

# **Wildlife and Countryside Act 1981**

## **Definitive Map Modification Order Application**

**Adding to the particulars of the footpath between Frog's Lane, Worstead and Yarmouth Road, North Walsham by adding a width and a statement as to limitations**

Applicant's Reference: iw.worsteadfp4.north walshamfp18.2021.07

**July 21**

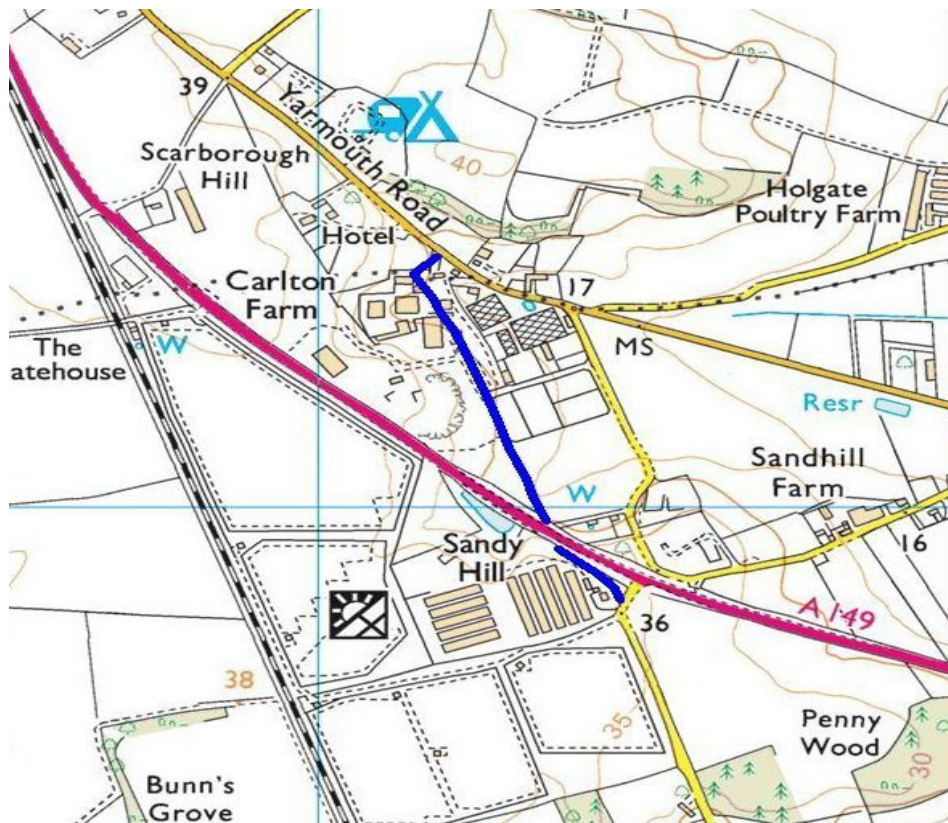
Quick reference path facts to assist the Surveying Authority in its investigation

OS County series map	Norfolk XIX. 10; XIX. 14
Modern Definitive Map sheet(s)	TG22NE

1. My name is Ian Witham. I have been a volunteer local correspondent for the Open Spaces Society since 1999. I am the applicant for the order.
2. This application is made to clarify the width of Footpath 4 in the parish of Westwick and 18 in the parish of North Walsham. The footpath has a long history of obstruction, in full knowledge of the highway authority, and it is therefore in the public interest for the extent of the public's rights over the routes to be investigated and clearly recorded in the particulars of the definitive statement.

### THE APPLICATION ROUTE

3. Worstead Footpath No. 5 is described in the definitive statement as starting from a point on the west side of C397 Frogs Lane near Sandy Hill, and skirting the periphery of the poultry units/dwelling site on the northeast and east side, running along the top of the embankment of the A149 North Walsham Bypass; the path then running down the embankment and crossing the bypass, continuing north westwards to the Parish Boundary. North Walsham Footpath No. 18 is described as commencing from Yarmouth Road by a stile, just south-east of Scarborough Hill House, and running southwards to the Urban District Southern Boundary.



*Ordnance Survey 1:25000 scale map extract showing application route*

### WIDTH

4. The application path is conclusively recorded on the Norfolk County Council's Definitive Map and Statement of Public Rights of Way as Footpath No. 4 in the parish of Worstead and Footpath No. 18 in the parish of North Walsham. The width of a public path is based on evidence. If the application path, or any part thereof, was expressly dedicated or created to a

particular width, then that will be the width to be recorded in the definitive map and statement (unless there is evidence that additional width had been dedicated).

5. The applicant has not seen any relevant information in the relevant enclosure or title documents published at <http://www.historic-maps.norfolk.gov.uk/> The applicant is not aware of any legal event setting out the width of the application path, except for the southern part of Worstead Footpath No. 4, which the council's definitive map indicates to have been subject to a diversion in or before October 1992; the legal event which effected this diversion may well yield information relevant to the question of the width of the section of new path created thereby.
6. The applicant has consulted Ordnance Survey maps to gain an indication of the likely width to which the path was dedicated. The applicant has consulted maps dating between 1886 and 1957, published electronically by the National Library of Scotland, and at [www.old-maps.co.uk](http://www.old-maps.co.uk)
7. A route, consistent with the greater part of the application path (prior to its diversion in or before October 1992) first appears on the 1886 25" First Edition map, and again on the 1906 25" (1:2500) Second Edition map, and again on the edition of 1928. In all instances, the route is annotated with the initials "F.P." The applicant considers that route to be consistent with that shown on the 6" (1:10,560) editions of 1946 to 1950, and of 1957, which, in turn, is consistent with much of the route shown, on the definitive map, conclusively to be dedicated as a public footpath. The applicant understands that the definitive map uses, as its base, an Ordnance Survey map contemporaneous with the 1957 edition.
8. The applicant therefore submits that it is reasonable to infer that the route shown on the 1906 edition coincides with much of the application route, and, in turn, to make inferences from the information shown, at the superior scales there used, as to the route's width.
9. For the 1906 edition, the applicant took measurements in numerous positions along the length of the route marked, and compared against the scale, broadly, the distance between the lines varied between what equates approximately to 5 and 7 feet.
10. The applicant notes that the Ordnance surveyors would have recorded the visible "trodden" path, varying as it does along the path's length, but that the actual width may well be greater than the visible or trodden path. However, the applicant submits that there is no reason to suppose that the true width of the path would be anything less than what the Ordnance Surveyors recorded as the visible or trodden path, in the absence of any evidence that the public were restricted to using only part of that width.
11. Where there is an absence of clear evidence, the applicant notes the following advice contained in the Planning Inspectorate's Rights of Way Section Advice Note No. 16, "Widths on Orders"<sup>1</sup>, at paragraph 9:

*Determination of the width will, if not defined by any inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or, where there is no such clear evidence, the type of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features, may dictate what may be considered reasonable. In the absence of evidence to the contrary, Inspectors should ensure that the width recorded is sufficient to enable two users to pass comfortably, occasional pinch points excepted. This width may well be greater than the width of the "trodden path". Apart from specific instances such as*

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<sup>1</sup>See: <https://www.gov.uk/government/publications/rights-of-way-advice-note-16-widths-on-orders>

*the reinstatement of a right of way after ploughing under Schedule 12A to the Highways Act 1980, there are no statutory widths for rights of way.*

### LIMITATIONS

**12.** The definitive map and statement do not record any limitations on the public's rights along the application path, and the only reference to any object that could conceivably pose any limitation is that to a "stile" at the commencement of North Walsham Footpath No. 18. Any such stile has long gone, and the applicant submits a photograph showing the absence of any stile at the location in question. The historical Ordnance Survey maps which show the route do not indicate the existence of any objects, such as gates or stiles. The applicant has been a frequent observer of the path, on the ground, since the 1990s to the present time, and has observed nothing along the route to pose a limitation on the public's rights, other than objects that have been blatant obstructions.

**13.** Bearing in mind the map evidence, as well as the principle established in *Gloucestershire CC v Farrow* [1985] 1 WLR 741 that, if a way originally dedicated subject to a limitation or condition is subsequently used for a 20-year period during which time it is free from that limitation or condition, the highway is presumed to have been re-dedicated free from that limitation or condition, the applicant submits that it can be confidently asserted, now, that the application path is free of limitations or conditions on the public's rights.

I. M. Witham, July 2021

# ANNEX



Norfolk XXIX.14 (Westwick; Worstead)  
Surveyed: 1884, Published: 1886  
Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

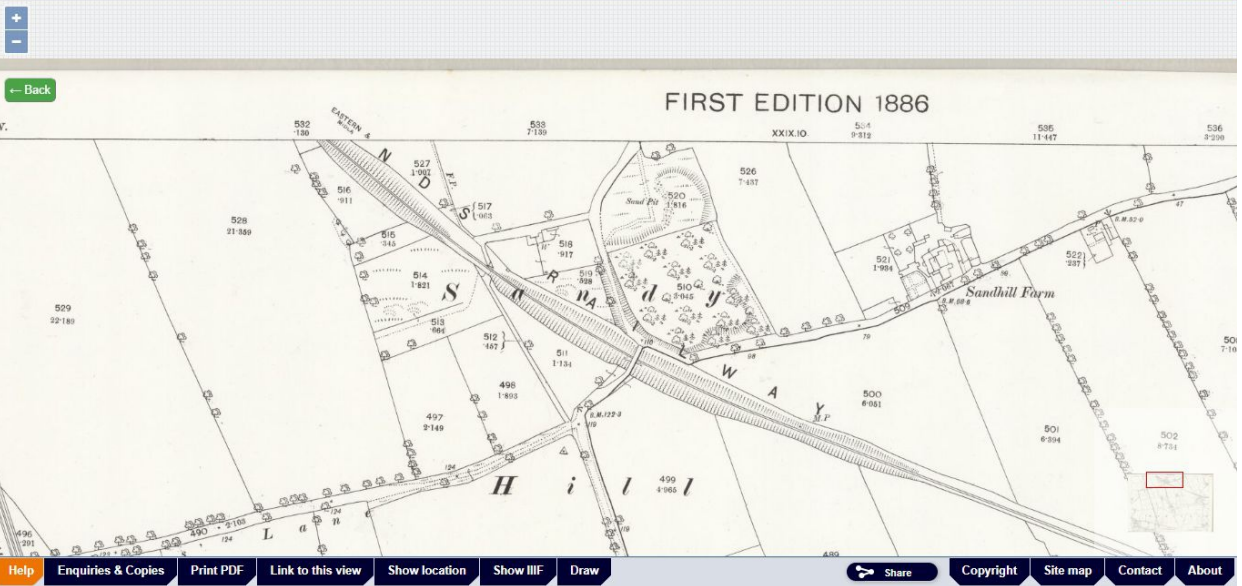
Keyword search

Re-use: CC-BY-NC-SA

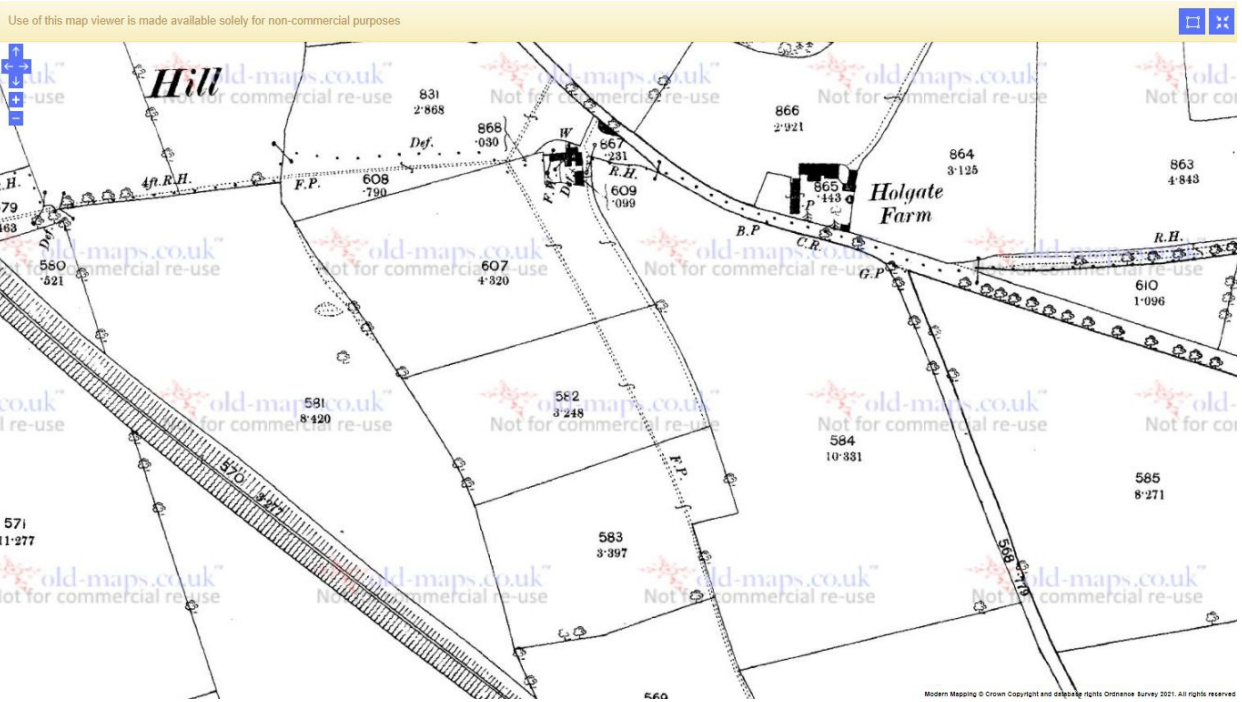
Commercial re-use restrictions on this map

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

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Extract from Ordnance Survey County Series Norfolk XXIX.14, 1886 Edition, National Library of Scotland



Extract from OS County Series NORFOLK 1886 1:2500, [www.old-maps.co.uk](http://www.old-maps.co.uk)



Norfolk XXIX.14 (Westwick; Worstead)  
Revised: 1905, Published: 1906  
Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

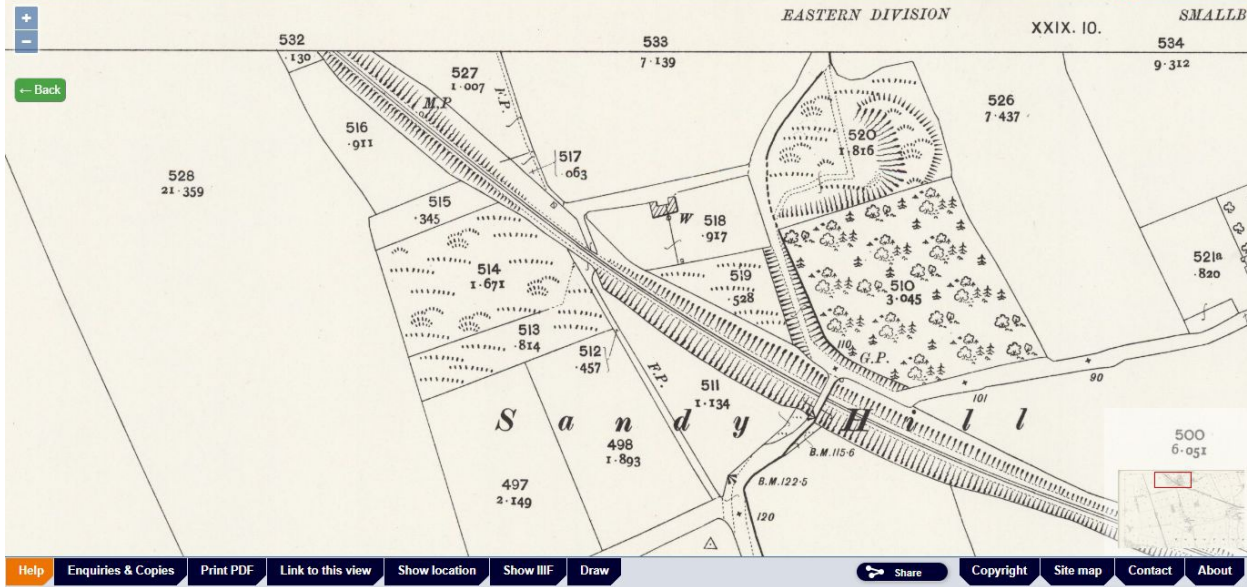
Keyword search

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Extract from Ordnance Survey County Series Norfolk XXIX.14, 1906 Edition, National Library of Scotland



Norfolk XXIX.10 (Honing; North Walsham; Worstead)  
Revised: 1905, Published: 1906  
Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

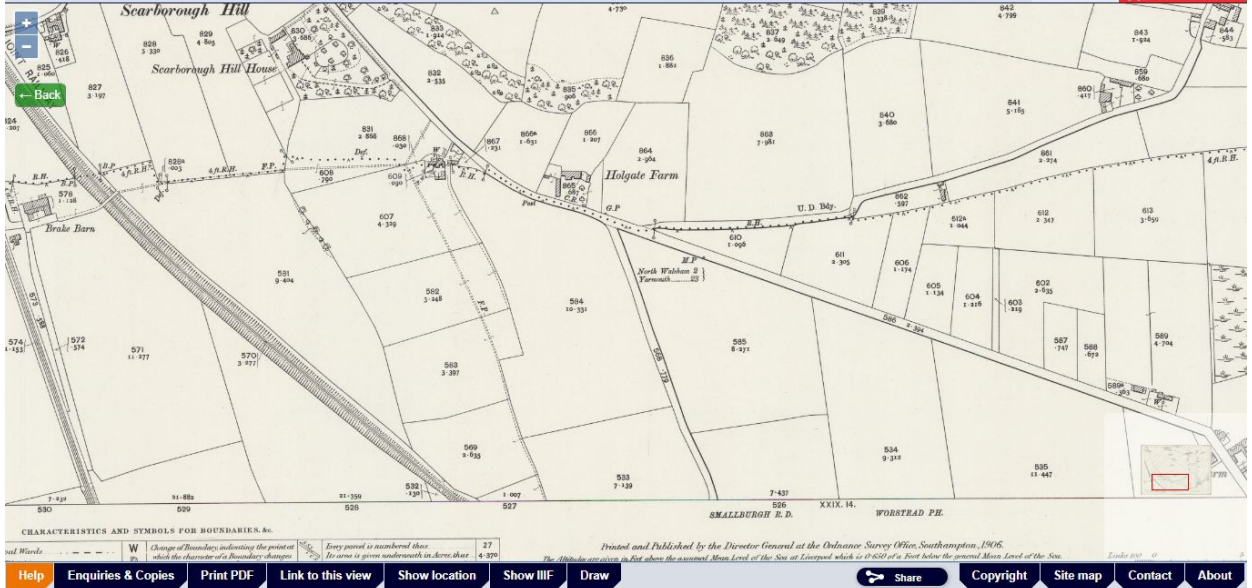
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Extract from Ordnance Survey County Series Norfolk XXIX.10, 1906 Edition, National Library of Scotland



Norfolk XXIX.14 (Westwick; Worstead)  
 Revised: 1926, Published: 1928  
 Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

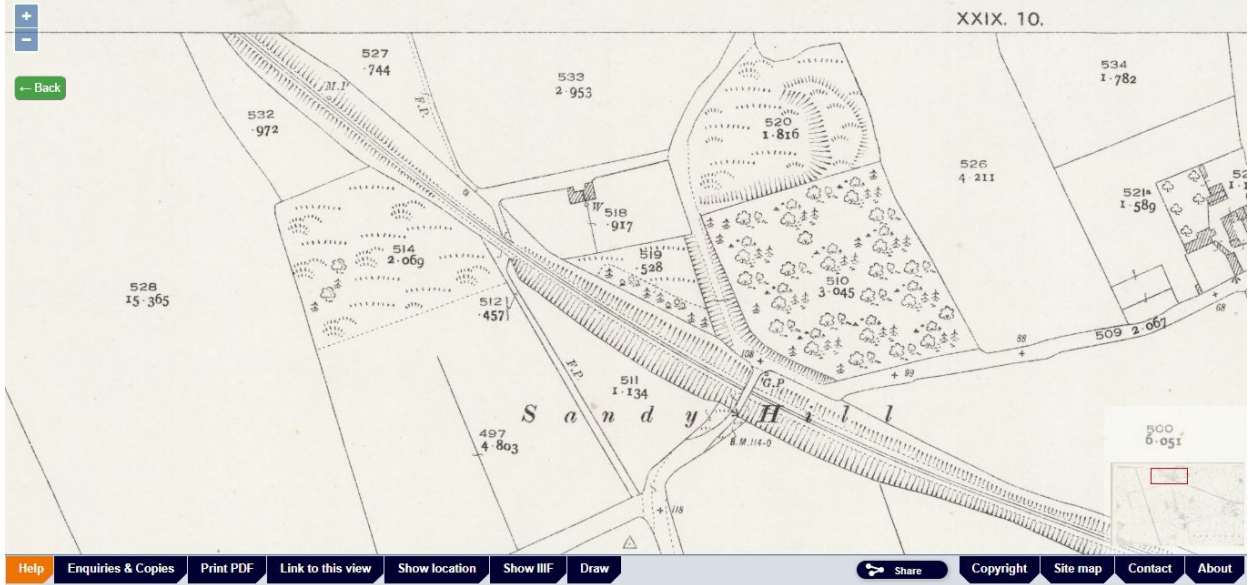
Keyword search

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Extract from Ordnance Survey County Series Norfolk XXIX.14, 1928 Edition, National Library of Scotland



Norfolk XXIX.10 (Honing; North Walsham; Worstead)  
 Revised: 1926, Published: 1928  
 Size: map 64.4 cm x 96.6 cm (25.344 x 38.016 inches), on sheet ca. 76 x 104 cm (ca. 30 x 41 inches)

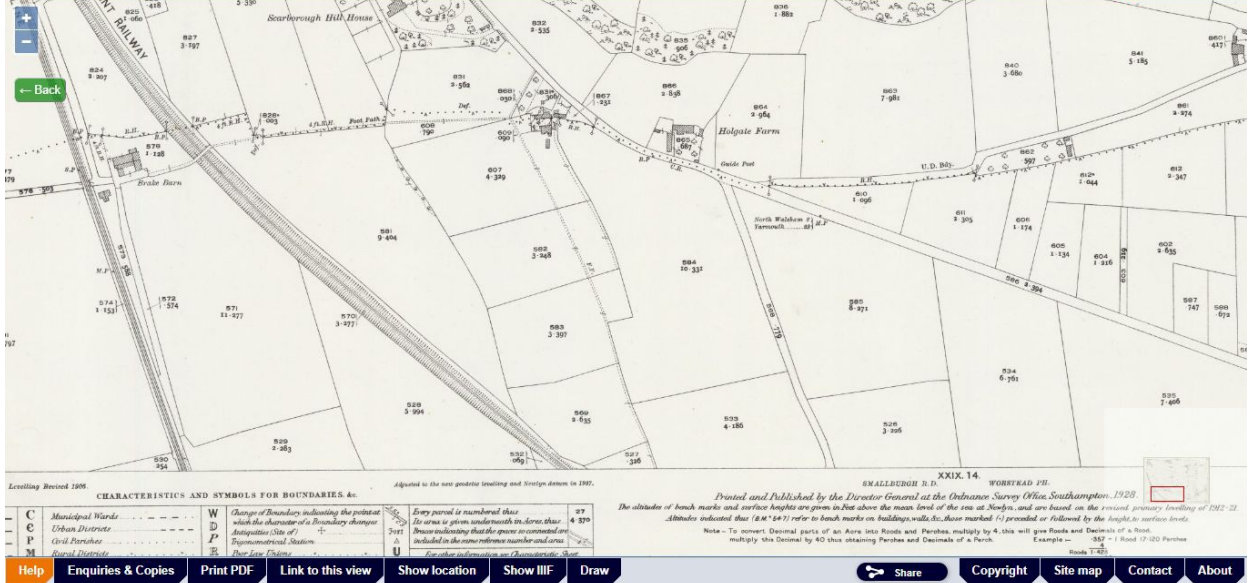
Keyword search

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Extract from Ordnance Survey County Series Norfolk XXIX.10, 1928 Edition, National Library of Scotland

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Available Maps

- All Map Types
- OS County Series: NORFOLK (partial) 1946-1950 1:10,560
- OS Plan 1957 1:10,560
- OS Plan 1977 1:2,500
- OS Plan (partial) 1980 1:10,000
- OS Plan 1980-1981 1:10,000

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- OS Plan 1977 1:2,500
- OS Plan (partial) 1980 1:10,000
- OS Plan 1980-1981 1:10,000

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Extract from OS Plan 1957 1:10,560, [www.old-maps.co.uk](http://www.old-maps.co.uk)





Extract 1 from the Definitive Map, showing the application route against a 1950s map base

125000  
10 Metres  
25000

Yards 1000 500 0

LONG 26

SCOTTOW PH

### AMENDMENTS

Revision	Description	Date
A	FP No 4 DIVERSION WORSTEAD	OCT. 1992
B	WORSTEAD FP 1, 2, 3 DIVERSION BKIS ADDED // PELMINGHAM FP 7 DIVERTED	11.00
C	NORTH WALSHAM FP 14 EXT./DIVERSION	06.01
D	NORTH WALSHAM FP 2, EXT./DIVERSION	APR. 15

TG 23 SW	TG 23 SE	TG 33 SW
TG 22 NW		TG 22 NE
TG 21 SW	TG 21 SE	TG 31 SW

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Extract 2 from the Definitive Map, referencing "FP No. 4 DIVERSION WORSTEAD – OCT. 1992"



*Photograph showing where the application route leaves the Yarmouth Road, North Walsham, as signposted by the Norfolk County Council. Absence of any stile. Dated March 2019, source: Google Street View*