



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**

from: County Road B3306 Gridref: SW39223473

to: FP 176 Gridref: SW39243465

(c) **Upgrading to** a Restricted Byway the footpath

from: Higher Bojewyan Gridref: SW39243465

to: Woon Gumpus Common Gridref: SW39453415

(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 *historical evidence has been discovered to establish a public right of way*

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

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.....
.....
.....
.....

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Signed:

.....

Dated: 26 February 2020

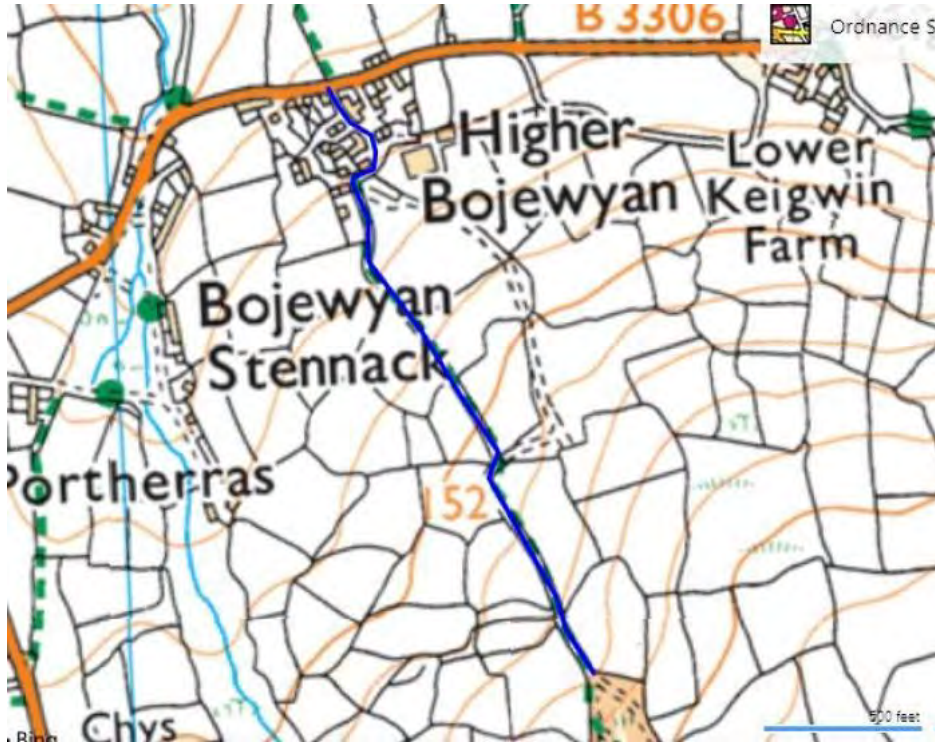
Application Details

Our Path Reference: 114/R24 Grid Reference: SW392347

Parish: St Just-in-Penwith

Map of Path:

Route applied for shown in blue.



Description of Path:

Path starts at County Road B3306 SW39223473 and ends at Woon Gumpus Common SW39453415

Old lane that runs from the coast road through Higher Bojewyan to and across Woon Gumpus Common.

Current Recorded Status:

Part of the path is recorded as Footpath on the Definitive Map.

Path is not recorded on the List of Streets.

Status being applied for: Restricted Byway

Notes:

Path is not believed to be obstructed. Path is believed to be walked and ridden.

There are rights for horse riding on all of Woon Gumpus Common owing to its status as a S193 Common.

Our Path Reference: 114/R24 Grid Reference: SW392347

Path starts at County Road B3306 SW39223473 and ends at Woon Gumpus Common SW39453415

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, 1809 to 1913

Sheet 351 - Penzance 1896 - Shown as road connecting to the routes over Woon Gumpus Common

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

Cornwall LXVII.10 & 11 Surveyed: 1875 Published: 1886 Path is given unique plot number 1023a that is consistent with being of highway status.

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

Cornwall LXVII.SW Published: 1888 Path is clearly shown as a 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 and lying between hereditaments, 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.

IR 128/5/792, 793 show path clearly excluded from adjoining hereditaments which is good evidence that the path was considered a public road. There is no evidence discovered to contradict this view for this path.

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.

St Just pt. 1 p12. Route is Plot 348 in common with county road. App. 348 listed as Bojewyan Town Plot, Lanes etc. We note that part of the lane appears to be marked 388. This is certainly an error as plot 388 is in Chyrose to the north. We believe that the 388 on this path should have been written as 348 which appears several times elsewhere in the contiguous plot which is through Bojewyan and main coast road. It also must be noted that the old lane appears (noting the gap at start of Woon Gumpus Common) to continue as one plot down the edge of the common (as drawn) to the parish boundary where the path is marked 'From Bosullow'. The labelling of the route in this manner (from/to another

significant place) is indicative of the alleged public status of this route. It should be noted that the nearby county road is labelled 'from Penzance' in similar fashion. Plot 348 is listed as 'Lanes and Waste'.

Parish Area Books

St Just Plot no 1023a is described as 'Road'.

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.

The Land Registry shows that no part of the path is registered. Some plots on either side are registered.

Summary and Statement of Reasons:

The Inland Revenue map shows all of 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 numbered and contiguous with adjacent county road and designated as Town Plot, Lanes etc. The Tithe map shows the importance of the route which leads to and subsequently across Woon Gumpus Common to Bosulow and beyond.

It must also be noted that Woon Gumpus Common is designated as a S193 Common with Rights of Air And Exercise including Horse Riding. This Route will therefore always have provided an important route for horses to reach and cross the Common. Note that this application does not apply for the route across the common which already has rights of access for horse.

There is no evidence to show any reason why most of the path has been recorded only as Footpath.

The combination of the evidence from Old Maps, Inland Revenue map 1910, Tithe and Area Book gives exceptionally 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 B3306 Higher Bojewyan



Aerial View showing old hedged lane running south from Higher Bojewyan



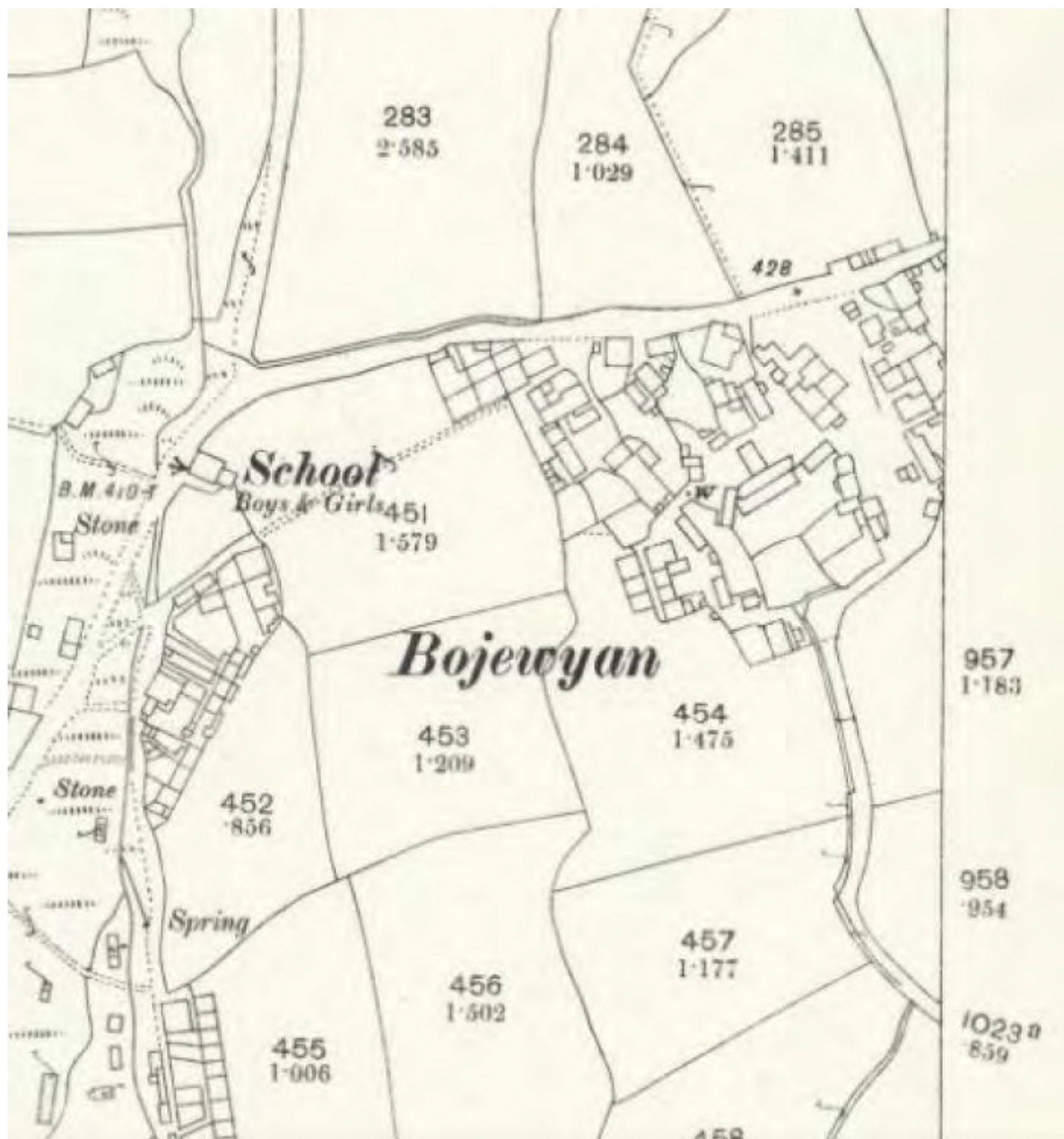
Southern End of route applied for at Woon Gumpus Common

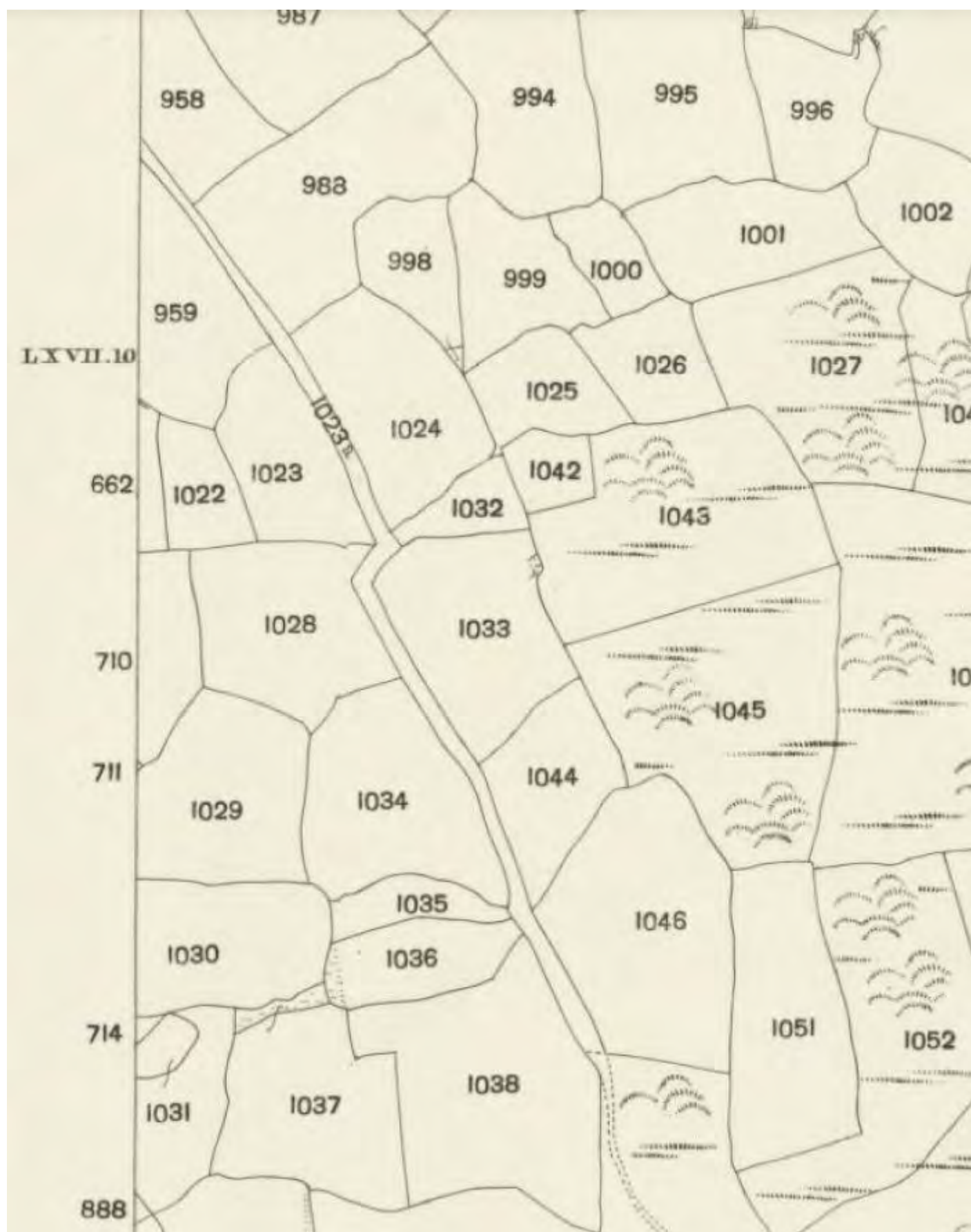


OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913

Shown as road connecting to the routes over Woon Gumpus Comon





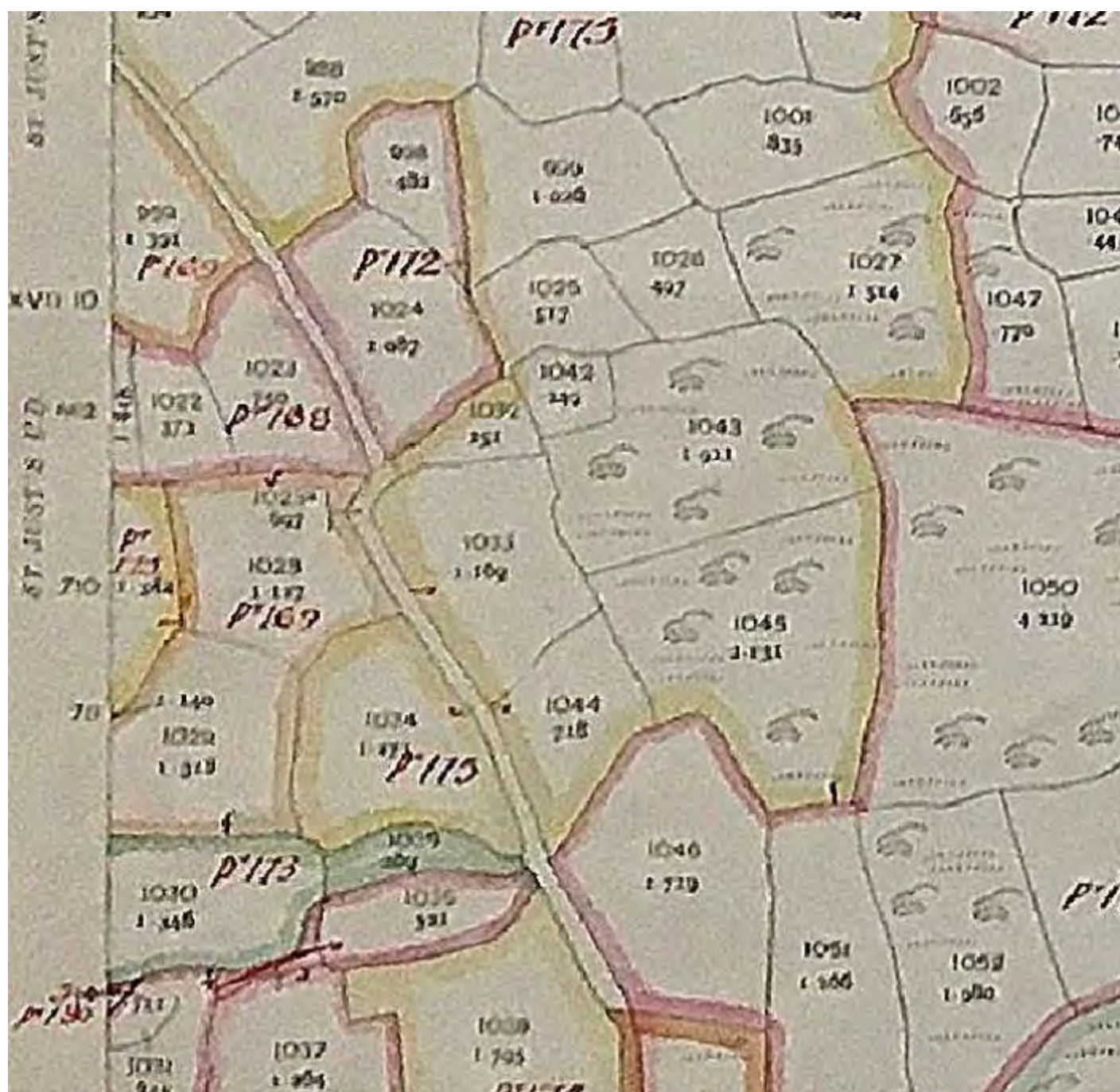


Clearly shown as a road



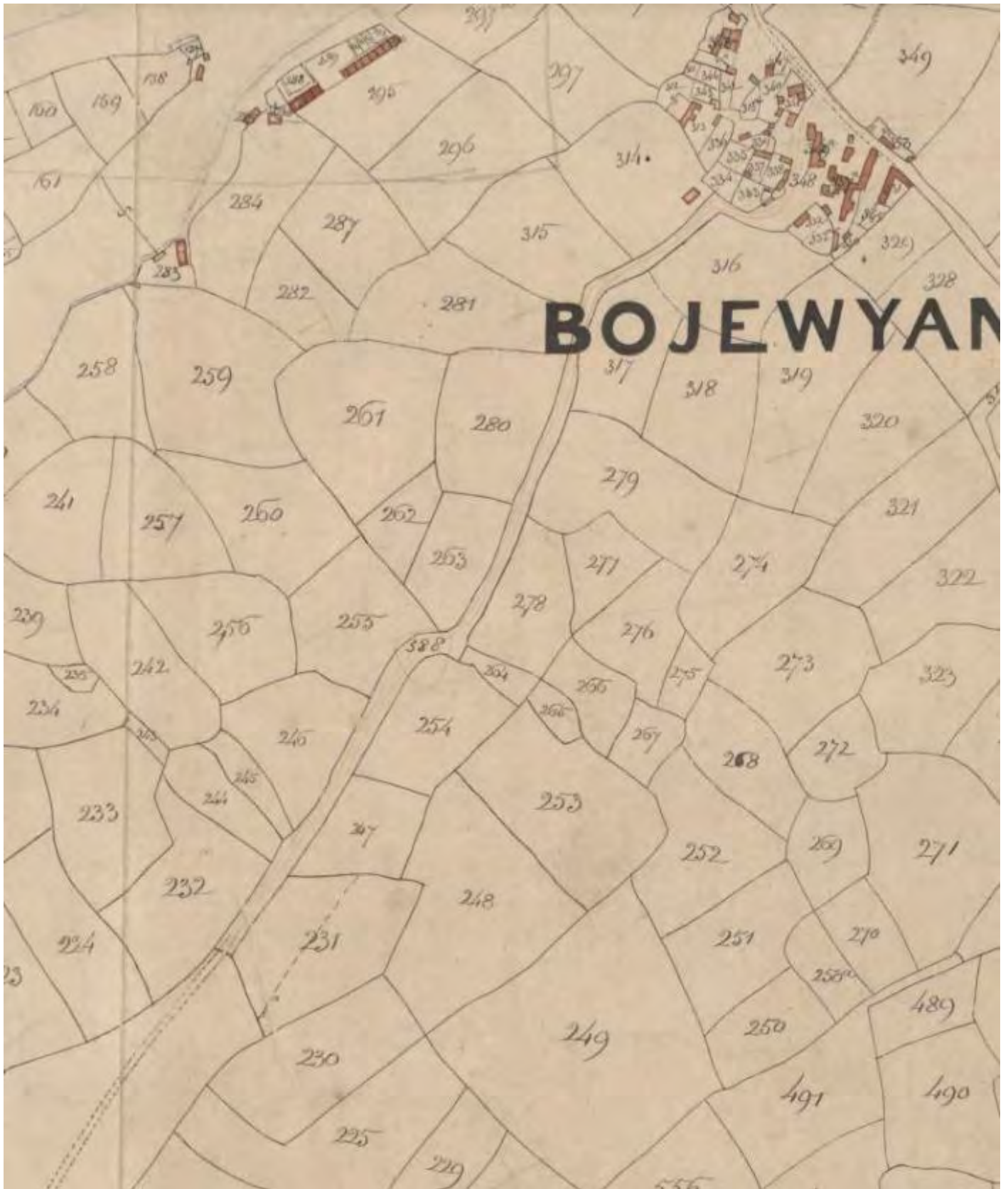
Route applied for is excluded from hereditaments





Tithe Records

Plots 348 and (388 seemingly labelled in error – see text above)



Apportionment Plot 348 No Tithe

COMMONS.				33	1	13	23	7	11	22	0	4	20
Themselves,	206	Woon Gumpus Common, ...	Heathy Pasture,...	144	0	23		9	0				
	366	Bojewyan Common,	do.	1	1	3		7					
	348	Bojewyan Town Plot, Lanes, &c. ..	Lanes and Waste,	3	1	14							
ANGWIN'S TENEMENT.				148	3	0		£0	9	7			
	318	Ischamps	Arable,	1	0	27		10			9		

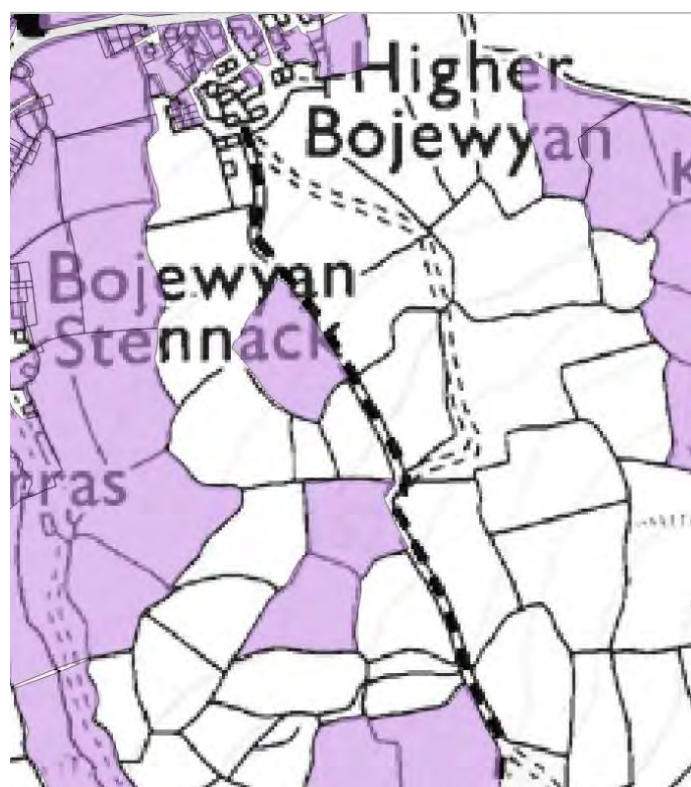
Parish Area Books

Plot 1023a 'Road'

12 PARISH OF ST. JUST.					
No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1023a	·859	Road.	1066	1·940	Pasture.
1024	1·087	Pasture.	1067	·269	Houses, garden, &c.
1025	·517	Arable.	1068	1·346	Pasture.
1026	·497	Arable.	1069	1·365	Pasture.
1027	1·514	Rough pasture, furze, &c.	1070	2·277	Pasture.
1028	1·127	Arable.	1071	3·033	Rough pasture and furze.
1029	1·318	Arable.	1072	4·902	Rough pasture and

Land Ownership

Land Registry polygons shows the route excluded from registrations (in purple)



LR '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.

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.