way into question can consist of:

- Locked gates being put up on the claimed right of way;
- Notices being erected along the claimed right of way to deny it is a public right of way;
- Landowner’s stopping or challenging the use of the claimed right of way;
- Notices stating that the claimed right of way can only be used with the permission of the landowner, and
- The lodging of an application for a Definitive Map Modification Order.

11) All 11 user evidence forms that were submitted with the application, state that there were no notices erected along the claimed right of way to inform users that it is not a public right of way.

- 12) A further user evidence form was submitted in September 2015 (namely user evidence form 12), which states that only recently a notice stating “private road” had been erected along the claimed right of way. However the words “private road” on a sign can be construed as meaning no access to vehicles, but still providing access to people on foot. This is further supported by stiles being erected to the side of the locked gates to allow pedestrian access, which is discussed at paragraph 14 below.
- 13) All the user evidence forms confirm that none of the users have ever been turned away from using the claimed right of way by the landowner or tenant farmer acting on the authorisation of the landowner.
- 14) In addition, 11 out of the 12 user evidence forms confirm that there are locked gates with adjacent stiles along the claimed right of way. There is only 1 user evidence form, namely user evidence form 9, which states that there are no locked gates or stiles along the claimed right of way. Contrary to the evidence submitted in user evidence form 9, the remaining user evidence confirms that there are locked gates and stiles along the claimed right of way, at the locations shown on the plan at Appendix 2. The user evidence does not however confirm the dates when the locked gates and stiles were erected. Furthermore it is questionable whether a locked gate that has a stile erected beside it, is a clear indication by the landowners to the public that their right to use the claimed right of way is being stopped; this is because the stile (much like a footpath sign), would imply or indicate to the public that they could still use the claimed right of way on foot.
- 15) The final event that can bring the use of the claimed right of way into question is the lodging of an application for a definitive map modification order under the Wildlife and Countryside Act 1981. An application for a definitive map modification order was made on 18 August 2015. Due to the above events (namely the notices and locked gates) being insufficient to bring into question the use of the claimed right of way; the view of Officers is that the date that first brought into question the public’s use of the claimed right of way can only be 18 August 2015; when the application was made.

B) Is there 20 years public use of the route during the relevant period of 1995 to 2015?

- 16) All the evidence in the 12 user evidence forms have been formulated into a table, which is attached at Appendix 3. Every person who has submitted a user evidence form have confirmed that they have used the whole of the claimed right of way, except for one person (user evidence form 12), which has only used the southern section of the claimed right of way. Therefore, that user evidence form will need to be discounted, leaving 11 user evidence forms to consider. In addition, user evidence

form 6 has confirmed in writing that they have used the whole of the claimed right of way (from Thornley Kennels to Sherburn Green Wood), but the plan attached to their user evidence form shows that they only used the route from Point A to Point C on the plan at Appendix 2 and then continued onto the Red Kite Trail. This might have been marked incorrectly on the plan by user 6, but contact has not been able to be made with that person in order to clarify their evidence and therefore their user evidence has been discounted. This means that there are only 10 user evidence forms to take into consideration.

- 17) From those 10 user evidence forms, 6 people claim to have used the claimed right of way regularly for at least 20 years during the relevant period of 1995 to 2015. The frequency of use for each person varies from a few times a year, to monthly then weekly. This indicates that there is regular use of the claimed right of way during the relevant period.
- 18) Two people allege to have used the claimed right of way for part of the relevant 20 years period, with 1 person having used the claimed right of way for 19 years of the relevant period. This evidence can be taken into account and added to those persons with 20 years or more use during the relevant period. The frequency of use of the claimed right of way varies from monthly to weekly, which indicates that the claimed right of way is well used. There are 2 user evidence forms (namely user evidence forms 10 and 11), which are unclear as to the period of use they have used the claimed right of way. The Council has written to these 2 people to request clarification on the period of years they are alleging to have used the claimed right of way, but no response has been received from them. Therefore those 2 user evidence forms will be discounted, leaving a total of 8 user evidence forms to be taken into consideration.
- 19) In order to satisfy the statutory test of dedication, the use not only has to be use during the relevant period, but it also has to have been enjoyed by the 'public' and not just used by a class or section of the public. For example, employees of a particular business using the route to get to work. When assessing the user evidence, it appears that the use is by local residents using the claimed right of way for recreational purposes i.e. walking. All of the 8 user evidence forms confirm that people have used the claimed right of way on foot, sometimes with the accompaniment of their dog. Therefore the user evidence supports the fact that the claimed right of way is actually enjoyed by the public as a footpath.
- 20) Taking the above into account it is the view of Officers that there is sufficient user evidence from the public claiming to have walked the claimed right of way for at least 20 years and continuously throughout the relevant period from 1995 to 2015, to satisfy the requirements of section 31(1) of the Highways Act 1980.

C) Is the claimed public use 'as of right' and uninterrupted?

- 21) The term 'as of right' in this context means without force (for example, breaking a lock on a gate to gain access), without secrecy (for example, the landowner must have been in a position to object to the use of his land as a right of way, so the public's use must not be in secrecy); and finally the public's use must have been without the permission of the landowner. For example, where the landowner gives express consent by erecting a sign stating "Permissive Path". Furthermore, use of the claimed right of way cannot be across common or access land as that use would be with permission (by right and not as of right). Also any permission granted or access denied, must be by the landowner or by someone authorised by the landowner.
- 22) From the user evidence, all 8 people confirmed that they did not ask permission of any landowners before using the claimed right of way. Again when the user evidence form asked if anyone had been stopped from using the claimed right of way, all 8 people stated that they had not been stopped from using it. Therefore, the user evidence confirms that the use of the claimed right of way was not with the permission of the landowners and was not in secrecy.
- 23) The final element of the 'as of right' test is whether the use of the claimed right of way was by force. The user evidence confirms that there are gates, some locked and some open, along parts of the claimed right of way, but that there are stiles or gaps next to the gates. This means that no force has been used to access the claimed right of way on foot and therefore use of it by the public has been 'as of right'.
- 24) Use of the claimed right of way must be without interruption, which does not refer to the interruption in continuity of use, but the actual and physical stopping of the enjoyment of the public's use. For example, if a landowner erected a locked gate on their land to stop public access, but the public continued to use it by going round the side of the gate, then that would still constitute an interruption in public use.
- 25) However the user evidence all appears to confirm that despite there being gates along the claimed right of way, the gates are either locked with stiles or gaps to the side or are unlocked and open. According to the user evidence, there have always been stiles and gaps or gates left open to enable public access on foot. Therefore it is assumed that stiles and gaps were put in place to enable footpath users to continue to use the claimed right of way, whilst stopping vehicles and motorbikes. If that is the case, then there would be no interruption in use of the claimed right of way as a footpath, because the landowner intended that use to continue by the existence of stiles, gaps and unlocked gates.
- 26) It is the view of Officers for the reasons set out above, that the nature of the public's alleged use of the claimed right of way was 'as of right' and

uninterrupted for the purposes of section 31(1) of the Highways Act 1980.

Landowner Evidence

D) Is there any evidence of the landowners having an ‘intention not to dedicate’ the route during the statutory 20-year relevant period?

- 27) A landowner is able to evidence his or her ‘intention not to dedicate’ a public right of way in a number of ways. The action that a landowner takes to do this must make it clear to users that they did not intend to dedicate a public right of way. The most effective way to achieve that is to have lodged with this Council (or a previous Council) a statutory declaration under the provisions of section 31(6) of the Highways Act 1980. The Council has not received any such declarations from the landowners.
- 28) Other ways in which a landowner can rebut a presumption of dedication could include erecting clear and unequivocal notices, erecting locked gates or challenging people using the claimed right of way. The user evidence detailed above, suggests that only recently there have been “private road” signs erected along the claimed right of way. All of the user evidence confirmed that no one had asked permission or been stopped from using the claimed right of way. However, this user evidence is in conflict with the evidence that has been provided by some of the landowners.
- 29) The ownership of the claimed right of way has two freehold landowners. One who occupies the land (which is unregistered land) from Point D to Point C on the plan at Appendix 2 as a farmer (referred to as Landowner 1 on the evidence table at Appendix 5); and the other landowner (referred to as Landowner 2 on the evidence table at Appendix 5), owns the remaining part of the claimed right of way. Landowner 2 has a tenant farmer occupying Sherburn Tower Farm from Point C to Point P on the plan at Appendix 2 (although no copy of the tenancy or lease has been provided). Landowner 2 has also granted a long lease to the Forestry Commission that manages the section of claimed right of way from Point A to Point P on the plan at Appendix 2, which is not registered as common land. Each of these owners and occupiers, have provided evidence in a landowner evidence form, which are detailed in the table at Appendix 5.
- 30) Landowner 1 has confirmed that they have owned the land since 1965 and that they have not obstructed the claimed right of way. Landowner 1 did not provide any further evidence.
- 31) The Forestry Commission provided initial evidence that the section of the claimed right of way that it manages is open access land under the Countryside and Rights of Way Act 2000. However the Forestry

Commission subsequently confirmed, in January 2016, that the area of land that forms part of the claimed right of way is not designated as open access land. (If the designated open access land had included that section of the claimed right of way, then the use of it by the public would not have been 'as of right' but 'by right', and no public right of way would be able to be dedicated on it).

- 32) The land agent acting for Landowner 2 and initially for the tenant farmer (who has recently appointed a legal representative), has confirmed that the tenant farmer has erected signs stating "Private Road No Entry" and "Private Road No Access without Permission". The sign stating "Private Road No Entry" has been broken off the new unlocked gate and fence at Point P as indicated on the plan at Appendix 2 and the sign stating "Private Road No Access without Permission" on the locked gate with stile to the side of it as indicated on the plan at Appendix 2; were both erected by the tenant farmer in 2015. The sign on the fence next to the open gate outside Sherburn Tower Farm, indicated with the "Private Road" sign on the plan at Appendix 2, has been in situ since 1990, where it was previously on the left hand side of the claimed right of way according to Landowner 2's agent.
- 33) The issue here is that if two of the signs were only erected in 2015 and one of those signs has been broken and not reinstated and no notice has been given to the local highway authority by the landowner to confirm that they do not intend to dedicate a public right of way on their land under sections 31(5) and (6) Highways Act 1980; then this would not be sufficient enough to rebut any presumption of dedication of a public right of way to the people who have used it at least 20 years prior to 2015. Furthermore, the two signs stating: "Private Road No Entry" and "Private Road No Access without Permission" are ambiguous and imply that there is no access to vehicles along the road without the permission of the landowner. In other words, it is not clear and unequivocal that the intention of Landowner 2 was to stop all public access along that section of the claimed right of way that they own. Also these notices were erected by the tenant farmer and these notices need to be erected by the landowner or by somebody on the instruction of the landowner to satisfy the test of rebuttal against dedication. It is not clear in this case if the signs were erected on the instruction of Landowner 2, as the evidence does not confirm this point. The agent for Landowner 2 has only confirmed that the tenant farmer was under a duty to prevent footpaths being established on the land. However it does not state how that duty arises.
- 34) The one sign that states: "Sherburn Tower Farm – Private Road" that is alleged to have been in situ since 1990 is still not sufficient to rebut a presumption of dedication to users for the reasons set out in paragraph 33 above. Also the user evidence suggests that there have been over 20 years use before 1990 of the claimed right of way by the public and as the sign is not located at the start or end of the claimed right of way, people would have to walk more than half way along the claimed right of

way before they saw it. Furthermore, it is arguable that only people walking from Point A at Sherburn Green Wood, up to Point D at Thornley Kennels, would see the sign as it is only facing in that direction. It would be questionable whether anybody walking in the opposite direction would actually see the sign. In addition, it appears the sign has had written on it at a later date the words: "Private Road" in the middle of the words "Sherburn Tower Farm", which could also be construed because of the position of the sign, as meaning the road up to the farm is a private road not the claimed right of way itself. Again those words could also indicate that it only applies to vehicles not pedestrians as it makes reference to the word "road". Therefore for those reasons, Officers would conclude that the sign that has been in situ since 1990 would not be sufficient to rebut any presumption of dedication of a public right of way.

- 35) The tenant farmer has confirmed that they have given verbal permission on an ad-hoc basis to people using the claimed right of way and has challenged some users, which has resulted in vandalism to the farm and putting the tenant farmer in a threatened position. This resulted in the tenant farmer not challenging the use by the public of the claimed right of way as much as they wanted too. This evidence coincides with the user evidence as it confirms that no challenges were made when walking the claimed right of way. However, other measures could have been taken to rebut any presumption of dedication as outlined above, which has not been done. In addition, it would need to be the landowner or someone authorised by them, for any challenges to be effective. It is unclear here if Landowner 2 has authorised the tenant farmer to challenge the public use of the claimed right of way on foot, although the agent for Landowner 2 has confirmed that the tenant farmer is under a duty to prevent new footpaths being established, although it does not state where this duty comes from.
- 36) The agent for Landowner 2 and the tenant farmer have confirmed that the two locked gates (one at Point D and the other between Points B and P as indicated on the plan at Appendix 2); were installed about 20 years ago and have been locked for the whole of that time to stop people from driving in and fly-tipping on the claimed right of way (although it does not confirm who erected the locked gates). This indicates that the gates were installed to stop vehicular traffic and not pedestrians, which may account for the stiles and gaps being erected next to the locked gates. Therefore there is no evidence of the landowners stopping the public from using the claimed right of way on foot.
- 37) The tenant farmer has also blocked the claimed right of way when moving stock around the farm, which has meant that some people have had to turn back or wait for permission from the tenant farmer before proceeding along the claimed right of way. However this act would not rebut a presumption of dedication because the interruption of public use must be with the intent of the landowner to stop the public using the claimed right of way. Whereas here it is an act of the tenant farmer to

move cattle from one field to another across the claimed right of way; it is not the intention of the landowner to stop the public using it as a footpath.

- 38) Therefore it is the view of Officers that there is no evidence of the landowners' intention not to dedicate the claimed right of way on foot during the relevant period of 1995 to 2015 for the purposes of section 31(2) of Highways Act 1980.

Map Evidence

- 39) The Council has reviewed the Ordnance Survey Plans, copies of which are attached at Appendix 4. The Ordnance Survey Plans from 1856 to the present day show that the claimed right of way was in existence on the ground for the whole of that period. This means that the claimed right of way was in existence since 1856, but it does not prove or establish its legal status. However, it does support the user evidence in showing that it has been in existence for a very long period of time and has more than likely been used for the whole of that period in order to be marked on the Ordnance Survey Plans.
- 40) The Tithe Maps were also inspected online when considering this claim. Historically, tithe maps were produced where agreement could not be reached between tithe owners and tithe payers and detailed surveys were undertaken of the land to apportion the applicable rent-charge to each part of the land contained in an accompanying award. Although these maps do not prove legal status of a claimed right of way, they do show whether a claimed right of way was in existence at the time the detailed survey was undertaken in 1838. The Winlaton tithe map shows that the claimed right of way was in existence in 1838 and therefore it is more than likely that it will have been used by the public from the time of its existence.
- 41) The above map evidence shows that it is more probable than not, that the public have used the claimed right of way for the duration of its existence, which is shown as being in existence from 1838.

Conclusion

- 42) In light of the user evidence, map evidence and submissions made by the landowners, Officers would recommend that there is sufficient evidence of use by the public as of right of the claimed right of way as a footpath, in order to make a definitive map modification order.

Recommendation

- 43) The Rights of Way Committee approves:

(i) the making of a definitive map modification order to add the claimed footpath at Sherburn Tower Farm, as shown with a broken black line from Point A to Point D on the plan at Appendix 2 onto the Definitive Map and Statement of Public Rights of Way.

(ii) Grant delegated authority to the Strategic Director of Corporate Services and Governance, to undertake the following:

(a) To consult statutory consultees and make a definitive map modification order to add the footpath at Sherburn Tower Farm as shown from Point A to Point D with a broken black line on the plan at Appendix 2, and

(b) If no objections are received to confirm the order or if objections are received and not subsequently withdrawn, to send the order to the Secretary of State for determination as an opposed order.

Contact: Jennifer Bradley Ext. 2219

1 FINANCIAL IMPLICATIONS

The costs of making and advertising the order will be covered by existing budgets.

2 RISK MANAGEMENT IMPLICATIONS

None

3 HUMAN RESOURCES IMPLICATIONS

Staff from Legal, Democratic and Property in conjunction with the Public Rights of Way Officer, will carry out the processing of the order.

4 EQUALITY AND DIVERSITY IMPLICATIONS

None

5 CRIME & DISORDER IMPLICATIONS

None

6 SUSTAINABILITY IMPLICATIONS

None

7 HUMAN RIGHTS IMPLICATIONS

Under Article 8, everyone has the right to respect for his or her private and family life, home and correspondence.

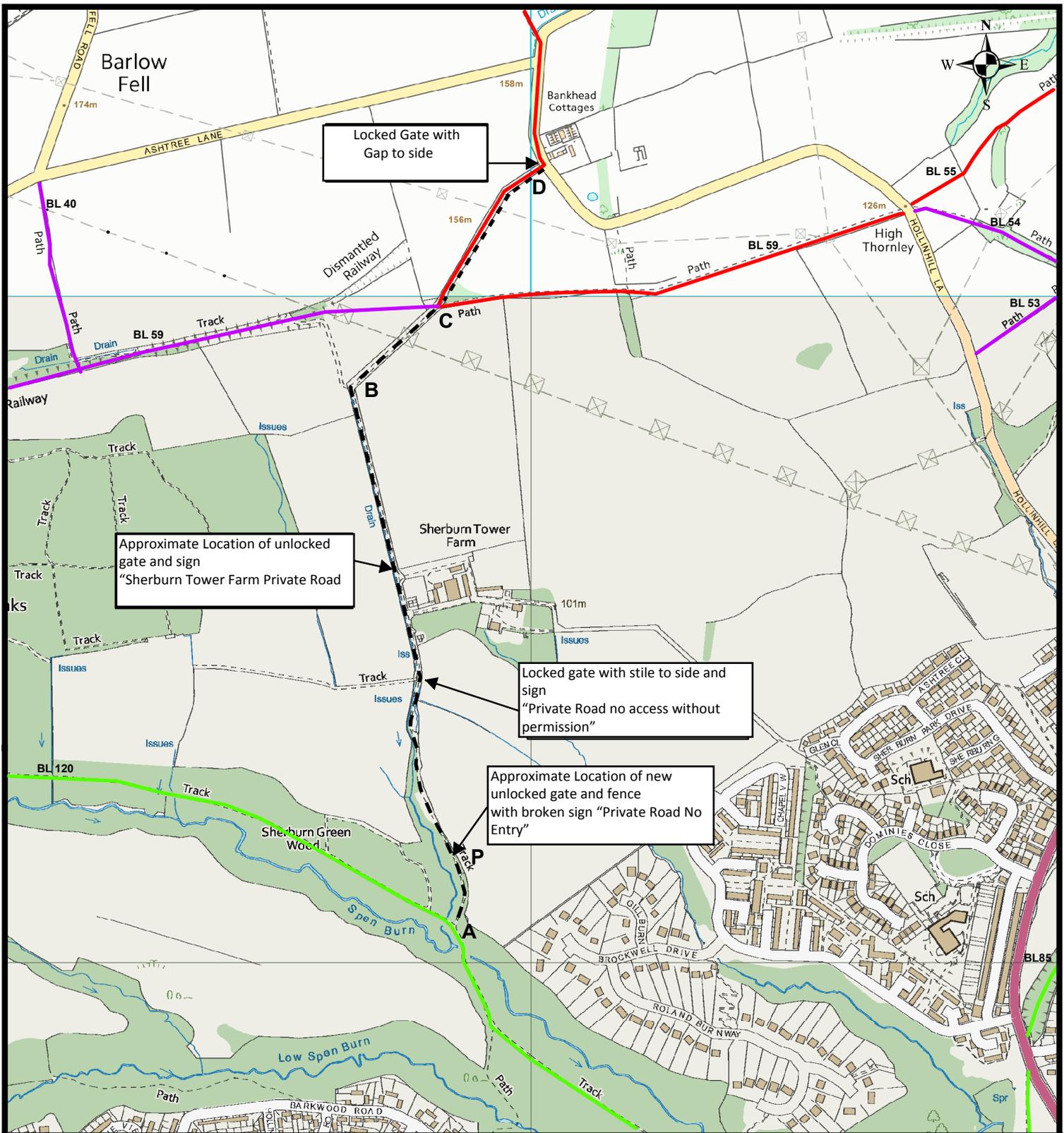
8 WARD IMPLICATIONS

Chopwell and Rowlands Gill

9 BACKGROUND INFORMATION

None

Contact: Jennifer Bradley Ext 2219



Information Plan

- D - C - Landowner 1
- C - A - Landowner 2
- C - P - Tenant Farmer
- P - A - Forestry Commission

- Red Kite Trail —————
- Other Gateshead Footpaths —————
- Other Gateshead Bridleways —————



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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	1968 - 2015 monthly. This equates to 46 years of use during the relevant period.	Circular walks	Foot	1. Stile next to locked gate below farm yard. 2. 2 locked gates one with stile and one at entrance opposite Thornley Kennels and one open above farm yard.	No	No	No	Part of Hookergate and Rowlands Gill School Cross Country Track.
User 2	Yes	1990 – 2015 five to eight times a year. This equates to 25 years of use during the relevant period.	Walking from home on a dog walk.	Foot	1. Stile opposite locked gate at end of Wood. 2. Open gate at farm. 3. Locked gate opposite Thornley Kennels with red kite way markers on	No	No	No	None

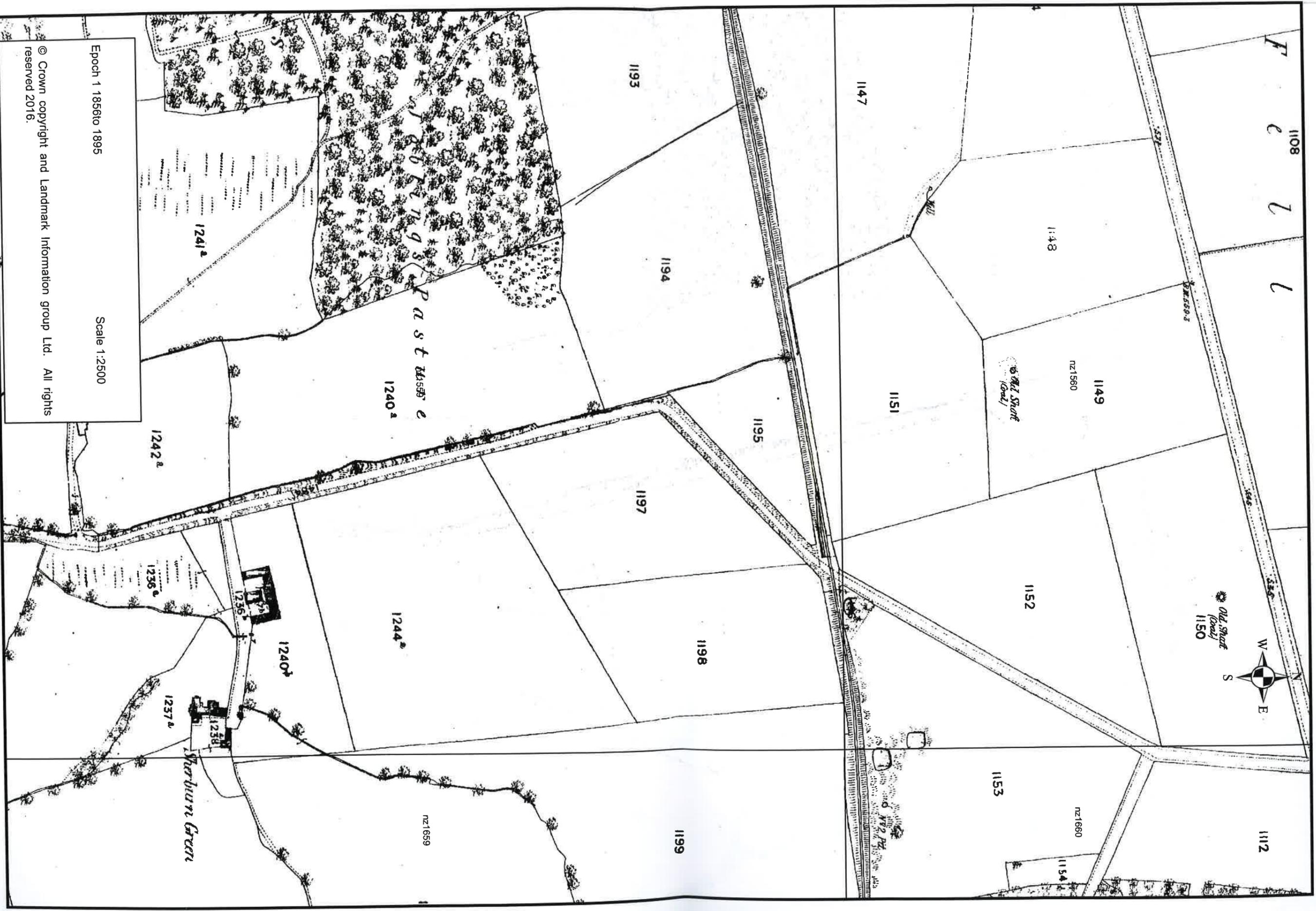
					either posts.				
User 3	Yes	1940 – 2015 three to four times a month. This equates to 75 years of use during the relevant period.	Walking to and from home	Foot	1. Stile adjacent to locked gates at end of Wood. 2. Open gate at farm. 3. Locked gate opposite Thornley Kennels with red kite way markers on either post.	No	No	No	None
User 4	Yes	1989 – 2015 weekly. This equates to 26 years of use during the relevant period.	Hookergate to Barlow	Foot	1. Locked gate with stile below farm. 2. Above farm open gate. 3. Locked gate at kennels with red kite way markers.	No	No	No	None
User 5	Yes	1963 – 2014 weekly. This equates to 51 years of use with 19 years of that use being during the relevant period.	Circular Walk	Foot	1. Stile with locked gate. 2. One open gate next to farm. 3. One locked gate opposite kennels with red kite marker on	No	No	No	None

					posts.				
User 6 (Discount User Evidence)	The user evidence form states that the user has used the route from Thornley Kennels to Sherburn Green Wood but a different route is marked on the plan accompanying their user evidence form.	1998 – 2014 twice monthly. This equates to 16 years of use, during part of the relevant period.	Dog walking from Home back to Home	Foot	1. Stile to south west of Sherburn Tower Farm. 2. Open and locked gates at the above location.	No	No	No	None
User 7	Yes	1990 - 2015 6 monthly. This equates to 20 years of use during the relevant period.	Dog walking	Foot	1. Stile by the farm. 2. Locked gate next to stile. 3. Open gate above farm 4. Locked gate with red kite way markers.	No	No	No	None
User 8	Yes	2007 – 2014 every couple of	Home to Rowlands	Foot	1. 1 stile 2. Locked gate	No	No	No	None

		months. This equates to 7 years of use during part of the relevant period.	Gill		next to stile. 3. Open gate next to farm and locked gate opposite kennels				
User 9	Yes	1990 – 2015 monthly to less than monthly. This equates to 25 years of use during the relevant period.	Rowlands Gill to Thornley	Foot	No	No	No	No	None
User 10 (Discount User Evidence)	Yes	Ten plus years weekly.	Dog walking and horse riding	Foot and horseback	1. Stile next to farmers field / farm. 2. Locked gate next to Farm.	No	No	No	None
User 11 (Discount User Evidence)	Yes	20+ years weekly.	Walking, jogging and using it with children and horse	Foot and horseback	1. Stile next to farm. 2. Locked gate next to stile. 3. Open gate	Gates with horses.	No. Saw him in tractor but never spoke.	No	None

					above farm. 4. Locked gates next to kennels with red kite markers.				
User 12 (Discount User Evidence)	The user evidence form states that only part of the claimed right of way has been used from south of Sherburn Towers Farm to Sherburn Green Wood	1992 - 2015 occasionally, possibly every 3 to 6 months. This equates to 23 years of use during the relevant period.	Circular walk from home via spen burn	Foot	1. Stile at gate on entry to wood and farm track. 2. Gate always locked next to this. 3. Path in Wood becoming overgrown now.	No	1. No not turned back but collie dog from farm attempts to bite you. 2. Yes a sign stating "Private road" erected on the gate last week. Another sign at entry to the Wood saying "Private road no access".	No	None

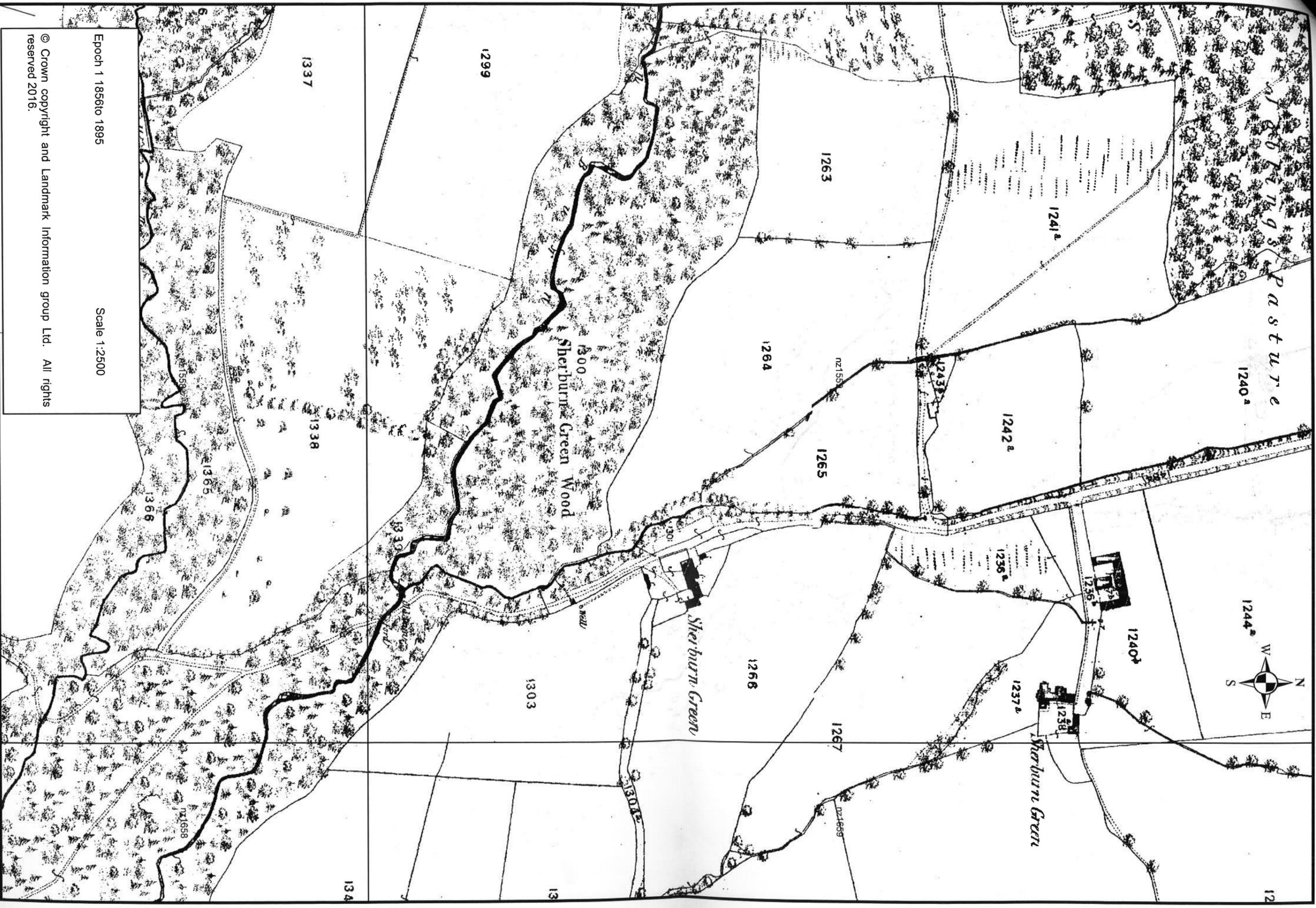
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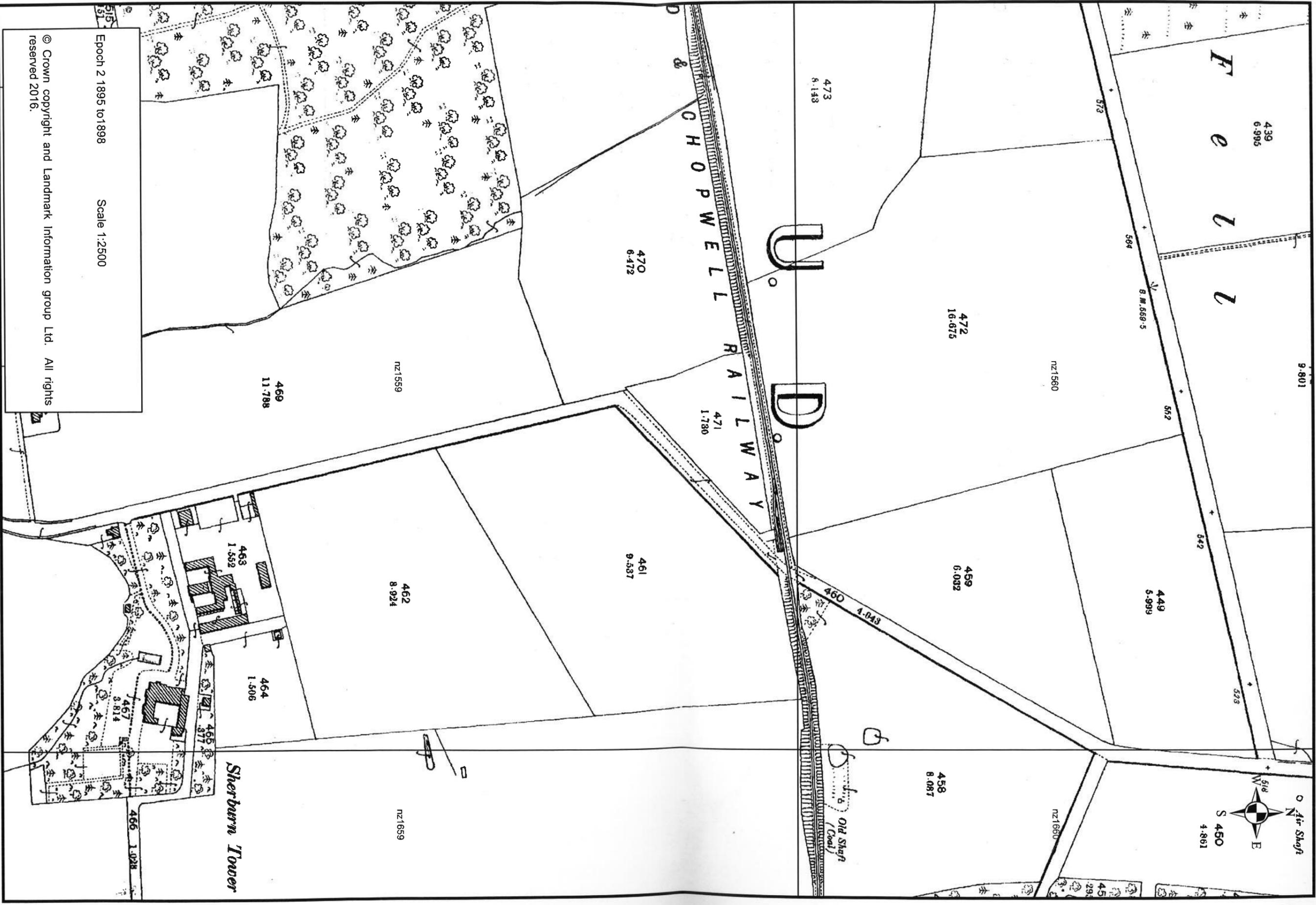
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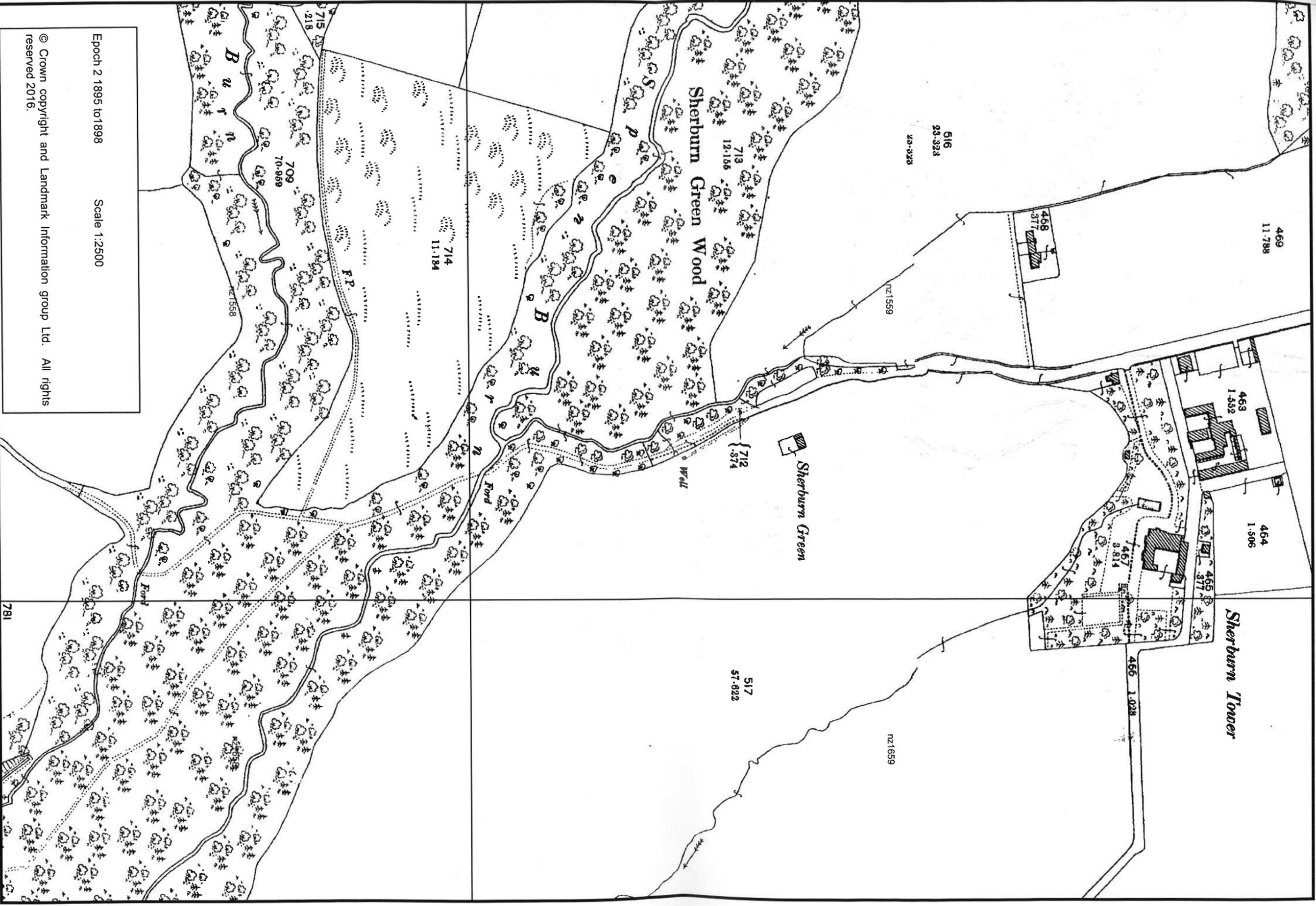
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Epoch 1 1856to 1895
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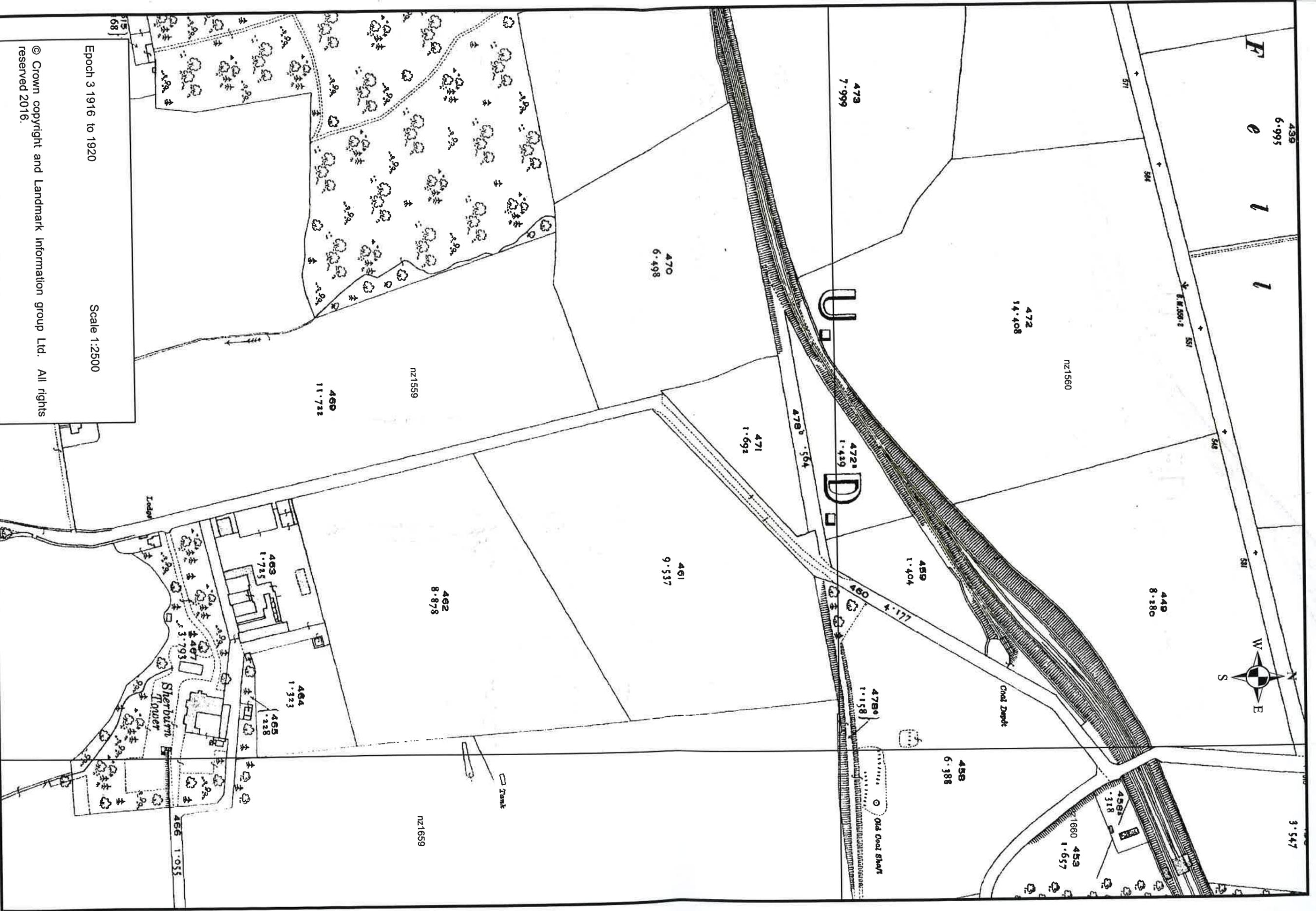




Epoch 2 1895 to 1898

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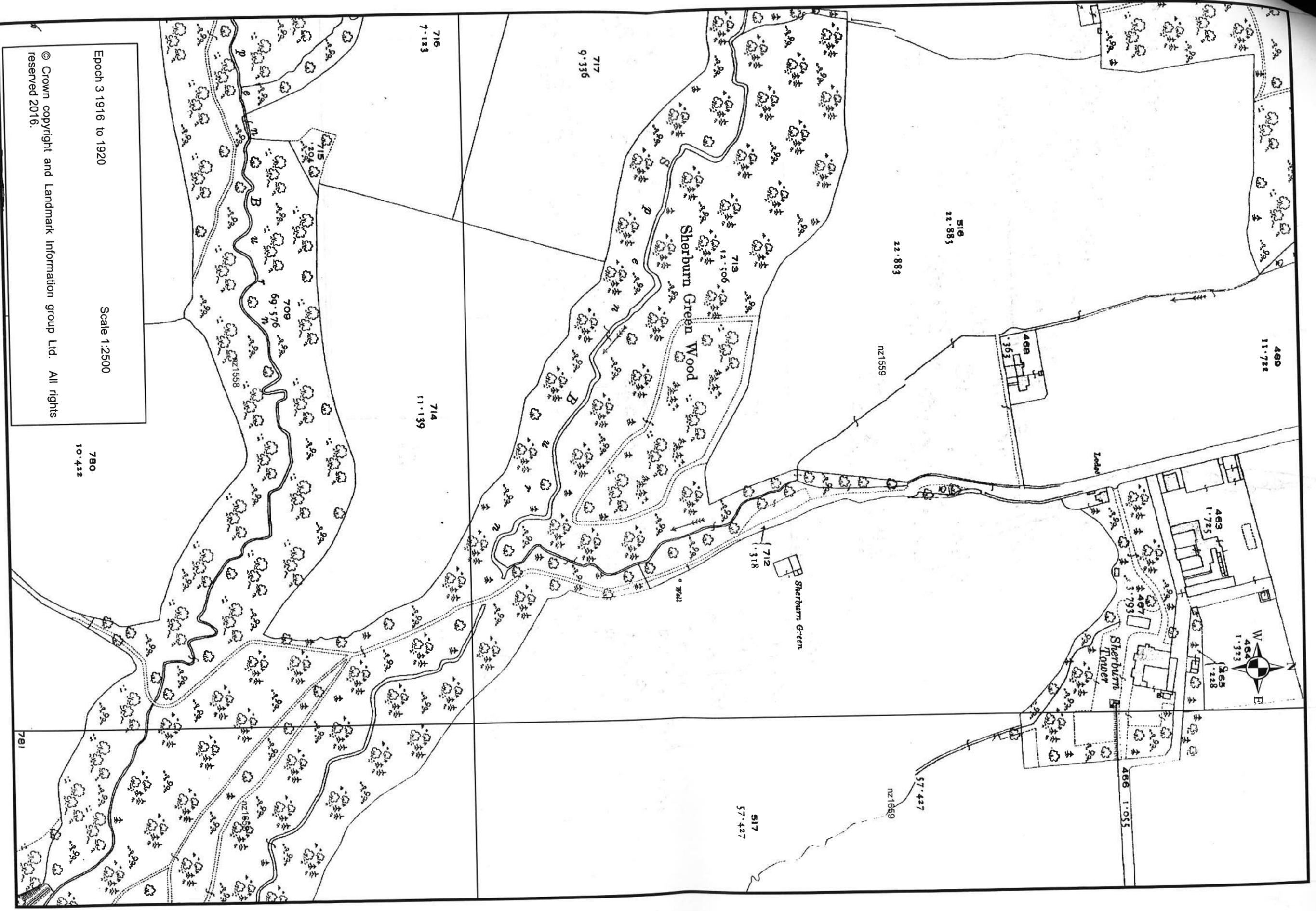
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Epoch 3 1916 to 1920

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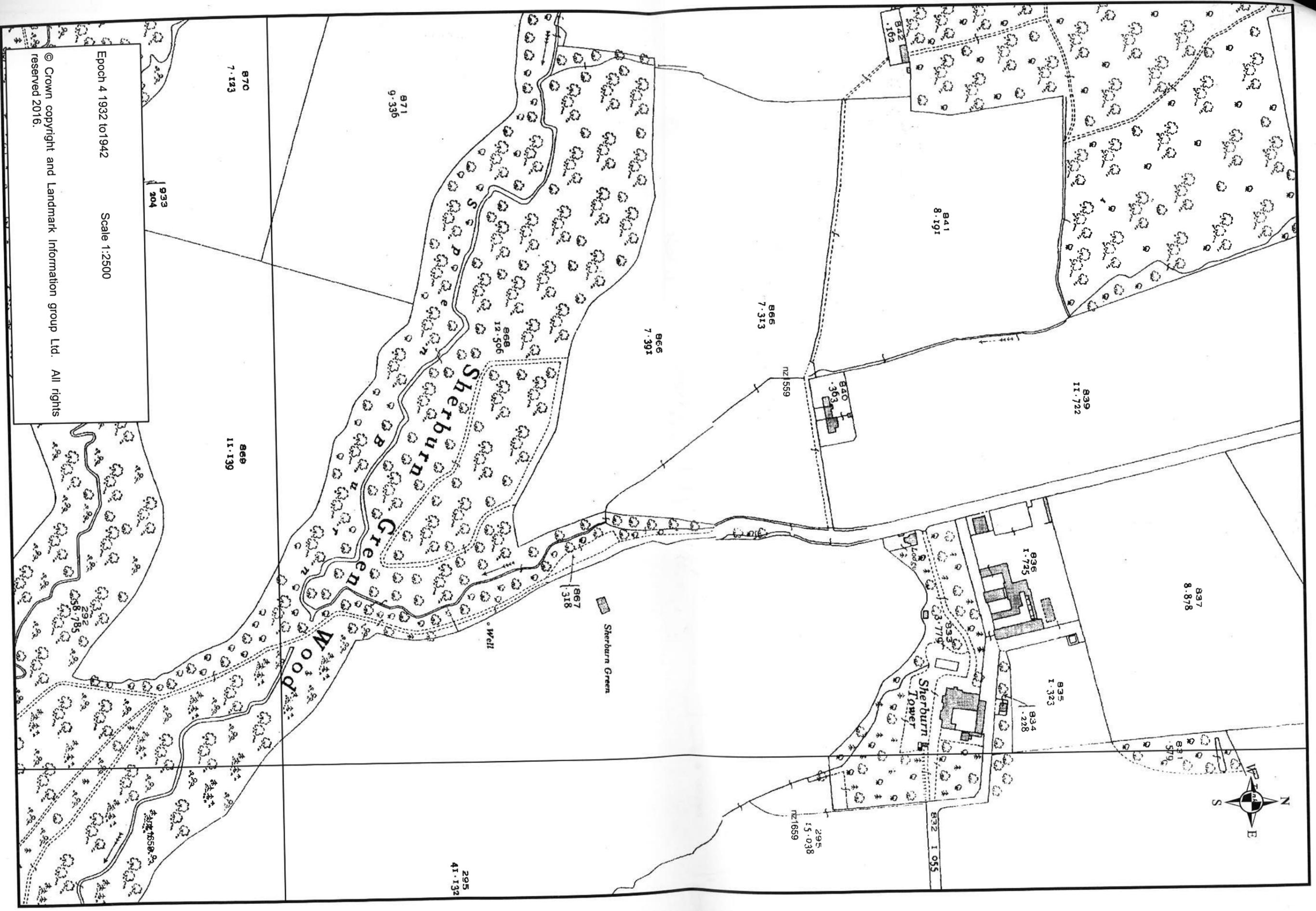
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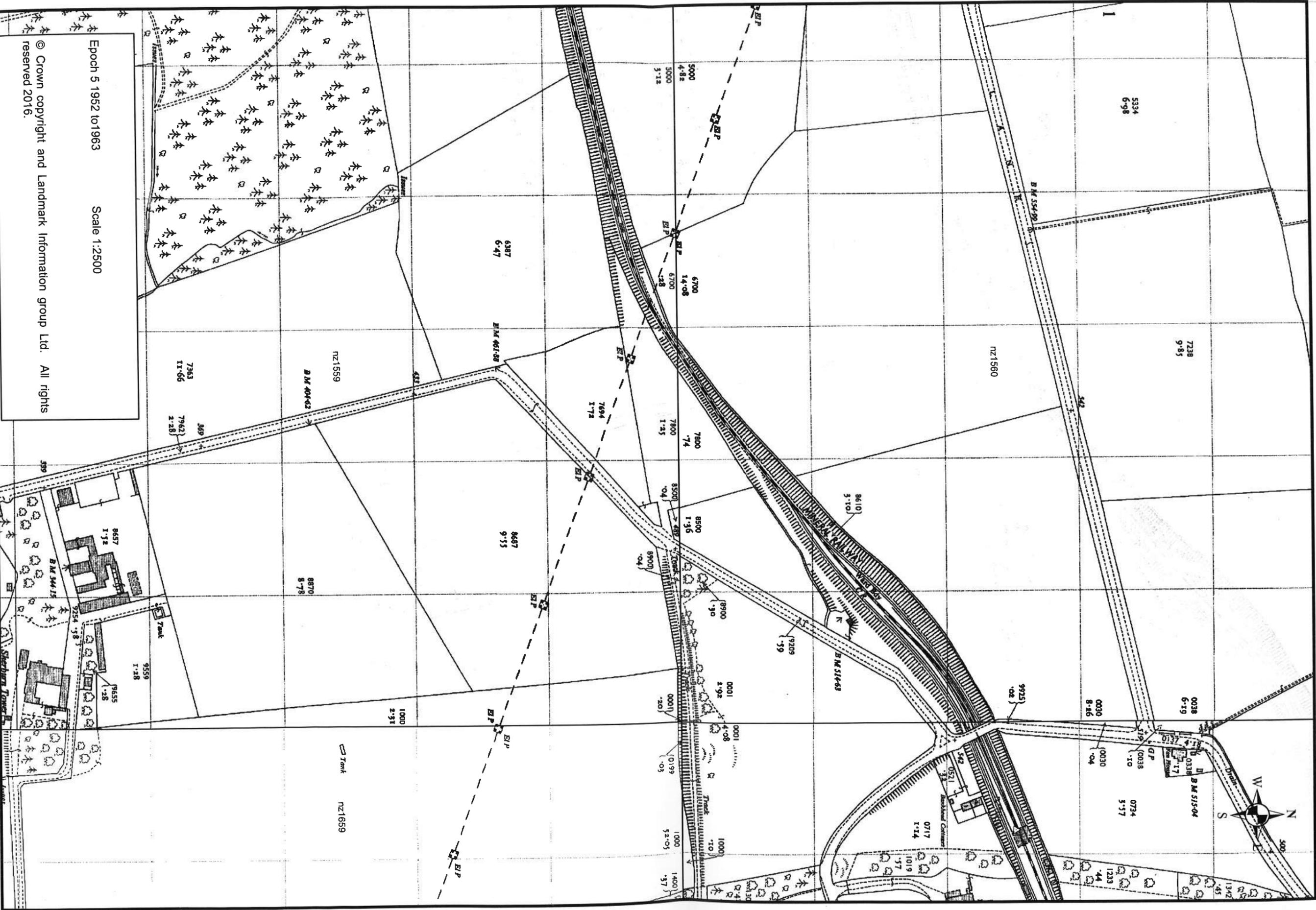
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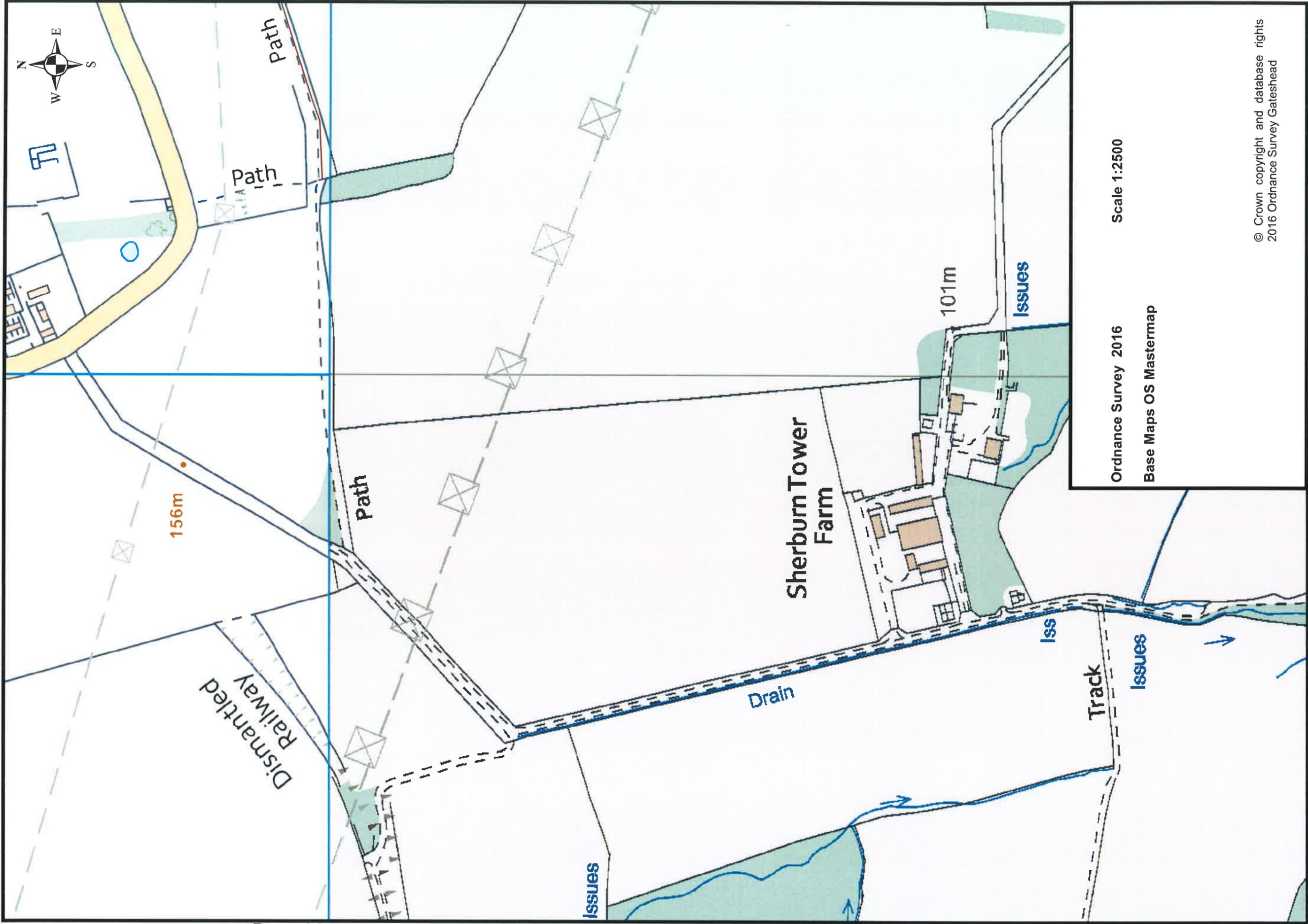
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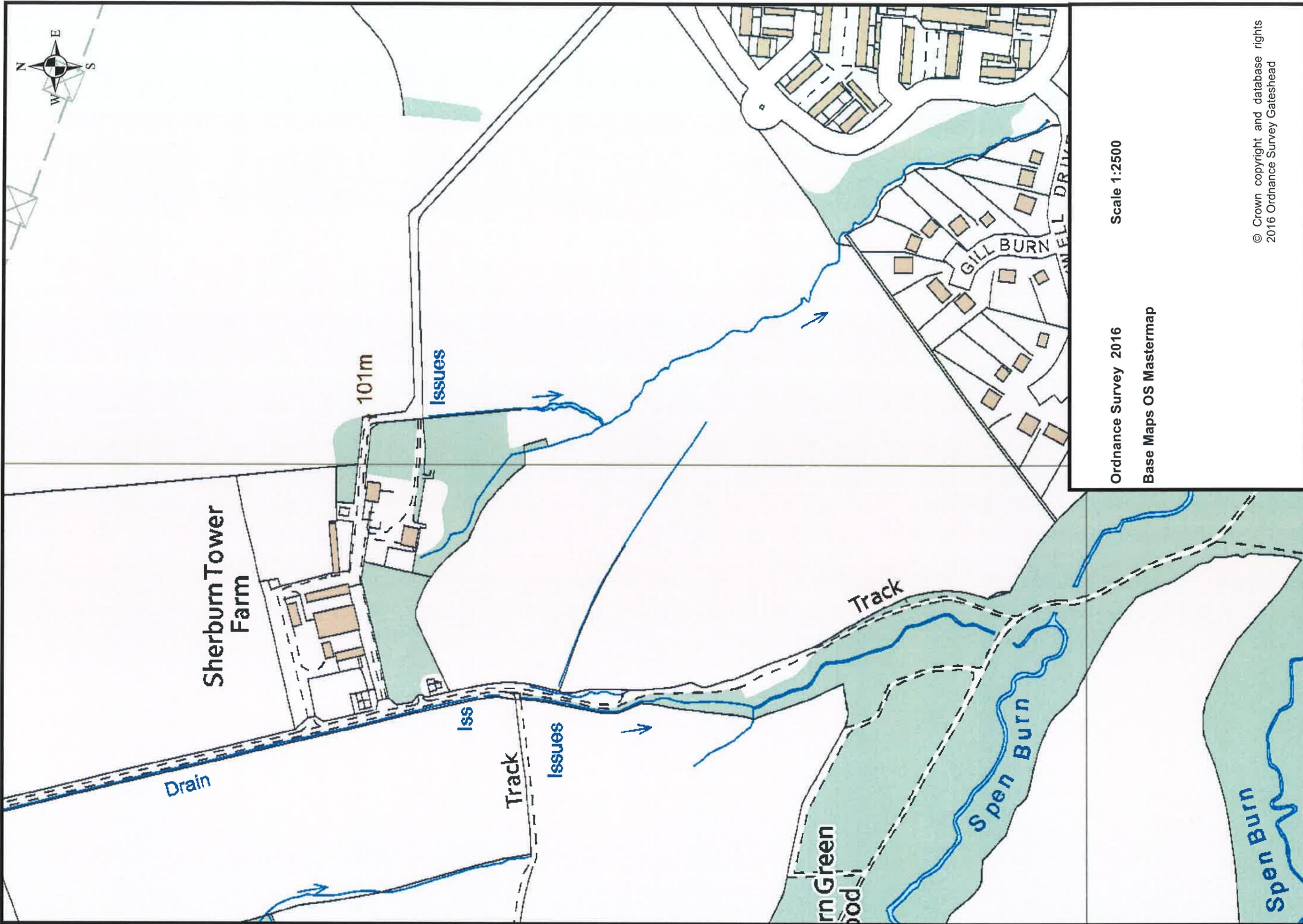


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Ordnance Survey 2016
Base Maps OS Mastermap
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Landowner Evidence Table

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
Landowner 1	From Point D to Point C on the plan at Appendix 2. Freeholder of the land since 1965. Land Unregistered.	blank	blank	blank	No	blank	None	blank	
Forestry Commission – Long Lease off Landowner 2	From Point A to Point P on the plan at Appendix 2. Held the land	No public right of way the land is open access land under CROW Act	No because the land is open access land under the CROW Act 2000 so	No because the land is open access land under the CROW Act 2000.	blank	Forestry Commission will have occasionally	None	No	The Forestry Commission confirmed on 12.1.2016

	under a long lease for 62 years.	2000 so public use it indiscriminately.	not required.			closed sites for forestry 2 operations without application.			that the eastern wing of Spen Banks as shown from Point A to Point P on the plan at Appendix 2 is not registered as access land under the CROW Act 2000.
Tenant Farmer of Landowner 2	From Point C to Point P on the plan at Appendix 2. Tenancy of the land for 87 years.	The claimed route is not a public right of way. He is aware of the public using it occasionally with his permission.	Yes several notices are on the route. Some of these signs have been destroyed. The signs stated: "Private Road No Entry" and "Private Road Access with permission".	Yes, we have turned people back as they become lost when using the red kite trail.	At Point D on the plan at Appendix 2 there is a locked gate to stop cars coming through. There was a problem with burnt out cars and youths dealing and using illegal drugs.	There are gates which are always locked unless the farm machinery needs to go through.	No	Yes	Part of the route from Point C to Point B on the plan at Appendix 2, is a public footpath but people do get confused as to which direction it goes and this leads to people occasionally

									narrow and dangerous to walk there. This is due to bad weather and heavy rainfall. The southern boundary of the farm was always fenced off and gated. The track was originally used to walk livestock from Sherburn Tower Farm to the Spen Fields (Spen Banks). The track north of Point A on plan at Appendix 2 was only intended for
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									<p>the use of the people who lived in the farm cottages which have long disappeared . The farm is also in a vulnerable position and farm thefts are on the increase (machinery and livestock), poaching, trespass, worrying of livestock, arson and the occasional confrontation with members of the public are all factors which do</p>
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									need to be taken in consideration
Landowner 2	<p>From Point C to Point A on the plan at Appendix 2.</p> <p>Freeholder has held the land for 17 years and then in same family prior to that time.</p>	No not until this claim was submitted.	<p>A sign has been in place near the farm for many years and more recently a sign was put up at Point A on the plan at Appendix 2. The sign at Point A has been removed twice. The sign states: "Private Road and Private Road No Access without permission".</p> <p>The sign at Point A on the plan at Appendix 2</p>	<p>On occasion the farm tenants have asked people not to use the route normally when accompanied by dogs off leads generally the tenants have sought to avoid confrontations. The tenants have advised some people that this route was not a public right of way including people on bikes.</p> <p>The tenant</p>	<p>There are various gates along the route, the tenants have blocked the route on occasions when moving stock and have parked vehicles on the route.</p> <p>The tenant farmers regularly block off the road when moving sheep. This has completely blocked the route and people have had to go back or wait</p>	<p>There is a stile at Point A on the plan at Appendix 2, which is maintained by the Forestry Commission.</p> <p>There is a gate at Point D on the plan at Appendix 2 that is usually locked.</p>	No	<p>Yes the tenant farmer has asked for permission in the past and have given consent to some when using the route.</p>	<p>The tenant farmer is aware that the route is not a right of way and is under a duty to prevent new footpaths. They report that there has been very little use of the route in the past though it has increased in the last 10 years with the creation of the red kite trail.</p>

			<p>was erected by the tenant farmer in 2015 along with the sign on the gate between Point A and farm. The sign at the farm has been there since 1990 at least and use to be on the left side of the track.</p>	<p>farmer has given verbal consent to the public on an ad-hoc basis but nothing in writing. Due to the acts of vandalism resulting from the tenant farmer challenging people using the farm, the tenant farmer has not challenged as many people to avoid threatening situations.</p>	<p>for permission to proceed from the tenant farmers.</p> <p>The gates at Point A and Point D on the plan at Appendix 2 have been in situ and locked for the last 20 years and were installed to stop people driving in and fly-tipping on the road.</p>				
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Report for Rights of Way Committee

18th March 2016

TITLE OF REPORT: Dedication of a Bridleway at
Bucks Hill, Whickham

REPORT OF: Strategic Director of Communities and Environment

Summary

This report relates to the proposed upgrade of Footpath Whickham 79 to bridleway at Bucks Hill Plantation, Whickham, Gateshead.

Purpose of the report

- 1) To seek authority from the Rights of Way Committee for a deed of dedication to upgrade Footpath Whickham 79 to bridleway, on Council owned land, through Bucks Hill Plantation, Whickham, as shown from Point A to Point B on the plan at Appendix 2 to the report.

Background

- 2) Footpath Whickham 79 consists of a trodden earth, woodland footpath which runs south easterly through Bucks Hill Plantation, as shown from Point A to Point B on the plan at Appendix 2 to this report, and provides a link with Broom Lane at its northern end and Restricted Byways Whickham 76 and Whickham 78 at its southern end.
- 3) Footpath Whickham 79 provides access to the surrounding network of country paths and access to Washingwell Woods. This footpath is also suitable for use by equestrians and cyclists and the upgrade to bridleway would add to the convenience and enjoyment of a substantial section of the public who are resident in the area.
- 4) The Council own all of the land the proposed upgrade of Footpath Whickham 79 to bridleway will be dedicated across. The land is managed by Waste Services and Grounds Maintenance of Environmental and Technical Services, who have been consulted at every stage of this process and have confirmed their support for the proposal.

The Law

- 5) Due to the proposed upgrade of Footpath Whickham 79 to bridleway being wholly on Council owned land, the Council can dedicate that bridleway via a Deed of Dedication in accordance with section 1 of the Localism Act 2011. Section 1 of the Localism Act 2011 gives a local authority power to do anything that individuals generally may do, such as dedicating land for public rights of way. The Council if dedicating the bridleway would need to give public notice of the dedication in the local press and on site but it would not be subject to a public objection period in the same way as it would be if it was created via a Creation Order under section 26 of the Highways Act 1980. However this proposed bridleway would provide an essential link and is already well used by the public in the area.
- 6) The Council can confirm that if a deed of dedication was to be made by the Council for the proposed upgrade to bridleway, that due regard will be given to the needs of agricultural and forestry and the desirability of conserving flora, fauna and geological and physiographical features in accordance with Section 29 of the Highways Act 1980.

Consultation

- 7) Consultation is not statutorily prescribed with a deed of dedication. However, local user groups were consulted on the proposed upgrade of Footpath Whickham 79 to bridleway. Consultations were sent out to the representatives of 7 local user groups with 5 replies received. There was one objection on the grounds that: "The condition of footpaths is worsened for those on foot (i.e. the original purpose of footpaths) when opened up to horses." However this appears to be a general statement and not specific to this particular footpath or proposal. In any event there is evidence of horse use on Footpath Whickham 79 and on assessment of the surface by Officers, the condition of the path has not deteriorated and no specific complaints have been received by the Council on this point. Therefore Officers view would be that the condition of the surface of Footpath Whickham 79 would not be worse by the upgrade of it to bridleway for those reasons. All other replies from the consultation were in favour of the proposal.

Conclusion

- 8) In conclusion it is the view of Officers that Footpath Whickham 79 should be upgraded to a bridleway via a deed of dedication because it would add to the convenience and enjoyment of a substantial section of the

public in that area and would provide a link onto Restricted Byways Whickham 76 and 78.

Recommendation

The Rights of Way Committee approves:

- i) That a Deed of Dedication be made on Council owned land to upgrade Footpath Whickham 79 to bridleway at Bucks Hill Plantation, Whickham, as shown with a broken line from Point A to Point B on the plan at Appendix 2 to this report.

Grant delegated authority to the Strategic Director of Corporate Services and Governance to undertake the following:

- (ii) To complete and publicise a deed of dedication to upgrade Footpath Whickham 79 to a bridleway as shown with a broken line from Point A to Point B on the attached plan at Appendix 2 to this report.

Contact: Rob Hindhaugh extension 3094

1 FINANCIAL IMPLICATIONS

The cost of making and advertising the deed of dedication will be covered by existing budgets.

2 RISK MANAGEMENT IMPLICATIONS

None

3 HUMAN RESOURCES IMPLICATIONS

Staff from Legal, Democratic and Property in conjunction with the Public Rights of Way Officer, will carry out the processing of the deed of dedication.

4 EQUALITY AND DIVERSITY IMPLICATIONS

None

5 CRIME & DISORDER IMPLICATIONS

None

6 SUSTAINABILITY IMPLICATIONS

None

7 HUMAN RIGHTS IMPLICATIONS

Under Article 8, everyone has the right to respect for his or her private and family life, home and correspondence.

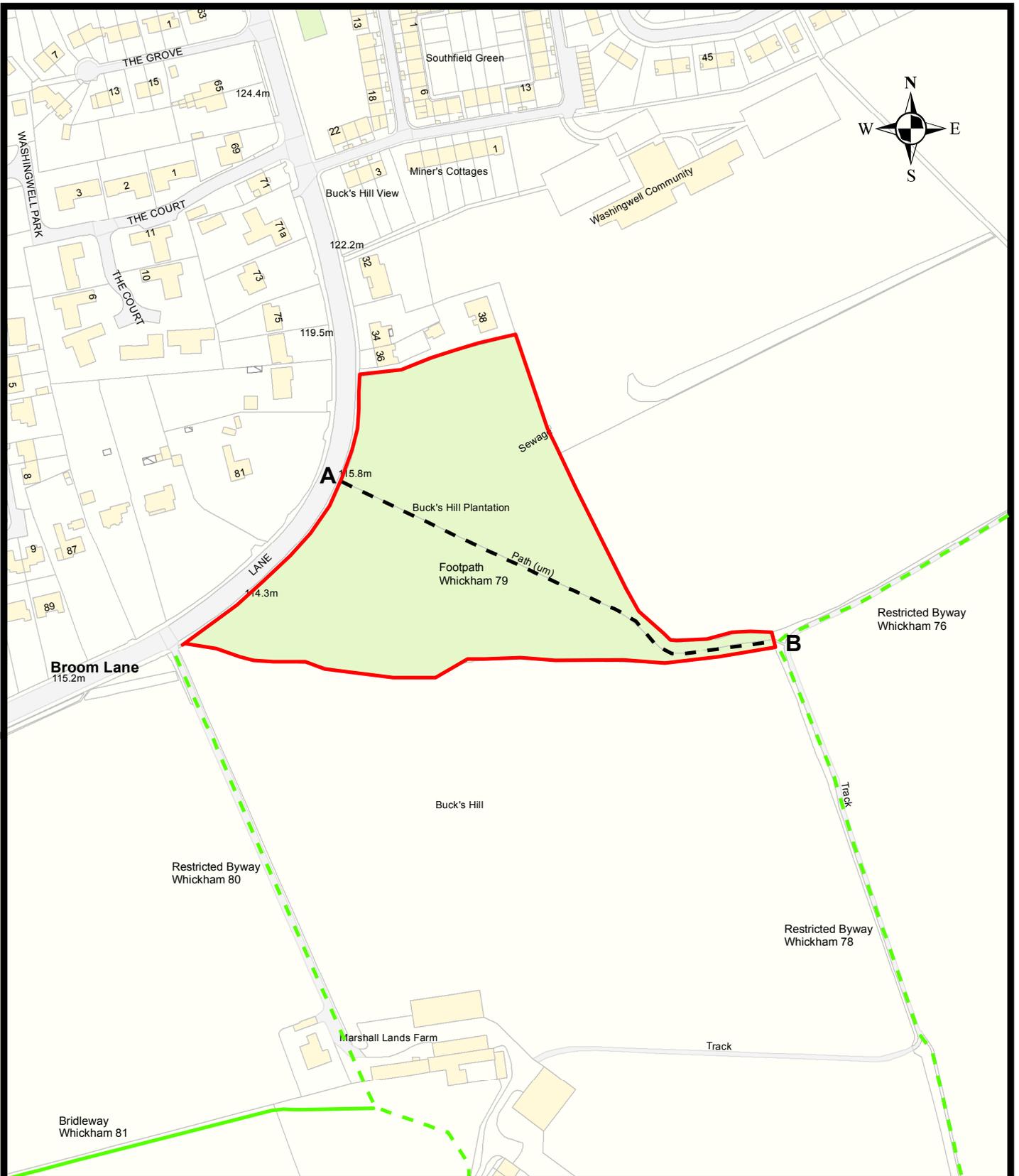
8 WARD IMPLICATIONS

Dunston Hill and Whickham East

9 BACKGROUND INFORMATION

None

Contact: Rob Hindhaugh extension 3094



**Plan of Deed of Dedication
Upgrade of Footpath Whickham 79 to Bridleway
Bucks Hill, Whickham**

Footpath to be upgraded
Whickham 79 A - B



Other Gateshead Bridleways



Other Gateshead Restricted Byways



Gateshead Council
Owned Land



Scale 1:2500 (at A4)



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Report for Rights of Way Committee

18th March 2016

TITLE OF REPORT: Changes to the Rights of Way Proposals at Bill Quay, Gateshead.

REPORT OF: Strategic Director, Communities and Environment

Summary

The purpose of this report is to seek approval to amend the recommendation of the Rights of Way Committee on 27th March 2015 for the dedication of a Bridleway and extinguishment of Footpath Felling 14 at Bill Quay, Gateshead.

Purpose of the report

- 1) The Committee approved the dedication of a bridleway via a Deed of Dedication on the 27th March 2015 at Bill Quay, Gateshead and the extinguishment of Footpath Felling 14. A copy of that report is attached at Appendix 3 to this report. Those recommendations now require amendment for the reasons highlighted below.

Dedication of Bridleway at Bill Quay

- 2) The reason the report to Committee dated 27th March 2015 and attached at Appendix 3 to this report; requested that a bridleway be dedicated via a deed of dedication, was because it was understood that the bridleway would be created on land that was wholly in the ownership of the Council.
- 3) On further investigation of the title of the land where the bridleway is proposed to be dedicated, it was discovered that there are two small sections of unregistered land. This means that the bridleway cannot be dedicated via a deed of dedication as the whole of the bridleway would not be on Council owned land. Therefore to overcome this issue it is proposed that the bridleway be created via a creation order as oppose to a deed of dedication. The route of the bridleway that was previously approved by Committee will not change; it will just be the method by which the bridleway is created that will require amendment.
- 4) In light of the above, officers would request that the bridleway shown on the plan as a green line from Point D through to Points E, F, G, H and Point I at Appendix 3 to this report, be created via a creation order under Section 26 of the Highways Act 1980.

Extinguishment of Footpath Felling 14 at Bill Quay

- 5) The Committee approved the recommendation on the 27th March 2015, which is attached at Appendix 3 to this report, to extinguish Footpath Felling 14 as it was not used by the public.

- 6) On preparation for implementing that approval a detailed assessment of the definitive map and statement was undertaken and it became apparent that the termination point shown on the plan at Appendix 3 to the report dated 27th March 2015 was incorrect. The route shown on that plan depicts Footpath Felling 14 as terminating at Joel Terrace, when in fact it is shorter and terminates at Ann Street, which is not shown on the plan because it is no longer in existence. Therefore the plan at Appendix 2 to this report shows the definitive line of Footpath Felling 14 that will be extinguished from Point A to Point B with a bold black line. This is the only change to the previous recommendation. Everything else, as set out in the report dated 27th March 2015 at Appendix 3 to this report; including the reason for the extinguishment being that it is no longer used by the public, remain the same.
- 7) For the reasons set out above, officers would request that the previous recommendation in the report dated 27th March 2015 relating to Footpath Felling 14 should be rescinded; and that the Committee approve the recommendation in this report, which shows the correct line of Footpath Felling 14 to be extinguished as shown with a bold black line from Point A to Point B on the plan at Appendix 2 to this report.

Recommendation

- 8) The Rights of Way Committee approves:
- i) That the part of the decision of the Public Rights of Way Committee dated 27th March 2015 as set out in minute RW9(iii) “That a deed of dedication be made to dedicate a public bridleway on Council land from Point D-E-F-G-H-I as shown with a green line on the plan attached at the appendix to the minutes”; and minute RW9(v)(iii) “that delegated authority be granted to the Strategic Director of Corporate Services and Governance to undertake to complete and publicise a deed of dedication to dedicate a bridleway from Points D-E-F-G-H-I as shown with a green line on the plan attached at the appendix to these minutes” be rescinded, and
 - ii) That approval is given for a public path creation order to create a bridleway at Bill Quay, Gateshead, from Point D-E-F-G-H-I, as shown with a green line on the plan attached at Appendix 3 to this report.
 - iii) That the part of the decision of the Public Rights of Way Committee dated 27th March 2015 as set out in minute RW9(i) “that a public path extinguishment order be made to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the plan attached at the Appendix to the minutes”; and minute RW9(v)(i) that “delegated authority be granted to the Strategic Director of Corporate Services and Governance to undertake to consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the plan attached to the Appendix to these minutes” be rescinded, and
 - iv) That approval is given for a public path extinguishment order to extinguish Footpath Felling 14 from Point A to Point B, as shown with a bold black line on the plan attached at Appendix 2 to this report.

Grant delegated authority to the Strategic Director of Corporate Services and Governance to undertake the following:

- v) To consult the statutory consultees and make a public path creation order to create a bridleway from Points D-E-F-G-H-I, as shown with a green line on the plan attached at Appendix 3 to this report.
- vi) To consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 14 from Point A to Point B, as shown with a bold black line on the plan attached at Appendix 2 to this report.
- vii) If no objections are received, to confirm the order or if objections are received and not subsequently withdrawn, to send the order to the Secretary of State for determination as an opposed order.

Contact: Rob Hindhaugh Ext 3094

1 FINANCIAL IMPLICATIONS

The costs of making and advertising the orders will be covered by existing budgets.

2 RISK MANAGEMENT IMPLICATIONS

None

3 HUMAN RESOURCES IMPLICATIONS

Staff from Legal, Democratic and Property in conjunction with the Public Rights of Way Officer, will carry out the processing of the orders.

4 EQUALITY AND DIVERSITY IMPLICATIONS

None

5 CRIME & DISORDER IMPLICATIONS

None

6 SUSTAINABILITY IMPLICATIONS

None

7 HUMAN RIGHTS IMPLICATIONS

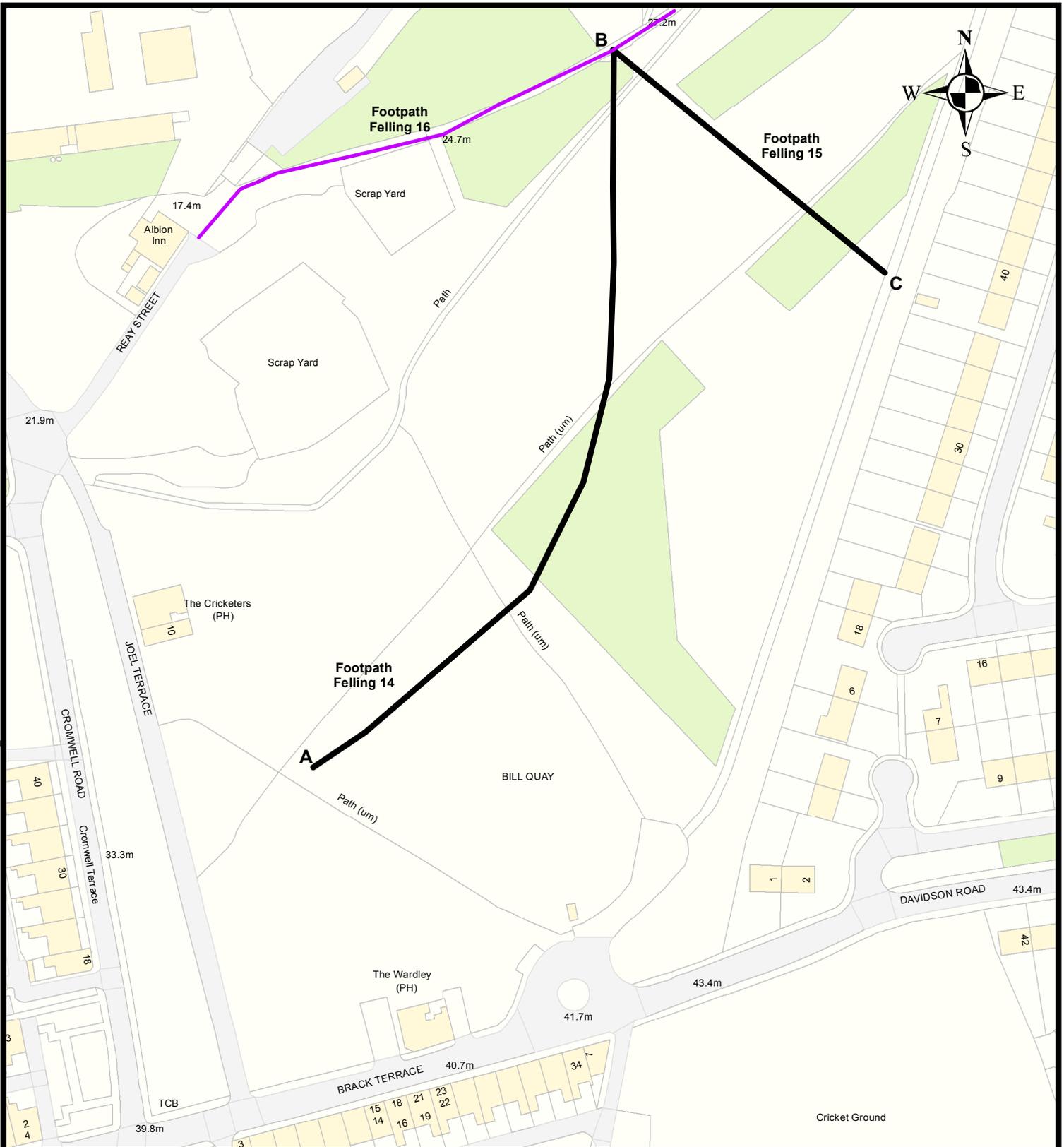
Under Article 8, everyone has the right to respect for his or her private and family life, home and correspondence.

8 WARD IMPLICATIONS

Pelaw and Heworth.

9 BACKGROUND INFORMATION

None



Extinguishment of Footpaths Felling 14 and Felling 15 Bill Quay, Gateshead.

Footpaths to be Extinguished

Felling 14 A - B

Felling 15 B - C

Other Gateshead
Footpaths

Scale 1: 1500

(at A4)



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27th March 2015**TITLE OF REPORT:** Proposed changes to public rights of way in the Bill Quay Area**REPORT OF:** Strategic Director, Communities and Environment**Summary**

This report relates to proposed changes to public rights of way in the Bill Quay Area

Purpose of the report

- 1) To seek approval to rescind the previous decision of the Public Rights of Way Committee dated 23rd January 2009 and request approval for the Amended Proposals set out at paragraph 4 in this report.

Background

- 2) On considering the previous Proposals approved by the Public Rights of Way Committee dated 23rd January 2009, which are set out in paragraph 7 below; some issues were highlighted with them as explained below. In order to assist members, a plan has been produced at Appendix 2 to this report, which shows the existing public rights of way in the Bill Quay Area.
- 3) The main issue with the previous Proposals was the creation of a section of bridleway as detailed at paragraph 7(iv) below. This in effect would create a bridleway that would lead onto a recorded footpath in South Tyneside (the boundary). If created it would result in horse riders and cyclists having to go along the bridleway but when reaching the boundary would then have to turn round and go back the way they came. In order to resolve this issue, officers considered whether a circular bridleway route could be created that would in effect avoid horse riders and cyclists having to go back the way they came because they would not be able to exit onto the footpath in South Tyneside (the boundary). The proposal for a circular bridleway was discussed with the relevant user groups, who were in favour of the proposal and this would resolve the issue of creating a dead end or cul-de-sac bridleway route. This amendment incorporates part of the previous Proposals set out at paragraph 7(ii) and (iii); with the only modification being to upgrade those sections to be originally created as footpath to bridleway so that they form part of the newly proposed circular bridleway route.
- 4) In effect this report seeks approval for the new amendment above, but also incorporates the previous proposal of extinguishing Footpaths

Felling 14 and 15 as detailed at paragraph 7(i) below. This is because, previous demolitions of terraced houses and subsequent landscaping has changed the accessibility to those footpaths. The landscaping took place, approximately 15 years ago, during which time areas of woodland were planted and boundary fencing erected, which encroached onto the footpaths. The public do not use the footpaths as there is a network of accessible paths nearby.

- 5) The final element of the Proposal as detailed at paragraph 7(v) below was to divert a section of Footpath Felling 10 to avoid a steep slope where it joins the Keelmans Way Path. However the Public Rights of Way Officer has investigated this section of path on site and found that this section of Footpath Felling 10 is still well used by the public. Therefore it is not considered expedient that this section of footpath be diverted in order to satisfy the statutory test under section 119 of the Highways Act 1980; because it is well used by the public and thus the public would not derive any positive benefit from the diversion.
- 6) In summary the purpose of this report is to seek approval from the Public Rights of Way Committee to rescind its previous approval dated 23rd January 2009 and seek approval for the Amended Proposals, (which incorporate some of the previous Proposals), set out below of:-
 - Extinguishing Footpaths Felling 14 and 15 (indicated from Point A to Point B and from Point B to Point C as shown on the attached plan at Appendix 3 to this report), on the grounds that they are no longer needed for use by the public;
 - To create a circuitous bridleway from Points D-E-F-G-H-I as shown on the attached plan at Appendix 3 to this report.

The Proposals

- 7) The Proposals that were approved by the Public Rights of Way Committee on 23rd January 2009, to which this report seeks to amend in part are:-
 - (i) the extinguishment of Footpaths Felling 14 and 15 (as indicated from Point A to Point B and from Point B to Point C on the plan attached at Appendix 3 to this report, on the grounds that they are no longer needed for use by the public; and
 - (ii) the creation of a public footpath from Point D to Point E on the plan attached at Appendix 3 to this report; and
 - (iii) the creation of a public footpath from Point F to Point G on the plan attached at Appendix 3 to this report; and
 - (iv) the creation of a bridleway from Point H to Point I on the plan attached at Appendix 3 to this report; and

- (v) the diversion of a section of Footpath Felling 10 indicated from Point X to Point Y; to the line marked from Point X to Point Z shown on the plan at Appendix 4 to this report.

The Amended Proposals

- 8) After further consideration of the Proposals at paragraph 7 above and in light of the reasons outlined in paragraphs 3, 4 and 5 above, approval is sought to rescind the previous decision of the Public Rights of Way Committee dated 23rd January 2009 and to seek approval for the following amendments to the Proposals set out below :-
 - (i) To extinguish Footpaths Felling 14 and 15 (indicated from Point A to Point B and from Point B to Point C on the attached plan at Appendix 3 to this report), on the grounds that they are no longer needed for use by the public.
 - (ii) To create a public bridleway from Points D–E –F– G– H- I as shown on the plan at Appendix 3 to this report. This incorporates the upgrade of a section of Footpath Felling 16 (shown from Point E to Point F on the plan at Appendix 3 to this report) to a bridleway. It also includes the creation of sections of bridleway from Point D to Point E and from Point F to Point G on the plan at Appendix 3 to this report. This Amended Proposal incorporates the creation of the footpaths as approved by the Rights of Way Committee decision of 23rd January 2009, but is instead creating them as bridleways. These amendments will create one continuous circuitous bridleway; as oppose to the previous Proposal, which would have created a bridleway leading onto a footpath.
 - (ii) Not to divert the northern section of Footpath Felling 10 from the line shown at Point X to Point Y to the line of Point X to Point Z as indicated on the plan at Appendix 4 to this report. The public have continued to use the original line of the footpath and it does not appear to be expedient to divert this section of footpath now as it would not satisfy the statutory test for a diversion under section 119 of the Highways Act 1980.

Land Ownership

- 9) The ownership of the land where the above Amended Proposals are to take place if approved by the Public Rights of Way Committee; will all be on Council owned land.

Legislation

- 10) Under Section 118 of the Highways Act 1980, the Council has the power to extinguish a footpath, bridleway or restricted byway if it is expedient to do so, on the grounds that the path is not needed for public use. The Council will not be able to confirm an unopposed Order (if approved)

unless it is satisfied that it is expedient to do so having regard to the extent to which it appears to the Council that the path (notwithstanding the making of the order), would be likely to be used by the public and also having regard to the effect the extinguishment would have on land served by the path. It is considered that the Proposal to extinguish Footpaths Felling 14 and 15 satisfy this test because, the paths are currently not used by the public and are not needed because the public have access to other footpaths in the area.

- 11) Due to the Council owning the land where it is proposed to create a bridleway, then the Council would be able to dedicate that land as a bridleway via a Deed of Dedication in accordance with section 1 of the Localism Act 2011. This would be in contrast to making a creation order to create the bridleway on the land under Section 26 of the Highways Act 1980. The Council if dedicating the land would need to give public notice of the dedication in the local press and on site but it would not be subject to a public objection period in the same way as it would be if it was created via a Creation Order. However as explained at paragraph 14 below, extensive consultation has been undertaken and only one objection was received, which stated no grounds or reasoning for the objection and no further correspondence has been received from the objector. Therefore there is little if no opposition to the proposal and proceeding by way of a deed of dedication would be appropriate in this matter.
- 12) Section 28 of the Highways Act 1980 does provide for the Council to pay compensation where it is shown that the value of an interest in the land has depreciated or a person has suffered damage by being disturbed in their enjoyment of the land. An “interest” for the purposes of section 28 of the Highways Act 1980, includes any estate in land or right over the land, whether that is exercisable by ownership, licence or agreement. In relation to the proposed extinguishment of Footpaths Felling 14 and 15, there are no known interests in the land that the proposed extinguishment would affect.
- 13) Section 29 of the Highways Act 1980 places a duty on local authorities to have regard to agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. There are no such potential implications in this matter.

Consultation

- 14) Consultation letters and plans were hand delivered to residents in the surrounding streets of Brack Terrace, Joel Terrace, Marian Drive, and Bill Quay with consultation Notices being placed at the beginning and ends of paths around the area. Several replies were received from residents in response to the letters and Notices with the main concerns being over the possible future development of the site. One e-mail was received, which only stated that the person wished to object. A reply was sent requesting the objector’s grounds of objection and the offer of a site meeting to discuss their concerns. However no further response was received from

them and apart from that one e-mail, no other objections have been made to the amended proposals set out at paragraph 8 above.

- 15) User groups such as the Bridleway and Riders Action Group (BRAG), British Horse Society (BHS), and Cyclist Touring Club (CTC) were consulted and were all in favour of the proposals. South Tyneside Council were also consulted on the Amended Proposals and it had no comments to make. Furthermore, copies of the consultation were sent to Ward Councillors and no responses were received. The Waste Services and Grounds Maintenance team of the Council were also consulted and it had no objections to the Amended Proposals.

Conclusion

- 16) In light of the results of the consultation, and the fact that Footpaths Felling 14 and 15 are not used by the public because landscaping took place, approximately 15 years ago, during which time areas of woodland were planted and boundary fencing erected, which encroached onto the footpaths. However the footpaths are not used by the public as there is network of accessible paths nearby which the public prefer to use. The Public Rights of Way Officer would recommend that it is expedient that Footpaths Felling 14 and 15 be extinguished because they are not needed for public use now or in the future.
- 17) In relation to the creation of the bridleway from Points D –E –F – G – H - I as shown on the plan at Appendix 3 to this report; it is recommended that a deed of dedication be made to dedicate a bridleway on Council land. This is in light of the lack of objections from the public to the Amended Proposals from the consultation and the support received from the user groups for the provision of a circuitous bridleway for public use; which would add to the convenience and enjoyment of a substantial section of the public.
- 18) It is recommended for the reasons outlined in paragraph 8 above, that the previous decision of the Public Rights of Way Committee dated 23rd January 2009 be rescinded. This in effect will mean that the previous proposal to divert a section of Footpath Felling 10 from Points X to Z as shown on the plan attached at Appendix 4 to this report will not be implemented. This is because the public have continued to use the original line of Footpath Felling 10 and is not considered that the previously proposed diversion would provide any benefit to the public or a more commodious route for them to use. For those reasons it is not now considered expedient to divert this section of the footpath and it would not satisfy the statutory test for diversion of a public right of way under section 119 of the Highways Act 1980 for those reasons.

Recommendation

19) The Rights of Way Committee approves:

- i) That a public path extinguishment order be made to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the plan attached at Appendix 3 to this report;
 - ii) That a public path extinguishment order be made to extinguish Footpath Felling 15 from Point B to Point C as shown with a black line on the plan attached at Appendix 3 to this report;
 - iii) That a deed of dedication be made to dedicate a public bridleway on Council land from Point D – E – F –G –H – I as shown with a green line on the plan attached at Appendix 3 to this report;
 - iv) To rescind the previous decision of the Public Rights of Way Committee dated 29th January 2009
- v) Grant delegated authority to the Strategic Director of Corporate Services and Governance to undertake the following:
- (i) To consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the attached plan at Appendix 3 to this report;
 - (ii) To consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 15 from Point B to Point C as shown with a black line on the attached plan at Appendix 3 to this report;
 - (iii) To complete and publicise a deed of dedication to dedicate a public bridleway from Points D – E – F –G –H – I as shown with a green line on the plan attached at Appendix 3 to this report.

Contact: Rob Hindhaugh Ext 3094

1 FINANCIAL IMPLICATIONS

The costs of making and advertising the orders and deed of dedication will be covered by existing budgets.

2 RISK MANAGEMENT IMPLICATIONS

None

3 HUMAN RESOURCES IMPLICATIONS

Staff from Legal, Democratic and Property in conjunction with the Public Rights of Way Officer, will carry out the processing of the orders and deed of dedication.

4 EQUALITY AND DIVERSITY IMPLICATIONS

None

5 CRIME & DISORDER IMPLICATIONS

None

6 SUSTAINABILITY IMPLICATIONS

None

7 HUMAN RIGHTS IMPLICATIONS

Under Article 8, everyone has the right to respect for his or her private and family life, home and correspondence.

8 WARD IMPLICATIONS

Pelaw and Heworth

9 BACKGROUND INFORMATION

None

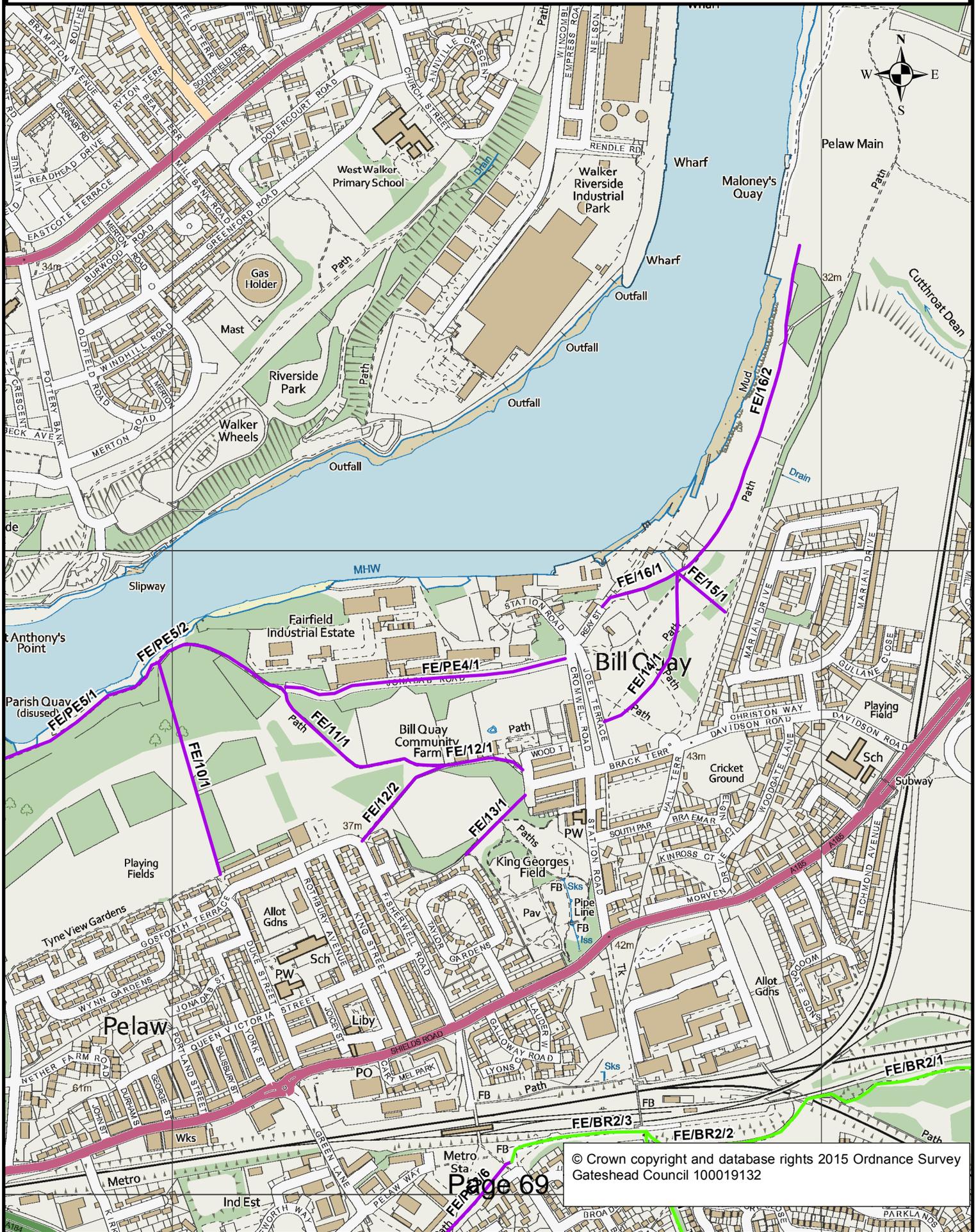
Contact: Rob Hindhaugh Ext 3094

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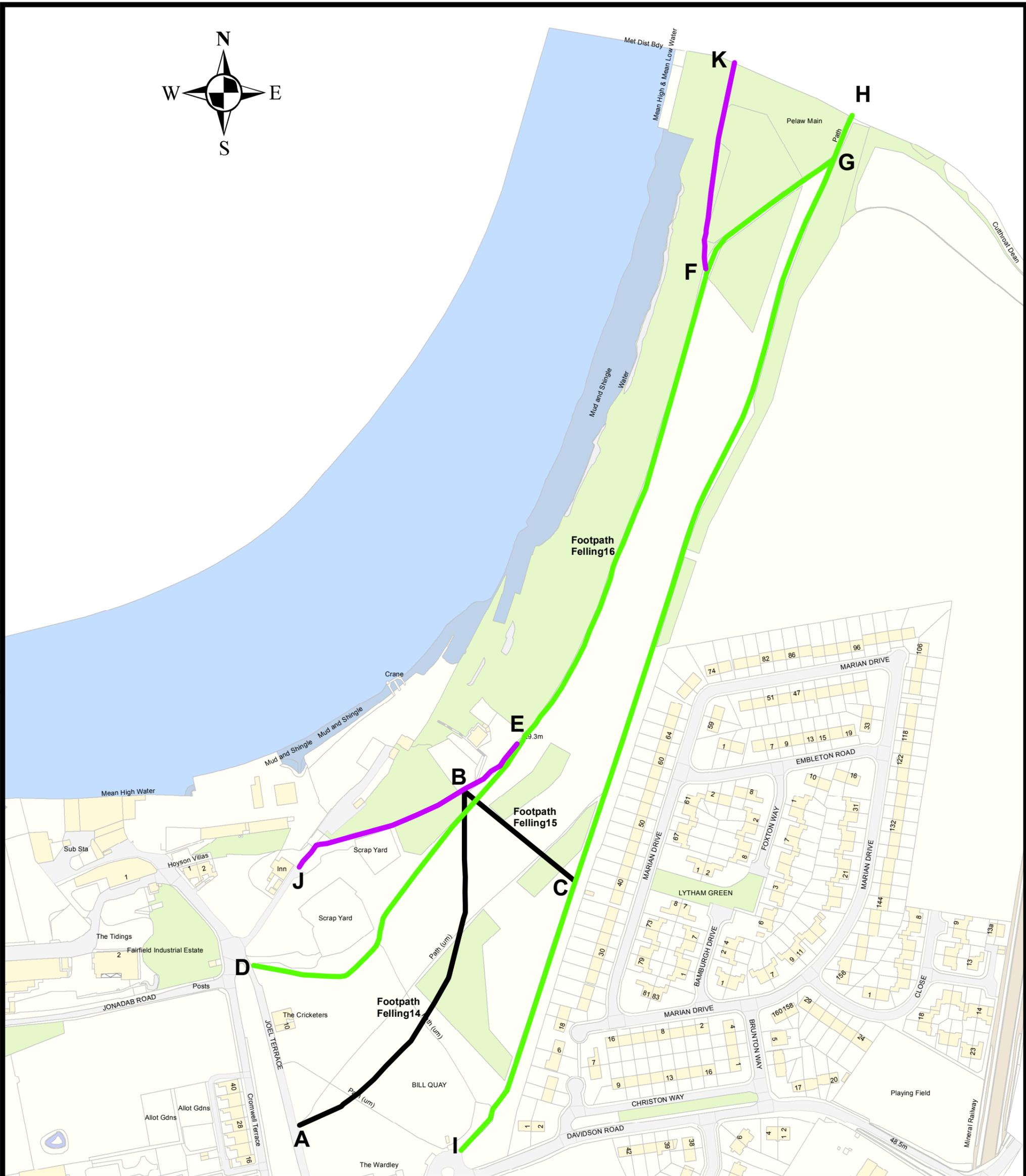
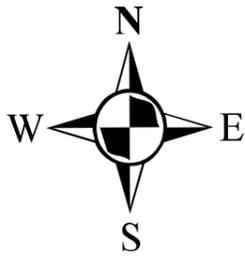
Plan Showing Existing Rights of Way Bill Quay Area

Gateshead Footpaths

Scale: 1:7,500



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**Bill Quay Area
Proposed Changes to Public Rights of Way**

**Extinguishment of Footpaths Felling14 & 15
A - B B - C**

**Creation of Bridleway
D - E, F - G, H - I**

**Upgrade of a Section of Existing Footpath
Felling 16 to Bridleway E - F**

**Section of Footpath Felling 16 to
remain unchanged J - E and F - K**

Scale 1:2500 (at A3)

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Plan Showing Proposed Diversion to Footpath Felling 10, Bill Quay, Gateshead



Footpath Felling 10 W - X - Y

Proposed Diversion X - Z

Other Gateshead Footpaths

Scale: 1:2,015.08



Footpath Felling 10



Playing Field

36.9m

39.7m

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**REPORT TO RIGHTS OF WAY
COMMITTEE
18th MARCH 2016**

TITLE OF REPORT: Progress of Rights of Way Matters

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

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 July 2015 and March 2016.

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: Jennifer Bradley extension 2219 and Rob Hindhaugh 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, Birtley, Lamesley, Crawcrook and Greenside, Dunston Hill and Whickham South and Sunnyside, Winlaton and High Spen

9. BACKGROUND INFORMATION

Nil

APPENDIX 2

Item No	Case	Ward	Application/ Proposal	Progress/Action	
1	North View	Winlaton & 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 confirmation.	
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 will be advertised shortly.	
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 Order will need to be sent to the Secretary of State for confirmation.	
Page 72	4	Definitive Map	-----	To bring the definitive map and statements into line with the orders and ensure that they are up to date are reviewed and meet the statutory requirements.	Upon review of the definitive maps for Gateshead by the Legal and Rights of Way officers, it is apparent that there is no map for the excluded area being Gateshead central area and the other definitive maps need to be brought up to date in light of legal events that have occurred. A blank map and statement for the excluded area is now produced and each right of way is being added to it via a definitive map modification order. At the same time a legal event modification order is being drafted to bring the current maps up to date. Once all this work has been completed the maps will be consolidated to produce a single map of definitive rights of way for the Gateshead area. There is now a working copy definitive map on the Council's website.
		Bridleway 35 Northside Birtley	Birtley	Creation and Extinguishment Orders	Committee approved the recommendation on the 24th October 2008 to make a creation and extinguishment order. A creation order was made by the Council on the 19th August 2014. The objection period comes to an end on the 19th September 2014. One objection was received to the Order, which was subsequently withdrawn. The works to install the bridleway cannot be completed until a survey is conducted of a nearby pond to establish amphibious species and their hibernation areas. The survey has revealed that there are no great crested newts in the nearby pond. The creation order was confirmed and came into operation on the 15th December 2015. The Extinguishment Order will be progressed shortly.
6	Claim for a Footpath at Sherburn Towers, Rowlands Gill	Rowlands Gill, Blaydon	Definitive Map Modification Order	An application has been received on the 18 th August 2015 to record a footpath onto the definitive map and statement at Sherburn Towers, Rowlands Gill. A report will be taken to Committee on 18 th March 2016.	

COMPLETED MATTERS LIST

	Case	Ward	Progress/Action
1	Deed of Dedication of Footpath Whickham 301 at Washingwell Wood	Whickham	Committee approved the recommendation on 3 rd July 2015 to dedicate a footpath across its land at Washingwell Wood, Whickham. The deed of dedication was made on the 11 th August 2015 and came into operation on the 17 th August 2015.
2	Footpath Blaydon 11 Diversion Order	Blaydon	Committee approved the recommendation on the 4 th July 2014 to make a diversion order. The diversion order was made on the 13 th January 2015 and the objection period ended on the 18 th February 2015. One objection was received to the Order. The Order sent to the Secretary of State who has now confirmed the Order with the agreed modification to the description of the access controls. The Order was confirmed by the Secretary of State on the 22 nd September 2015 and came into operation on the 13 th October 2015. A copy of the Inspectors decision is attached as an Appendix to this report.
3	Footpath Ryton 76 Diversion Order	Ryton	Committee approved the recommendation on 3 rd July 2015 to make a public path diversion order. The order was made on the 11 th August 2015 and advertised in the press on the 17 th August 2015. The objection period came to an end on the 15 th September 2015 and no objections were received. The Order was confirmed on the 27 th October 2015 and came into operation on 3 rd November 2015.
4	Bridleway Birtley 21 Extinguishment Order	Birtley	Committee approved the recommendation on 4 th July 2014 to make a public path extinguishment order. The order was made on the 11 th August 2015 and advertised in the press on the 17 th August 2015. The objection period came to an end on the 15 th September 2015 and no objections were received. The Order was confirmed on the 6 th October 2015 and came into operation on the 13 th October 2015.
5	Bridleway Ryton 108 and 110 at Burnhills Creation Agreement	Greenside , Ryton	Committee approved the recommendation on the 3 rd July 2015 to enter into a creation agreement with the landowner to create a bridleway on the former quarry site in accordance with the planning obligations. The creation agreement was completed on 15 th November 2015 and came into operation on the 4 th December 2015.
6	Bridleway Ryton 109 at Burnhills Deed of Dedication	Greenside , Ryton	Committee approved the recommendation on the 3 rd July 2015 to create a section of bridleway at the former quarry site at Burnhills. This will link up with Bridleways Ryton 108 and 110 to create one bridleway route. The deed of dedication was completed on the 2 nd December 2015 and came into operation on the 4 th December 2015.

PRINCIPAL WORKS CARRIED OUT ON THE RIGHTS OF WAY NETWORK – July 2015 – March 2016

August 2015	Bridleway Birtley 35, Northside, Birtley	Completion of bridleway following suspension of work due to amphibians survey.
September 2015	Footpath Blaydon 14, Bowser's Hole, Chopwell	Route improvements including opening up of inaccessible section.
October 2015	Footpaths Blaydon 10,11,12, 13 & 16, Ashtree Farm, Chopwell	Stile and access improvements on network of footpaths.
November 2015	Footpath Blaydon 41, Pawston Birks, Barlow	Opening up of previously inaccessible route.
December 2015	Footpath Ryton 73, Ryton Golf Club	Opening up previously inaccessible footpath including the building of a boardwalk across boggy land.
February 2016	Bowes Bridleway Lamesley 72, Kibblesworth	Access controls installed on Kibblesworth Section of Bowes following Public Space Protection Order.
February 2016	Bowes Bridleway Felling 44 Leam Lane, Felling	Repair work carried out to make surface suitable for use following flood damage.

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e-mail: jean.mcentee@pins.gsi.gov.uk

Jennifer Bradley
Gateshead Metropolitan Borough
Council
Civic Centre
Regent Street
Gateshead
NE8 1HH

Your Ref: JB/TH/1358
Our Ref: FPS/H4505/4/6
Date:

22 SEP 2015

Dear Ms Bradley

HIGHWAYS ACT 1980 SECTION 119
Gateshead Metropolitan Borough Council
Public Path Diversion Order Footpath Blaydon 11 (Part) Diversion Order 2015

I enclose herewith

1. a copy of the Inspector's decision with regard to the above-named Order.
2. two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.
3. one of the sealed Orders.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at The Planning Inspectorate, 1/23 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN

Tel: 0303 444 5884

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>

An electronic version of the decision will shortly appear on the Inspectorate's website.

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/onlinerow/onlinerow>

Yours sincerely

Jean McEntee
(Rights of Way Section)

Despatch 1OMA

Gateshead Council Corporate Services & Governance		
23 SEP 2015		
DIR	LDPS	LIT
	JB	

0107-138



Order Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: **22 SEP 2015**

Order Ref: FPS/H4505/4/6

The Borough Council of Gateshead

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the **Footpath Blaydon 11 (part) Diversion Order 2015**.
 - The Order is dated 13 January 2015 and proposes to divert part of Footpath 11 at Newhouse Farm, Chopwell, Gateshead as shown on the Order map and described in the schedule.
 - There was one objection outstanding when the Borough Council of Gateshead (the Council) submitted the Order for confirmation, subject to modifications, to the Secretary of State for Environment, Food and Rural Affairs.
-

Decision

1. I confirm the Order subject to the following modifications, which do not require advertisement:

In the description column of Part 3 of the Schedule delete the existing text and insert:

for Grid Reference NZ11145818 'Wooden wide-post and rail stile approved by the Borough Council of Gateshead as being in accordance with all relevant current legislation and guidance including BS5709:2006 at Point B on the Order map.' and

for Grid Reference NZ11155818 'Wooden wide-post and rail stile approved by the Borough Council of Gateshead as being in accordance with all relevant current legislation and guidance including BS5709:2006, near Point B on the Order map.'

Background and Reasons

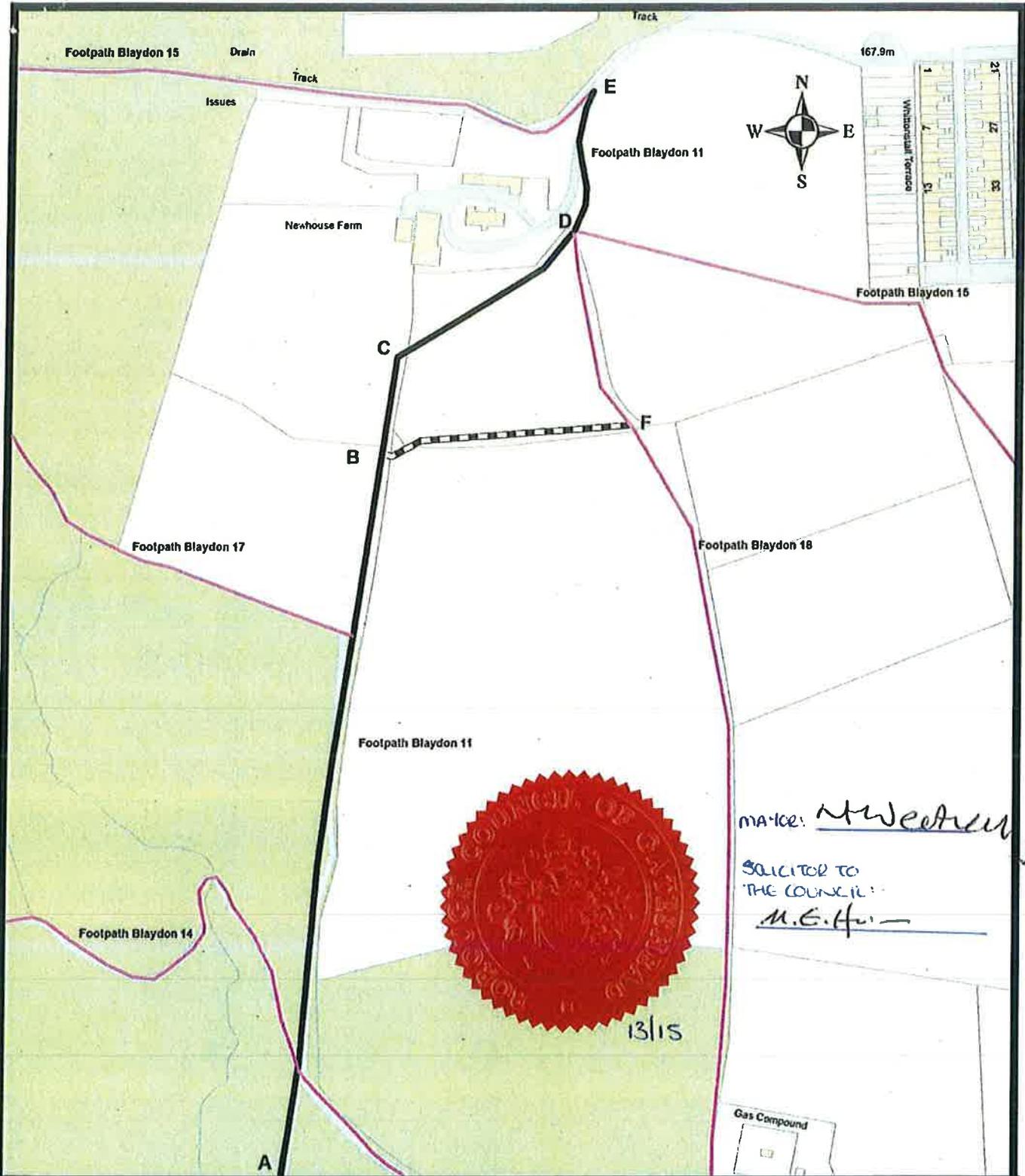
2. Following an application from the owner of Newhouse Farm, Chopwell the Council made the Order. Before making the Order the Authority carried out consultations and no objections or representations were received. After the publication of the Order one objection was made on the ground that no design standard is detailed for the two stiles that are proposed to be constructed across the diverted footpath.
3. The Council agrees that a specification for the stiles is required and has therefore submitted the Order to the Secretary of State seeking confirmation of the Order with modifications to the limitations and conditions. I agree that a design specification is appropriate and I have therefore modified the Council's Order in accordance with its request.
4. Having regard to the Council's Statement of Grounds on which it is considered the Order should be confirmed, I am satisfied that the Order meets the criteria for confirmation set out in section 119 of the 1980 Act when modified to amend description of the limitations and conditions of the stiles along the diverted route.

Conclusion

5. Having regard to all these and all other matters before me I conclude that the Order should be confirmed, with the modifications as set out above.

Michael R Lowe

INSPECTOR



**Footpath Blaydon No. 11 Part Diversion Plan
Newhouse Farm, Chopwell.**

- A - B - C - D - E Footpath Blaydon No 11
- B - F Diverted Route
- B - C - D Section to be Diverted
- Other Gateshead Footpaths

Scale 1:2500



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