

Our Ref: 113/F	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 C0324 Gridref: SW50913855

to: County Road U6017 Gridref: SW50723810

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

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: 18 January 2021.....

APPENDIX II Evidence Documents

List of Evidence Documents

Ordnance Survey First Series

, 31, 1813, National Library of Australia (Web)

Ordnance Survey. One-inch to the mile, Revised New Series

, Sheet 351, 1896 Revision, National Library of Scotland (Web)

Ordnance Survey, 25 inch to the mile

, Sheet LXI.15, Surveyed 1876, www.old-maps.co.uk/

Ordnance Survey, 25 inch to the mile

, Sheet LXI.15, 1907 Revision, National Library of Scotland (Web)

Ordnance Survey, 25 inch to the mile

, Sheet LXI.15, 1907, National Library of Scotland (Web)

Ordnance Survey. Six-inch to the mile

, LXI.NE & SE, 1877, National Library of Scotland (Web)

Ordnance Survey, 1:25,000, First Series

, 10/53, 1951, National Library of Scotland (Web)

Geographia

, Cornwall Sheet 15, circa 1930, British Horse Society

Inland Revenue Valuation Map - Finance Act 1908-1910

, NA 128/5/729, LXI.15, National Archive

Inland Revenue Valuation Map - Finance Act 1908-1910 Continued

Parish Tithe Map - St Ives

, County Records Office

Parish Tithe Map St Uny Lelant

, County Records Office

Parish Tithe Map - St Ives

, County Records Office

Parish Tithe Apportionments

, County Records Office

Ordnance Survey Parish Area Book Uny Lelant

, British Horse Society/National Archive

Handover Map Local Government Act 1929

, St Ives, Cornwall Council

Handover Map Local Government Act 1929

, St Ives Key, Cornwall Council

Definitive Map

, Penwith, Cornwall Council

Parish Path Survey

, St Ives, Cornwall Council

Cornwall Council Map

, Cornwall Council

DEFRA Magic Map (web)

, DEFRA/ Natural England

Land Registry 'Polygons' Map

, Land Registry

Land Registry 'Inspire' Map

, Land Registry

Our Path Reference: 113/F

Parish: St Ives Grid Reference: SW506383

Application Details

Map of Path:

Route applied for is shown in RED DASHES



Description of Path:

Path starts at County Road C0324 SW50913855 and ends at County Road U6017 SW50723810

First part is an unsealed hedged lane skirting Halsetown to Halsetown Manor Farm. The lane continues to then go southerly across a Section 193 Common to join the county road.

Current Recorded Status:

Path is not recorded on the Definitive Map
Path is not recorded on the List of Streets.

Status being applied for: Restricted Byway

Notes:

Path is obstructed over the common seemingly deliberately with a garden shed..
This track, until recent years, was regularly ridden but not designated and often gets overgrown. Users have been aggressively challenged. User evidence will be obtained.

Our Path Reference: 113/F Grid Reference: SW506383

Path starts at County Road C0324 SW50913855 and ends at County Road U6017 SW50723810

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

First Series 1813. This map drawn before Halsetown was built shows a long road from Carbis Bay running Westwards, This road no longer exists in its entirety. However the section along which our application runs does still exist.

Sheet 351 Publication date: 1896 All the route of this application is clearly shown.

It is most important to note that the track down from Halsetown Farm to the County Road is the only route marked on the map which demonstrates the significance of the route as major thoroughfare. The routes of the current footpaths are not shown.

Ordnance Survey Maps - 25 inch England and Wales

Sheet LXI.15 Surveyed: 1876 - The first part of the route is shown as road with plot numbers.

The parish boundary runs down the centre of the Road.

The northern side is in St Ives plot numbers 1125 and 1123

The Southern side is in St Uny Lelant, plot number 18.

Plot 1125 is recorded as 'Rough Pasture' despite the southern width of the road plot 18 being recorded as 'Road' in Lelant parish.

Plot 1123 is described as 'Road'.

The Road is not gated.

It should be noted that the parish boundary is marked C.R. (ie down Centre of Road). This shows that the 'Rough Pasture' designation in Area book must be a mistake.

On the later map published 1907 it is interesting and significant to note that two of the paths are marked F.P, but the route of this application is not labelled. We submit that is because it was deemed to be of higher status than footpath and noting the depiction on the 1 inch map (above).

OS Six Inch Ordnance Survey Maps - Six-inch England and Wales

Cornwall LXI.NE & SE Surveyed: 1877 Route is clearly shown with track over the common land.

Ordnance Survey, 1:25,000 maps of Great Britain

10/53 Publication date: 1951 - Route is clearly shown as road all the way through.

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 application route is shown running down to Balnoon. The start of the route is shown running along the original route which is currently FP 58.

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 128/5/729 The photographed image is not totally clear. It would appear that at least some of the path is excluded from hereditaments. Local Kresen Kernow copy needs checking.

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.

Plot 284a Apportionment states 'half of Polmantha lane, Waste.'

359 'Lower Downs'

474 Higher common plot

284 'Huel flat common, Waste'

Tithe status breakdown is not given for these plots.

The St Uny Lelant Tithe map labels the way as Polmantha Lane and waste.

The St Ives Tithe map to the northern side of the road is shown in the same unnumbered plot as adjacent county roads and not listed in apportionments.- no tithe payable.

The naming of the road as 'Polmantha Lane' shows that the road was an important historical road to Polmantor (East of Halsetown - see attached map in appendix)

Parish Area Books

Uny Lelant Plot 18 Road

St Ives 1123 Road ,1125 Rough Pasture

Handover Maps 1929 Act

St Ives 2. The north east end marked with dashed line, the yellow and green colours have faded under the tape. The yellow colour indicates 'Other Roads' (see key) maintained at the public expense. It is noted that St Ives do not appear to have claimed maintenance for the road along the boundary. We do not have the handover map for Uny Lelant. There is no reason to doubt that the 'maintained county road' status should not apply to the continuation of the roads maintained by St. Ives.

It also should be noted that there are large smudged dashes drawn along our application route to the parish boundary stone. This could be of significance.

Other Evidence:

Definitive Map Records

The Definitive map shows THREE footpaths joining the route of the application, which does not have any recorded status, and is not on the list of streets.

The lack of recording of the lane on the definitive map is an indication that it was considered to be a public road and therefore could not be recorded on the map.

Paths were not drawn that did not go anywhere or deliver users to another right of way.

FP's 55 and 56 join the route. Statements for these paths say:

'55 FP from Laundry to Balnoon'

'56 FP from west of Laundry, continues west to B.3311'

Laundry is marked on the OS 25 inch maps by Halsetown.

In particular it should be noted that FP 56 joins on to the old lane and directly leading to Laundry. It is most clear that the old lane was considered to be highway.

The term Laundry could mean a stream/watercourse/drainage (old Cornish) or laundry in the current sense. It obviously was a noted location for public access and such access being from both directions. Hence its consistent mention in the definitive statements.

Further Evidence

This application for the whole route can be examined and determined in two parts.

1. The first part from County Road to FP 56

The evidence for this being highway is very strong both from the Tithe Maps, other old maps and with very good evidence from the definitive map which clearly shows that all that part of the route was considered to be highway with three footpaths connecting to it.

This part of the application can stand alone without the second part described below.

- i. It connects from the county road to Section 193 Common which provides public access for horses.
- ii. It connects to FP 56.

2. The second part from FP 56 south to the other county road.

This part of the route is Section 193 Common under the Law of Property Act 1923 over which there is a public right of access for air and exercise and this includes horse riding.

Use of the route was challenged in April 2011 by occupiers of a permanent caravan dwelling erected on the registered Common land without permission.

A copy of an email sent to Cornwall Council in 2011 reporting this issue is attached. Many incidents and threats had also happened earlier than that date.

In 2013 Cornwall Council wrote to the landowner informing him that the land was Section 193 Common with rights of horse access.

Apart from the S193 designation the documentary evidence for recording this section on the definitive map relies largely on the depiction of the path as a track or road on all the old maps and on user evidence being gathered.

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 (see appendix) shows that all of the road to Manor Farm is excluded from registration. The plot shaded yellow is not owned but a caution has been registered relating to alleged private access rights by number 25, Halsetown.

Note that un-owned strip extends further east along what is now FP 58 but which was another part of the old road connecting to County Road (now Footpath).

The second image shows the aerial view of the lack of ownership of this section.

The fact that the road is excluded from registration yet plots either side are all registered is strongly suggestive of an ancient public highway.

Half of the southern section of the application route is registered. The bottom half is not registered but the plot alongside the route is.

Summary and Statement of Reasons:

1. First part of Route from County Road C0324 to FP 56

This part also connects to Lower Downs which is Registered Section 193 Common on which there are access rights for air and exercise which includes horse riding.

The old road is depicted on all old maps. The first series OS indicates that it was part of a significant route from Carbis Bay eastwards and beyond.

The road runs along the parish boundary which is annotated C.R. (Centre of Road) on the 25inch map to Halsetown Manor Farm.

Area Book evidence is good as the lane is described as 'Road' in the Uny Parish book and the northern leg as 'Road' in the St Ives parish book.

The St Ives 1929 Handover Map clearly shows the start of the application route is maintained, marked as 'Other Roads' and thus Public Highway. By inference the connecting bottom road along the parish boundary is also Public.

The St Uny Lelant Tithe map labels the way as 'Polmantha Lane and Waste'. The Tithe evidence is very strong and its alleged public status is enhanced by the Lane having a name which indicates where its destination was to the north.

Several recorded rights of way terminate on the lane which is the application route. We submit that the lack of recording of the lane on the definitive map is because it was a public road and thus could not be recorded on the definitive map. The short stretch from the Farm to FP58 is shown on the maps as an un-enclosed track. Paths were not drawn that did not go anywhere or deliver users to another right of way.

The Inland Revenue Map suggests that the old road is excluded from adjacent hereditaments. This is suggestive of an ancient public highway.

There are no gates along the route to discourage public access.

2. Second Part of the route from FP 56 southward across Section 193 Common to County Road.

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

Paths across Commons were regularly used by all and often were not recorded.

Alleged usage of this path by horse riders and walkers is consistent with the status of the land as 'Urban Common' with rights of air and exercise and with the status of the track as Restricted Byway

Conclusion:

The combination of the evidence from Old Maps, Tithe and Area Book, and Handover Map gives very strong indication that the first part of the route is highway and now should be recorded with Restricted Byway Status. Although the Inland Revenue map evidence as presented appears somewhat inconclusive. There is no evidence against the first part of the route being a public highway as suggested by the tithe.

The map evidence for the second part of the route is good and is strongly supported by the right of access already in place under Commons legislation. There is no evidence discovered against this part of the route being a public highway.

The application is likely to be supported by much User Evidence in the near future to show its past public usage. There is much evidence supporting the premise that the route is highway. There is no evidence found otherwise to indicate that the route is not dedicated as highway.

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 County Road at Halsetown



View of track continuing past Halsetown Farm note FP 55 on the left.



End of Route on County Road to the south.



2005 aerial image (CC) – of the second part of the route showing Definitive FPs purple and the route of the application red dots. The track is clearly visible passing through the trees.



OS One Inch Ordnance Survey Maps - One-inch England and Wales

Ordnance Survey First Series, 31, 1813

At the time of this map Halsetown was not yet built. The blue dots show the path of the current lane to Halsetown. The red dots the route of this application which runs along part of a long road depicted from Carbis Bay running Westwards



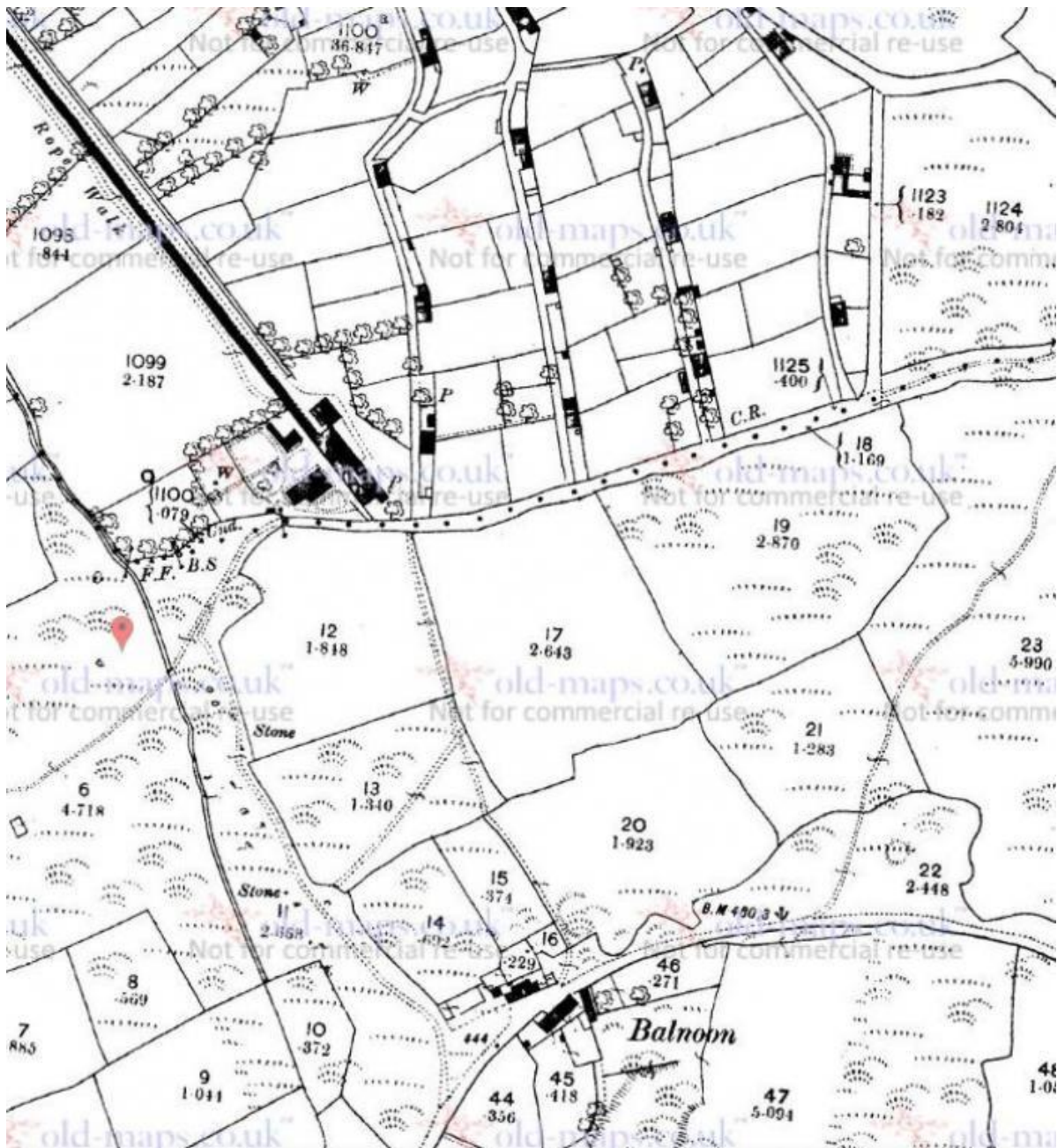
Ordnance Survey. One-inch to the mile, Revised New Series, Sheet 351, 1896 Revision

The whole route is shown and note particularly the track down from Halsetown Farm to the County Road.

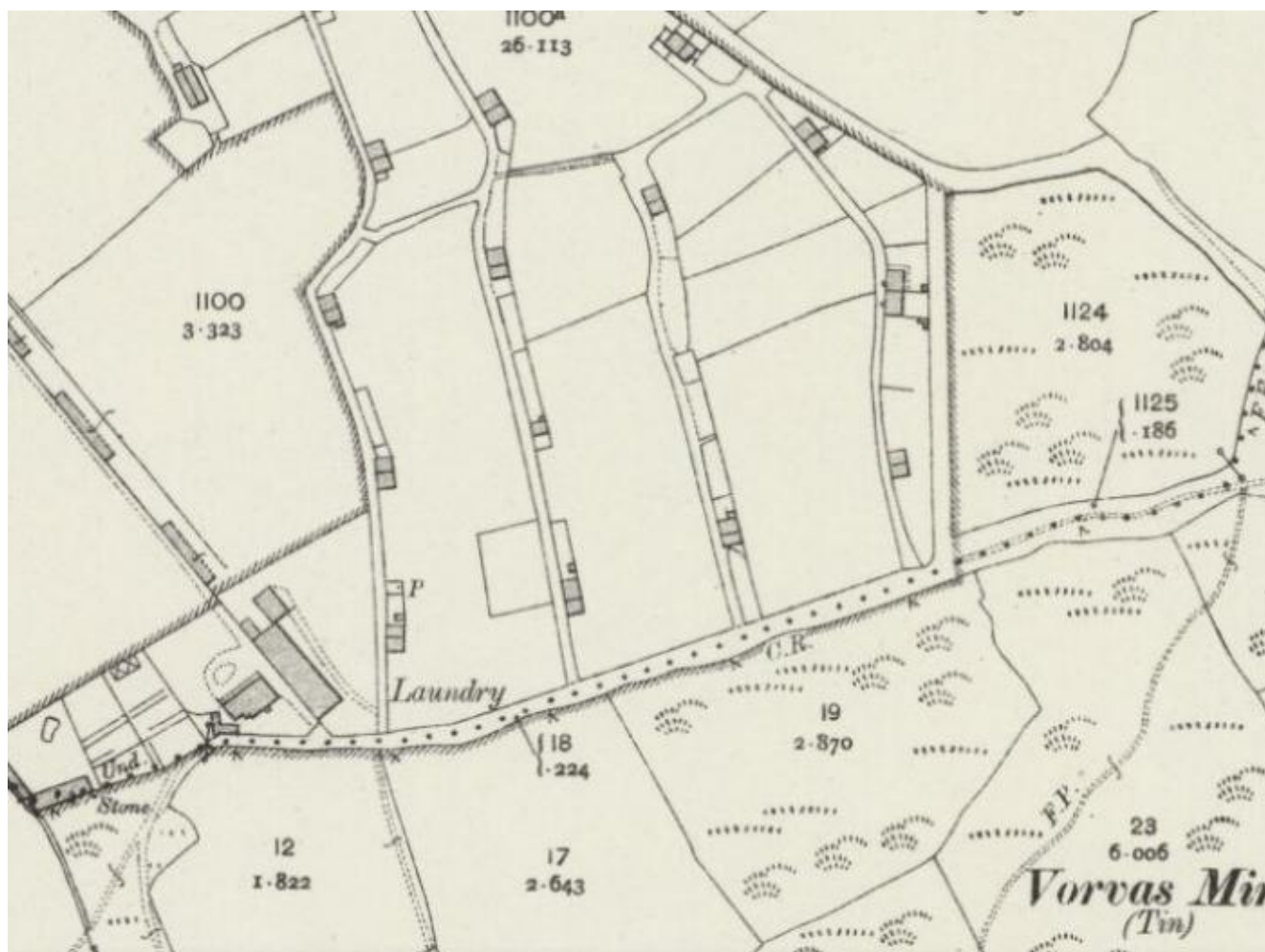


Ordnance Survey Maps - 25 inch England and Wales

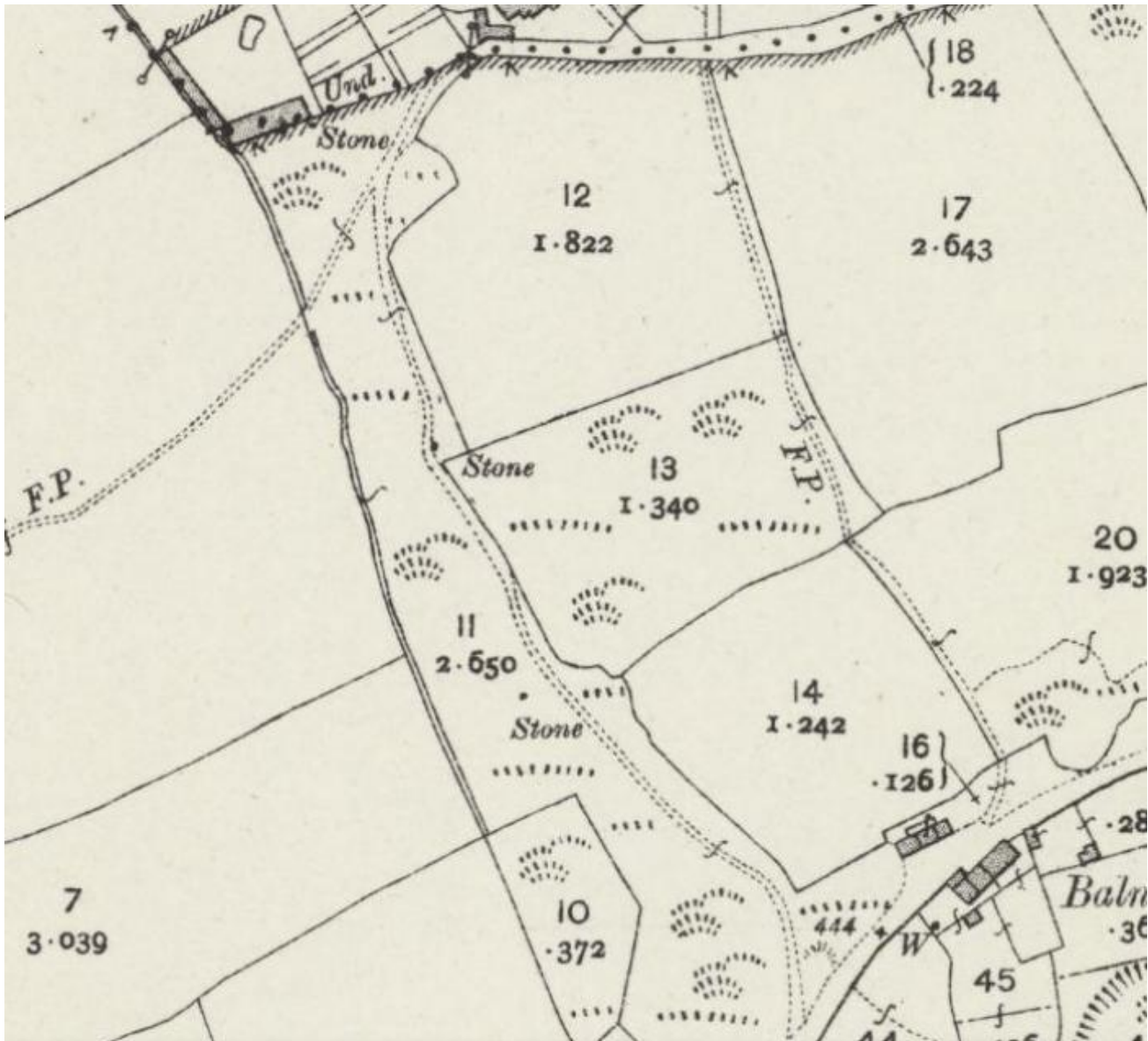
Ordnance Survey, 25 inch to the mile, Sheet LXI.15, Surveyed 1876



Plot 18 Uny Lelant



1907 Revision -The southern section shows the adjoining paths are labelled F.P. The application route does not have the F.P. qualification implying it is of higher status. the lane.



OS Six Inch Ordnance Survey Maps - Six-inch England and Wales

Ordnance Survey. Six-inch to the mile, LXI.NE & SE, 1877

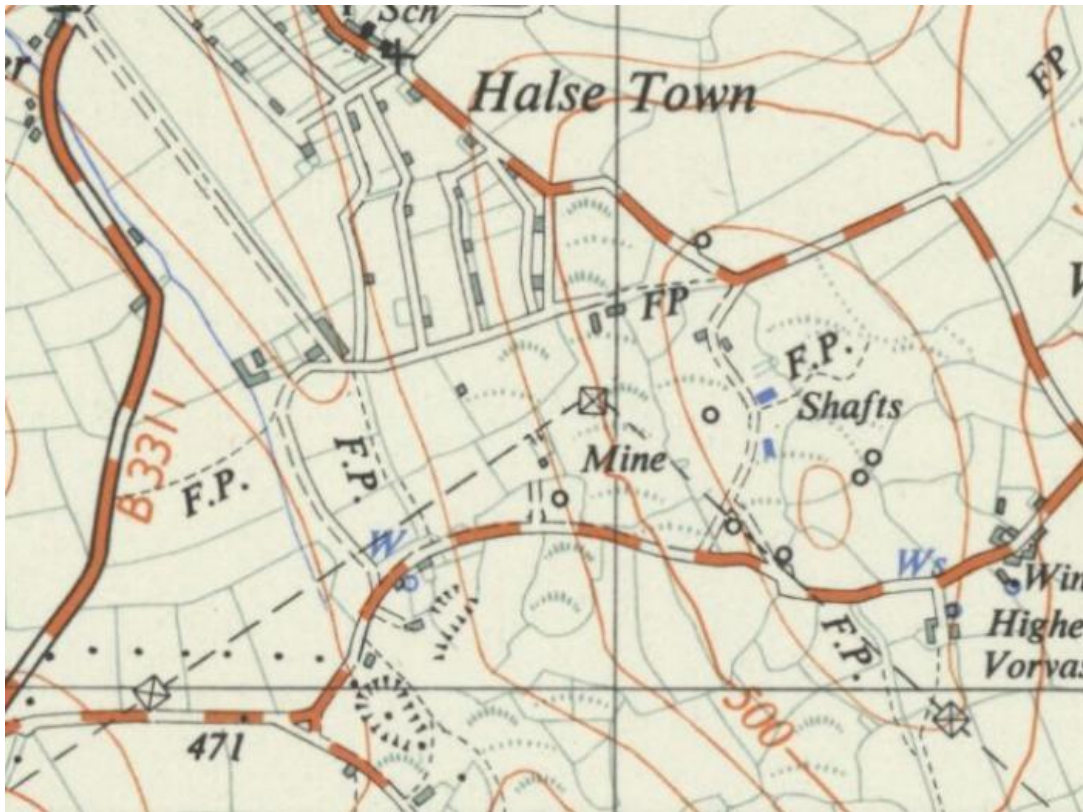
Route is clearly shown with track over the common land.



Ordnance Survey, 1:25,000 maps of Great Britain

Ordnance Survey, 1:25,000, First Series, 10/53, 1951

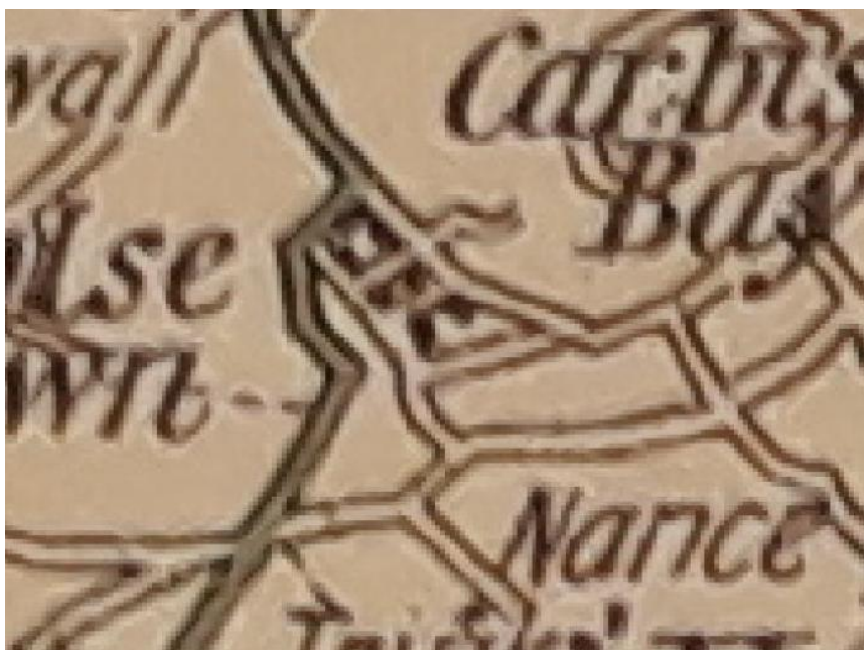
Clearly shown as a road/track



Geographia 2 inch

Geographia, Cornwall Sheet 15, circa 1930

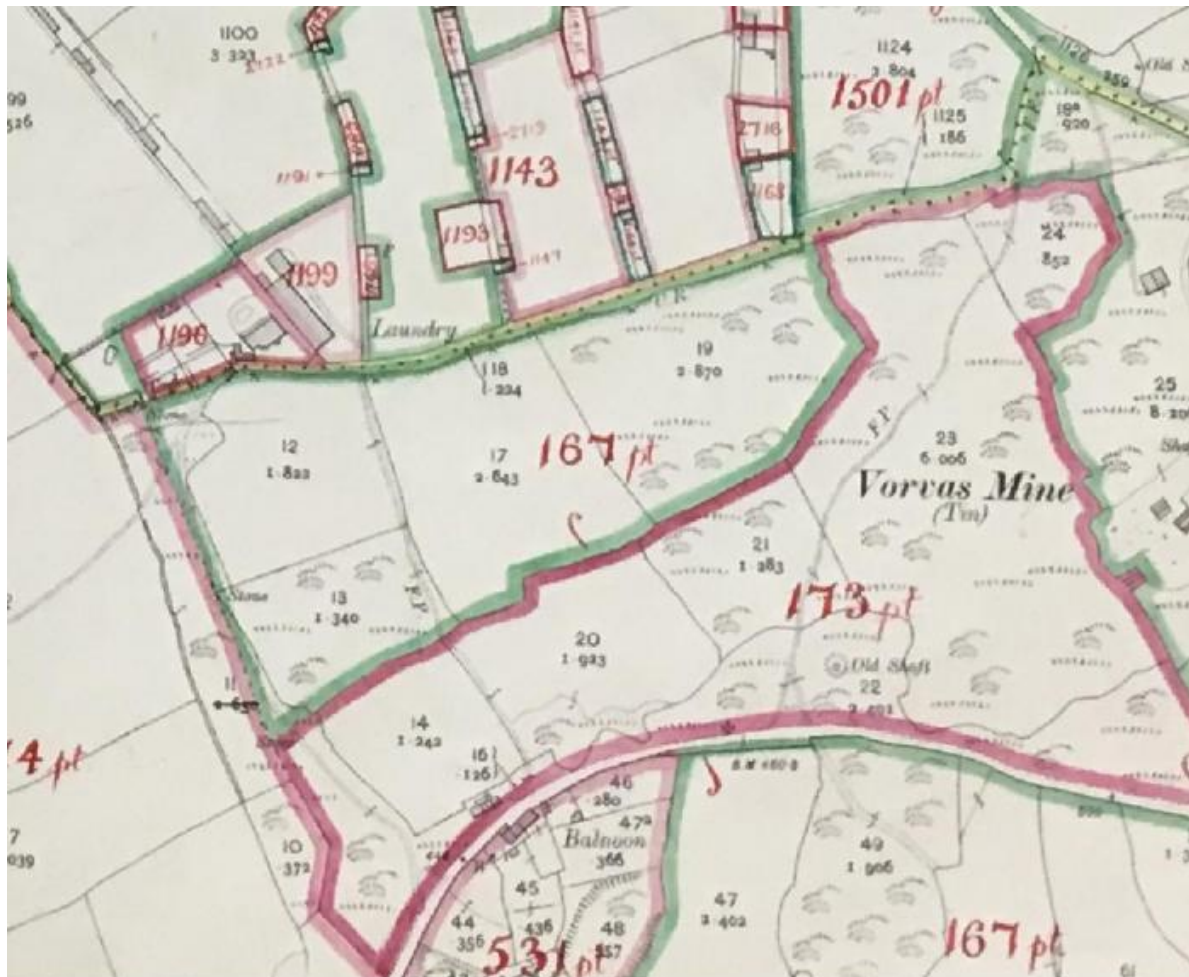
The application route is shown running down to Balnoon



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

Inland Revenue Valuation Map - Finance Act 1908-1910, NA 128/5/729,LXI.15

Hereditaments are split along parish boundary/road



Inland Revenue Valuation Map - Finance Act 1908-1910 Continued

Close up of section of path. Some of the path appears to be outside of both hereditaments



Tithe Records

Parish Tithe Map - St Ives

Route is shown unnumbered contiguous with other county roads



Parish Tithe Map St Uny Lelant

Parcel 284a Southern half of 'Polmantha Lane' , Plot 284 is 'Waste'



Parish Tithe Map - St Ives

Wider view showing 'Polmantor' which will explain why the road is named (in Uny Lelant Tithe) as Polmantha Lane (misspelling as often happens)



Parish Tithe Apportionments

Uny Lelant Apportionments

			A.	R.	P.
		Brought Forward	8	0	22
359	Lower Down Common	Morass		3	22
274	Lower field	Arable	2	1	3
275	Lower field	d ^e	2	2	24
281	Lower field	d ^e		3	27
282	Great d ^e	d ^e	1	3	10
283	Gayn Down	partly destroyed by mining	8	3	24
284	Fuel Flat Common	Waste		3	7
291	Croft Vental	Purze	1	1	8
323	Sal noon sile	Arable	1	0	20
324	Meadow	d ^e and waste		3	4
325	Sal noon Common	d ^e d ^e	3	1	26
284 ^a	1/2 of Polmantha Lane	Waste		1	12
			38	1	4

Parish Area Books

Ordnance Survey Parish Area Book Uny Lelant

Plot no 18 'Road'

12	1-070	Arable, &c.	48	1-004	Pasture, &c.
13	1-340	Rough pasture, &c.	49	.830	Arable.
14	.692	Rough pasture, &c.	50	1-025	Arable.
15	.374	Rough pasture, &c.	51	.943	Arable.
16	.229	Houses, yards, gardens, &c.	52	.378	Houses, yards, &c.
17	2-643	Arable.	53	1-315	Pasture.
18	1-169	Road.	54	1-087	Arable.
19	2-870	Rough pasture, &c.	55	1-093	Arable.
20	1-923	Arable, &c.	56	.613	Arable.
21	1-283	Rough pasture, &c.	57	.225	Pasture.
22	2-448	Rough pasture, &c.	58	.349	Garden, &c.
23	5-990	Rough pasture, &c.	59	.363	Garden, &c.
24	.852	Rough pasture	60	2-387	Pasture.
			61	2-284	Arable.

Handover Maps 1929 Act

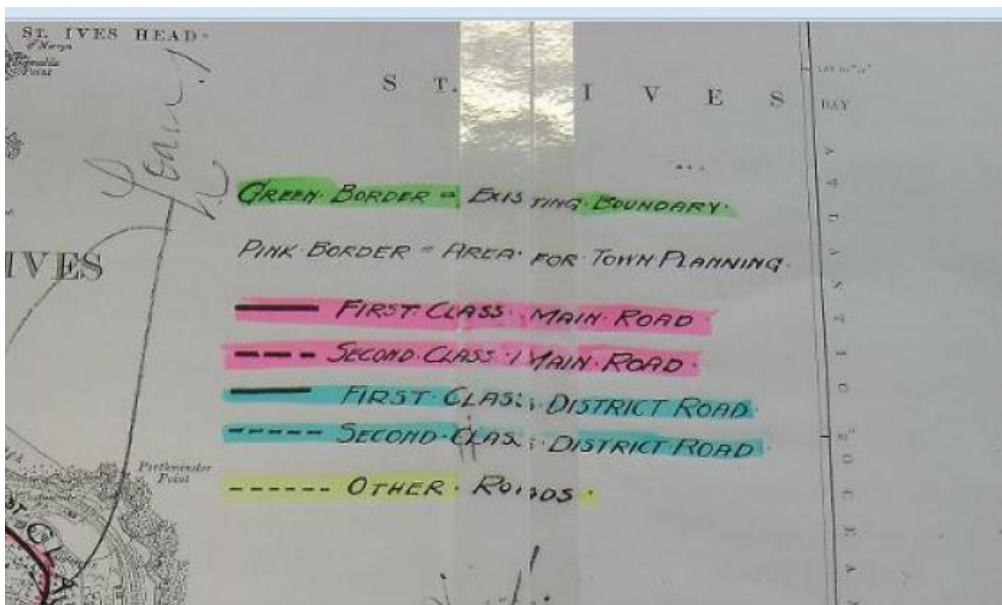
Handover Map Local Government Act 1929, St Ives

Heavy dashes indicate maintained roads - yellow colour has faded under sellotape



Handover Map Local Government Act 1929, St Ives Key

Note that sellotape has caused the colours to disappear



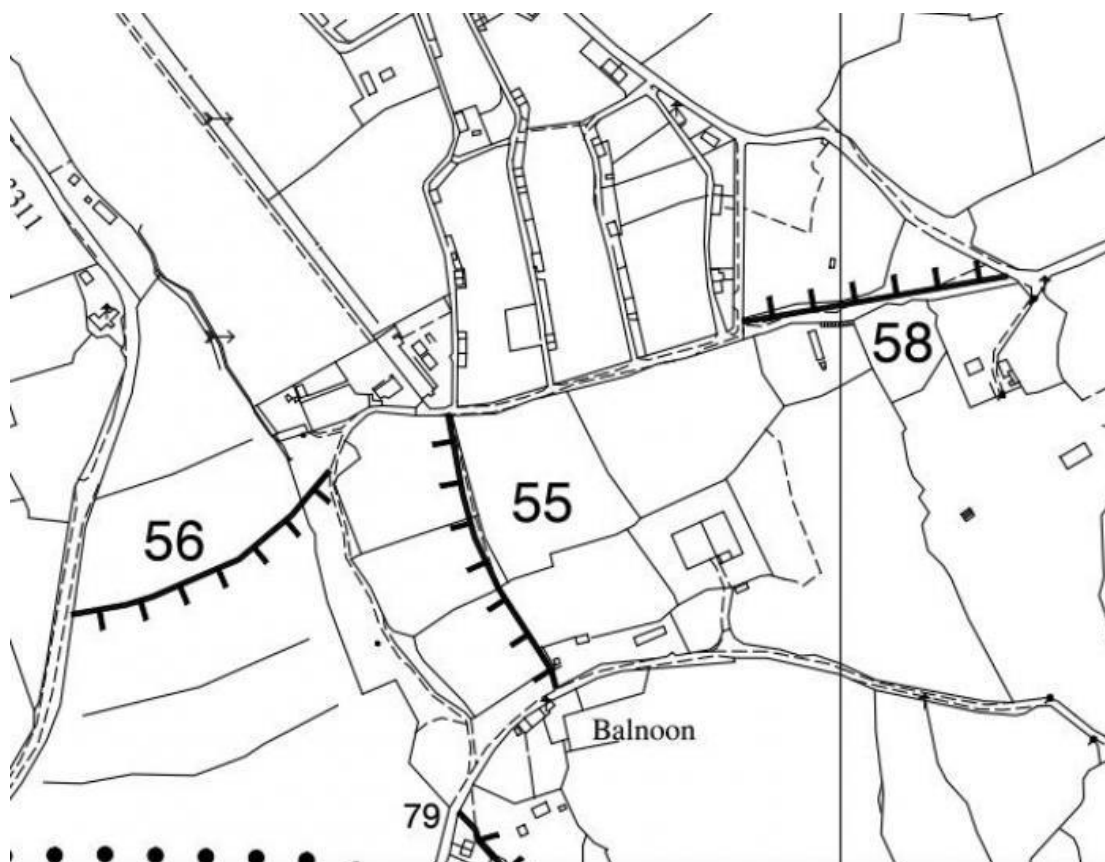
The map shows the Halse Town area in North Wales, with the Ives and Steennack valleys. Key features include:

- Topography:** Contour lines indicating elevation, with labels such as 100, 200, 300, 400, and 500.
- Water Features:** The Halse River, Halse Water, and various streams and ponds.
- Settlements:** Halse Town, Steennack, and other smaller villages.
- Landmarks:** St. Mary's Church, St. John's Church, and various mines and quarries.
- Grid System:** A grid system with labels such as 'I V E S', 'B 3306', and 'B 3511'.
- Infrastructure:** Roads, railways, and bridges.

Definitive Map Records

Definitive Map, Penwith

The dependence on the application route for the integrity of the definitive map is clearly seen.



Parish Path Survey, St Ives

Definitive statements for paths 55.56 and 58

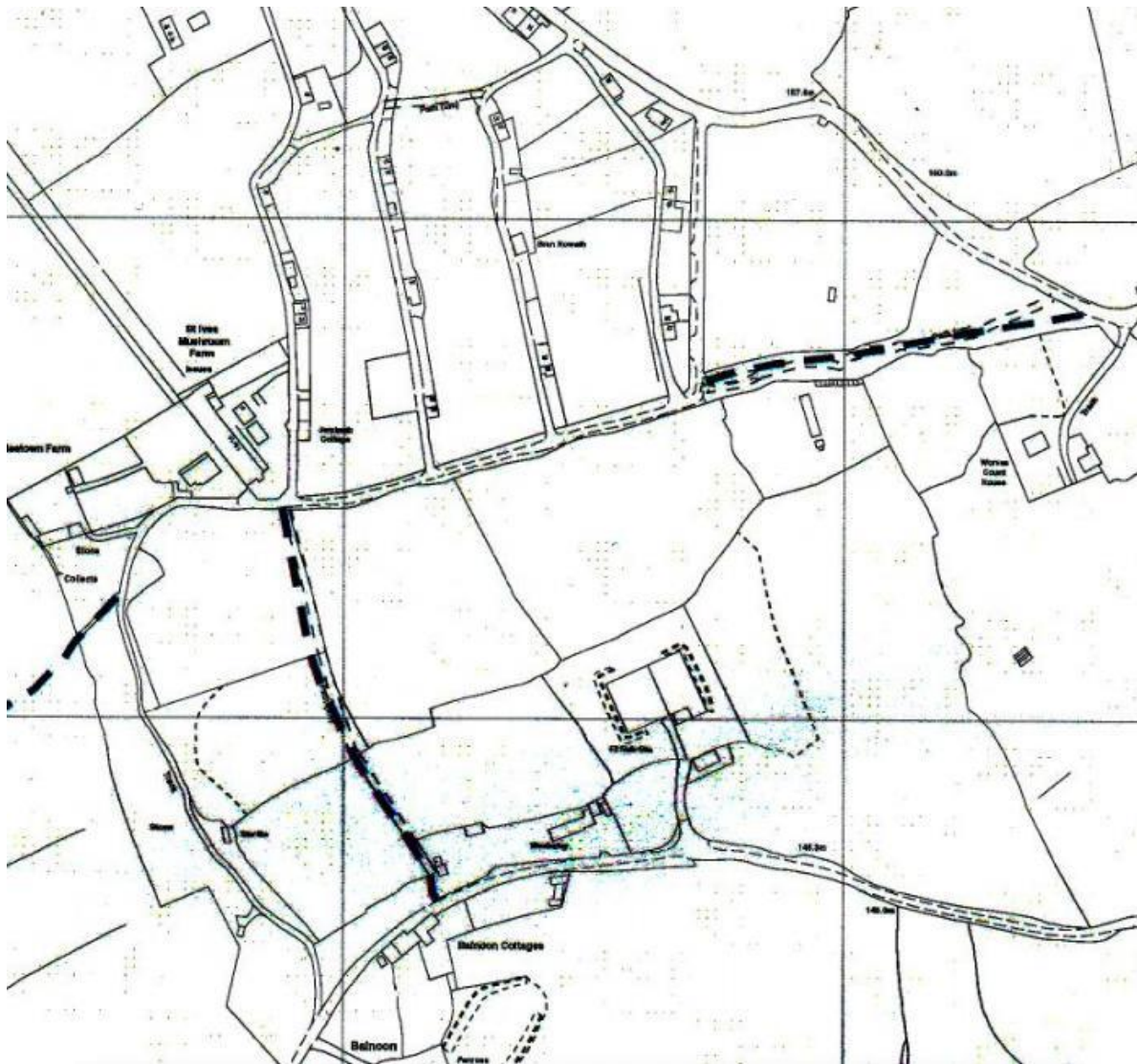
Town of ST IVES

Relevant Date 2nd February 1998 - Sheet 4

NO.	LOCATION	AVERAC WIDTH
55	FP from Laundry to Balnoon	-
56	FP from west of Laundry, continues west to B.3311	-
57	FP from eastern end of FP 20 via Higher Burthallan to Clodgy Point Metalled 6'0"	
58	FP from east of Laundry, proceeds to lane from Halse Town	-

Cornwall Council Map

This map shows the track clearly marked



Other Evidence
DEFRA Magic Map (web)

Showing S193 Common shaded purple



Land Ownership

Land Registry 'Polygons' Map

Land Registry polygons in blue showing registered land. The yellow is not owned but a caution registered claiming a private way of way. The magenta plot alongside the application route is registered by the owner of the caravan dwelling at the side of the application route.



Aerial view of first section with landownership superimposed



Aerial view of southern section with landownership superimposed. Note ownership of plot along side application route



Land Registry 'Inspire' Map



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Ordnance Survey. Six-inch to the mile

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Ordnance Survey, 1:25,000, First Series

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Geographia

, Cornwall Sheet 15, circa 1930, British Horse Society

Inland Revenue Valuation Map - Finance Act 1908-1910

, NA 128/5/729, LXI.15, National Archive

Inland Revenue Valuation Map - Finance Act 1908-1910 Continued

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Parish Tithe Apportionments

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