

DEVELOPMENT CONTROL & REGULATION COMMITTEE	Paper No.
Meeting date: 7th June 2022	
From: EXECUTIVE DIRECTOR – ECONOMY AND INFRASTRUCTURE	

WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATIONS TO DELETE A SECTION OF PUBLIC FOOTPATH
NO 358037 IN THE PARISH OF PENRITH DISTRICT OF EDEN

1.0 EXECUTIVE SUMMARY

- 1.1 *Two applications have been received to remove a section of public footpath from the Definitive Map and Statement. These applications relate to public footpath no 358037 at Milestone House in the parish of Penrith (see plan at Appendix A).*
- 1.2 *The purpose of this report is for Members to consider all the available evidence and for a decision to be made whether to proceed with the next stage of the process by making a legal order to remove the section of public footpath from the Definitive Map and Statement.*

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO CORPORATE STRATEGY

- 2.1 *The relevant corporate theme is “To provide a safe and well managed highway network, secure infrastructure improvements and support local economic growth”.*
- 2.2 *This matter is a decision-making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored. It is merely a matter of weighing the strength of evidence and if that evidence is found sufficient to meet the burden of proof then the legal framework must be applied to the evidence.*

3.0 RECOMMENDATION

- 3.1 *It is recommended that the applications to delete a section of public footpath no 358037 in the parish of Penrith (shown A-B on the map annexed at Appendix A) be rejected.*

4.0 BACKGROUND

- 4.1 In 2008 two applications were received to delete a section of public footpath no 358037 at Milestone House in the parish of Penrith on the basis that it is wrongly shown on the Definitive Map as passing across properties known as "The Hollies" and "No 1 Milestone House".
- 4.2 It has been noted that the definitive line of the footpath is heavily obstructed between points A-B on the plan at Appendix A by amongst other things walls, fencing, garden sheds and mature vegetation.
- 4.3 A notice under Section 130A of the Highways Act 1981 was served on Cumbria County Council in 2015 requiring them to make the definitive line available for walkers by removing obstructions. This application for a modification order has been received as a result of Cumbria County Council serving a notice on the landowner responsible for the obstructions.

HISTORY OF THE PATH

- 4.4 Footpath Nos 358036 and 358037 were originally recorded as one path numbered 113023. Attached at Appendix C is a copy of the original schedule compiled in about 1951 when path 113023 was surveyed for the first Definitive Map and Statement of 1966. This gives no details to assist with the exact location of the path around Milestone House. Appendix D is a copy of an extract from the original path survey map which clearly shows that the path being claimed went straight down the south side of Milestone House. Attached at Appendix E is a copy of the original definitive statement. The description of the path in this statement largely matches the original path survey map of route 113023 although it does not mention passing close to or through any buildings.
- 4.5 Following the review of the 1966 Definitive Map and Statement, a new 1976 statement was compiled and a copy of this is attached at Appendix F. It describes the eastern section of path 358036 as continuing north-easterly across Thacka Beck approx. 350m to field gate onto road at Milestone House. It describes path 358037 as commencing from a field gate alongside the road at Milestones House and thence continuing north easterly through fields. No mention is made in this description of 358037 of passing close to or through any buildings. No evidence has been found to show that the route was blocked when it was first surveyed in the 1950s although there is considerable correspondence on file from the 1980s reporting that the route was obstructed.
- 4.6 Attached at Appendix G is a copy of the 1st edition Ordnance Survey Map dated 1860 which clearly shows a track running to Milestone House but the route of the path from thence on is not shown. Attached at Appendix H is a copy of the 2nd edition OS Map published in 1900, which shows a track entering what is now the garden of The Hollies. The track then turns in a northerly

direction before splitting in to two routes. One turns west into the farmyard and one continues north and then in a westerly direction behind some buildings to join the road (now the A6). This map is of interest because it also shows a track on the other side of the A6 on the north side of the wall whereas the current Definitive Map records path 358036 at this location running down the south side of the wall.

- 4.7 In 1974 a number of planning applications were granted for temporary use of Milestone House as a contractor's headquarters for a pipeline project. The premises were to be used as offices, stores, maintenance workshops and for installation of a 2500-gallon underground storage tank, with heavy plant machinery and 30 plus workforce. There was no mention in the planning process of any footpath in the vicinity of Milestone House despite it being clearly marked on the Definitive Map. The 1966 Definitive Map of the time was at a scale of 1:25,000 and would not have clearly shown the location of the footpath. The first Definitive Statement did not say the path passed through Milestone House or Milestone Cottages. With neither Definitive Map nor Statement clearly saying the path went through any properties the planning authority may have believed the public footpath was not affected by the development. In addition, the path may have appeared unused or there was no evidence of its existence on the ground at that time.
- 4.8 In 1984 a planning application was submitted to convert a farm barn into two dwellings "adjacent to Milestone House" conditional on diversion of the footpath. A Diversion Order was duly made by Eden District Council on 29 September 1984. However, the District Council did not confirm the order as they decided that the Definitive Line did not run through Milestone House and was not affected by the development. The District Council based their view on an interpretation of the provisional map (very similar to the draft map at appendix D), which it is difficult to support as the provisional map does not show which side of the wall the path is located to the south of Milestones House between points A and B. In addition, a path located either side of the wall between points A and B would have been obstructed by walls. No such diversion was undertaken. It is unclear where Eden District Council believed the footpath was located in 1987, as a further planning consent was granted for the construction of the Hollies at this time on condition that the footpath was not obstructed.
- 4.9 When a Ramblers Association representative visited the site in 1984, they observed a route just to the north of the Hollies and approximately on the positions shown on the 2nd Edition OS Map. They noted that this alignment was available apart from a then new fence obstructing at point B
- 4.10 Various attempts have been made to divert the footpath on to a usable line in recent years, but these have failed to materialise as the landowners concerned have not been willing to agree a diversionary route.

THE APPLICANT'S CASE

- 4.11 The Applicant's have applied to delete the footpath where it crosses the two properties known as The Hollies and No 1 Milestone House. In support of their case the applicants say that the footpath could not have been used from A to B due to the presence of ancient walls, two at Milestone House and one at The

Hollies. They say these ancient walls are shown on the 2nd edition OS Map. There is today little evidence of any gates or stiles allowing access through these walls and this strongly supports the argument that the path did not exist at this location.

- 4.12 Witnesses who have lived and worked at Milestone House and Milestone Cottages next door from 1924 until recent times say there was never any way of crossing the two ancient walls and never knew of a public right of way crossing the farmyard.
- 4.13 Of particular interest in this case is a photograph dated 28 April 1968 (Appendix I) which shows the three walls running across the definitive line between A and B. It also shows a wall without gate on the other side of the road from point A blocking the start of footpath no 358036. This photograph supports the applicant's case that the route was heavily obstructed in 1968 and could not have been used on the definitive line. It should be noted that Milestone Cottages were built around 1937, so would have obstructed the line of the original 1951 claimed path if it was intended to claim it on the very nearby adjacent south side of the boundary wall to Milestone Farm.
- 4.14 As can be seen from the original 1950s claim map at Appendix D, it is not clear which side of the wall, south of Milestone House, path 23 was claimed. The thick black line indicating the location of the claimed path 23 is positioned over and completely obscures the lines denoting the walls, fences and hedges. The present Definitive Map shows it on the North side at Milestone House as A-B on the draft order plan but the applicant believes this was a drafting error and it should be located on the south side. They believe this is backed up by the old definitive statement for 113023 which describes the path going from the railway "*.....east-north-easterly crossing Thacka Beck approx. 380 yards to field gate onto road at Milestone House, continuing north-easterly from field gate on opposite side of road, through fields (field gates) approx. 550yards to Penrith-Carlisle Road.*" The main problem with the applicants argument that the original claim for the path was on the south side of the wall is that Milestone Cottages, which were built around 1937 have from that date obstructed this claimed alignment.

5.0 CONSULTATIONS

- 5.1 County Councillor Hilary Carrick the local councillor for the area has been consulted but no response has been received.
- 5.2 The statutory undertakers have been consulted and non are affected
- 5.3 A consultation has also been carried out with:
- | | |
|-----------------------------------|----------------------|
| Byways and Bridleways Association | No response received |
| Open Spaces Society | No response received |

The Ramblers	Objection received
Cyclists' Touring Club	No response received
British Driving Society	No response received
Auto Cycle Union	No response received
Eden District Council	No response received
Cumbria and Lakes Local Access Forum	Consider a diversion order.

- 5.4 An objection has been received from the local representative of the Ramblers on the basis that there is clear evidence of the existence of the path but if evidence were produced showing the path should go on a different route between the buildings, then he might find an order to amend the route acceptable but the evidence so far is not sufficient.
- 5.5 Cumbria Local Access Forum suggested resolving the problem by means of a diversion order pursuant to section 119 of the 1980 Highways Act. This may be possible although we first require a decision on this Wildlife and Countryside Act 1981 section 53 application to make an order to delete path 358037. If the application fails then we would be able to process an application to divert path 358037 under section 119 of the Highways Act 1980.
- 5.6 The applicant landowners agree the route cannot be a cul-de-sac but believes it originally may have passed to the south of Milestone House. Although there is a physically possible route south of Milestone House and Milestone Cottages there is insufficient evidence to support it.

6.0 LEGAL POSITION

- 6.1 Under paragraph 2.1 (g)(vii) of Part 2G of the County Council's Constitution this committee exercises the County Council's statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (section 53 of the Wildlife & Countryside Act 1981).
- 6.2 The County Council has a duty to investigate an application, to consider all relevant evidence available to it, and then to reach a conclusion. It must, therefore, evaluate the application. All the evidence must be weighed in the balance and any relevant legal principles applied to it.
- 6.3 An application for a modification order involves a two-stage process whereby the County Council makes the order and then, if appropriate, confirms the order if there are no outstanding objections to it or, where there are such objections, the order can only be confirmed by the Secretary of State

- 6.4 The application as submitted is made pursuant to section 53(3)(c)(iii) Wildlife and Countryside Act 1981 on the ground that there has been a discovery by the County Council “.....of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description,”
- 6.5 Section 56(1)(a) Wildlife and Countryside Act 1981 states that where a definitive map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than that right.
- 6.6 The leading case in this area is that of Trevelyan [2001] 1 W.L.R. 1264. The Court of Appeal decided that clear and compelling evidence of a mistake would be needed to set aside the presumption that the Definitive Map and Statement of Public Rights of Way had been correctly prepared and are a true record. The procedure whereby the Definitive Map was originally drawn up was lengthy and involved and opportunities were given for those concerned to object if they thought that the Definitive Map had been incorrectly drawn.
- 6.7 The evidence needs to fulfil certain stringent requirements. These are that: -
- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made (Burrows 2004).
 - The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.
 - The evidence must be cogent (i.e. clear and convincing on the balance of probabilities).

7.0 OPTIONS

- 7.1 The Committee may accept or reject the recommendation in whole or in part.
- 7.2 If the recommendation is rejected and an order is made any objector will have an opportunity, following advertising of the Order, to submit a further objection whereupon the matter will be referred to the Secretary of State for decision (probably after a Public Inquiry or other hearing).
- 7.3 If the recommendation is accepted the applicants have the option of appealing against the decision to the Planning Inspectorate at Bristol.

8.0 ASSESSMENT

- 8.1 It is most doubtful that this path was a cul-de-sac stopping at point B and that a mistake was made when the definitive map was drawn up and that the path

should end at The Hollies. The path was at one time part of a continuous route numbered 113023 and considerable evidence points to the footpath continuing to and over the road. All old plans inspected show routes which the path could have taken to link with the A6 main road. The first 1966 Definitive Statement says the path continues from Milestone House in a north-easterly direction from a gate on the side of the A6 main road. The current 1976 Definitive Statement says the path goes from field gate alongside the A6 main road at Milestone House north-easterly through fields.

- 8.2 The applicant's evidence that the Definitive Line is physically impossible to use and that witnesses never knew of a public right of way crossing the Milestone property is of insufficient weight to pass the stringent legal tests as summarised in 6.7 above.
- 8.3 The applicants have only demonstrated that the Definitive Line could not have been walked in recent years. They have provided insufficient evidence to support the deletion of this section of public footpath from the Definitive Map and Statement.
- 8.4 The applicants agree that the path could not have been a dead end stopping at point A before entering The Hollies. There are several routes which the path could have taken around Milestone House and the route recorded on the Definitive Map is one of those routes. Insufficient evidence has come to light to show, on the balance of probabilities, that the route shown on the Definitive Map is incorrectly recorded.

9.0 CONCLUSION

- 9.1 The evidence required to pass the stringent legal tests to delete a public right of way has not been provided in support of these applications and, therefore, I recommend that the application be rejected.

Angela Jones
Executive Director – Economy and Infrastructure
June 2022

APPENDICES

- A – Plan showing the path to be deleted***
- B – Location Plan***
- C - Original Schedule accompanying survey map for path no 113023***
- D – Original survey map***
- E- Original Definitive Statement for path no 113023***
- F – Copy of current Definitive Statement***
- G - OS 1st Edition Map (1860)***
- H – OS 2nd Edition Map (1900)***
- I – 1968 photograph***

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division(s): Penrith North – Hilary Carrick

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS ***[including Local Committees]***

No previous relevant decisions.

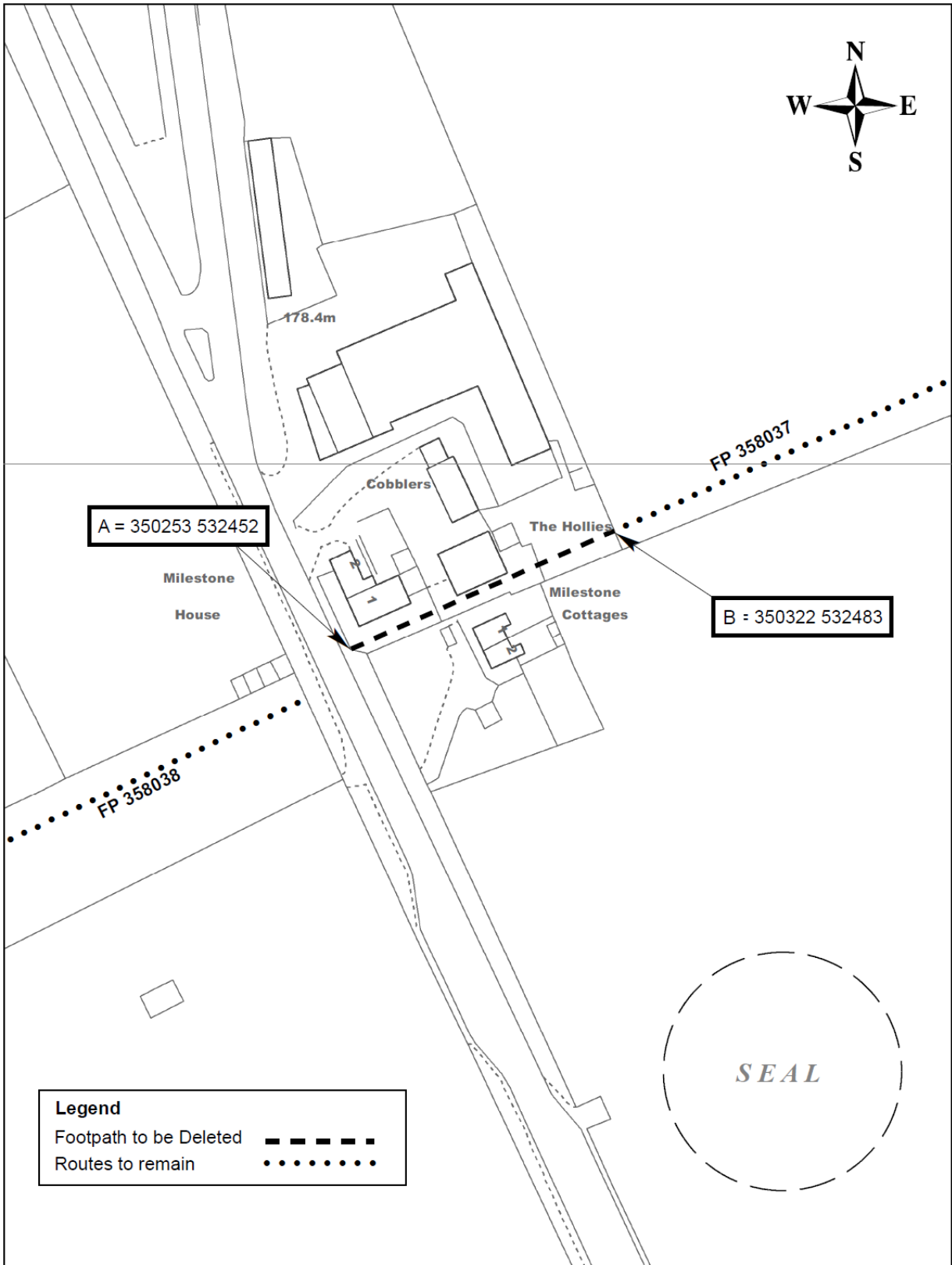
CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny.

BACKGROUND PAPERS

No background papers

Contact: Andy Sims, Countryside Access Officer
E-mail: andy.sims@cumbria.gov.uk



A = 350253 532452

B = 350322 532483

Legend
 Footpath to be Deleted - - - - -
 Routes to remain · · · · ·

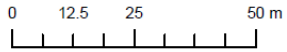
SEAL



Wildlife & Countryside Act 1981 Definitive Map Modification Order
Milestone House, Penrith

Scale = 1:1250 @ A4

(c) Crown Copyright and Database Right 2013 Ordnance Survey Licence Number 1000019506





Milestones, Penrith - Location Map

Scale: 1:40,783 @ A4

This produce includes mapping data licensed by Ordnance Survey. (c) Crown Copyright 2018. Licence Number. 100019596

APPENDIX B

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949
SCHEDULE ACCOMPANYING SURVEY MAPS.

PARISH OF _____ in the Rural District of _____

Through Urban District } of PENRITH
(Delete whichever is inapplicable).

1. Number of highway on Map 113023
2. Kind of Path (i.e. F.P., B.R.) F.P. & B.R.
3. Beginning at Thackagale and ending at Old barstole Rd.
4. Name of Path (if any) _____
5. Is the Path well defined? Yes
6. Is the Path metalled? If so, define length No
7. If its width can be stated, insert here _____
8. What is the present condition of the path, stiles, etc.? Fair
9. Is it subject to being ploughed out? No
10. Details of any notice boards, direction signs or warning signs against trespassers, stating their location, wording on them, their condition and date of erection, if known.

11. Grounds for believing the path to be public (if known), e.g. "Awarded," "Repaired at Public Expense," (with date) or "mentioned in Minutes of Parish Council" or any other evidence such as that of an old inhabitant.

Ordinance Survey 6" 1897 Edition - shown as Public Path.

(Continue overleaf if necessary).

12. Have persons been prevented from using the highway? Not Known
13. Give particulars of any obstructions None
14. Names of owners of freehold and previous owners, if known, for past 30 years.

15. What maps have been consulted, and where are they deposited?

(a) See (ii) Town Hall, Penrith
(b) Penrith T.M. deposited at the office etc

16. What records have been consulted, and where are they deposited?

17. Any other relevant information Part of this running alongside the Railway then switching to F.P. 113031 as shown on Penrith T.M.

Surveyed by	Address	Dates of Survey

Sheet No. of Map on which Highway is shown

3 / 6 / 49 S.E.
5 / 6 / 58 N.E.

SCHEDULE OF 1951 APPROX



APPENDIX D

No. of Path	O.S. Sheet	Type of Path	Description	Limitations and conditions affecting the public right way
113014 ✓	58 NE	Footpath	From BR.113017 at Melbourne Cottage westerly through fields approx. 350 yards thence south-westerly approx. 100 yards there joined by FP.113029 from the south-east continuing south-westerly approx. 300 yards thence north-westerly approx. 170 yards to field gate thence south-westerly approx. 500 yards to field gate onto Penrith - Newton Reigney Road at Urban boundary.	Do
113015 ✓	58 NE	Bridleway	From BR.113017 approx. 200 yards north-west of Poulersike Cottage westerly through fields approx. 200 yards there joined by FP.113016 thence south-westerly approx. 550 yards to Newton Rigg Farm School.	Do
113016 ✓	58 NE 49 SE	Footpath	From BR.113015 approx. 400 yards west of Poulersike Cottage north-westerly through fields approx. 150 yards thence westerly (stiles) approx. 350 yards to Parish boundary (continuing south-westerly as FP.37002 in Catterlen Parish to Newton Road).	
113017 ✓	58 NE 49 SE	Bridleway	From road on east side of railway at Thackergate westerly under railway and north-westerly over lane to Melbourne Cottage continuing north-westerly to Poulersike Cottage thence north-north-westerly approx. 200 yards there joined by BR.113015 from the west continuing north-westerly over lane approx. 1100 yards there joined by FP.113027 from the south-west continuing north-westerly over lane to Parish boundary at River Patteril approx. 150 yards south of Catterlen Hill (continuing north-westerly in Catterlen Parish as BR.37003).	Do
113018 ✓	58 NE	Footpath	From kissing gate at north-west end of Foster Street westerly approx. 60 yards to kissing gate on east side of railway thence north-westerly approx. 30 yards crossing railway to west side thence north-westerly through fields approx. 200 yards to stile there joined by BR.113017 at railway bridge at Thackergate.	P. 113 West Dr
113019 ✓	49 SE 58 NE	Footpath	From Beacon Road at east side of Cottage Hospital north-north-westerly approx. 800 yards to stile onto road approx. 100 yards north-east of Bellevue House.	
113020 ✓	49 SE 50 SW	Footpath	From field gate on west side of road at Maidenhill Cottage west-north-westerly on south side of Maidenhill Quarries and Maidenhill approx. 450 yards to wicket gate thence south-westerly approx. 120 yards and north-westerly approx. 20 yards to wicket gate thence westerly through wood approx. 100 yards to stile at Maidenhill there joining FP.113021 from the north thence southerly between buildings approx. 150 yards thence south-westerly through field approx. 230 yards to field gate onto road continuing from field gate on opposite side of road west-south-westerly through field approx. 300 yards thence south-south-westerly approx. 100 yards to field gate thence south-westerly approx. 60 yards to south side of Greengill Farm thence south-south-easterly approx. 300 yards south-westerly approx. 400 yards to Greengill Lodge thence southerly approx. 50 yards and south-westerly approx. 200 yards to road east of Elms Cottage.	Subject to ploughed
113021 ✓	49 SE 50 SW	Footpath	From field gate on west side of road approx. 250 yards north of Maidenhill Quarries west-north-westerly through fields (field gates) approx. 750 yards thence west-south-westerly approx. 150 yards and southerly approx. 450 yards to Maidenhill joining FP.113020.	
113022 ✓	49 SE	Footpath	From field gate on east side of road west of Forest Hill easterly to end between buildings at Forest Hill approx. 250 yards to field gate thence east-north-easterly through fields approx. 400 yards to field gate there joined by FP.113030 from the south-east thence north-north-westerly through fields approx. 220 yards to road to Edenhill.	Subject to ploughed
113023 ✓	49 SE 58 NE	Footpath	From field gate on east side of railway bridge at Thackergate north-westerly through fields along east side of railway approx. 1650 yards to field gate there forming (1) south-westerly to and under railway to join FP.113031 and (2) east-north-easterly crossing Thacker Road approx. 380 yards to field gate onto road at Milestone House, continuing north-easterly from field gate on opposite side of road, through fields (field gates) approx. 550 yards to Penrith - Carlisle Road.	Do

ORIGINAL STATEMENT FP 113 023

COUNTY OF CUMBRIA
National Parks and Access to the Countryside Act 1949
Countryside Act 1968

DISTRICT EDEN
STATEMENT OF RIGHTS OF WAY

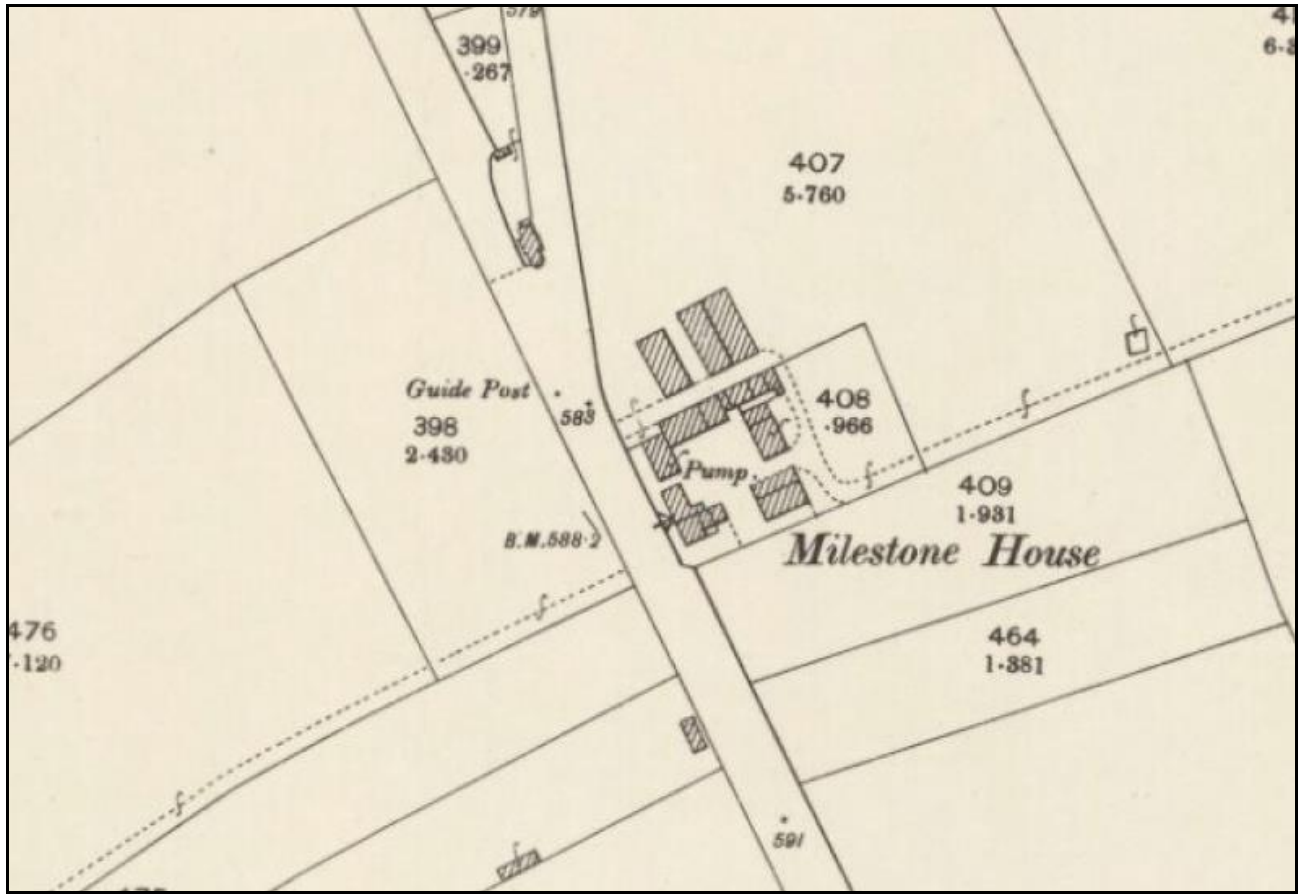
PARISH OF PENRITH
Sheet 7 of 8
Relevant Date 1 January 1976

PATH NO	PATH TYPE	DESCRIPTION	SHEET NO	REMARKS
358031	Footpath	From BW 358017 at railway bridge at Thackergate north-westerly through fields along south-west side of railway approx 503 m thence west-north-westerly approx 91 m thence north-westerly through fields approx 549 m to side of railway continuing along south-west side of railway approx 780m thence north-north-westerly across fields to south side of River Patteril near Weir crossing under motorway bridge over river thence westerly approx 100 m to Parish boundary there joining FP 313006 (Catterlen).	NY53SW NY43SE	Part diverted under M6 motorway bridge. Part renumbered FP 313006 (Catterlen)
358032	Footpath	From footpath east of Fell Lane south-easterly and south-westerly approx 339 m to Brent Road (Scaws Housing estate).	NY53SW	
358033	Footpath	From field gate on FP 358028 approx 183 m south of Beacon Road westerly approx 128 m to stile onto FP 358007.	NY53SW	
358034	Footpath	From south side of A66 west of Skirsgill Lodge south-south-westerly approx 90 m to Parish boundary there joining FP 321008 (Daore).	NY52NW	Previously part of FP 358010
358035	Footpath	From west side of motorway fence approx 420 m south-south-west of Fowlersike Cottage south-westerly approx 150 metres thence north westerly approx 180 m to field gate, thence south-westerly approx 490 m to field gate onto Penrith-Newton Reigny Road at Parish boundary.	NY53SW NY43SE	Previously part of FP 358014
358036	Footpath	From FP 358031 approx 575 m south of Long Ashes north-easterly to and under railway bridge there joined by FP 358023, continuing north-easterly across Thacka Beck approx 350 m to field gate onto road at Milestone House.	NY53SW NY43SE	Previously part of FP 358023
358037	Footpath	From field gate alongside road at Milestone House north-easterly through fields (field gates) approx 500 m to Penrith - Carlisle Road.	NY53SW	Previously part of FP 358023
358038	Footpath	From BW 358017 approx 150 m east-south-easterly of Melbourne Cottage south-south-easterly for approx 180 metres.	NY53SW	Previously had <u>no</u> number
358039	Footpath	From King Street, through narrow covered passageway flanking south side of Old Crown Inn, giving onto yard and narrow lane leading in an east north easterly direction for 130 metres	NY53SW	Added 1976 review

APPENDIX F

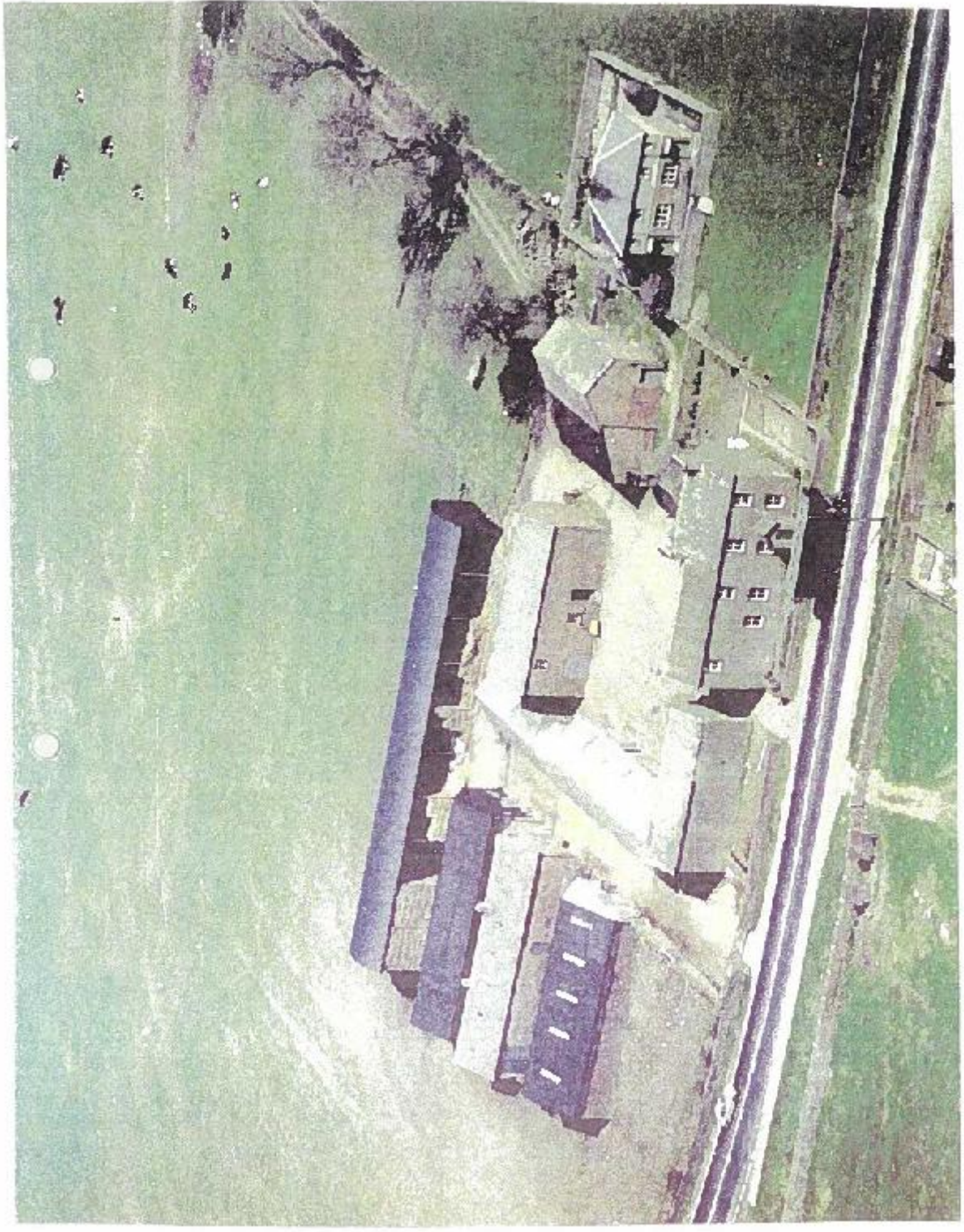


APPENDIX G



APPENDIX H

215.04.68.



APPENDIX I