



## Cornwall Council

## FORM OF APPLICATION FOR MODIFICATION ORDER

## Wildlife and Countryside Act 1981

**Definitive Map and Statement for the former District / Borough\* of Penwith / Kerrier / Carrick / Restormel / North Cornwall / Caradon\***

**To:** Cornwall Council

**of:** New County Hall, Treyew Road, Truro TR1 3AY

**I/We** .....

**of** .....

hereby apply for an Order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

**(a) Deleting the footpath / bridleway / restricted byway / byway open to all traffic\***

from: .....Grid Ref.....

to: .....Grid Ref.....

**(b) Adding** Restricted Byway

from: Unrecorded Road Nanterrow Lane Gridref: SW59764101 .....

to: Nancemellin Farm: .....

and Byway Open to All Traffic

from: .....Nancemellin Farm .....

to: ..... County Road U6036 at Parish Boundary nr Bospebo SW60634102 .....

**(c) Upgrading to a**

from: .....

to: .....

**(d) Varying /adding to the particulars relating to the footpath/bridleway/restricted byway/byway open to all traffic \***

from: .....Grid Ref.....

to: .....Grid Ref.....

by providing that .....

.....

and shown on the map accompanying this application.

\* Please delete text as applicable

I / We attach copies of the following documentary evidence (including statement of witnesses) in support of this application:

.....  
.....DOCUMENTARY EVIDENCE IS ATTACHED .....  
.....  
.....  
.....  
.....  
.....

Signed: .....

..... Dated: 7 June 2019 .....

# Application Details

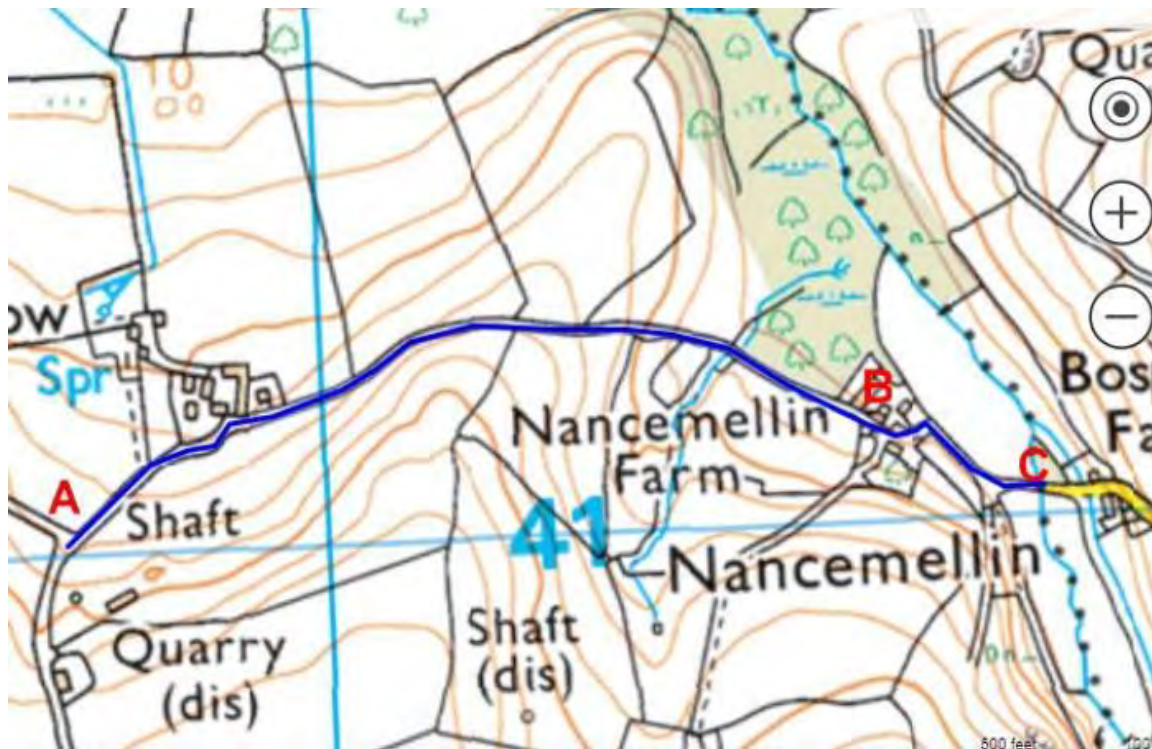
Our Path Reference: 101/C

Grid Reference: SW602411

Parish: Gwinear-Gwithian

Map of Path:

Claimed route shown in blue.



Description of Path:

Path starts at Unrecorded Road Nanterrow Lane SW59764101 and ends at County Road U6036 at Parish Boundary nr Bospebo SW60634102

Old Lane - middle section has been obstructed in recent years. Aerial view shows old hedged lane and parts obstructed.

Current Recorded Status:

Path is not recorded on the Definitive Map

Status being claimed: Restricted Byway (A to B) and Byway Open to All Traffic (B to C)

Notes:

Part of the path is believed to be obstructed.

Path is believed to be walked, path was ridden before obstructed.

Path is believed to be cycled

The application from A to B is for Restricted Byway, from B to C Byway Open to All traffic as was on the List of Streets prior to the NERC Act 2006.

Our Path Reference: 101/C      Grid Reference: SW602411

Path starts at Unrecorded Road Nanterrow Lane SW59764101 and ends at County Road U6036 at Parish Boundary nr Bospebo SW60634102

## Documentary Evidence

### Evidence from Maps:

Old maps provide very good evidence of the history of roads and other paths. Whilst such maps themselves do not record any user rights, any routes must have been significant enough to be mapped and the maps were intended for use by the public. If old maps clearly show the way marked as a road or old lane it is very good supportive evidence of the way being a road.

#### OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1888 to 1913

Sheet 351 - 1896 Path is clearly shown as a road.

#### Ordnance Survey Maps - 25 inch England and Wales, 1841-1952

Cornwall LXII.7 Surveyed: 1876 Path is clearly shown as a road or lane, plot no. 254

#### OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

Cornwall LXII.NE Surveyed: 1877 to 1878 Path is clearly shown as a road.

#### Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961

SW64 Publication date: 1960 Path is clearly shown as a road.

#### Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

These half-inch to the mile (1:126,720) maps were produced with recreation use by motorists and tourists in mind, these maps were popular and influential.

Sheet 37 - 1903 Path is shown as Road.

#### Johnston's Motoring Touring maps of England and Wales

Path is shown as Road.

### Primary Evidence:

#### Inland Revenue Valuation Records - Finance (1908-10) Act 1910

These maps on their own can provide very good evidence of a RoW. If a track is uncoloured on the map, this is very good evidence that it was excluded as being a public road. Footpaths and bridleways are usually included in the hereditament (plot area) but there is a deduction for them in the valuation. It is often not easy to positively identify the routes of footpaths and bridleways for large hereditaments but it may be easier for smaller ones.

IR 128/5/736 Shows all the path clearly excluded from adjoining hereditaments which is good evidence that the path was considered a public road.

## Tithe Records

The tithe maps and apportionments are an important source of information about the history and topography of a parish. They provide details of land ownership and occupation, and the type of cultivation of the land. They were produced in order to assess the tithe payable in cash to the parish church for the support of the church and its clergy. Roads were specifically excluded from tithe payments and thus can provide valuable evidence for the existence of Rights of Way. The tithe apportionment often describes public tracks as "Common, wastes and roads" or sometimes "Roads and rivers", which are all areas which generated no tithes for the church. Often such areas excluded from tithe are shaded in a sienna coloured wash. Tithe records can provide reputable evidence on their own taken in support of other standards of public records.

Gwithian Plots 127a p20 'Lane', 215 p18 'Lane', 113a p3 'Lane' and 79a p3 'Lane' All are no tithes payable.

## Parish Area Books

Gwinear Plot no 254 is described as 'Road'.

## List of Streets

Section from B to C was on the LOS in 2011 but now appears to have been deleted without stopping up order. See snap shots. 2011 map shown is using 2011 copy of CC GIS held by the BHS.

## Other Evidence:

### Land Ownership

Exclusion of a path from land registrations on either side is very indicative of public rights. However where an adjacent registration includes a path this does not give any indication against public rights. Land registrations sometimes deliberately or inadvertently extend ownership beyond that shown on the original deeds.

Approximately two thirds of lane is unregistered. Where registered both sides lane is excluded from registration. The eastern third of the lane is registered to a single owner together with adjoining land.

## Summary and Statement of Reasons:

The Inland Revenue map shows all this named road as excluded from the adjacent hereditaments. This is very good evidence that it was excluded as being a public road. The Tithe map shows the path as plots listed as Roads, Lanes, Waste, all with no tithes payable. The Area Book lists it as 'Road'. The combination of the evidence from Old Maps, Inland Revenue map 1910 and Tithe Map gives very strong indication that the path is highway and now should be recorded with Restricted Byway Status. The Land Registry shows much of the path is excluded from registration re-enforcing this conclusion. The Eastern section from B to C was on the LoS prior to NERC thus its own right should be recorded as Byway Open to All Traffic.

In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. While no single piece of evidence is necessarily conclusive, the applicant believes that taken as a whole the evidence demonstrates highway reputation.



## APPENDIX I - Documents and Photos

Western end Aerial View showing section believed to be obstructed. Old hedged lane clearly visible.



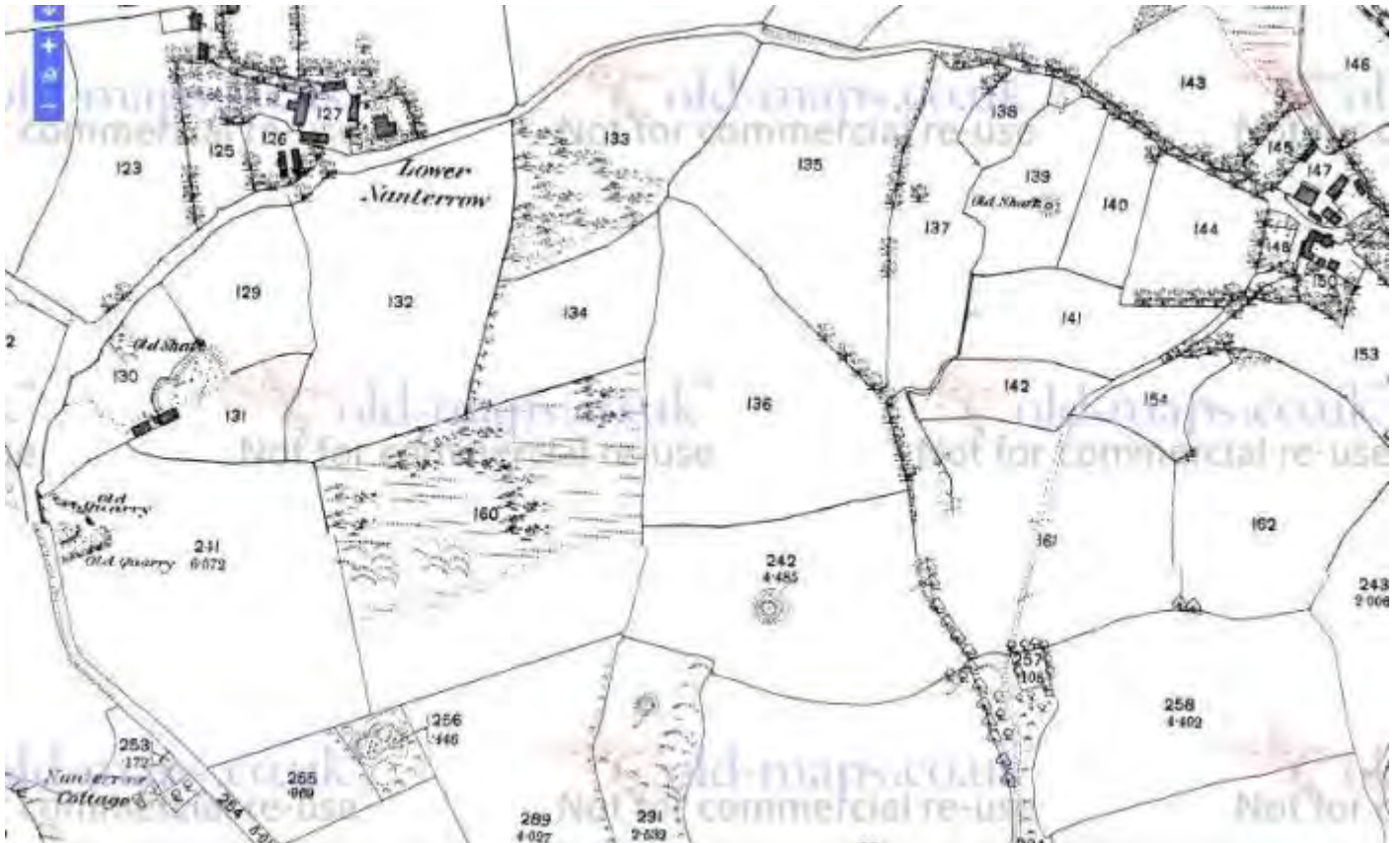
OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1888 to 1913

Shown clearly in similar style to other roads



## Ordnance Survey Maps - 25 inch England and Wales, 1841-1952

Plot 254



## OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

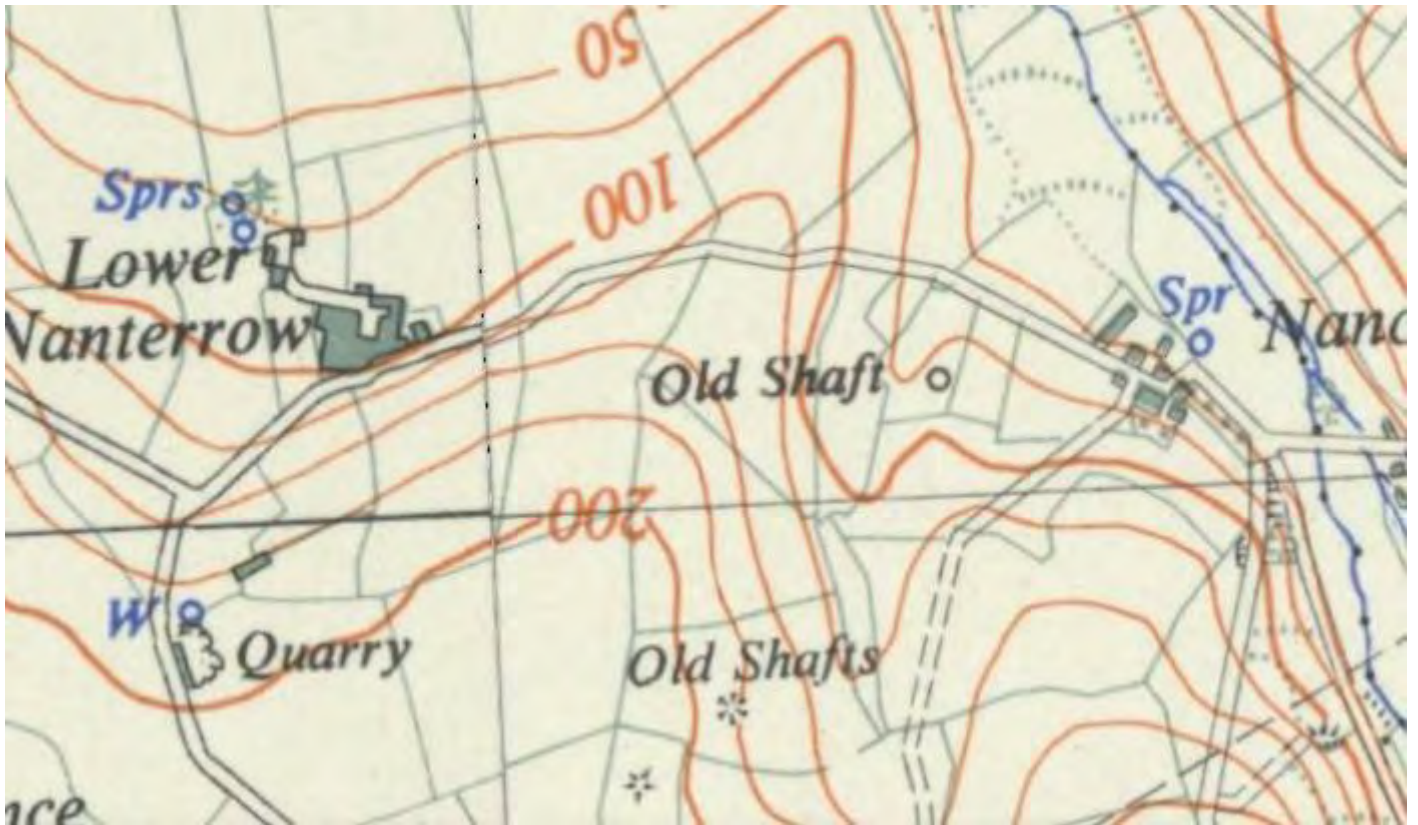
Clearly shown as road





Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961

Clearly shown as road



Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

Clearly shown as road





Johnston's Motoring Touring maps of England and Wales

Clearly shown as road



Inland Revenue Valuation Records - Finance (1908-10) Act 1910



## Tithe Records

Plots 127a, 113a, 79a



Plots 127a, 113a and 79a

<u>Antierrewundivided</u> <u>common Lanes, &amp;c.</u>							
48a	Common		21	3	14		
126a	Half of Lane				23		
122a	Lane				35		
66a	Green Lane		1		1		
101a	Lane			2	2		
74a	Lane				1		
79a	Lane				29		
139a	Lane			3	1		
127a	Lane			1	4		
113a	Lane and Town place			1	35		
			21	2	5		

## Parish Area Books

Plot 254 'Road'

200	6.008	Arable, &c.	245	1.404	Pasture, &c.
201	2.953	Arable, refuse, &c.	246	.879	Rough pasture, &c.
202	280.330	Houses, rough pasture, &c.	247	5.062	Arable.
203	.376	Rough pasture.	248	.202	Orchard.
204	4.785	Pasture, &c.	249	4.486	Arable, &c.
205	.796	Pasture.	250	3.670	Arable, &c.
206	3.528	Pasture, &c.	251	.823	Houses, yards, pasture, &c.
207	2.652	Pasture, &c.	252	7.124	Arable.
208	1.241	Arable.	253	.172	Houses, garden, &c.
209	3.499	Pasture, &c.	254	5.012	Road.
210	1.312	Pasture.	255	.969	Arable.
211	1.346	Arable.	256	.446	Refuse, &c.
212	3.056	Arable, &c.	257	.108	Wood.



## List of Streets

2011 UCR goes to Nancemellin Farm



2019 CC website shows UCR terminating as parish boundary





## Land Ownership

Majority of path is unregistered and part is excluded from registrations both sides.

Registered is shown in purple. LR Poly Data.



Land Registry 'Inspire' map.



## APPENDIX II - Evidence Sources

### OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1888 to 1913

National Library of Scotland/Vision of Britain on-line maps.

### Ordnance Survey Maps - 25 inch England and Wales, 1841-1952

National Library of Scotland or old-maps.co.uk on-line maps.

### OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

National Library of Scotland on-line maps.

### Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961

National Library of Scotland on-line maps.

### Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

National Library of Scotland on-line maps.

### Johnston's Motoring Touring maps of England and Wales

Scanned paper copy British Horse Society.

### Inland Revenue Valuation Records - Finance (1908-10) Act 1910

Photographed at National Archive - British Horse Society.

### Tithe Records

Cornwall Record Office, CD copies.

### Parish Area Books

National Archive --scanned Google/British Horse Society.

### List of Streets

Cornwall Council Online GIS map.