

## KIRKLEES METROPOLITAN COUNCIL

### UPDATE OF LIST OF APPLICATIONS TO BE DECIDED BY DISTRICT WIDE PLANNING COMMITTEE

19 SEPTEMBER 2024

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#### Agenda Item 9:

**Application for a Definitive Map Modification Order (DMMO) to record a public footpath at Old Lane, Scapegoat Hill, Colne Valley on the Definitive Map and Statement (DMS), and two other discovered routes**

Please note one submission on this PROW agenda item.

Kirklees Council received a written submission via email on 12 September 2024 relating to 'route 3 Old Lane to High Street via Vermont Close' from the residents referred to as 'landowner 7' in the Committee Report and Appendices, as follows:

*Dear Deborah*

*After following the link in your email to the documents for the planning meeting on 19th September, we have now read the report. In view of the recommendations we assume that the footpath matter should now be resolved as far as we are concerned and that it will not be necessary for us to come to the meeting to make a verbal representation.*

*Whilst reading the documents we are a little concerned about Item 114 in Appendix B, Officer Investigation Report, Executive Summary. This item states that a representative of the Church said that 'Landowner 7 said they would open their gate if they (the Church) wanted to use this as a footpath' This is not correct. We did not say this. We have never met or spoken with anyone from the church about the gate, the path or anything at all. Also, this representative claimed that the narrow walled route was cleared by contactors in about the first half of 2020. The narrow walled route has never been cleared whilst we have lived here. By coincidence I took a photo from an upstairs window just as building work was beginning in June 2020. This photo is attached and you will see that the area had definitely not been cleared recently.*



Route 3  
(annotation added  
by Officer)

Landowner 7's photo they dated 8/6/2020

### Officer notes

In response, Officers emailed landowner 7 to confirm that in relation to route 3 leading from Old Lane to High Street via Vermont Close, and through No.2 Vermont Close the Officer recommendation is not to make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath on the Definitive Map and Statement of public rights of way.

Officers also advised that whilst Officers make recommendations, in this case, the decision will be taken by the Committee members. It would therefore be landowner 7's decision whether to attend the Committee meeting or not and they may wish to discuss that with the Governance Officer.

Whilst Officers note landowner 7's comments in relation to **paragraph 114** in **Appendix B** and photo evidence relating to route 3 dated 8 June 2020, Officers can confirm that the recommendations remain the same. This is because, in relation to route 3 leading from Old Lane to High Street via Vermont Close, it is not reasonable to allege that a public footpath subsists under s31(1) of the HA 1980 on user evidence during the alternative relevant periods, or at common law.

Please note the replacement of the draft Order Map - Public footpaths recommended to be added

The draft Order Map at **Figure 1 (page 23)** of the **Committee Report** and the same map at **Figure 41 (page 104)** of **Appendix C Figures and Photos** has been updated since the report was published on the Council's website in relation to the variable width area hatched/ edge blue with dashed black lines at point A and between B and C.

The width of a way which has been dedicated, or is presumed to have been dedicated, is a question of fact. The Planning Inspectorate Advice Note 16 states:

*“Widths should be included in all DMMOs and these widths should also be used based on the available evidence”.*

In this case, the user evidence has been determined under section 31(1) of the Highways Act, 1980, and the width has been derived from user evidence and actual use. The User Evidence Forms completed by witnesses specifically ask: *“How wide is the route used by the public?”*. Public rights are therefore considered to extend to the width over which it can be shown that there has been sufficient public use of the appropriate quality to satisfy the test for deemed dedication. In this case, most users estimate a variable width between 1.2 and 2-3 metres, which is relatively consistent with the available width of routes 1 and 2 based on aerial images and Officer site visit photos.

Currently, **paragraph 185 (page 68)** at **Appendix B**, states, due to recent development which has altered historic boundaries, that the recommended recorded public footpath width for route 1:

*“It is therefore recommended that a Definitive Map Modification Order is made to record public footpaths with variable widths based on the user evidence and measurements of the routes and aerial images, as shown by the shading on the indicative draft Order map (Figure 41). The current OS mastermap shows boundaries after the land has been developed for housing. The draft Order map has therefore been based on the boundaries shown on the 2020 OS mastermap (prior to the housing development) and adjusted using aerial images, as there are spatial differences when overlaying different maps”.*

Officers have since reviewed the boundaries shown on the 2020 OS mastermap in comparison to available aerial photos, such as those taken in 2012, to ensure the correct widths are recommended to be recorded. It has become apparent that the width of route 1 as shown on the 2020 OS mastermap is much wider than the width actually used and enjoyed by the public as of right and without interruption during the relevant period of 1997 to 2017.

The recommended widths have therefore been revised, reducing the width at Point A on the draft Order map from 9.5 metres to 5 metres, where route 1 commenced between a garage on the northern side and an old drystone wall on the southern side. The width has also been reduced between Points B to C from a variable width between 4.8 and 2.9, to a consistent 2.5 metre width between historic drystone wall boundaries. Along the burial ground steps it continues with a width of 2m.

**Figure 1 / Figure 41: Replacement draft Order map – Public footpaths recommended to be added (ABCD) dated 16/9/2024**

