

Our Ref: COR-1029	<b>Cornwall Council</b>	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** [redacted]

**Of :** [redacted]

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 U605325 Gridref: SW72614164

to: County Road U605328 Gridref: SW72674146

(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: 22 February 2021.....



**Our Path Reference: COR-1029**

**Parish:** Carharrack **Grid Reference:** SW726415

## Application Details

### Map of Path:

Route applied for is shown in RED DASHES



### Description of Path:

Path starts at County Road U605325 SW72614164 and ends at County Road U605328 SW72674146

Old Hedged Lane

### 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 not believed to be obstructed.

Path is believed to be walked.

Northern part used for farm access .

**Our Path Reference: COR-1029 Grid Reference: SW726415**

Path starts at County Road U605325 SW72614164 and ends at County Road U605328 SW72674146

## **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 31 1813 Revision - The route is clearly identifiable although the some adjacent roads have since altered. It appears part of a longer through route from North to South

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

Sht LXIII.8 1880 Path is shown as a road or lane. Plot no. 1423

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

Cornwall LXIII.NE (includes: Camborne Redruth.) Surveyed: 1877 to 1879 - Route is clearly shown as a significant enclosed lane.

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

Path is shown in same style as other contemporary county roads.

### **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.

IR128/5/752 Shows path clearly excluded from adjoining hereditaments which 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.

Gwennap map 6. Path is clearly shown, the very northern part is not enclosed being part of a larger common area parcel 4850. Parcel 4850 includes both common and adjacent county roads. Apportionments page 80 'COMMONS, WASTES, AND ROADS', 'Roads and Wastes in Trevethan' with no tithe payable.

## **Parish Area Books**

Gwennap parish, plot 1423 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 path is excluded from registration yet most plots either side are all registered. This is strongly suggestive of an ancient public highway.

## **Summary and Statement of Reasons:**

The route is shown on many old maps as a road. This is very strong supportive evidence of the status of the route as a public road.

The Inland Revenue map shows all of the route excluded from the adjacent hereditaments. We submit that it was excluded because it was a public road. There is no evidence against this premise.

The Tithe map shows the path as a plot listed under 'Roads and Wastes' and the plot contiguous with other county roads. There is no evidence against it being a public road.

The OS 25 inch map and associated Area Book evidence gives plot as 'Road' re-enforcing this conclusion.

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

There is much evidence supporting the premise that the route is highway. There is no evidence found to indicate that the route is not dedicated as highway.

On the balance of probabilities we submit that the route does carry highway status and 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 U605325



Exit on to U605328





Aerial View



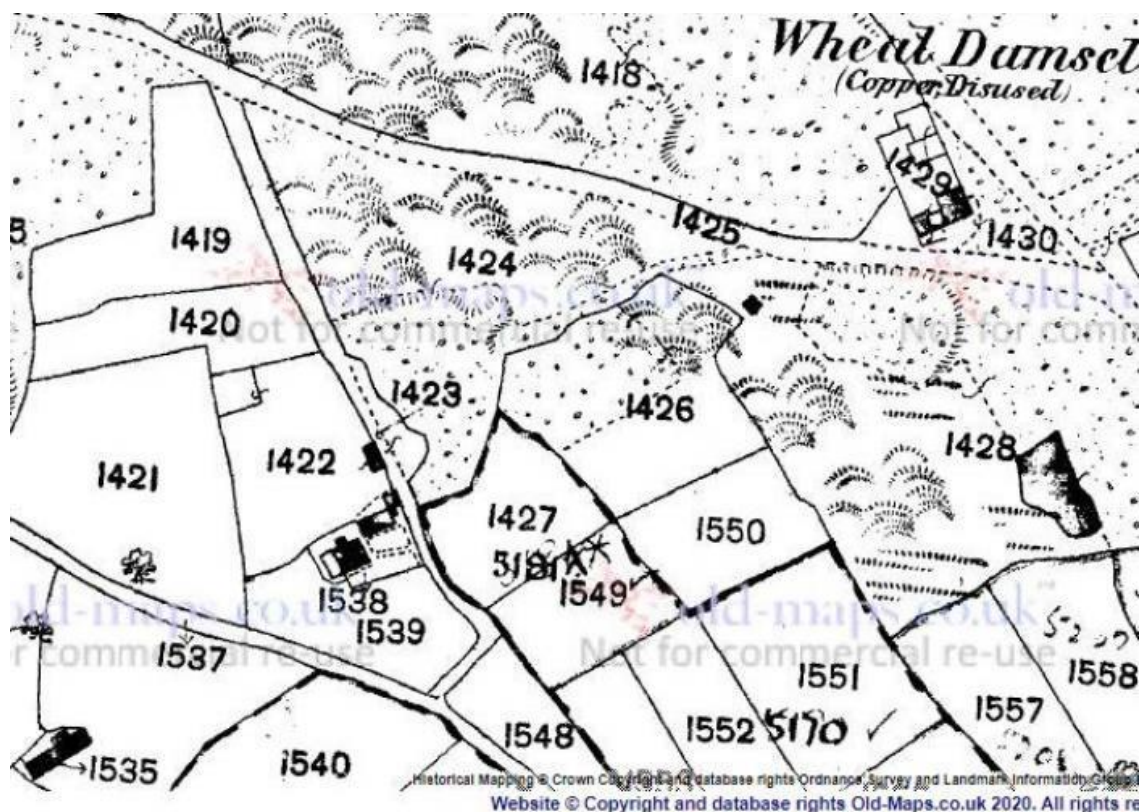
## OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913

1813 Revision - Route is identifiable A to B and shown as road although some other roads have since altered. .



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

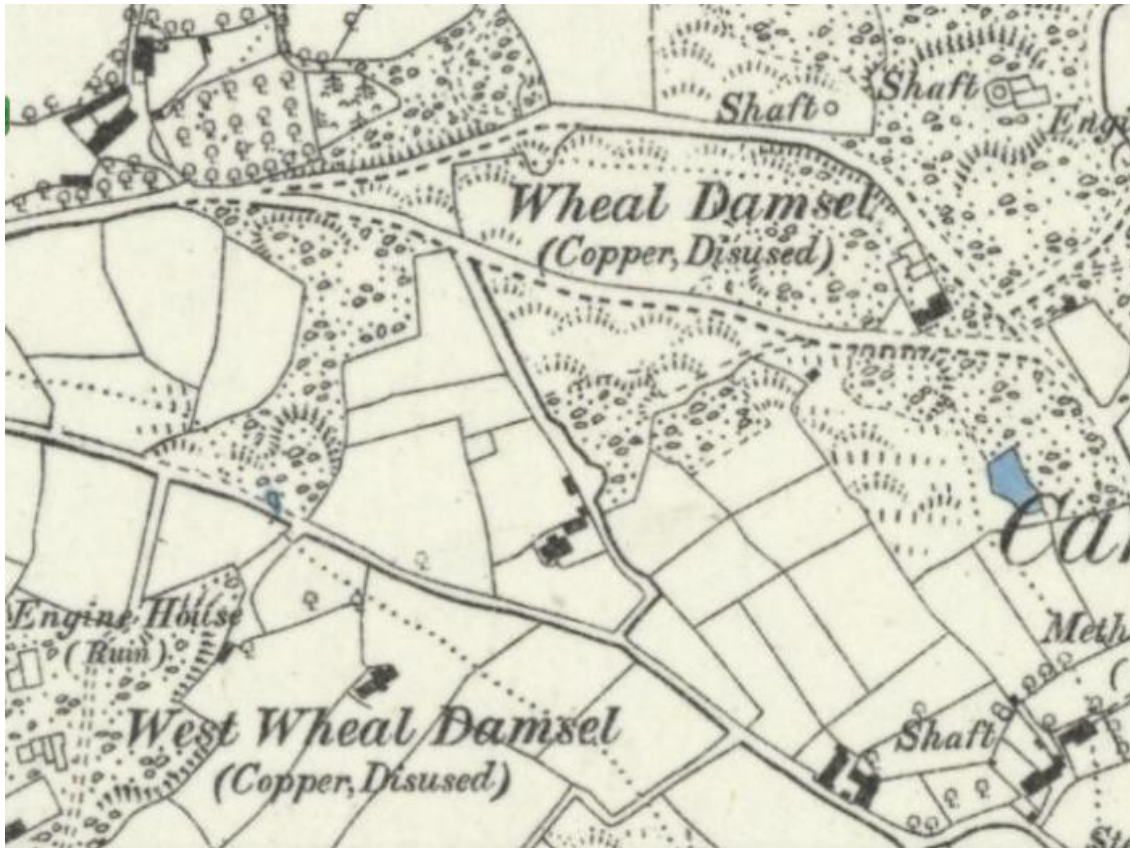
1880 Revision





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

1877 to 1879 Revision - Route is clearly shown as a significant Road

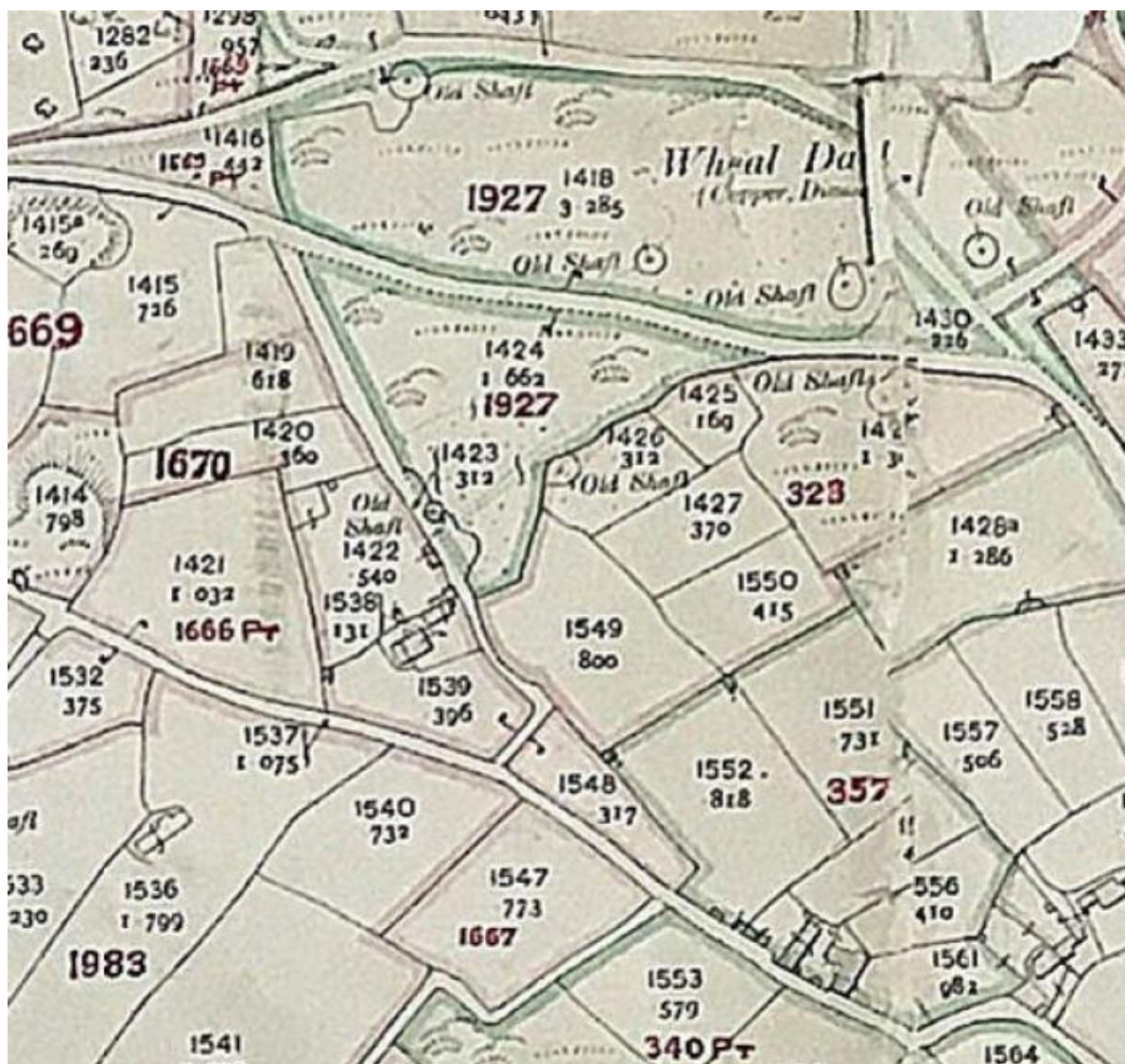


Ordnance Survey, 1:25,000 maps of Great Britain – 1951



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

IR Map 128/5/752





## Tithe Records

Gwennap map 6 Parcel 4250. Note how plot 4250 includes both common and adjacent roads.



Nos. referring to the Plan.	Name and Description of Lands and Premises.	Quantities in Statute Measure.		
		A. R. P.		
	<b>COMMONS, WASTES, AND ROADS (continued).</b>			
	Brought forward. ....	317	1	13
1267	{ Waste in Western part of Cos- }		3	28
4453	Common, Tolcarne .....		1	29
4633	Mine Waste „ .....			
4691	Wastes and Roads, Tolcarne ....	20	2	1
4786	Wastes in Trevethan .....	4	2	8
4850	Roads and Wastes in Trevethan ..	8	0	27
4997	Trevince Commons and Roads ..	118	3	22
5072	Waste part of Cosgarne Martha ..	2	3	20
5075	Cold Wind Downs .....	9	0	19
5148	Chycoose Downs .....	44	3	18
5237	{ Wheal Damsel Mine Waste and Roads }	37	2	8



## PARISH OF GWENNAP.

15

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
1324	2-371	Refuse, &c.	1375	2-080	Arable.
1325	-928	Refuse, &c.	1376	-093	Pond.
1326	-804	Arable.	1377	-609	Arable.
1327	-848	Pasture.	1378	1-174	Arable.
1328	-819	Arable.	1379	-553	Pasture, &c.
1329	-941	Pasture.	1380	-244	Houses, gardens, &c.
1330	1-261	Pasture.	1381	-611	Pasture.
1331	-828	Pasture.	1382	1-857	Road.
1332	1-091	Arable.	1383	1-418	Pasture.
1333	-564	Road.	1384	1-189	Arable.
1334	-703	Pasture.	1385	1-483	Pasture.
1335	-626	Arable.	1386	3-566	House and pasture.
1336	-601	Pasture.	1387	-618	Arable.
1337	-624	Arable.	1388	-059	Waste.
1338	-788	Pasture.	1389	-816	Arable.
1339	1-500	Rough pasture.	1390	2-408	Pasture.
1340	-344	Pasture.	1391	-367	Houses, gardens, &c.
1341	-422	Arable.	1392	-430	Garden, refuse, &c.
1342	-835	Arable.	1393	-136	Arable.
1343	-573	Arable.	1394	2-246	Pasture, &c.
1344	-745	Arable, &c.	1395	-208	Pasture.
1345	-663	Arable, &c.	1396	-155	Houses, pasture, &c.
1346	1-290	Arable, &c.	1397	-320	Pasture.
1347	1-269	Arable.	1398	-172	Pasture.
1348	1-448	Pasture.	1399	-683	Pasture.
1349	-959	Arable.	1400	-348	Houses, yards, &c.
1350	3-294	Arable, &c.	1401	-788	Orchard.
1351	2-095	House, pasture, &c.	1402	-296	Wood.
1352	2-318	Pasture.	1403	-102	Wood.
1353	2-921	Pasture, &c.	1404	-526	Pasture, &c.
1354	-209	Road.	1405	-473	Pasture.
1355	1-913	Arable.	1406	-542	Pasture.
1356	1-688	Arable.	1407	1-154	Arable.
1357	1-374	Pasture.	1408	-898	Arable.
1358	3-003	Pasture.	1409	-871	Pasture.
1359	-771	Houses, gardens, &c.	1410	-845	Arable.
1360	3-232	Pasture, &c.	1411	-615	Pasture, &c.
1361	2-011	Pasture.	1412	-901	Pasture.
1362	1-989	Pasture.	1413	-489	Pasture.
1363	-437	Road.	1414	-645	Pasture.
1364	-736	Pasture.	1415	1-889	Refuse, &c.
1365	-354	Houses, garden, &c.	1416	-442	Rough pasture.
1366	-156	Yard.	1417	-643	Road.
1367	-224	Arable.	1418	3-285	Furze and refuse.
1368	-637	Rough pasture, &c.	1419	-618	Arable.
1369	-543	Houses, refuse, &c.	1420	-360	Pasture.
1370	-277	Pasture.	1421	1-032	Pasture, &c.
1371	-165	Road.	1422	-546	House, pasture, &c.
1372	-640	Shed, yard, refuse, &c.	1423	-312	Road.
1373	2-039	Pasture, &c.	1424	1-662	Furze and refuse.
1374	-537	Arable.	1425	1-504	Road.
			1426	-818	Pasture, furze, and refuse.

## Land Ownership

Land Registry Polygons show old lane is excluded from any registration



## 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.