

Our Ref: COR-1523	Cornwall Council	FORM 1
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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: County Road U6021 Lower Kenneggy Gridref: SW56802899 Gridref: SW56802899

to: Unrecorded Old Coach Road Gridref: SW56792929 Gridref: SW56792929

(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:Grd Ref

by providing that historical evidence has been discovered to establish a public right of way.

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

DOCUMENTARY EVIDENCE IS ATTACHED

.....

.....

.....

Signed

.....Dated: 27 July 2020.....

APPENDIX

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.

Martyns Map

Martyns Map online at Harvard University.

Geographia 2 inch

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.

Handover Maps 1929 Act

Cornwall Council photographed copies.

Our Path Reference: COR-1523

Parish: Breage **Grid Reference:** SW568291

Application Details

Map of Path:

Route applied for is shown in RED DASHES



Description of Path:

Path starts at County Road U6021 Lower Keneggy SW56802899 and ends at Unrecorded Old Coach Road SW56792929

It is a Hedged Lane which crosses the A394

Current Recorded Status:

Path is not recorded on the Definitive Map

Path is not recorded on the List of Streets – Yet is on the 1929 Handover Maps.

Status being applied for: Restricted Byway

Notes:

Path is not believed to be obstructed. Path is believed to be walked, ridden, cycled. This connects to the unrecorded Old Coach Road which is subject to DMMO application our Ref 209/F

Our Path Reference: COR-1523 Grid Reference: SW568291

Path starts at County Road U6021 Lower Kenneggy SW56802899 and ends at Unrecorded Old Coach Road SW56792929

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

Sheets 351 and 358 Publication date: 1895, Path is clearly shown as road in common with current county roads

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

LXXV.6 1878 revision shows the southern half of the route is shown as a single plot (number 2043, listed as road) in common with the current road through Lower Kenneggy rather than following the current county road going north east. This implies it was the more important route at that time. This depiction is continued on the 1908 revision. The northern section above the A394 is plot number 1937.

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

Cornwall LXXV.NW Surveyed: 1877- Path is clearly shown as a road.

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

10/52 - A – 1950. Path is clearly shown as a road in common with the old coach road.

Martyns Map

Depiction of a route on the Martyns Map 1748 shows the existence of the route at that time. Given the small scale and age of this map, it is most likely that the route was significant and used by all. It is unlikely that footpaths would be depicted.

Route not depicted

Geographia 2 inch Road Map

These half-inch to the mile maps were produced for use by motorists. These maps were popular and influential. Quote: 'This beautifully coloured series of Road Maps are indispensable to the Tourist or Business Man, whose destination is off the main road, as in addition to the first and second class roads being prominently indicated, other roads and tracks are very clearly shown'.

The path is clearly identifiable and shown as a Road. Further this map shows the connection across Greenberry Downs onwards via the current bridleway to St Hilary.

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 128/5/905 Northern link and part of southern section is definitely excluded. The very southern part, including the current county road running through Lower Kenneggy, does not appear to be excluded.

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.

Breage Tithe shows all the route as plot 3665b contiguous and in common with current county roads including the A394. Plot 3665b is listed in apportionments under 'Commons Roads and Wastes' as 'Roads and Wastes at Lower Kenneggy' with No Tithe payable.

Parish Area Books

Breague - Plots nos 2043 and 1937 are both described as 'Road'.

Handover Maps 1929 Act

Lower section of route clearly marked in yellow. (in preference to the current county road which is shaded black) .

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 southern leg of the path is excluded from registration yet plots either side are all registered. This is strongly suggestive of an ancient public highway.

The Northern section is also not registered, plots along the eastern side are all registered.

Summary and Statement of Reasons:

All the old maps, which were intended for public navigation, show the route consistently as a road. This is very strong supportive evidence of the status of the route as a public road.

The Inland Revenue map shows much of the road excluded from the adjacent hereditaments. This is suggestive that it was excluded because it was a public road.

The Tithe map evidence is strong. The Tithe map shows the path included in a single plot similar to and contiguous with other county roads. Plot 3665b is listed under 'Commons Roads and Wastes' as 'Roads and Waste in Higher Kenneggy'.

The OS 25 inch map and associated Area Book evidence give the plots as 'Road' re-enforcing the status of the route.

The marking of the lower part of the route as 'District Road' on the Helston 1929 Handover Map confirms the conclusion it is a county road.

The Land Registry shows the path is excluded from registration or unregistered. This is strongly suggestive of an ancient public highway.

Further the route provides a direct connection from the south crossing the A394 and onward to St Hilary across Greenberry Downs. It is inconceivable that any such available route would not be used by all to get about, and via the shortest route to hand.

The combination of the evidence from Old Maps, Inland Revenue map 1910, Tithe, Area Book and Handover Map 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

Start of route from Lower Kenneggy



Aerial View of where the route crosses the A394

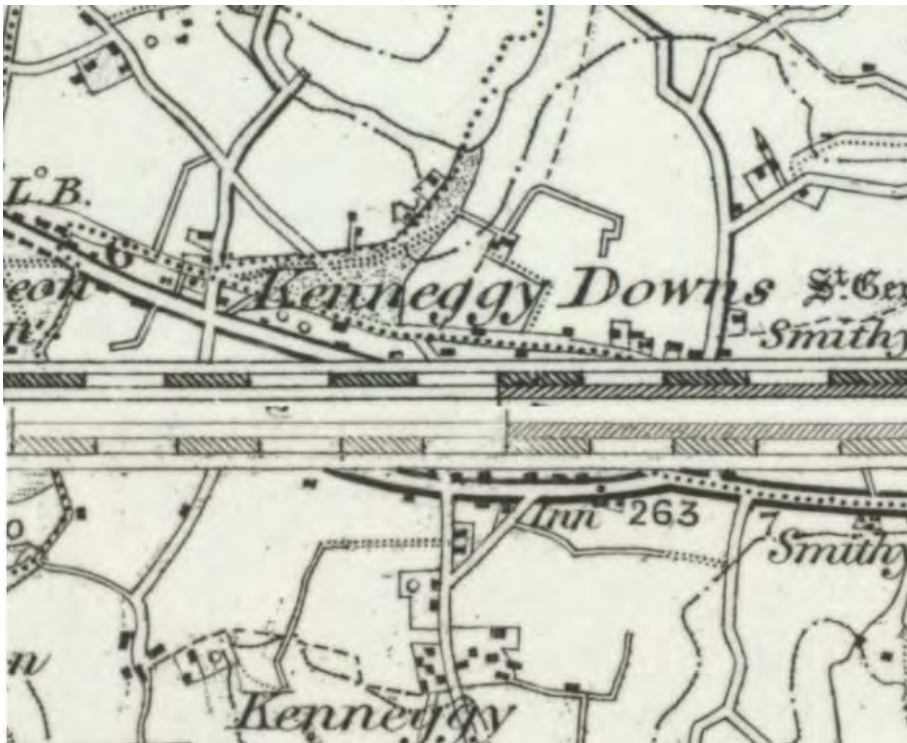


Google Earth View of whole route.



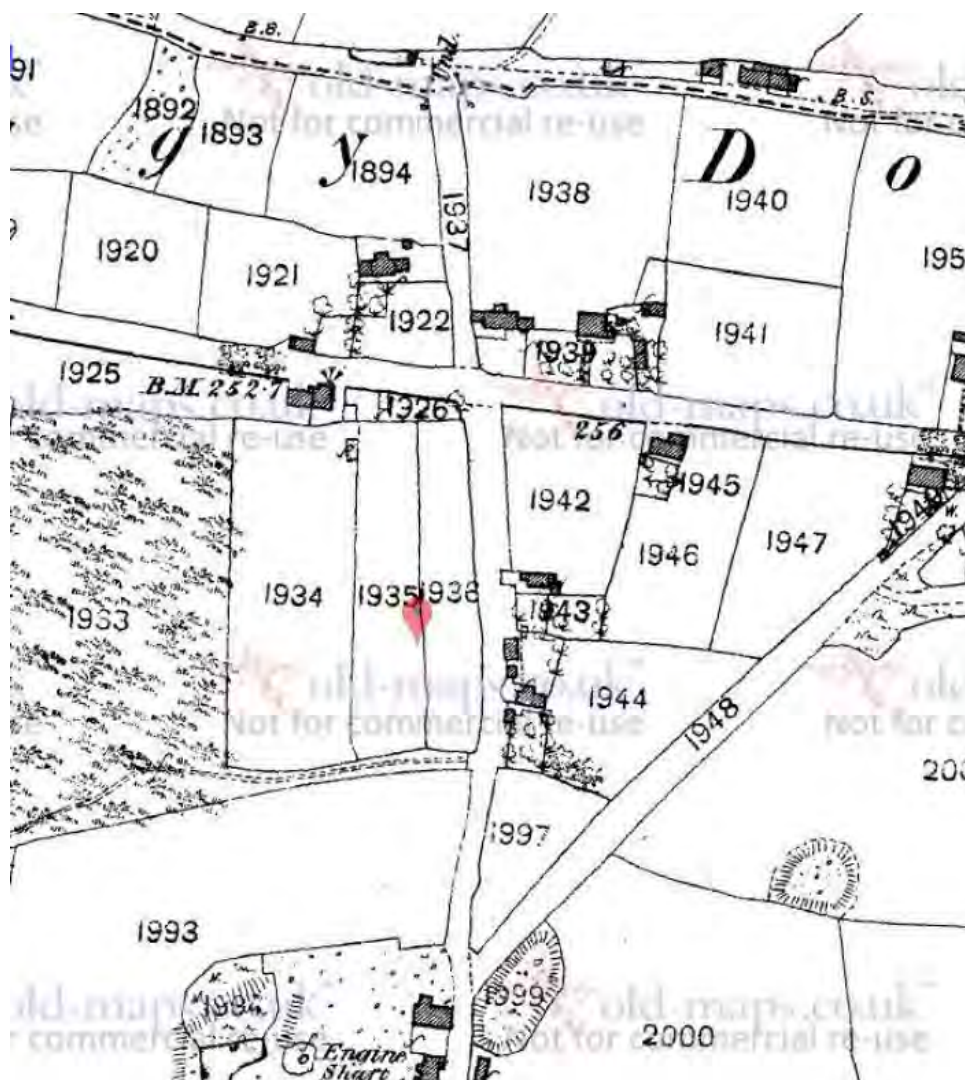
OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913

Route is clearly shown as a road.



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

1878 revision



lane plot 2043





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

Route is shown as road.



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

Path clearly shown as road



Geographia 2 inch

Route is clearly identifiable as is the old coach road.



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

North of A394 definitely excluded- South of A394 could be partially excluded not totally clear as is the county road running south.



Tithe Records

Whole of route is plot 3665b contiguous and in common with current county roads including the A394



Apportionment 3665b

COMMONS, ROADS, AND WASTES.			
3604A	Roads and Wastes, at Higher Kenneeggy	12 0 0
3605B	Roads and Wastes, at Lower Kenneeggy	7 3 9
3605A	The Beach	18 3 8
3606A	Roads and Wastes, at Pen-treath, and Prah Sand	40 2 12

Parish Area Books

Plot 2043 'Road'

2036	3·768	Arable, &c.	2086	1·781	Furze.
2037	·087	Rough pasture.	2087	2·595	Arable, &c.
2038	4·334	Arable, &c.	2088	1·354	Arable, &c.
2039	5·625	Arable, &c.	2089	·838	Arable, &c.
2040	5·887	Arable, &c.	2090	5·224	Arable.
2041	6·321	Pasture, &c.	2091	·339	Road.
2042	·953	Houses, yards, &c.	2092	3·105	Pasture.
2043	2·193	Road.	2093	4·502	Pasture.
2044	1·544	Houses, yards, &c.	2094	·116	Road.
2045	1·799	Pasture.	2095	4·869	Arable.
2046	1·454	Arable.	2096	3·189	Arable, &c.
2047	3·166	Pasture.	2097	7·180	Arable.
2048	1·404	Pasture.	2098	·625	Pasture.

Plot 1937 'Road'

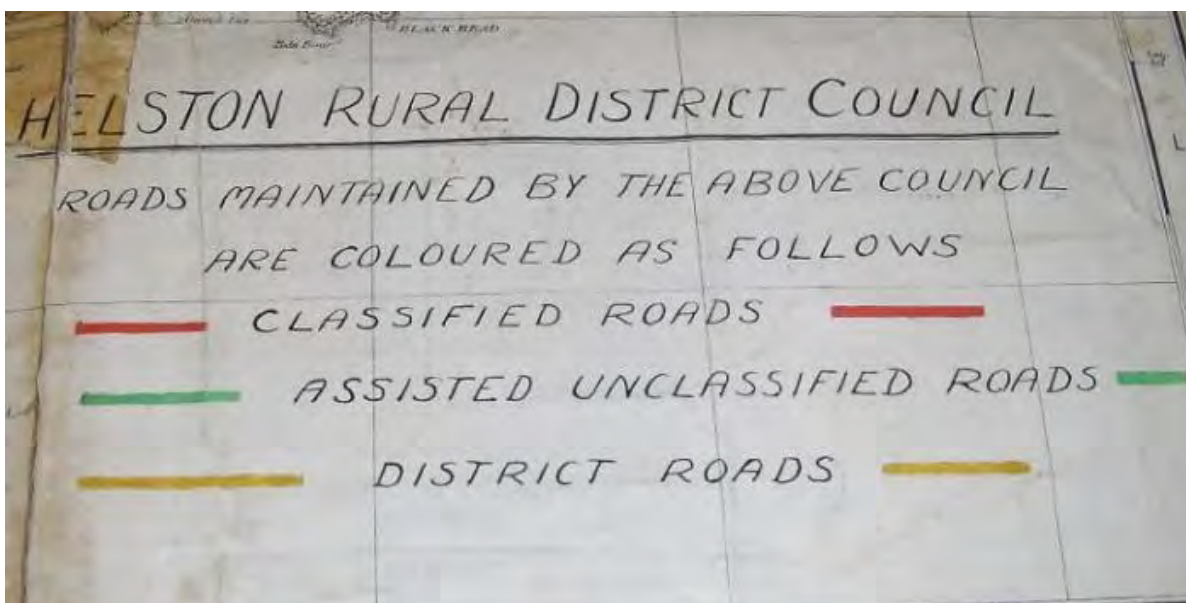
1930	4·063	Furze, &c.	1980	1·048	Arable.
1931	·683	Furze.	1981	5·424	Arable.
1932	·718	Arable.	1982	3·653	Arable.
1933	2·865	Furze, &c.	1983	2·898	Road.
1934	1·193	Arable, &c.	1984	3·494	Arable.
1935	·615	Pasture.	1985	3·388	Arable, &c.
1936	·480	Arable.	1986	2·700	Pasture, &c.
1937	·205	Road.	1987	3·553	Arable, &c.
1938	1·229	Arable.	1988	·490	Road.
1939	·367	Houses, gardens, &c.	1989	1·707	Furze.
1940	·846	Arable.	1990	1·050	Furze, &c.
1941	·627	Pasture.	1991	1·988	Arable, &c.
1942	·579	Pasture.	1992	3·895	Arable, &c.

Handover Maps 1929 Act

Lower section of route clearly marked in yellow. (in preference to the current county road which is shaded black)



Map Key

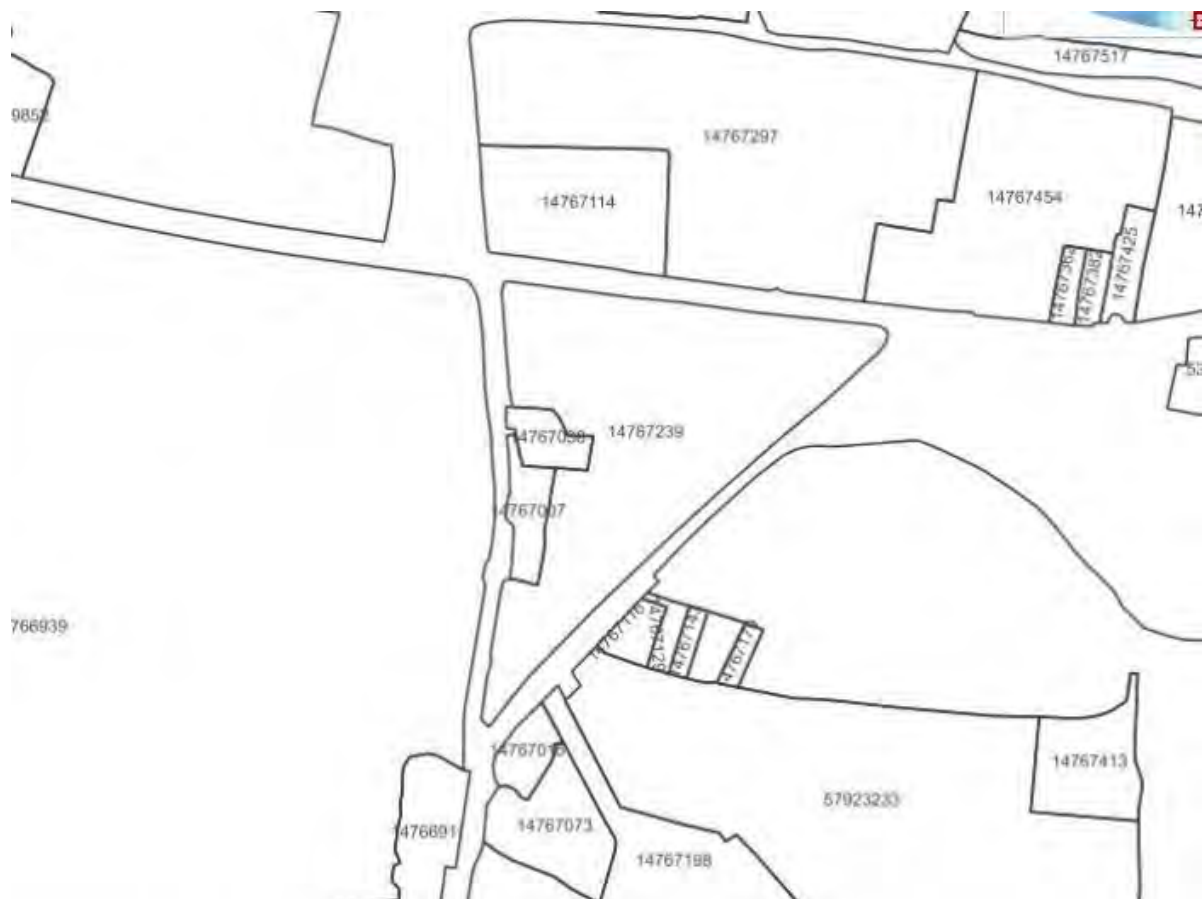


Land Ownership

Registered land shown in blue (LR polygons)



Land Registry 'Inspire' Map



APPENDIX II - Evidence Sources

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

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