

Our Ref: COR-2499	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

from:

to:

(c) Upgrading to a Restricted Byway the Bridleway

from: Byway 117 St Just Gridref: SW36423290 Gridref: SW36423290

to: County Road U6009 Gridref: SW36843276 Gridref: SW36843276

(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: 6 August 2020.....

APPENDIX

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.

Definitive Map Records

Our Path Reference: COR-2499

Parish: St Just-in-Penwith **Grid Reference:** SW366327

Application Details

Map of Path:

Route applied for is shown in RED DASHES



Description of Path:

Path starts at Byway 117 St Just SW36423290 and ends at County Road U6009 SW36843276

Old Lane bridleway much of it is used by vehicles

Current Recorded Status:

Path is recorded on the Definitive Map as Bridleway.

Path is not recorded on the List of Streets.

Status to be applied for: Restricted Byway

Notes:

Path is not obstructed. Path is walked, ridden and cycled. It may be overgrown along some of its length.

Our Path Reference: COR-2499 Grid Reference: SW366327

Path starts at Byway 117 St Just SW36423290 and ends at County Road U6009 SW36843276

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 - Publication date: 1896 Path is clearly shown as a road, in common with Byway 117

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

Cornwall LXVII.13 Published: 1878 - Path is clearly shown as a road or lane, in as plots 1260a and 1263b both listed as road. It should be noted that Byway 117 is plot 1200 and it is similarly listed as road.

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 track or road.

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

10/33 - A 1951 - 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.

Path is shown as Road from Botallack to coast and looping back again.

Johnston's Motoring Touring maps of England and Wales

Shown as a road to the cliff area

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.

128/5/795 and 796 - 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 exclusion is in common with the byway at the west and county road at the eastern end. 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.

1688 Truthwell Moor - Waste - Apportionment 1688 - No tithe payable.

Parish Area Books

plots 1260a and 1263b listed as 'Road'

Other Evidence:

Definitive Map Records

We have been unable to access the original path surveys (COVID19). It is noted that the CC 2005 aerial view shows how the used route migrated off the definitive line. The definitive line follows exactly the route of the road as depicted on the 1878 25 inch map

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.

All except a small section near the eastern end are registered. The majority is owned by the NT.

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. There is no evidence to suggest that the exclusion should not be interpreted in this way nor why the path was only recorded as a bridleway.

The OS 25 inch map showing the path as a Road in separate plots which is consistent with being of highway status. Also note the open bracing signifying the exclusion from the plots it passes through supporting the premise that it is a road. At that time, the primary mode of transport was pack horse, cart or carriage. It is inconceivable that any such available route would not be used for the transport of goods by horse drawn vehicles from the mine complex, and via the shortest route to hand.

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. It is important to note the whole route connects byway 117 to Botallack.

There is no evidence as to explain why the recorded status of the path differs from the connecting Byway 117 which is similar unmade road.

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

Aerial View of Start of route from Byway 117



Exit onto County Road

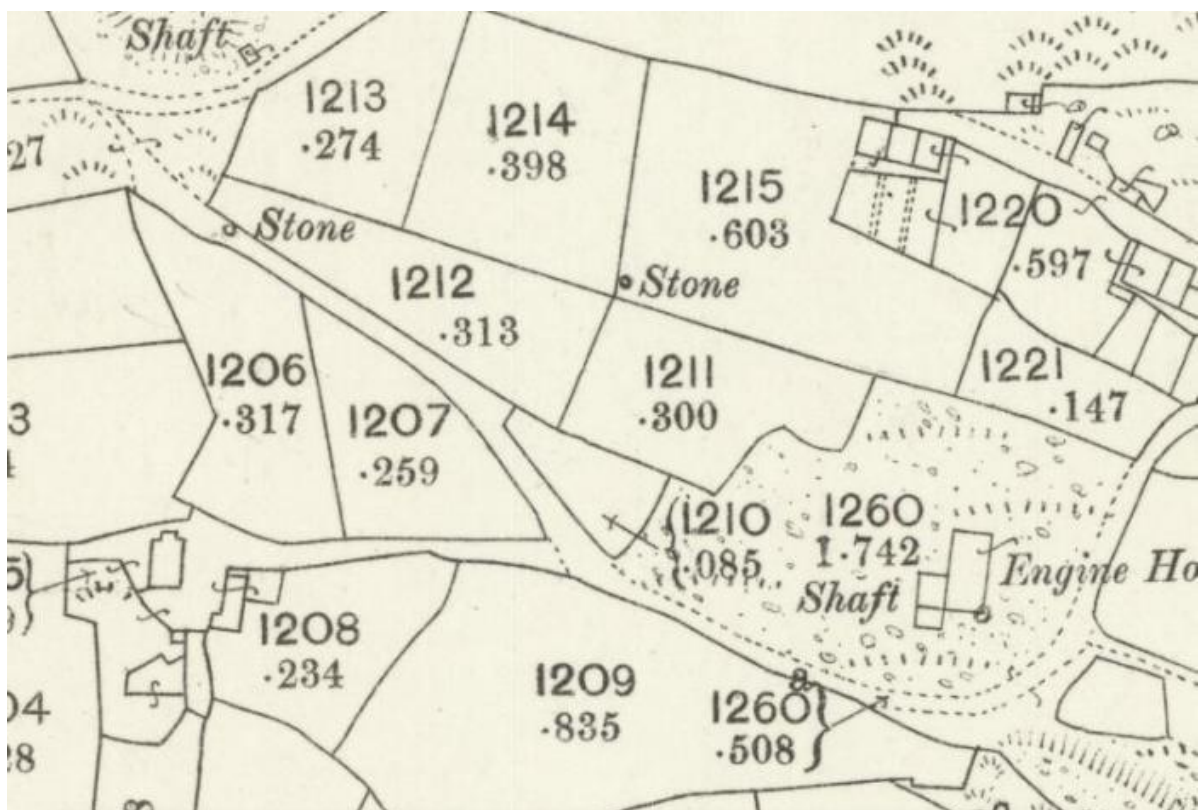


OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913



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

Western half



Path is clearly shown as a track or road.



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

10/33 - A 1951 - Path is clearly shown as a road.



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

Note that on this map it is shown in preference to the coastal byway indicating that it is a



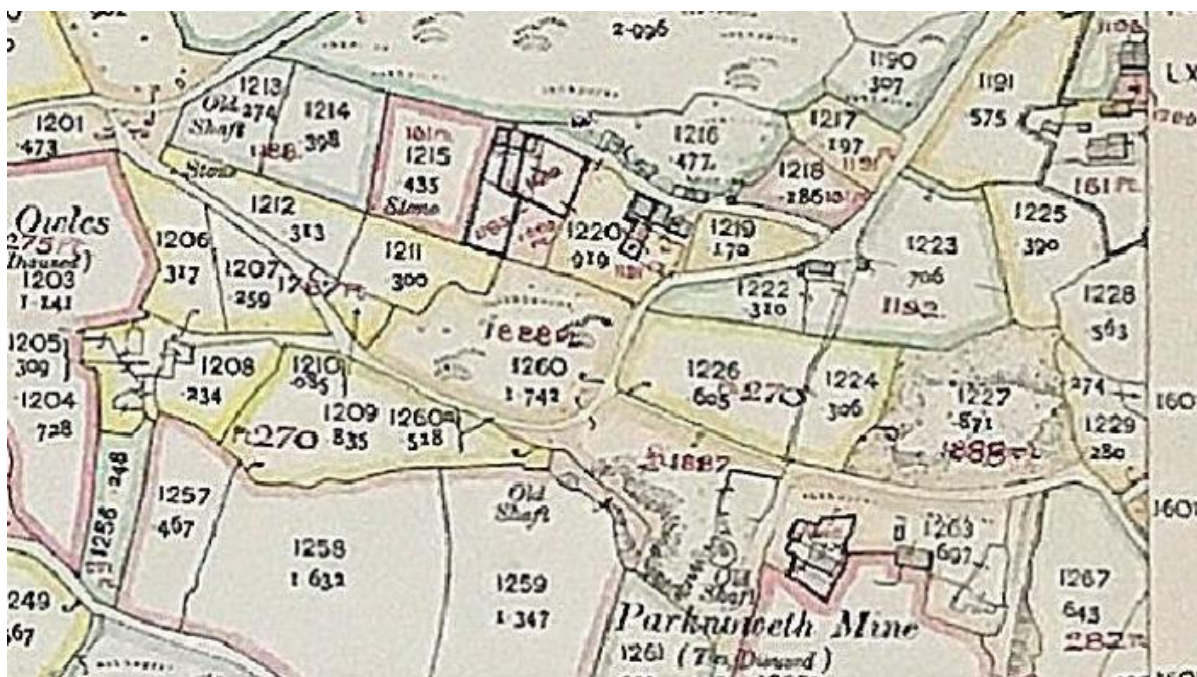
Johnston's Motoring Touring maps of England and Wales

Shown as a road to the cliff area

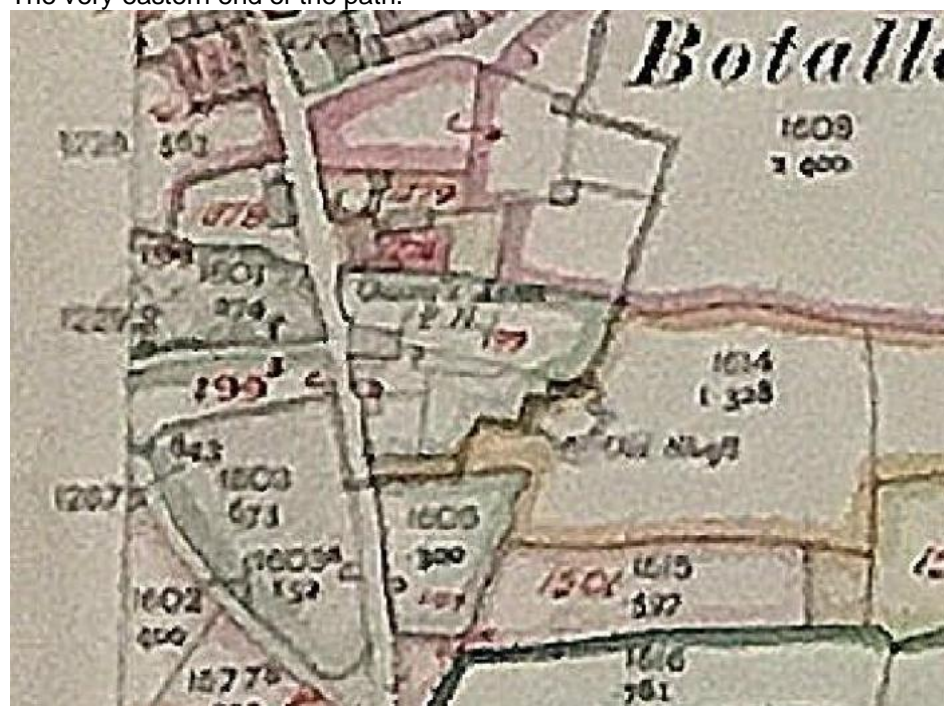


Inland Revenue Valuation Records - Finance (1908-10) Act 1910

Path is excluded from hereditaments



The very eastern end of the path.



Land Ownership

Registered land shown in blue. (LR polygons)



LR 'Inspire' Map



APPENDIX II - Evidence Sources

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