

DATED

4th July

2003

BRITISH WATERWAYS BOARD

and

RUSHCLIFFE BOROUGH COUNCIL

LICENCE

To carry out construction of Multi-User Path with
access improvements adjoining the Grantham Canal between
Lady Bay Bridge Nottingham and The Smite Aqueduct Nottingham

~17163~

Nigel I Johnson
Legal Director
BRITISH WATERWAYS BOARD
Willow Grange
Church Road
Watford
WD17 4QA

JOH/CX229Licence

THIS LICENCE is made the 4th day of July Two Thousand and Three BETWEEN BRITISH WATERWAYS BOARD whose principal office is situate at Willow Grange Church Road Watford Hertfordshire WD17 4QA (hereinafter called "the Board") of the one part and RUSHCLIFFE BOROUGH COUNCIL of Civic Centre, Pavilion Road, West Bridgeford, Nottingham NG2 5FE. (hereinafter called "the Council") of the other part

WHEREAS

- (i) The Council wish to carry out the construction of a Multi-User Path between Lady Bay Bridge Nottingham Ordnance Survey No SK587383 and Smite Aqueduct Ordnance Survey No SK715295 in the County of Nottinghamshire.
- (ii) The Board is (inter alia) the freehold owner of the Canal and the Towing Path and has (inter alia) statutory powers to provide and enhance canal and navigation facilities for users of its waterways.
- (iii) The Council and the Board have agreed subject to the terms set out in this Licence to undertake a programme of works to improve the Towing Path and access points as a multi-user recreational facility as set out in Schedule 1 hereto ("the Works").

IT IS HEREBY AGREED as follows:

1. Definitions

In this Licence the following words and expressions shall have the meanings set out alongside those words and expressions:

"the Plans" The plans annexed hereto and referred to in Appendix 1 to Schedule 1.

"the Canal"	Grantham Canal which is for the purpose of identification only is shown included within the green lines on the Plans
"Multi-User Path"	A surfaced path extending to a depth of 200mm to be constructed on the towing path adjoining the Canal between Lady Bay Bridge Nottingham Ordnance Survey number SK587383 and Smite Aqueduct Ordnance Survey number SK715295 for recreational use as a pedestrian route a recreational cycleway and where reasonably practicable to allow for disabled access.
"the Licence"	Such licence as is granted by virtue of clause 3 below.
"the Towing Path"	That part of the Board's property which comprises both the towing path and adjoining land and is for the purpose of identification only shown included between green lines on the Plans and which expression shall include the Multi-User Path where constructed over the same and reference to the Towing Path shall include any part of it.

2. Commencement and Term

This Licence and Authority will come into force on the First day of April 2003 and will be for a period of 21 years from the date thereof.

3. Grant of Licence

3.1.1 In consideration of the agreements on the part of the Council and the conditions hereinafter contained the Board so far as they can and lawfully may hereby grant to the Council licence and authority for: -

3.1.2 Use of the surfaced area of Multi-User Path for recreational use as a pedestrian route by able bodied and disabled persons including use of approved powered wheelchairs but all subject to the natural gradients of the Towing Path where in the reasonable opinion of the Board they cannot be re-graded to those recommended for disabled use.

3.1.3 Use of the surfaced area of Multi-User Path for the passage of pedal bicycles for recreational and rural transport purposes only PROVIDED THAT and for the avoidance of doubt such use shall exclude cycle racing or organised cycle events unless otherwise first agreed in writing between the Board and the Council

4. Permissions

The use of the Multi-User Path under this Licence is permissive only and such use shall not be deemed to be or become public rights of way.

5. Access Points

The Board shall determine and provide from time to time access points (the location of which shall be entirely at the Board's discretion) to the Towing Path for persons using the Towing Path under this Licence.

6. Rights Reserved

The Board expressly reserves the right at all times to:

6.1 use the Towing Path and carry out works thereon for all purposes but without prejudice to the generality of the foregoing the right of access over and along the Towing Path and any part of it with or without vehicles and authorising all such others to do so.

6.2 grant other licences or agreements for the use of the Towing Path PROVIDED THAT such licences or agreements do not substantially or permanently interfere with the exercise of the Licence

6.3 carry out its powers and duties including the right to obstruct or close the Towing Path whenever required for the purposes of navigation, engineering and maintenance operations in connection with authorised uses of the Canal and Towing Path or for the installation by the Board or by others of apparatus beneath the surface of the Canal and Towing Path including without prejudice to the generality of the foregoing telecommunications apparatus and cables.

6.4 to close and divert the Towing Path for such period or periods of time as the Board, acting reasonably, shall at its discretion require upon the happening of any occurrence which makes continued use of the Towing Path unsafe.

7. Towing Path Works

7.1 Where the Board intends to obstruct close or divert the Towing Path or authorise its obstruction closure or diversion or remove any of the Works for any reason it shall first give written notice to the Council (save in case of emergency) and shall use its reasonable endeavours to consult with the Council to minimise any disruption which may be caused by such obstruction closure or diversion, and except where urgent action is required to be undertaken by the Board, the Board shall give such notice of such action as is reasonable in the circumstances.

7.2 If at any time the Board carries out or authorises works of whatever nature to the Towing Path, (other than those authorised hereunder) it shall so far as reasonably practical secure reinstatement of the Towing Path to the condition in which it was before carrying out any such works.

8. Items on Towing Path

The Council may at its own cost subject to the prior written approval of the Board, such consent not to be unreasonably withheld and which may be subject to conditions imposed by the Board: -

8.1 erect and maintain on the Towing Path notices, seats, litter receptacles, lifebuoys and stands, stiles, motorcycle barriers and access points additional to those within the Works and

8.2 plant and cultivate appropriate parts of the Towing Path.

9. Title to Items

Title in such items as may be fixed on the Towing Path by virtue of Clause 8 shall remain with the Council who shall be responsible for their maintenance, renewal and repair and (unless the Board otherwise agree) shall be removed by the Council on or before the termination of this Licence and any damage done made good to the reasonable satisfaction of the Board.

10. Alterations

Subject to the provisions of 8 the Council shall not cause or permit to be made any alteration in the position or structure or otherwise of the Works without the prior written consent of the Board

11. Rights of Support

Save for the maintenance works referred to in Schedule 5 nothing herein contained shall be deemed to give to the Council a right of lateral or subjacent support for the Works or render the Board liable for any damage which may happen to the same

12 The Works

12.1 The Council and the Board shall carry out or pay all, (or a proportion) of the costs of the Works set out in Schedule 1 (including works of maintenance) as has been agreed between the parties and as provided for in sub-clauses 12.2 to 12.4 inclusive and sub-clauses 15.1, 15.2 and 15.4.

12.2 The Board shall undertake to carry out that part of the Works which are set out in schedule 2 which include the construction of a granular surfaced towpath between Cotgrave Road and Hollygate Lane near Cotgrave.

12.3 The Council shall undertake to carry out that part of the Works which are set out in schedule 3 at its own costs.

12.4 The Board shall undertake to carry out that part of Works set out in schedule 4 at its own cost.

13 Cycling Code

13.1 The Council shall erect and maintain at its own cost notices as specified by the Board to inform users of the Towing Path of the Board's Code for Cyclists and other information relating to cycling on the Board's towing paths.

13.2 The Licence shall be subject to the person or persons using the Towing Path complying in all respects with any bye-laws and rules of conduct for the time being in force including but without prejudice to the generality of the foregoing cyclists having a cycling permit from the Board (whether or not it is free) if required by the Board PROVIDED THAT the Board in its absolute discretion shall be entitled to restrict or prevent the use of the Towing Path by any person who has contravened the provision of such bye-laws or rules of conduct.

14 Assignment

14.1 Except as provided in Clause 14.2 the Council shall not assign sub-licence or otherwise part with the benefit of this Licence.

14.2 The Council shall not assign the whole of this Licence without the previous written consent of the Board (such consent not to be unreasonably withheld)

14.3 The Council shall procure that prior to any assignment the assignee enters into a written agreement with the Board to perform and observe all the agreements and conditions on the Council's part contained in this licence

15. Maintenance

- 15.1 For the duration of this licence the Board shall undertake the maintenance works set out in Schedule 5.
- 15.2 For the duration of this licence the Council shall undertake the maintenance works set out in Schedule 6 but such works will be implemented on behalf of the Council by the Board. In consideration of the same the Council will make an annual payment of £928.00 plus value added tax per kilometre of that part of the Multi-User Path referred to in paragraph 1 of Schedule 6 such annual payment to be updated annually based on the monthly bulletin of indices dated May 2002 (civil engineering formula Index no.1) published by the Department of the Environment. The Board will submit to the Council an invoice for the amount due for payment on 30th September in each year and the Council shall pay the amount due to the Board within 28 days of the date of the invoice. If the Board fails to implement the maintenance works in so far as they relate to maintaining the Multi User Path in a safe condition and in good repair commensurate with its use the Council shall be entitled to give the Board notice specifying the work to be done. If the Board fails to respond to the notice within 28 days of it being served on the Board the Council shall be entitled to carry out such works and recover the reasonable costs of so doing from the Board.
- 15.3 If it becomes impossible to make the calculation required in clause 15.2, then the updated payment may be agreed at any time between the parties or, in the absence of agreement, shall be determined by a single arbitrator pursuant to Clause 15, who shall ascertain what would have been the up-dated annual payment, based on the monthly bulletin of indices mentioned in Clause 15, had it continued on the same basis.
- 15.4 For the duration of this licence the Council and the Board shall jointly undertake the maintenance works set out in schedule 7.

15.5 If the Council fails to carry out any of its obligations under this Licence the Board shall give the Council written notice of default specifying the work to be done.

15.6 If the Council shall fail to respond to such a notice of default stated at 15.5 above within twenty-eight days of it being served on the Council the Board shall be at liberty to carry out the works described in the notice of default and recover the costs forthwith of so doing from the Council.

15.7 If the Board fails to carry out its obligations under 15.1 the Council shall give written notice of default specifying the work to be done

16. Interference with Navigation

The Council shall not do or permit to be done anything which may cause any interference with navigation upon the Canal

17. Preservation of Rights

17.1 The Council shall endeavour to ensure that the exercise of the Licence does not cause any nuisance to or interference with the Board or its licensees

17.2 The Licence shall be without prejudice to any existing rights of way over and along the Towing Path which may be shown to have been established prior to the execution of this Licence.

18. Arbitration

In the event that any dispute or difference arises between the Board and the Council as to the construction of this Licence or otherwise in respect of the carrying on of the same into effect the matter shall be referred to the arbitration of a single arbitrator to be agreed between the Board and the Council or in default of agreement to be appointed by the President for the time being of the Institution of Civil Engineers in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

19. Rights and Duties Reserved

Nothing in this Licence shall prejudice or fetter the proper exercise of any function or duty or power of the Council or the Board or the officers of either.

20. Special Act or Order

Nothing herein contained shall prejudice or affect any provision for the protection of the Board or included in any Special Act or Order

21. Works by Council

The Council shall comply with the Board's "Code of Practice for Works affecting British Waterways" (including any relevant 'Special Requirements' supplemental to the Code and any relevant appendices from time to time in force) in respect of any works carried out by the Council under this Licence.

22. Indemnity

22.1 The Council shall obtain sufficient public liability insurance cover and will indemnify the Board against all costs claims demands and damages of whatever nature occurring (except where caused by the negligence of the Board or their servants or agents) through the use of the Towing Path (including use by members of the public) and the exercise of the Council of its licence and authority under this licence.

22.2 The Council will make all necessary arrangements with and satisfy all claims by the owners, or occupiers of land adjoining the Towing Path and any other person who may be affected by this Licence and fully and effectually indemnify the Board from and against any such claims by such persons

22.3 The Board hereby indemnifies the Council against any cost claims demand or damage arising out of or in connection with the exercise by

the Board of any of its functions under this Licence (except where caused by the negligence of the Council its contractors servants or agents).

23. Footbridge and Alteration

If and so often as the Board shall for the purpose of their undertaking require the position of the footbridges referred to in paragraphs 2 and 3 of Schedule 3 or any part thereof to be altered or the said footbridges removed entirely the Council shall at its own expense under the supervision and to the reasonable satisfaction of the Board's engineer and in accordance with plans details and specifications previously approved in writing by the Board's engineer remove or alter the said footbridges or such part thereof as required and shall (except where the same is being removed entirely from the waterway) replace or reconstruct the same in such other position as notified to the Council and the provisions of this licence shall apply to such removal alteration or replacement and to the said footbridges as removed altered or replaced as the case may be.

24. Plans

Works to be carried out between the Lay Lady Bridge and Gamston Bridge section referred to in Schedule 1 which have not been indicated on the Plans and any additional works agreed between the parties shall upon the completion of such works be indicated on 'as built' plans and shall form part of a supplemental agreement to be entered into between the parties which shall incorporate such additional agreed works within the terms of the Licence.

25. Notices

Any notice which under the provisions of this Licence is to be given to the Board shall be deemed effectively served if addressed to the Board and served on the Waterway Manager, Sawley Marina, Sawley, Nottinghamshire NG10 3AE, or such other person as the Board may from time to time designate and any notice in writing that is to be given by the Board to the Council shall be deemed effectively served if sent through the post in a registered or recorded delivery letter addressed to the Council at its last known address.

26. Interpretation

- 26.1 In this licence if any party at any time comprises 2 or more persons the obligations of that party are to the joint and several obligations of those persons.
- 26.2 Words in one gender include all other genders. Words in the singular include the plural and vice versa and any reference to a person includes reference to a Company or Authority Board Department or other body.
- 26.3 The clause headings do not form part of this Licence and are not to be taken into account for the purposes of its structural interpretation
- 26.4 Reference to a clause without further designation is to be construed as a reference to the clause of this licence so numbered.

IN WITNESS whereof the duly authorised representatives of the parties have signed this Licence on the day and year first written above.

THE PLANS ANNEXED – Appendix to Schedule 1

The Plans including details of the Board's canal and towpath land ownership between Lady Bay Bridge and Smite Aqueduct. Nottinghamshire within the Rushcliffe Borough boundaries Ref SK 587383 and SK 715295.

SCHEDULE 1
The Works

Canalside and Towpath and access Improvements between Lady Bay Bridge Nottingham and Smite Aqueduct.

The works as identified on the Plans.

- 1.1 Canalside granular surfaced Multi-User Towpath improvements between Lady Bay Bridge Nottingham and The Smite Aqueduct.

- 1.2 Street furniture, litter and dog fouling bins and Anti Motorcycle barriers at locations indicated on the Plans.
- 1.3 Tarmac surfaced access improvements at including connection between the public highway and The Board's towpath at locations indicated on the Plans.
- 1.4 Pedestrian and cycle route signing at locations to be agreed on site by the Council and the Board.
- 1.5 Timber pedestrian footbridge crossing the Canal at Gamston.
- 1.6 Ramp improvements and revetment support at Irish Jacks and Blue Hills Bridges.
- 1.7 Environmental works including hedge management and additional hedge planting Lady Bay Bridge to Gamston.
- 1.8 Vegetation clearance from the Canal bed Cropwell Bishop.
- 1.9 Fencing to the off-side of the Canal off side between Hog Hill Swing Bridge and Cropwell Roving Bridge.
- 1.10 Pedestrian footbridge with handrail Lock 10 (upstream of A46 Road) and granular surface of car parking area.
- 1.11 Waterway wall repairs Cropwell Roving Bridge.
- 1.12 Towpath surface works, hedge planting and other access improvements between Cotgrave Road and Hollygate Lane referred to within the Cotgrave SRB scheme.
- 1.13 Bank protection works as required to enable the construction of a granular towpath wherever reasonably practical 2m wide.

SCHEDULE 2

The works to be undertaken by the Board

1. Bank protection works as required to enable the construction of a granular towpath wherever reasonably practical 2m wide.
2. Towpath construction between Lady Bay Nottingham and Cotgrave Road Nottinghamshire. Hollygate Lane to Smite Aqueduct Nottinghamshire.
3. Street furniture, litter and dog fouling bins and Anti Motorcycle barriers at locations indicated on the Plans.
4. Tarmac surfaced access improvements at including connection between the public highway and the Towing Path at locations indicated on the Plans.
5. Ramp improvements and revetment support at Irish Jacks and Blue Hills Bridges.
6. Environmental works including hedge management and additional hedge planting Lady Bay Bridge to Gamston.
7. Vegetation clearance from the canal bed upstream upstream of Cropwell Roving Bridge.
8. Pedestrian footbridge with handrail Lock 10 (upstream of A46 Road) and granular surface of car parking area.
9. Waterway wall repairs with metal handrail upstream of Cropwell Roving Bridge.
10. Towpath surface works, hedge planting and other access improvements between Cotgrave Road and Hollygate Lane referred to within the Cotgrave SRB scheme.

SCHEDULE 3

The works to be undertaken by the Council.

1. Environmental and hedge management scheme Lady Bay length.
2. Timber footbridge crossing Grantham Canal near supermarket at Gamston and subject to raising bridge to navigation height if canal is restored for navigation.
3. The pedestrian footbridge (schedule 1:10) crossing lock 10 upstream of A46 to be raised to navigational height if the canal is restored to navigation.

SCHEDULE 4

The works to be undertaken by the Board

1. The construction of a granular multi-user footpath included within the Cotgrave SRB Scheme.
2. Fencing to the off-side of the canal off side between Hog Hill Swing Bridge and Cropwell Roving Bridge.

SCHEDULE 5

The Maintenance Works to be undertaken by the Board

1. The foundations of the Towing Path.
2. Such waterway walls as may separate the Towing Path from the navigation.
3. The hedgerow to the rear of the Towing Path.
4. Fencing to canal off side between Hog Hill Swing Bridge and Cropwell Roving Bridge.

SCHEDULE 6

The Maintenance Works to be undertaken by the Council

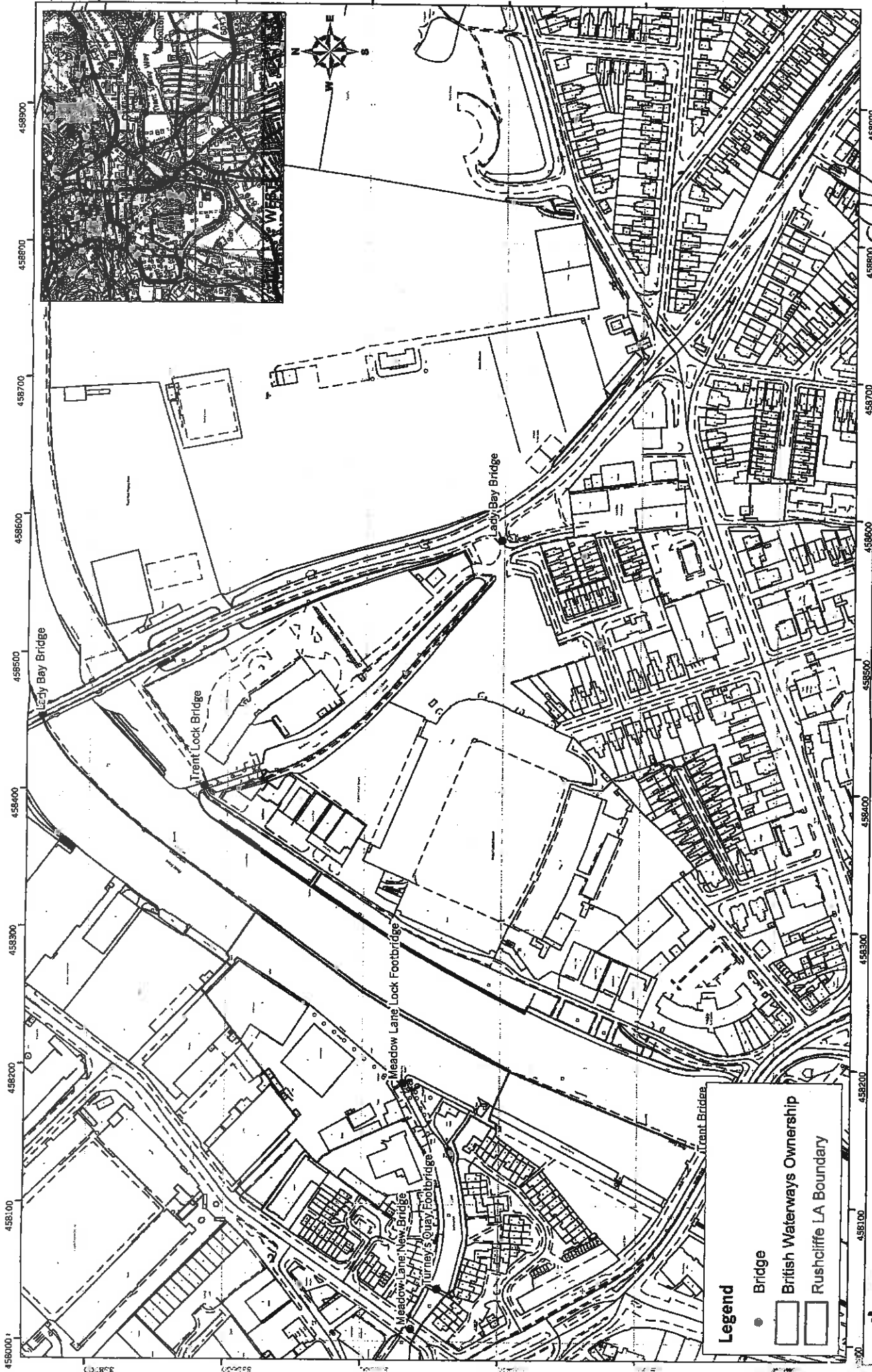
- 1 The continued maintenance of the surfaced Multi-User path and adjoining verge not more than 1metre to each side of the Multi-User path between ordnance survey reference nos. SK 587383 and SK 715295.
- 2 The maintenance of pedestrian and cycle route signs and litter and dog fouling bins on the Multi-User Path.
- 3 The maintenance of the Timber pedestrian Footbridge crossing the Grantham canal near the supermarket site at Gamston.

SCHEDULE 7

The maintenance works to be undertaken jointly by the Council and the Board.

1. Tarmac surfaced access connections between the highway and towpath at various locations as marked on schedule 1.
2. Anti Motorcycle barriers at locations marked on schedule 1. Metal handrails upstream of Cropwell Roving Bridge
3. Handrail and revetment to support ramp and access improvements.
4. Metal footbridge and car park improvements Lock 10.

Jim COLLINSON
(BOROUGH CLERK/CHIEF OFFICER)
Signed by 
For and on behalf of Rushcliffe Borough Council



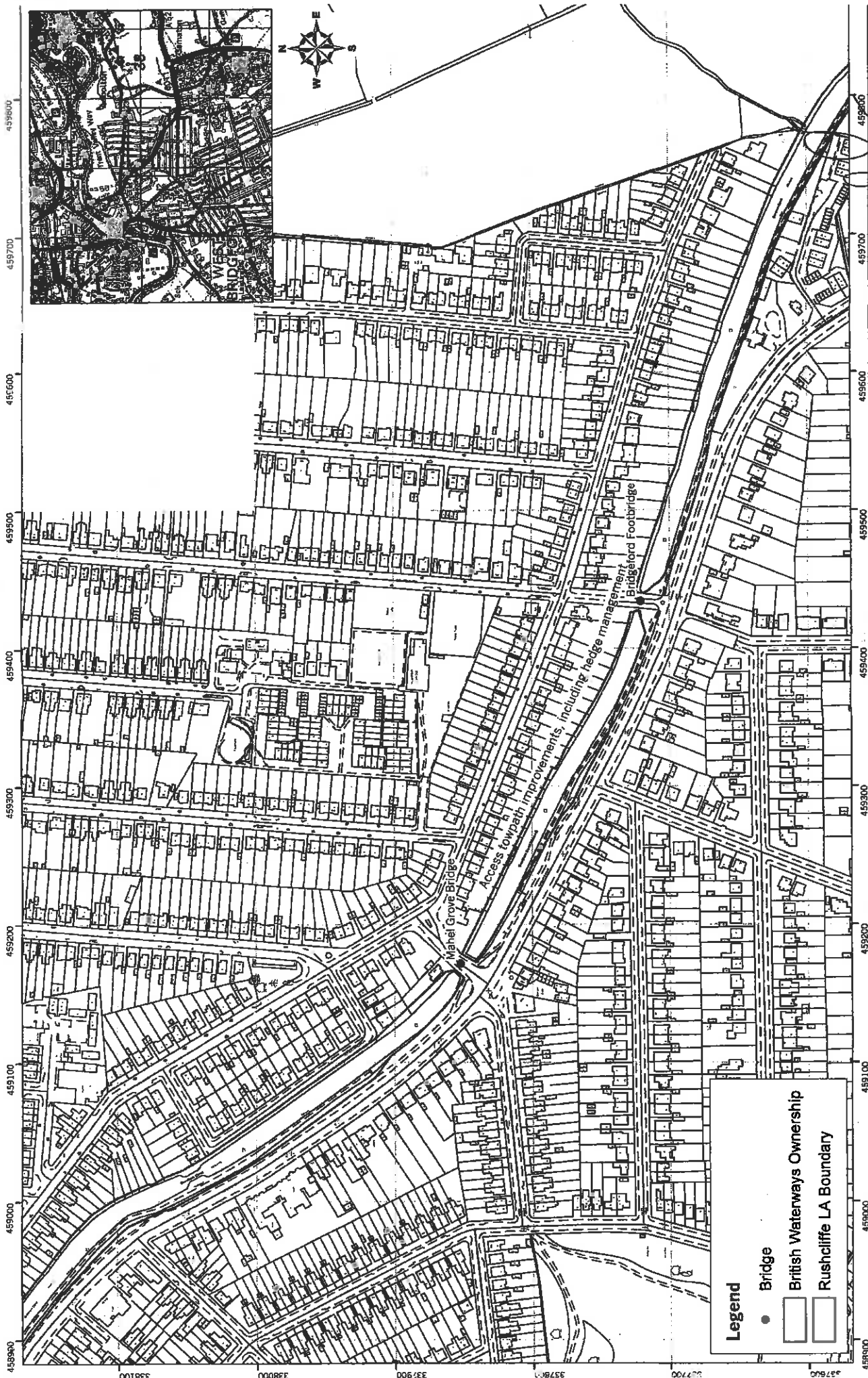
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British Waterways
NE Region



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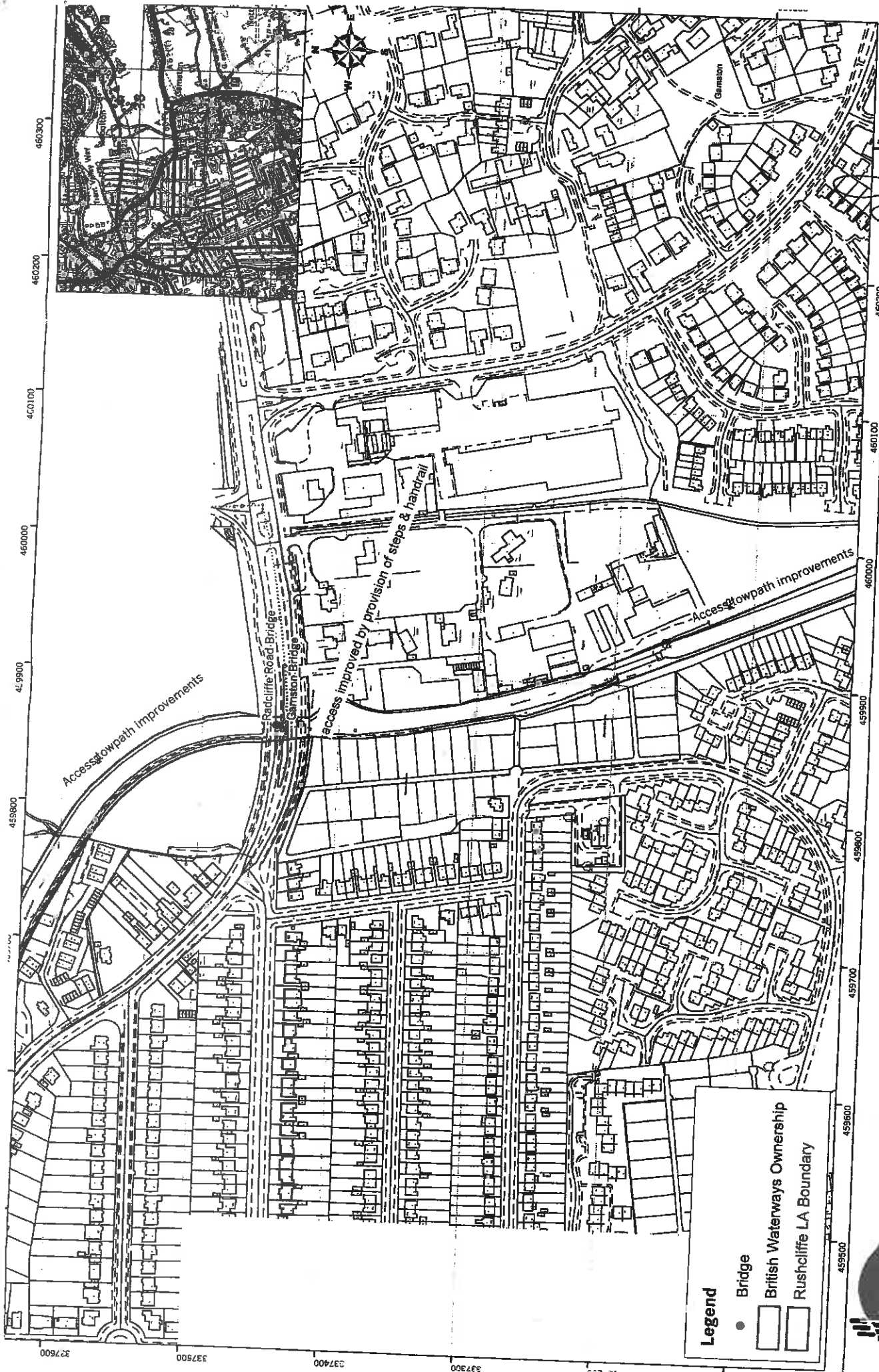
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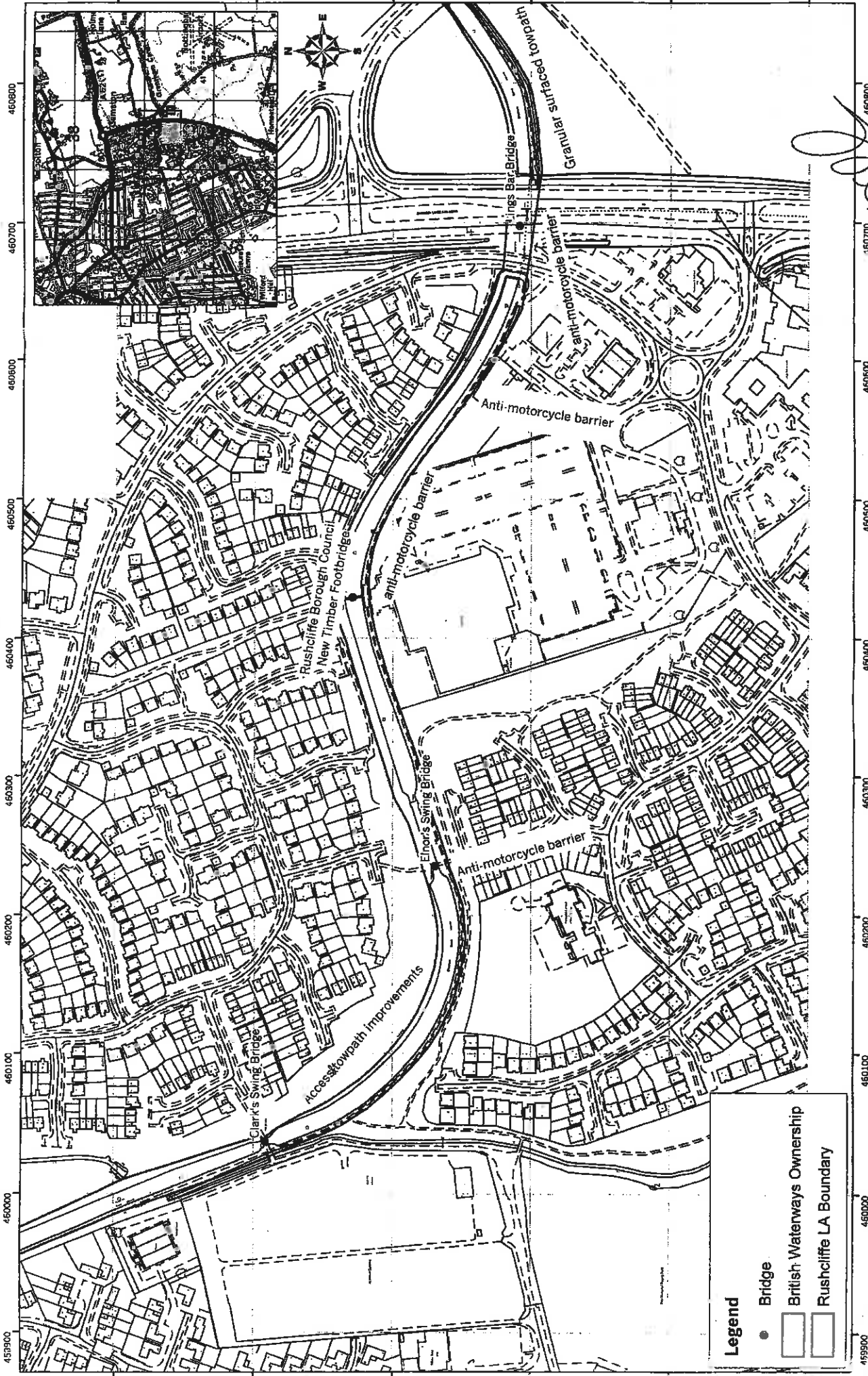
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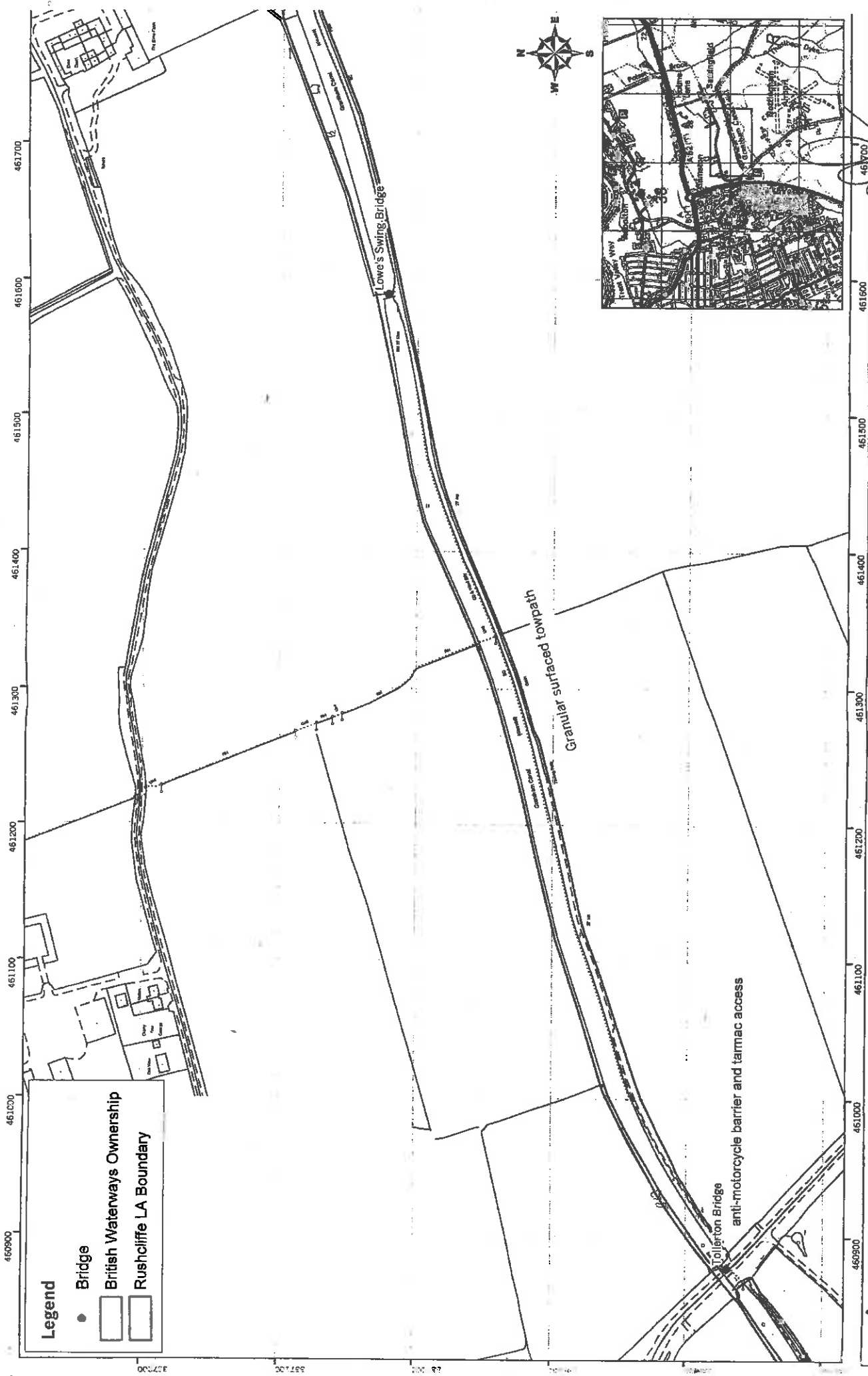


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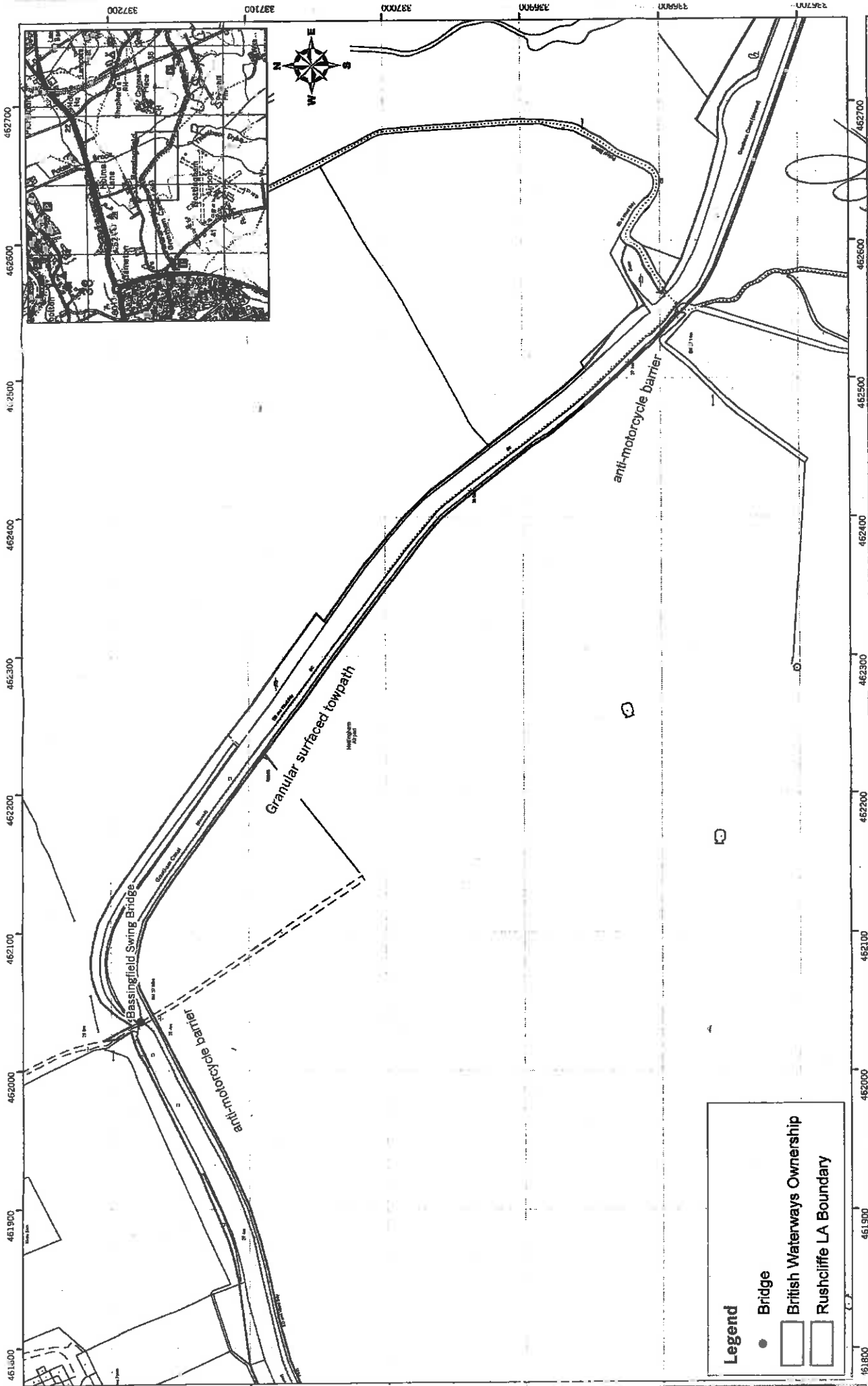


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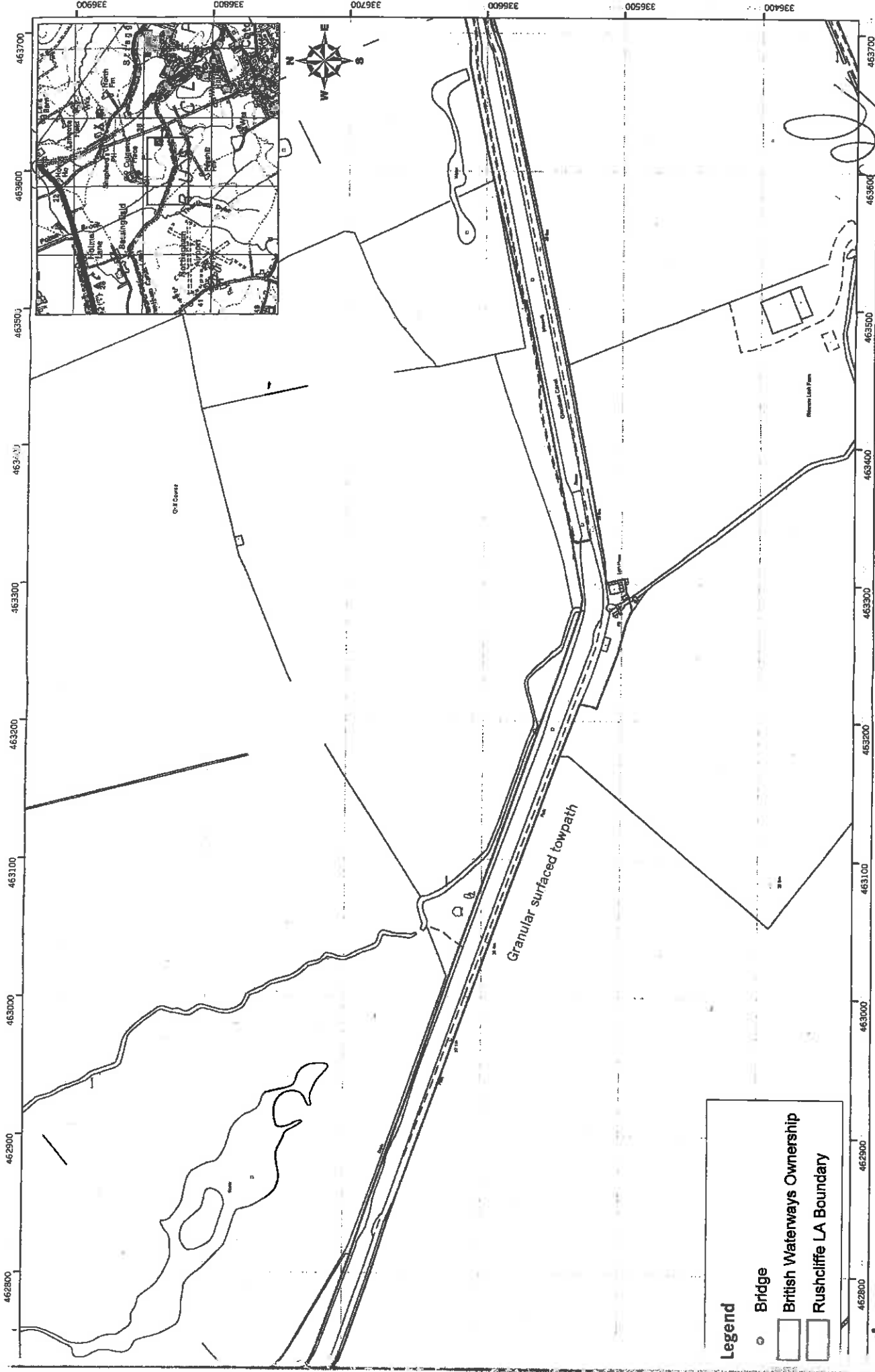
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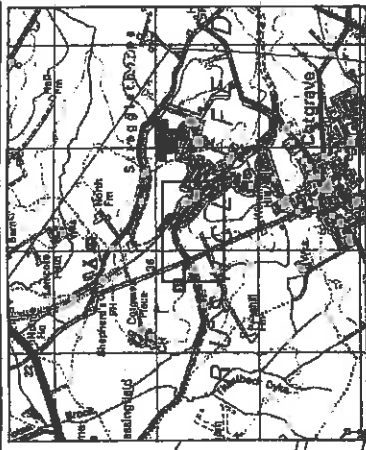
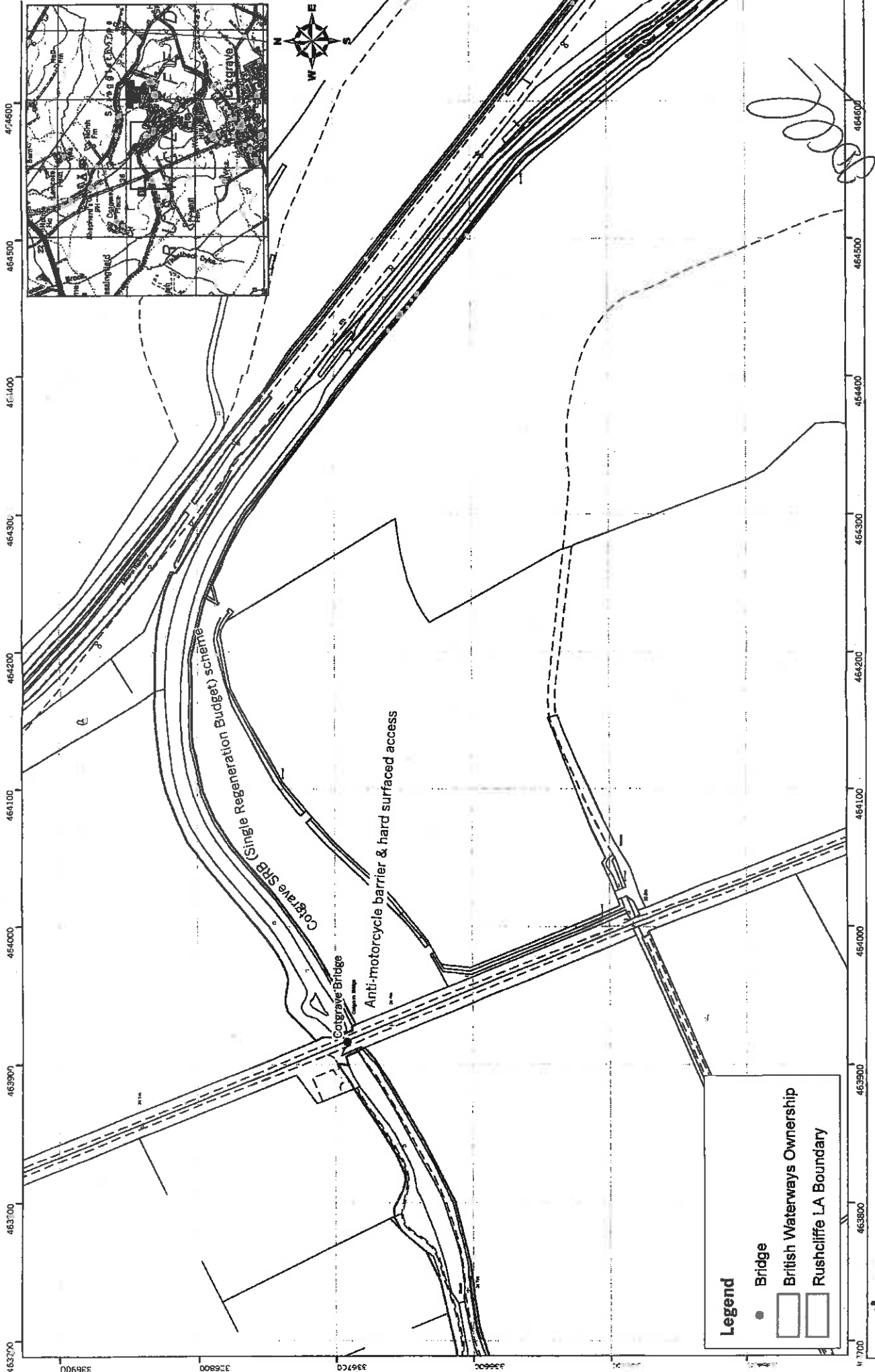


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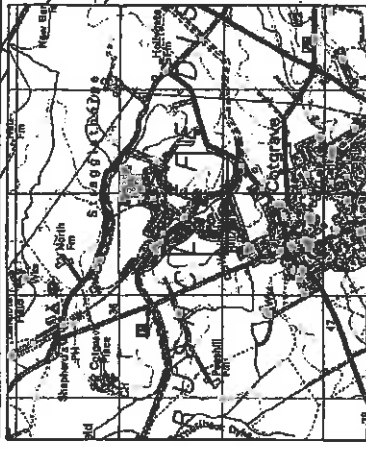
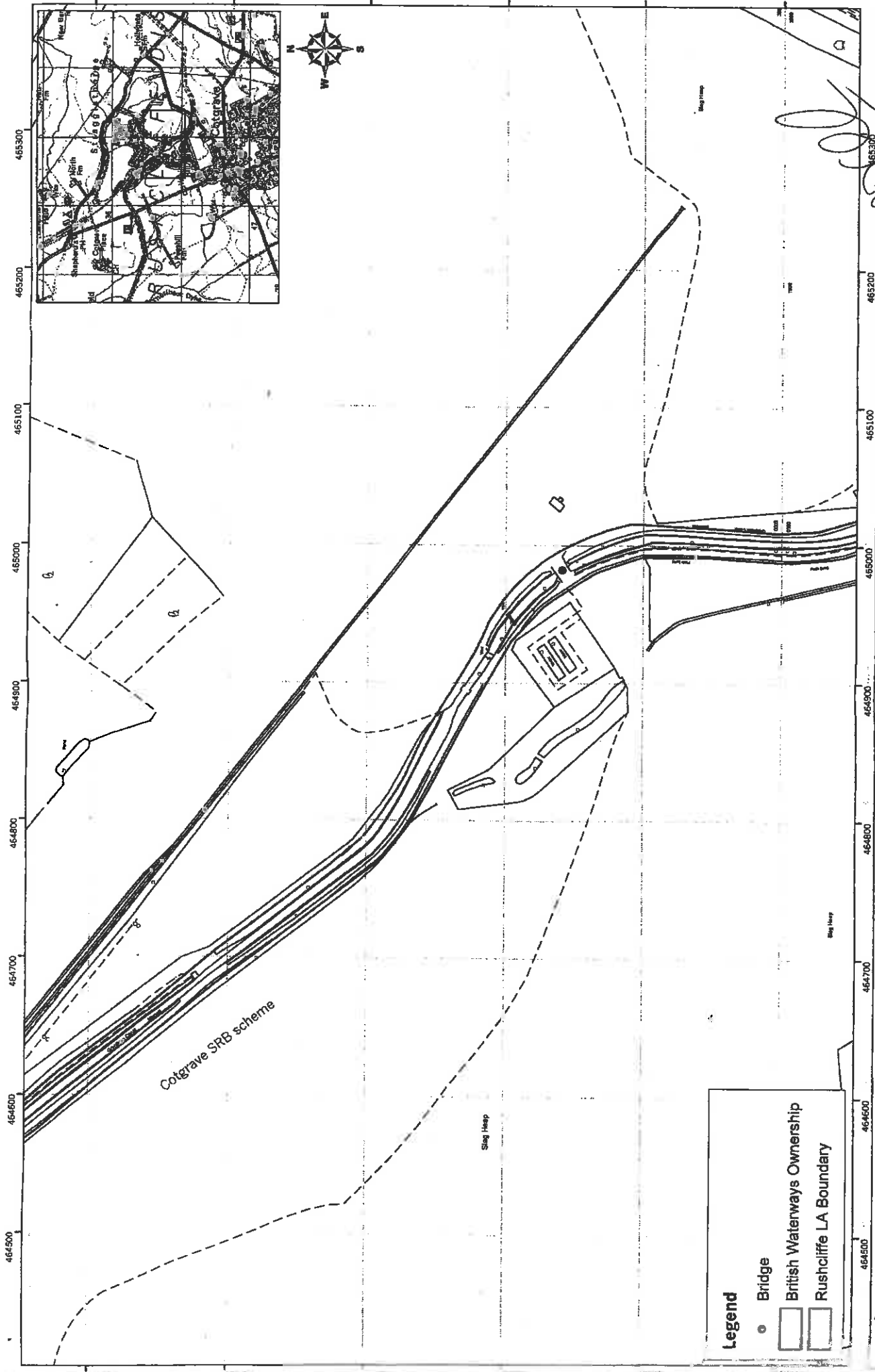


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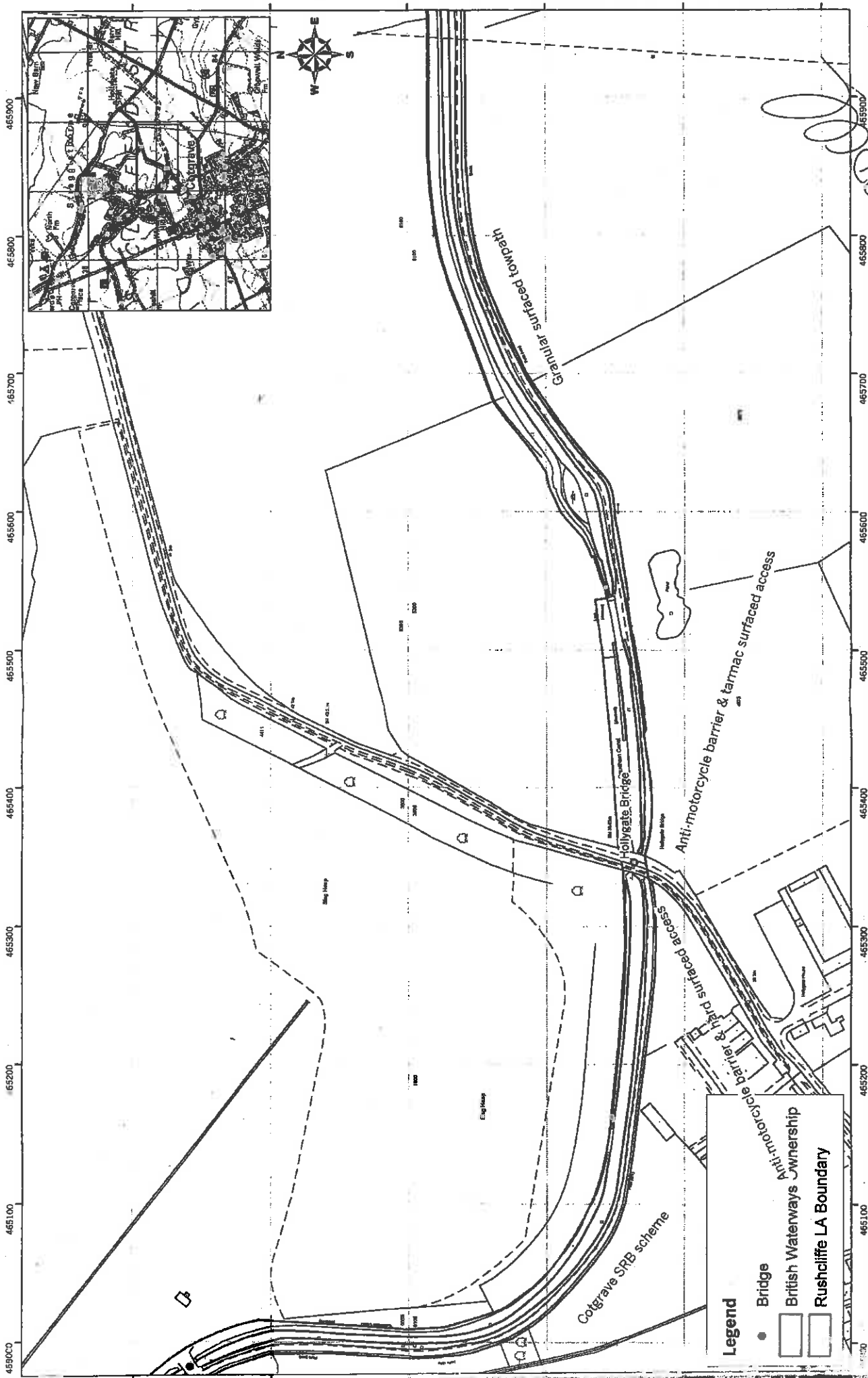
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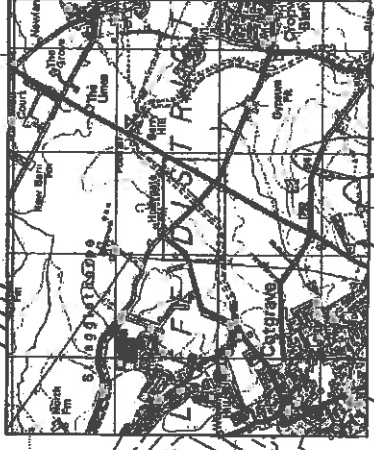
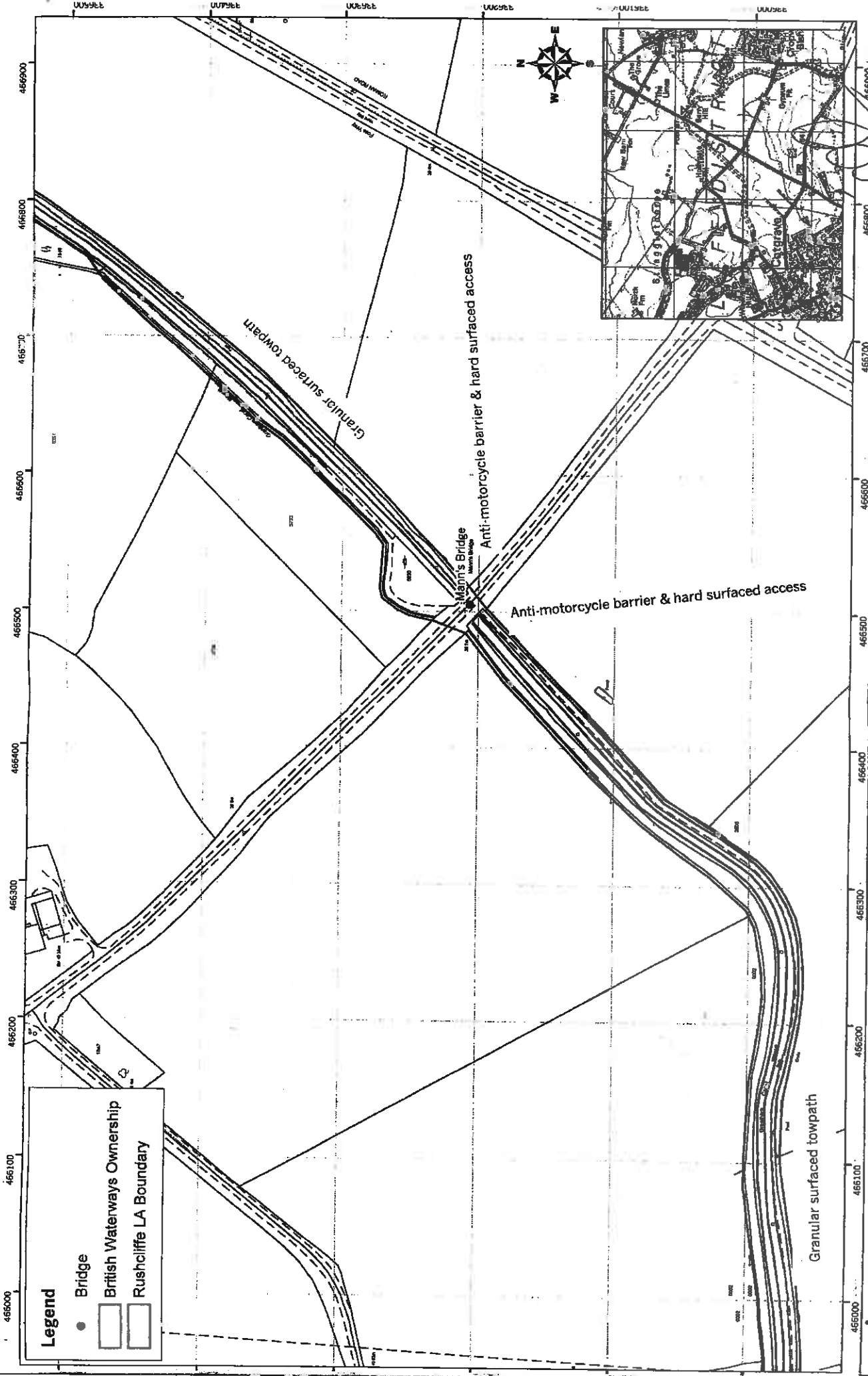
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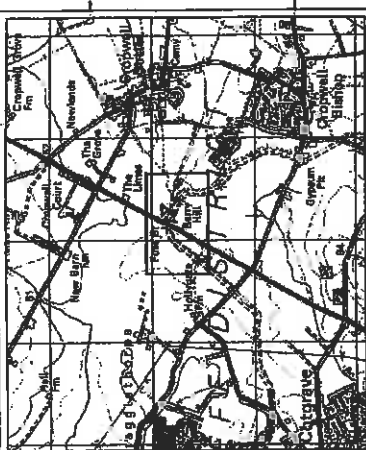
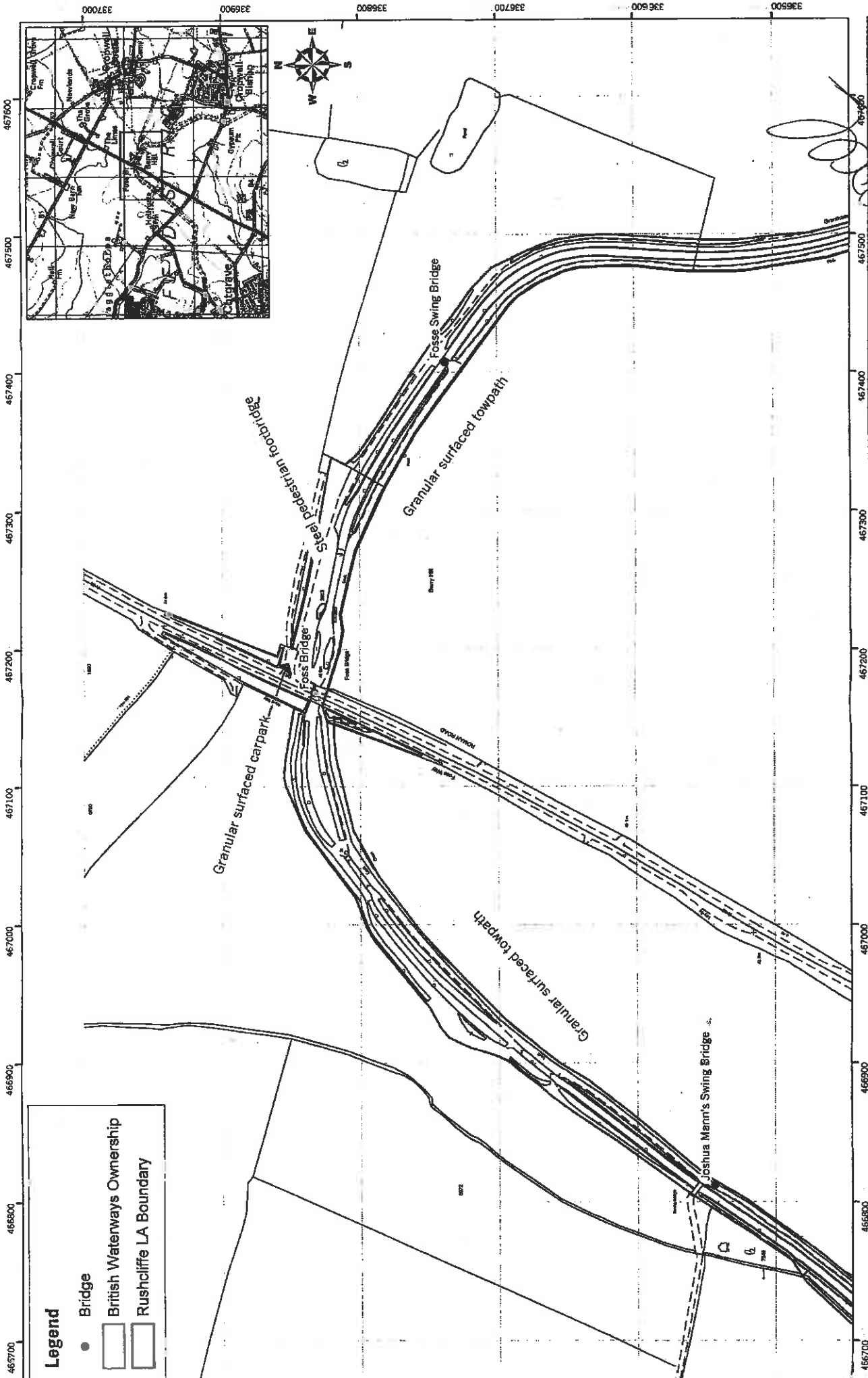
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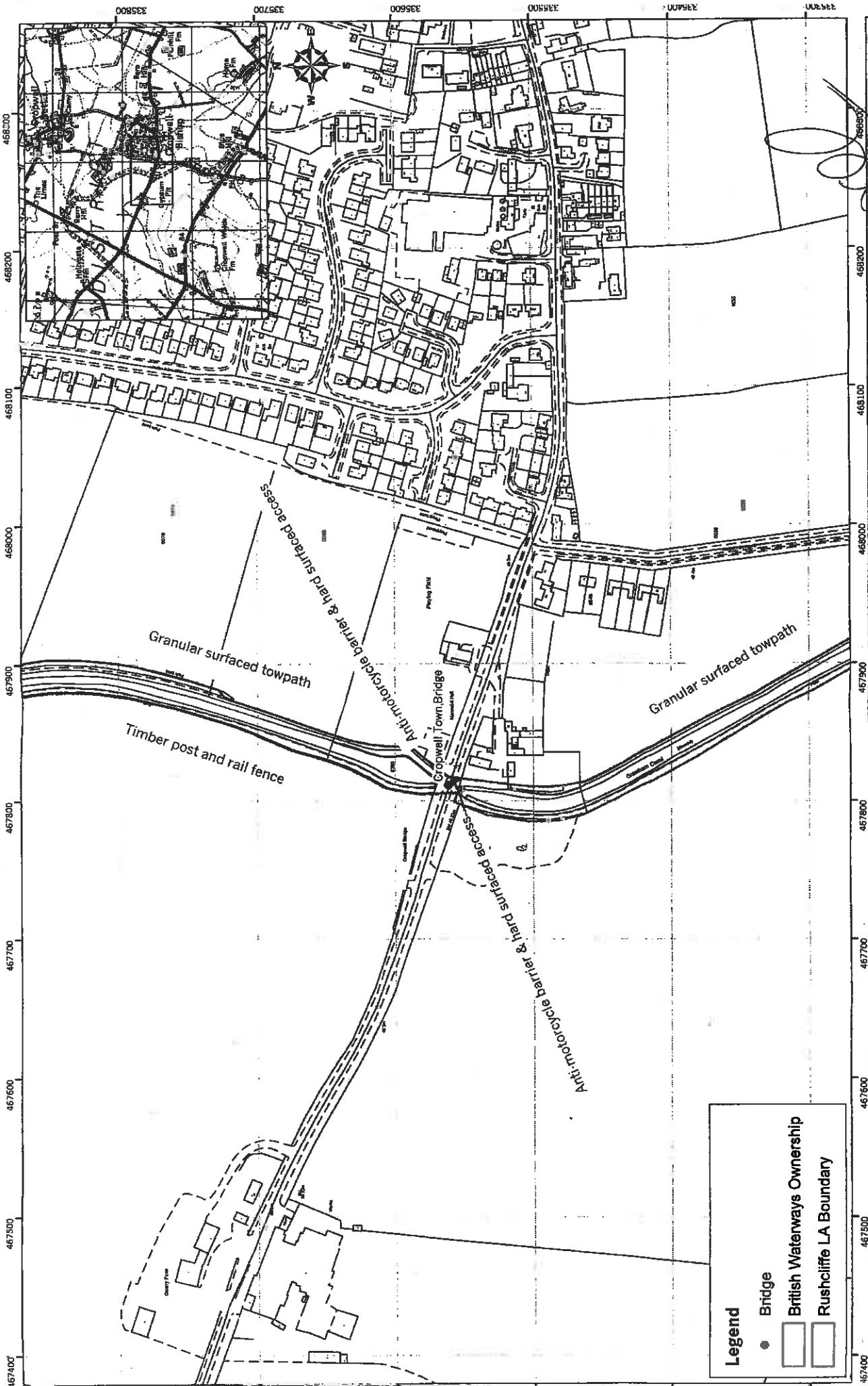
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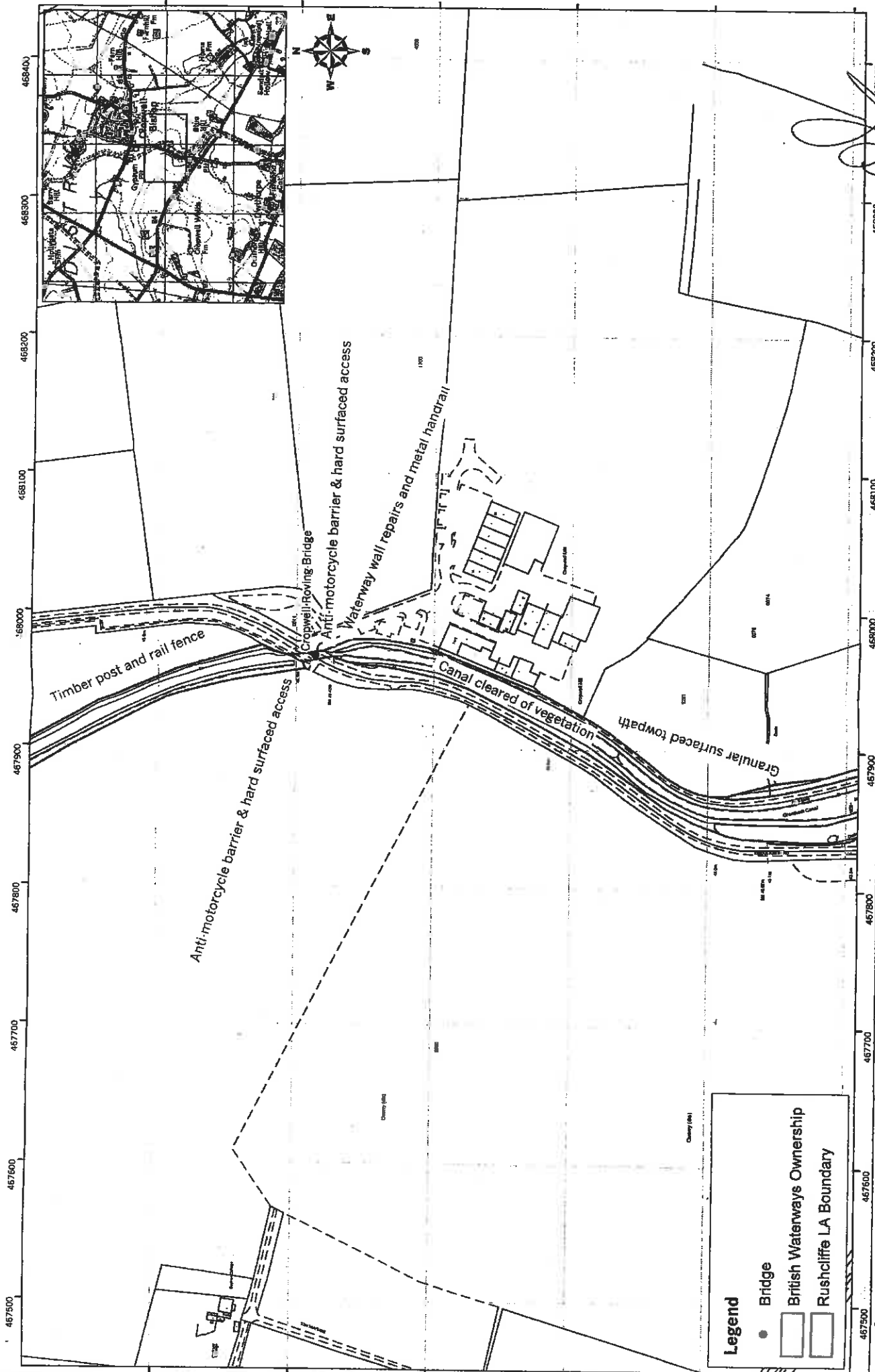
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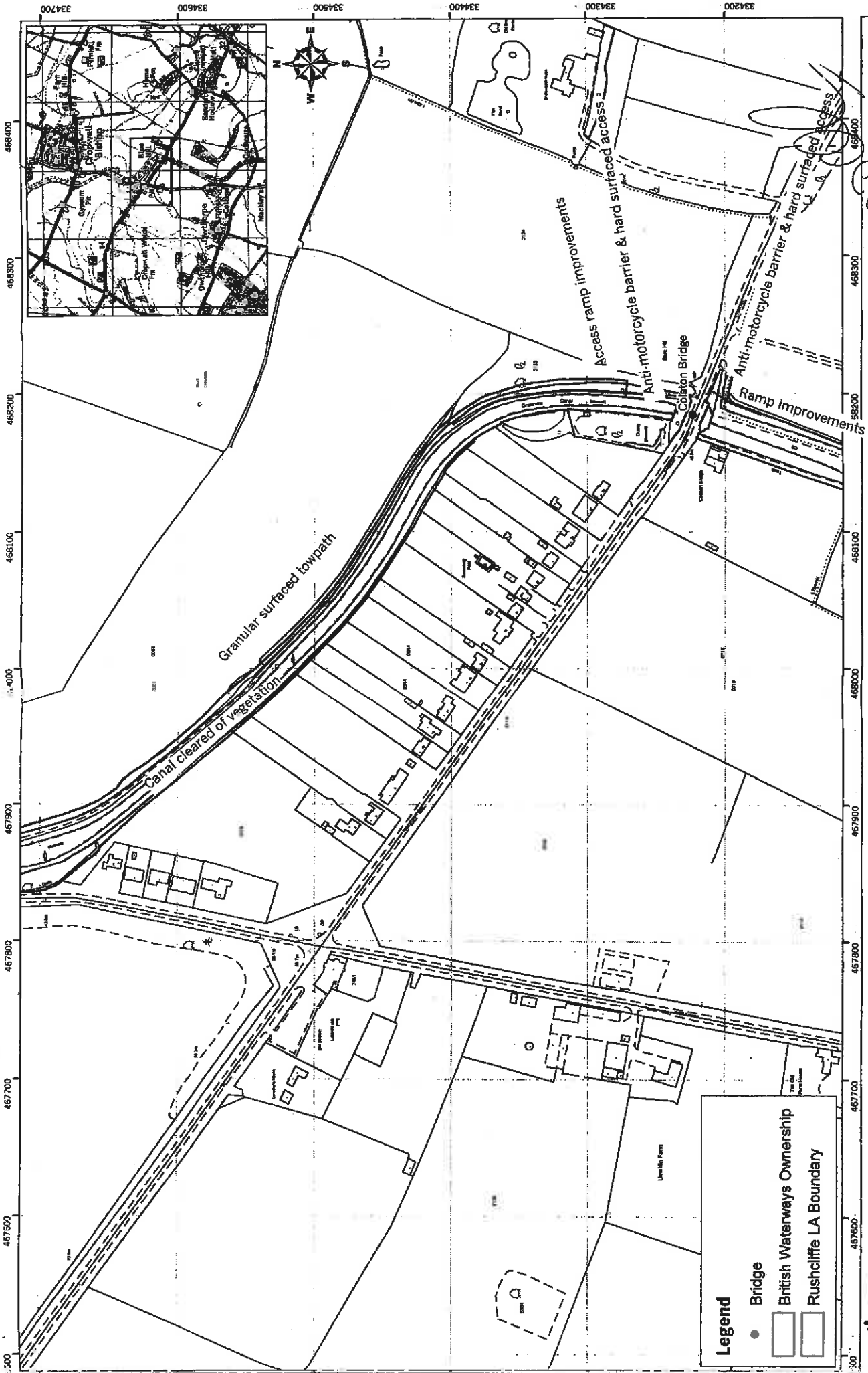


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Legend

- Bridge
- British Waterways Ownership
- Rushcliffe LA Boundary

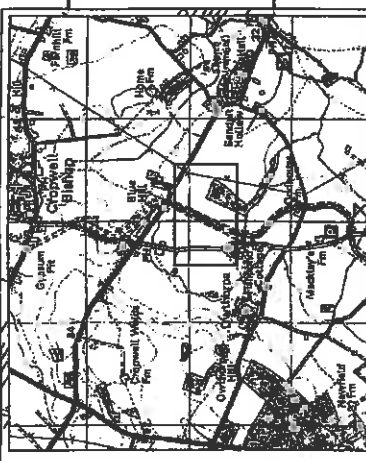
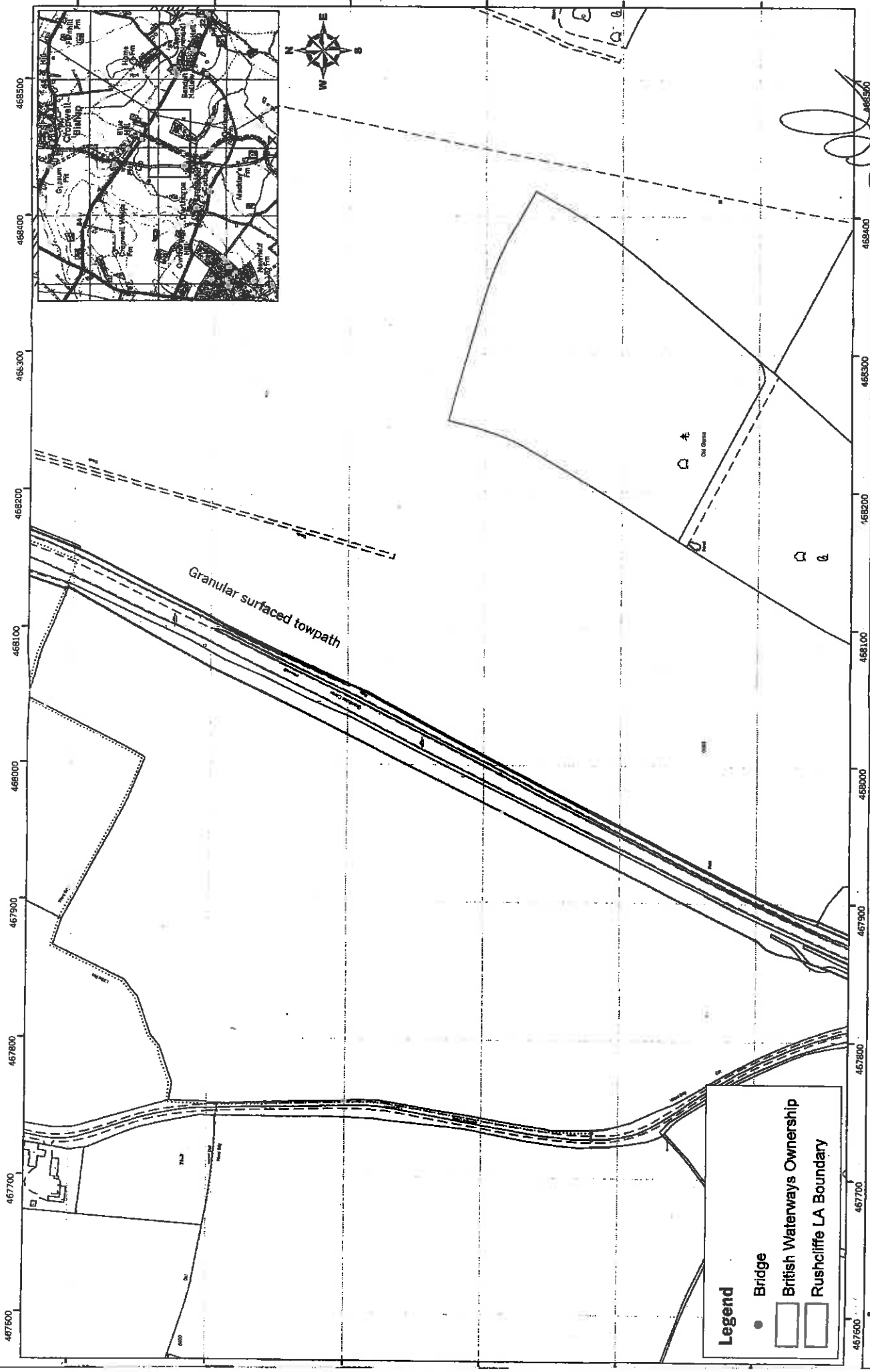


Grantham Canal Section 16

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Legend

- Bridge
- British Waterways Ownership
- Rushcliffe LA Boundary

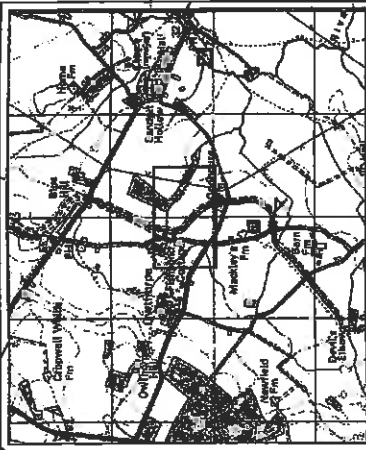
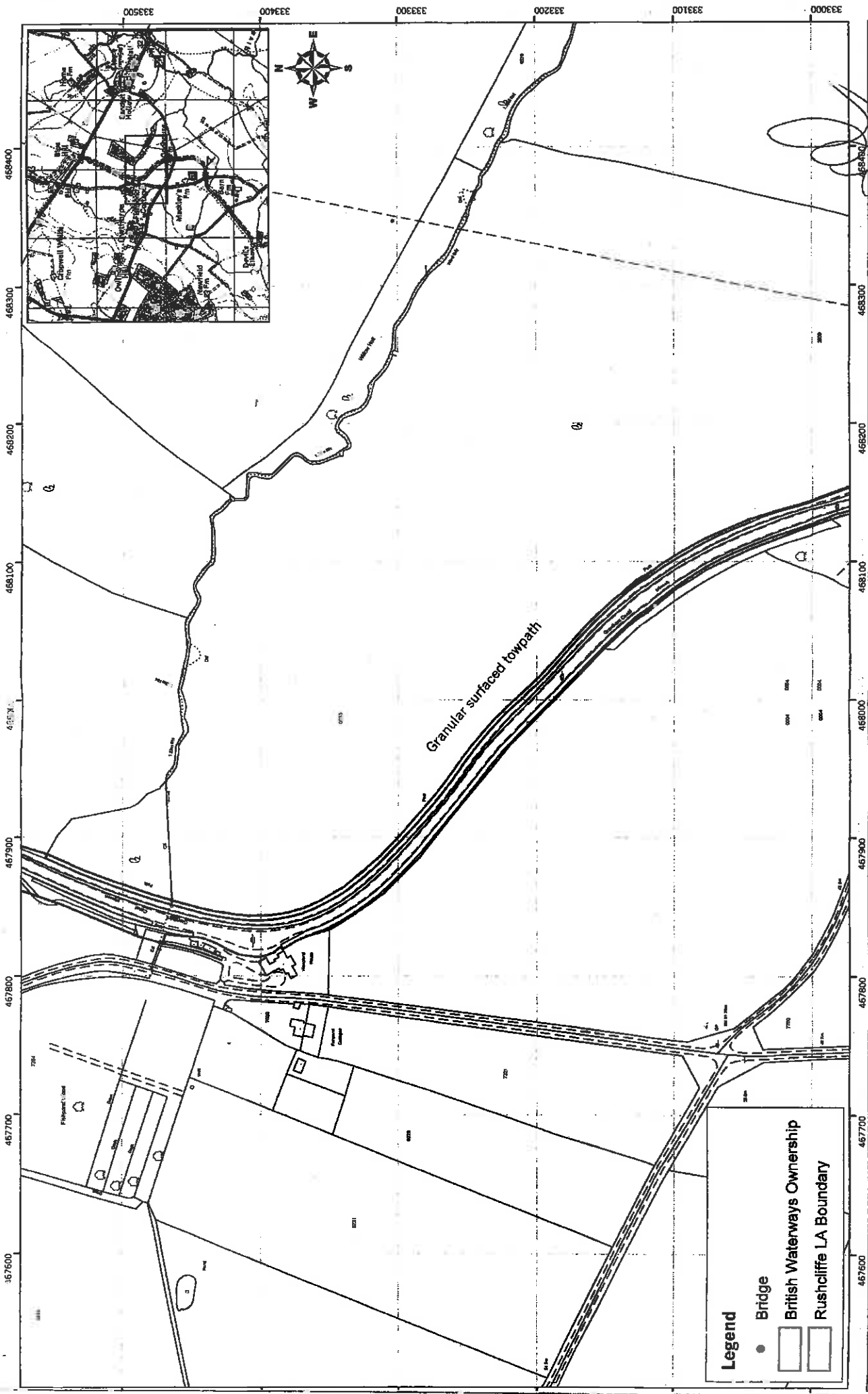


Grantham Canal Section 17

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Legend

- Bridge
- British Waterways Ownership
- Rushcliffe LA Boundary



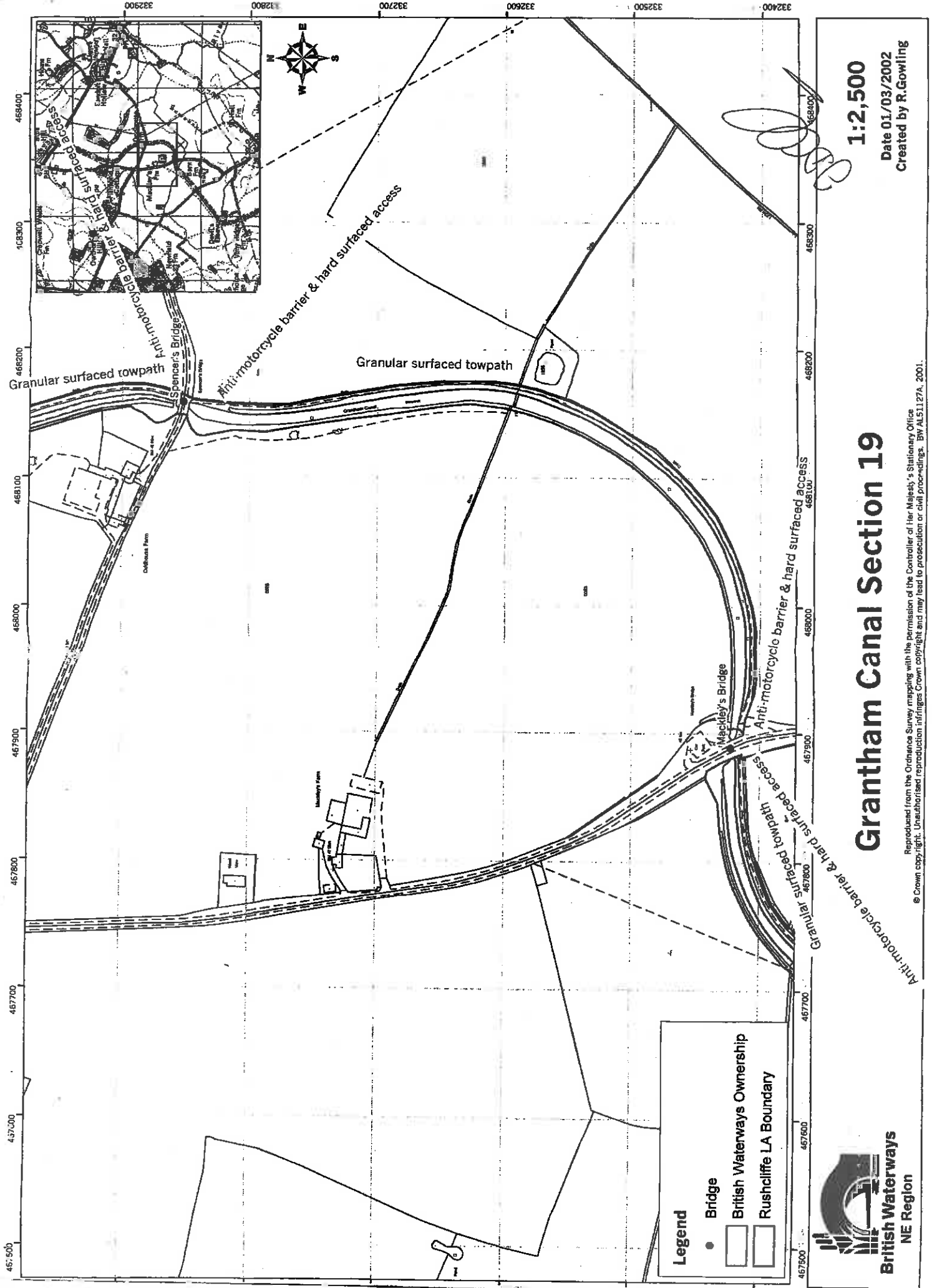
British Waterways
NE Region

Grantham Canal Section 18

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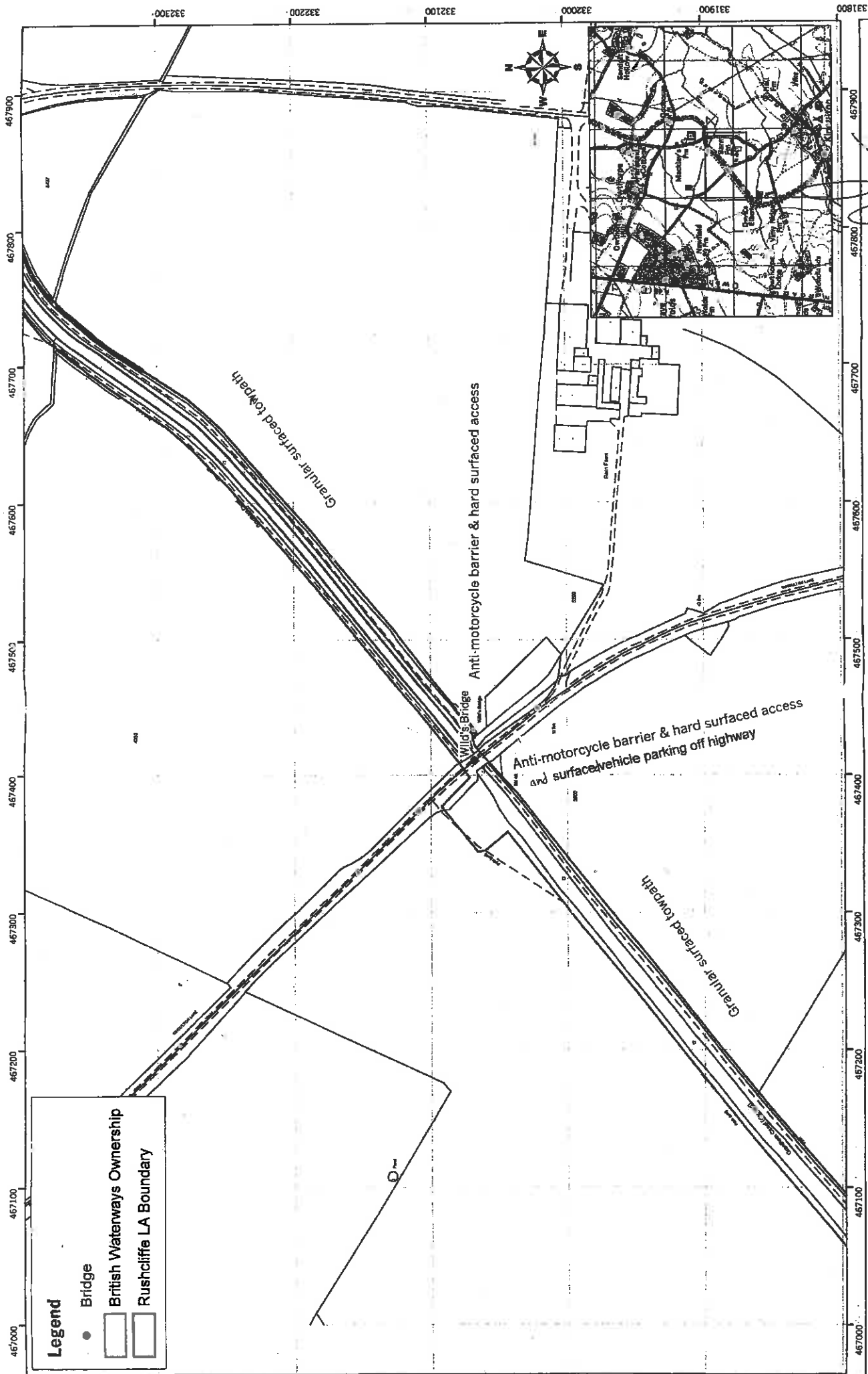


Grantham Canal Section 19

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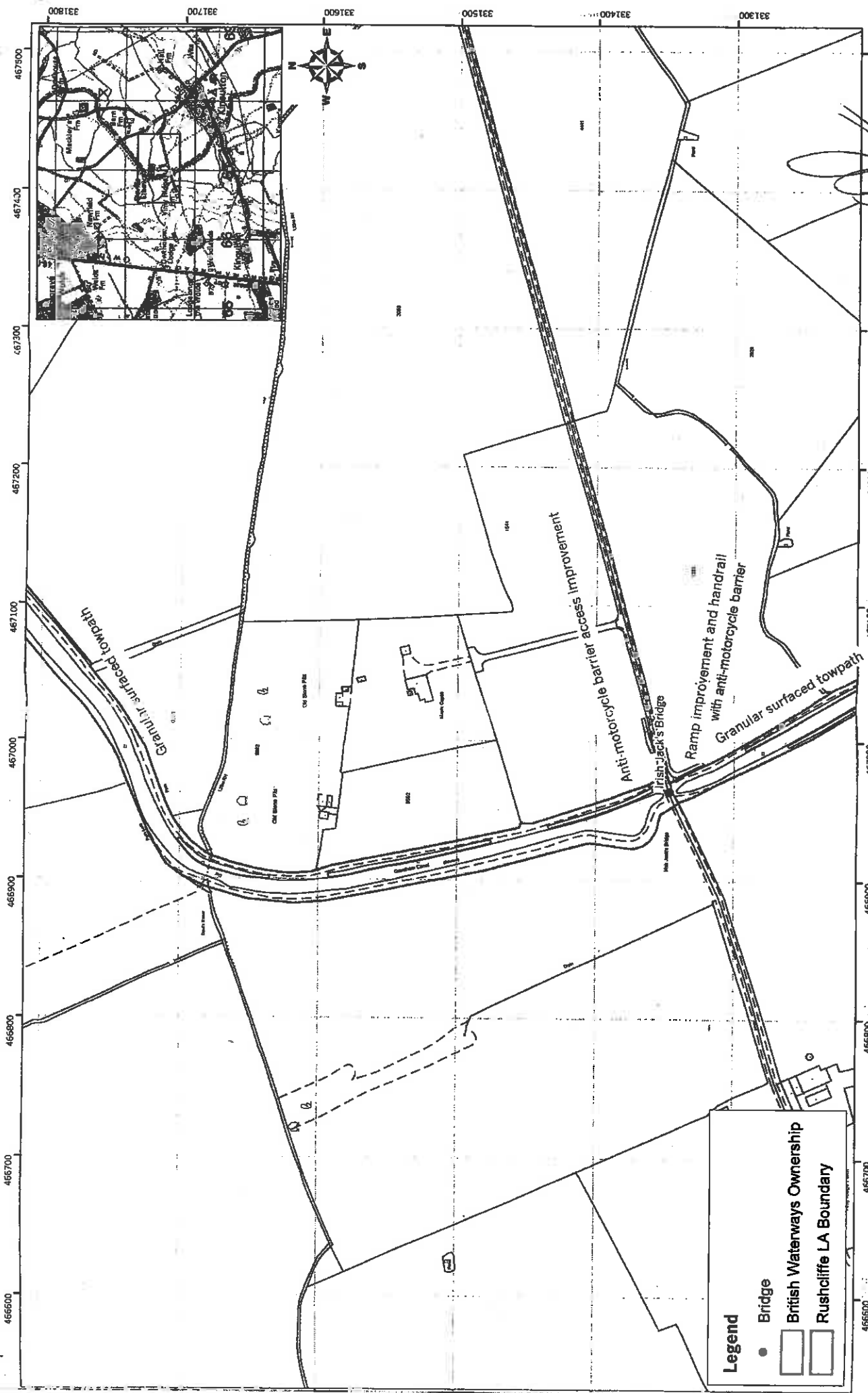
Grantham Canal Section 20

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Legend

- Bridge
- ▭ British Waterways Ownership
- ▭ Rushcliffe LA Boundary

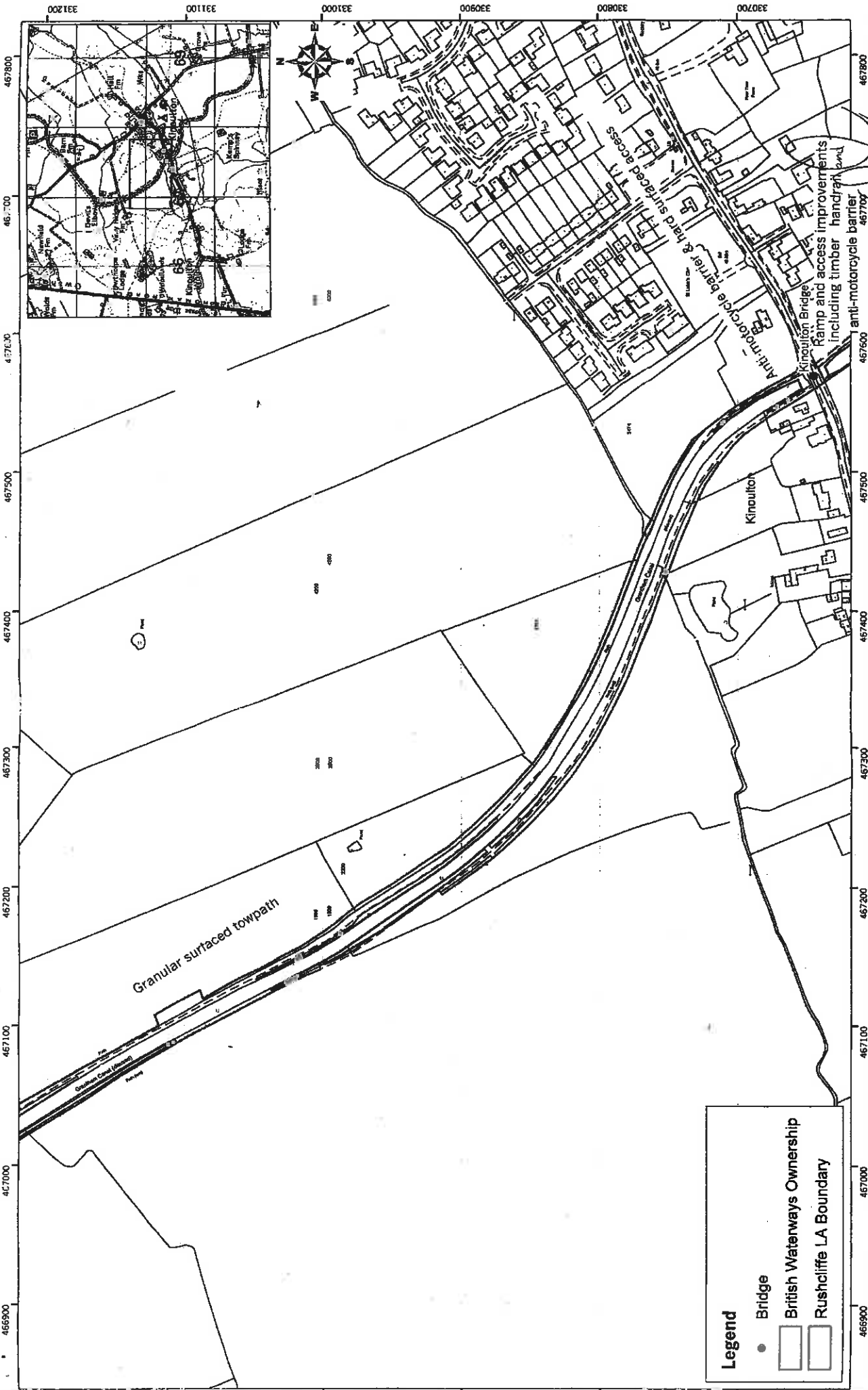


Grantham Canal Section 21

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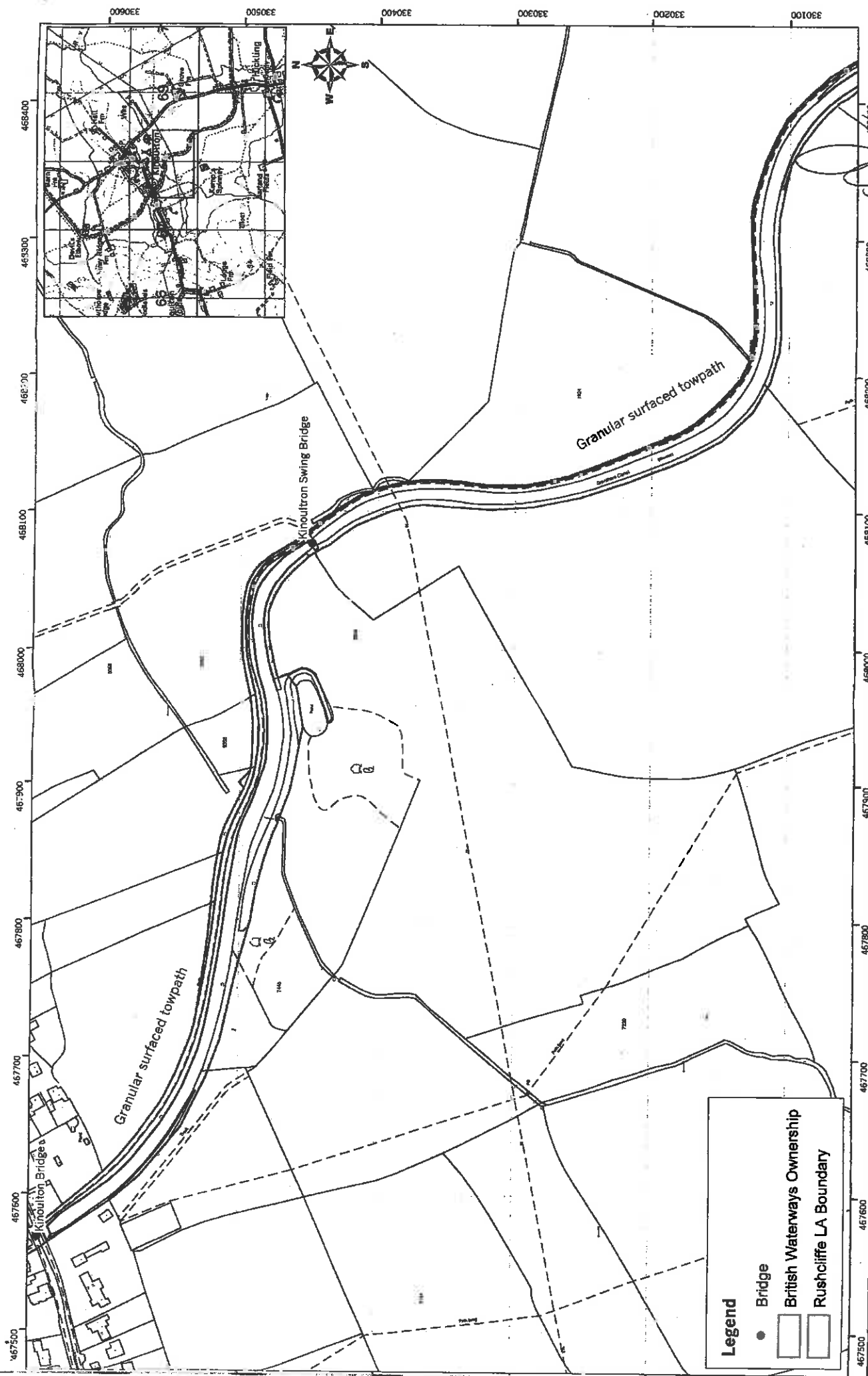
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Grantham Canal Section 22



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Legend

- Bridge
- ▭ British Waterways Ownership
- ▭ Rushcliffe LA Boundary

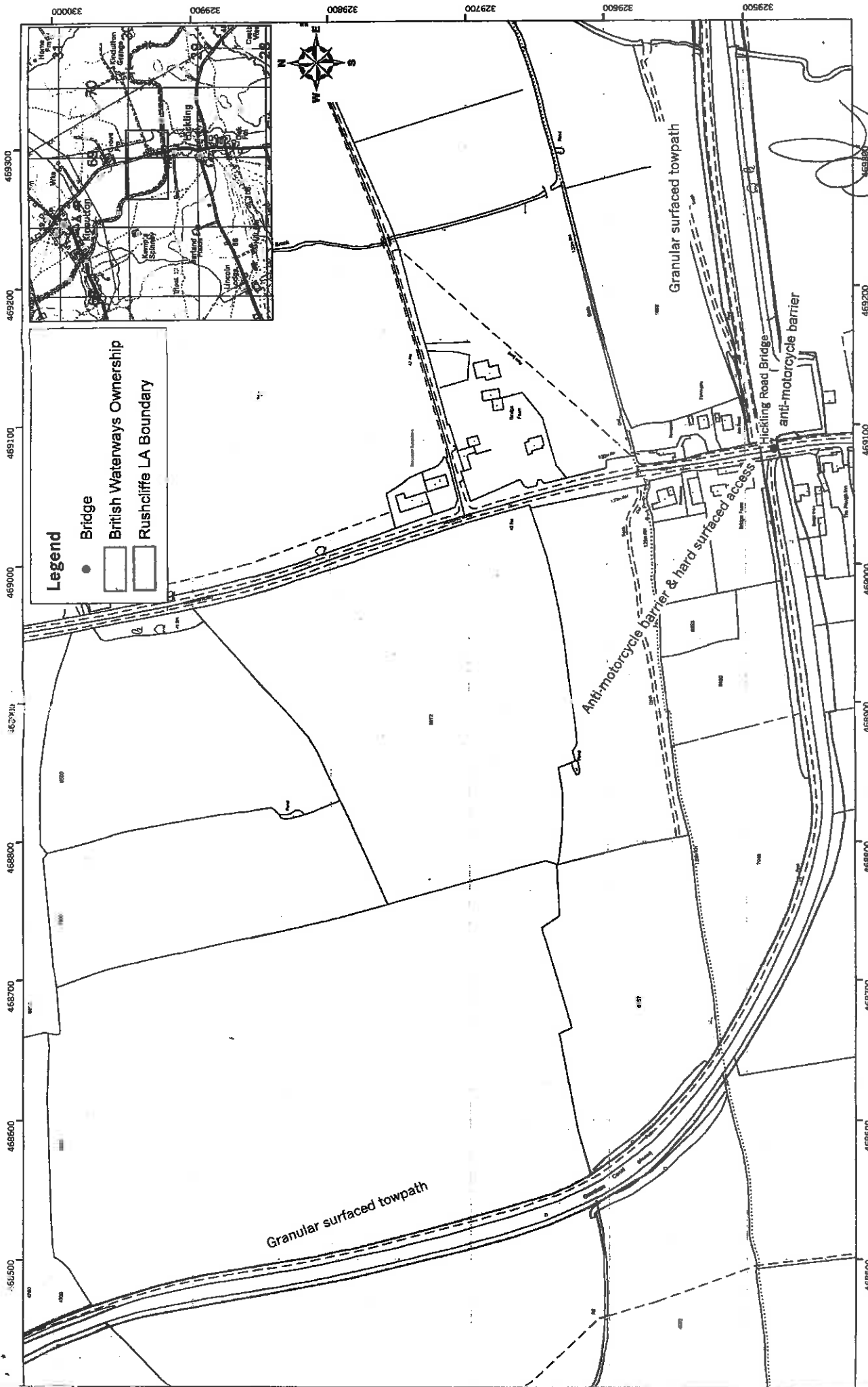


Grantham Canal Section 23

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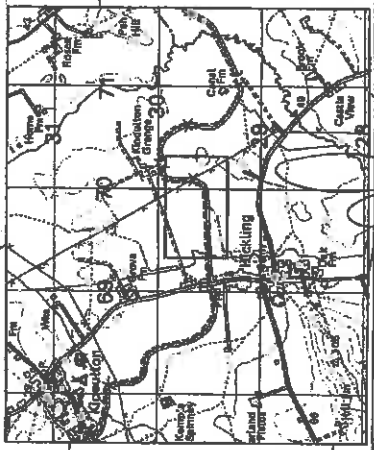
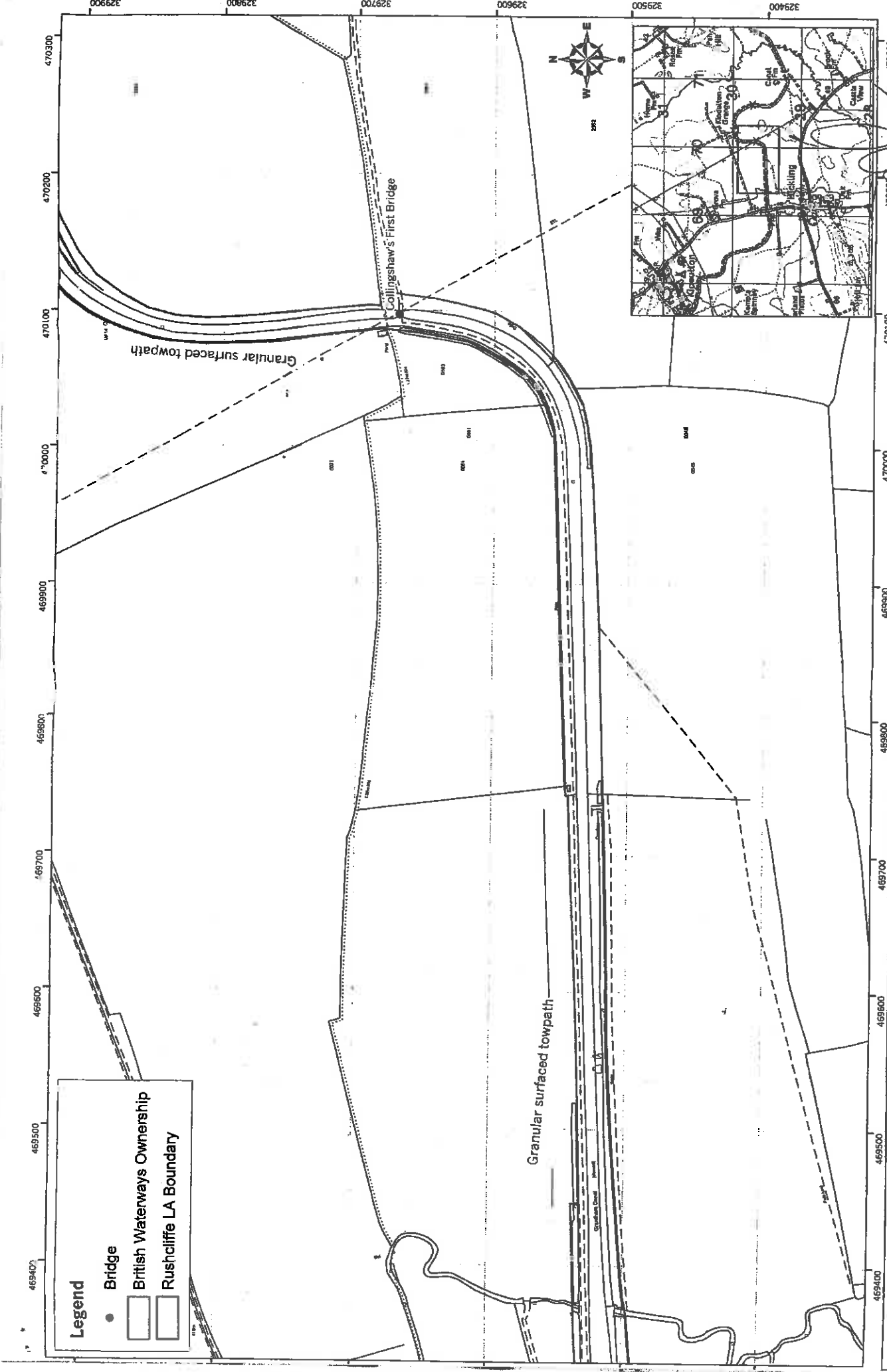


Grantham Canal Section 24

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Legend

- Bridge
- British Waterways Ownership
- Rushcliffe LA Boundary

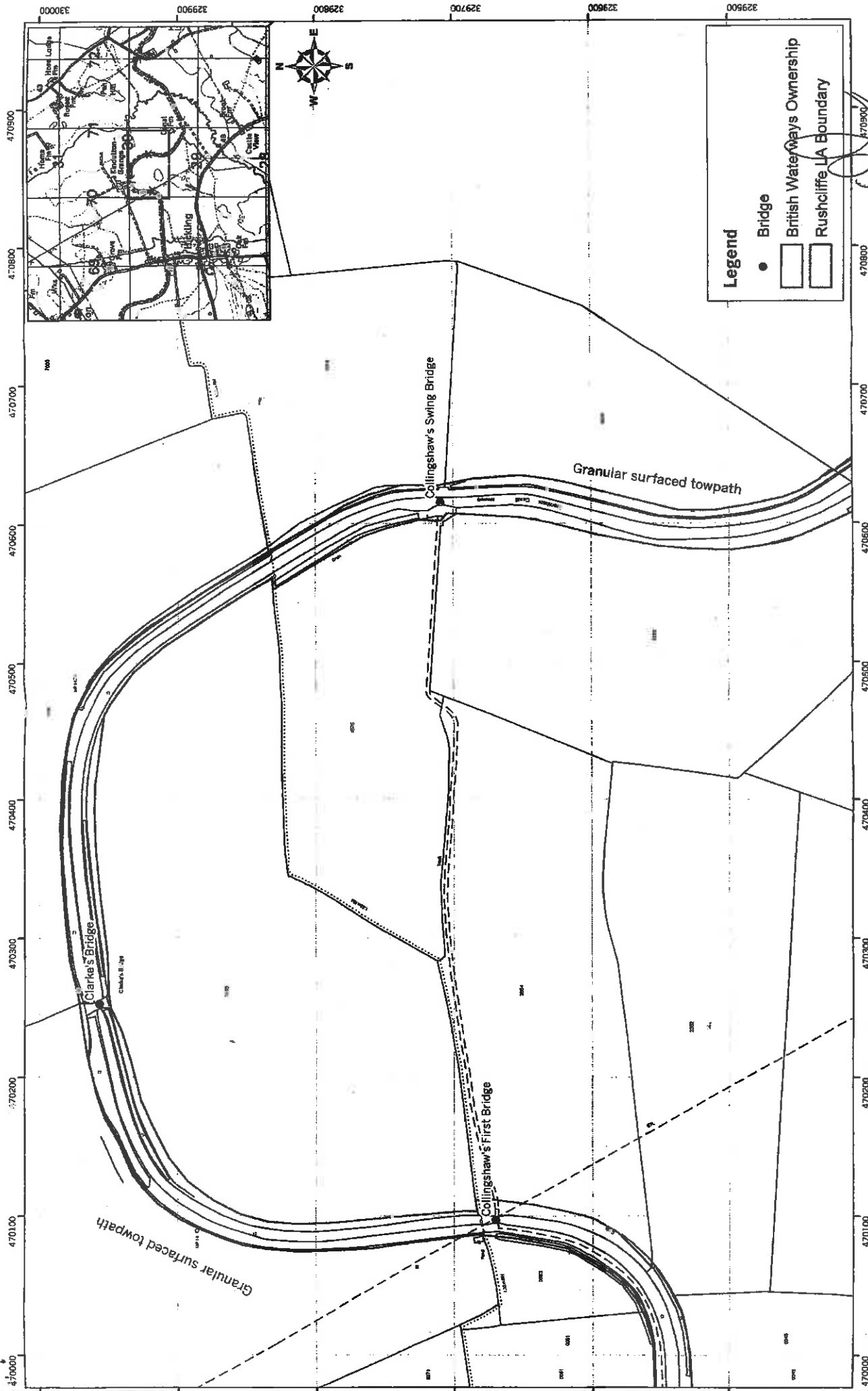
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Grantham Canal Section 25



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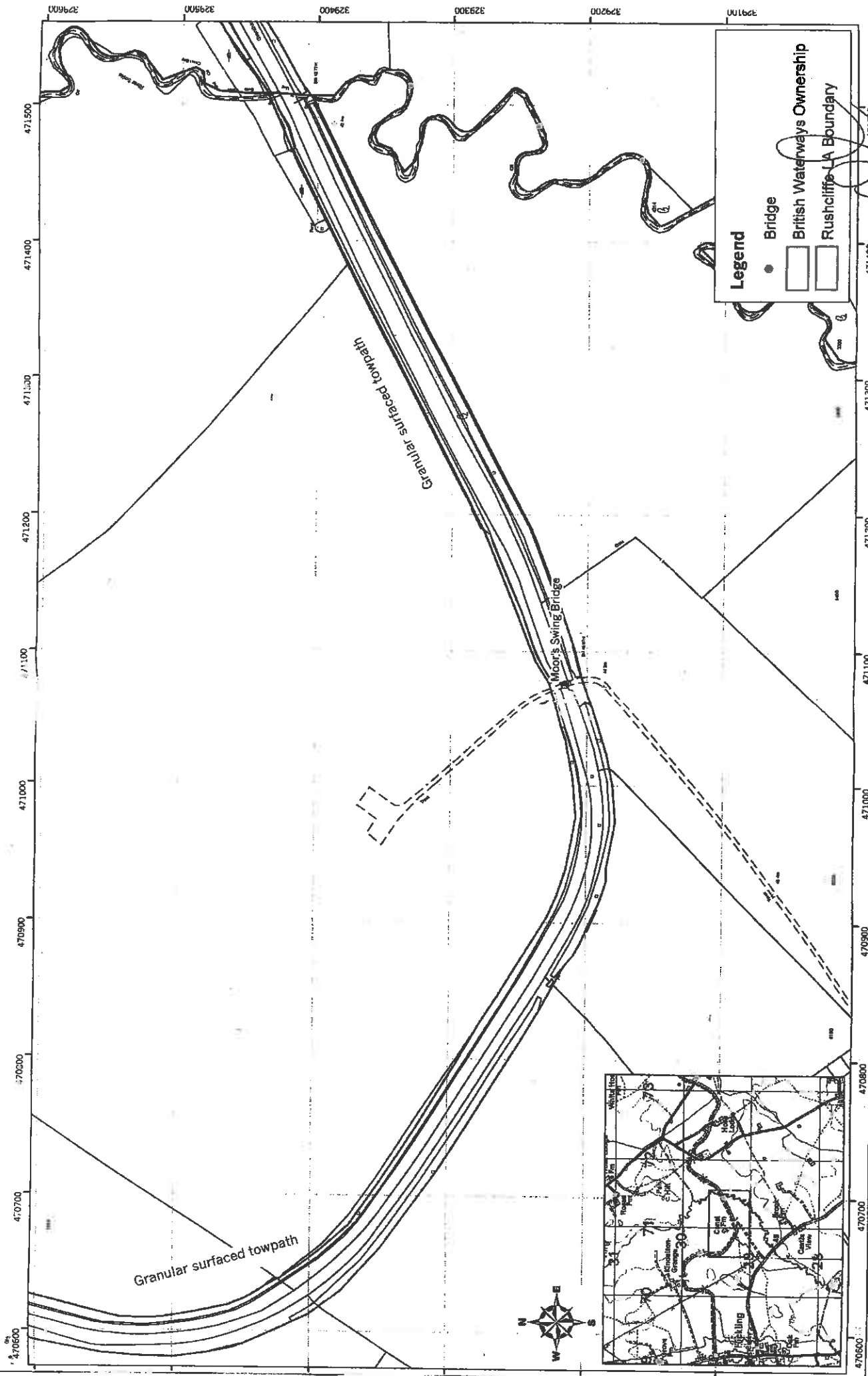


Grantham Canal Section 26

1:2,500

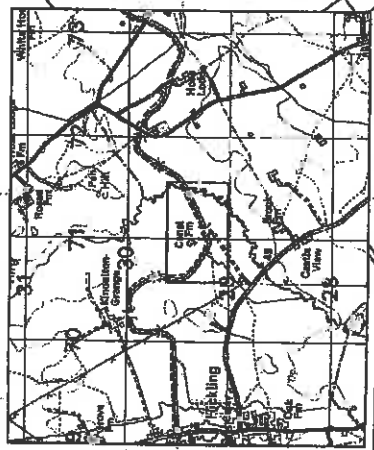
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Legend

- Bridge
- British Waterways Ownership
- Rushcliffe-LA Boundary



Grantham Canal Section 27

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