



Cornwall Council

26 AUG 2009

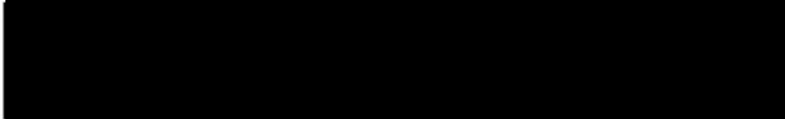
FORM OF APPLICATION FOR MODIFICATION ORDER

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



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: Prince Park Road - C0118 Gridref: SW98356452

to: Footpath 9 Gridref: SW98486418

and

from: Footpath 9 Gridref: SW 98466409

to: Demelza Lane U6122 Gridref: SW98646367

(c) Upgrading to a Restricted Byway the Footpath

from: Footpath 9 Gridref: SW98486418

to: Footpath 9 Gridref: SW98466409

(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

.....

.....

.....

.....

.....

Signed:



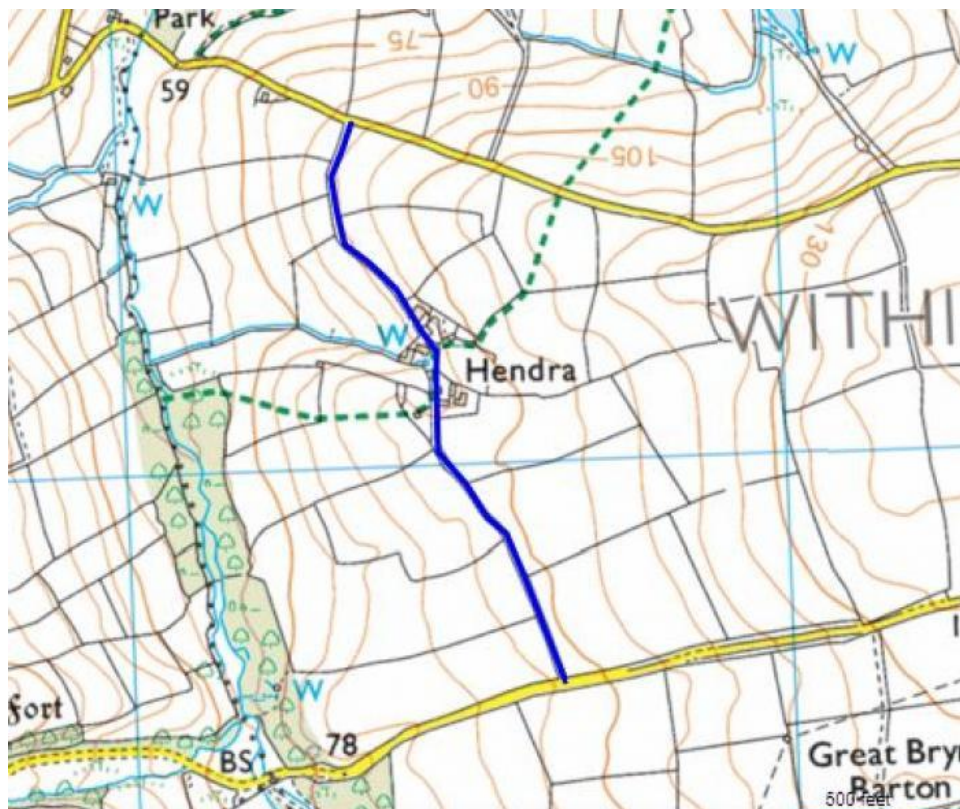
Application Details

Our Path Reference: 565/R02 Grid Reference: SW984641

Parish: Withiel

Map of Path:

Route applied for shown in blue.



Description of Path:

Path starts at Prince Park Road - C0118 SW98356452 and ends at Demelza Lane U6122 SW98646367

Hedged lane running road to road with a farm in the middle

Current Recorded Status:

Only part of the path is recorded on the Definitive Map

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

Status being applied for: Restricted Byway

Notes:

Path is believed has been regularly walked and ridden until the last few years.

A public footpath runs along the part of the lane through the farm. It has been reported that access along the lane from end to end has been disputed in the few years by the occupants of Hendra. Use of the North part is unchallenged. (Oct 2015)

Our Path Reference: 565/R02 Grid Reference: SW984641

Path starts at Prince Park Road - C0118 SW98356452 and ends at Demelza Lane U6122 SW98646367

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

Ordnance Survey First Series sh 30 1856 Path is clearly shown as road in common with current county roads. The hamlet of Hendra is depicted as a significant place.

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

1881: XXXIII.10 & 11, Hedged lane, plots 602, 775, 823. 1907 plots 602, 772a, 775 & 823.

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

Cornwall XXXIII.SW Published: 1888 Path is clearly shown as a road.

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

SW96 pub 1951 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.

Sheet 37 pub 1903 & 1922 clearly shown as a road.

Johnston's Motoring Touring maps of England and Wales

Route is Clearly shown as 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.

Clearly shown with hedges as a significant hedged route through Hendra

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 128/5/383, 384 appears to be included in hereditaments. There could be a deduction for bridleway or restricted byway in the assessments. However, although the Forms 37 show a deduction for Rights of Way in two associated hereditaments, the detail assessments by plot are not available (Kresen Kernow) for these hereditaments. As there is a recorded public FP running through Hendra, it is not possible to determine if part of these deductions are attributable to the path and details of our application.

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.

Tithe Map 1851 St Withiel p2. The whole lane is plot 336. The apportionments list plot 336 under PUBLIC ROADS as Hendra Lane, no owner, no tithe. This is extremely good evidence that it was (and still is) Public Highway!

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

Summary and Statement of Reasons:

The OS 25 inch map showing the path as a road in separate plots indicates the significance of the route. All the old maps which were intended for public navigation, including the old Martyns Map, show the route consistently as a road. This is very strong supportive evidence of the status of the route as a public road.

The 1851 Tithe Map for St Withiel shows the path as named plot Hendra Lane and this is listed under PUBLIC ROADS with no owner or tithe. This, unambiguously and without question, confirms the status of the path at the time of the map 1841.

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

The combination of the evidence from Old Maps, and the Tithe Map and apportionments in particular, gives exceptionally strong evidence indicating 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 Prince Park Road



Southern end looking from Demelza Lane



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

Clearly shown as a road through the hamlet of Hendra



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





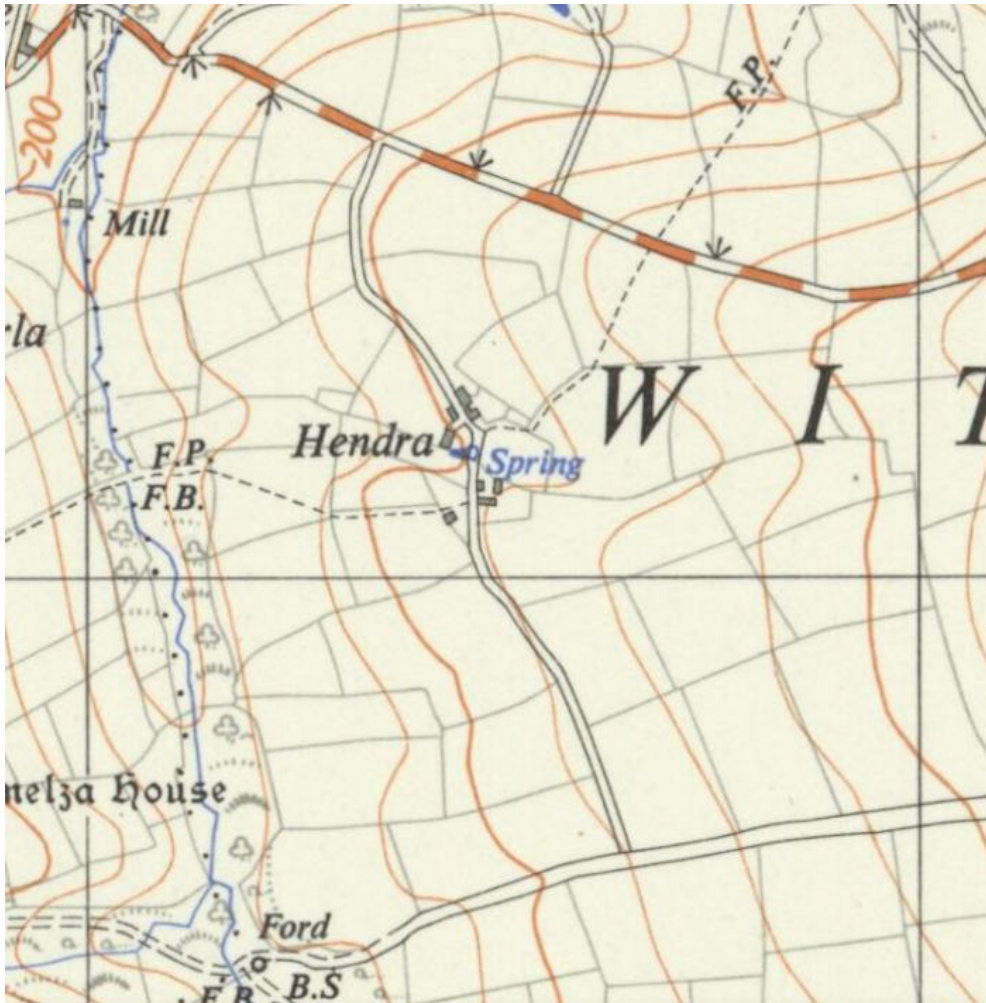
OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

Clearly shown as a road



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

Clearly shown as a road



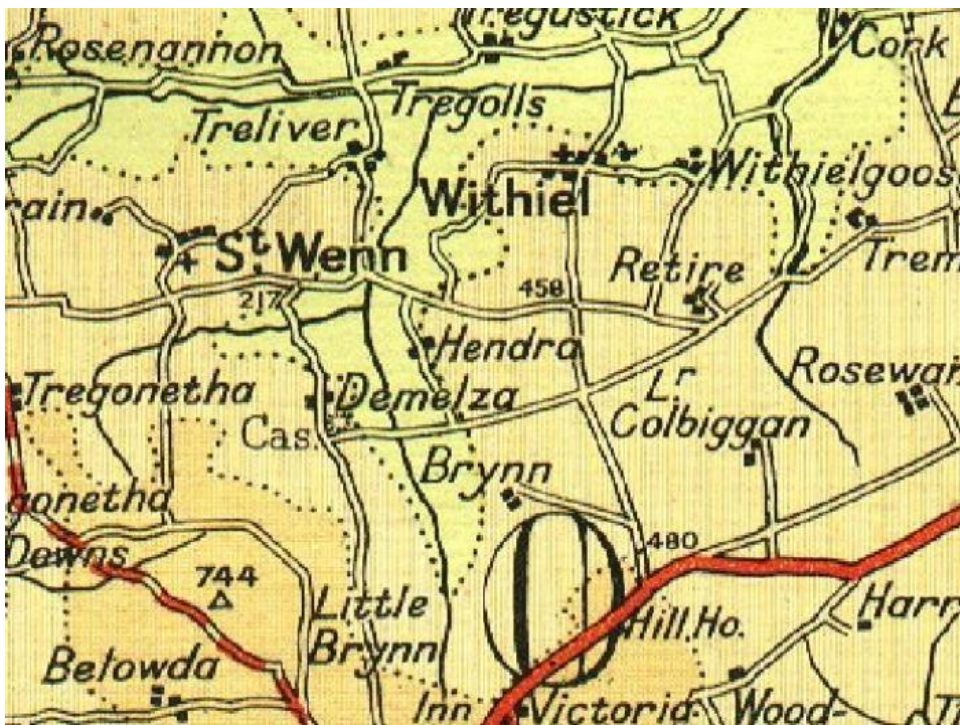
Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

1922 map the route is clearly shown as a road



Johnston's Motoring Touring maps of England and Wales

Clearly shown as a road through Hendra



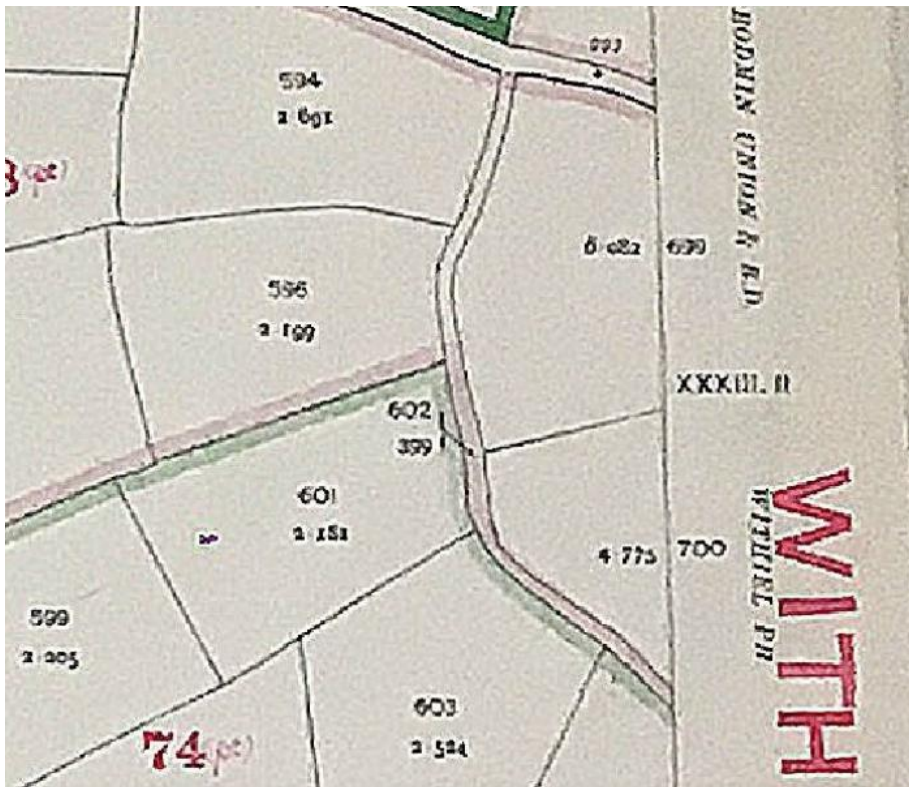
Martyns Map

Lane through Hendra clearly shown

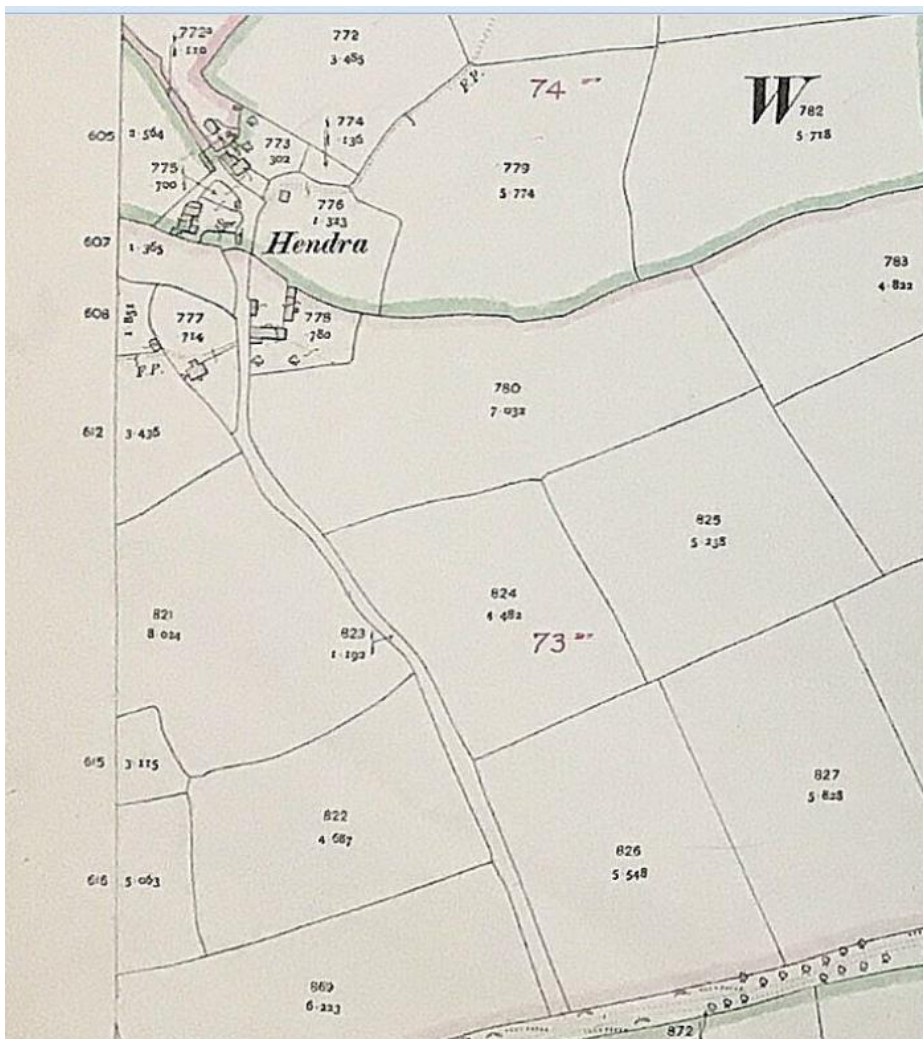


Inland Revenue Valuation Records - Finance (1908-10) Act 1910

Northern part runs through hereditament 28 plot 602



Southern half runs through hereditament 823



Tithe Records

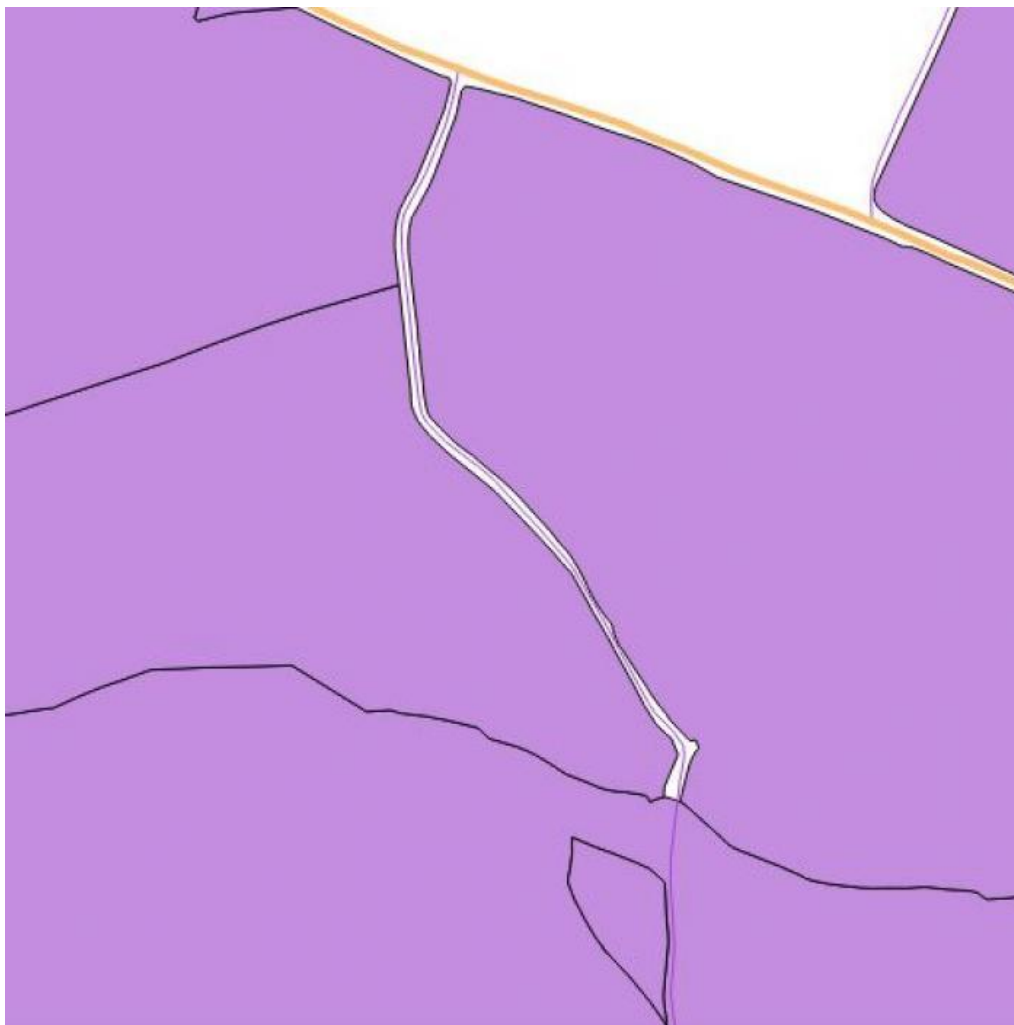
Lane Plot 336



OCCUPIERS.	Nos. referring to the Plan.	Name and Description of Lands and Premises.	State of Cultivation.	Quantities in Statute Measure.	Amount of Rent Charge apportioned upon the several Lands, & payable to the Rector.
				A. R. P.	£. s. d.
PUBLIC ROADS, (continued,)	173	Brought forward,		36 2 17	
		On Withiel Common to Roche Boundary,		8 23	
	336	Hendra Lane,		1 8 5	
	271	From Post Lane to Four Lanes End,		1 0 3	
	536	„ Retire to Mine,		8 14	
	569	Lane,		25	
				41 1 7	
WATER,	1078	Mill River,		3 13	
	1171	Mill River to Levellan River,		3 23	
	900	Roche Common to Tregustick,		1 0 29	
	1174	Tregustick to Eastern Bridge,		4 0 38	
	1402	Bosnieves Common to Levellan River,		3 17	
					8 0 0

Land Ownership

Northern part of the lane is not owned. Registered land shown in purple



Land Registry '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.

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.

Martyns Map

Martyns Map online at Harvard University.

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

Photographed at National Archive - British Horse Society.

Tithe Records

Cornwall Record Office, CD copies.