



Our Ref: 101/B

Natural Environment **FORM 1**

Cornwall Council

17 JUN 2019

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: Byway 30 Gridref: SW59224144

to: Junction of unrecorded ways on Nanterrow Lane Gridref: SW59764101

(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 ATTACHED
.....
.....
.....
.....
.....

Signed:

..... Dated: 8 June 2019

Documentary Evidence

Our Path Reference: 101/B

Grid Reference: SW594413

Parish: Gwinear-Gwithian

Map of Path:

Claimed route shown in blue.



Description of Path:

Path starts at Byway 30 SW59224144 and ends at Junction of unrecorded ways on Nanterrow Lane SW59764101

Old hedged lane continuing on from Byway 30.

Current Recorded Status:

Path is not recorded on the Definitive Map

Status being claimed: Restricted Byway

Notes:

Path is not believed to be obstructed.

Path walked, ridden and cycled

Path is believed to be used by motors

Connects at northern end to junction of two unrecorded paths, our ref DMMO applications 101/D and 101/C (Nanterrow Lane). The track is a clear through route serving a number of properties - passing beside all of them, and not through them - and at both ends there are handmade signs directing one to a B&B.

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 Plot 97

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

Cornwall LXII.NE Surveyed: 1877 to 1878. Path being claimed is shown as road yet the definitive byway across Garrack common is not well defined.

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.

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 The path does not appear to be excluded from the valuation, but neither is definitive byway 30.

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 - There is no separate section in apportionments for Roads and Wastes. Roads appear listed with other apportionments. The claimed route is shown in a contiguous plot including current county road at Gwithian and Byway 30. The plot numbers along the whole route are 282 p7 'Road', 126a p3 'Half of Lane', and 101a p3 'Lane' all with no tithe payable .

Parish Area Books

Gwithian Plot no 97 is described as 'Road'.

Other Evidence:

Definitive Map Records

Statement for Byway 30 says 'BW from Gwithian to road north west of Nanterrow Cottage'. This gives strong indication that the path being claimed was considered highway at the time the map was drawn.

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.

The Land Registry shows path is excluded from registration yet some plots are registered on both sides excluding the path.

Summary and Statement of Reasons:

The Tithe map evidence is strong, path labelled lane with no tithe payable. OS 25 inch shows path as contiguous plot described as 'Road'. The Definitive Statement for Byway 30 says it connects to Road north west of Nanterrow Cottage. The claimed path (to which the byway connects) leads to Nanterrow Lane. Although the Inland Revenue map does not show the path excluded, this does not mean that path does not carry Highway Rights.

The combination of the evidence from Old Maps, Tithe Map, Area Book and Definitive map Records gives very strong indication that the path is highway and now should be recorded with Restricted Byway Status. The Land Registry shows the path is excluded from registration re-enforcing this conclusion.

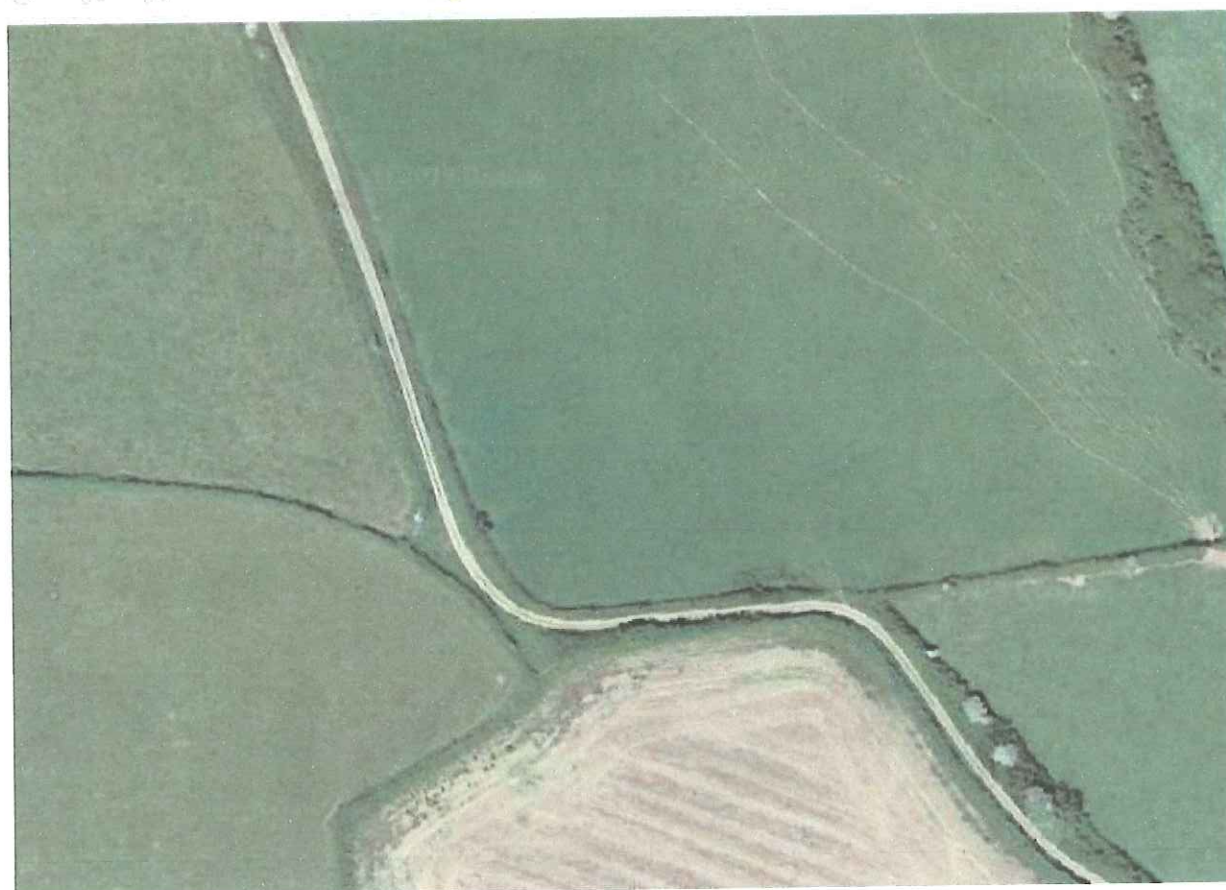
In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. While no single piece of evidence is necessarily conclusive, the applicant believes that taken as a whole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

APPENDIX I - Documents and Photos

Western end at byway



Path is a hedged lane used by vehicles and all other traffic as a byway



Showing junction with unrecorded ways nr Nanterrow Farm



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 97



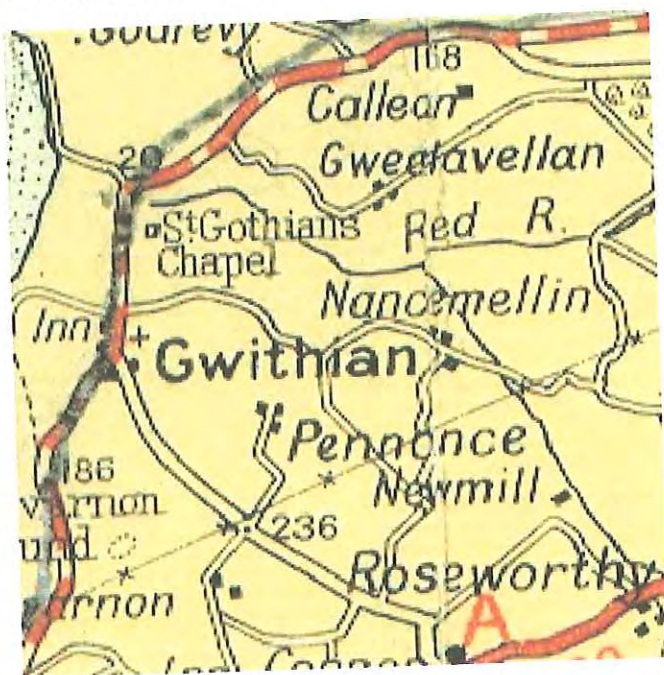
Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

Shown clearly in similar style to other roads



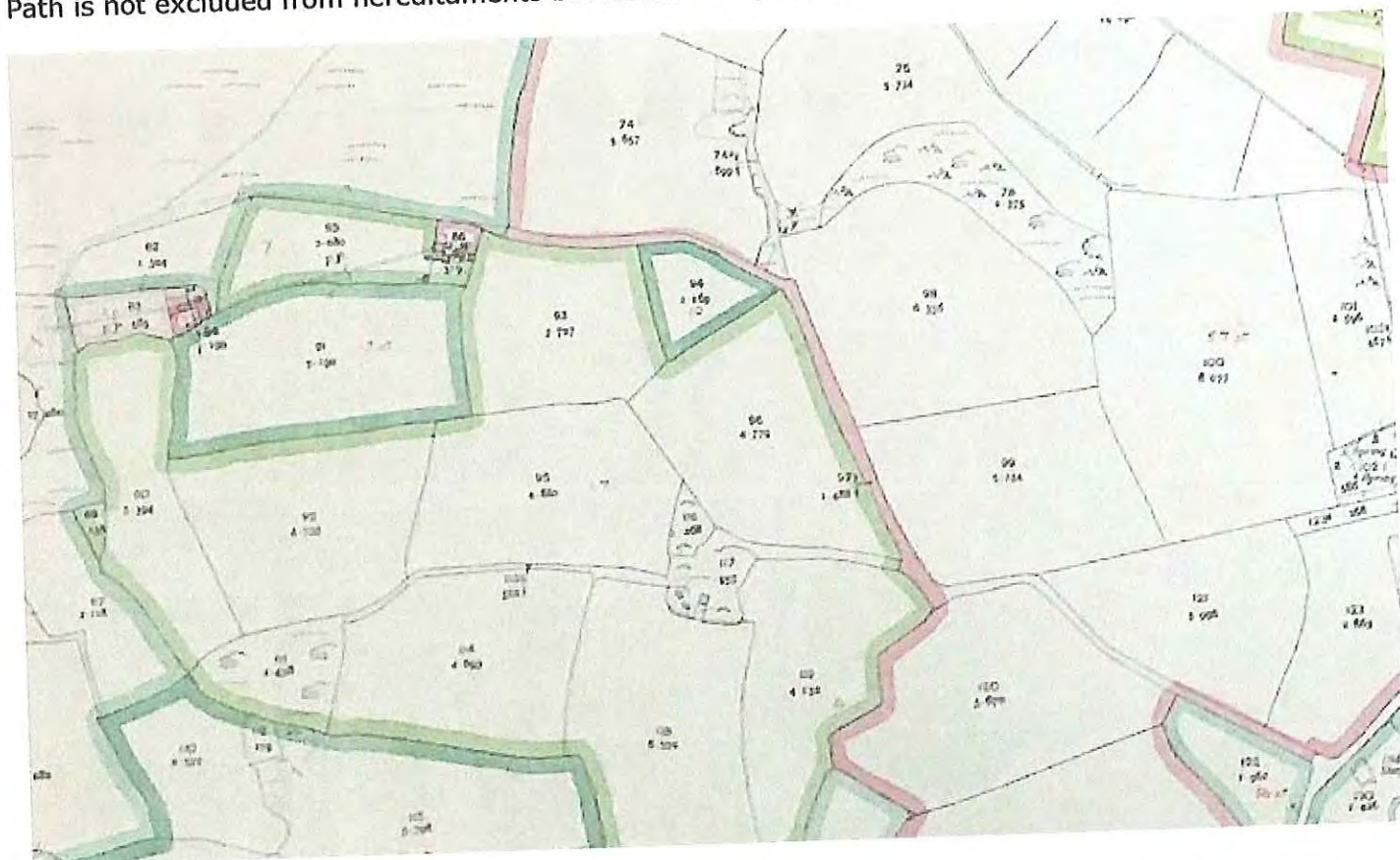
Johnston's Motoring Touring maps of England and Wales

Clearly shown as a road.



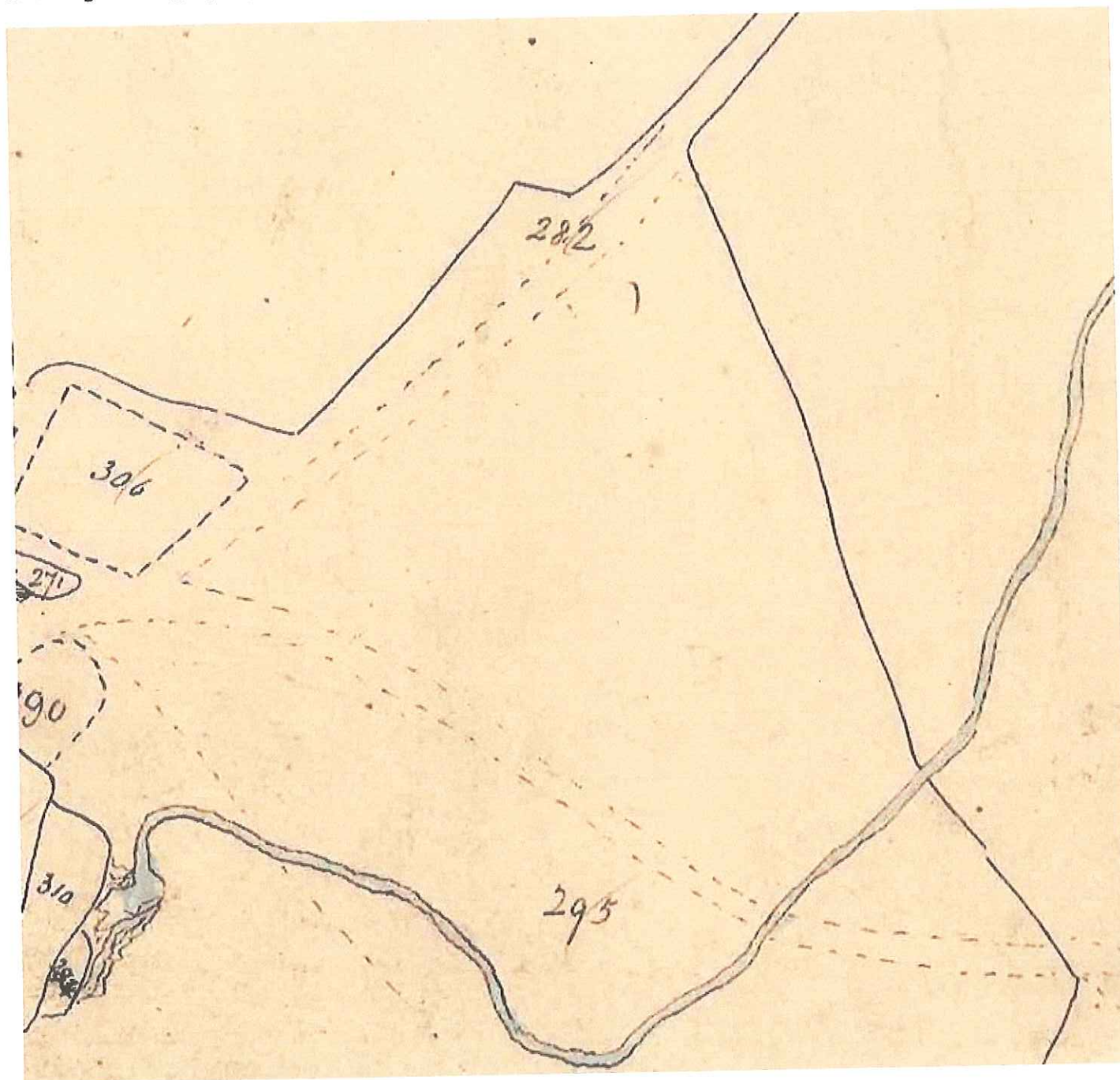
Inland Revenue Valuation Records - Finance (1908-10) Act 1910

Path is not excluded from hereditaments but neither is Byway 30.

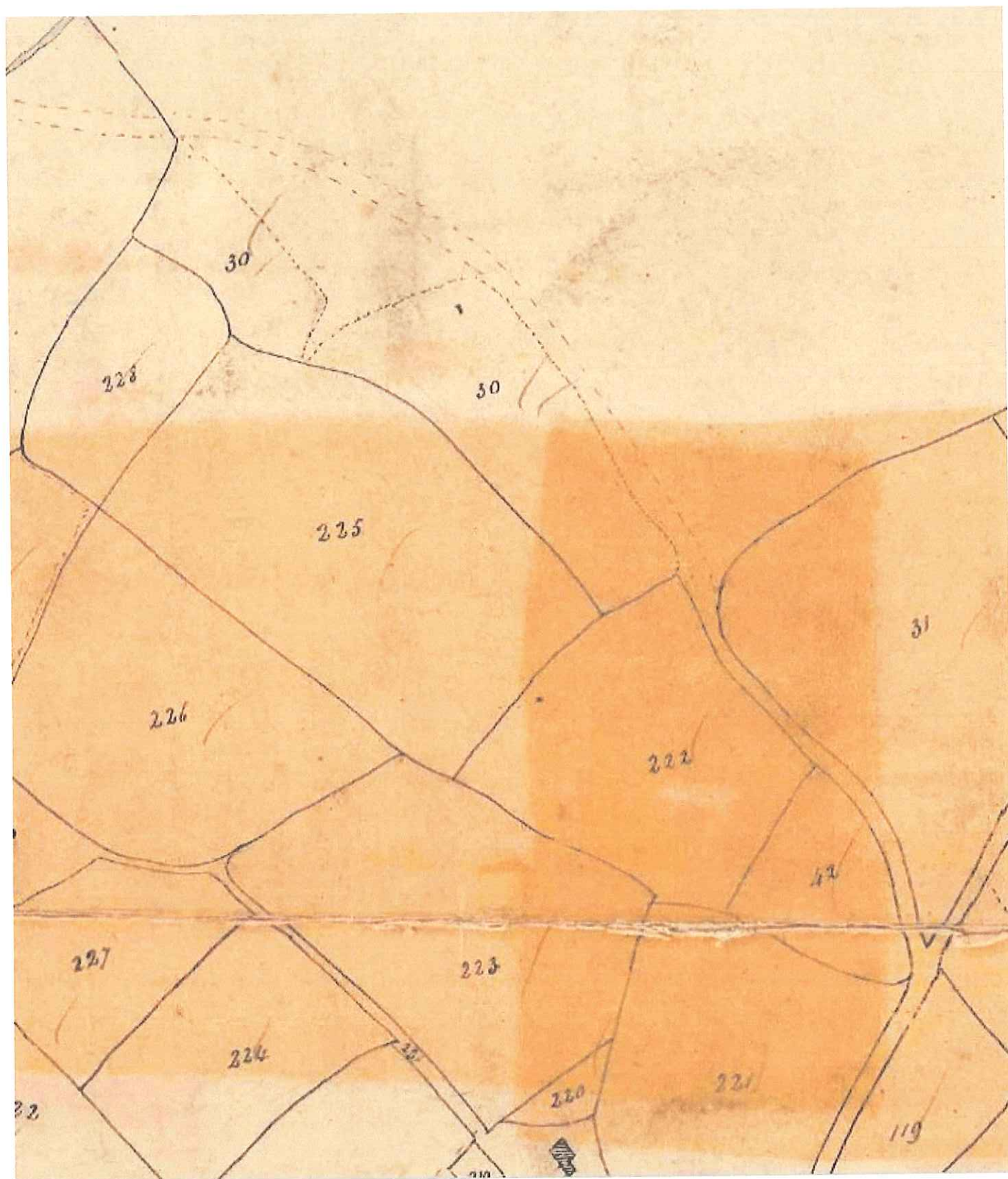


Tithe Records

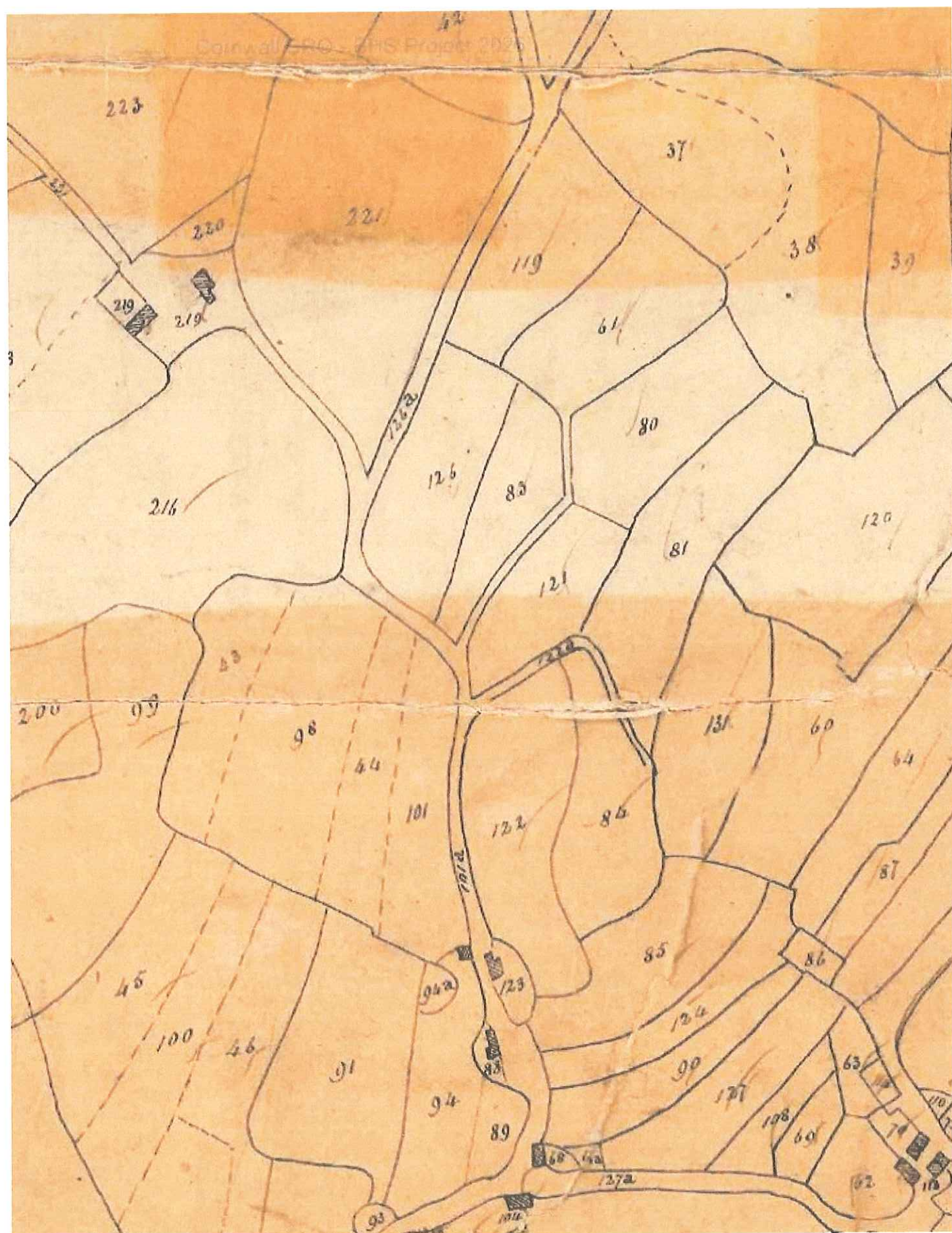
Showing existing byway contiguous with the road at Gwinear - Plot 282



Continuation of byway and claimed path inside same contiguous plot



Continuation to End of claimed route - Labelled plots 126a and 101a



Apportionments 101a, 126a, 282 - All no tithe payable

<i>Anterrew and divided Common Lands &c.</i>									
452	Common		21	3	12				
126a	Half of Lane		-	-	23				
122a	Lane		-	-	38				
66a	Green Lane		1	-	8				
101a	Lane		-	2	7				
74a	Lane		-	-	8				
79a	Lane		-	-	24				
139a	Lane		-	3	8				
127a	Lane		-	1	4				
113a	Lane and Town place		-	1	33				
			21	2	2				

11			98	1	39	10	16	2
210	Waste by Garrach. 1-21							
251	Co	2-1-12	3	1	18			
252	Road	1-1-12						
253	Half of River	2-3-11						

Parish Area Books

Plot 97 "Road"

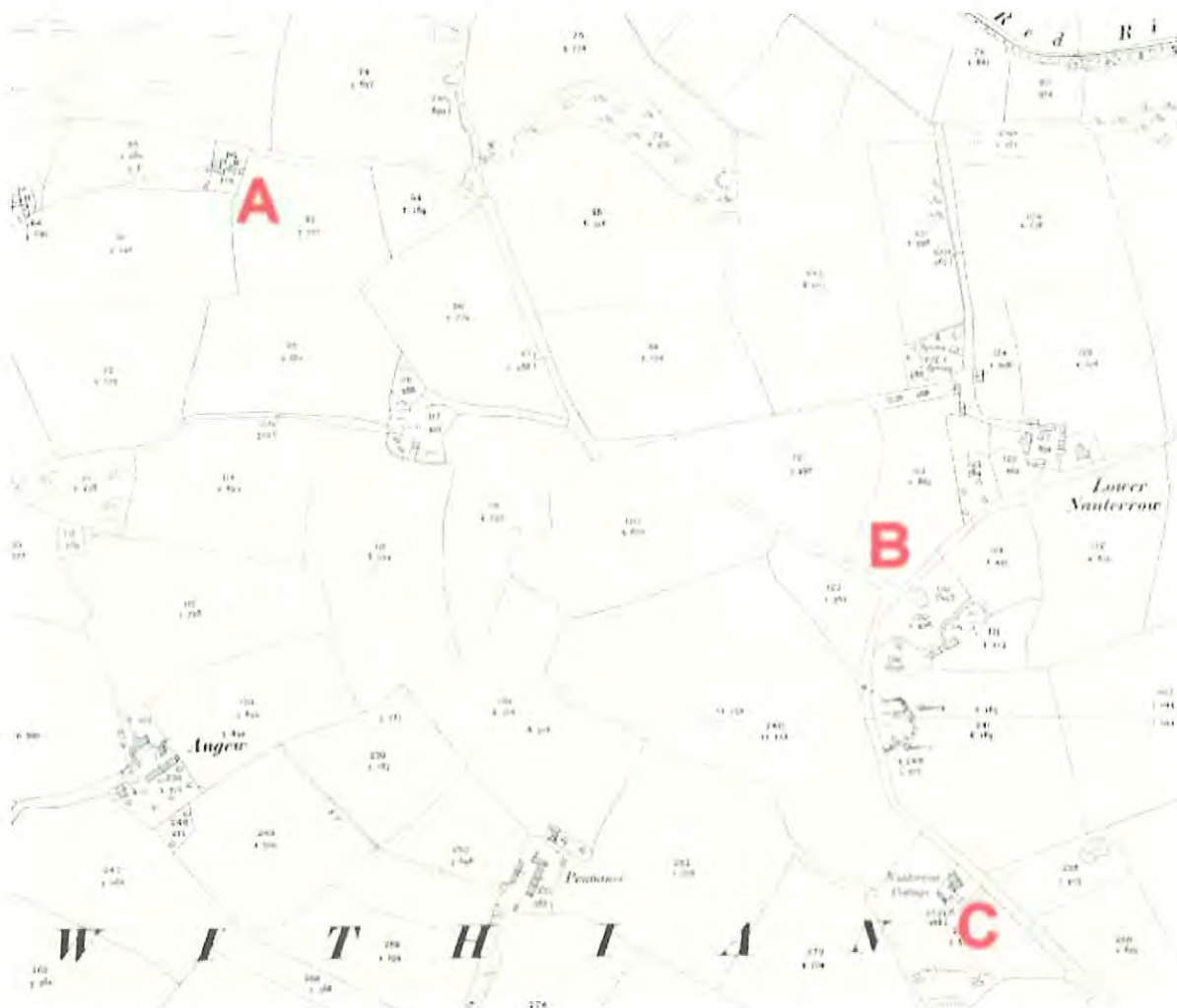
91	5.190	Arable.	138	.446	Pasture.
92	4.735	Arable.	139	1.363	Arable, &c.
93	3.727	Arable.	140	.879	Arable.
94	1.169	Arable.	141	1.600	Pasture, &c.
95	4.880	Arable.	142	.867	Pasture, &c.
96	4.779	Arable.	143	1.635	Pasture.
97	1.635	Road.	144	1.389	Arable.
98	6.356	Pasture.	145	.277	Orchard.
99	5.174	Pasture.	146	1.199	Arable, &c.
100	8.279	Arable, &c.	147	.440	Houses, yards, &c.
101	2.596	Arable, &c.	148	.150	Orchards.
102	.535	Wood and refuse.	149	.237	Road.

Definitive Map Records

Extract from Definitive Statement (BW 30), 2nd February 1998

26	BR from Penhale to BR 63 at Polmenor Downs	-
27	FP from BR 49 east of Drewollas to B3280 at Parish Boundary	-
28	FP from Trungle Farm to Mellanoweth Farm and Parish Boundary at Angarrack	-
29	FP from Prosper Hill south of Gwithian via Angew to Pennance	3'0"
30	BW from Gwithian to road north west of Nanterrow Cottage	6'0" to 8'0"
31	FP from BW 30 to District Boundary at the Red River	3'6"
32	FP from north of Gwithian Bridge to FP 47 south of The Knavocks with spur via Godrevy	2'6"

On map below, BW 30 runs to point A, Path Claimed runs from A to B, Nanterrow Cottage is at point C.



Land Ownership

Path is excluded from registration



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.

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.

Definitive Map Records