



Cornwall Council

Natural Environment

FORM OF APPLICATION FOR MODIFICATION ORDER

14 JUN 2019

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 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 40 Gridref: SW59693952

to: Gwithian Road County Road Gridref: SW59943974

(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: 12 June 2019

Documentary Evidence

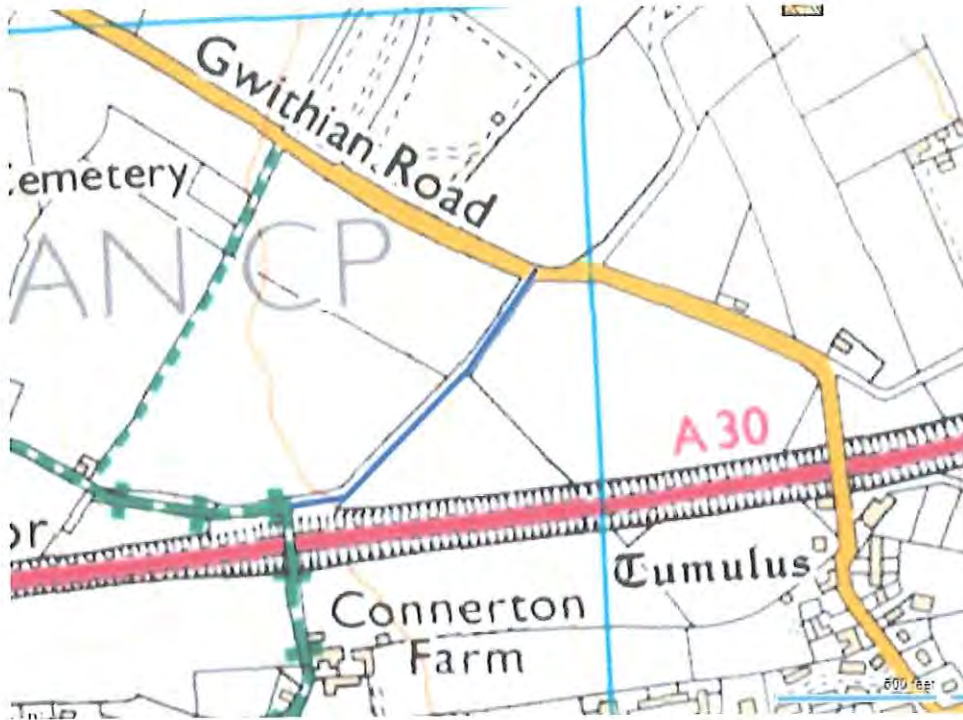
Our Path Reference: 101/R03

Grid Reference: SW597395

Parish: Gwinear-Gwithian

Map of Path:

Claimed route shown in blue.



Description of Path:

Path starts at Byway 40 SW59693952 and ends at Gwithian Road County Road SW59943974

Hedged lane

Current Recorded Status:

Path is not recorded on the Definitive Map

Status being claimed: Restricted Byway

Notes:

Path is not obstructed.

Path is believed to be walked

Path is believed to be ridden

Path is believed to be cycled

Path is used by motors

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 Shown as part of the road network including the current byway.

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

Cornwall LXII.11 Surveyed: 1876 Path is clearly shown as a road or lane, plot no. 448.

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

Cornwall LXII.SE Surveyed: 1877 Path is shown clearly as road in common with current county roads

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 a Road.

Martyns Map

Not shown. Probably open moor.

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.

IR128/5/739 Shows path as white between hereditaments or passing through a gap in the coloured boundary from an excluded section signifying that that section is also excluded as being continuation of the exclusion. This 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 - Path is shown in the same plot 555 as nearby county roads apportionment 555 'Lanes and Waste' no owner/occupier or tithe payable.

Parish Area Books

Gwinear - Plot no 448 is described as 'Road'.

Other Evidence:

Definitive Map Records

The connecting byway was diverted to accommodate the new A30. See appendix for old and new definitive map. It should be noted that the claimed route uses a further 50 metres of the unrecorded road (which previously was byway until the diversion.)

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 plots either side are all registered other than within the A30 curtilage

Summary and Statement of Reasons:

The Inland Revenue map shows all the road excluded from the adjacent hereditaments. This is very good evidence that it was excluded because it was a public road. The Tithe map shows the path as a plot listed as 'Lanes and Wastes' no tithe. The OS 25 inch and associated Area Book evidence gives plot as Road. The Applicant recognises that the byway used southward was changed when the new A30 was built but the route claimed and evidence connects with the newly positioned byway. 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.

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

Entrance off Gwithian Road signed Trevarnon Moor



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

Clearly shown as part of the road network.



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

Plot 448



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

Clearly shown as a road

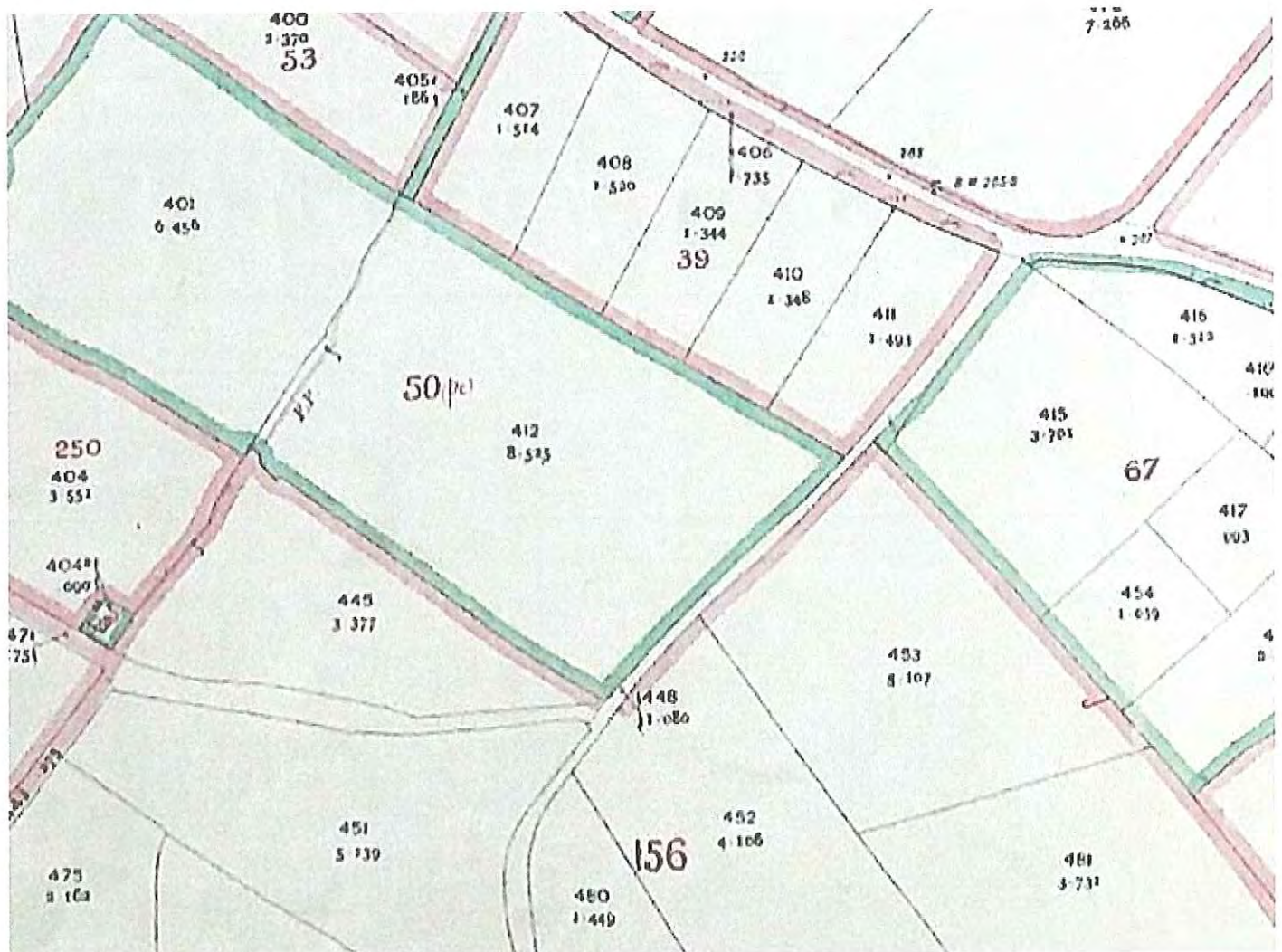


Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924



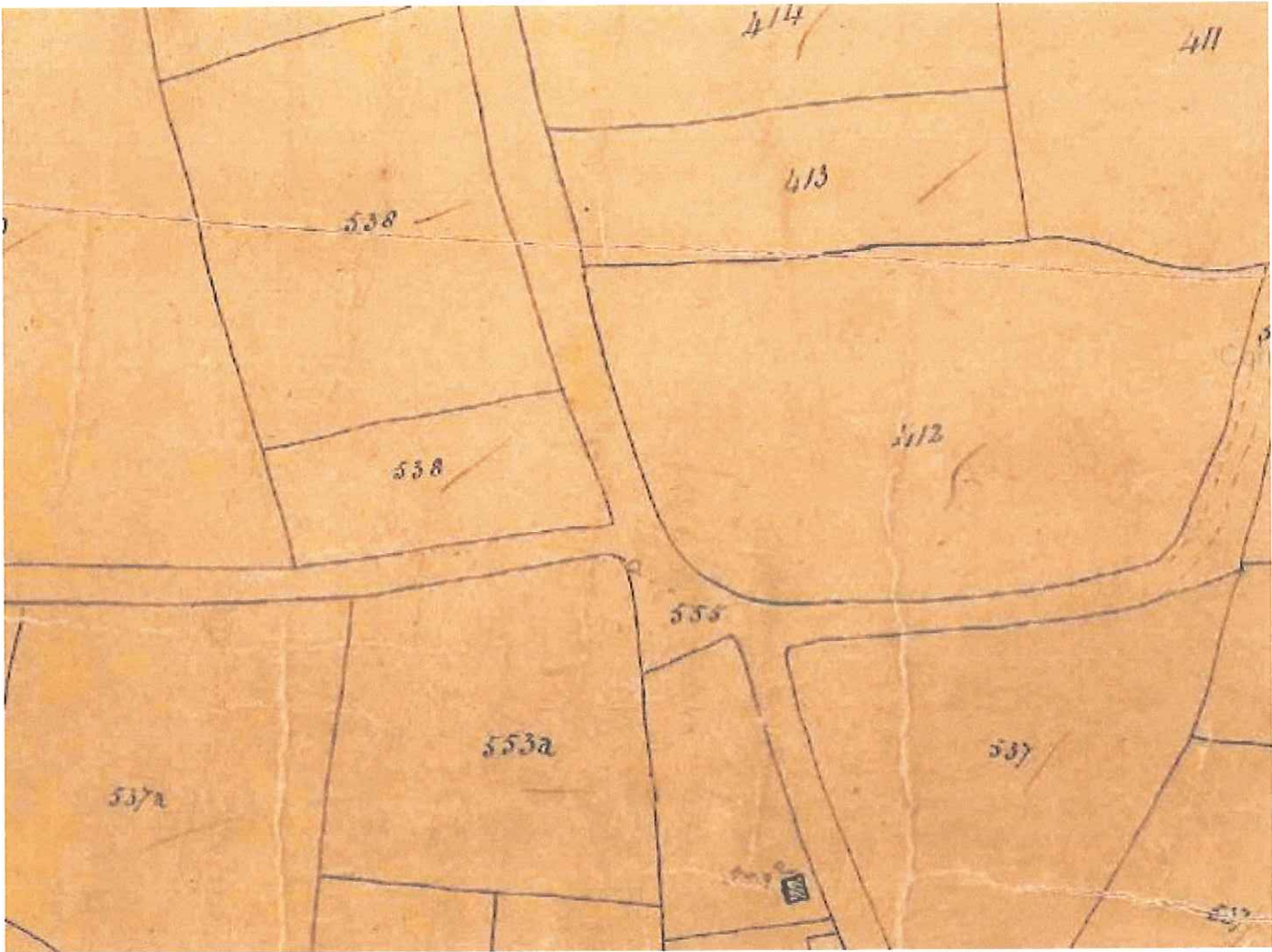
Inland Revenue Valuation Records - Finance (1908-10) Act 1910

Clear Shown as white between hereditaments



Tithe Records

Plot 555 includes county road



apportionment 555 no tithe or owner

Charles C. C. C.	555b	One Plot	
Rev. Smithham	537b	Two Plots	2
		<u>Connerden Gowns</u>	
	554	Waste on Connerden	}
		Gowns.	
	555	Land & Waste	37
	556	Half of Land & Waste	7
			44
George Wiarne	556	House and Garden	

Parish Area Books

Plot 448 'Road'

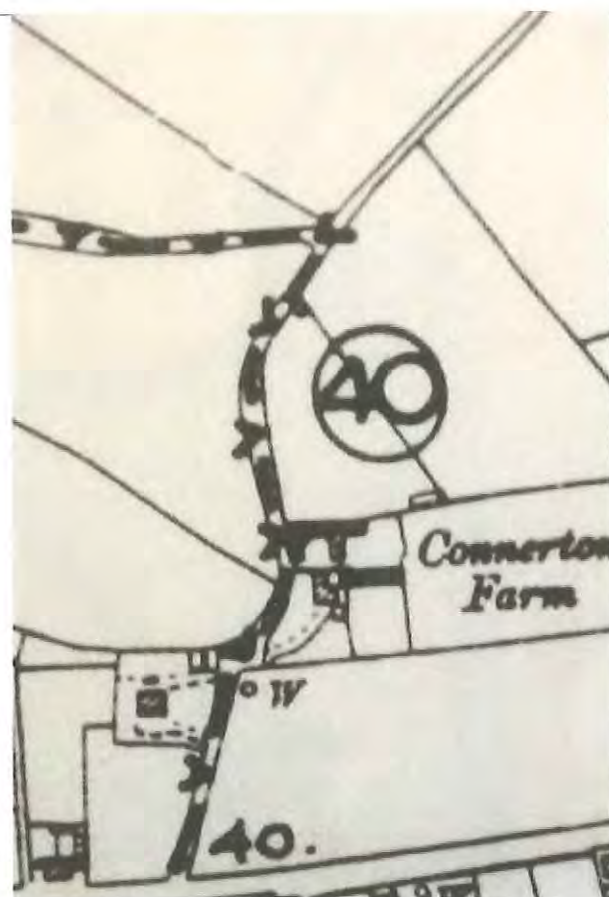
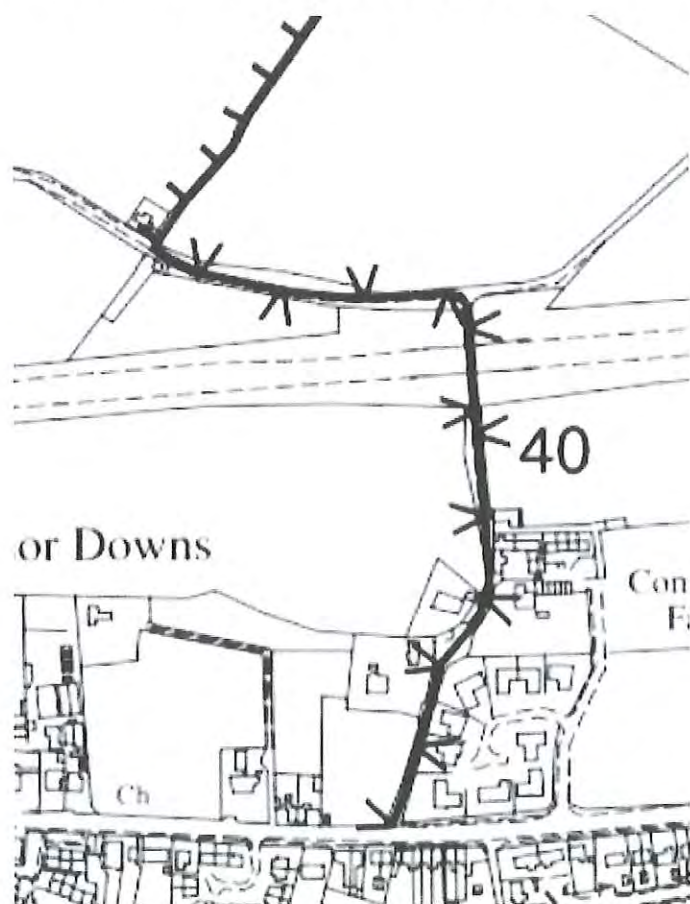
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PARISH OF GWITHIAN.

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
445	2.424	Arable.	493	1.732	Pasture.
446	.659	Rough pasture and furze.	494	.297	Arable.
447	1.117	Road.	495	.427	Arable.
448	1.381	Road.	496	.177	House, gardens, &c.
449	.711	Rough pasture and	497	1.433	Arable.
			498	.616	Houses, gardens, &c.

Definitive Map Records

New definitive map 1998 Left, Right Original route.

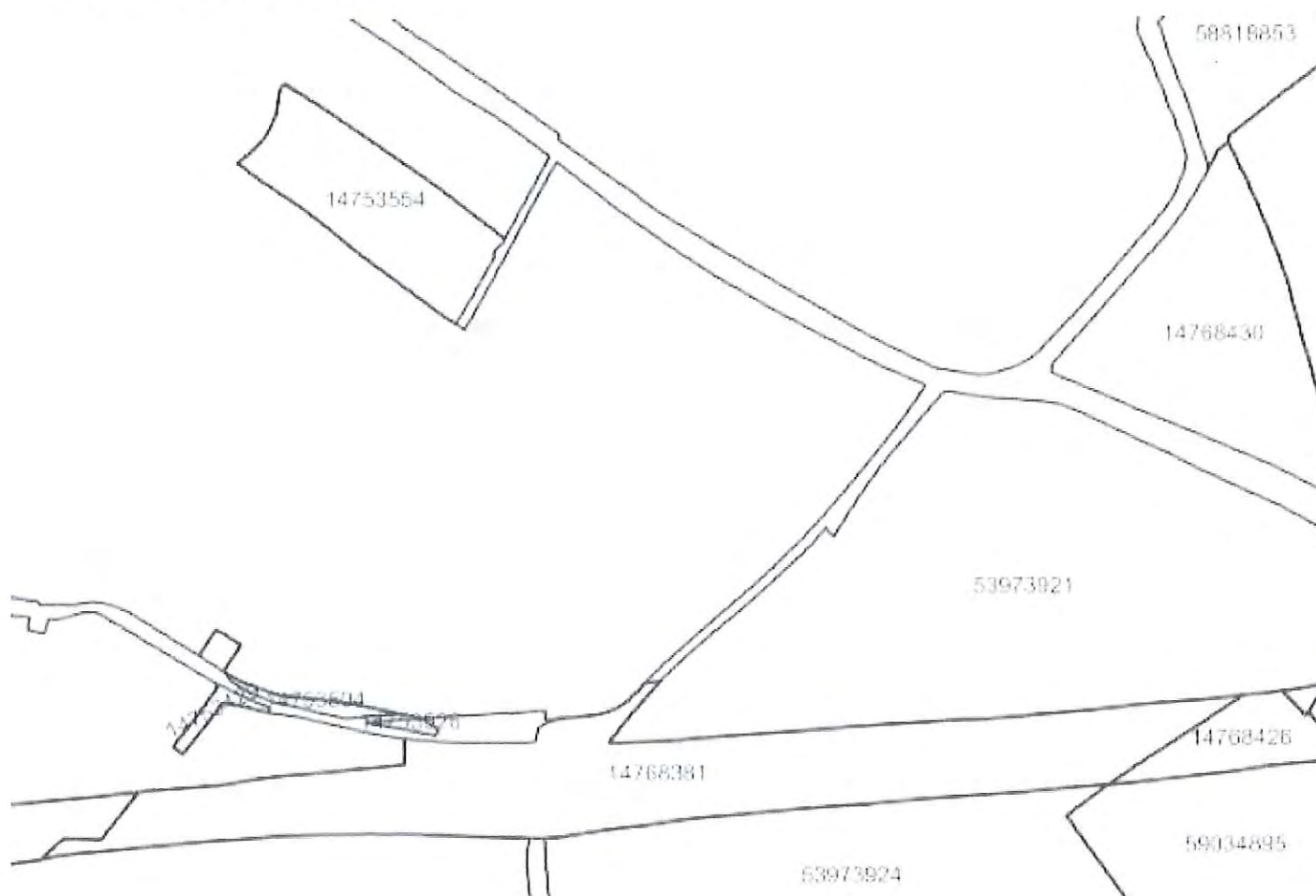


Land Ownership

No part of the path is registered other than within the A30 curtilage



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.

Martyns Map

Martyns Map online at Harvard University.

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