

A.

DURHAM COUNTY COUNCIL – REGENERATION AND ECONOMIC DEVELOPMENT
APPLICATION FOR MODIFICATION ORDER

Wildlife and Countryside Act 1981
The Definitive Map and Statement of Public Rights of Way
for the County of Durham

To: Corporate Director of Regeneration and Economic Development
of: Durham County Council, County Hall, Durham DH1 5UQ

We, PHILIP and ANDREW JOHNSON (Name)
of QUARRINGTON FARM, OLD QUARRINGTON (Address)
DURHAM DH6 5NN

hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981
modifying the Definitive Map and Statement for the County of Durham by:-

(i) (Deleting) (~~adding~~) the (footpath) (~~bridleway~~) (~~byway open to all traffic~~) (Delete whichever is
inapplicable)
from BRIDLEWAY 39
to THE JUNCTION OF EXISTING FP29 WITH THE RAILWAY CUTTING
AS SHOWN BY THE HATCHED LINE ON THE PLAN ATTACHED.

(ii) (Upgrading) (downgrading) to a (footpath) (bridleway) (byway open to all traffic) the
(footpath) (bridleway) (byway open to all traffic) (Delete whichever is inapplicable)
from _____
to _____

(iii) (Varying) (adding to) the particulars relating to the (footpath) (bridleway) (byway
open to all traffic) (Delete whichever is inapplicable)
from _____
to _____
by providing that _____

as shown on the plan attached.

I/We attach copies of the following documentary evidence (including statements of witness)
in support of this application:-

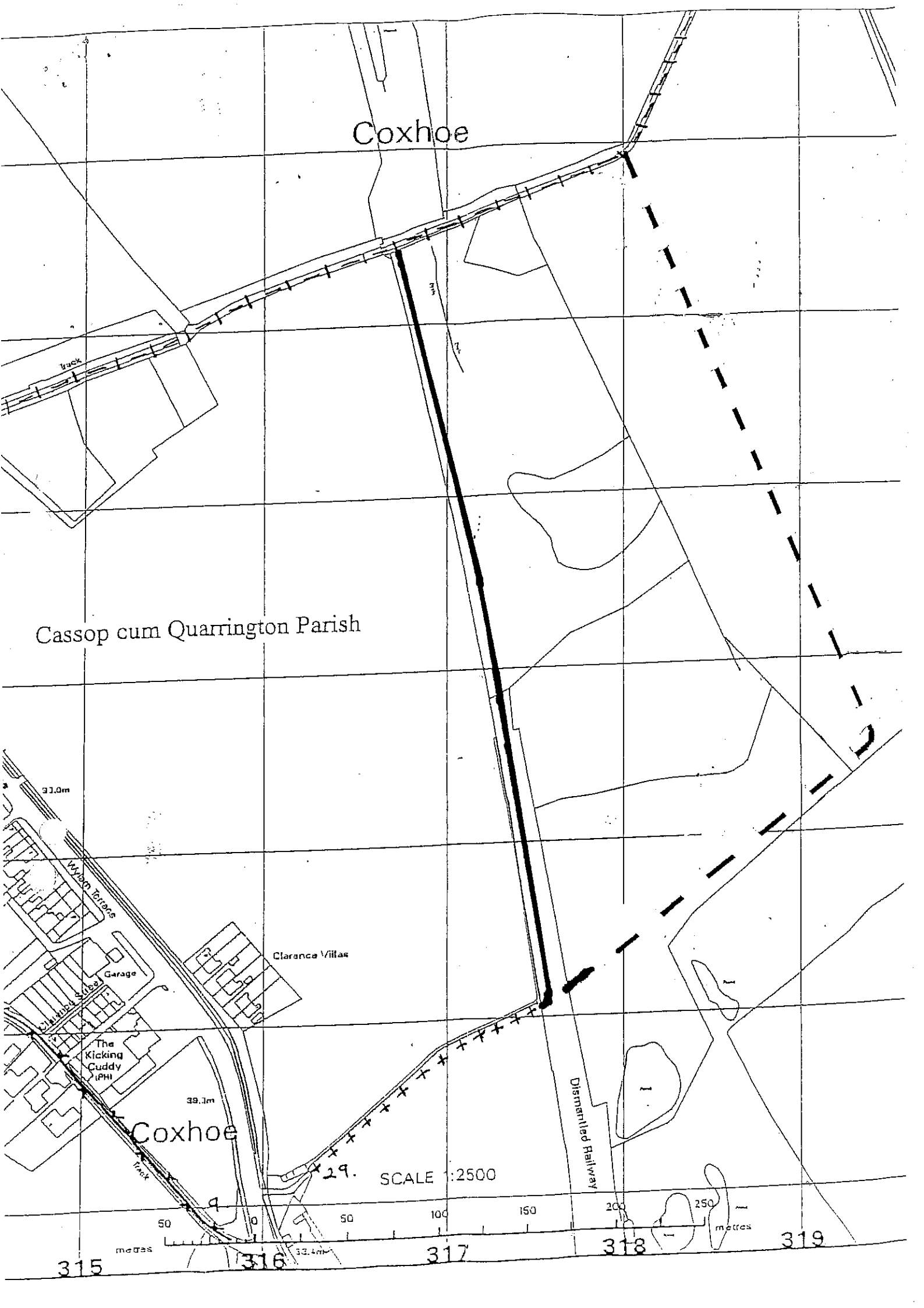
List of documents SEE ATTACHED

Dated 25/4/2011 Signed _____

Note: This application must be accompanied by a map showing the right(s) of way applied for. Legally such map must be at a
scale of not less than 2 1/2" to 1 mile, but the scale should be sufficient to enable the accurate determination of the way on the
ground.

Coxhoe

Cassop cum Quarrington Parish



Dismantled Railway

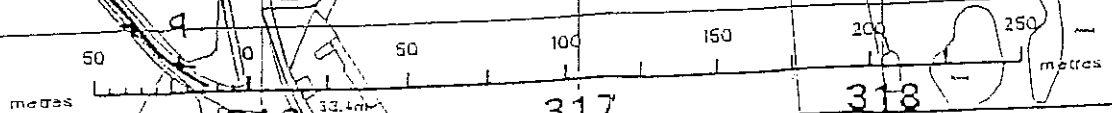
Clarence Villas

The Kicking Cuddy (PH)

Garage

Wilson Terrace

SCALE 1:2500



315 316 317 318 319

**LIST OF DOCUMENTS IN SUPPORT OF APPLICATION
FOR DELETION OF ROUTE FROM DEFINITIVE MAP BY
PHILIP & ANDREW JOHNSON DATED 5th APRIL 2011**

1. Letter from DCC to Johnson Brothers dated 3rd August 2010
2. Letter from Johnson Brothers to DCC dated 13th August 2010
3. Letter from Johnson Brothers to DCC dated 27th September 2010
4. Letter from DCC to Johnson Brothers dated 11th October 2010
5. Letter from Johnson Brothers to DCC dated 9th November 2010
6. Letter from DCC to Johnson Brothers dated 25th November 2010
7. Letter from Johnson Brothers to DCC dated 3rd December 2010
8. Letter from DCC to Johnson Brothers dated 17th December 2010
9. Letter from DCC to Johnson Brothers dated 17th December 2010
10. Letter from Johnson Brothers to DCC dated 14th January 2011
11. Letter from Johnson Brothers to DCC dated 19th February 2011

Contact: Owen Shaw
Direct Tel: 0191 383 3452
Fax:
email: owen.shaw@durham.gov.uk
Your ref:
Our ref: RED/NM/AROW/OS



Johnson Brothers
Quarrington Farm
Old Quarrington
Durham
DH6 5NN

3 August 2010

Dear Sirs


Cassop cum Quarrington Public Footpath No 29 Access Improvements

I am writing to inform you of intended works for opening up and improving access for the public on the above footpath on land that is in your ownership.

I've attached a plan from the working copy of The Definitive Map that indicates the location of the intended works on your land as well as details of the works to be carried out. I anticipate the works to be carried out this summer.

Durham County Council recognises the important contribution to public access that landowners and occupiers make where public paths cross their land. On this occasion due to the longstanding difficulties for the public to access this path, Durham County Council will carry out and pay for the works.

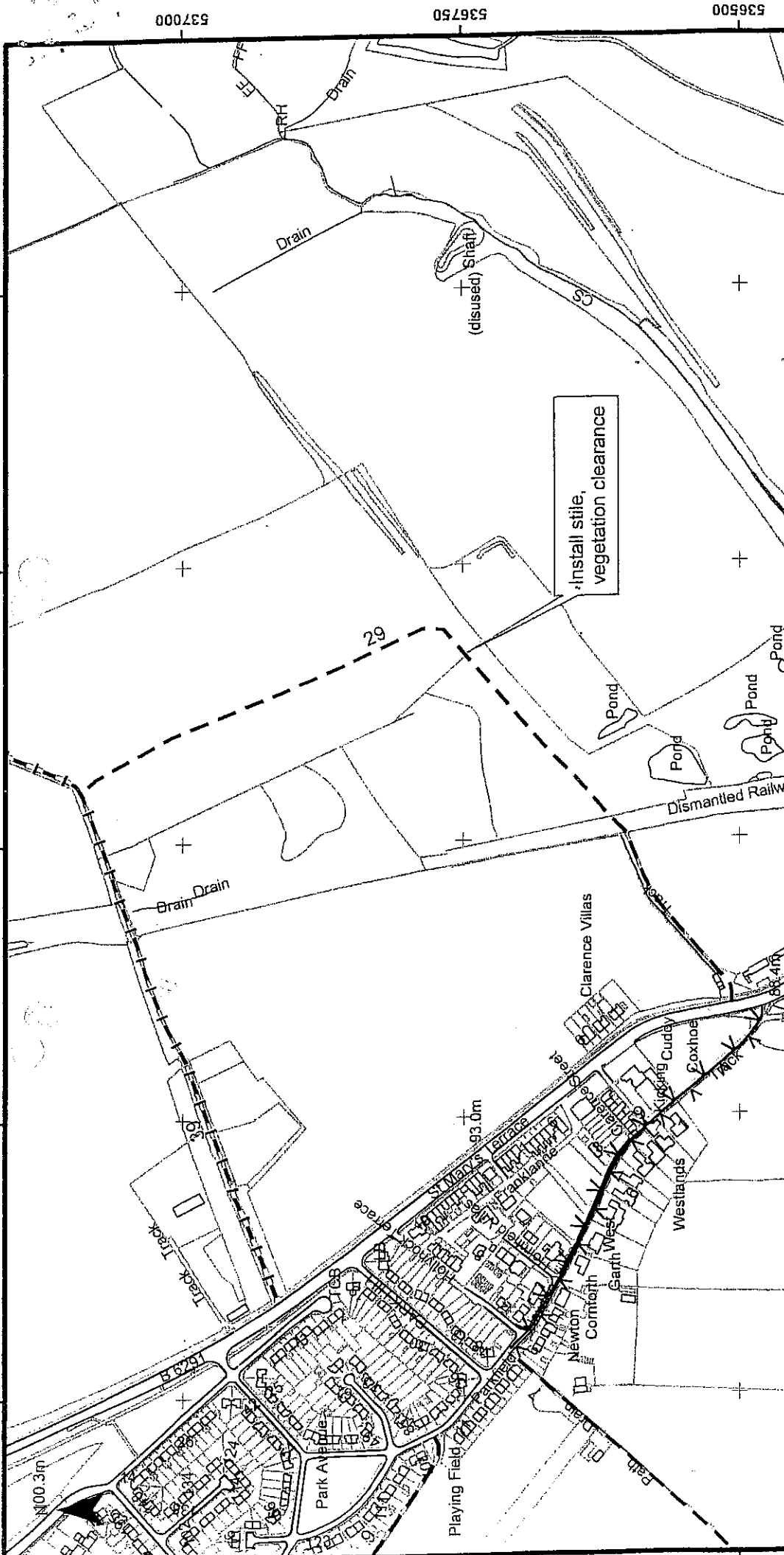
Yours faithfully


Owen Shaw
Public Rights of Way Officer

Regeneration & Economic Development

Durham County Council, County Hall, Durham DH1 5UQ
Main Telephone (0191) 383 3000 Minicom (0191) 383 3802 Text 07786 02 69 56





Comments
 Cassop cum Quarrington
 Public footpath 29
 Access works

Drawn by: OS

Date: 26/07/10

Scale: 1:5,000

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This map extract is at a Scale of 1:10,000 (for reference only) produced from the Definitive Map Digital Mapping Data correct to a scale of 1:2500 when viewed against Ordnance Survey Mastermap © Crown copyright.

Public Rights of Way

- Footpath
- - - - - Bridleway
- Λ Λ Λ Λ Λ Byway

Durham County Council

Access & Rights of Way Section
 Regeneration and Economic Development
 Durham County Council
 County Hall
 Durham
 DH1 5UQ
 Telephone 0191 383 3239

431250

431750

432250

432750

433250

Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/AROW/OS

13th August 2010

Mr. O. Shaw
Public Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Dear Mr. Shaw,

Re: Cassup cum Quarrington Public Footpath No. 29

Receipt of your letter dated 3rd August 2010 is acknowledged.

As there is no public footpath over the route depicted by The Definitive Map it would be a reckless waste of public money to carry out your proposed works.

By way of evidence in support of our contention please find enclosed a copy of the Council's letter to us dated 18th May 2000 in which you will see that it states that the Council had by then "*evidence which shows that there is no public footpath over the route shown "to be deleted" ... on the enclosed plan*".

Following subsequent correspondence with the Council during 2000 and 2001 it was effectively agreed by the Council that the correct route of Footpath 29 is as was depicted in the Council's letter dated 21st May 2001 (copy enclosed).

In our letter of 29th May 2001 (copy enclosed) we confirmed our agreement not to object to an Order seeking modification of The Definitive Map to this correct route.

In the circumstances we recommend that any improvements to the footpath are carried out along the route that both ourselves and the Council agree to be the correct route for the footpath.

Yours sincerely,

P. D. Johnson
Johnson Brothers

Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/AROW/OS

27th September 2010

Mr. O. Shaw
Public Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Dear Mr. Shaw,

Re: Cassop cum Quarrington Public Footpath No. 29

We refer to the property damage carried out by the Council to our permanent boundary fence on or around 20th September the background to which, as we understand it, is as follows:-

1. Since at least 1982 to the present no member of the public has ever used the alleged footpath 29 through our field either along the route depicted by the Definitive Map or any other route and no member of the public claims to have done so.
2. Since at least 1982 to the present the public have used an alternative footpath of equal distance through the adjacent permanent grass pasture field. Many years ago the Council way marked this route as a public footpath and created a stile at the junction with Bridleway 39. Recently a post and wire fence has been erected within the permanent grass field along the length of this path creating an exclusive 2-3m public right of way and excluding the occupier of the land from benefiting from the grazing or cropping of the land.
3. In a letter dated 18th May 2000 the Council advised us that the Council had by then discovered that "*there is no public footpath over the route*" depicted by the Definitive Map.

4. In a letter dated 21st May 2001 the Council advised us that *"The evidence so far received is in support of a public footpath on (the route through the adjacent permanent pasture field)."*
5. The conclusion of our 2000/2001 exchange of correspondence with the Council was that the Council intended to apply for a formal Modification of the Definitive Map so as to substitute the incorrect route with the permanent pasture field route. We made it clear that we would not object to such a Modification application. In the event it appears that no such application was ever made.
6. Despite the Council having clearly set out the position in 2000/2001 you wrote to us on 3rd August advising of your intended works to open up a footpath along the definitive map route.
7. We replied to you on 13th August reminding you of the formal position as set out above. Whilst we received an automated acknowledgement of receipt of this letter, we have received no substantive response to date.
8. Prior to the Council carrying out the works last week you personally were made aware by the Parish Council that due to lobbying by a small minority of local residents, with whom you were in regular contact, the issue of Footpath 29 had been raised at a Parish Council meeting. The intention of the Parish Council was to hold a special meeting to discuss only the footpath and it had or was intending to invite you to attend that meeting. We understand that you were aware that some, possibly the majority, of Parish Councillors concur with the formal position as stated in writing by the Council in 2000/2001. They agree that this has been the position in practice at all times from at least 1982 to the present and do not agree with the Council's 2010 views.
9. On or around Monday 20th September and despite all of the above you nevertheless authorised the works to be carried out.
10. At approximately 4.30pm on Wednesday 22nd September you e-mailed the Clerk to the Parish Council stating:

"Further to your enquiries about this footpath. I can now report that works have recently been carried out by Durham County Council opening up this footpath on the line of the 2010 Definitive Map....."

11. At 12.13pm on Thursday 23rd September you sent a further e-mail to the Clerk to the Parish Council stating:

"I imagine that a meeting to discuss this footpath would no longer be deemed necessary, given that the path has now been opened up for the public to use".

12. On Thursday 23rd September we removed the stile placed within our boundary, reinstated the permanent boundary fence and displayed a sign stating "PRIVATE PROPERTY. NO PUBLIC ACCESS".

In our view the Council needs to seriously reflect on its conduct of the past few weeks as it appears once again to have demonstrated a total disregard for the rules, property and personal rights not to mention the will of the Parish Council.

The current position is that the County Council have created an equidistant right of way through a permanent grass pasture and recently obtained exclusive rights over a significant area of land associated with this. Since at least 1982 there has never been any public use of the Definitive Map route or any other route through a field that has been at all times in an arable crop rotation.

We ask you to reflect that it is now clear beyond a doubt that the world faces an imminent global food shortage. The additional route through our field would take a minimum of 300 m² of good agricultural land out of crop production. More in practice, due to dogs straying off the path and flattening crops, etc. It would also take up time and resources of ours in maintaining it when these resources are more sensibly and productively directed at producing food. 300 m² provides at least 300 loaves of bread or its equivalent in other crops each year. For people living in parts of the world less fortunate than ours, where a loaf of bread is able to keep an average family alive for a week, the loss of 300 loaves of bread will result in the death by starvation of 6 or more families each year.

This is the third separate boundary location on this small farm alone where the Council has carried out actions in the past few years that have been solely designed to encourage members of the public to break the law and to trespass on to private property requiring us to act more and more as policemen. We are disappointed by this conduct.

In so far as footpath 29 is concerned the Council's formal written position as set out in the 2000/2001 correspondence is the correct position and we request that the Council adheres to it.

We are copying this letter to the Clerk to the Parish Council and to all of the residents of Old Quarrington. Copies of the 2000/2001 correspondence are available on request.

Yours sincerely,

P. D. Johnson
Johnson Brothers

Contact: Audrey Christie
Direct Tel: 0191 383 4084
Fax: 0191 383 4096
email: Audrey.christie@durham.gov.uk
Your ref:
Our ref: RED/NM/AROW/017/29



Mr PD Johnson
Johnson Brothers
Quarrington Farm
Old Quarrington
Durham
DH6 5NN

11 October 2010

Dear Mr Johnson

Cassop cum Quarrington Footpath no 29

Thank you for your letter of 27 September 2010.

The County Council's recent actions have simply been to ensure that the route of Cassop Footpath no 29 is open on the line shown on the Definitive Map. I remind you of the conclusivity provision contained in section 56 of the Wildlife and Countryside Act 1981 which states that '... where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map...'. This was stated to you in the Council's letter to you of 29 June 2000. I must apologise that the wording contained in our earlier letter of 18 May 2000 was unfortunately misleading and does not take precedence over the conclusivity provision.

The other path you mention (on adjacent permanent pasture field/former railway) is a separate issue to that of Footpath no 29. The Council has no plans at this time to make any modification order for this or any of the paths you mention in your letter of 27 September.

The Council is performing its duty to ensure that the network of public rights of way is properly open. I would advise you as an owner/occupier that you should not obstruct any public right of way and where arable crops are grown the line of the path should be apparent and crops removed from the line of the path.

You stated that you blocked the path on 23 September by removing the stile and erecting a private sign. I understand that the path is however now open again and I advise that if the path becomes blocked again or there is any other type of encroachment we will serve a Legal Notice on you which allows for the County Council to carry out any necessary work and to recharge the costs to you. We also have the option to pursue criminal proceedings.

I hope our position is clear.

[Redacted Signature]
Senior Rights of Way Officer

Regeneration & Economic Development

Durham County Council, County Hall, Durham, DH1 5UQ

Main Telephone (0191) 383 3000 Minicom (0191) 383 3802 Text 07786 02 69 56



Please acknowledge → AJC
Scan - FP 24 Cassop
ACK 11-11-10

Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

9th November 2010

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/AROW/017/29

Ms. A. Christie
Senior Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Dear Ms. Christie,

Re: Cassop cum Quarrington Public Footpath No. 29

Receipt of your letter dated 11th October 2010 is acknowledged.

We note your attempt to reconcile the wording in the Council's letter of 18th May 2000 and reliance upon the conclusivity wording within the Council's letter of 29th June 2000. However, the conclusivity provision was referred to as a precursor to the statement "Hence the need for a Modification Order". As such it supports the Council's then position and our position and not your current position. Moreover, your new position is irreconcilable with the entirety of the 2000/2001 correspondence and in particular the concluding final letter dated 21st May 2001 in which the Council made it absolutely clear that the actual route of the footpath is the route specified in that letter and with which we agree.

Parliament gives third parties powers over citizens in expectation that they apply them reasonably and where appropriate with commonsense. It is not justifiable to use powers unreasonably just because you have them as you are now seeking to do.

The fact is that when the Definitive Map is accepted as being incorrect the correct thing to do is to put it right and not to compound matters by attempting to enforce a route that doesn't exist.

It is absolutely obvious that the thing to do here in the interests of the public is to make an application for a Modification Order in the way that it was considering in 2001 ie along the route with which we agree. If the County Council does not act responsibly and attend to this then we will but really it is the Council's responsibility and the Council should do it. Will you or are you going to require us to do it? If you require us to do it then please let us have the appropriate application forms and any relevant up to date guidance notes, etc.

We appreciate that a stretch of approx. 4m of fencing was completely removed from the fence line, coincidentally, in the day or two prior to the despatch of your letter dated 11th October. We record the fact that this is a permanent boundary, a land ownership boundary and a stock fence boundary.

We have re-fenced this boundary fence and put up a fresh Notice taking all of the following circumstances into account:

- a) That a Modification Order application is now intended,
- b) That your office has acquiesced to there being no public right of way through this field by not enforcing the route for over 10 years at least despite being fully aware of it being annually obstructed with crops and whilst routinely walking all of the footpaths on the farm during the summer of each year and regularly issuing formal notices to clear other Rights of Way even after spraying/clearance has actually taken place,
- c) Your longevity as a Rights of Way Officer and consequential acquiescence by implication, and
- d) That the fence is required to keep livestock in our neighbours field.

We are confident that you will agree that in the current circumstances the fence should be left undisturbed and that consequently if it is removed again, then the act of removal will be by local activists rather than by the Council or on its behalf. We will therefore continue to replace this boundary fence and notice. If the Council has been or becomes responsible for its removal then obviously the Council must accept responsibility for all losses and liabilities arising from straying stock. In this respect we remind you how close the paddock is to all of the A177 Coxhoe road, the new A688 Bowburn Bypass and indeed the A1(M) Motorway itself.

Moreover, given the seriousness of the consequences of the removal of this fence by or on behalf of the Council, if you and your Department are still, in the circumstances, minded to remove the fence then we ask that you first refer the matter to the Council's Legal Department for a second opinion and that either your or the Legal Department confirm to us in writing that it is the County Council's formal position to do so, the Legal Department having first had sight of all of the correspondence and documentation relating to this matter.

Please note that we are now monitoring and will continue to monitor our field for the foreseeable future. The only person seen to have walked through the field is the activist Mr. Cowen who did this once last weekend. He was challenged, informed that the issue between the County and ourselves is unresolved and that until it is he must keep out of the field. Quite properly and sensibly he appears to be respecting this.

We await hearing from you.

Yours sincerely,



P. D. Johnson
Johnson Brothers

Contact: Audrey Christie
Direct Tel: 0191 383 4084
Fax: 0191 383 4096
email: Audrey.christie@durham.gov.uk
Your ref:
Our ref: RED/NM/AROW/017/29

Mr PD Johnson
Johnson Brothers
Quarrington Farm
Old Quarrington
Durham
DH6 5NN

25 November 2010

Dear Mr Johnson

Cassop cum Quarrington Footpath no 29

Thank you for your letter of 9 November 2010 about which I have taken and followed the advice of the County's highways solicitor.

As before I must re-iterate the conclusivity provision contained in section 56 of the Wildlife and Countryside Act 1981 which states that '... where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map....'. I note your reference to previous correspondence, however, the statutory provision takes precedence and the footpath exists as shown on the Definitive Map. As stated in my previous letter I have apologised that previous wording of letters from the County Council may have been misleading. For clarification I have enclosed a copy of the Definitive Map showing Cassop Footpath no 29.

The Council does not have any plans to make a Modification Order for Footpath no 29, and in any case, even if an application was submitted we could not give it any priority as the alteration would be of no public benefit. I have attached a copy of the Modification Order proposal from 2000/1 which you make reference to and which you have never agreed to. Your reference to a route mentioned in the Council's letter of 21 May 2001, which you state you agree to, is that of the old railway line, on neighbouring land, which has nothing to do with Footpath no 29.

If you have difficulties with the route of Footpath no 29 through your arable field then I suggest that a longer term solution would be for you to apply to us for the diversion of this footpath using Section 119 of the Highways Act 1980. Should you pursue this option, the correct line of the path as shown on the Definitive Map would need to be open until any proposal was completed. You can find further information about diverting paths at www.durham.gov.uk/prow.

Regeneration & Economic Development

Durham County Council, County Hall, Durham DH1 5UQ
Main Telephone (0191) 383 3000 Minicom (0191) 383 3802 Text 07786 02 69 56

You make reference to the longevity and acquiescence to the path having been obstructed for some time. I would draw to your attention the case of *Redbridge London Borough Council v Jacques (1971)* which clearly concluded the opposite to your view but instead that acquiescence does not make lawful any obstruction, which is otherwise unlawful. I am sure you are aware that it is an offence to obstruct any public right of way under Section 137 of the Highways Act 1980.

You have expressed your concern about needing to keep your neighbour's livestock in its own field and this was the reason why we erected a stile when the works to open the path were carried out in September. You have since removed the stile, so obstructing the path and the Council cannot be responsible for the actions of third parties removing obstructions. I also draw to your attention that the responsibility to maintain stiles and gates on public rights of way sits with the landowner, as outlined in Section 146 of the Highways Act 1980. Further there is no precedence in law for the County Council being liable where stock stray off land that they are grazing, even if there is a public right of way with stiles or gates.

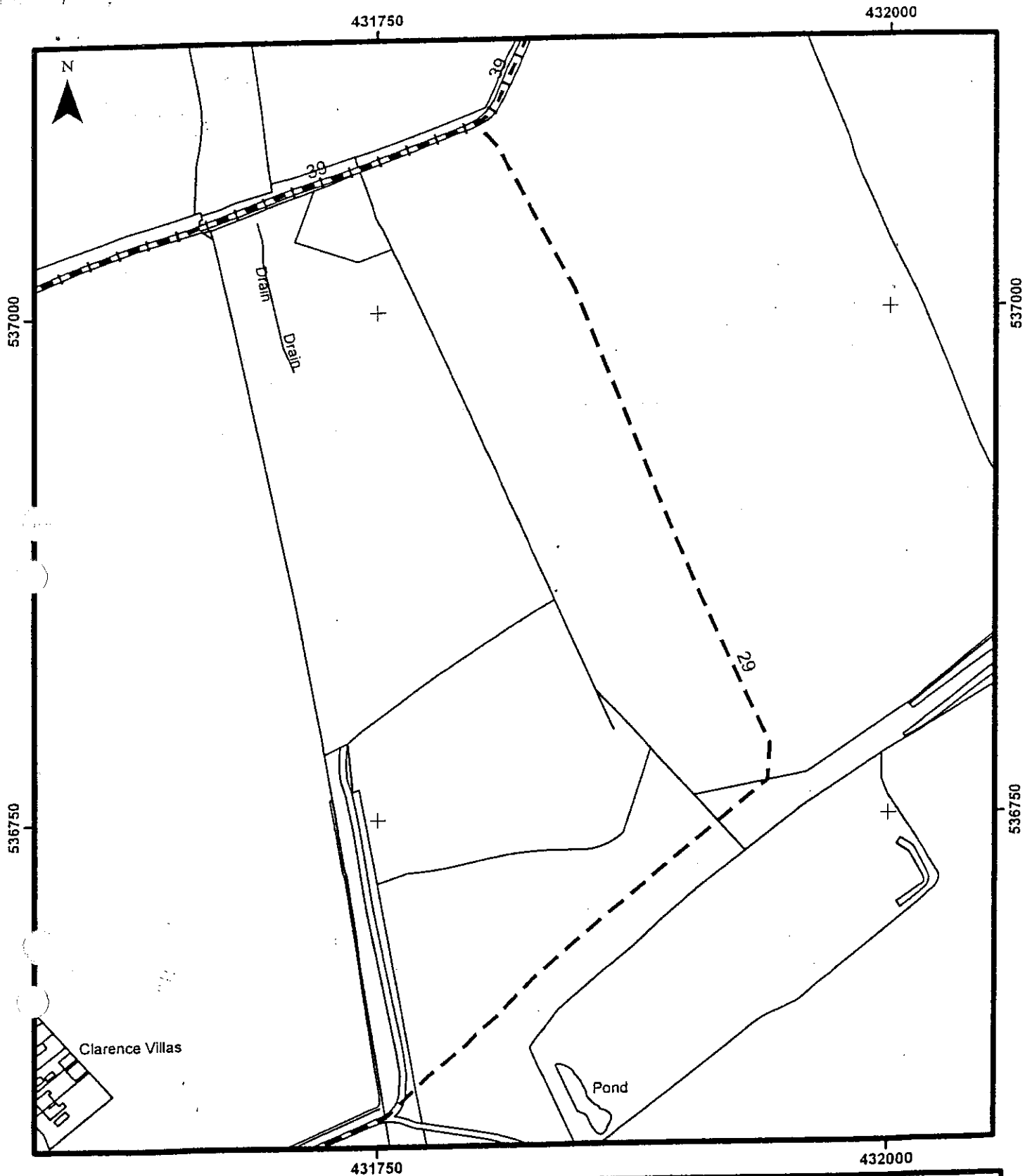
You have clearly stated that you have obstructed this footpath and I ask you to remove the obstruction by Friday 3 December 2010. I trust that you will re-instate the stile to deal with the control of stock. After this time, if the path is still obstructed, our Legal Services will serve Notice on you which allows for the County Council to carry out work to open up the path and to re-charge the costs to you. Additionally pursuing criminal proceedings is also possible.

You should also be mindful that under the Single Payment Scheme the proper management of public rights of way is a Good Agricultural and Environmental Condition.

I trust that you do understand the situation and will ensure the path is properly open.

Yours sincerely

Audrey Christie
Senior Rights of Way Officer



Access & Rights of Way Section
 Regeneration and Economic Development
 Durham County Council
 County Hall
 Durham
 OH1 5UQ
 Telephone 0191 383 3239

This is a working copy of the Definitive Map.
 The relevant date of the Digital Mapping
 Data is the 14th February 2010.
 The map shows changes which have taken
 place up to and including the date specified:

- Public Rights of Way**
- — — — Footpath
 - | - | - | - | Bridleway
 - Λ V Λ V Λ V Byway

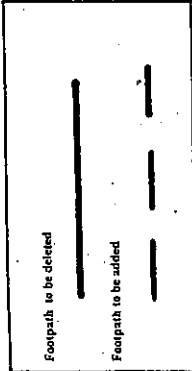
Drawn by
 AC
 25 Nov 2010
 Scale 1:2,622

Cassop cum Quarrington
 Footpath no 29

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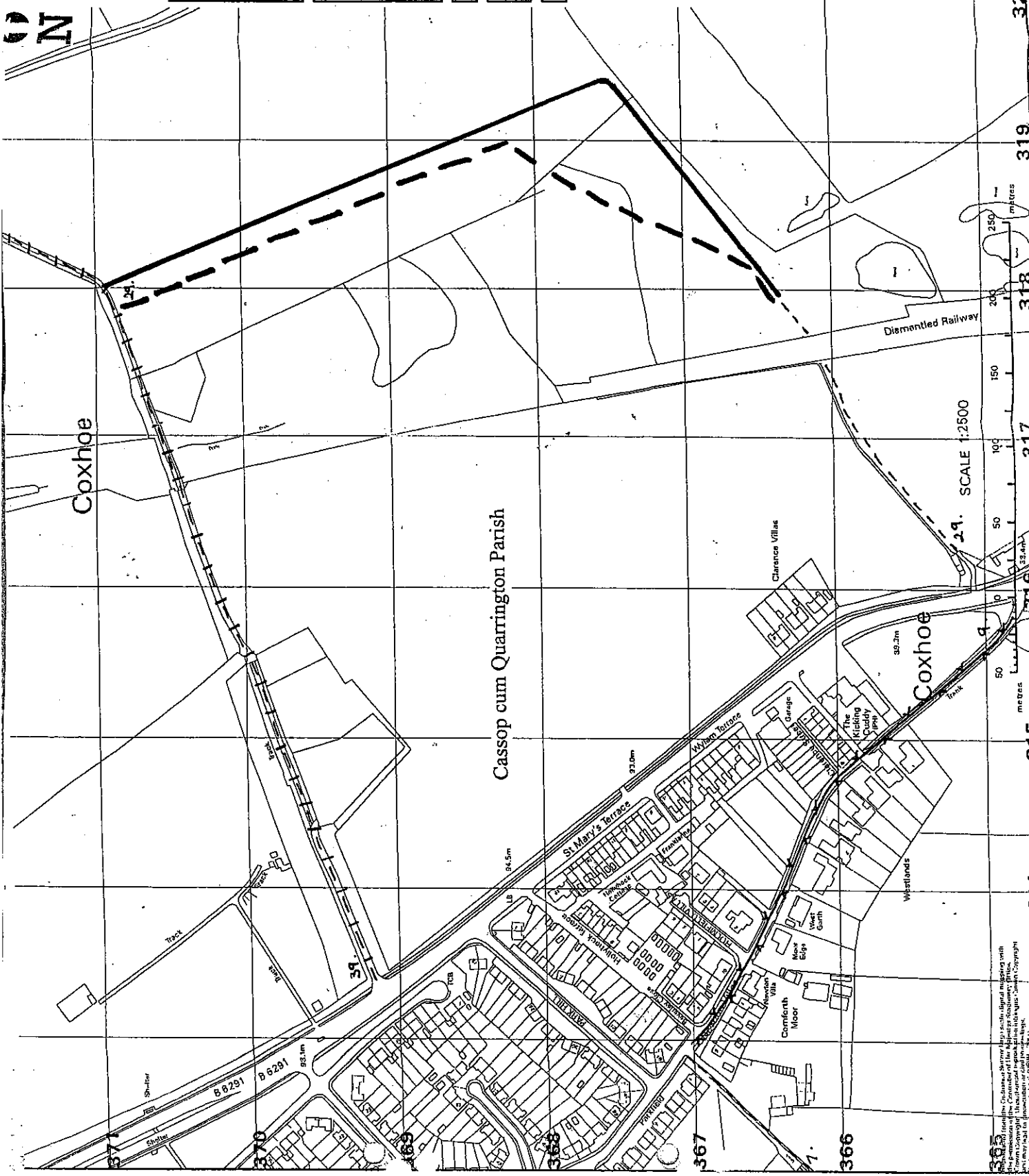
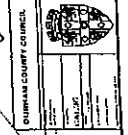
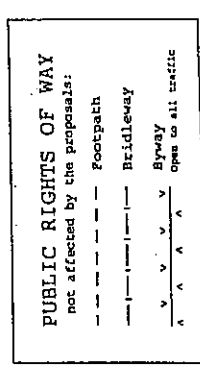
PROPOSED MODIFICATION ORDER
FOOTPATH NO. 29 CASSOP CUM QUARRINGTON PARISH



SCALE 1 : 2,500

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DATE: 15/5/00



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Received 6.12.10
Johnson Broth

Durham County Council
FOI request
Mr PD Johnson

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3772255

Cassop Footpath No 29

17 December 2010

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/AROW/017/29

3rd December 2010

Ms. A. Christie
Senior Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

URGENT

Dear Ms. Christie,

Re: Cassop cum Quarrington Footpath No. 29

Receipt of your letter dated 25th November is acknowledged.

Whilst disappointed with the contents of the letter we nevertheless appreciate that you have taken and followed the advice of the County's Highways Solicitor for which we thank you.

The difficulty that we have is that in our view all of the contents of your letter, including the suggestion that we apply for a diversion, rely upon the premise that a footpath exists on the route marked on the Definitive Map. It is our contention that there is no such footpath and to apply for a diversion would be to concede that there was. The evidence in support of our view includes, not least, that the Council agreed with us in 2000/2001.

We understand that under the Wildlife and Countryside Act 1981 it is the duty of the Council to keep the Definitive Map and Statement under continuous review and to make Modification Orders where appropriate. The work carried out by the Council in 2000/2001 concluded that a Modification Order was required as there was no footpath on the route that you allege there is or on any other route through our arable field but that "the evidence so far received is in support of a public footpath" along the railway cutting route. It appears to be indisputable that this is an appropriate case for the council to apply for a Modification Order and

indeed that the Council appears to have failed in its duty to do so since 2001.

In the circumstances we are still of the view at the moment that a Modification Order, as proposed by the Council in 2000/2001, but modifying the Definitive Map route to the railway cutting route is the correct way forward.

Nevertheless, but in the light of the above, we invite you to persuade us one last time, by providing full and detailed reasons, as to a) why the County now considers that a Modification Order is not appropriate including what has changed since the Council's 2000/2001 position, b) why the Council should not make the application and c) why it considers that a Diversion Application is appropriate.

If, upon hearing from you, we remain of the view that a Modification Order is the correct procedure and the County is still not prepared to make the application then we will do so. However the application must, of course, be made to the County and the appropriate application forms do not appear to be on the County's website. To save time may we therefore ask you once again please to supply the appropriate application forms and all accompanying documentation to us in any event.

In anticipation of our having to submit the application, please may we also have a copy of all of the documentation relating to alleged Footpath 29 that is in the Council's possession, including everything relating to all alleged routes through our arable field and through the railway cutting from 1st January 1980 to the present day. To demonstrate that we desire this matter to be concluded as quickly as possible and to ensure that no more time is lost and that we are in receipt of all of the relevant information we are also making a formal request for this information from the County's Legal Department under the Freedom of Information Act. We will forward a copy this request to you as we have no wish to cause the County to duplicate this work.

You have expressed the view that upon the Modification order application being made, then you could not give it priority as the alteration would be of no public benefit. In response we ask you to let us know if the "Definitive Map Modification Orders – Statement of Priorities" Joint Report to the Highways Committee of 9th March 2005 was adopted by the County and if not that you provide us with the full text of the County's prevailing policy in relation to the issue.

The 2005 Joint Report states that:

*“when prioritising the order in which [Modification Orders] should be investigated and determined, it is recommended that in each consideration should always be given to the particular circumstances of the claim **and** also to take into account the following criteria: The Council’s first priority ... should be those cases where a formal application has been received. Such applications to be investigated in chronological order but also having regard to:*

- a) The degree of public benefit*
- b) Obstruction of the route*
- c) Cogency of the evidence submitted*
- d) Risk of violence/harassment due to issue being unresolved”*

The Report does not attach any greater weight to any of the particular circumstances. However we make reference to each of the first five in the same order as listed:

The particular circumstances of the claim

Firstly, the County appears to have carried out all the necessary investigatory work and compilation of evidence in support of this particular application during 2000/2001. This means that the amount of time and expense that the Council will incur in processing the application will be the least possible.

Secondly, the County appears to have failed in its duty to make the Modification application since at least 2001.

Thirdly, the County itself appears to be extremely anxious to have the matter resolved as a matter of urgency.

The degree of public benefit

Firstly, the public will benefit from the equivalent of at least 300 loaves of bread each year. This food could keep at least 6 average families alive somewhere in the world even if they had no other food source at all.

Secondly, in so far as the immediate local community is concerned, the existing railway-cutting route is equidistant, the alleged path has never been used for at least the last 30 years and no detriment whatsoever is caused to any walker by taking the existing route.

Obstruction of the route

The alleged route has been obstructed for at least 30 years and for at least this period the existing path has not been obstructed and has been freely used every day.

Cogency of the evidence submitted

It is the Council's own investigations that resulted in the decision in 2000/2001 to apply for a Modification Order. We have no doubt that the Council carried out a thorough investigation at that time and that this is the most cogent of evidence that could possibly exist.

Risk of violence/harassment due to issue being unresolved

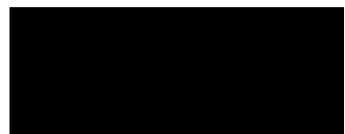
We enclose a copy of a note timed at 10.30am on 30th October 2010. Whilst when we wrote to you on 9th November we understood that Mr. Cowen appeared to be respecting the position. He has apparently once again been seen within our arable field. Given our contention that there is no footpath Mr. Cowen will be challenged if seen again and given the demeanour that he displayed on 30th October there is a distinct risk of violence resulting.

In the circumstances, if the 2005 Joint Report does prevail, then we are confident that you will agree that the application can and should be attended to extremely quickly, thereby resolving the issue which you appear to wish to see so resolved. In any event, if it were not concluded within a year, we would wish to apply to the Secretary of State for the Modification.

Given all the circumstances of this case we do not believe it is helpful for you to be threatening us with formal Notices to carry out works and bill us, with deductions from our Single Farm Payment or indeed with criminal proceedings all of which we would oppose at least until you provide us with answers to questions that we believe that we are reasonably entitled to ask and for as long as we consider that we are not in the wrong.

We look forward to hearing from you.

Yours sincerely,



P. D. Johnson
Johnson Brothers

Contact: Audrey Christie
Direct Tel: 0191 383 4084
Fax: 0191 383 4096
email: Audrey.christie@durham.gov.uk
Your ref:
Our ref: RED/NM/AROW/017/29



Mr PD Johnson
Johnson Brothers
Quarrington Farm
Old Quarrington
Durham
DH6 5NN

17 December 2010

Dear Mr Johnson

Cassop cum Quarrington Footpath No 29

Thank you for your letter of 3 December 2010. Your request for information under the Freedom of Information Act 2000 (FOI) has been replied to separately by the Chief Executive's Office while I have responded in this letter to the other issues you have raised. Our Legal Services have also written enclosing a Notice with respect to the outstanding obstruction on the path.

Referring to your letter of 3 December I note that you contend the existence of the footpath on the Definitive Map. I have mentioned before in my previous letters of 11 October and 25 November 2010 that there is the conclusivity provision contained in Section 56 of the Wildlife and Countryside Act 1981 which states 'where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map....'. Again I note your reference to previous correspondence from the County Council. However, as I have also mentioned before the statutory provision takes precedence and the footpath legally exists no matter what interpretation is given to any previous representations made by council officers. I have already apologised for the wording of previous letters from the County Council which may have been misleading to you and I do so again.

You state that you are of the view that a Modification Order to alter the route to the railway cutting is the correct way forward and you suggest that this was what the Council proposed in 2000/1. However, this was not what the Council proposed and I cannot find any correspondence with you to suggest this. In my letter of 25 November 2010 I attached the Modification proposal at that time and I pointed out that this referred to a different route and did not refer to the railway cutting route which, as I have mentioned before is a separate issue. For the sake of clarity I will repeat that the Council's proposals in 2000/1 related to an alternative route some 10 - 15 metres to the west of the current route of FP 29 which in essence would still cross your field except on a slightly different alignment.

Regeneration & Economic Development

Durham County Council, County Hall, Durham DH1 5UQ
Main Telephone (0191) 383 3000 Minicom (0191) 383 3802 Text 07786 02 69 56



Yours sincerely



Audrey Christie
Senior Rights of Way Officer

Contact: Claudine Freeman
Direct Tel: 0191 383 4884
Fax: 0191 383 4929
email: claudine.freeman@durham.gov.uk
Your ref:
Our ref: CF/EE/



Mr PD Johnson
Johnson Brothers
Quarrington Farm
Old Quarrington
Durham
DH6 5NN

17 December 2010

Dear Mr Johnson

Cassop cum Quarrington Footpath No 29

I refer to the previous correspondence between you and officers in the Council's Access and Rights of Way Section concerning the above mentioned public footpath.

I note you have removed a stile on Public Footpath 29, Cassop cum Quarrington and replaced this with barbed wire. You have been previously advised in letters dated 11 October and 25 November 2010 that the barbed wire constitutes an obstruction. You were also requested to remove the barbed wire which you have failed to do.

Whilst I realise you dispute existence of Footpath 29 along that route, I am satisfied that it is recorded on the Definitive Map and Statement or Public Rights of Way for County Durham and therefore the barbed wire is an obstruction.

The County Council as Highway Authority is under a duty to 'assert and protect the rights of the public to the use and enjoyment of any highway' (Section 130, Highways Act 1980). As you have failed to comply with the Council's repeated requests to remove the barbed wire, I have no alternative but to serve you with the enclose formal notice under Section 143 of the highways Act 1908 requiring you to remove this obstruction within one month.

Failure to comply with this notice by **17 January 2010** will result in the County Council carrying out the necessary works to remove the obstruction and recovering the costs of doing so from you.

Continued/..

Legal and Democratic, Resources

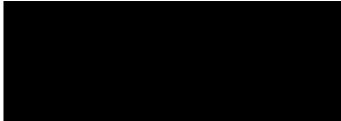
Durham County Council, County Hall, Durham DH1 5UL DX 722100 Durham 16
Main Telephone (0191) 383 3000 Minicom (0191) 383 3802 Text 07786 02 69 56

Page 2 of 2

I am advised that you have concerns about stock control should the barbed wire be removed. The replacement of the barbed wire with a stile will be considered sufficient to comply with this notice.

I would also point out that it is an offence under Section 137 of the Highways Act 1980 to obstruct a public right of way.

Yours sincerely

A solid black rectangular box redacting the signature of Claudine Freeman.

Claudine Freeman
Solicitor

NOTICE to remove structure (barbed wire) from highway

DURHAM COUNTY COUNCIL

HIGHWAYS ACT 1980 SECTION 143

To: *Mr PD Johnson, Johnson Brothers,
Quarrington Farm, Old Quarrington, Durham DH6 5NN*

The County Council of Durham, as competent authority for the highway known as **Cassop Footpath No 29** shown by a bold broken line on the attached plan, gives you notice under and in pursuance of the powers contained in the Highways Act 1980 Section 143 that it requires you within one month after service of this notice upon you to remove a structure, being strands of barbed wire, erected or set up by you upon the highway at **point X** shown on the attached plan.

If the structure is not removed within the time required by this notice the Council may itself remove the structure and recover from you the expense of so doing.

Dated: 17 December 2010

Signed: 

PP Ian Thompson, Corporate Director of Regeneration and Economic Development

- 1 Where a structure (see note 4 below) has been erected or set up on a highway otherwise than under a provision of the Highways Act 1980 (20 Halsbury's Statutes (4th edition) HIGHWAYS STREETS AND BRIDGES) or some other enactment, a competent authority (see note 2 below) may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice: see the Highways Act 1980 s143(1). As to the meaning of 'enactment' see the Highways Act 1980 s329(1). See also Paragraph 54 [218] ante. As to the removal of nuisances and obstructions generally see paragraphs 53 [216] -57 [224] ante.
- 2 'Competent Authority' generally means the highway authority: see the Highways Act 1980 s143 (1) as amended by the Local Government Act 1985 s8 (1), Sch 4 para 25.
- 3 The period should be at least one month, as the statutory authority may not itself remove the structure until the expiration of one month from the date of service of notice: See the Highways Act 1980 s143 (3)
- 4 'Structure' means any machine, pump, post or other object capable of causing obstruction, and includes wheeled structures: see Highways Act 1980 s143(4)
- 5 If the structure is not removed within the time specified, the authority may remove it and recover the expenses reasonably incurred by it in doing so from the person having control or possession of the structure: see Highways Act 1980 s143(2). As to the recovery of expenses see the Highways Act 1980 ss305 (5), 306.
- 6 Any Notice or other document under the Highways Act 1980 issued by a council may be signed by the proper officer of the council or any officer so authorised: see the Highways Act 1980 s321. As to the form and service of notices and orders by or on behalf of a highway authority or council under the Highways Act 1980 see the Highways Act 1980 ss320, 322 as amended

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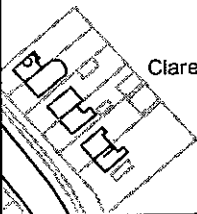


Drain
Drain



Pond

Clarence Villas



This is a working copy of the Definitive Map. The relevant date of the Digital Mapping Data is the 14th February 2010. The map shows changes which have taken place up to and including the date specified:

Public Rights of Way

- Footpath
- |-|-| Bridleway
- Λ V Λ V Λ V Byway

Access & Rights of Way Section
Regeneration and Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ
Telephone 0191 383 3239

Drawn by: OS

Date: 14/12/10

Scale 1:2,500

Cassop cum Quarrington
Footpath no 29

Highways Act 1980
Section 143

X = location of barbed wire

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Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/AROW/017/29

14th January 2011

Ms. A. Christie
Senior Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Dear Ms. Christie,

Re: Cassop cum Quarrington Footpath No. 29

Receipt of your letter dated 17th December 2010 is acknowledged.

We are also in receipt of documentation requested under the FOI Act.

We have reviewed all of our files and the FOI documentation and this reply is based upon that documentation. However it appears from the FOI documentation produced that other relevant documents have not been produced albeit that they are specifically referred to within the documentation produced. These include letters from Michelle Nolan dated 26th September and 15th October 2007 and an e-mail from you dated 26th November 2007. According to your letter of 9th January 2008 the latter "*explained our position with respect to Footpath 29 and the parallel route along the old railway*". We have written to the Information Management Team expressing our concern at the omissions and providing a list of items that have clearly not been produced. Obviously our views may change upon receipt of further documentation at a later date.

In relation to each of the key issues that we referred to in the second paragraph of our letter of 3rd December 2010 our view is as follows:-

issue of whether a modification is required or not and we do not therefore appear to have as yet any explanation for the change in the Council's 2000/2001 position.

(b) Why should not the Council make the Modification Order?

You also appear to remain silent as to this. Indeed you appear to attempt to avoid answering this question by referring to the fact that the Council does not make a Modification Order application. This of course is technically correct but only because the procedure is that it can make a Modification Order without receiving an application from itself.

(c) Why does the Council consider that a Diversion application is appropriate?

You say that this is because "*Your position, questioning the existence of Footpath 29, cannot be sustained*". In other words, as we suspected, a Diversion application requires an admission that there is a footpath on the route depicted by the Definitive Map. As this is not the case you have in fact convinced us that a Diversion application is not appropriate.

Given all of the information and documentation now available to us we are now more certain than ever before that a Modification Order is and indeed has always been the correct process to resolve this matter.

As it is clear that the Council will not carry out its duty to modify we now enclose an application for your attention with the accompanying certificate of service. You will note that this is to vary the map and statement in relation to Footpath 29 to the railway cutting route. We have considered your view that any such application would not be valid but it appears to us that Sections 53(3)(c) (i) and (iii), the latter as set out above including particularly the words "*or any other particulars contained in the map and statement require modification*" provide just for these circumstances. Clearly the evidence supports the view that the railway cutting route is the correct route. This was certainly the Council's view in 2001. It appears also to have been the Parish Council's view until at least their Clerks' letter to the Council dated 21st October 2001.

In so far as your proposed enforcement is concerned we repeat the sentiments expressed in the third paragraph of our letter of 9th November 2010 and wish to make it clear that we will not accept any responsibility for any expense that the Council incurs in its proposed enforcement

actions. Any civil or indeed criminal proceedings will be defended as we do not believe that any court will find in favour of a public authority that is enforcing a right that exists and it knows exists solely as a result of its own failure to carry out its duties properly over a period of at least 10 years and when we have been put to the time and expense of preparing and lodging applications to rectify the position.

In the meantime if our properly erected boundary fence is removed without our being given the courtesy of a date and time for this action, then we will re-erect it. If we are given notice of a date and time then it is our intention to refuse the removal and works and if necessary, as has previously been the case with disputes with the Council, the Police will be called.

We trust that you will agree that as we have now made this application and that no-one is being prejudiced by the position on the ground remaining as it has been for at least the past 30 years then the status quo should prevail until the application and any subsequent appeals have been determined.

We await hearing from you.

Yours sincerely,

P. D. Johnson
Johnson Brothers

Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

19th February 2011

Our Ref. PDJ/KH/DCC
Your Ref. CF/EE

Ms. C. Freeman
Solicitor
Legal & Democratic, Resources
Durham County Council
County Hall
Durham
DH1 5UL

Dear Ms. Freeman,

Re: Cassop cum Quarrington Footpath No. 29

Thank you for your letter dated 8th February 2011.

Thank you also to Miss Christie and her manager, Mr Ogden, for meeting me yesterday and at short notice.

As I understand it we have agreed a way forward in relation to the Definitive Map. Namely that:

1. We will submit a further application for a modification of the Map and Statement, namely for the removal of the existing route within the next week or so and the County will process the application. The County will, given the circumstances, consider raising the application up the priority list.
2. We will submit a further application for a modification of the Map and Statement, namely for the addition of the railway cutting route within the next week or so and the County will process the application. Again and given the circumstances, the County will consider raising the application up the priority list

3. We will consider the withdrawal of our application dated 14th January 2011 for a modification on the basis of a variation of the route from the existing route to the railway cutting route upon receiving from the County some further clarification as to the fact that variations do not include variations as to routes but only as to physical characteristics of highways.

This leaves outstanding only the issue regarding our boundary fence on the line of the incorrectly depicted Definitive Map route and your Section 143 Notice which you intend to attempt to enforce at 9.00 am on Monday morning.

The County's contention is that the Definitive Map and Statement is "conclusive" evidence of the route shown on the Map.

However we have today given this further consideration and it does not appear always to be the case. In *R v SSE ex parte Simms and Burrows* [1990] 3 ALL ER 490 the Court of Appeal held, quoting from the Report:

"However, when evidence was discovered subsequent to the preparation of the map which proved that no right of way existed where one was recorded or, the map was not conclusive"

The County and ourselves are agreed that no right of way and therefore no highway exists along the route defined in the Map. In particular we are agreed that there is no right of way or highway at the point depicted by the X on the plan attached to the Notice.

As there is no highway at the point depicted by the X on the plan we hope that the County will agree with our view that the Notice can have no effect and that we are entitled to retain the boundary fence where it has been for at least the last thirty years.

Obviously if the County ultimately disagrees with us then it is at liberty to make an application to a court for an appropriate Order. Although we would obviously defend any proceedings the Court would ultimately decide the issue.

However, we hope that the matter can be resolved amicably without recourse to litigation. The County has a duty under Section 53 to keep the Map and Statement under "continuous" review and to make modifications, which the County and ourselves agree in this case have to be made, "as soon as reasonably practical". Ten years has passed since

the County became aware that the Map was wrong. In addition and although it appears extraordinary to us, but because you have advised us that in your view the County's internal "Statement of Priorities" overrides these duties in so far as the County making the modifications itself is concerned, we have agreed to submit applications to accelerate the modifications process. The County has agreed to consider prioritising them. This appears to us to be a sensible way forward. The processes are in motion to resolve the issue whilst the status quo that has prevailed on the ground for the last thirty years and possibly indefinitely also remains. Moreover no expenses will be incurred on Monday because Mr Ogden explained that he would be attending the site on Monday initially without any contractors.

We would welcome any further observations that you may have and we apologise for the lateness of this letter. I was abroad last week. Certainly if there is anything else that you think that we can do to assist with the modification applications then please let us know.

Yours sincerely,

P. D. Johnson
Johnson Brothers

Please acknowledge → AJC
ACK 20-4-12

Johnson Brothers

QUARRINGTON FARM, OLD QUARRINGTON, DURHAM DH6 5NN U.K.
TEL: DURHAM (0191) 3772255 · FAX: DURHAM (0191) 3770261

Our Ref. PDJ/KH/DCC
Your Ref. RED/NM/ROW/Modification Orders

19th April 2012

BY HAND

Ms. A. Christie
Senior Rights of Way Officer
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Dear Ms. Christie,

Re: Cassop cum Quarrington Footpath No. 29

We refer to your letter dated 16th March 2012 with enclosures and briefly to Miss Burgess's letter addressed to our Solicitors dated 30th March 2012.

We note:

1. That you have decided to process our Deletion Application despite all of your earlier refusals to do so both directly in correspondence to us and in the penultimate paragraph of your Witness Statement dated 24th November 2011.
2. That your reason for not processing our Addition Application is that you are now asking the landowners to dedicate the land notwithstanding their Agents letter to you dated 21st January 2011 and the various other notes that you have made on your files recording their strong objection to any such dedication.
3. That you have drafted your Report recommending refusal prior to carrying out any consultations
4. That you have drafted your Report not having made any inquiries at all, according to the FOI documentation disclosed, in relation to either the route to be added or the route to be deleted in accordance with the Council's statutory duty.
5. That your Report fails to state that the railway cutting route is equidistant, fenced, waymarked, has become a public footpath by deemed dedication, has to your knowledge been for 20 years and remains in daily use without restriction and "*provides an alternative to Footpath 29 and that because of this the public are not unduly suffering*", to quote from your email dated 26th November 2007.

6. That your Report refers to matters relating to the field route within paragraph 7.3 which purports to be a paragraph concerning the railway cutting route.

We believe that your Report should be corrected in order not to misrepresent the position to the Committee.

You may recall that in the recent case concerning footpaths in Medomsley, Order Reference FPS/H1345/7/8, the Inspector referred to the Applicants complaint of Durham County Council not being impartial. Our concern regarding the Council's conduct in this case prior to March 2012 is well documented. During March further matters with which we are concerned have occurred, as follows.

Firstly, in your witness statement of 24th November last year you stated:

"The Johnsons' current application is not a priority for the Council as the priorities still primarily give precedence to formal applications which are dealt with in date order and of which there are over 20 ahead of this application."

During March you decided to process at least one of our applications ahead, we understand, of others and therefore contrary to your witness statement.

Secondly, during March, it came to our attention from information that we have received from third parties, for example Parish Council meeting minutes, that the Council may have withheld documents from disclosure under the FOI that are potentially damaging to its cause.

Thirdly, during March, the Council may have decided not to accept clear advice given to it by a District Judge sitting in the Magistrates Court.

We leave it to others to determine the impartiality or otherwise of the Council's conduct.

As you know we consider that the County has failed in its statutory duty to review the Definitive Map and Statement since at least 2000. Nevertheless and after incurring a lot of time and expense in sourcing and obtaining new evidence we now enclose this for your consideration:

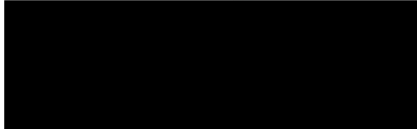
1. Letter from CLA dated 30th March 2012
2. Extracts from 12 OS Plans of various dates 1857 – 2002
3. Aerial photograph (1944)
4. 10 witness statements
5. Note of new evidence relating to both routes

We confirm that we will wish to make representations directly to the Committee on 10th May 2012 and in order to avoid any misunderstandings

arising in relation to this may we please have a copy of the County's procedural rules for making representations to the Committee i.e. setting out the timetable for written representations, timetable for notification of attendance, Committee Officer with whom we are to liaise, etc. Could you please also let us know as quickly as possible at what time on 10th May the Committee will meet to consider the issue.

Finally for your information we enclose a copy of our two recent letters to the County's Freedom of Information Officer dated 30th March 2012.

Yours sincerely,



P. D. Johnson
Johnson Brothers



Groundsure
ENVIRONMENTAL INSIGHT

Site Details:

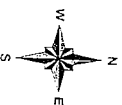
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Report Ref: 431900-536900
Grid Ref: 431900, 536900

Map Name: County Series

Map date: 1939

Scale: 1:2,500

Printed at: 1:2,500



Surveyed 1938
Revised 1938
Edition N/A
Copyright N/A
Levelled T/A

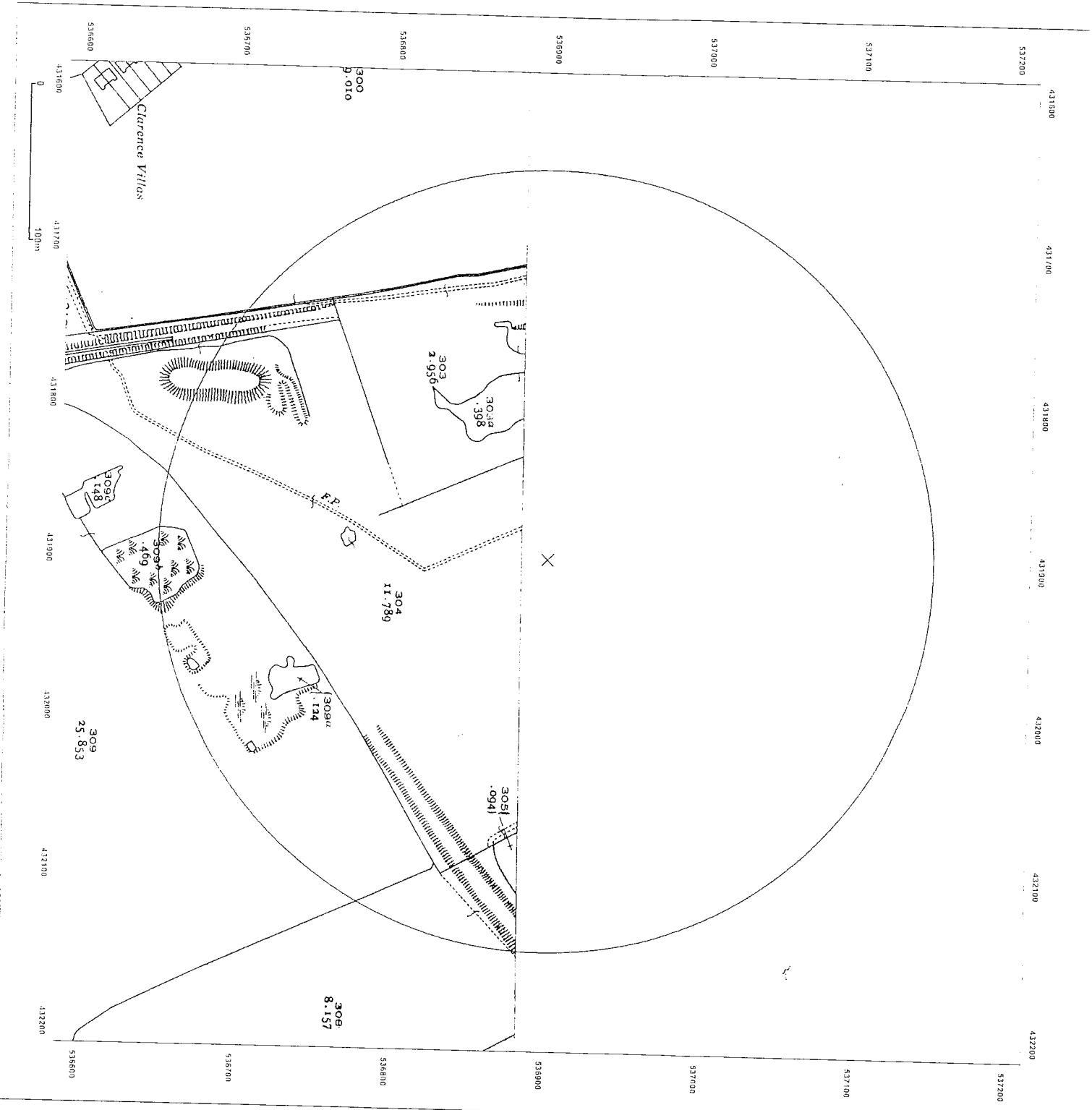


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Production date: 02 April 2012

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GroundSite
ENVIRONMENTAL INSIGHT

Site Details:

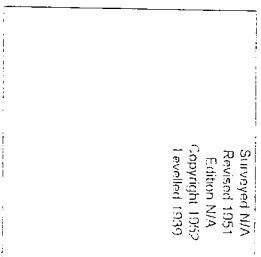
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Report Ref: 431900, 536900
Grid Ref:

Map Name: Provisional

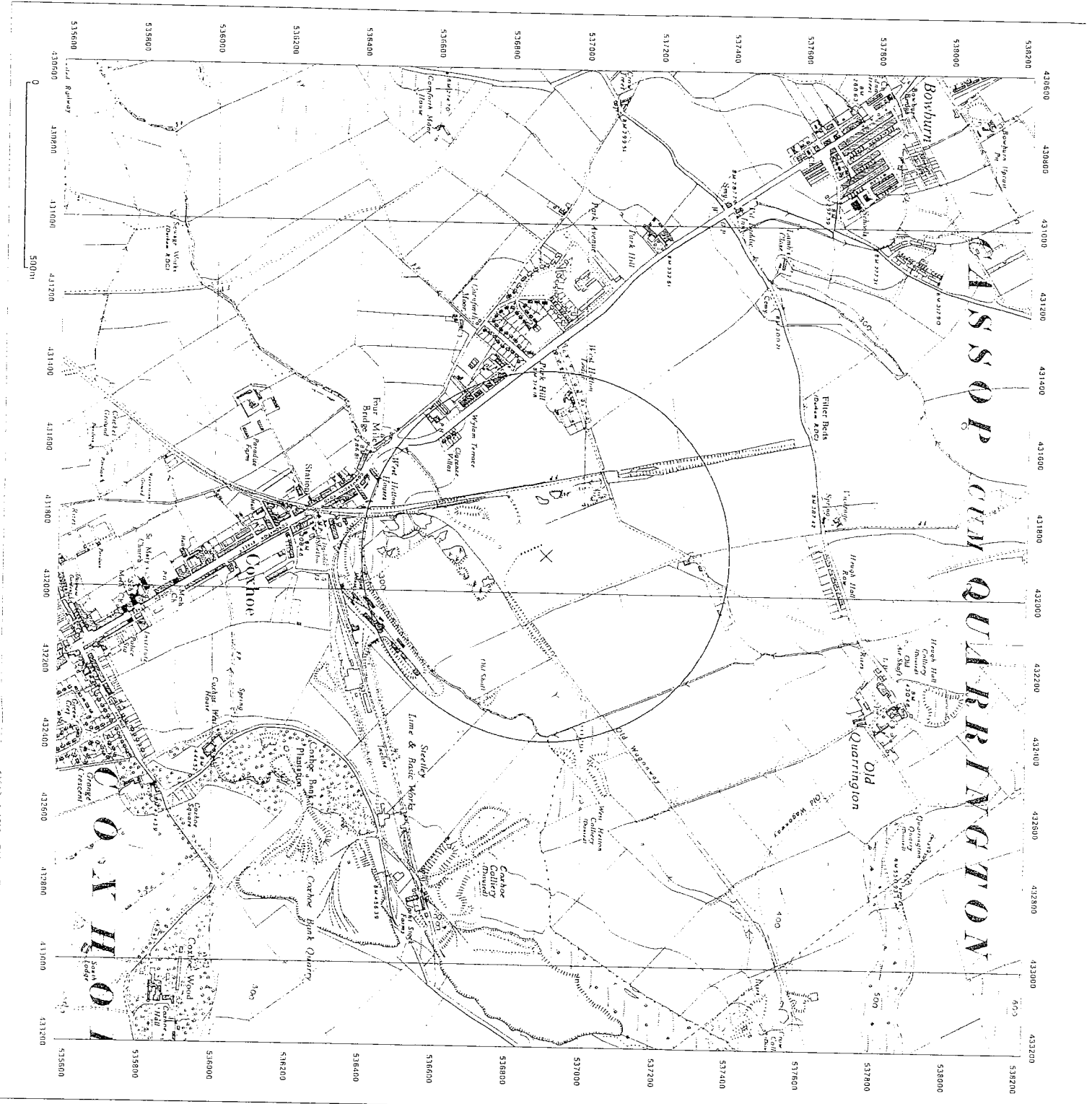
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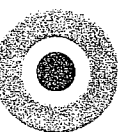


Surveyed N/A
Revised 1951
Edition N/A
Copyright 1952
Issued 1999



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Groundsure
ENVIRONMENTAL INSIGHT

Site Details:

Client Ref: 431900-536900
Report Ref: 431900, 536900
Grid Ref:

Map Name: Provisional

Map date: 1964

Scale: 1:10,560

Printed at: 1:10,560



Surveyed 1961
Revised 1964
Edition N/A
Copyright 1967
1 levelled N/A

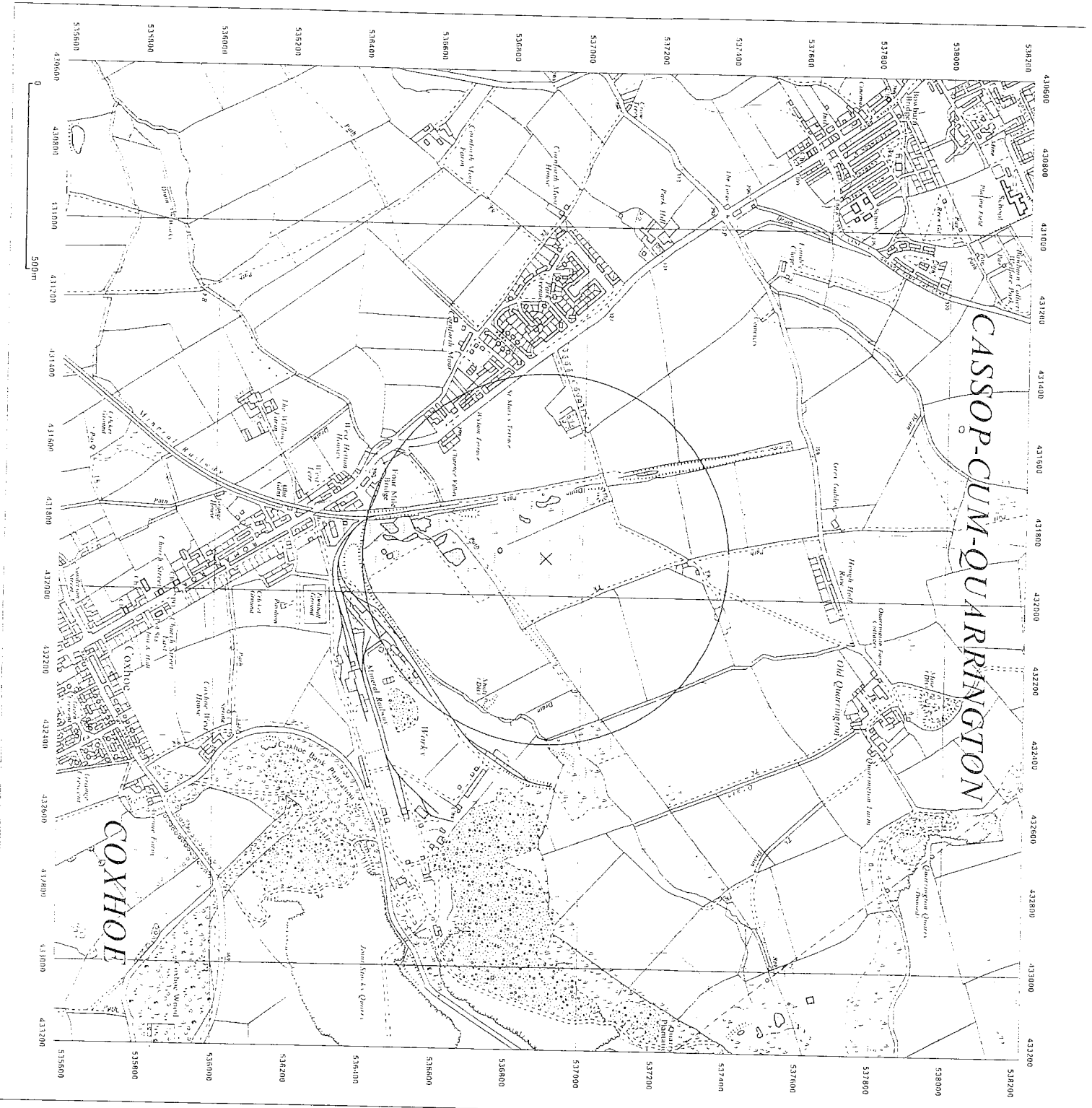


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Site Details:

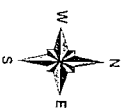
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Report Ref: 431900-536900
Grid Ref: 431900, 536900

Map Name: County Series

Map date: 1895-1898

Scale: 1:10,560

Printed at: 1:10,560



Surveyed 1887
Revised 1895
Edition N/A
Copyright N/A
Levelled N/A

Surveyed 1857
Revised 1898
Edition N/A
Copyright N/A
Levelled N/A

Surveyed 1857
Revised 1895
Edition N/A
Copyright N/A
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Levelled N/A

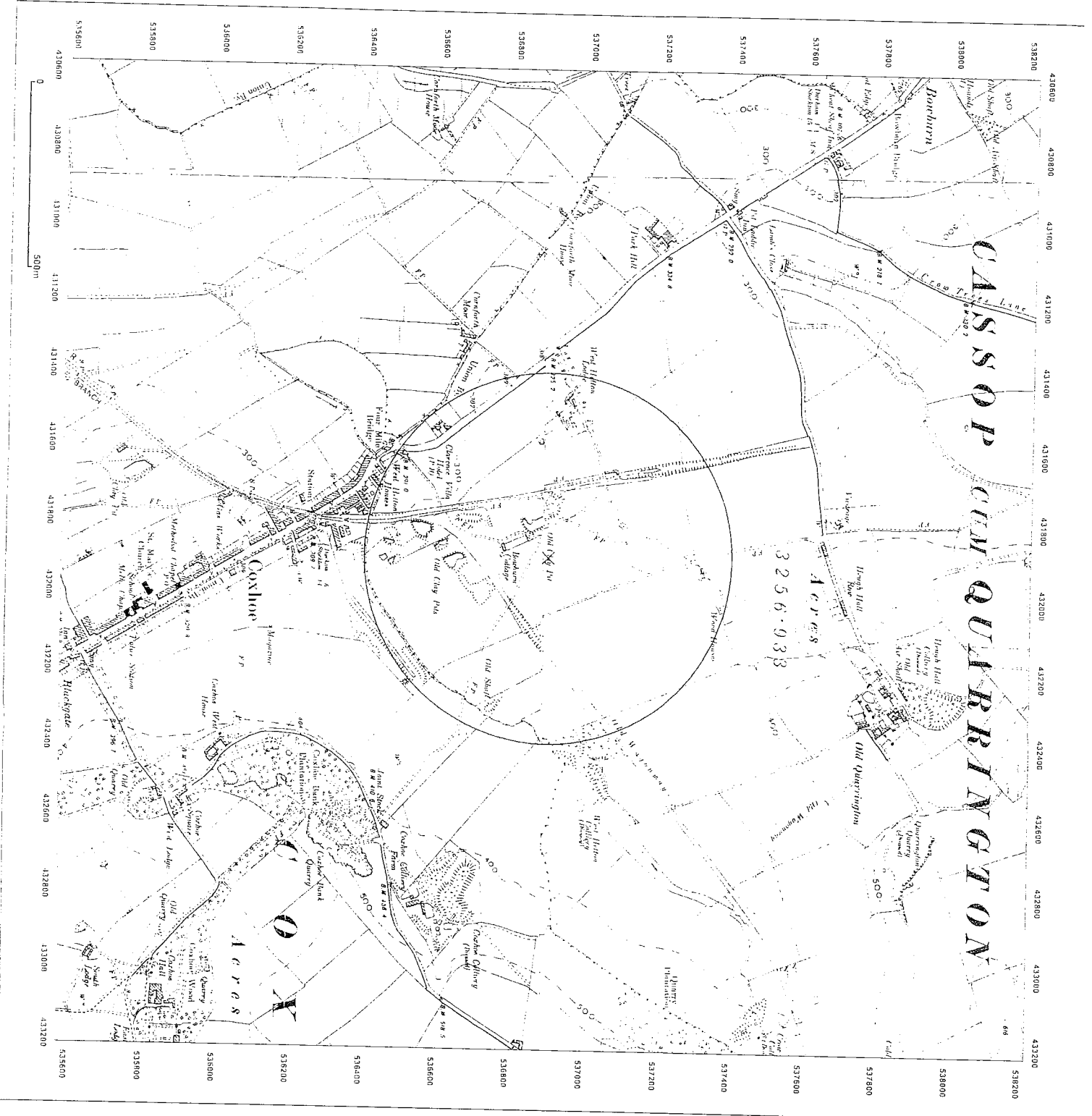


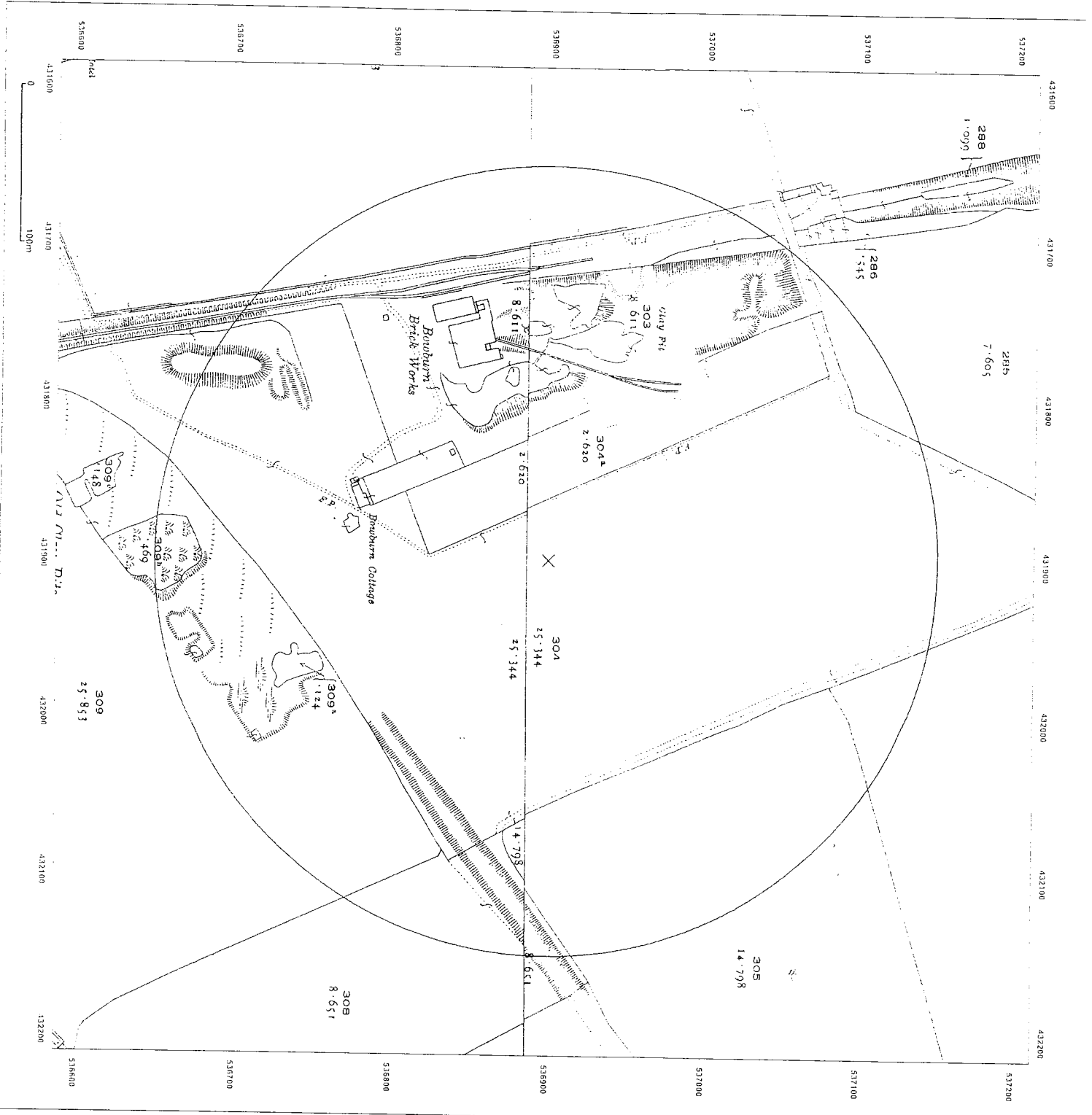
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Site Details:

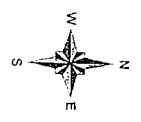
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 Grid Ref:

Map Name: County Series

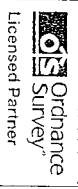
Map date: 1919

Scale: 1:2,500

Printed at: 1:2,500



Surveyed 1919
Revised 1919
Edition N/A
Copyright N/A
Levelled N/A



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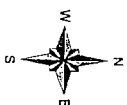
Client Ref: 431900-536900
Report Ref: 431900, 536900
Grid Ref:

Map Name: County Series

Map date: 1857

Scale: 1:10,560

Printed at: 1:10,560



Surveyed 1857
Revised 1857
Edition N/A
Copyright N/A
Licensed N/A

Surveyed 1857
Revised 1857
Edition N/A
Copyright N/A
Licensed N/A

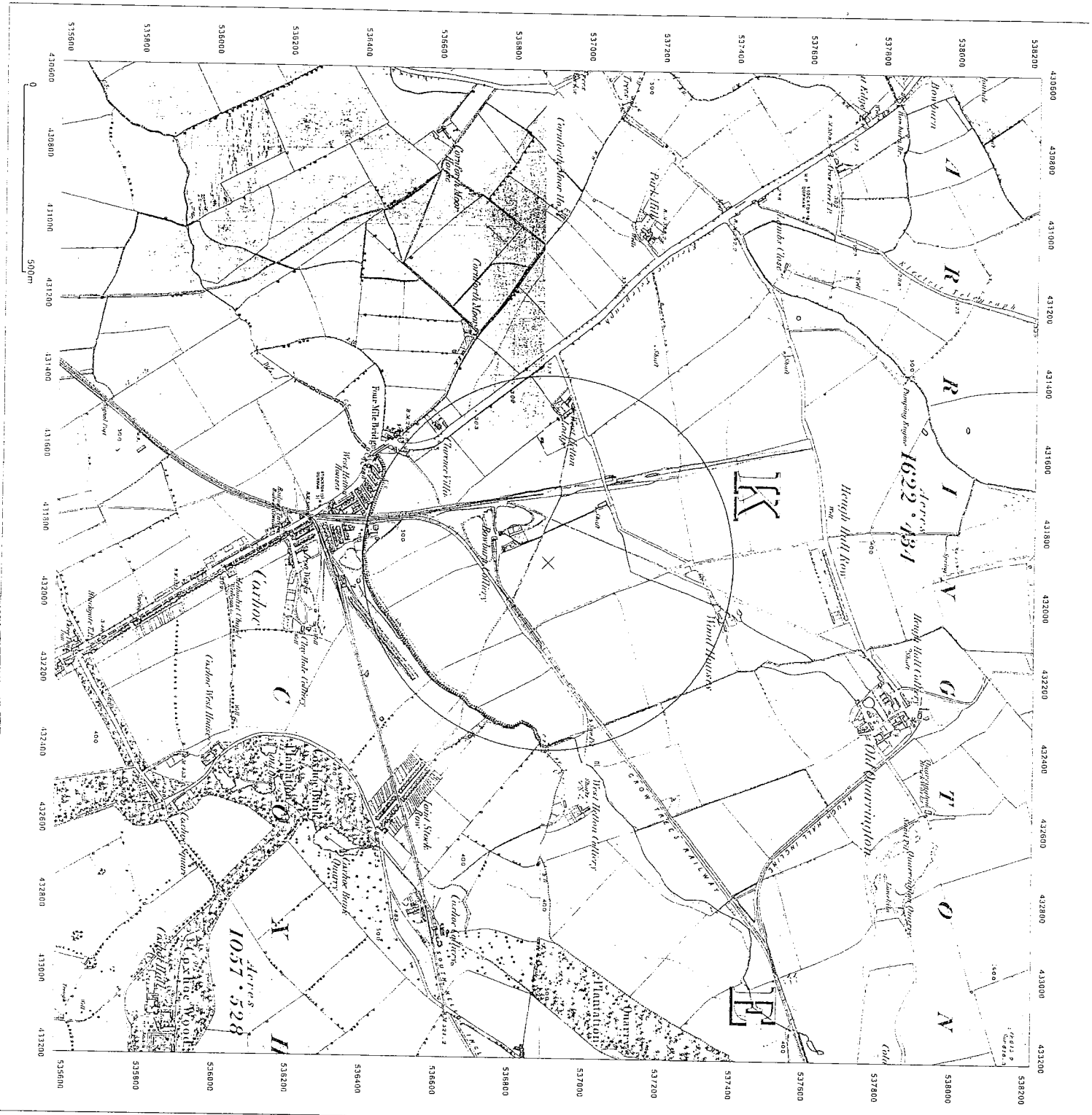


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ENVIRONMENTAL INSIGHT

Site Details:

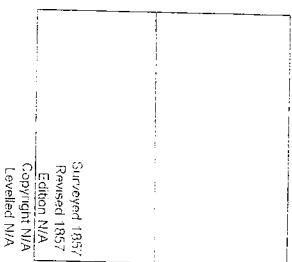
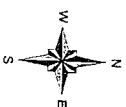
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Printed at: 1:2,500

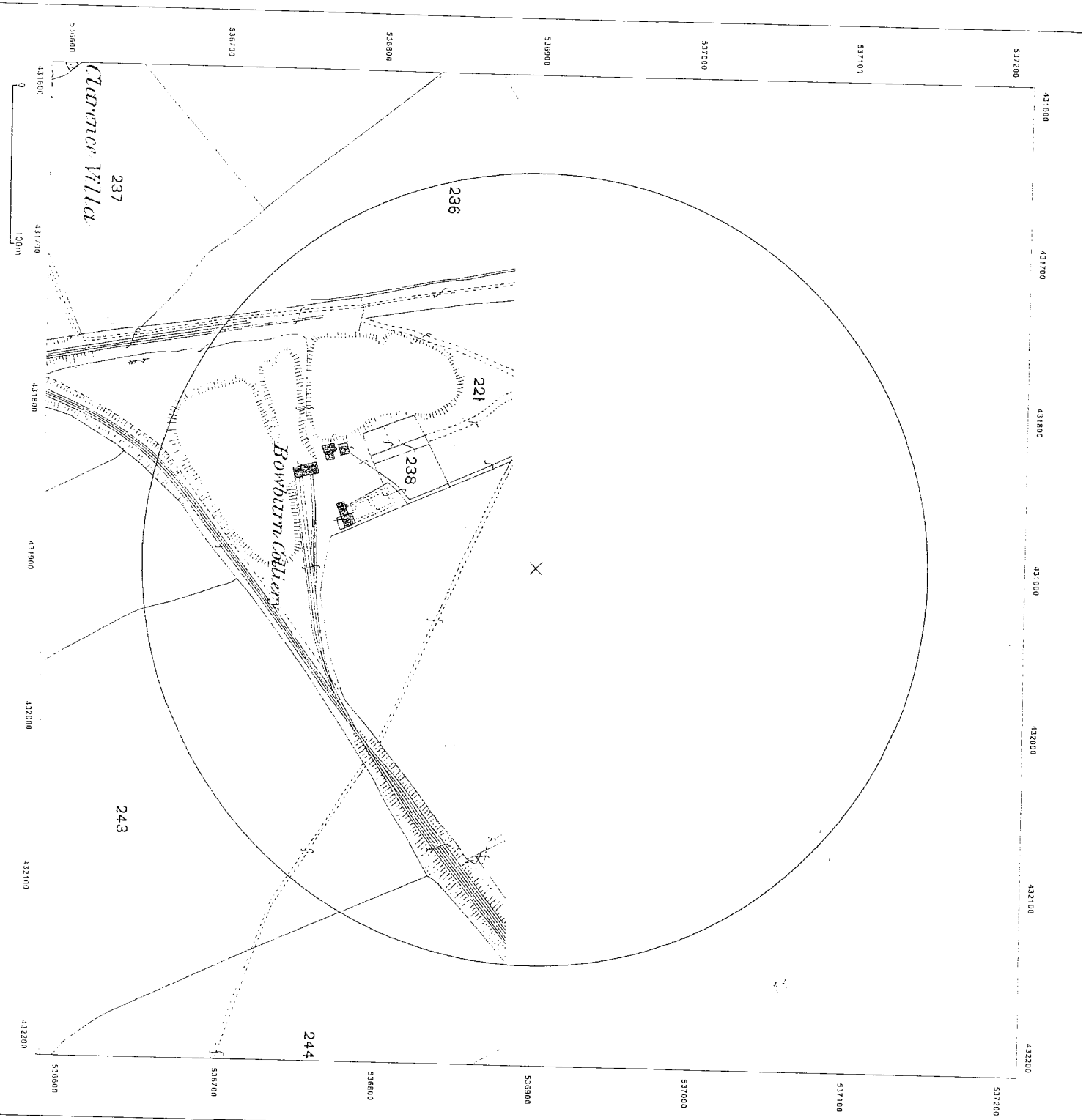


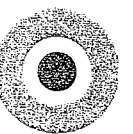
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ENVIRONMENTAL INSIGHT

Site Details:

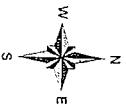
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Grid Ref: 431900, 536900

Map Name: National Grid

Map date: 1969

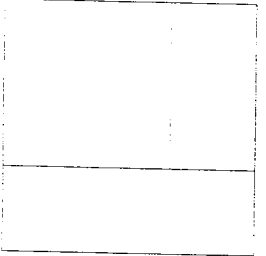
Scale: 1:2,500

Printed at: 1:2,500



Surveyed 1969
Revised 1969
Edition N/A
Copyright 1970
Levelled 1965

Surveyed 1969
Revised 1969
Edition N/A
Copyright N/A
Levelled 1965

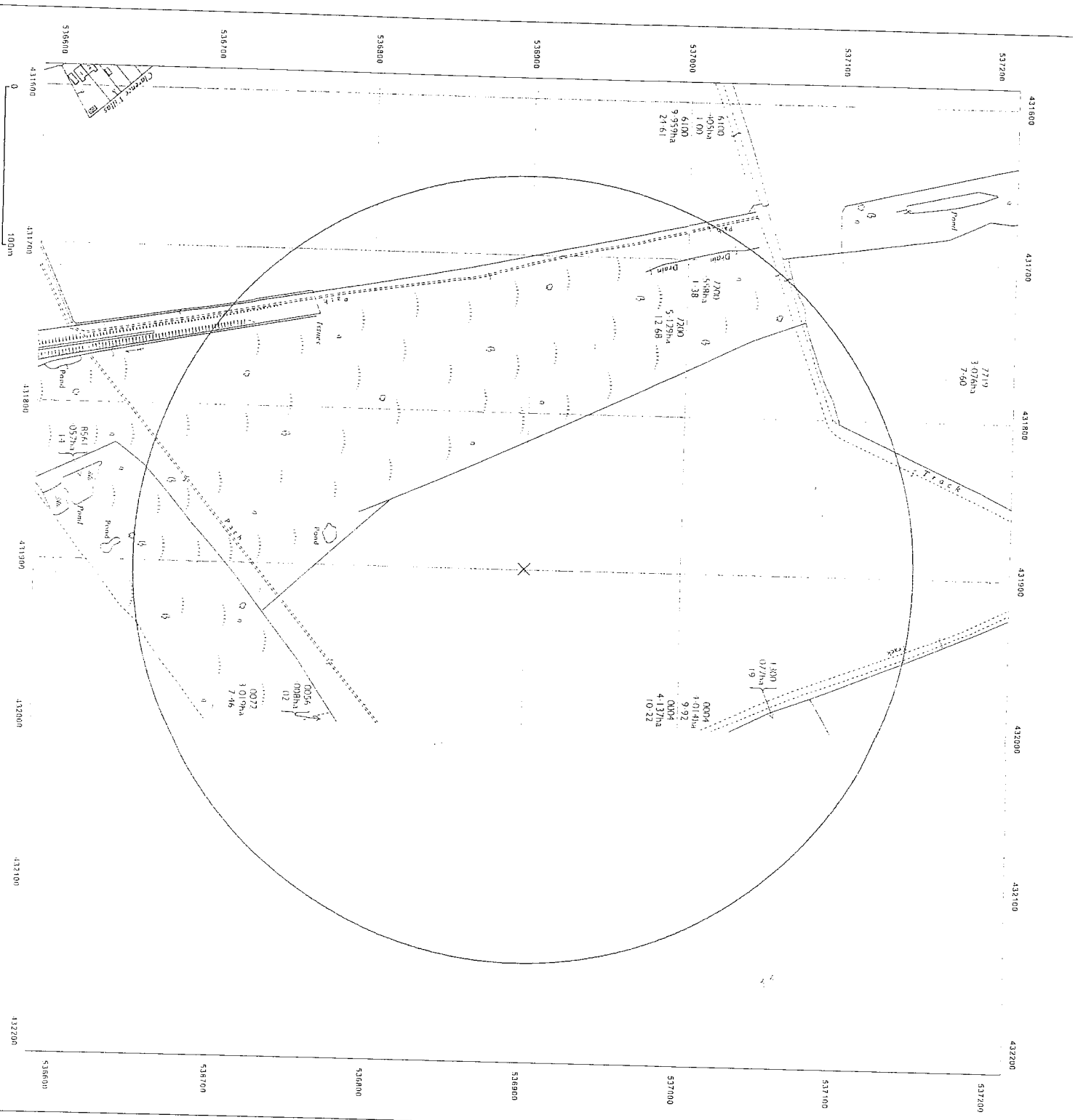


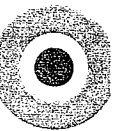
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Site Details:

Client Ref: 431900-536900
Report Ref: 431900, 536900
Grid Ref:

Map Name: National Grid

Map date: 1982-1985

Scale: 1:2,500

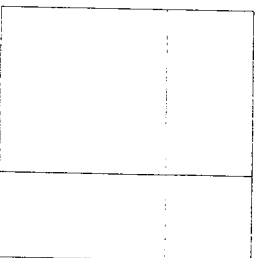
Printed at: 1:2,500



Surveyed 1985
Revised 1982
Edition N/A
Copyright 1982
Levelled 1985

Surveyed 1985
Revised 1985
Edition N/A
Copyright 1985
Levelled 1985

Surveyed 1985
Revised 1982
Edition N/A
Copyright 1982
Levelled 1985



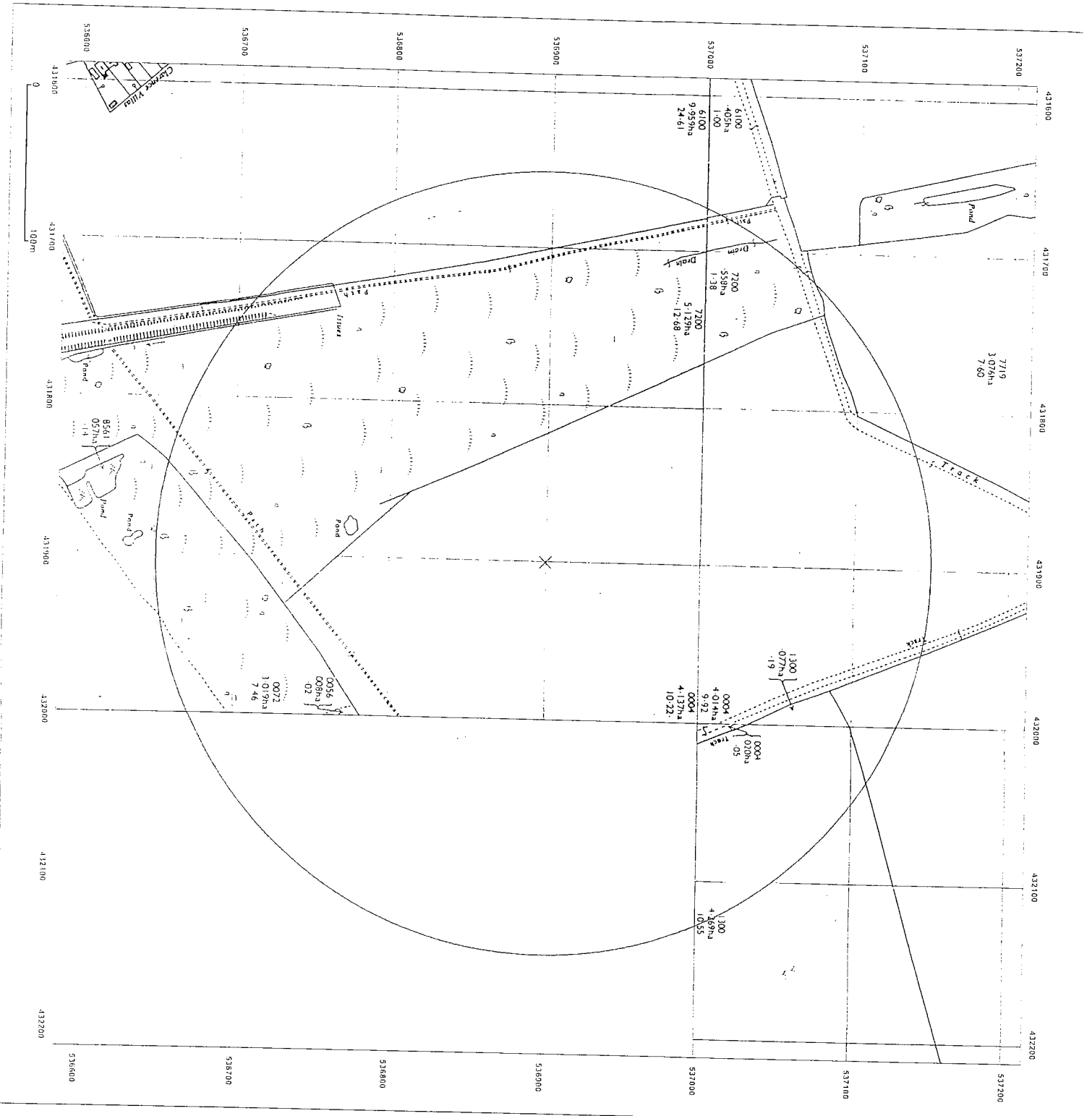
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Site Details:

Client Ref:
Report Ref: 431900-536900
Grid Ref: 431900, 536900

Map Name: National Grid
Map date: 1992
Scale: 1:10,000
Printed at: 1:10,000



Surveyed 1990
Revised 1992
Edition N/A
Copyright N/A
Levelled N/A

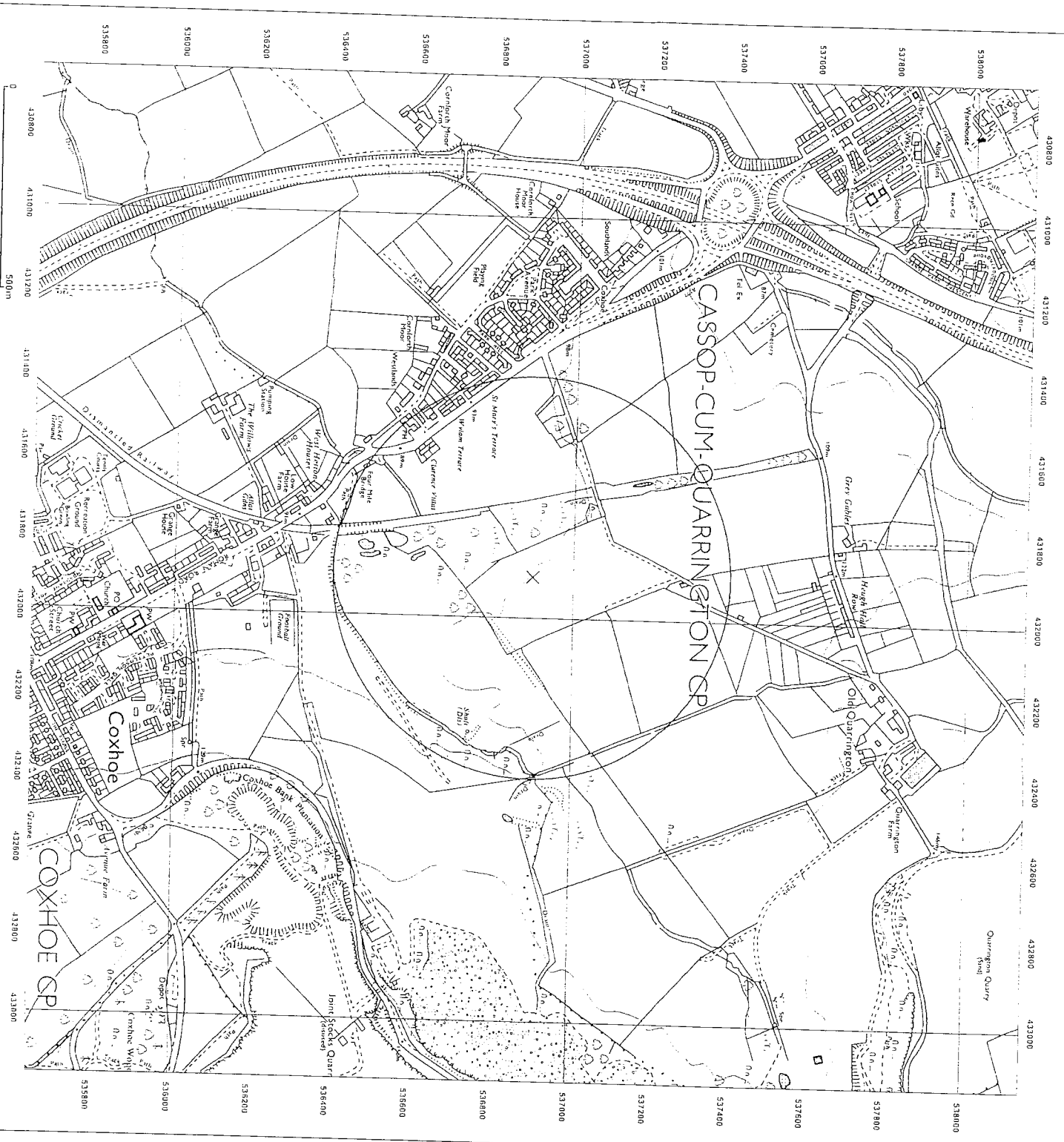


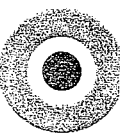
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Site Details:

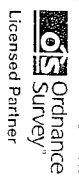
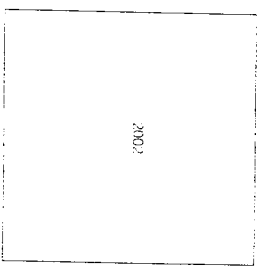
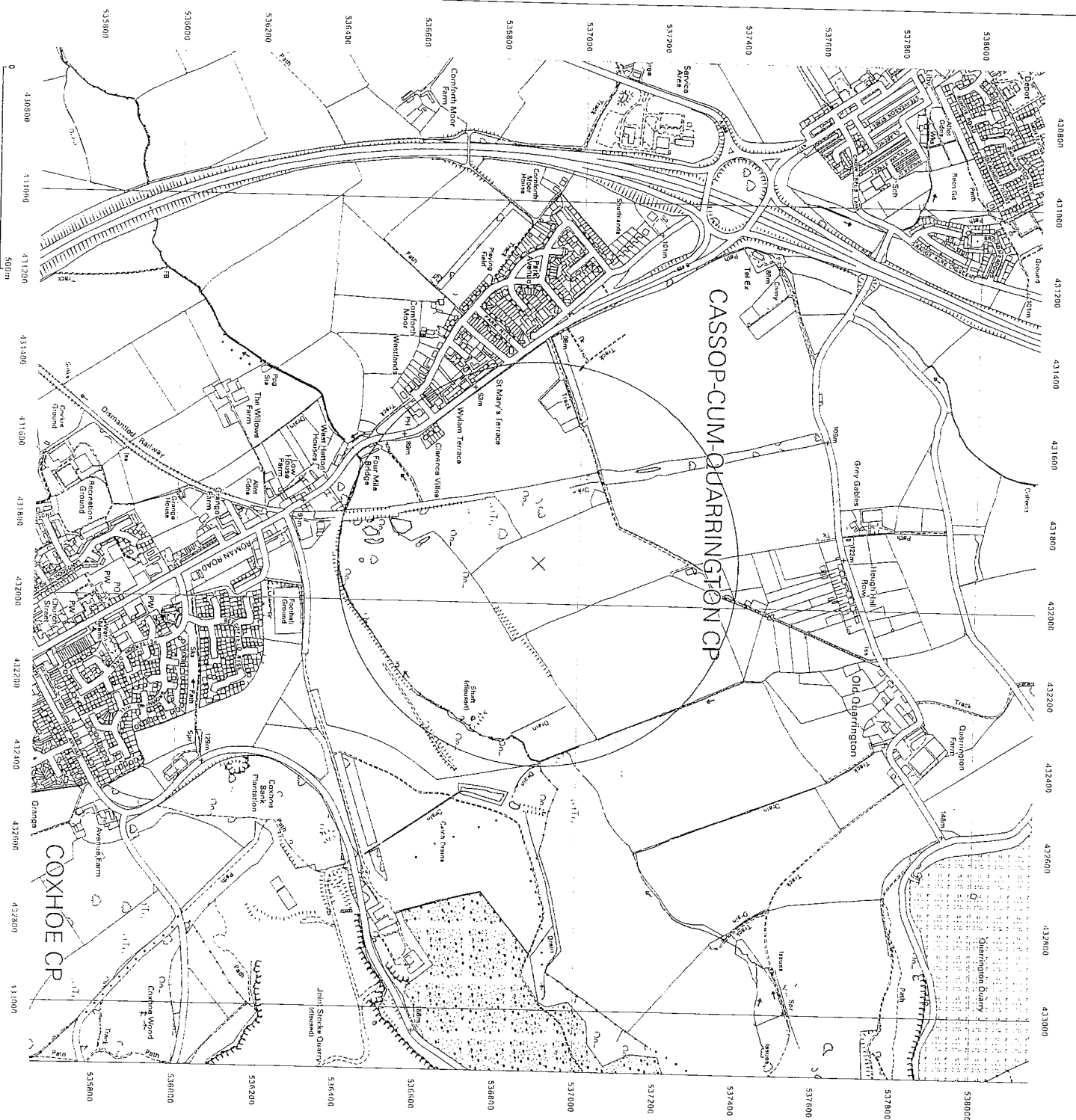
Client Ref: 431900-536900
Report Ref: 431900, 536900
Grid Ref:

Map Name: 1:10,000 Rasler

Map date: 2002

Scale: 1:10,000

Printed at: 1:10,000



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Site Details:

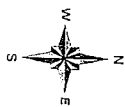
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Report Ref: 431900, 536900
Grid Ref: 431900, 536900

Map Name: County Series

Map date: 1923

Scale: 1:10,560

Printed at: 1:10,560



Surveyed 1857
Revised 1923
Edition N/A
Copyright N/A
Levelled N/A

Surveyed 1857
Revised 1923
Edition N/A
Copyright N/A
Levelled N/A

Surveyed 1857
Revised 1923
Edition N/A
Copyright N/A
Levelled N/A

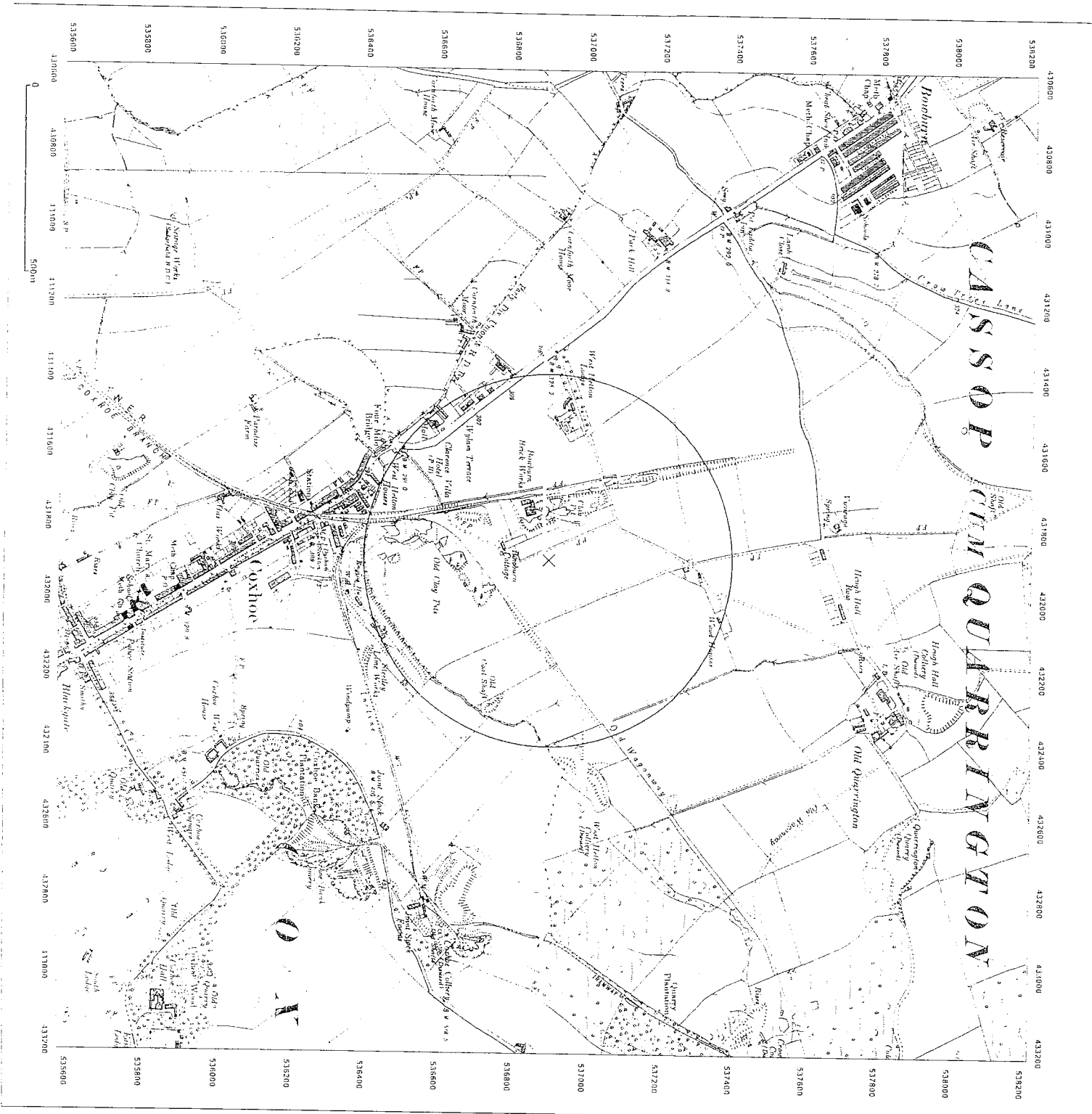


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Country Land &
Business Association
RURAL ECONOMY IS OUR BUSINESS

Our Ref: 1901116/Legal/hway/pubrow/SS/009283
Your Ref:

30 March 2012

A R M Johnson Esq
Johnson Brothers
Quarrington Farm
Old Quarrington
DURHAM
DH6 5NN

Dear Mr Johnson

Definitive Map

Further to our telephone conversation I understand that there is a public right of way across your land which you believe was incorrectly mapped when the definitive map was first drawn up. In particular, I understand that the parish survey upon which the definitive map entry is based relied on a 1919 version of the Ordnance Survey map and referred to buildings which had been destroyed and were therefore no longer in evidence at the time the survey was undertaken. The errors in the definitive map relate directly to the use of that 1919 map and it is unlikely those errors would have occurred if a more up-to-date map been used.

You asked whether this was unusual. The parish surveys undertaken for the definitive map process in the 1950s appear to be extremely variable. Some surveys are very detailed and record the exact location of the path, any structures along it, the condition, the width and so forth. Others are extremely brief, and that is a very common complaint. Using an out-of-date map is something that can lead to errors. The fact that the surveyor failed to notice that a building shown on that out-of-date map no longer existed (indeed, I understand he even refers to it) casts doubt on whether he actually walked the path at all. It would be expected that he would observe the discrepancy.

I would note that the depiction of a path on an Ordnance Survey map is not conclusive evidence either that it exists, or, that it is a public path rather than merely a private one.

The parish survey process was supposed to lead to a 'definitive' map. However, some sixty years later, local authorities are still dealing with errors and omissions on definitive maps, which indicates that the initial process was far from satisfactory. One authority estimates it spends one third of its time correcting errors and anomalies on the definitive map.

You also asked whether we had other members who had experienced similar problems with definitive maps. Throughout the CLA we deal with hundreds of enquiries every year relating to public rights of way. Many of these relate to problems with definitive maps and include situations where the landowner had no knowledge of a route in that location (or of that status) until contacted by the local authority or where a route is shown in a different position on the definitive map from that used by the public (and, in some cases, from that waymarked by the local authority).

I regret that problems with definitive maps are not unusual.

Yours sincerely,



Mrs Sarah Slade BSc(Hons) MRICS
National Access Adviser

**STATEMENT OF BRIAN HALL OF 16 BELGRAVE AVENUE, COXHOE,
COUNTY DURHAM**

1. I was born on 28th November 1939 and lived at 7 Old Quarrington, Durham until I married in 1965. I moved with my wife to 14 Old Quarrington and we lived there until around 1970 when we moved to St. Mary's Terrace, Bowburn. I have shown the Old Quarrington addresses at which I have lived on the attached plan.
2. From as early as I can remember my mother would take some or all of my older brothers and sisters down the track between Old Quarrington and Parkhill marked on the plan as "Track".
3. We had relatives in both Parkhill and Coxhoe and my mother also sometimes shopped in Coxhoe. From as early as I can remember, probably being 4 or 5 until I went walking on my own when I was around 10 or 11, I would make the journey down the track at least once a week and in almost all weathers. Snow and even drifts didn't put my mother off.
4. My brothers and sisters and I were always told to keep to the public rights of way and to respect other people's property and not to walk over it. Everyone in those days did just that.
5. My parents explained to us that the track from Old Quarrington to Parkhill was a public footpath. They also explained that there were no public routes through either the field marked "Johnson's field" on the plan or the field to the west of the railway cutting.
6. The one exception to this general rule was the land marked "railway cutting" on the plan. In relation to this particular area my parents always told us that we were allowed to play on the railway cutting area. We were never told or knew who owned the land but I do recall

the railway line coming up the railway cutting land about a third of the way from Coxhoe.

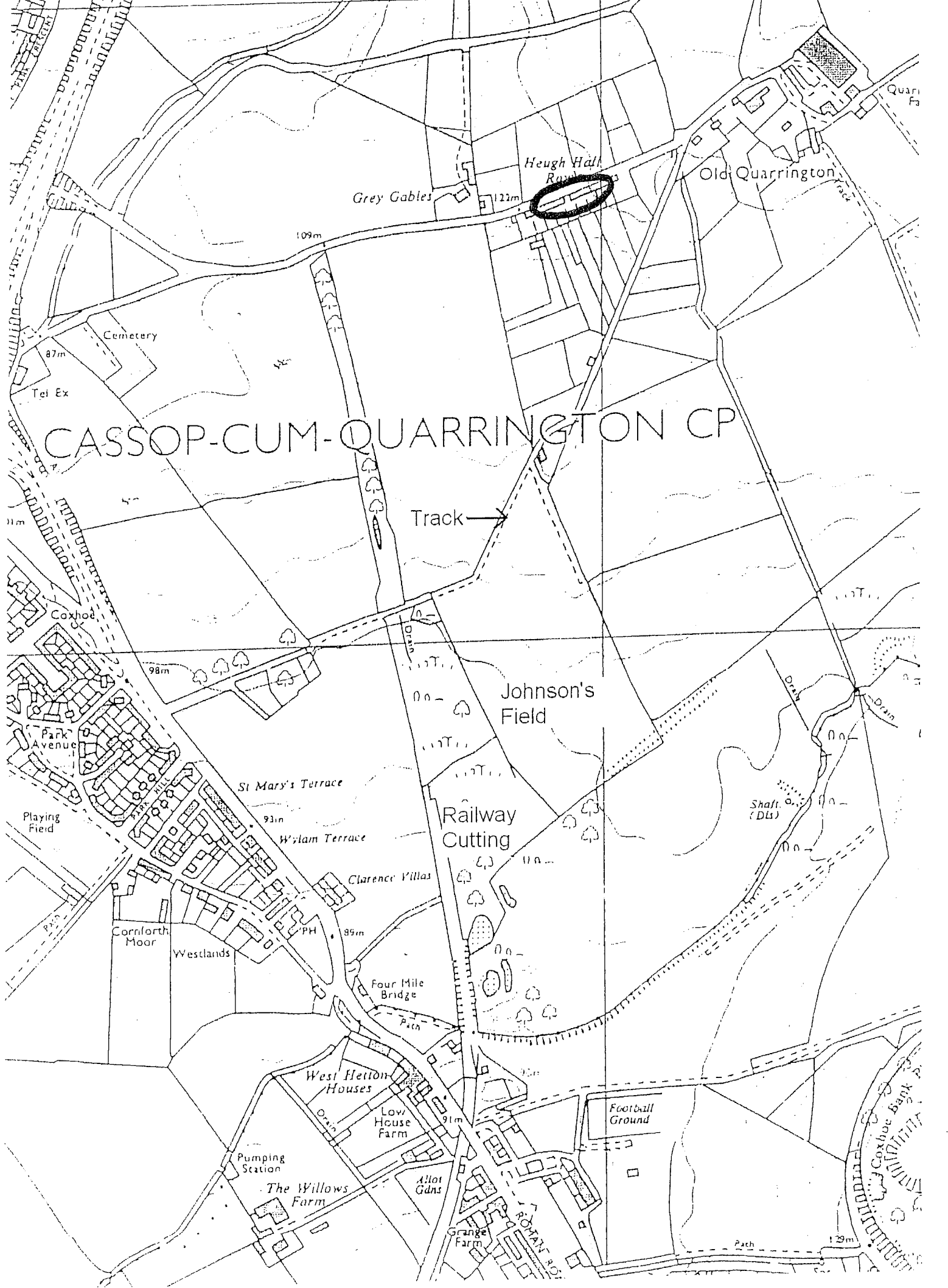
7. Once I began to explore on my own from about the age of 8 or 9 in 1946/47 until I left school and started work when I was 15 in 1954, I would often play in the railway cutting area either on my own or with friends. Many times there were a dozen or so children playing in this area, often 20 or more in different groups. My recollection is that throughout these years I went down and back up the track at least twice a week in all weathers.
8. During these years, between 1946/47 and 1954 I remember the trains that used to come in and out of the railway cutting land. I recall the Guards telling us children to keep back from the train. This was really just for our own safety. I remember the Guard telling us this perhaps six or seven times. However no-one ever told us not to play in the railway cutting land. I can't specifically recall seeing any adults in the railway cutting land at the time. But I have no reason to believe that they didn't walk through it. Certainly from being 15 or 16 years old until I left the area in 1970 aged 41 I walked through this area. I walked in a north-south direction just inside the western boundary.
9. When I was 15 I started work for the Coal Board as an Apprentice Joiner. I worked 6 days a week. From then until I left the area in 1970 I was regularly dropped off by my work colleagues at Parkhill and walked up the track to have tea at home. Sometimes after tea I would walk then back down the track to friends or relatives in Parkhill or down the track and through the railway cutting to friends and relatives in Coxhoe before returning home later in the evening. I was dropped off by my colleagues at Parkhill on average at least once a week all the time that I was living at Old Quarrington. I would re-use the track in the evenings again at least once a week.

10. I worked for the Coal Board until after I moved to St. Mary's Terrace at the other side of Bowburn from Old Quarrington. However I have always had an interest in local history and been a keen walker. On average I have walked along the track about 8 or 10 times a year until recent years when my health has begun to deteriorate. I only stopped walking the track altogether 4 or 5 years ago.
11. Never once in my life have I ever seen anyone walking anywhere across the field marked the "Johnson's field" on the plan. Nor have I ever seen any footprints or other sign that anyone has ever walked through the field. This specifically includes the years 1946/47 to 1954 when my use of the track and the railway cutting land was at its highest as described above and when the field was clearly visible from almost all parts of the railway cutting land and even though I could spend days at a time playing all day in the railway cutting land.
12. I have always been aware that Mr. Oliver owned the fields around the railway cutting land before the Steetley Company bought them. I don't recall ever seeing or hearing Mr. Oliver ask anyone not to walk across any of his fields but this is simply because I never saw anyone attempt to walk across his fields. Everyone just respected other people's property then. Certainly much more than they do today.

This statement is true to the best of my knowledge and belief.

Dated: 31.3.2012

Signed: 



CASSOP-CUM-QUARRINGTON CP

Track →

Heugh Hall Road

Old Quarrington

Grey Gables

Cemetery

Johnson's Field

Railway Cutting

St Mary's Terrace

Wylam Terrace

Clarence Villas

Cornforth Moor

Westlands

Four Mile Bridge

West Hetton Houses

Low House Farm

Pumping Station

The Willows Farm

Allot Gdns

Grange Farm

Football Ground

Shaft (Dis)

Quarrington

Tel Ex

Coxhoe

Playing Field

Park Avenue

Coxhoe Bank

122m

109m

87m

98m

93m

89m

95m

91m

129m

**STATEMENT OF THOMAS LAING OF GRANGE FARM, COXHOE,
COUNTY DURHAM**

1. I was born on 12th July 1926 and have lived at Grange Farm, Coxhoe, as shown on the attached plan, all my life.
2. From the early days of my childhood to the present day I have been a regular user of the track between Parkhill and Old Quarrington known in part as Ramsey's Drive and marked on the plan as "Track". I believe that this track was a footpath until it was upgraded to a bridleway in or around the 1980's.
3. As a boy and during the 1930's my friends and I used to play in the area of the old railway line between Coxhoe and Bridleway 39 that is marked on the plan as "Railway cutting". We always understood that this land was privately owned but we were never stopped by anyone or asked to leave. There was a footpath used regularly in a north/south direction just inside the western hedge of the railway cutting land.
4. I don't remember ever seeing Bowburn Cottage or any other buildings that had existed in the railway cutting land. As far as I can remember any buildings had been demolished and all but a few bricks removed from the site before we began to play there.
5. The entire railway cutting land was just scrubland. In the 1940's the old ponds left by the brickworks were being filled in by the local authority with household rubbish. I helped to fill them in.
6. In contrast Mr. Oliver, the owner of the field marked "Johnson field" on the plan to the east and the fields to the north of the railway cutting had a reputation for chasing people off his land. Consequently neither we nor anyone else ever went onto any of his fields.

7. Never once in my life have I ever seen anyone walk through the Johnson's field. I do not recall ever seeing any footprints or other sign that anyone has ever used any route through the field. Nor have I ever heard of anyone alleging that any footpath ever existed through the field.

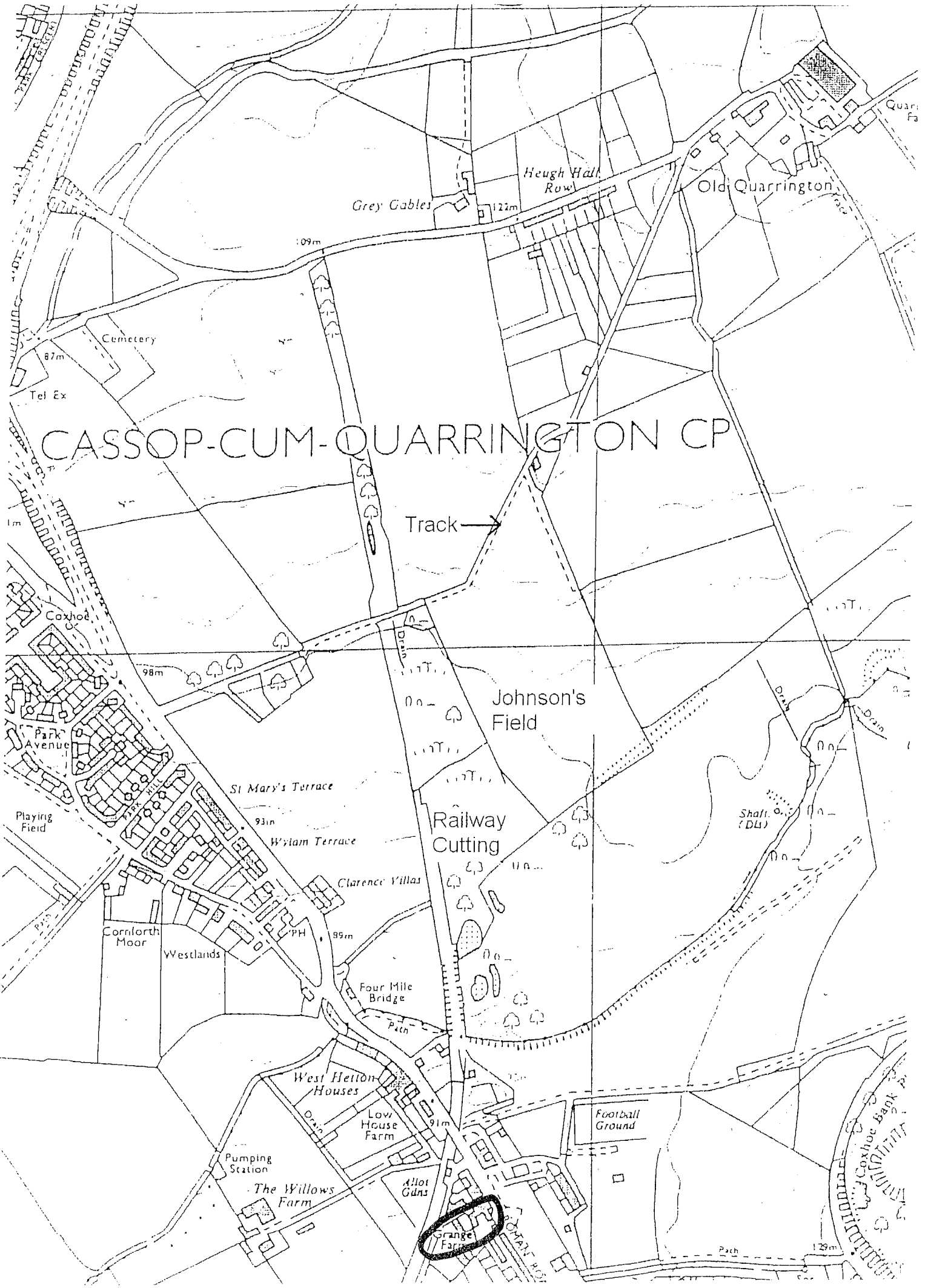
This statement is true to the best of my knowledge and belief.

Dated: 3 4 12

Signed:



CASSOP-CUM-QUARRINGTON CP



**STATEMENT OF THOMAS GARDINER OF 5 HOLLYHOCK TERRACE,
PARKHILL, COXHOE**

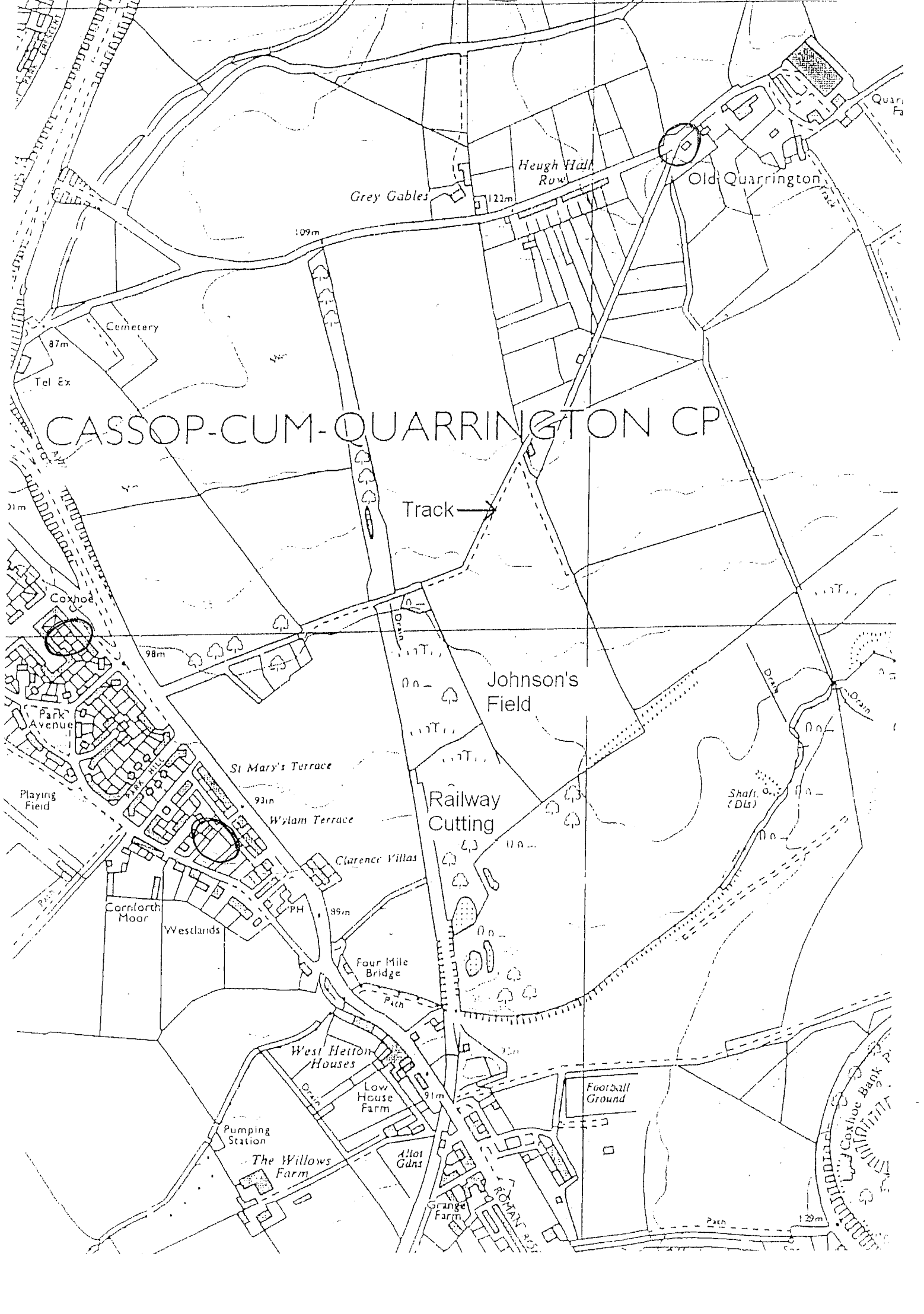
1. I was born on 4th July 1936 in Parkhill and lived in Parkhill with my sister and parents until I moved to Old Quarrington in 1953/4. I returned to Parkhill in approximately 1970 where I still live. I have marked the three addresses at which I have lived since 1936 on the attached plan.
2. My parents used to walk to take us for regular walks when we were children but there were few footpaths in the area. Consequently we walked the track marked on the plan as "Track" between Parkhill and Old Quarrington known in part as Ramsey's Drive regularly. Weather dependent we would walk it once a week, sometimes more often during the spring, summer and autumn.
3. I continued to walk the same track regularly as a teenager and with my wife to be for the 3 or 4 years before we were married in 1957.
4. I began working for Mr. Oliver who farmed the land to the east and north of the railway cutting land in around 1953 or 1954 when I was 17 or 18. When the Steetley Company bought the farm from Mr. Oliver I continued to work for Steetley until 1970, first under a Foreman and then as Foreman when Bob Graham took over as Manager a few years later.
5. Throughout the time that I worked on the farm between 1953/4 and 1970 I lived in Old Quarrington. I moved to Hollyhock Terrace in around 1970. We were living at Hollyhock Terrace when my youngest daughter Julie was born in 1972.
6. I continued to walk the track between Parkhill and Old Quarrington with my wife until around 1996. We used to walk the route regularly, weather permitting, once or twice a month.

7. Throughout all the time that I walked the track and worked on the farm I never saw anyone ever attempt to walk through the field marked on the plan as "Johnson's field" to the east of the land marked on the plan as the "Railway cutting". Nor have I ever seen any footprints or other sign that anyone has ever used any route through the field. Knowing both Mr. Oliver and the Steetley Company both would have questioned anyone that had attempted to walk through the field and directed them to the track that existed between Parkhill and Old Quarrington.
8. During each of the years that I worked on the farm I spent many weeks each year working all day in the Johnson's field or surrounding fields with a clear view of the field.
9. I can't remember whether anyone ever used any path through the railway cutting land. I remember the railway company employees chasing anyone from the railway tracks but so far as I was aware this was only for peoples safety.
10. I do recall that when the Steetley Company farmed the railway cutting land Steetley personnel, including myself, allowed people to walk in a north/south direction inside the western boundary of the railway cutting land.

This statement is true to the best of my knowledge and belief.

Dated: 29/3/12

Signed: 



CASSOP-CUM-QUARRINGTON CP

Track →

**STATEMENT OF JOHN HENRY LAING OF 2 WILLOW COTTAGES,
COXHOE, COUNTY DURHAM**

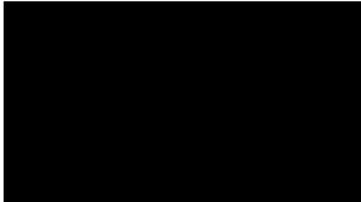
1. I was born on 12th January 1937 and lived at Grange Farm, Coxhoe, as shown on the attached plan, until I married on 12th April 1969. I have lived in Coxhoe all my life.
2. From the early days of my childhood to the present day I have been a regular user of the track between Parkhill and Old Quarrington known in part as Ramsey's Drive and marked on the plan as "Track". I believe that this track was a footpath until it was upgraded to a bridleway in or around the 1980's.
3. As a boy and during the 1940's my friends and I used to play in the area of the old railway line between Coxhoe and Bridleway 39 that is marked on the plan as "Railway Cutting". We always understood that this land was privately owned but we were never stopped by anyone or asked to leave. There was a footpath used regularly in a north/south direction just inside the western hedge of the railway cutting land.
4. Bowburn Cottage and any other buildings that had existed in the railway cutting land had been demolished and all but a few bricks removed from the site long before we began to play there. It was obvious from what we saw that Bowburn Cottage had been removed many years before.
5. The entire railway cutting land was just scrubland. In the 1940's the old ponds left by the brickworks were being filled in by the local authority with household rubbish.
6. In contrast Mr. Oliver, the owner of the field marked "Johnson field" on the plan to the east and the fields to the north of the railway cutting had a reputation for chasing people off his land. Consequently neither we nor anyone else ever went onto any of his fields.

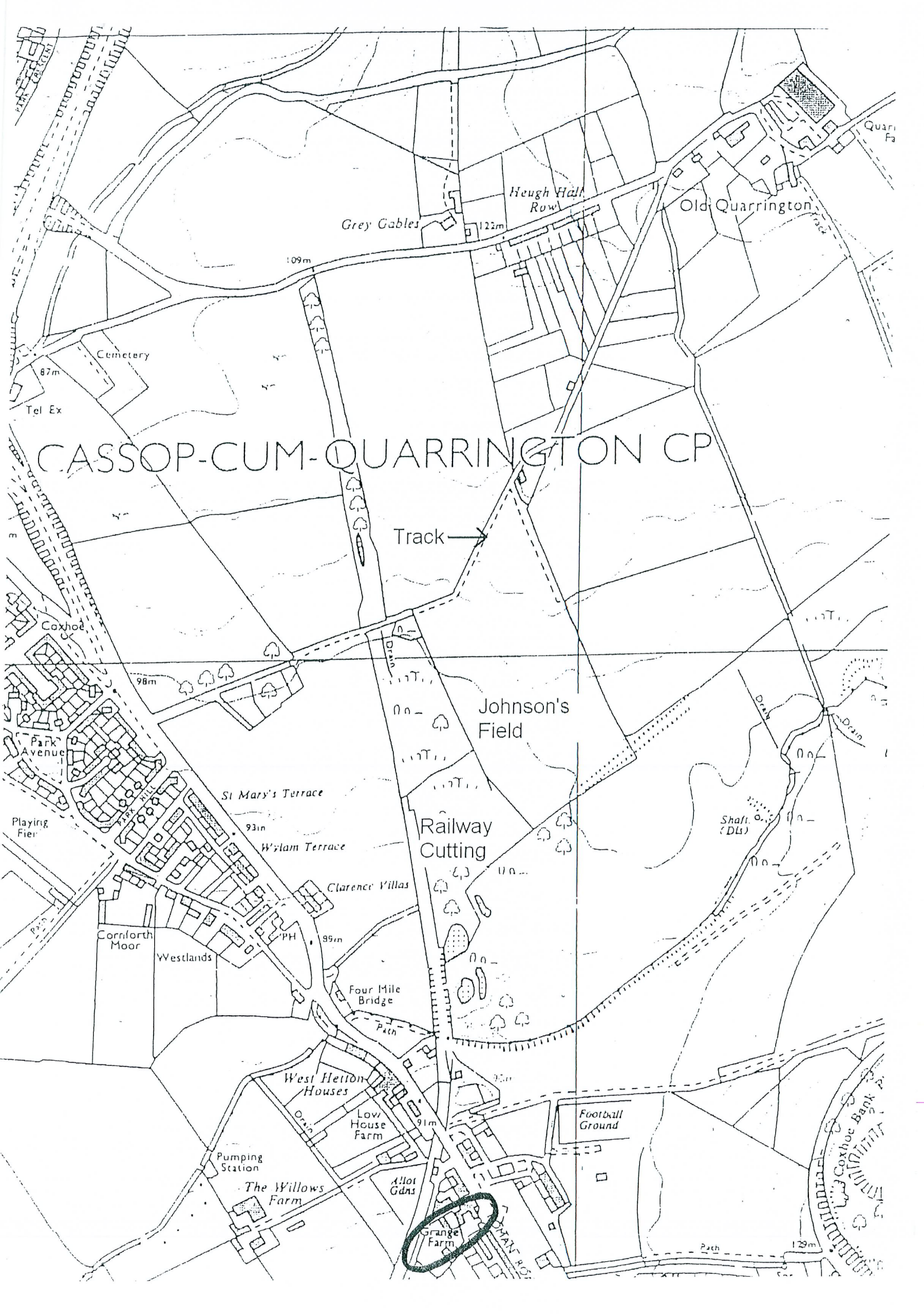
7. Never once in my life have I ever seen anyone walk through the Johnson's field. Do not recall ever seeing any footprints or other sign that anyone has ever used any route through the field. Nor have I ever heard of anyone alleging that any footpath ever existed through the field.

This statement is true to the best of my knowledge and belief.

Dated: 3-04-2012.

Signed:





CASSOP-CUM-QUARRINGTON CP

Track →

Grey Gables

Heugh Hall Row

Old Quarrington

Cemetery

87m

Tel Ex

109m

122m

Track →

Coxhoe

98m

Park Avenue

Playing Field

St Mary's Terrace

Wylam Terrace

Clarence Villas

Cornforth Moor

Westlands

PH

99m

Four Mile Bridge

West Hetton Houses

Low House Farm

Pumping Station

The Willows Farm

Allot Gdns

Grange Farm

Football Ground

Shaft (DL)

129m

Coxhoe Bank


**STATEMENT OF WILLIAM SINDERSON OF 6 TRANMERE ROAD,
BLACKPOOL**

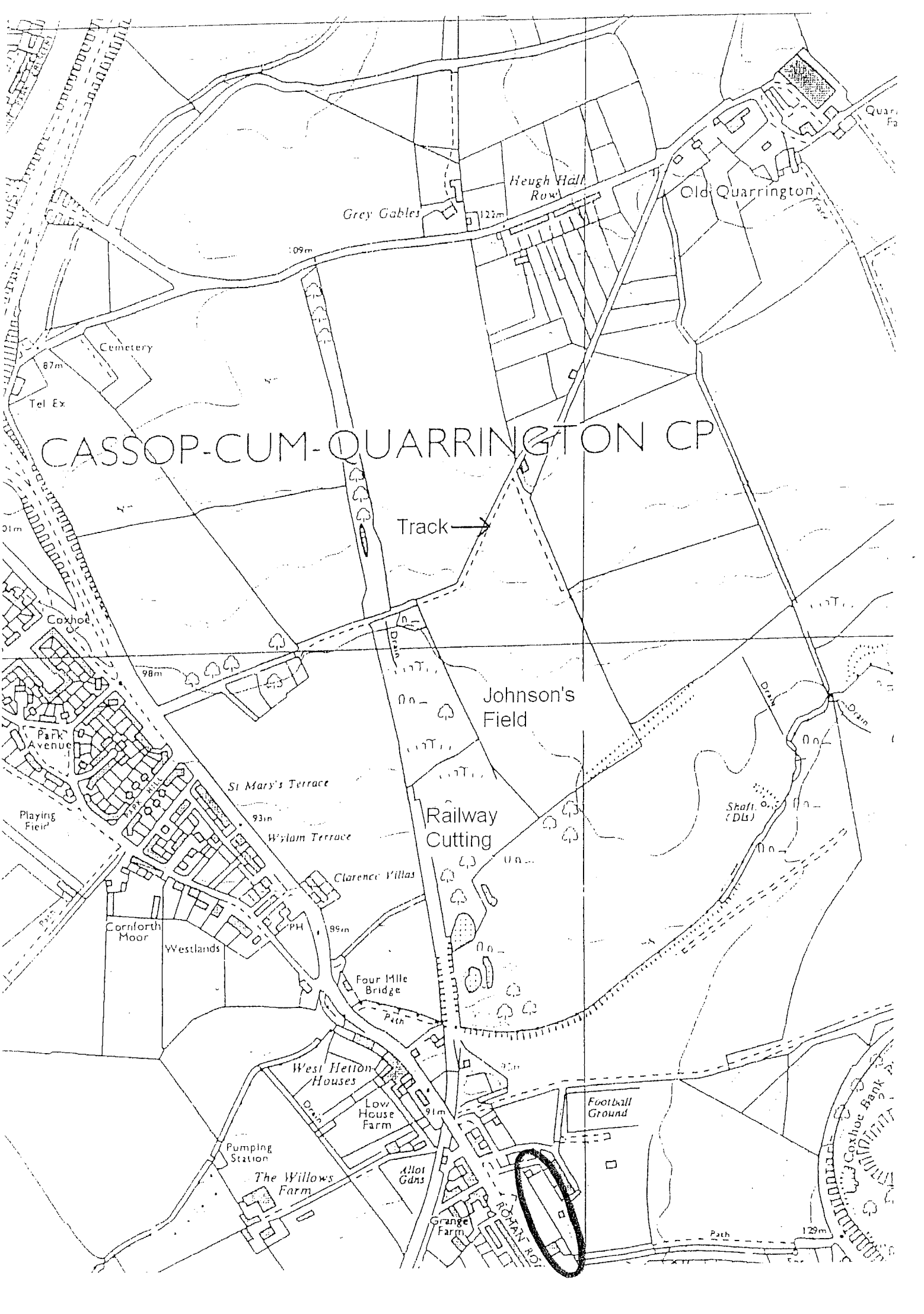
1. I was born on 12th October 1940. My family lived in Long Row on Front Street, Coxhoe as shown on the attached plan. My father bought houses and land in Coxhoe and I lived in the same part of Coxhoe until moving to Blackpool in 2011.
2. My parents had very good friends called the Blenkinsopp's who lived in No. 16, Heugh Hall Row, Old Quarrington. We visited them regularly by walking along the track from Parkhill to Old Quarrington known in part as Ramsey's Drive. The track is marked "Track" on the plan.
3. I remember visiting the Blenkinsopp's with my parents, brother and sister from before I was 10 or 11 in 1950/51. As a family we only ever used the footpath from Parkhill to Old Quarrington because like everyone in the area we were all aware that it was the only public footpath to Old Quarrington. We would walk the path once every two weeks or thereabouts, weather permitting, throughout the spring, summer and autumn. Obviously it would have been a shorter route for us to walk along the path in the area marked "Railway Cutting" on the plan. By this I mean all the disused old railway land between Coxhoe and the track. It would also have been shorter to walk through any of the fields, including the one marked on the plan as "Johnson's field". But as there was no footpath there we didn't.
4. However as young boys, from the late 1940's onwards, my friends and I used also to play in the railway cutting land. Although we knew the land to be privately owned we were never chased off it. We never went onto any of the land to the east or north of the railway cutting area. Mr. Oliver who owned the land to the east and north of the railway cutting land had a reputation for chasing people off his land and this is why we didn't go onto any of it.

5. Bowburn Cottage and any other buildings that had existed in the railway cutting land had been demolished and all but a few bricks removed from the site long before we began to play there. It was obvious from what was there that Bowburn Cottage had been removed many years before.
6. The entire railway cutting land was basically just scrubland. The old ponds left by the brickworks were then being filled in by the local authority with household rubbish.
7. My use of the track between Parkhill and Old Quarrington reduced when I was a teenager and then eventually ceased altogether. I probably haven't walked the route for 30 years. This is because there was no reason for me to walk it. I was never a leisure walker as an adult.
8. Throughout the entire time that I was walking along the track I never saw anyone ever use any path within the Johnson's field and never in my life have I ever heard anyone claim that a footpath existed through that field. Nor did I ever see any footprints or other sign that anyone has ever used any route through the field.

This statement is true to the best of my knowledge and belief.

Dated: 30th 3rd 2012.

Signed: 



CASSOP-CUM-QUARRINGTON CP

Track →

Johnson's Field

Railway Cutting

West Hutton Houses

Football Ground

The Willows Farm

Grange Farm

Coxhoe Bank

**STATEMENT OF STAN ROBINSON OF 93 PARK AVENUE, PARKHILL,
COXHOE, COUNTY DURHAM**

1. I was born on 28th November 1943 at 20, Old Quarrington, Durham, the property now known as Forge Farm, Old Quarrington. I lived there with my parents and sister until 1958 when we moved approximately 100 yards to Grange Farm Cottage now part of The Grange, Old Quarrington. A year later, in 1959, we moved to Heugh Hall Farm Cottage and in 1968 I moved to a rented house in Bowburn. In or around 1980 my wife and I moved to Parkhill where we still live. My sister is 1 year and 9 months older than I am. I have marked the three addresses at which I have lived in the vicinity of the disputed path on the attached plan.
2. I have been a local Parish Councillor since approximately 1997.
3. From as early as I can remember, from when I was around 3 or 4 years old in 1947/8 and until we moved to Heugh Hall Farm Cottage in 1959 (when I was 16), I regularly walked and biked along the farm track marked "Track" on the plan and that was then a footpath from Old Quarrington to Parkhill. Part of this track is known locally as Ramsey's Drive. My fathers two sisters lived in Hett and we used the footpath to Parkhill to reach Hett.
4. As far as I can remember we made this trip every second week.
5. In addition to this I also walked this route between 1947/8 and 1959 whenever we visited Coxhoe. Certainly I walked it at least once every month and many times it would be once a week.
6. Throughout this period at no time did we ever use nor did we ever see anyone using any route through the field marked "Johnson's field" on the plan and in which I understand the County Council allege that there is a footpath. There was a simple reason for this. Namely, that to the best of my knowledge and belief, no-one considered there to be a footpath through the field.

7. If there had been any such footpath then we would have used it because the farm track route had 4 or 5 stiles, which we had to climb over and was therefore less convenient than a route that would have passed through the Johnson's field. When I used to bike down the track I had to open and shut 4 or 5 gates adjacent to these stiles.

8. From when I was about 8 or 9 years old and until I was 13, ie between 1951/2 until 1956 I would help my father to plough the field in question and other fields surrounding the field in question when he was helping the farmer, Mr. Oliver. I used to stand on the back of the tractor to help my father to push the clutch pedal, which in those days was very stiff. The field in question was in arable rotation including temporary grass. It was therefore ploughed regularly. During those years I would say that I spent at least three weeks each year, probably many more, either in the field in question or in the fields surrounding it with a clear view of the field. I never saw anyone ever attempt to walk through the field. If anyone had attempted to walk through it then I am certain that Mr. Oliver, the owner of the field at that time, would have confronted and stopped that person.

9. From as early as I can remember the land marked "Railway Cutting" on the plan to the south of the track was derelict. The brickworks and the cottage referred to as Bowburn Cottage had long before been demolished and removed. It was always our understanding that all buildings had been demolished and removed before the War. It was always our understanding that this land was owned by the railway company. Although I acknowledge that there has always been a footpath shown on all OS Maps in a north-south direction on the west side of the railway cutting I grew up believing that it was private property belonging to the railway company and no-one was allowed on any part of it. This is what my parents and everyone else within the community told us. It was common knowledge that there were guards on the trains that used to use the railway track in the southern third of the railway cutting and that these guards would chase any youngsters that they saw on the land away from the land.

10. Since returning to live at Parkhill in 1980 I have regularly walked along the same farm track, which I understand the Johnson family allowed to be upgraded from a footpath to a bridleway. By 1980 it had become common knowledge that everyone was using the north-south path inside and on the west side of the railway cutting and I also used it. I would estimate that I have used the track on average once every two weeks and the north-south path within the railway cutting also on average once every two weeks. Sometimes this could be as often as twice a week. My recollection is that this railway cutting path was waymarked by the County Council in about the mid-1990's.

11. Throughout all the years from 1980 until 2011 when the Council removed the various obstacles the route that the Council alleges exists has been physically blocked where it traverses the railway cutting. At the Parkhill side there has always been a five barred gate with wire across the top of it. Beyond that there were impassable pockets of hawthorn and then there was an impenetrable patch of hawthorn where the alleged route adjoins the boundary with the Johnson's field. Then there was the barbed wire boundary fence.

12. In the 30 plus years since 1980 I have never once seen anyone walking through the arable field in which I now understand the Council alleges that part of the designated map route passes. Nor has there ever been any footprints or other sign that anyone has ever used any route through the field. It is my understanding that there are only a few individuals within the local community who are seeking to establish a public right of way through this arable field and that they have only begun to assert this in the past few years. To the best of my knowledge and belief the rest of the community accept that there has never been a footpath through the arable field in anyone's living memory.

13. Whenever the issue of either an alleged path in the Johnson's field or of the path in the railway cutting has been raised in Parish Council meetings I have always said that there has never been a path through the Johnson's field and that the railway cutting path began to be used between 1959 when I left the area and 1980 when I returned.

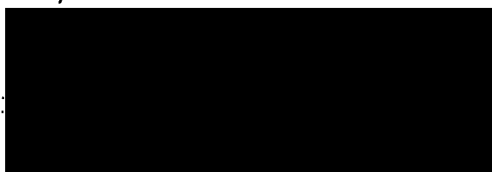
14. I remember meeting Victoria Lloyd, the then County Footpath's Officer' together with my wife, Councillors Syer and Raine and Mr Thorpe the Parish Clerk in September 2006. I understand that the minutes do not mention Councillor Raine being present but it is my recollection that she was. Councillor Syer argued that the Definitive Map route through the Johnson's field was historically important and had to be preserved but my wife and I felt that he was merely using his historical argument as an excuse to try to persuade the Council to enforce this route whilst at the same time persuading the Council to designate the railway cutting route. We said that we could not see the sense in having two footpaths so close yet equidistant to each other when one of them had never been used in living memory and would sterilise good agricultural land whilst the other went through scrub land and was regularly used. Our view was shared by Victoria Lloyd who made it clear to us all that it was the County's intention to proceed to divert the designated route out of the Johnson's field and in to the railway cutting. Councillor Syer and I both lost our tempers and we did not speak to each other for many months after this meeting.

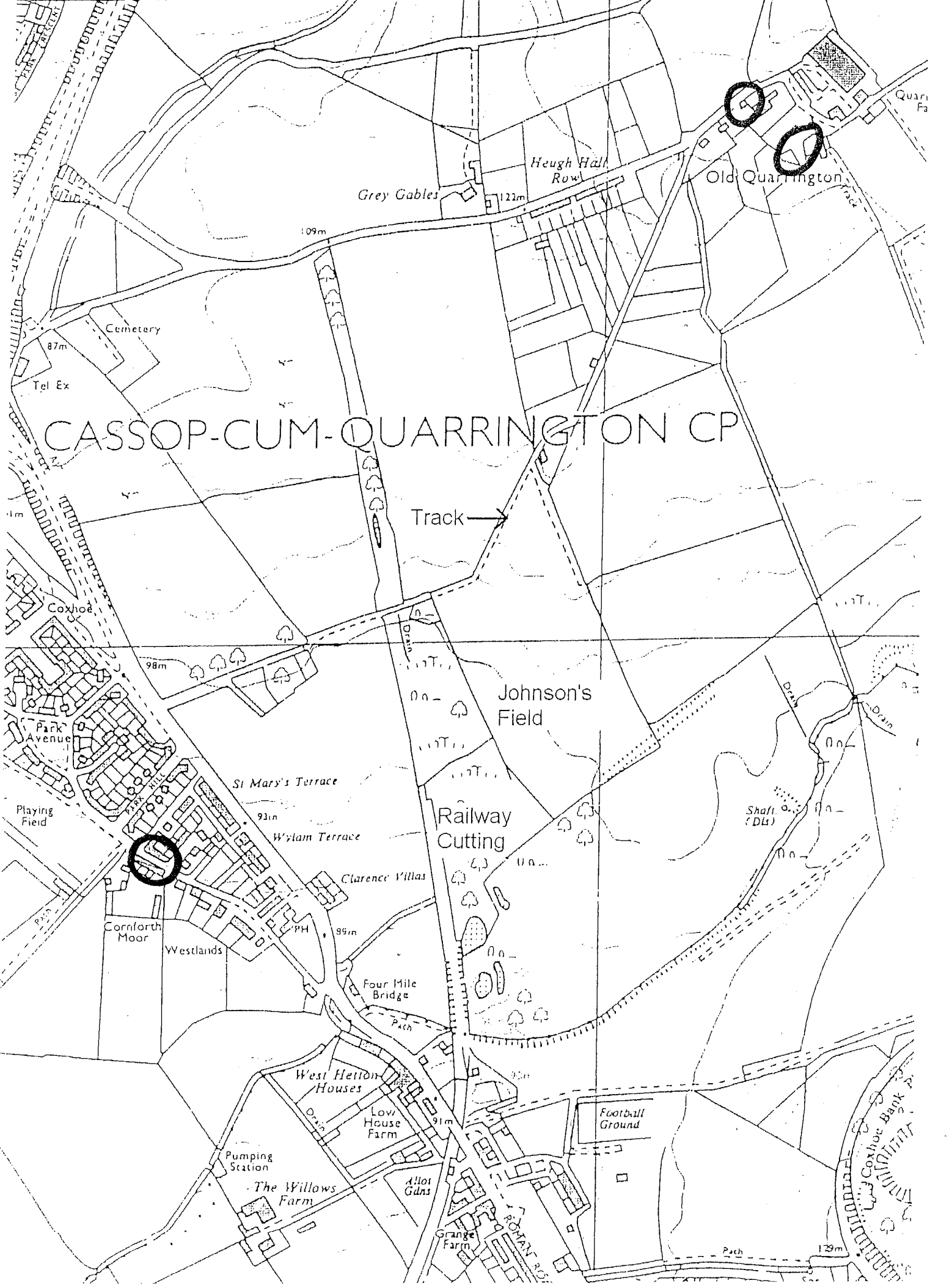
15. I remained of the view that the County Council would correct the Definitve Map route until I found out about the County Council's action in September 2010 to open up the incorrect Definitive Map route. I had no prior knowledge of the County Council's intention to open up the route and only became aware of it after it had occurred.

This statement is true to the best of my knowledge and belief.

Dated: 29.03.12

Signed:





CASSOP-CUM-QUARRINGTON CP

**STATEMENT OF MARGARET ROBINSON OF 93 PARK AVENUE,
PARKHILL, COXHOE, CO. DURHAM**

1. I was born on 25th July 1935 and lived in Spennymoor until the late 1970's when I moved to Bowburn. I married my husband Stan in 1980 and we moved together to Parkhill where we still live.
2. I have been a local Parish Councillor for 29 years since 1983 and I was Chairperson of the Parish Council for about 12 years between approximately 1996 and May 2008.
3. I regularly walked along the track shown on the attached plan as "Track" between Parkhill and Old Quarrington with my husband between 1980 and 2004/5 when I was taken ill.
4. By the time of my arrival to the area in 1980 people were obviously using the north-south footpath on the west side of the land marked "Railway Cutting" on the plan and I also used it. Everyone's footprints were clearly visible.
5. We used to walk the track between Parkhill and Old Quarrington on average once every two weeks and the north-south footpath within the railway cutting also on average once every two weeks. I also recall that sometimes we would walk the railway cutting route as often as twice a week and that this route was waymarked by the County Council in about the mid-1990s.
6. In the 24/5 years between 1980 and 2004/5 I never once saw anyone walking through the field marked "Johnson's field" on the plan to the east of the railway cutting. Nor did I ever see any footprints or other sign that anyone has ever used any route through the field.
7. It is my understanding that there are only two or three individuals within the community who have begun to seek to establish a public right of way through the Johnson's arable field and that they have only begun to assert this in the past few years. It is my understanding that there

are only a few individuals within all of the communities of Old Quarrington, Parkhill, Bowburn and Coxhoe that are seeking to establish a public right of way through this arable field and that they have only begun to assert this in the past few years.

8. In September 2006 I recall meeting with Victoria Lloyd, the then County Footpaths Officer, my husband, Councillors Syer and Raine and Mr Thorpe. I note that the Parish's meeting Minutes do not mention Councillor Raine as being present but it is my recollection that she was. Councillor Syer was adamant that the route of the footpath through the Johnson's arable field was historically important and had to be preserved. My husband and I felt that Councillor Syer was merely using his historical argument as an excuse to try to persuade the Council to enforce this route whilst at the same time persuading the Council to designate the railway cutting route. We said that we could not see the sense in having two footpaths so close yet equidistant to each other when one of them had never been used in living memory and would sterilise good agricultural land whilst the other went through scrub land and was been regularly used. Our view was shared by Victoria Lloyd who made it clear to us all that it was the County's intention to proceed to divert the definitive Map route out of the Johnson's field and in to the railway cutting. Both my husband and Councillor Syer got very heated and in my view lost their tempers. They did not speak to each other for many months after this meeting.
9. I remained of the view that the County Council would correct the Definitive Map route until I found out about the County Council's action in September 2010 to open up the incorrect Definitive Map route. I had no prior knowledge of the County Council's intention to open up the route and only became aware of it after it had occurred.

This statement is true to the best of my knowledge and belief.

Dated: 29th March 2012

Signed: 

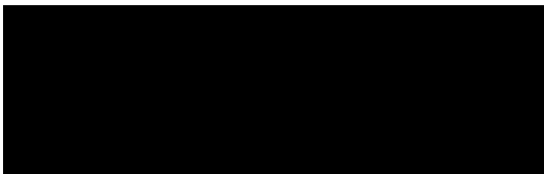
**STATEMENT OF WILLIAM TICKEL OF 21 HENRY AVENUE, BOWBURN,
CO. DURHAM**

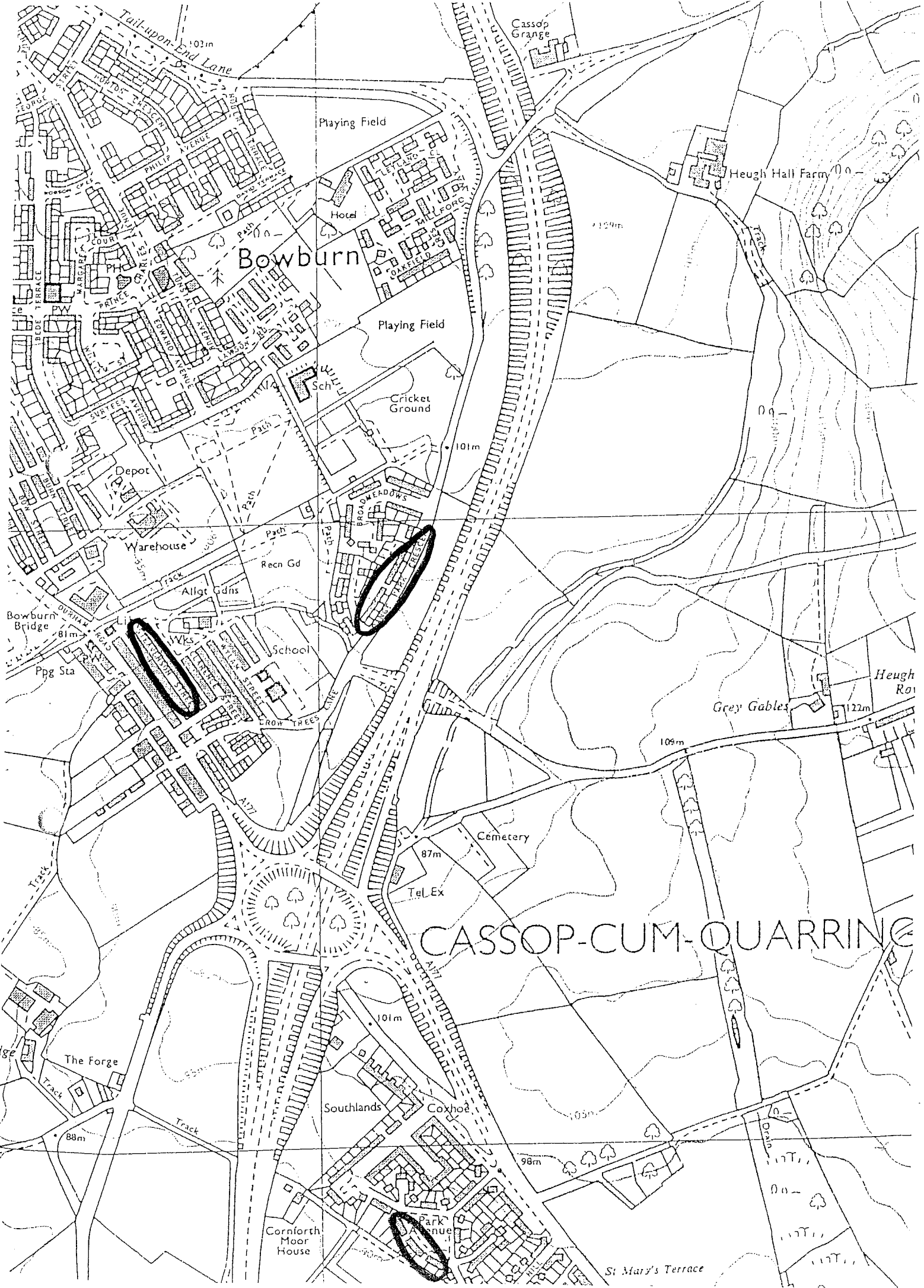
1. I was born on 15th January 1930 and lived in TurSDale until approximately 1946/47 when my family moved to Shincliffe.
2. I have been a local Parish Councillor since approximately the late 1970's and was Chairman of the Parish Council for approximately 5 or 6 years in the late 1980's or early 1990's.
3. I married in 1952 and in the same year my wife and I moved to 13, Grange Park Crescent, Bowburn. We moved to 12 Stevenson Street, Bowburn in 1955, to 117 and later 133, Park Avenue, Parkhill in 1957 and to our present address, 21 Henry Avenue in 1970. My wife has assisted me to mark Grange Park Crescent, Stevenson Street and Park Avenue on the attached plan.
4. During the 1952-1957 period that we lived in Bowburn I used to walk the track between Parkhill and Old Quarrington part of which is known as Ramsey's Drive. I would say that I walked it on average once a month. I understood that this was a footpath at that time although I cannot recall why it is that I believed this to be the case. My understanding was that there was no footpath either through the Johnson's arable field that is marked "Johnson's field" on the plan (in which I understand the County Council are now claiming that there is a footpath) or through the railway cutting that is marked "Railway cutting" on the plan. I remember that there was a path inside and on the western side of the railway cutting but I believe that this was only used by employees of the railway company. My recollection is that everyone that I ever spoke to in the community thought that both Mr Oliver that owned the Johnson's field and the railway company's employees would chase you if you were seen on their property. I believe that at that time everyone ^{was} _^ more respectful to owners of land and to the best of my knowledge no-one used to walk either through the field or through the railway cutting.

5. Upon our moving to Parkhill in 1957 I started to walk along the track more often. In all the years from 1957 to when I moved back to Bowburn in 1970 I walked along the track at least once every week unless the weather or some other unusual event prevented me from walking it. Throughout all of this time the position regarding the Johnson's field and the railway cutting remained as I have set out above.
6. After moving to our present address in 1970 I used to walk along the track but less frequently, perhaps once or twice a year. From about the time that Steetley's acquired Quarrington Farm in the late 1950s or early 1960s some of the local residents began to walk along the path on the western side of the railway cutting. The Steetley employees didn't appear to stop people walking through the railway cutting in the same way as the railway company had done earlier. I personally did not walk along it always understanding that it was not a public right of way
7. I stopped walking along the track in around 1985 a few years after the Heugh Hall row of houses in Old Quarrington were renovated and bought by private homeowners.
8. In all the time that I walked along the track between 1952 and 1985 I have never once seen anyone walking through the Johnson's field in which I now understand the Council alleges there is a footpath. Nor did I ever see any footprints or other sign that anyone had ever used any route through the field. It is my understanding that there are only a few individuals within all of the communities of Old Quarrington, Parkhill, Bowburn and Coxhoe that are seeking to establish a public right of way through this arable field and that they have only begun to assert this in the past few years.

This statement is true to the best of my knowledge and belief.

Dated: 29.3.2012.

Signed: 



Bowburn

CASSOP-CUM-QUARRING

Playing Field

Hotel

Playing Field

Cricket Ground

Sch

Warehouse

Recn Gd

Allgt Gdns

School

Cemetery

Tel. Ex

The Forge

Southlands

Coxhoe

Cornforth Moor House

Park Avenue

Heugh Hall Farm

Grey Gables

Heugh Roy

Cassop Grange

Tail-upon-End Lane

Bowburn Bridge

Ppg Sta

ge

St Mary's Terrace

Statement of Philip David Johnson of Quarrington Farm, Old Quarrington, Durham

1. I was born on 29th February 1960 and have lived at Quarrington Farm, Old Quarrington, Durham on a permanent basis since 1987. I am a qualified Solicitor and on The Law Society's Roll of Solicitors although I have not practised since 1988.
2. In 1994 my parents left and I joined the family farming partnership which has since that date farmed Quarrington Farm and other farms.
3. Since 1994 I have carried out a variety of farming operations at Quarrington Farm including drilling the crops, walking up and down all of the fields to remove pernicious weeds by hand, walking through all of the fields to check on the welfare of the crops, hand spraying field headlands, combine harvesting the crops, carrying out field drainage and ditching works, manure carting and manure spreading.
4. Since 1994 to the present day I estimate that on average I have spent between 10 and 15 full days each year either in the field marked "Johnson's field" on the plan attached or in fields from which that field is visible. Of this time I estimate that my brother Andrew is with me for on average 3 days out of this 10 to 15 as most of our work in the fields is done at different times.
5. In addition both my brother and I are constantly looking out for and dealing with poachers, flytippers and other trespassers as we go about our daily affairs.
6. From the time that my parents first bought Quarrington Farm in 1982 to the present day I have never seen anyone ever walk along any route through the field in question. Nor have I ever seen any footprints or other sign that anyone has ever used any route through the field.

7. During the same period I have regularly seen people walking the north south route within the land marked "Railway Cutting" on the plan. I estimate that I see on average one person use this path each day that I am in that area.

This statement is true to the best of my knowledge and belief.

Dated: 17th April 2012

Signed:



Statement of Andrew Richard Maddison Johnson of Quarrington Farm, Old Quarrington, Durham

1. I was born on 28th March 1963 and have lived and farmed at Quarrington Farm, Old Quarrington, Durham since 1982.
2. In 1987 I joined my parents in the family farming partnership which has since that date farmed Quarrington Farm and other farms. My parents left and my brother Philip joined the partnership in 1994
3. Since 1982 I have carried out a variety of farming operations at Quarrington Farm including ploughing, cultivating, drilling the crops, rolling, fertilising, spraying, walking up and down all of the fields to remove pernicious weeds by hand, walking through all of the fields to check on the welfare of the crops, hand spraying field headlands, carting grain from field to farmstead, baling, leading bales from field to farmstead, carrying out field drainage and ditching works, manure carting and manure spreading.
4. Quarrington Farm is predominantly an arable farm. The field marked "Johnson's field" and the fields to the North and West of it that are on the farm have been in arable production and therefore cultivated every year since 1982.
5. Since 1982 to the present day I estimate that on average I have spent between 25 and 35 full days each year either in the field marked "Johnson's field" on the plan attached or in fields from which that field is visible. Of this time I estimate that my brother Philip is with me for on average 3 days out of this 25 to 35 as most of our work in the fields is done at different times.
6. In addition both my brother and I are constantly looking out for and dealing with poachers, flytippers and other trespassers as we go about our daily affairs.

7. From the time that my parents first bought Quarrington Farm in 1982 to the present day I have never seen anyone ever walk along any route through the field in question. Nor have I ever seen any footprints or other sign that anyone has ever used any route through the field.

8. During the same period I have regularly seen people walking the north south route within the land marked "Railway Cutting" on the plan. I estimate that I see on average one person use this path each day that I am in that area.

This statement is true to the best of my knowledge and belief.

Dated: 17th April 2012

Signed: 

NEW EVIDENCE TO SHOW THAT THERE WAS NO FOOTPATH THROUGH THE JOHNSON'S FIELD AND THAT THERE WAS A FOOTPATH THROUGH THE RAILWAY CUTTING IN 1952

New March 2012 information received from witnesses about the 1952 position

Thomas Laing, born 1926, resident of Grange Farm, Coxhoe all his life, says that he spent time playing in the railway cutting during the 1930's. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did. He saw people using the path inside the western hedge of the railway cutting land.

Brian Hall, born 1939, former Old Quarrington resident, says that he spent days at a time playing in the railway cutting between 1946 and 1954 with good visibility of the field and walked the track to Parkhill several times a week. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did. He always used the path inside the western hedge of the railway cutting land.

Tommy Gardiner, born 1936, former resident of Old Quarrington and Parkhill resident, says that he walked the track between Parkhill and Old Quarrington at least once a week as a boy, as a teenager and as a young man until 1957 and that he worked for the then owners of the field from 1953 until 1970. He spent many weeks working in areas of the farm from which he could see the field. He continued walking the track once or twice a month from 1957 until 1996. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did.

John Laing, born 1937, resident of Grange Farm, Coxhoe all his life, says that he spent time playing in the railway cutting during the 1940's. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did. He saw people using the path inside the western hedge of the railway cutting land.

Billy Sinderson, born 1940, Parish Councillor and former Coxhoe resident, says his family had friends in Old Quarrington and he also spent time playing in the railway cutting land as a boy from the late 1940's. He also walked the track to Old Quarrington once every two weeks. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did.

Stan Robinson, born 1943, Parish Councillor and former Old Quarrington and Parkhill resident, says that he walked the track to Parkhill at least once every other week and many times more often when he was a boy from the late 1940's. He also spent weeks at a time helping his father in the

surrounding fields with visibility of the field between 1951 and 1956 and. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did. He says that in a meeting that he attended in September 2006 the County Council agreed to delete the field route from the Definitive Map and add the railway cutting route and until he heard of the Council's actions in September 2010 he always assumed that they were attending to this.

Billy Tickel, born 1930, Parish Councillor and former Parkhill resident from 1952, says that he walked the track between 1952 and 1957 on average once a month and between 1957 and 1970 at least once a week. He has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He is sure that no one ever did.

Maggie Robinson, born 1935, Parish Councillor and Parkhill resident, says that between 1980 and 2004/5 she walked both the track and the railway cutting route with her husband at least once every two weeks and sometimes as often as twice a week. She has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. She is sure that no one ever did. She also says that in a meeting that she attended in September 2006 the County Council agreed to delete the field route from the Definitive Map and add the railway cutting route and until she heard of the Council's actions in September 2010 she always assumed that they were attending to this.

Andrew Johnson, born 1963, Applicant and farmer of the field says that between 1982 and the present day he has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He has regularly seen people using the path inside the western hedge of the railway cutting land.

Philip Johnson, born 1960, Applicant and farmer of the field says that between 1982 and the present day he has never seen anyone walk through the field nor any footprints or other evidence of anyone ever doing so. He has regularly seen people using the path inside the western hedge of the railway cutting land.

Information about Local Authority Surveys carried out before the publication of the Definitive Map & Statement

The National Access Advisor of the Country Land & Business Association says that many of the hundreds of enquiries that the CLA receive every year relate to problems with definitive maps including where the landowner had no knowledge of a route in the definitive map location. Regarding Footpath 29 she says:

*"Using an out of date map is something that can lead to errors.
The fact that the surveyor failed to notice that a building shown*

on that out of date map no longer existed (indeed I understand he even refers to it) casts doubt on whether he actually walked the path at all. It would be expected that he would observe the discrepancy”

Errors within the 1952 DCC Survey

1. At number 2 the Survey describes the route as “*southerly behind Bowburn Cottage and Old Pottery*”. The 1939 OS Survey, the 1944 aerial photograph, the 1951 OS Survey and all the 2012 Witness Statements all confirm that Bowburn Cottage and Old Pottery had been demolished and removed at least 12 years before the Survey was completed.
2. At number 2 it describes the route as “*to stile and Footpath No. 17 south of Bowburn Cottage*”. However, there was no Footpath 17 south of Bowburn Cottage. The Survey Plan attached to the Survey itself depicts the path extending to the A177. The Draftsman of the 1952 Definitive Map and Statement appears to have recognised this mistake as the Map is corrected and the Statement has added the words “*then over railway by FG [field gate] and two ladder stiles to FG [field gate] on A177*”.
3. At number 2 it incorrectly repeats that the ultimate destination is “*Footpath 17 near Bowburn Cottage*”.
4. At number 4, in answer to “*Details of any special features*” it repeats the mistake “*1 stile*”. The Draftsman of the 1952 Definitive Statement has seen this mistake and added the words “*then over railway by FG [field gate] and two ladder stiles to FG [field gate] on A177*”.
5. The Map attached to the Survey is a copy of the 1923 OS Plan based on an OS Survey carried out in 1923. This 1923 OS Plan shows Bowburn Cottage and Bowburn Brickworks. However further OS Surveys were carried out and plans produced in 1939 and 1951. By the time of the 1939 OS Survey/Plan Bowburn Cottage and Bowburn Brickworks had both been demolished and removed.
6. The Map attached to the 1952 Survey shows no path on the current Definitive Map route. This appears correct as no such path has ever being depicted on any OS Plan or according to all witnesses has ever existed. This error is accepted by the County Council who maintain that the current Definitive Map route is the path depicted in the 1923 OS Plan used by the 1952 Survey. The Footpaths Officer argues that this route difference is irrelevant. She measures the maximum distance between the two routes at 60 metres to assist her in this argument. In fact the maximum distance apart is a third more at 80 metres but whether 80 metres, 60 metres or some lesser distance the route is a different one. If the distance between the two routes was irrelevant then the Rights of Way department would not have

proposed a Modification Order to modify the Definitive Map route as it did in 2000 and as it still maintains that it must.

7. The map attached to the 1952 Survey shows a path (not the Definitive Map route) through the Johnson's field. Whilst it appears to have indeed been a path between around 1923 until some time before 1951 this is believed to have been as a result of an intention to expand Bowburn Brickworks taking up more of the railway cutting land to the east. This field extension and resultant fence is depicted on the 1923 OS Plan although not on the 1939 OS Plan nor on the 1944 aerial photograph. There is no evidence that this was used by the general public and is more likely to have been a route used by the occupants of Bowburn Cottage, the only people who would have benefited from it, the general public always having the use of the equidistant railway cutting route.
8. By the time of the 1952 DCC Survey the 1923 OS Plan was therefore out of date and the information shown on it superseded.
9. The 1951 OS Survey and accompanying Plan shows the railway cutting land boundary and lack of footpath through the Johnson's field as it is believed to have been in 1951 and as confirmed by all of the March 2012 witnesses.
10. The 1952 survey fails to depict the actual equidistant route that did exist within the railway cutting land

Other information

The 1944 aerial photograph, the 1951 and subsequent 1961, 1969, 1982, 1992 and 2002 OS Surveys all reaffirm that no footpath existed on any route through the Johnson's field.

The OS surveys carried out in 1857, 1896, 1919, 1923, 1939, 1951, 1961, 1969, 1982, 1992 and 2002 all show the railway cutting route as a path.