

Public Document Pack



**Service Director – Legal, Governance and
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Wednesday 1 November 2023

Notice of Meeting

Dear Member

Planning Sub-Committee (Heavy Woollen Area)

The **Planning Sub-Committee (Heavy Woollen Area)** will meet in the **Reception Room - Town Hall, Dewsbury** at **1.00 pm** on **Thursday 9 November 2023**.

(A coach will depart the Town Hall, at 11.00am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in Dewsbury Town Hall.)

This meeting will be webcast live and will be available to view via the Council's website.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

Julie Muscroft

Service Director – Legal, Governance and Commissioning

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

The Planning Sub-Committee (Heavy Woollen Area) members are:-

Member

Councillor Eric Firth (Chair)
Councillor Ammar Anwar
Councillor Timothy Bamford
Councillor Adam Gregg
Councillor Steve Hall
Councillor John Lawson
Councillor Gwen Lowe
Councillor Shabir Pandor
Councillor Mussarat Pervaiz
Councillor Andrew Pinnock
Councillor Jackie Ramsay
Councillor Joshua Sheard
Labour Group Vacancy

When a Member of the Planning Sub-Committee (Heavy Woollen Area) cannot attend the meeting, a member of the Substitutes Panel (below) may attend in their place in accordance with the provision of Council Procedure Rule 35(7).

Substitutes Panel

Conservative

B Armer
D Bellamy
D Hall
R Smith
J Taylor
M Thompson

Green

K Allison
A Cooper
S Lee-Richards

Labour

B Addy
P Moore
M Sokhal
T Hawkins
H Zaman

Liberal Democrat

PA Davies
A Munro
A Marchington
A Smith

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Sub-Committee

To receive any apologies for absence, or details of substitutions to Sub-Committee membership.

2: Minutes of Previous Meeting

1 - 6

To approve the Minutes of the Meeting of the Sub Committee held on 21 September 2023.

3: Declaration of Interests and Lobbying

7 - 8

Sub-Committee Members will advise (i) if there are any items on the Agenda upon which they have been lobbied and/or (ii) if there are any items on the Agenda in which they have a Disposable Pecuniary Interest, which would prevent them from participating in any discussion or vote on an item, or any other interests.

4: Admission of the Public

Most agenda items will be considered in public session, however, it shall be advised whether the Sub Committee will consider any matters in private, by virtue of the reports containing information which falls within a category of exempt information as contained at Schedule 12A of the Local Government Act 1972.

5: Deputations/Petitions

The Sub Committee will receive any petitions and/or deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also submit a petition at the meeting relating to a matter on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10, Members of the Public must submit a deputation in writing, at least three clear working days in advance of the meeting and shall subsequently be notified if the deputation shall be heard. A maximum of four

deputations shall be heard at any one meeting.

6: Public Question Time

To receive any public questions.

In accordance with Council Procedure Rule 11, the period for the asking and answering of public questions shall not exceed 15 minutes.

Any questions must be submitted in writing at least three clear working days in advance of the meeting.

7: Site Visit - Application No: 2023/90434

Change of use of ground floor of vacant public house (Sui Generis-drinking establishment) to community centre with a small prayer room (Class F1) at Babes In The Wood PH, 1039, Leeds Road, Woodkirk, Dewsbury.

Contact: Sarah Longbottom, Planning Services

Ward affected: Dewsbury East

Estimated time of arrival at site: 11.10am

8: Site Visit - Application No: 2022/92616

Change of use of land and formation of skate park at Royds Park, Bradford Road, Rawfolds, Cleckheaton.

Contact: Sarah Longbottom, Planning Services

Ward affected: Cleckheaton

Estimated time of arrival at site: 11.50am

Planning Applications

9 - 10

The Sub Committee will consider the attached schedule of Planning Applications.

Please note that any members of the public who wish to speak at the meeting must register by 5.00pm (for phone requests) or 11:59pm (for email requests) on Monday 6 November 2023.

To register, please email andrea.woodside@kirklees.gov.uk or phone Andrea Woodside on 01484 221000 (ext 74993).

- 9: Application to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statement** 11 - 128
- To consider the report.
- Ward affected: Kirkburton
- Contact: Mark Drydale, Definitive Map Officer
-
- 10: Application for a Definitive Map Modification Order (DMMO) to record a Public Right of Way from Definitive Public Footpath at Upper High Fields to Woodsome Road at Farnley Tyas, Kirkburton on the Definitive Map and Statement** 129 - 188
- To consider the report.
- Ward affected: Kirkburton
- Contact: Mark Drydale, Definitive Map Officer
-
- 11: Planning Application - Application No: 2022/92619** 189 - 202
- Change of use of land and formation of skate park at Royds Park, Bradford Road, Rawfolds, Cleckheaton.
- Contact: Nina Sayers, Planning Services
- Ward affected: Liversedge and Gomersal
-
- 12: Planning Application - Application No: 2023/90434** 203 - 214
- Change of use of ground floor of vacant public house (Sui Generis-drinking establishment) to community centre with a small prayer room (Class F1) at Babes In The Wood, 1039 Leeds Road, Woodkirk, Dewsbury.
- Contact: Elenya Jackson, Planning Services
- Ward affected: Batley East
-

Planning Update

An update providing information on further matters raised after the publication of this agenda will be added to the web agenda (online) the day prior to the meeting.

Contact Officer: Sheila Dykes

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 21st September 2023

Present: Councillor Eric Firth (Chair)
Councillor Ammar Anwar
Councillor Timothy Bamford
Councillor Adam Gregg
Councillor Steve Hall
Councillor John Lawson
Councillor Gwen Lowe
Councillor Shabir Pandor
Councillor Mussarat Pervaiz
Councillor Andrew Pinnock
Councillor Jackie Ramsay

Apologies: Councillor Joshua Sheard

1 Membership of the Sub-Committee

Apologies were received on behalf of Councillor Joshua Sheard.

2 Minutes of Previous Meeting

That, subject to the amendment below, the Minutes of the meeting of the Sub Committee held on 10 August 2023 be agreed as a correct record:

Item 10 – Application No: 2023/90349

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Bamford, E Firth, Gregg, S Hall, J Lawson, Pervaiz, A Pinnock, Ramsay and Sokhal (9 votes)

Against: (no votes)

3 Declaration of Interests and Lobbying

All Councillors present advised that they had been lobbied in respect of Application 2023/92079.

During the meeting and in the interests of transparency, Councillor Bamford advised that the applicant for Application 2023/91145 was a ward colleague and he would therefore not participate in this item.

4 Admission of the Public

All items were considered in public session.

5 Deputations/Petitions

No deputations or petitions were received.

6 Public Question Time

No questions were submitted.

7 Site Visit - Application No: 2023/92079

Site visit undertaken.

8 Planning Application - Application No: 2023/92079

The Sub-Committee considered Planning Application 2023/92079, an outline application for the erection of residential development of 10 dwellings, demolition of existing extension at 27 Moor Lane, widening of existing access and realignment of boundary walls .

Under the provisions of Council Procedure Rule 36(3), the Sub-Committee received a representation from Councillor E Smaje (Ward Councillor).

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from Charles Buchanan (objector).

Resolved –

(1) That approval of the application and issue of the decision notice be delegated to the Head of Planning and Development in order to:

(a) complete the list of conditions including those contained within the report and the update, as set out below:

1. Details of appearance, landscaping, layout, and scale (hereinafter called the “Reserved Matters”) shall be submitted to and approved in writing by the Local Planning Authority no later than 3 years.

2. The development hereby permitted shall begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.

3. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

4. The Reserved Matters referred to in Condition 1 shall include a report specifying the measures to be taken to protect the development from noise from all significant noise sources that are likely to affect the proposed development (including road traffic), to first be submitted to and approved in writing by the Local Planning Authority.

5. The Reserved Matters referred to in Condition 1 shall include a Biodiversity Enhancement and Management Plan (BEMP), to be submitted and approved in writing by the Local Planning Authority.

6. The Reserved Matters referred to in Condition 1 shall include an Arboricultural Impact Assessment, to first be submitted to and approved in writing by the Local Planning Authority.

7. The Reserved Matters referred to in Condition 1 shall include a scheme detailing the full site and dwellinghouse safety and security measures to be implemented, to first be submitted to and approved in writing by the Local Planning Authority.

8. Notwithstanding the approved plans, the Reserved Matters referred to in Condition 1 shall include a scheme of hard and soft landscape proposals, including a maintenance and management plan, to first be submitted to and approved in writing by the Local Planning Authority.

9. The Reserved Matters referred to in Condition 1 shall include a Landscape and Ecological Design Strategy (LEDS) to first be submitted to and approved in writing by the Local Planning Authority.

10. There shall be no commencement of the development hereby approved until (other than those required for a site investigation report) until a Phase II Intrusive Site Investigation Report by a suitably competent person has first been submitted to and approved in writing by the Local Planning Authority.

11. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 10, there shall be no commencement of any further groundworks or development until a Remediation Strategy by a suitably competent person has first been submitted to and approved in writing by the Local Planning Authority.

12. Remediation of the site shall be carried out and completed in strict accordance with the Remediation Strategy approved pursuant to Condition 11.

13. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy, a Verification Report by a suitably competent person shall be submitted and approved in writing by the Local Planning Authority.

14. There shall be no commencement of the development hereby permitted until; a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and; b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

15. Prior to the first occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall first be submitted to and approved in writing by the Local Planning Authority.

16. There shall be no commencement of the development hereby permitted until a detailed design scheme detailing foul, surface water and land drainage, including agreed discharge rates with the Lead Local Flood Authority of 3.5l/s indirectly or directly to watercourse, attenuation for the critical 1 in 100 (+ climate change allowance) rainfall event, attenuation construction details /design, plans and longitudinal sections, hydraulic calculations, phasing of drainage provision) has first been submitted to and approved in writing by the Local Planning Authority.

17. There shall be no commencement of the development hereby permitted until an assessment of the effects of 1 in 100 year storm events (+ climate change allowance), blockage scenarios and

exceedance events on drainage infrastructure and surface water run-off pre and post development between the development and the surrounding area (both upstream and downstream of the development), has first been submitted to and approved in writing by the Local Planning Authority.

18. There shall be no commencement of the development hereby permitted until a scheme, detailing temporary surface water drainage for the construction phase (after soil and vegetation/site strip) has first been submitted to and approved in writing by the Local Planning Authority.

19. There shall be no commencement of the development hereby permitted until full details of the proposed means of disposal of foul water drainage for the whole site, including details of any balancing works, off-site works and phasing of the necessary infrastructure, have first been submitted to and approved in writing by the Local Planning Authority.

20. There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, full details of which will have first been submitted to and approved in writing by the Local Planning Authority.

21. There shall be no commencement of the development hereby permitted until a Construction Environmental Management Plan (CEMP) has first been submitted to and agreed in writing with the Local Planning Authority.

22. There shall be no commencement of the development hereby permitted until the wall to the site frontage has first been set back to the rear of the proposed visibility splays, as shown on approved plan ref: 18/412/SKH/001 Revision K (Proposed Access Layout with Tracking Manoeuvres Plan, dated 19/07/2023), and has been cleared of all obstructions to visibility and hard surfaced to current standards in accordance with details that have previously been approved in writing by the Local Planning Authority.

23. There shall be no commencement of the development hereby permitted until a scheme detailing the proposed internal estate roads has first been submitted to and approved in writing by the Local Planning Authority.

24. There shall be no commencement of site access and internal highways works until full details of an acoustic barrier (as demonstrated in the approved plan (21942)10_Access Road Elevations) have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- A plan showing the location of the barrier;
- The minimum height of the barrier relative to the adjacent ground level;
- Details of the appearance of the fencing, and
- The construction specification of the barrier including the barrier support structure, the barrier material, the minimum barrier thickness, the minimum density of the barrier material and the details where the barrier meets the ground.

Planning Sub-Committee (Heavy Woollen Area) - 21 September 2023

The access hereby approved shall not commence until the construction of the acoustic barrier has been completed and the barrier shall be retained thereafter.

25. Prior to the first occupation of the development hereby approved, a scheme detailing the dedicated facilities to be provided at each dwelling house for charging electric vehicles and other ultra-low emission vehicles shall first be submitted to and approved in writing by the Local Planning Authority.

26. Where implementation of the development hereby approved is to be phased, and/or any of the dwellings hereby approved are to become occupied prior to the completion of the development, details of temporary arrangements for the storage and collection of wastes from those residential units, and details of temporary arrangements for the management of waste collection points, shall first be submitted to and approved in writing by the Local Planning Authority prior to the occupation of those residential units.

27. No site clearance works shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the site for active birds' nests immediately before the site is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site.

28. Any tree, shrub or hedgerow forming part of an approved landscape scheme which dies, is removed or become seriously damaged or diseased, within a period of five (5) years from the date of planting, shall be replaced during the next planting season following removal with another of a similar size and species as that originally planted, and in the same place.

29. The access hereby permitted shall not be brought into use until details of the bollards demonstrated on the approved plan "18/412/SKH/001 Rev.K", have been submitted to and approved in writing by the Local Planning Authority. The bollards shall then be constructed in accordance with the approved details and thereafter retained.

(b) secure a Section 106 Agreement to cover the following matters:

- (i) Off-site Biodiversity Net Gain contribution (£43,470)
- (ii) Incorporation of a Drainage Management Company
- (iii) Incorporation of a Highways Management Company
- (iv) Incorporation of a Public Open Space Management Company

(2) In the circumstances where the Section 106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

Planning Sub-Committee (Heavy Woollen Area) - 21 September 2023

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Anwar, Bamford, E Firth, S Hall, Pandor, Pervaiz and Ramsay (7 votes)

Against: Councillors Gregg, Lawson and Pinnock (3 votes)

Abstain: Councillor Lowe

9 Planning Application - Application No: 2023/91145

The Sub-Committee considered Planning Application 2023/91145 relating to the erection of a first floor extension over an existing single storey side extension and rear single storey extension at 49 Manorstead, Skelmanthorpe, Huddersfield.

Resolved -

That approval of the application and issue of the decision notice be delegated to the Head of Planning and Development in order to complete the list of conditions, including those contained within the report, as set out below:

1. Three years to commence development.
2. Development to be carried out in accordance with the approved plans and documents.
3. The external walls and roofing materials of the extensions to match those used in the construction of the existing building.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows;

For: Councillors Anwar, E Firth, Gregg, Hall, Lawson, Lowe, Pandor, Pervaiz, Pinnock and Ramsay (10 votes)

Against: (no votes)

KIRKLEES COUNCIL
DECLARATION OF INTERESTS AND LOBBYING
Planning Sub-Committee/Strategic Planning Committee

Name of Councillor			
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest

LOBBYING

Date	Application/Page No.	Lobbied By (Name of person)	Applicant	Objector	Supporter	Action taken / Advice given

Signed: Dated:

NOTES

Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

(a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
(b) either -

- the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Lobbying

If you are approached by any Member of the public in respect of an application on the agenda you must declare that you have been lobbied. A declaration of lobbying does not affect your ability to participate in the consideration or determination of the application.

In respect of the consideration of all the planning applications on this Agenda the following information applies:

PLANNING POLICY

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

National Policy/ Guidelines

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

REPRESENTATIONS

Cabinet agreed the Development Management Charter in July 2015. This sets out how people and organisations will be enabled and encouraged to be involved in the development management process relating to planning applications.

The applications have been publicised by way of press notice, site notice and neighbour letters (as appropriate) in accordance with the Development Management Charter and in full accordance with the requirements of regulation, statute and national guidance.

EQUALITY ISSUES

The Council has a general duty under section 149 Equality Act 2010 to have due regard to eliminating conduct that is prohibited by the Act, advancing equality of opportunity and fostering good relations between people who share a protected characteristic and people who do not share that characteristic. The relevant protected characteristics are:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- religion or belief;
- sex;
- sexual orientation.

In the event that a specific development proposal has particular equality implications, the report will detail how the duty to have “due regard” to them has been discharged.

HUMAN RIGHTS

The Council has had regard to the Human Rights Act 1998, and in particular:-

- Article 8 - Right to respect for private and family life.
- Article 1 of the First Protocol - Right to peaceful enjoyment of property and possessions.

The Council considers that the recommendations within the reports are in accordance with the law, proportionate and both necessary to protect the rights and freedoms of others and in the public interest.

PLANNING CONDITIONS AND OBLIGATIONS

Paragraph 55 of The National Planning Policy Framework (NPPF) requires that Local Planning Authorities consider whether otherwise unacceptable development could be made acceptable through the use of planning condition or obligations.

The Community Infrastructure Levy Regulations 2010 stipulates that planning obligations (also known as section 106 agreements – of the Town and Country Planning Act 1990) should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF and further guidance in the PPGS launched on 6th March 2014 require that planning conditions should only be imposed where they meet a series of key tests; these are in summary:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects

Recommendations made with respect to the applications brought before the Planning sub-committee have been made in accordance with the above requirements.



Name of Meeting: Planning Sub-Committee (Heavy Woollen Area)

Date: 09/11/2023

Title of Report: Application for a Definitive Map Modification Order (DMMO) to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statement

Purpose of Report: Members are asked to consider the relevant available evidence and determine an application for a DMMO made under section 53(5) of the Wildlife & Countryside Act 1981 to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statement. Members are also asked to make a decision on making a DMMO and its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	David Shepherd – 28/09/23
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 28/09/23
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Sandra Haigh on behalf of Julie Muscroft – 28/09/23
Cabinet member portfolio	Not applicable

Electoral wards affected: Kirkburton

Ward councillors consulted: Cllr Taylor, Cllr Armer, Cllr Smith

Public or private: Public

Has GDPR been considered? Yes. Personal data and biographical information that could identify a person from consultation responses has been redacted.

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Summary

1. In 1996 and 2007, Kirklees Council received applications (Reference 26 & 197) under Section 53 of the Wildlife & Countryside Act, 1981, ('WCA') to record Moor Lane, Farnley Tyas, on the Definitive Map and Statement as either a public footpath or public bridleway. The applications provided user evidence, which was later supplemented by documentary evidence, in support of the claims. The Secretary of State has directed that Kirklees Council must determine the application by 30th November 2022.
2. Based on an overall analysis of the available documentary evidence, the Definitive Map Officer does not consider that it is reasonable to allege the existence of a public bridleway, or public carriageway. However, the user evidence is of sufficient quantity and quality to demonstrate use and enjoyment of Moor Lane by the public on foot, and such use was 'as of right'. There is no available evidence of a lack of intention to dedicate a public footpath during the relevant period of 1976 to 1996.
3. Accordingly, the Definitive Map Officer recommends that it is reasonable to allege the existence of a public footpath, subject to limitation of gates and stiles. It is recommended that a Definitive Map Modification Order is made under section 53(3)(c)(i) of the WCA to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a public footpath. Members are also recommended to support confirmation of the Definitive Map Modification Order to meet the statement action plan of Kirklees Councils Rights of Way Improvement Plan.

Information Required to Take a Decision

Applications

4. On 22nd February 1996, Kirklees Council received an application (Ref: 26), on behalf of the Huddersfield Ramblers, under section 53(5) of the Wildlife & Countryside Act, 1981 ('WCA'), to modify the West Yorkshire County Council Definitive Map and Statement for the Kirklees Area ('DMS'). The application seeks to record a route known as Moor Lane, Farnley Tyas, leading between Farnley Road and Manor Road, as a public bridleway on the Definitive Map and Statement, which is a public right of way on foot, horseback, leading a horse, bicycle, and with or without a right to drive animals. The application was properly made under the requirements of Schedule 14 of the WCA and the submission have as evidence 13 User Evidence Forms ('UEFs') and was supplemented by a UEF in 1997.
5. Subsequently, on the 11th October 2007, another application was submitted to Kirklees Council (Ref: 197), on behalf of the Huddersfield Rucksack Club, under the WCA and sought to record a section of Moor Lane as a public footpath on the Definitive Map and Statement, which is a public right of way on foot only. The application was properly made and gave as evidence 5 UEFs and an additional UEF was submitted in 2015. Together, both applications have provided evidence of use by 20 people. A further 21 members of public responded to an informal consultation conducted in August/September 2023, providing evidence of use along the application route, and fourteen of these completed a UEF; one of which had already completed a UEF in 2007. The user evidence has therefore been considered collectively.
6. Furthermore, in 2020, a member of the Kirklees Bridleways Group provided documentary evidence in support of at least bridleway status, including: extracts from 'Huddersfield Highways Down the Ages'; the 1910 Finance Act Valuation Maps, Ordnance Survey Maps from 1841 and 1893. The claim is not an official Schedule 14 application and Kirklees Bridleways Groups do not have a right to appeal the Councils determination of the applications referenced 26 & 197. On the other hand, they may object to the potential Definitive Map Modification Order and present their evidence to the Planning Inspectorate.

Character of Application Route

7. The character of the application route is described in detail in **Appendix B** with photos. In summary, the Claimed Route is an old historic way known as Moor Lane. It is located in the town of Farnley Tyas, in the civil parish of Kirkburton, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. Farnley Tyas is a small rural village located 3 miles southeast of Huddersfield and is situated on a hilltop approximately 900ft above sea level between Almondbury, Castle Hill, Thurstonland, and Honley. The village is surrounded by green belt and is designated as a conservation area with a number of listed buildings. The application route leads generally north-easterly between Farnley Road and Manor Road, over a distance of approximately 690m. There are two gates along the route, and three stiles. In 2020, signs were erected at either of the application route, which state: "*Permissible right of way on foot. PLEASE CLOSE THE GATE*"; and: "*Permissive Footpath CAUTION Livestock grazing*".

Planning Inspectorate Direction

8. Following a representation by both applicants, the Council were directed on 20th May 2021 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: [FPS/Z4718/14D/19](#)) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S14026, no later than 20th November 2022.

Statutory Provisions

Wildlife & Countryside Act, 1981

9. [Schedule 14, Paragraph 3 of the WCA](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. Section 53(3)(c)(i) of the WCA provides that the Council has a statutory duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

- that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic

10. Section 53(3)(c)(i) involves two tests at the Schedule 14 stage:

Test A: Does a right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.

Highways Act, 1980

11. The relevant provision, in relation to the dedication of a public right of way based on user evidence is found in [section 31 of the 1980 Act](#) ('the 1980 Act'). The legislation sets out there where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate. The period of twenty years is to be calculated retrospectively from the date when the public right to use the way was brought into question.
12. There is no statutory minimum level of use required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from cases to case ([Definitive Map Consistency Guidelines 2022](#)). Alternatively, user evidence can be considered at common law, which requires evidence of public use over a period of time to contribute to a justifiable conclusion of implied dedication by the landowner(s) based on their actions.
13. [Section 32 of the 1980 Act](#) required a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

14. General guidance for members is provided in **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of the research report and available evidence, which is discussed in detail in **Appendix B**, the documentary and user evidence made available below, the consultation, and also the Officer recommendations and reasons.
15. As stated in paragraph 9, it is the Councils statutory duty to keep the Definitive Map and Statement up to date and make any requisite DMMOs where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- I. The first option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on the Definitive Map Officers recommendation (see paragraphs 48 for next step and timeline).
 - II. The second option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on members interpretation of the evidence (see paragraph 48 for next step and timeline).
 - III. The third option is for members to turn down the applications (see paragraph 47 for next step and timeline).
16. The likelihood or otherwise of a DMMO attracting opposition should form no part of the decision. Please note that matters such as safety, suitability, security, or privacy cannot be taken into consideration. Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

Documentary Evidence Evaluation

17. The Definitive Map Officer has conducted a thorough investigation of the available documentary evidence and the investigation report is available in **Appendix B**. This section will focus on the primary documentary evidence required for the purpose of making an informed decision. In summary, Kirklees Bridleway Group rely on three source of documentary evidence to support the claim that the application route is reasonably alleged to subsist as a public bridleway: W.B. Crumps analysis of 1719 Warburtons Survey of the Route from Huddersfield to Penistone, which describes a route leading from Farnley Tyas to Highburton as 'Moor Lane'; 1893 OS 25 Inch Map, which shows the application route as a second class metalled road; and the 1910 Finance Act Map, which shows the application as a 'white road' and can be supportive of public ownership based on case law.
18. Each of these documents have been subject to critical analysis to determine their credibility. Firstly, the investigation has demonstrated that the 1719 survey did not relate to the application route and W.B. Crump made an error. Secondly, carriage drives were also shown on the 1893 OS 25 Inch Maps as a second class metalled road; and notably the application route was the site of a former brewery and tannery. Thirdly, public ownership does not explain why the application route was shown as a 'white road' on the 1910 Finance Act Map, as documents from 1925-28 show that the application route was not a highway maintained at public expense by Thurstonland & Farnley Tyas Urban District Council. Therefore, it would not have been vested in the former highway authority. A 1968 Estate Sale Catalogue also shows that the Earl of Dartmouth claimed private ownership of the application route. This analysis is consistent with today's List of Streets.
19. The investigation has also researched Jefferys 1772 Map of the County of York, which doesn't show the application route; Greenwoods 1817 Map of Yorkshire, which shows the application route as a cross road, but this document is of low evidential value and the surveyor recorded both public and private roads. Accordingly, the Definitive Map Officer considers that there is no credible evidence to reasonably allege the existence of a public bridleway.

User Evidence Evaluation

20. The Definitive Map Officer has conducted a thorough investigation of the available user evidence and the investigation report with a summary table is available in **Appendix B**. The application route was first brought into question by the initial Schedule 14 application in 1996. The relevant twenty-year period is therefore 22nd February 1976 – 22nd February 1996 ('the relevant period'). The application route, between Farnley Road and Manor Road, was used by thirty people during the relevant period: twenty throughout, and ten for parts of the relevant period. It is their collective use that is important.
21. Frequency of use varied and was used by two people daily; four weekly; five monthly; five every few months; and four once a year. Others refer to using the application route 'regularly', 'frequently', 'occasionally', 'quite often', or 'once or twice a year'. One person did not provide an answer for their frequency of use. The quantity and frequency of use are sufficient to represent use and enjoyment by the public without interruption. All users saw others using the application route.
22. The width of the application route used by the public varied due to overgrown vegetation, and estimates ranged between vehicular width that narrows to 2ft in places. The evidence is consistent and shows that the public have not walked over the entire width of the application route. Eighteen respondents acknowledge the presence of gates, whilst twenty-two state that there were several stiles to prevent cattle straying but to continue to allow access for pedestrians.
23. None of the users indicate that they used the application route by force, secrecy, or permission, and there is no evidence that their use was challenged or that the landowner(s) demonstrated a lack of intention to dedicate a public footpath during the relevant period. Consequently, it is reasonable to allege that a public footpath subsists along the application route, such that a Definitive Map Modification Order is recommended.

Implications for the Council

Working with People

24. Not applicable.

Working with Partners

25. Definitive Map Officer has engaged with landowners and user groups when gathering and investigating the evidence connected with this application.

Placed based Working

26. Not applicable.

Climate Change and Air Quality

27. Work to ensure that the public rights of way network are correctly recorded on the Definitive Map and Statement and are available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with Council's response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality.

Improving Outcomes for Children

28. Not applicable.

Other (e.g. Legal/Financial or Human Resources)

29. The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded public rights of way and any other modifications that should be made to the legal record.

30. The Council must make a decision regarding the DMMO Application and the legal status of Moor Lane, Farnley Tyas, and make a DMMO that is requisite further to section 53 of the Wildlife and Countryside Act 1981.

31. Any person may make a duly made objection or representation to a DMMO modifying the Definitive Map and Statement. If objections are made and not withdrawn, any DMMO made must be forwarded to the Secretary of State and most likely be considered by an appointed Planning Inspector, who may or may not confirm the DMMO.
32. The financial costs associated with the making or confirmation of an DMMO or associated with referral of an opposed DMMO the Secretary of State would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.
33. If a DMMO is made based on the Definitive Map Officers recommendation to record a public footpath, it will not be a highway maintainable at public expense as, based on the available evidence, it came into existence after section 38 of the Highways Act, 1959, came into operation.
34. Any financial implications incurred associated with public right of way maintenance due to the change in the recorded status of the Application Route should not be taken into account when considering the evidence regarding this status of the paths in question.

Consultation

35. On 13th August 2023, the Definitive Map Officer conducted an informal consultation with the public, landowners/occupiers, user groups, Kirkburton Ward Members, and Kirkburton Parish Council. The consultation provided an opportunity to provide further documentary or user evidence relating the application route via email, letter, or telephone. Public notice of the consultation was provided on the Councils website under '[Changes to the Definitive Map and Statement](#)' and titled '*Investigation into the status of a route known as Moor Lane, leading between Farnley Road and Manor Road, Farnley Tyas*'. Notices were displayed at either end of the way. The preliminary consultation elicited 23 responses from members of the public and those consultees that provided evidence of use were subsequently offered the opportunity to complete an [online user evidence form](#). Consequently, the evidence of public use has been collated together with the original UEFs and considered under the heading 'User Evidence Evaluation'.

Kirkburton Parish Council

36. Kirkburton Parish Council support the applications and highlighted the need to safeguard the continued use of the route by including it on the Definitive Map and Statement, and also stated: "*One Councillor has confirmed that the path has been in regular, unobstructed use during the relevant period, and has been used for leisure and recreation purposes*".

Kirkburton Ward Members

37. Kirkburton Ward Members were consulted but did not respond.

Applicant & User Groups

38. Huddersfield Ramblers and the Huddersfield Rucksack Club are the applicants and provided further user evidence in support of the applications. Kirklees Bridleways Group did not directly respond to the consultation but provided

further documentary evidence, which was considered during the investigation. No other user group responded to the consultation.

Adjacent Landowners/Occupiers

39. Landowners, adjacent landowners, and occupiers were included in the consultation and were provided with Kirklees Councils 'WCA10 Landowner & Occupier' template form to complete and provide evidence. Additionally, the Definitive Map Officer conducted a site visit with Consultee Refs 1 & 2 on 21st August 2023 to view their deeds and discuss documentary evidence. A summary of responses received is provided below. Consultee Refs 3 and 6 did not respond to the consultation.

Consultee Ref 1

40. Consultee Ref 1 understands that the application route is not a public right of way as it is now shown as a footpath and "... *it is certainly not accessible on horseback and with some confidence I can state that no horse has ever ventured near it*". Consultee Ref 1 clarified that the permissive access signs were first erected in 2020, and has witnessed people walking the application route, commenting that it was mostly evident during lockdown when people were walking far more. Additionally, the consultee stated that they had been asked on several occasions if the application route was a public footpath, and the consultee answered 'no', turning back two members of public who walked an alternative route. Notably, this challenge to use did not occur during the relevant period of 1976 to 1996.

Consultee Ref 2

41. Consultee Ref 2 has lived adjacent the application route after the relevant period and after both applications were submitted but comments: "*I have never seen a horse use the proposed route, due mainly to it being totally unsuitable for equestrian users and in places impassable for horses. I lived [in the area] from 1986 until moving to [adjacent application route] and both properties have*

clear views to the proposed route". Consultee Ref 2 is also not aware that a right of way exists but also witnessed people using the application route on foot during lockdown, and occasionally at other times.

Consultee Ref 4

42. Consultee Ref 4 has owned part of the application route relatively recently and is not aware of any public right of way along the application route but was made aware of the pending applications by the previous landowner. The consultee has not witnessed any person using the application route but erected the permissive access sign on the gate at the entrance to the application route from Farnley Road in 2019 and stated: "*I believe there was always a notice up from the estate and they advised me to put one up when I purchased the land in 2019, sorry I can't remember specific day...*". It is worth noting that Consultee Ref 1 states that the signs were erected in 2020, which is consistent with correspondence between Consultee Ref 4 and Kirklees Council in 2020. Either way, the sign was not in place during the relevant period.

Consultee Ref 5

43. Consultee Ref 5 states that the Ramblers approached the landowners in 1986 to ask for the application route to become designated as a public footpath. The request was discussed but turned down by the landowner, who states: "*The route was left open as a permissive route only... The route is barely passable today because it is used so infrequently*". Additionally, Consultee Ref 5 answered that they have never seen people using the route, nobody has asked for permission, and they have not ever given permission to anyone to use the application route, which contradicts the statement that Moor Lane remained accessible only as a permissive route.

44. Furthermore, the consultee states that gates have always remained shut to keep livestock in, and gates and fencing have been in place for hundreds of years, which is consistent with the user evidence. The consultee also answered that they erected permissive access signs that have been replaced due to been torn down and vandalised over the years and could not recall a time when the signs weren't in

place. However, none of the UEFs mention any signage prior to 2020 and Kirklees Council took photos of the claimed route in 2013 and there were no signs at all. Lastly, Consultee Ref 5 refers to a deposit/declaration made under section 31(6) to the effect that the landowner demonstrated a lack of intention to dedicate any public right of way over the land on the 21st November 2012, which is not during the relevant period of 1976 to 1996.

Consultee Ref 7

45. Consultee Ref 7 have lived adjacent the application since 1997, so after the relevant period, but have lived in the area for 80 years and comments that they have rarely seen people using the route on foot as it is unsuitable for other users as the application route is difficult to traverse. It is their understanding that there are no public rights of way over the land. The consultee is not aware of anyone ever being stopped or turned back when using the application route, they have never locked a gate, placed any obstructions, or given anyone permission to use the application route.

Consultation Evaluation

46. Overall, the majority of landowner/adjacent landowners have owned the land after the relevant period of 1976 to 1996. Consequently, there is no substantial evidence of challenge to public use of a lack of intention during the relevant period. The landowner statements are relatively consistent with regards to acknowledging public use on foot but not by horse riders. Whilst Consultee Ref 5 states that signage has been in place for a significant period of time, this is inconsistent with user evidence and Kirklees Council records. The Public Rights of Way team were in correspondence with Farnley Estates in 2013 regarding permissive signs along Moor Lane, which were apparently ordered and made, whilst a map was to be provided on the Farnley Estate website showing permissive routes. However, there is no available evidence that they were erected. In any case, the current evidence of signage does not displace the fact that it is reasonable to allege that a public footpath subsists along the application route during the relevant period.

Next Steps & Timelines

47. As soon as reasonably practicable after determining the applications, Schedule 14(3)(3) requires the Council to give notice of their decision by serving a copy of it on the applicant and any landowner/occupier. If the Council decide not to make a DMMO, the applicants may appeal the decision to the Secretary of State within 28 days after service of notice under Schedule 14(4) of the 1981 Act. The process is usually delegated to a Planning Inspectorate who will consider the appeal and may direct the Council to make a DMMO.
48. If a DMMO is made, it will be processed under [Schedule 15 of the 1981 Act](#). This schedule provides that before making a DMMO, the Council shall formally consult with every local authority whose area includes the area in which the DMMO relates. The DMMO will be made in the prescribed form as set out in [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1983](#) and does not take effect until it is confirmed. On making a DMMO, the Council shall give public notice in the prescribed form for a 42 day period during which representations or objections may be duly made.
49. The public notice is published in a local newspaper, displayed at either end of the way affected by the DMMO, at Council offices, and served on every relevant owner/occupier, local authority affected by the DMMO, and user groups and statutory consultees. If the DMMO is unopposed, it may be confirmed by the Council. On the other hand, an opposed DMMO must be submitted to the Planning Inspectorate who may determine the DMMO via written representations, public hearing, or public inquiry. The DMMO may be modified, unconfirmed, or confirmed as made. A final decision is similarly given public notice for a 28 day period.
50. Further information on the process and timelines is provided in these documents:
- [A Guide to Definitive Map and Changes to Public Rights of Way \(2008 Revision\)](#)
 - [Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders html - GOV.UK \(www.gov.uk\)](#)

Officer Recommendations & Reasons

Make a DMMO

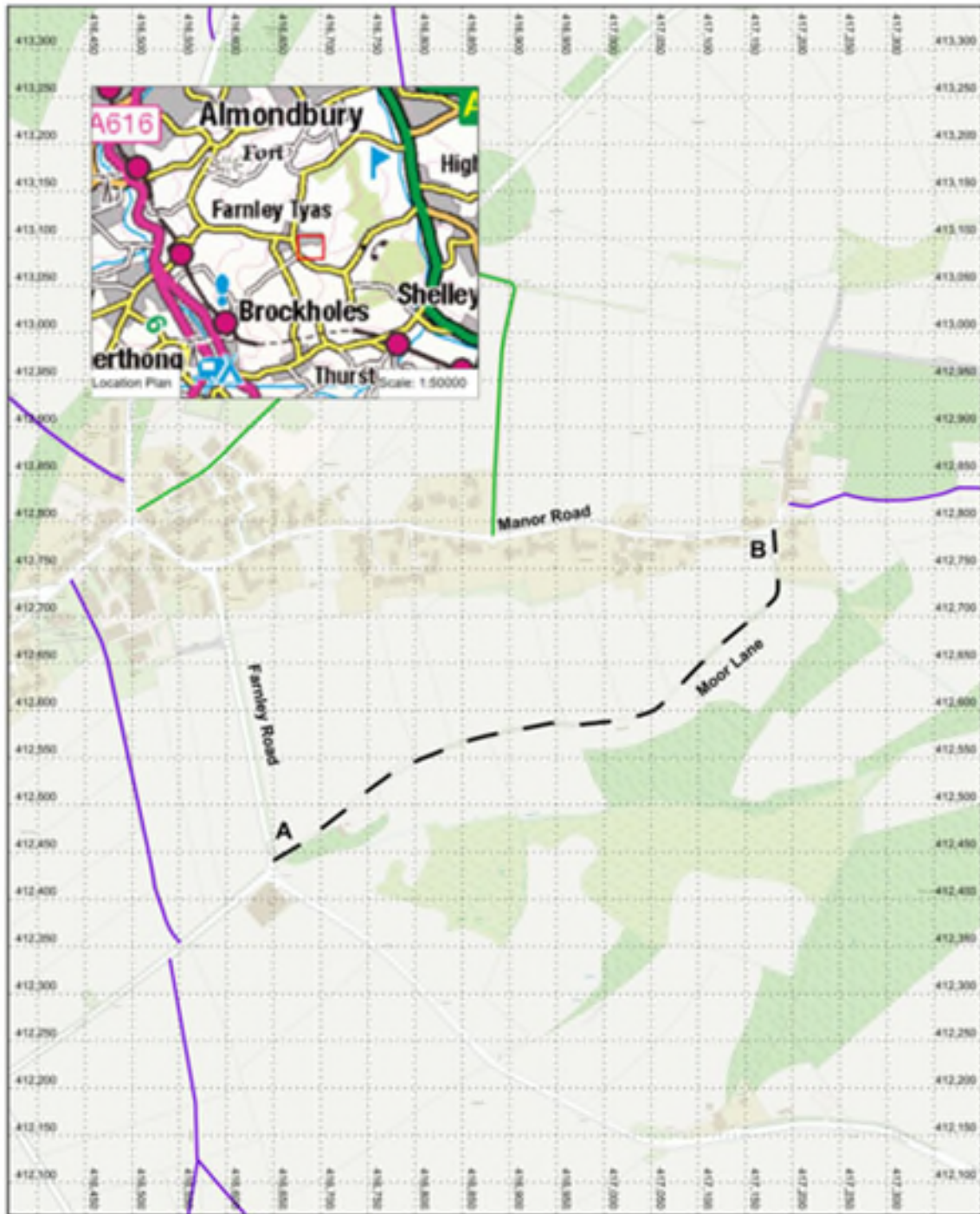
51. Based on an overall assessment of the user evidence, as discussed above under 'User Evidence Evaluation', and in Appendix A, the Definitive Map Officer determines that it is reasonably alleged that Moor Lane, Farnley Tyas, leading between Farnley Road and Manor Road is a public footpath.
52. The Definitive Map Officer therefore recommends that a Definitive Map Modification Order is made under section 53(3)(c)(i) of the WCA, as set out in paragraph 9, to record the public footpath leading from Farnley Road (Point A on the Draft Map in **Figure 1**) to Manor Road (Point B on the Draft Map in **Figure 1**) with a width of 2m. The width takes into account the available user evidence, location and character of the application route, potential use with vehicles, and the necessity to infer the least burdensome form of dedication by the landowners, subject to the limitation of gates and stiles as detailed in the table below:

<i>Structure</i>	<i>Grid Reference</i>
<i>Gate</i>	SE 1667 1245
<i>Gate</i>	SE 1680 1255
<i>Stile</i>	SE 1687 1257
<i>Stile</i>	SE 1708 1263
<i>Stile</i>	SE 1718 1273

DMMO Confirmation

53. Kirklees Councils [‘Rights of Way Improvement Plan \(2010 – 2020\)’](#) (‘ROWIP’) statement action plan states (ID: DMS 9 at page 73) that Kirklees Council will carry out research to identify “White Roads”, which should be classed as a public footpath and recorded on the Definitive Map and Statement. To meet the action plan of the ROWIP, the Definitive Map Officer therefore also recommends that, should the DMMO be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should actively support the confirmation of the DMMO by either written representations, public hearing, or public inquiry.

Figure 1: Draft Map 1 – Public Footpath Recommended to be Added (A-B)



Draft Map 1 - Definitive Map Modification Order Application (26 & 197) - Moor Lane, Farnley Tyas

Legend Public Footpath to be Added (A-B) Public Footpath Public Bridleway		Date: 25/10/2023	
		Scale: 1:2500	
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Contact Officer

54. Mark Drydale, Definitive Map Officer, 01482 221000, mark.drydale@kirklees.gov.uk

Background Papers and History of Decisions

55. This report is accompanied by the following appendices:

- Appendix A (Guidance to Members)
- Appendix B (Definitive Map Officers Investigation Report)

Service Director Responsible

56. Highways and Streetscene; Environment & Climate Change Directorate

KIRKLEES METROPOLITAN COUNCIL (Annex 1)
AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP
GUIDANCE NOTES FOR MEMBERS

Introduction

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

The Legal Tests

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

Making the Order

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.



KIRKLEES COUNCIL INVESTIGATION REPORT

S14026 & 197 MOOR LANE, FARNLEY TYAS

Mark Drydale, Definitive Map Officer

22/09/2023



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SUMMARY

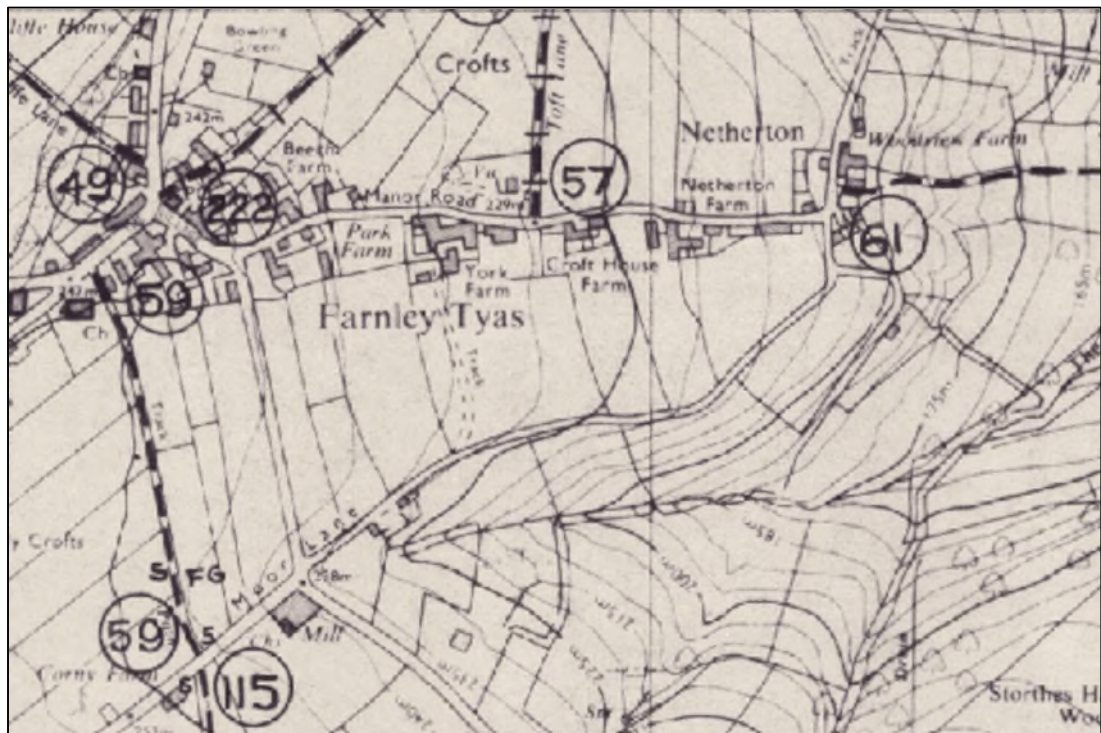
1. In February 1996, and October 2007, Kirklees Council received a Schedule 14 application (reference [S14026 & 197](#)) under the 1981 Act, to record Moor Lane, Farnley Tyas, on the Definitive Map and Statement as a public footpath/public bridleway ('the application route'). The applications provided user and were later supplemented by documentary evidence in support of the claim.
2. A Farnley Tyas Estate Terrier Map, approximately to before 1817, shows that the application route was an ancient occupation road to fields leased by the Earl of Dartmouth. Sales particulars of Farnley Tyas Estate in 1968 listed the application route as a private road. Greenwoods 1817 Map of the County of York recorded the application route as a cross road, however, the document included both public and private routes. Improvements to the Farnley Tyas road network took place between approximately 1815-1829, which connected the application route to highways at either end.
3. The application route was depicted on the 1893 OS 25-Inch Map as a second class road, a category which includes thoroughfare highways but also carriage drives. Notably, the application route was used at this period of time to access a brewery and a tannery. However, the 1896 One-Inch Map only recorded the western section of the application route as a third class metalled road, with the remainder being an unmetalled road. The 25-Inch Map was revised in 1906 and no longer showed the application route as a second-class road. As the OS maps include a disclaimer, the depiction of the route on the 1893 OS Map is not considered credible evidence to reasonably allege the existence of a vehicular highway.
4. The 1910 Finance Act showed the application route as excluded from adjacent hereditaments, even though it was part of Farnley Tyas Estate before and after the antecedent date. Exclusion of the application route may suggest that it was in public ownership and vested in the highway authority. However, the route is not recorded on the current list of streets and was not included in a 1925 list of highways. The route was most likely excluded, as with other private roads, because it was in multiple occupation of adjacent leased fields.

5. Based on an overall assessment of the documentary evidence, the Definitive Map Officer determines that it is not reasonable to allege that a public bridleway or vehicular highway subsists along the application route. The applications have therefore been determined based on user evidence under section 31 of the Highways Act, 1980.
6. The public right to use the application route was brought into question in 1996 and 2007 by the Schedule 14 applications, and in 2020 by notices stating the route was a permissive footpath. The relevant period considered for the user evidence investigation under section 31 of the Highways Act 1980 is 1976-1996. Overall, forty-one user evidence forms (UEFs) or statements were submitted in support of the applications, with twenty-nine people using the application route during the relevant period.
7. Twenty people frequently walked the application route throughout the relevant period, whilst a further nine respondents also frequently used the application route for part of the relevant period. Some members of the public provided evidence of use during the 1980/90s as a public bridleway but it is not sufficient to represent use and enjoyment by the public and does not cover the entirety of the relevant period. All users saw other members of the public walking the application route and most mention the presence of gates and stiles, although these may have been relatively new features following the 1968 estate sale.
8. There is no evidence that public use during the relevant period was by force, secrecy, or permission. Additionally, there is currently no evidence that any landowner demonstrated a lack of intention to dedicate a public footpath during the relevant period. Based on the user evidence, it is reasonable to allege the existence of a public footpath along the application route and it is recommended by the Definitive Map Officer that a Definitive Map Modification Order should be made.

APPLICATION

9. On the 22nd February 1996, the Council received an application (S14026) on behalf of the Huddersfield Ramblers, to the Council, under section 53(5) of the Wildlife and Countryside Act 1981 ('WCA'), to modify West Yorkshire County Council Definitive Map and Statement for the Kirklees Area ('DMS'), as shown in **Figure 1**.

Figure 1: Extract of Current Definitive Map and statement covering area of Moor Lane, Farnley Tyas



10. The application, as shown highlighted pink in **Figure 2**, seeks to record a route known as Moor Lane, leading between Farnley Road and Manor Road, as a public bridleway on the Definitive Map and Statement. Which is defined in [section 329\(1\) of the Highway Act 1980](#) as a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of on horseback or leading a horse, with or without a right to drive animals of any description along the highway. [Section 30 of the Countryside Act 1968](#) states that any member of the public shall have, as a

right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback. The application was properly made under the requirements of [Schedule 14 of the WCA](#) and the submission gave as evidence 13 User Evidence Forms ('UEFs'), which were supplemented by a further submission in 1997.

11. Subsequently, on the 11th October 2007, another application was submitted to the Council ([S140197](#)) on behalf of the Huddersfield Rucksack Club, under the WCA in relation to the same route and sought to record Moor Lane as a public footpath on the Definitive Map and Statement. A public footpath is defined in [section 329\(1\) of the Highway Act 1980](#) as a highway over which the public have a right of way on foot only, not being a footway. The application, as shown highlighted pink in **Figure 3**, was properly made and gave as evidence 5 UEFs and an additional UEF was submitted in 2015. In 2007, a preliminary assessment of the application was undertaken, and the applicant was notified that the evidence was not sufficient to establish a claimed based on public user.
12. Together both applications have provided evidence of use by 20 members of the public. A further 21 members of public responded to an informal consultation conducted in August/September 2023 providing evidence of use along the application route, and thirteen of these user completed a UEF; one of which had already completed a UEF in 2007. The user evidence will therefore be considered together. Furthermore, in December 2020, a member of the Kirklees Bridleways Group provided documentary evidence that may support bridleway or vehicular status, including: extracts from 'Huddersfield Highways Down the Ages'. 1910 Finance Act Valuation Maps, Ordnance Survey Maps from 1841 and 1893. However, this is not an official schedule 14 application, and the documentary evidence will therefore be investigated based on the 'discovery of evidence'.

Figure 2: S14026 Application Map

(Farnley Road [Google Street View](#) to Manor Road [Google Street View](#), Farnley Tyas)

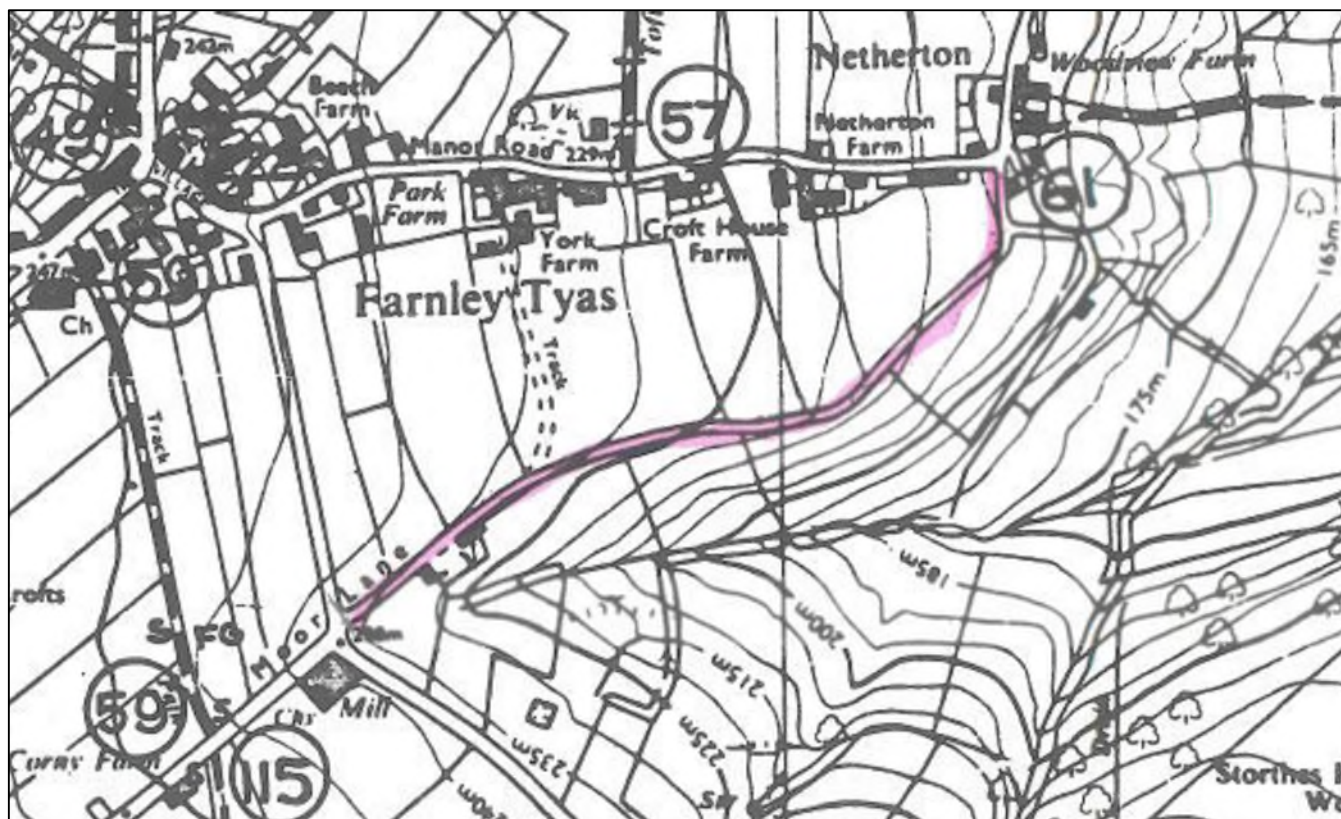
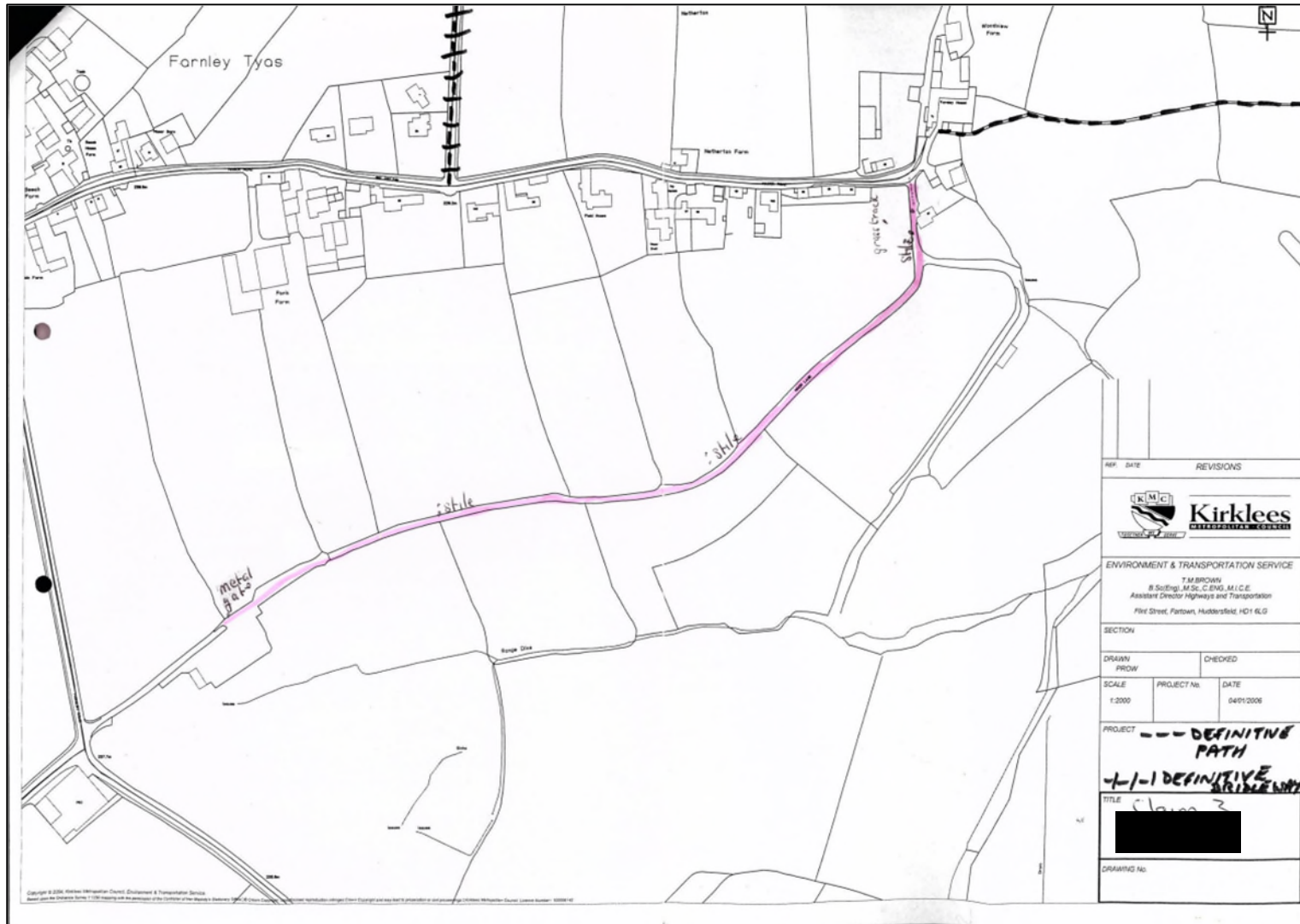


Figure 3: S140127 Application Map



CHARACTER OF CLAIMED ROUTE

14. The Claimed Route is an old historic way known as Moor Lane. It is located in the town of Farnley Tyas, in the civil parish of Kirkburton, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. Farnley Tyas is a small rural village located 3 miles southeast of Huddersfield and is situated on a hilltop approximately 900ft above sea level between Almondbury, Castle Hill, Thurstonland, and Honley. The village is surrounded by green belt and is designated as a conservation area with a number of listed buildings.
15. Farnley Tyas is a historic village that was first mentioned in the Domesday Book of 1086 as 'Fereleia' (Darby, 2008). Tyas is a manorial affix from the family name of 'le Tyeis' who held land in the area from the 13th century (Mills, 2011). The majority of the village was owned by the Kaye family of Woodsome that built Woodsome Hall since 1378 (Yorkshire Archaeological Society, 1895). By 1732 the lands were in the possession of the Earl of Dartmouth and the village grew into a predominantly farming community. In 1966, the land was sold to a local family and has been known since then as Farnley Estates Limited.
16. The claimed route leads generally north-easterly between the junction of Farnley Road and the public carriageway section Moor Lane that is maintained at public expense, over a distance of approximately 690 metres ('m'). Set 15 from the junction with Farnley Road, the route leads along a 4m wide gravel track, passed the former Farnley Tyas Brewery site to a field gate with an attached sign, which states: "Permissible right of way on foot. PLEASE CLOSE THE GATE". Continuing through the field gate, the route is partially obstructed by a shipping container and becomes more vegetated. There is another field gate with a sign stating: "Permissive Footpath CAUTION Livestock grazing". The available width narrows to approximately 2.5m between drystone walls and intermittent barbed wire, however, access is restricted by trees and overgrown vegetation within the lane.
17. Turning easterly the route leads to a wooden structure for stock control with a stile for pedestrian access, which leads to open fields with no boundary on the southern side of the lane. The claimed route becomes enclosed at another wooden stock control gate and stile where the route turns north-easterly again

where trees create pinch points. The available width is exceptionally narrow at a point where the claimed route turns narrow due to an overgrown hedge. Leading northerly the width widens to a wooden cattle control structure with a side gap for pedestrian access and a side gap for pedestrian access. As above, there is a sign attached to the wooden structure stating: "Permissive Footpath CAUTION Livestock grazing".

18. The width increases to a maximum of approximately 8m at a point where the claimed route is joined by another ancient lane leading easterly, just to the south of 40 Manor Road. The claimed route then leads northerly along a tarmac access road that provides access to the properties of 40 Manor Road and Ash Croft. The available width is approximately 4m wide and the claimed route joins Manor Road opposite 49 Manor Road. In summary, there are four wooden structures along the claimed route and three signs stating that the route is a permissive footpath. The route is predominantly vegetated and narrow with a width between 2.5-3m, although it widens at both termini where it joins Farnley Road and Manor Road.

Figure 4: Photos taken on 15/05/2023 showing the physical characteristics of the Claimed Route



Photo 1: The Claimed Route commences at the junction between Farnley Road and Moor Lane and is accessed by a field gate set 15m east of the latter junction.



Photo 2: Attached to the field gate is a sign, which states: "Permissible right of way on foot. PLEASE CLOSE THE GATE"



Photo 3: The Claimed Route leads north-easterly along a wide gravel track approximately 4m wide.



Photo 4: The Claimed Route is partially obstructed by a shipping container.

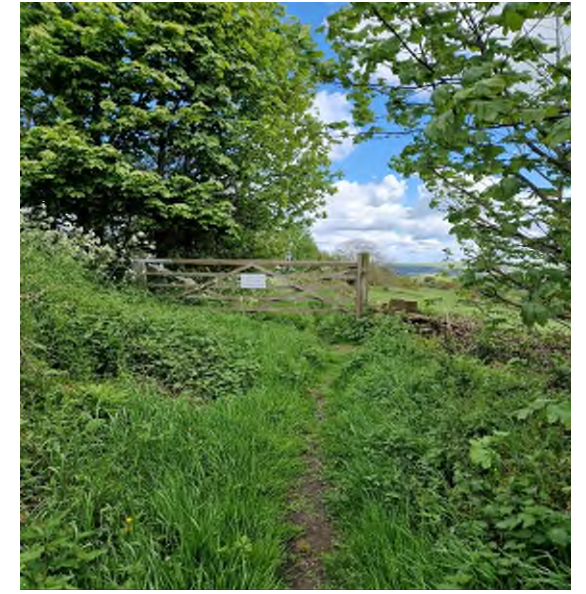


Photo 5: Another field gate is located approximately 170m north-east of the first field gate. The surface is vegetated, and the width begins to narrow.

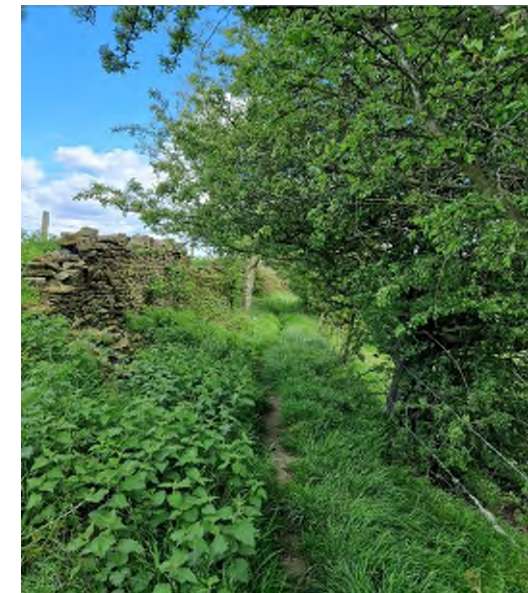


Photo 9: The drystone wall on the southern side of the claimed route is replaced by barbed wire. A well-worn trodden line can be seen in the centre of the claimed route.

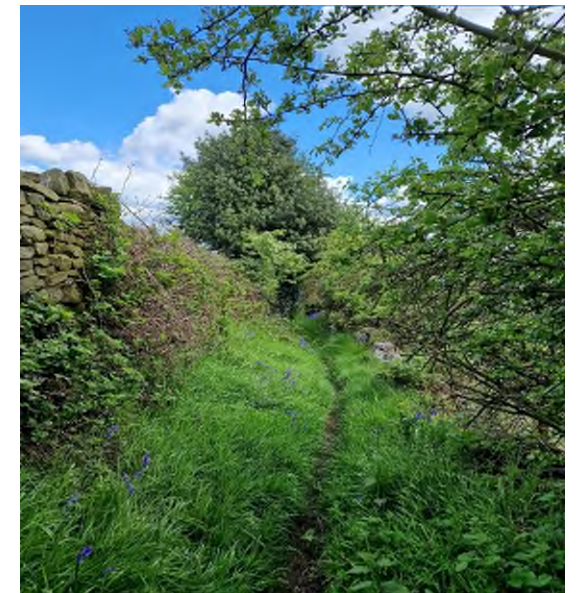


Photo 10: The claimed route momentarily widens to its full width of 2.5m. It has a grass surface and is tree-lined with a high drystone wall on its northern side.



Photo 11: The claimed route now leads easterly and is less vegetated with another structure for cattle control, with a stile for pedestrian access.



Photo 12: Leading through the stile, the claimed route is no longer enclosed on its southern side and joins open field. The claimed route curves at this point to continue north-easterly again.



Photo 13: Another cattle control structure with a stile is located at the point at which the route becomes enclosed again.

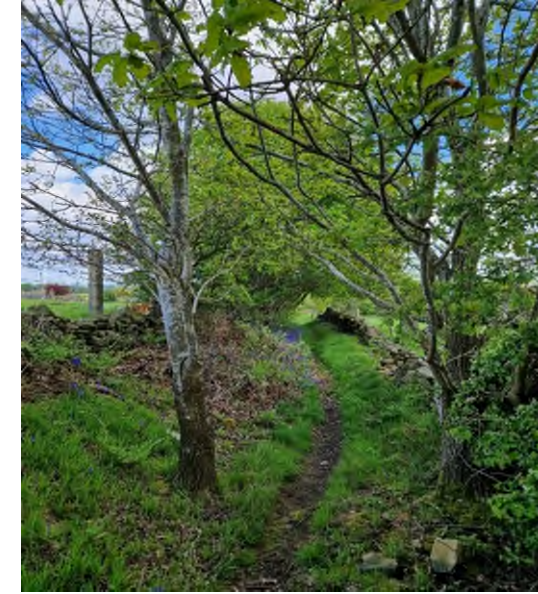


Photo 19: The claimed route leads along a tarmac surface, which is used to access 40 Manor Road and Ash Croft.



Photo 20: The claimed route joins Manor Road west of Ash Croft and opposite 49 Manor Road. The available width is approximately 4m.



Photo 17: Attached to the structure is a sign, which states: "Permissive Footpath CAUTION Livestock grazing"



STATUTORY PROVISIONS

Wildlife & Countryside Act, 1981

19. [Schedule 14, Paragraph 3 of the WCA](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. Section 53(3)(c)(i) of the WCA provides that the Council has a statutory duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

- that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic

20. As was made clear in the case of *R v Secretary of State for the Environment ex parte Bagshaw and Norton* (1994), and clarified in *R v Secretary of State for Wales ex parte Emery* (1998), section 53(3)(c)(i) involves two tests at the Schedule 14 stage:

Test A: Does a right of way subsist? This requires clear evidence in favour of the claimant and no credible evidence to the contrary.

Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.

Highways Act, 1980

21. The relevant statutory provision, in relation to the dedication of a public right of way, is found in [section 31 of the 1980 Act](#) ('the 1980 Act') The legislation sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of twenty years is to be calculated retrospectively from the date when the public right to use the way was brought into question.
22. Evidence is usually presented through the completion of evidence questionnaires by users of the route. It is possible for a public right of way to come into existence through long usage if the people using the route have used it 'as of right', which means the use must have been without force, secrecy, or permission. Additionally, if a landowner can show he has taken steps to prevent a right of way coming into existence, then the presumed dedication is rebutted. These steps must make the public aware that the landowner has no intention to dedicate the way for public use, for example, by placing notices on site stating that the route is 'not a public right of way' or use 'is by permission', gates can be erected and locked or by verbally telling users that it is not a public right of way. A presumed dedication will also be rebutted if the use constituted a public nuisance. A right of way can also come into existence in less than 20 years under common law if it can be proven that the landowner dedicated the route, and the public accepted it.
23. There is no statutory minimum level of use required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from cases to case ([Definitive Map Consistency Guidelines 2022](#)). Alternatively, user evidence can be considered at common law, which requires evidence of public use over a period of time to contribute to a justifiable conclusion of implied dedication by the landowner(s) based on their actions.

24. [Section 32 of the 1980 Act](#) requires a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

MAIN ISSUE

25. Following a representation by both applicants, the Council were directed on 20th May 2021 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: [FPS/Z4718/14D/19](#)) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S14026, no later than 20th November 2022.
26. As the available evidence submitted with the application and discovered by the Council is both historical and user to record either a public footpath or public bridleway on the Definitive Map and Statement, the application will be determined, firstly by analysing documentary evidence to assess whether a public bridleway, or higher public rights, is reasonably alleged to subsists along the application route by presumed dedication at common law. If not, then it will be necessary to consider the user evidence under statute and common law.

DOCUMENTARY EVIDENCE

WARBURTON: THE ROAD BETWEEN HUTHERSFIELD AND PENISTONE 1719 & 1720 MAP OF YORKSHIRE

Background

27. The background to John Warburton (1682-1759) is provided by (Prince, 2008):

“John Warburton (1682-1759) was a genealogist and antiquary, who styled himself ‘Esquire’ and traces his descent from an Elizabethan knight. He was born in Bury in Lancashire and was first employed by the Inland Revenue. In 1708, while serving as a customs officer at Cockermouth, Cumberland, he entered details of surveys he had not made in his register. For this offence he was demoted and posted to Newcastle. He subsequently moved to Darlington, Hartlepool, and Hexham. In 1715, he acted as a government informer in north-east England during the Jacobite rising and afterwards assisted at an inquiry into forfeited estates. In 1716, he was promoted to the rank of Collector at Richmond in Yorkshire, but two years later he was demoted for drunkenness and sent to Wakefield. Shortly after this he resigned from the Inland Revenue and began preparing a map of Yorkshire. In this enterprise, he gained the patronage of Ralph Thoresby, a wealthy Leeds cloth merchant. The map was published in 1720. The year 1720 was a turning point in Warburton’s life. In March 1719 he had been admitted as a Fellow of the Royal Society and in January 1720 he was elected Fellow of the Society of Antiquaries”.

28. Warburton’s 1720 Map of Yorkshire was published at a scale of 24 miles to 1 inch and was made from an actual survey and the rough notebooks of his surveyors are discussed in ‘Huddersfield Highways Down the Ages’ by W.B. Crump in 1968:

“It is shown on Warburton’s map of 1720 and was surveyed for that purpose on ‘May ye 12th, 1719’.... The surveyor, with some assistance, used two instruments, first, a simple pattern of compass on a pole (a theodolite), to determine the direction of the road, and at every sharp change in direction

of he observed and recorded the reading of the compass, i.e. the angle between the road direction and the magnetic north. His second instrument was a large wheel, sometimes called a way-wiser which recorded the furlongs and miles from one station to the next. The surveyor also marked in his notebook the point where any crossroad occurred, and he noted down landmarks and points in interest en route, sometimes reading their direction with his compass. For the names of villages or detached houses he obviously had to depend upon the people he met.

Quite obviously he interrogated the natives as he journeyed along and recorded the names in the vernacular as he heard them from their lips. So 'Phinney' is written for 'Fenay', 'Shipley' for 'Shepley,' and 'Cumberworth'. Many of Warburton's words were abbreviated, e.g. 'Upper Cumberworth t.B. SE 85°', where 'T' stands for 'town' and 'B' for 'bearing'. 'Hall' is usually indicated by 'H' whilst 'Rd' (road), 'Rt' (right), 'Lt' (left) and 'Res.' (resident) need no comment.

Warburton was constantly in touch with his surveyor and he probably assisted in reading the theodolite whenever it was taken up a tower to record the directions of the features visible all round the prospect. But his chief object was to visit the gentry to induce them to subscribe to his map offering them the bait of decorating the map with their arms. Occasionally he made a very crude small sketch of his host's house, but he had engaged Samuel Buck to make drawings of the more important houses in Yorkshire."

Analysis

29. An extract of the surveyor notes as transcribed by W.B. Crump were submitted in evidence to Kirklees Council by Kirklees Bridleway Group to support an informal claim that the application route is at least public bridleway status. The documents show that the primary route from Huddersfield to Penistone, and onwards to London, was through Farnley Tyas, as shown in **Figure 5** and **Figure 6**. Warburton's route has been transposed onto an OS Map as shown in **Figure 7**. Leading through Farnley Tyas, the surveyors note describe a road on the left to Highburton, which is bracketed as 'Moor Lane'. It is clear that W.B. Crump names the route and corrects the surveyors' spelling mistakes. The

reference to the application route is therefore based on W.B. Crumps interpretation of the survey. Kirklees Bridleway Group infer that this indicates the application route was used as a thoroughfare to Highburton via the road through Carr Wood to Woodsome Lees.

30. As shown in **Figure 7**, Warburtons route does not lead directly passed the application route. Therefore, in the first instance, 'Moor Lane' may only refer to the section of present day Moor Lane that leads between Brockholes Road and Farnley Road, which joins Storthes Hall Lane and in turn leads to Highburton and are maintained as vehicular highways maintained at vehicular expense today. Furthermore, the surveyor provided the distances between points in miles, furlongs, and poles. One furlong equals 200m, and one pole equals 5m; 8 furlongs make up a mile, and 40 perches make up 1 furlong. The distance between 'Enter Farnley Town End' (3m, 3f, 15p) and 'A Rd. on ye Rt. to Honley ye Lt. Highburton + (Moor Lane)' (4m, 1f, 0p) is 5 furlongs and 25 poles, which equates to 1,125m.
31. Measuring this distance on modern Ordnance Survey Maps from approximately just north of 'The Village' at 'Field Lane', leading along 'The Village', 'Butts Road', and part of 'Thurstonland Road', places the point that surveyors/WB Crump notes as 'Moor Lane', as exactly at the ancient parish boundary between Farnley Tyas and Thurstonland. On the other hand, the distance from Farnley Tyas to the junction of Brockholes Lane/Moor Lane is only approximately 780m. The surveyor notes continue and describe a point that W.B. Crump has annotated as 'Farnley Moor End' as exactly 2 furlongs apart, which is approximately 400m, which is the exact distance from the ancient parish boundary to the modern day junction with Green Side Road at a point known as Farnley Moor End.
32. Additionally, measuring the distance leading northerly from the ancient parish boundary to 'Enter Farnley Moor. Open' (3m, 7f, 10p) is 0m, 1f, 39p, which is approximately 350m and is, give or take, the distance from between the ancient boundary and the present day junction of Brockholes Lane/Moor Lane/Butt Lane. Continuing northerly to 'A Rd. on yet Rt to Honley (Farnley Road)' (approximately 3m, 4f, 0p), the distance from Brockholes Lane/Moor Lane, leading along Butts Lane to present day Honley Road on the 1719 survey is

0m, 3f, 10p, which is 650m and again, is the exact distance between Honley Road and Brockholes Lane/Moor Lane today. Lastly, the distance from the junction of Honley Road to 'Enter Farnley Town End' is 0m, 0f, 25p, which is 125 and is also the same distance as the section of 'The Village' from Honley Road to 'Field Lane' at the entrance to Farnley Tyas from Almondbury.

33. The analysis indicates that there once an ancient route at the ancient parish boundary and that W.B. Crump was incorrect to attribute the road leading to both Honley and Highburton as relating to Moor Lane. Often parish boundaries lead along ancient routes as they were easy to memorise and 'beat the bounds'. It is notable that today there are farm tracks at this location and today Farnley Moor is now enclosed land, which indicates that the land was at one point enclosed. The fact that the 1719 surveyor didn't state that a thoroughfare road led to a destination at the point at which the present day Brockholes Lane/Moor Lane meet Butt Lane/Thurstonland Road, referred to as 'Enter Farnley Moor', serves to suggest that one didn't exist at this period of time.

Figure 5: 1719 from Huddersfield to Penistone as followed by Warburton (Source: [Huddersfield Highways Down the Ages](#))

Station	Bearing	Distances		Point	Remarks
		Pro- gressive m. f. p.	to Point m. f. p.		
11	SW 25	3 1 0	0 1 00		Ascend Leasurly Rheidus (Royd House) Wood on ye Rt.
12	SW 9	3 2 30	0 1 30		Top of ye Hill (Farnley Bank)
13	SW 33	3 3 5	0 0 15		
14	SW 65	3 3 15	0 0 10		Enter Farnley town end. A house on ye Rt. & Scattering houses on ye Lt. ye main body of ye Town on ye Lt. A way on ye Lt. to it.
		3 4 0			Leave Farnley. Open Rt.
		3 ? ?			A Rd. on ye Rt. to Honley (Farnley Lane)
15	SE 13	3 5 25	0 2 10		Close
16	SE 19	3 7 10	0 1 25		Enter Farnley Moor. Open.
		4 1 0			A Road + ye Rt. to Honley ye Lt. High Burton + (Moor Lane)
17	SE 2	4 1 15	0 2 5		Close on ye Lt.
		4 3 0			Descend (Farnley Moor End)
18	SE 58	4 3 10	0 1 35		Blackhouse H. Resd. Mr. Lockwood. B. South at 30 poles Dist. Thurslaland (Thurstonland) T.B. SW 22° Descend Leasurly. Leave ye Moor & Close on both sides.
19	SE 4	4 4 25	0 1 15		Descends again A Rd. on ye Lt. to high Burton

Figure 6: Extract of 1720 Warburton's Map of Yorkshire (Source: [Kirklees Image Archive](#))



Figure 7: Warburton's Route transposed on 1896 One-Inch OS Map (Source: [NLS Maps](#))



1772 JEFFERYS COUNTY OF YORK MAP

Background

34. Thomas Jefferys ('Jefferys') was one of the most significant and prolific London map publishers of the 1750's; success growing out of a double professional identity as geographer and engraver. Jefferys considered himself to be primarily an engraver despite his designation as Geographer to King George III, an official title which gave him semi-official access to government intelligence and an aura of authority (Anderson, 2018); (Winearls, 1996). Today, it is as geographer that Jefferys is best known and he profited considerably from demands for maps during the Seven Years War and made a speciality of producing maps of North America, which were largely based on inexpensive secondary sources (Ristow, 1976)). In the early 1760's, Jefferys occupied an influential position in the renaissance of English cartographical science, carefully surveying and producing maps of English counties, and was associated with, both as organiser of survey and engraver, at least ten original county maps (Harley J. B., 1966); (Whitaker H. , 2013).
35. The impetus for accurate county surveys was inspired by an advert from the Society for the Encouragement of Arts, Manufacturers, and Commerce ('Society of Arts'), one of the major 'improving' bodies of the period, envisioning that the resulting maps might produce a unified national atlas; the precursor to the Ordnance Survey (Henry, C.J. & Hose, T.A., 2016). The initial 1759 advert was amended over several years and offered awards up to £100 for county maps based on original surveys, triangulation, accurate measurements for latitude and longitude, a two year time scale for completion, and at a scale of one inch to a mile or larger (Arts, 1762); (Macnair, Rowe, & Williamson, 2016)). The county maps required sufficient advanced funds to meet the cost of actual surveying and expensive engraving (Fordham, 1923). The overly-ambitious projects ultimately led to Jefferys bankruptcy in 1766. Jefferys was only able to continue in business through the intervention of William Faden ('Faden') and Robert Sayer, fellow leading map publishers, who acquired substantial shares of his enterprises (Harley J. B., 1966).

36. The subsequent County of York Map was engraved, prior to his death in the same year, by Jefferys in 1771 and published according to Act of Parliament on 25th March 1772. The map contains an elaborate dedicatory cartouche to Charles Watson Wentworth, the British Prime Minister and Leader of the House of Lords between 1765 and 1766 (Gregory, 2007). The dedication was an attempt to stimulate interest and patronage in order to build a market for the costly production (Smith, 1982). The County of York Map is the first original general-purpose survey atlas of the county at a scale of one inch to a mile, the first to show all the major roads, and the second county map in England to use the Royal Observatory Greenwich Meridian for geographical coordination (Whitaker H. , 2013). Accord Mortgages 5.65 product fee, £495, £250 cashback completion, £798, Skipton Building Society (12 days) £800,
37. The actual topographical and theodolite triangulation survey for the map was undertaken between 1767 and 1770 by an inter-linked trio comprising the great surveyors of the day: John Ainslie ('Ainslie'), Thomas Donald ('Donald') and Joseph Hodkinson ('Hodkinson'); each responsible for a separate area of the county (Jones, 1981). The date of the cartographical information contained on the County of York Map can be elucidated and fixed more accurately than is implied. By process of elimination, (Jones, 1981) deduced that the East Riding of Yorkshire was surveyed by Hodkinson between 1767 and 1769. Many of the critical inputs into a map-making process, and hence dependability of the maps, are influenced by events, perceptions and skill personal to a single cartographer; justifying a brief portrait of Hodkinson (Harley, J B; Laxton, P, 1974)).
38. The surveying trio previously worked on Jefferys 1765 County of Bedfordshire Map, which was surveyed by Ainslie and Donald, and engraved by Hodkinson. In 1774, Hodkinson also engraved and published the map of Cumberland, which was surveyed by Donald and commissioned by Jefferys. His greatest achievement in this period is in the Map of Suffolk. Despite the fact it was engraved and published in 1783 by Faden, then Geographer to King George III as successor to Jefferys, it is known as 'Hodskinsons Map of Suffolk', who surveyed the county between 1777 and 1782; winning him the gold medal from the Society of Arts (Pedley, 2020) (Skempton, 1996).

39. Additionally, Hodskinson was a member of the Society of Arts from 1775 until 1790 and was also elected to the Society of Civil Engineers in 1777, serving as Vice-President from 1781 until 1789 and established himself as an engineering consultant (Skempton, 1996). Hodskinson was clearly recognised as surveyor of the highest calibre and affiliated with class leading map-publishers and surveyors of that era. For instance, Faden would go on to publish the first Ordnance Survey map of the county of Kent in 1801; whilst Ainslie progressed to become Scotland's greatest cartographer of his time, and 'virtually the Master-General of Scotland's national survey' for fifty-seven years (Fleet, 2012).

Evidential Weight

40. The County of York Map never received a premium or gold medal from the Society of Arts. (Whitaker H. , 2013) commented: "*It is surprising that such a fine piece of work did not receive the Society of Arts' award... Jeffery's map of Yorkshire easily held the field until the Ordnance Survey was carried out*" and (Harley, 1965) notes that for one reason or another, Jefferys surveys had proved unacceptable by the Society. The Society of Arts initially stipulated in its advertisement conditions that the map should be completed within one or, at most, two years. This clause is likely to have prevented Jefferys map from qualifying for an award since the map was surveyed over a period of four years.

41. The historic County of York was the largest county in the United Kingdom and was divided into the East, North and West Ridings. The size of the county is reflected in the scale of the map, which is spread over twenty sheets. For comparison, Hodskinsons Map of Suffolk comprised only six sheets. The scale of the county is therefore likely to have had a direct impact on the survey period. (Seward, 1797) commented that Jefferys: "... *ought to have made the three ridings three distinct counties. It is however the best map of this county that has been made*". Additionally, (Jones, 1981) states: "*Jefferys main roads are generally of a high degree of accuracy and some of an exceptionally high degree*". The accuracy, surveying proficiency, purpose, uniqueness and production method of the County of York Map collectively contribute to

rendering the document a heavily reliable source of information to which considerable evidential weight can be applied.

Analysis

42. The relevant sheet in the County of York Map for this investigation is plate seven, as shown in **Figure 8**. The map does not show the application route in its entirety, only the initial western section at the present day junction of Farnley Road is shown as an inclosed road. The section of Farnley Road between The Village and the junction with Moor Lane/application route is not yet shown as it wasn't constructed; hence why historically it is referred to as 'New Lane'. One other notable omission is the route now known as Thurstonland Road, and was formerly called Farnley Moor Lane, even though it was described and shown in the 1720 Warburton's Map of Yorkshire and is also shown on ['An Accurate Map of the County of York'](#) by Bowen & Kitchin in 1760. The latter map also shows a route leading from Thurstonland Road leading to Storthes Hall at the point the 1719 surveyor records a road leading to Highburton at the ancient parish boundary. Rather than doubting the existence of Thurstonland Road or the application route at the time of Jefferys survey, their omission may be due to cartographic practice. The section of land where Thurstonland Road should be annotated is similarly shown as common land.
43. The cartographic convention described above was proposed by Dr Hodson and accepted as correct by Neuberger MJ in *Commission for New Towns and Another v JJ Gallagher Ltd* [2002] EWHC 2668 (Ch) (['Gallagher'](#)):

"... However, for the first time when in the witness box, she suggested that there might be a cartographic convention, adopted by at least some map makers in the 18th and early 19th centuries, which involved not marking a non-metalled highway (or, presumably, private road) when it crossed a common or a heath. (In this connection, it should be explained that a road is not metalled when its surface is no more than beaten earth. It is metalled if it is covered with anything from thick asphalt over a foundation, at one extreme, to loose chippings, at the other extreme).

Although initially inclined to dismiss this suggestion as heretical, Professor

Kain, although still sceptical, was prepared to accept, on further examination, that the suggestion had more force than he had at first supposed. Given that the suggestion was, as it were, sprung on him at the hearing for the first time, it is not to the discredit of Professor Kain that he modified his attitude; on the contrary. Dr Hodson's hypothesis is supported by two factors. First, the 1758 Estate Map makes it clear, as Professor Kain fairly accepted, that Beoley Lane did track a defined route over the common to the Birmingham Road. Secondly, it would seem that the convention may well have been adopted by Dawson and Greenwood in relation to a significant number of other heaths and commons on the same page of their respective maps as contained Beoley Lane. That is only a matter of inference, but, on a fair number of occasions, one can see a road coming onto a common or heath precisely opposite another road on the other side of the common or heath, and a fair inference would be that those using either road to cross the common or heath would naturally walk or ride along the shortest distance joining the two points.

On the basis of the documentary evidence, particularly the 1758 Estate Map, and on the basis of Professor Kain's acceptance that Beoley Lane had a visible vehicular route across the common, and, indeed, that members of the public would not have had a right to stray on the common, I have reached the conclusion that Dr Hodson's notion of a cartographic convention is in fact correct. In case this decision is of interest to cartographic historians, it should be emphasised that I have reached this view on the balance of probabilities, and on the basis of the documentary, oral and expert evidence, as well as the arguments, advanced before me."

44. The value of Jefferys County of York Map is fourfold. Firstly, the fact that a section of what is present day Farnley Moor Lane is not shown leading across common land does not mean it didn't exist. It was likely a defined but unmetalled all-purpose highway leading over the common and was the route mapped by both Warburton in 1720 and Bowen & Kitchin in 1760. Secondly, Storthes Hall Lane is also similarly shown leading to and from common land, and importantly, is the only route shown leading to Highburton, which provides

further evidence that the route described by the 1719 Warburton surveyor as leading to that settlement was most likely not the application route. Thirdly, only the initial western section of the application route is shown as inclosed, which may be because it was an unimportant public road, or private road. Other routes shown in this manner are the access roads to 'Farnley Hey', 'Lumb Royd', and a section of Brockholes Lane. So far, the historical evidence has not shown that the application route existed in its entirety to infer any kind of status. Lastly, no route is shown along the ancient parish boundary, suggesting that at some point between 1719 and 1768, it may have ceased to exist.

Figure 8: Extract of Plate 7 of Jefferys 1772 County of York Map (Source: [Huddersfield Exposed](#))



REFERENCES.

Churches or Chapels	.....
Gentlemens Seats	.....
Turnpike Roads	.....
Open Roads	.....
Inclosed Roads	.....
Water Mill &c.	.....
Lead Mines	.....
Iron Mines	.....
Coal Pitts	.....
Allum Works	.....

FARNLEY TYAS ESTATE TERRIER MAP

Background

45. The traditional term for the set of records held for an estate is the 'estate terrier'.

The word 'terrier' is derived from a combination of the medieval Latin words *terrarius* (earth) and *liber* (book); thus, the estate terrier was simply a book containing detail about the land (Edwards, 2009). A primary function of a terrier is to keep a list of properties that form part of the estate and to record rent rolls and due amounts actually received. That is a main purpose of the terrier (Keith, 2022). The Farnley Estate Terrier is therefore an inventory of the physical structure of the Earl of Dartmouth's property and consists of a set of record books containing the following information: boundaries, plans and maps, showing sites and size of holdings, field name, admeasurements, tenure, leases, land use status (i.e. woodlands and roads) for the effective day to day running of the estate.

46. The Farnley Tyas Estate Terrier documents included a map of the entire estate, as shown in **Figure 9** which showed the fields, woodlands, and both public and private roads in the township, however the map does not directly distinguish between the two. The evidential value of the map is therefore limited to showing the existence of routes at the time of survey, but it can show the character of the application route and its purpose. The map is titled '*Plan of Farnley Tyas dated approx. 1826*'. The map is signed, although the name is difficult to transcribed, but may potentially be "Rowley", which assumably is the person that created the map. However, it is not clear who has dated the map, which seems to have been a later event and not originally part of the 19th century terrier survey, based on the difference in handwriting styles. The map appears to have been dated to 1826 based on the fact that it shows the ancient highway network between Farnley Tyas, Woodsome Mill, and Almondbury. These routes were stopped up and diverted in 1827, as shown in **Figure 10**; which is included to accurately date the Farnley Tyas Estate Terrier Map.

47. Similarly, there are routes, such as 'New Lane', which is now a section of 'Farnley Road' between Manor Road and the application route, that don't appear to exist on the Farnley Estate Terrier Map but are shown in Greenwoods

1817 Map of the County of York in **Figure 11**. The Farnley Estate Map therefore records the physical landscape and road network that existed before improvements and changes were made after 1817. On the other hand, the Farnley Estate Terrier Map does not show historic Farnley Mill at Carr Wood, which is shown to exist in the 1790's, which may suggest an earlier date when the map was produced, particularly before the 1805 Thurstonland Enclosure Award.

Analysis

48. The Farnley Tyas Estate Map shows an area of manorial waste at the eastern end of the village where the properties of Ash Croft and Tanners Croft, Manor Road, are now located. Three routes lead from the manorial waste: the application route (Moor Lane), Crab Lane, and an unnamed track leading northerly to Mill Lane. Each of the routes provide access to separate numbered fields of the Farnley Tyas Estate. As previously mentioned, the 'New Road' between Manor Road and the junction between Moor Lane and the application route, known a section of Farnley Road, is not shown on the map. This would explain why the application route and the section of vehicular highway are both known as Moor Lane. The application route is shown exactly as it exists today; however, the ancient route continues south-westerly along the section of present day Moor Lane that is a vehicular highway maintainable at public expense. Here, the area of manorial waste is relatively wide and is at the location of what is now known as 'Farnley Mill'. The ancient route continues south-westerly and is joined by a road on its northern side that also provides access to fields and is now recorded as Kirkburton Footpath No. 59.
49. The ancient route then leads southerly and terminates at a plot of land numbered '20'. No onward continuation is shown joining the ancient route with what is now Thurstonland Road, which is shown fully enclosed. This depiction differs from Jefferys 1772 County of York Map and Greenwoods 1817 Map of the County of York. The Farnley Estate Map indicates that the primary purpose of the ancient route was as an occupation road to leased land of the estate held by the Earl of Dartmouth. Today, the section of Moor Lane between Brockholes Road and Farnley Road takes a northeasterly or southwesterly route, which

strongly suggests that this section was a newly created/dedicated highway, as there is currently no evidence of a diversion order.

50. The Farnley Tyas Estate Terrier map also shows a road spur commencing on the southern side of the application route leading southerly and terminating as a short cul-de-sac to fields. This section of road is now part of Farnley Road and was shown on Jefferys 1772 Map of the County of York leading south-westerly then easterly to what appears to be common land. Whereas the present day Farnley Road south-westerly. **Figure 9** seems to indicate that the moor/woodland was enclosed between 1772 and 1826, and there was no through-route from Moor Lane to Storthes Hall.

51. The documentary evidence seems to establish that the application route was, on the balance of probabilities, an occupation road before at least 1817, based on Greenwoods Map of the County of York. Jefferys 1772 County of York Map is a reliable source of information, but only purports to show inclosed and open roads; it is not clear that a distinction was made based on public or private status and routes are shown as cul-de-sacs leading to farmsteads. After 1817, based on current routes and Ordnance Survey maps, there appears to have been a radical change in the road network at Farnley Tyas, providing new improved routes between the village and Almondbury, Storthes Hall, and Woodsome Mill. The Farnley Estate Terrier Map also serves to reinforce the re-evaluation of the route described by Warburtons surveyor in 1719, as Moor Lane does not appear to have formed a thoroughfare to Highburton.



Figure 10: 1827 Diversion of Highways at Farnley Tyas (Source: [West Riding Archive Service: QS1/166/4](#))



GREENWOODS 1817 MAP OF THE COUNTY OF YORK

Background

52. Greenwoods 'Map of the County of York' was titled: '*Map of the County of York, Made on the Basis of Triangles in the County, Determine by Lieu. Col, W^m Mudoc, Royal Art^y F.R.S and Captⁿ Tho^s Colby, Royal Eng^{rs} in the Trigonometrical Survey of England, by Order of The Honourable Board of Ordnance, and surveyed in the years 1815, 1816, & 1817 by C. Greenwood Wakefield*'. The map was engraved by S. I Neele & Son, 352 Strand, London, and was later republished by Henry Teesdale and Co. on 21st April 1828 with some amendments, in particular new Turnpike Roads. The original 1817 Map of the County of York therefore acknowledged the use of published data from the official Ordnance trigonometrical survey. The high degree of accuracy and detail of Greenwoods maps largely anticipate the standard of Ordnance Survey, effectively pushing back the data at which map reliability ceases to be a major issue, which in Yorkshire is between 20 and 40 years. (Whitaker H. , 2013) remarks:

"An exceedingly fine map, published considerably earlier than the One Inch Ordnance maps for Yorkshire, and except that it is drawn to a smaller scale, closely resembling them in style and execution".

53. The project was advertised in the Leeds Intelligencer on 1st May:

"PROPOSALS FOR PUBLISHING, by subscription,

A NEW MAP of the COUNTY of YORK, from an actual Survey, laid down upon the Basis of Col. Mudge's Trigonometrical Survey of the Great Triangles of Yorkshire, at a Scale of Three Quarters of an Inch to a Mile to consist of Two Parts, of Four Sheets each, Price Two Guineas

Published by Messrs. Robinson, Son, and Holdsworth, Leeds; Mr J Hurst, and Mr. C. Greenwood, Wakefield.

The Publishers beg Leave to announce, that in Compliance with the urgent Solicitations or numerous highly respectable Characters, they are preparing a Map of the County of York, from an actual Survey.

As no such Survey of the County has been taken since that by Jefferys, in the Middle of the last Century, the Necessity of a new and actual Survey will be evident from a View of the Changes which have taken Place since that Period, in the Manufacturing and Agricultural Parts of this extensive County; from the great Increase of Population, and the consequent additional Number of Villages, Hamlets, Gentleman's Seats, Manufactories, and Mills; as well as from the vast Extent of Waste Ground Increased, and brought into Cultivation; that various Improvements that have been effected in the Roads, the new ones made, and the Canals cut to facilitate Inland Navigation

In this Map, the Ainsty of York, Craven, Richmondshire, Cleveland, Holderness, the Honour of Pontefract, Manor of Wakefield, the Wapontakes, and all other Divisions of Importance, will be distinctly noted, together with the Boundaries of Townships and Parishes; the Course of Rivers and Brooks, Line of Canals, Public and Private Roads, Situation of Towns, Villages, Hamlets, Gentleman's Seats, principal Farm Houses, Manufactories, Mills, Mines, Mountains, Vallies, Lakes, Commons, Bays, Harbours, etc., will be correctly exhibited:- in Fact, to the Nobleman, the Country Gentleman, the Sportsman, the Merchant, the Manufacturer, the Tradesman, and the Traveller, it is hoped that this Map will be found both interesting and useful.

The great Triangles with the Latitudes and Longitudes of the County will be laid down from Colonel Mudge's Trigonometrical Survey, by Messrs. N. and F. Giles, of New Inn, London, as a grand Basis to the general Survey. The Angular Survey of the small Triangles will be made upon that Basis by Mr. C. Greenwood, of Wakefield, of Wakefield, under the Inspection of Messrs. Giles, and Mr C. Greenwood will also superintend the Admeasurement of the full Survey of the County. The Drawing of the Original Map for the Engraver will be made by Mr. William Mounsey, of Otley, and the Engraving

executed by a first-rate Artist under the immediate Inspection of Messrs. Giles and Greenwood'.

54. The advertisement provides evidence that the purpose of the 1815 was to finance the project by subscription and states that a new map was required due to rapid industrial/agricultural revolution, urbanisation, inclosure of common land, and road improvements since Jefferys 1772 County of York Map. The map therefore purports to also show hamlets, principal farm houses, manufactories, and mills, which more often than not are private enterprises or land, as well as towns and villages, which are regarded as public destinations. For that purpose, it was necessary to record both public and private roads. The beneficiaries of the map were not restricted to travellers, which were listed last, but also noblemen, country gentlemen, sportsmen, merchants, manufacturers, and tradesman. Their utility of the map would not be restricted to highways, but also private ways that they may use by private right of way, license, invitation, or permission.
55. The map was duly published at a scale of 1.38 miles to the inch and the 'Explanation', or legend includes: churches and chapels, castles and priories, houses, water mills, wind mills, woods and plantations, heaths and commons, rivers and brooks, navigable canals, towns, authority boundaries, hills and rising grounds, turnpike roads and cross roads. 'Turnpike Roads' were shown coloured orange with black shading on their southern side, whereas 'Cross Roads' were shown uncoloured with two parallel solid lines or dashed lines. Turnpike Roads were all purpose highways administrated by Turnpike Trusts. These organisations were created by private Acts of Parliament to finance road improvement over a principal highway by levying tolls on road roads, issuing mortgage debt, and turnpike trusts were also vested with various powers as a highway authority (Bogart, 2004). The depiction of a turnpike road on Greenwoods Map of the County of York is therefore without ambiguity as to the status of the way.
56. On the other hand, the term 'cross road' has been subject to various judicial cases. Firstly, in *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77, the judge stated:

“The road is again shown on the map of 1802 by Faden and again in Greenwood’s map of 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the topographer-author was intending to represent the road on his map as a public highway”.

57. The judgement is consistent with the advertisement that the map would show both public and private roads, which seem to have been grouped as one category, under the term ‘cross road’. However, in *Hollins v Oldham (Ch)* [1995] C94/0206, Judge Howarth examined Burdett’s Map of Cheshire dated 1777, which similarly included two categories of roads, turnpike road and cross road, and concluded:

“This latter category, it seems to me, must mean a public road in respect of which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when produced would have been so expensive that no other kind of purchaser could be envisaged. There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use. Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway or vehicles”.

58. The judgment bestowed public status to the term ‘cross road’ on the basis that it was not a turnpike road, and on the presumption that the purpose of the map was for wealthy travellers on highways on horseback or carriage. Seemingly, the least burdensome status of presumed dedication at common law that can be inferred from the depiction of a cross road on a commercial map is therefore a public bridleway. However, the background facts are materially different to Greenwoods 1828 County of York Map, which purported to serve a private as well as public purpose. In *Trafford v St Faiths* 1910 74 JP 297, Neville J assumed that the category ‘Good Cross or Driving Road’ on Bryant’s 1826 Map of Norfolk, who was in considerable competition with Greenwood during this period of time. In *Norfolk County Council v Mason* [2004], Judge Roger Cooke commented:

“The Judge made the assumption that “good cross or driving road” meant a public road. I do not read the judgement as determining that as a matter of law it must do so. It is not clear to me from the report why he accepted that “good cross or driving road” was evidence of reputation of public status. The judgement gives no evidential basis. Whether it was in evidence, something stated at the bar or common ground, one has no idea. There is no legal basis for this designation necessarily meaning public status of which I have been made aware. I think the best interpretation is that it is a description of a quality of road most commonly held by public roads rather than private ones and that it is therefore (absent other evidence) some evidence of reputation as a public road... What I do firmly conclude as a result of this is that by itself Bryant’s map is anything but a firm indicator and not too much reliance should be placed on it”.

59. Commercial county maps therefore can provide an indication of public status, but they must be viewed in the context of other evidence and they have a low evidential value as there is no legal basis to assume public status of roads shown within them. Greenwoods Map of Wilshire, dated 1829, and therefore synonymous with the County Map of York, was evaluated in *Fortune & Others v Wiltshire County Council & Another* [2012] EWCA Civ 334 ([‘Fortune 2012’](#)) by LJ Lewison at paragraphs 54 & 55:

“The judge moved on to consider Greenwood’s map of Wiltshire, produced in 1829. Greenwood was a well-known commercial map-maker who produced maps of many English counties. The judge considered that this map also showed a thoroughfare which included Rowden Lane. Prof Williamson agreed. It was not coloured in the same way as the Bath road; but nor were a multitude of other roads linking disparate settlements. The legend of the map shows that the colouring of the Bath Road meant that it was a turnpike or toll road, whereas that of Rowden Lane meant that it was a “cross road”. As the judge pointed out, in 1829 the expression “cross road” did not have its modern meaning of a point at which two roads cross. Rather in “old maps and documents, a “cross road” included a highway running between, and joining other, regional centres”. Indeed that is the first meaning given to the expression in the Oxford English Dictionary (“A road

crossing another, or running across between two main roads; a by-road”). Prof Williamson agreed in cross-examination that a “cross road” was a reference to a road forming part of a thoroughfare...”

“The judge concluded that Greenwood’s map supported “the emerging picture” of an established thoroughfare. In our judgement the label “cross road” added further support’.

60. Importantly, the Fortune 2012 judgement identified that the term ‘cross roads’ included, but were not restricted to, highways. Furthermore, the judgement was with regards to Greenwoods 1829 Map of Wiltshire, so there is no reason to suppose that the document was examined in light of the 1815 County of York Map advert. So far, the judgements have stated that a cross road shown on a commercial map may be either public or private status, there is no legal basis to infer public status, a thoroughfare cross road could be an indicative evidence of a highway of at least public bridleway status, however, a cross road may also be vehicular highway if corroborated by other documentary evidence. There are some sources that show that the term ‘private cross road’ existed in the 19th century:

“With respect to the widening of the further portion of the common way below his private cross road, he would give up the land on the eastern side of the common way...” ([Tamworth Herald, 7th May 1898](#));

“The road where the body was found is a private cross road leading from Middleton Road to Holland Road and is in one of the respectable residential parts of Higher Crumpsall”. ([Manchester Evening News, 17 May 1890](#);

“Looking round, I saw that a drove of the Highland cattle had just emerged from a private cross-road into the main road, and were rapidly coming up with me”. (London Society, 1881)

61. A highway is defined at common law to pass and repass over land between highways, settlements as a thoroughfare, or they can be cul-de-sacs leading to a place of popular resort. However, there is no legal principle that a route, which joins a highway at either end, is itself automatically a highway and there is an inalienable public right of passage, such that it is a thoroughfare. Connecting

with highways at either end may make public use and dedication more likely, but evidence of public user is still required and there are overt acts landowners can make to prevent public passage and the permanent dedication of a public right of way, such as a sign, gate, barrier, or closing the way one day a year. Evidence of public user dating back to the 18th and 19th century is not available, hence an investigation looks for inferences within corroborating documentary evidence. In conclusion, Greenwoods 1828 Map of the County of York may provide evidence of reputation, but it is not of sufficient evidential value in itself to directly infer status without consulting other documentary sources.

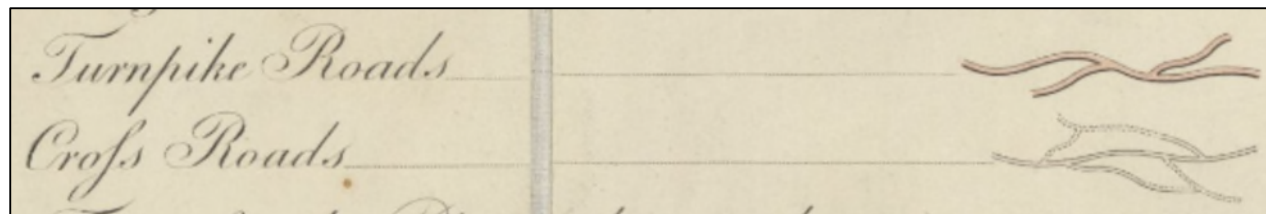
Analysis

62. **Figure 11** shows an extract of Greenwoods 1817 Map of the County of York. The application route is shown in the category of a 'Cross Road' and is shown leading from a new junction of Farnley Road, what was then called 'New Road'. The application route is shown leading to what is now known as Manor Road but was then simply known as 'the village', and there is a clear natural continuation northwards then eastward to Farnley Mill and then onwards to Woodsome Lees Lane and Woodsome Lees at the Huddersfield and Penistone Turnpike Road.
63. Farnley Mill was first recorded in Land Tax Returns of 1793, when it was leased by William Roberts. It appears to have been constructed around this date, and in an 1805 Terrier of the Dartmouth Estate, it was referred to as a "*fulling and scribbing mill built by the tenants (Roberts and Co) in 1794*" (May, 2012). The mill is therefore not shown on Jefferys 1772 County of York Map for that reason. It is possible that the road from Farnley Tyas to Woodsome Lees, via Farnley Mill, also did not exist until after 1793. Today, this route is recorded as a private carriage road with a co-existing public footpath long the section of the road that leads from the mill, through Carr Wood, to Woodsome Lees.
64. Other routes depicted include the sections of Farnley Moor Lane and Brockholes Lane that were 'omitted' from Jefferys 1772 County of York Map, the private road leading to the hamlet of Farnley Hey, which today is recorded with a co-existing public footpath, and a thoroughfare called Lud Hill Lane, which is today recorded as a public footpath, although there is an outstanding

claim for a public bridleway. Based on the purpose on the map, which was to show both public and private roads and its evidential weight, it is not possible to confidently infer a status of the application route based on this document or the proceeding evidence.

65. A highway is defined at common law as the right to pass and repass over land. These must either be a thoroughfare between other highways or settlements, or they can be cul-de-sacs leading to a place of popular resort. However, there is no legal principle that a route, which joins a highway at either end, is itself automatically a highway and there is an inalienable public right of passage, such that it is a public thoroughfare. Connecting to highways at either end may make a route more likely to be used and dedicated to the public, but there are still overt acts the landowner can take to prevent the acquisition of public rights, such as gates, barriers, signs, or closing the way or one day a year. As the application route forms a thoroughfare, it fulfils one of the criteria necessary for it to be a highway. Other corroborative documentary sources are therefore necessary to determine its status. Nevertheless, the document could be supportive evidence towards a reasonable allegation of a public bridleway.

Figure 11: 1817 Greenwoods Map of the County of York (Source: [East Riding of Yorkshire Council Archives](#))



ORDNANCE SURVEY

Background

66. The Ordnance Survey are the official mapping agency in the United Kingdom. The organisation collects and maintains uniform datasets with national coverage, containing detailed mapping of the built and natural physical topography of the landscape; transport networks including road, rail, waterways, tracks and paths; terrain and height data; administrative and electoral boundaries information; and geographical names (Commons, 2008). The Ordnance Survey originated for military purposes, however, rapid urbanisation and new transport networks required accurate large scale maps and in 1841 '*An Act to authorise and facilitate the Completion of a Survey of Great Britain, Berwick upon Tweed, and the Isle of Man*' (['the 1841 Act'](#)) granted the Ordnance Survey was granted the right to enter land and map physical and administrative boundaries (Fletcher, D, 1999).
67. Section 12 of the 1841 Act specifically states that the Ordnance Survey does not provide, and has no remit to ascertain and record, any map with property boundaries, or information about ownership of physical features (Aldridge, 1997). Ordnance Survey maps are therefore topographical and do purport to fix or record the invisible line of a legal property boundary (*Willsher v Scott* (2007) EWCA Civ 195). The invisible property boundary may run parallel to but a few metres distance from the visible boundary of a fence or hedge in the middle of a highway or private road, based on the *ad medium filum* presumption. Nevertheless, property boundaries may depend or be coincident with surveyed map features, such as: fences, walls, hedges, similar visible objects and naturally occurring divisions (Tyler, 1876) (Brown, Robillard, & Wilson, 1995).
68. The Ordnance Survey has produced a series of topographic maps at different scales, notably: one inch, six inch, and 1:2500. The detailed, large scale 1:2500 maps from the 1870's onwards provides the best evidence of the position and width of routes and the presence of any structures on them. The Ordnance Survey 1:2,500 scale maps identify each parcel of land by field numbers, which

refer to books of reference in which the acreage and, until about 1880, the land use of each parcel was recorded. Field numbers derive from the requirement that was placed on the Ordnance Survey to measure the area of every county, borough, district, ward, and parish in the United Kingdom (Kain, R J P & Baigent, E, 1992). The ownership and occupation is not recorded in these books. Consequently, Ordnance Survey maps are universal as a secondary source for cadastre maps, such as the 1910 Finance Act.

69. The roads on Ordnance Survey Maps were divided into four classes to indicate accurately, at a glance, their military value. First Class Roads were shown by two thick parallel lines, Second Class Roads were shown by two parallel lines, but only one was thick on the southern side. Third Class Roads were shown by only two thin parallel lines. Lastly, Unmetalled Roads were depicted with two narrow lines. [The Highways and Locomotives Act, 1878](#), introduced a distinction between a main road and an ordinary highway. A ‘main road’ was any road which ceased to be a turnpike road within the period since 31st December 1870 to the 16th August 1878. [A parliamentary debate in 1893](#) stated:

“Of course, it was not the business of the Ordnance Surveyor to judge whether a path was of a private or public character, and all footpaths ought to be laid down, but care should be taken to make as roads tracks which were only temporary, or which were not roads at all. The recommendations of the Committee resolved themselves into three heads- namely, those that could be carried by the Department, those for which Treasury sanction must be obtained, and those which necessitated legislative action. The Department could deal with the question of footpaths and the characteristics of roads. He thought the Committee had made a good recommendation as to roads. Formerly, when turnpike roads existed, they were clearly shown on the maps and there was a distinct meaning attached to the term “main road”. Since the disappearance of turnpike roads, however, there had been no means of means of judging what was a first-class and what a second-class roads. The Committee had laid down the rule that a well-metalled road 14 feet wide on which two carriages could go abreast, or pass easily, should be regarded as a first-class road, whilst a well-metalled roads less than 14

feet should be regarded as a second-class road. They had defined a well-metalled road as meaning a road capable of being travelled over at a high rate of speed all the year round, Roads inferior to these were again to be divided into two classes by distinct characteristics. These Rules would, be believed, lead to a much clearer marking of roads on the Ordnance maps". (Cobbett's Parliamentary Debates, 1893).

70. The classification scheme was therefore dependent on the width of the road at issue and the type of traffic each road could carry. In another parliamentary debate in [1893, the Ordnance Survey Committee](#) directed the following rules:

"That the classification roads is bad. Since the disappearance of turnpikes there seems to be no round rule regarding the representation of roads on the Ordnance Survey maps, and the subject seems to us require consideration. We consider that the classification of roads proposed by the Military Committee of 1891 should in substance be adopted on the Ordnance maps. This classification was as follows, viz., first class, well metalled roads of over 14 feet of metal, where two carriages can easily pass; second class, well-metalled roads of less than this width, fit for fast traffic at all seasons; and third class, cart roads or tracks not ordinarily used by superior carriages or for fast traffic.

It appears to us desirable that the roads thus classified as first and second class should be of such a nature that the public are certain of having free access over them, not disturbed either by their physical condition or by their being private, and we think that the third class should be broken into a third and fourth class, so as to admit of inferior metalled roads being distinguished from roads and tracks wholly unmetalled. We therefore recommend the following classification and definitions, viz:-

First class- Roads with over 14 feet of good metal, fit for fast traffic at all seasons of the year.

Second class- Roads of similar character with less than 14 feet in width of good metal.

Any of the roads in these two classes which are not repaired by an authority under legal obligation to maintain them, and are in consequence not highways, should be indicated by a slight modification of the characteristic adopted, such as dotted lines. This paragraph would apply principally to roads in public and private parks, private roads of good character, but not necessarily open to the public.

Third class- Metalled roads of an inferior character, whether maintained by a public authority or not.

Fourth class- Unmetalled roads, tracks, and green lanes.

A scheme of characteristics has been shown to us by the Director-General which satisfies us that there will be no difficulty in representing the above four classes on the maps” (Sessional Papers. Vol 72, 1894).

71. Under [the Local Government Act, 1888](#), County Councils acquired maintenance responsibility for all main roads. [The Local Government Act, 1894](#), reorganised local administration in England and Wales and followed the reforms at county level. A second tier local government system within the county council areas created urban and rural district councils based on the earlier classification of sanitary districts. [The Public Health Act, 1875](#), transferred highway responsibility to urban districts, whilst section 25(1) of the 1894 Act transferred highway liability to rural districts. A further expansion on what was meant by the terms first and second class is contained in a circular dated 23rd December 1896, in which it was stated that roads should be classed as first and second class according to whether they were main or district roads (Hodson Y. , 1999). Furthermore, the '[Instruction to Field Examiners](#)' by the Director General of Ordnance Survey in 1905 states:

“The Examiner should state on the tracing the classification of roads, etc., under the following headings, viz.:-

First Class Roads, viz.: Main Roads, generally leading from town to town, metalled and kept in good repair, and with a minimum width of metalled roadway, exclusive of edges and footway, of 14 feet.

Second Class Roads, viz.: Metalled roads in good repair, fit for fast traffic at all seasons, i.e., it should be possible to drive carriages and light carts over them at a trot. This class will, as a rule, include roads between villages, or between villages and towns, or between one first class road and another, and approaches to railway stations.

Carriage Drives, Second Class, viz.: Carriage drives, up to the standard of second class roads.

Public Roads, Metalled, viz.: Those other than first and second class.

Carriage Drives, Metalled, viz.: Those not up to second class.

Occupation Roads, Metalled.

Public Roads, Mud.

Occupation Roads, Mud.

Cart Tracks.

Bridle Roads.

Footpaths.

Roads should be classified according to their general character, and not with reference to their best or worst portions; but no road should be shown as second class unless throughout the part so shown it is fit for fast wheeled traffic at all seasons”.

72. The practice of shading metalled public roads for wheeled traffic, kept in proper repair by the local authority on their eastern and southern sides, was first introduced from 1884. Dr Yolande Hodson explains in ‘Roads on OS 1:2500 Plans 1884-1914 (Rights of Way Law Review, 1999) remarks that the primary purpose of the shading of roads on the large-scale maps was to guide the draftsman in the preparation of revisions to the One-Inch Maps. Dr Hodson concludes that shaded lines are not necessarily an indication that such roads shown in such a manner were public:

“However, it has been demonstrated that it is not possible to identify whether a shaded (i.e. thickened) line, as shown on the 1:2500 plans, indicates a public or private road. Even where the published plans carry different widths of shading that appear to conform to the three widths apparently specified in the instructions, so that a road might be interpreted

as public, the lack of uniformity and, above all, specified gauge of line, is such that it is not possible to predicate with scientific certainty that the road was regarded as public. For example, the absence of any specification for line width means that where a plan shows two different widths of line, it would not be possible to judge, on the basis of the plan alone, whether the ticker line denoted a first or second class road, or, on the other hand, a public second class road and a private second class road. All that can be said is that roads shown with shaded lines should have been metalled and well maintained at the time of survey or revision.

Roads with shaded lines may have been of first class standard, in which case they were probably public, or they may have been second class standard, in which case they could have been either public or private. This illustrates the danger of interpreting a road as public on the grounds that it looks like all other known public roads...".

73. Ordnance Survey maps provide good evidence of the physical existence of routes at the time the map was surveyed but such maps are no evidence of whether a road is public or private (*Attorney General v Antrobus* (1905)) (*Moser v Ambleside Urban District Council* (1925) 89 JP 118). Similarly, in *Norfolk CC v Mason* [2004] NR205111, Cooke J observed that the Ordnance Survey has one major self-imposed limitation in that it portrays physical features, but it expresses no opinion on public or private rights. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways (*Attorney General v Horner* (1913)).
74. However, the disclaimer which has been added to editions since the 2nd edition maps, along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way (*Masters v Secretary of State for the Environment, Transport, and the Regions* (2000) 4 PLR 134). Nevertheless, the available Ordnance Survey maps can be useful evidence to determine the status of a route when used in conjunction with other evidence and cover the time area prior to the 1910 Finance Act Valuation Reference Maps.

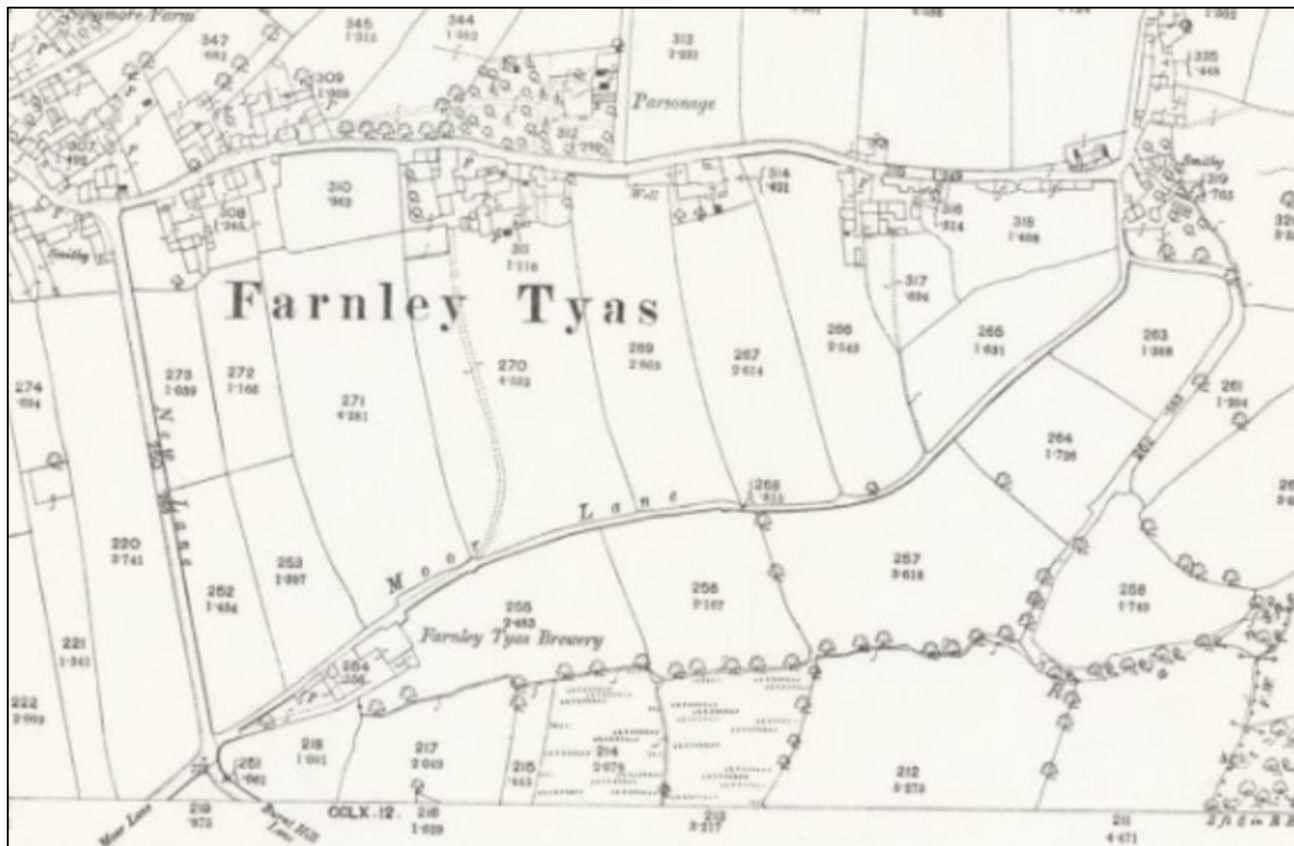
1893 OS 1:2,500 Map

75. The application route is shown on the 1893 OS 1:2,500 Yorkshire [West Riding] CCLX.8, which was surveyed in 1888, as a Second Class Road and named as 'Moor Road', as shown in **Figure 12**. The 1893 OS Rules tells us that the classification infers that the application route may have been a metalled road, less than 14ft wide, in good repair and fit for fast wheeled traffic at all times. The shading is just as prominent as other routes that are public vehicular highways today. The application route leads from the junction of 'New Lane' and 'Burnt Hill Lane'; which are also classified as Second Class Roads and are vehicular highways today, to the eastern end Farnley Tyas village. The application route therefore led between public destinations.
76. Inferring that the application route was a highway maintainable at public expense is at odds with **Figure 16**, which does not record the route within the 1925 list of highways. However, as stated above, it is not possible to discern, based on this map alone, whether the application route was a public second class road or a private second class road. For instance, in 'Roads on OS 1:2500 Plans 1884-1914' (Rights of Way Law Review, 1999), Dr Yolande Hodson on the interpretation and depiction of 'Carriage Drives' concluded that the term encompasses private vehicular routes and was not solely confined to those carriage drives passing through ornamental estate grounds, and stated:
- "The implication of this is that on the revision material for the 1:2500 plans, metalled occupation roads and main carriage drives that were or a second class standard would be shown in the same way as public second class roads, and it would not be possible to distinguish between the two. It was emphasised that "Their condition as fit for wheeled traffic is the chief point to be noted". This was, in effect, a confirmation of the instruction to show well maintained private roads in a similar manner to the public roads that were set out by the circular of November 1885".*
77. Notably, Farnley Tyas Brewery is shown leading at the western end of the application route on its southern side. There is a track shown by a double dotted line leading from Moor Lane, east of the brewery, and northwards to Farnley Tyas towards what used to be 'Park Farm' but is now known as 'Park Farm

Court' and 'Park Mews'. The commencement of the track is at photo 7 in Figure 4 where the application narrows from approximately 4m to 2.5m wide and there is a distinct change in character. The instruction to field examiners states: "*When occupation roads or cart-tracks are fenced on one side only... their outer line of dots only is shown...*". This route is most likely an unenclosed occupation road or cart track leading to private property. This track was shown on aerial imagery from 2002 to 2018, when the farm was demolished for residential houses.

78. It is not possible to confidently infer public status from the 1893 OS 1:2,500 Map because, as with Greenwoods 1817 Map of the County of York, both public and private roads could be shown in the same manner. Nevertheless the document could provide corroborative evidence towards a reasonable allegation of public bridleway rights or higher.

Figure 12: 1893 OS 1:2,500 Yorkshire [West Riding] CCLX.8: [NLS Maps](#))



1896 OS One-Inch Map

79. In 'Roads on OS 1:2500 Plans 1884-1914' (Rights of Way Law Review, 1999), Dr Yolande Hodson further states that the one-inch survey or revision was a separate project from the 1:2,500 OS Map series, to record new topographical detail, correct errors, for military purposes. The two OS maps would therefore not be an exact replica, creating differentiation. The evidential value of this document compared to the 1893 1:2,500 OS Map is that Farnley Tyas Urban District Council, which was created in 1894, will have been consulted with regards to first and second class roads:

“While the overt differentiation of private from public roads was never to be made on the one-inch map, an important outcome of these inquiries was that the new edition of the one-inch would be prepared from revisions that were independent of the progress of the large-scale plans. In other words, the road classification that now appeared on the one-inch map would not necessarily reflect what was surveyed at the 1:2500 scale, because the revisions for the two scales were now separate operations.

The object of the separate revision for the one-inch map was to speed up production so that it would be less out of date by the time it came to be published. The specific purpose of the new revision was spelled out in 1896 in an internal set of instructions: “to supply detail that has come into existence since the sheets of the map were published; to remove the obsolete or unnecessary detail; to correct errors; to supply details of military importance; to secure uniformity by a systematic classification of the roads, etc”.

There are three important points to be drawn from this paragraph. The first concerns the fallibility of maps; no map should be assumed to be without error, and here we have an overt admission that OS maps were no exception. If errors occurred on the one-inch map, they might, in turn, have been derived from errors made on the large-scale plans. Mistakes did, and still do, occur in OS mapping, and this point should not be forgotten in map interpretation”.

80. The key to interpreting roads on the large-scale plans is to examine how they are shown at the one-inch scale. Many roads depicted with a shaded line at the 1:2,500 scale in rural areas are shown on the one-inch map as third class, which encompasses private roads. The one-inch map is therefore useful in clarifying the interpretation of the shaded line on the 1:2,500 plan where it is impossible to discern any difference in the width of any of the shaded lines on the plan.
81. **Figure 13** shows the 1896 OS One-Inch Sheet 68 Glossop, which covers the relevant area. The document is an 1894 revision of a 1871-72 survey that was originally published in 1887. The Yorkshire & Lancashire portions were added in 1895. In contrast to the 1893 OS 25 Inch Map, which was surveyed before the one-inch revision, only a section of the application route is shown as a 'Metalled Third Class Road', with two solid parallel black lines, leading from what is now known as Farnley Road to the point where the double dotted track leading from the application route to what was formerly Park Farm, as described above.
82. This section does not lead to a public destination or place of popular resort and is more consistent with a private road that was metalled to third class standard in association with the brewery and private access. The remainder of the application route is classified as an 'Unmetalled Road', with two narrow solid black lines continuing from just east of the brewery north-easterly to join Manor Road, or 'The Village', as it was then known. The designation is consistent with either a public or private road. The application route continued to be shown in this manner throughout the subsequent revisions of the one-inch OS Map. It appears that the 1896 OS One-Inch Map has clarified that the application route was shown on the 1893 OS 25-Inch Map as a second class metalled road because it was a private road. Other routes continued to be shown as second class, such as Farnley Road, Butts Lane, and the section of Moor Lane that today is recorded on the List of Streets as a highway maintainable at public expense.

Figure 13: 1896 OS One-Inch Sheet 68 Glossop (Source: [NLS Maps](#))



<i>Metalled Roads; First Class</i>	} <i>Fenced</i>	<i>5 (Mile distance)</i>	} <i>Unfenced</i>
" " <i>Second Class</i>		<i>(Altitude) 211</i>	
" " <i>Third Class</i>			
<i>Unmetalled Roads</i>			
<i>Footpaths</i>			

1906 OS One-Inch Map

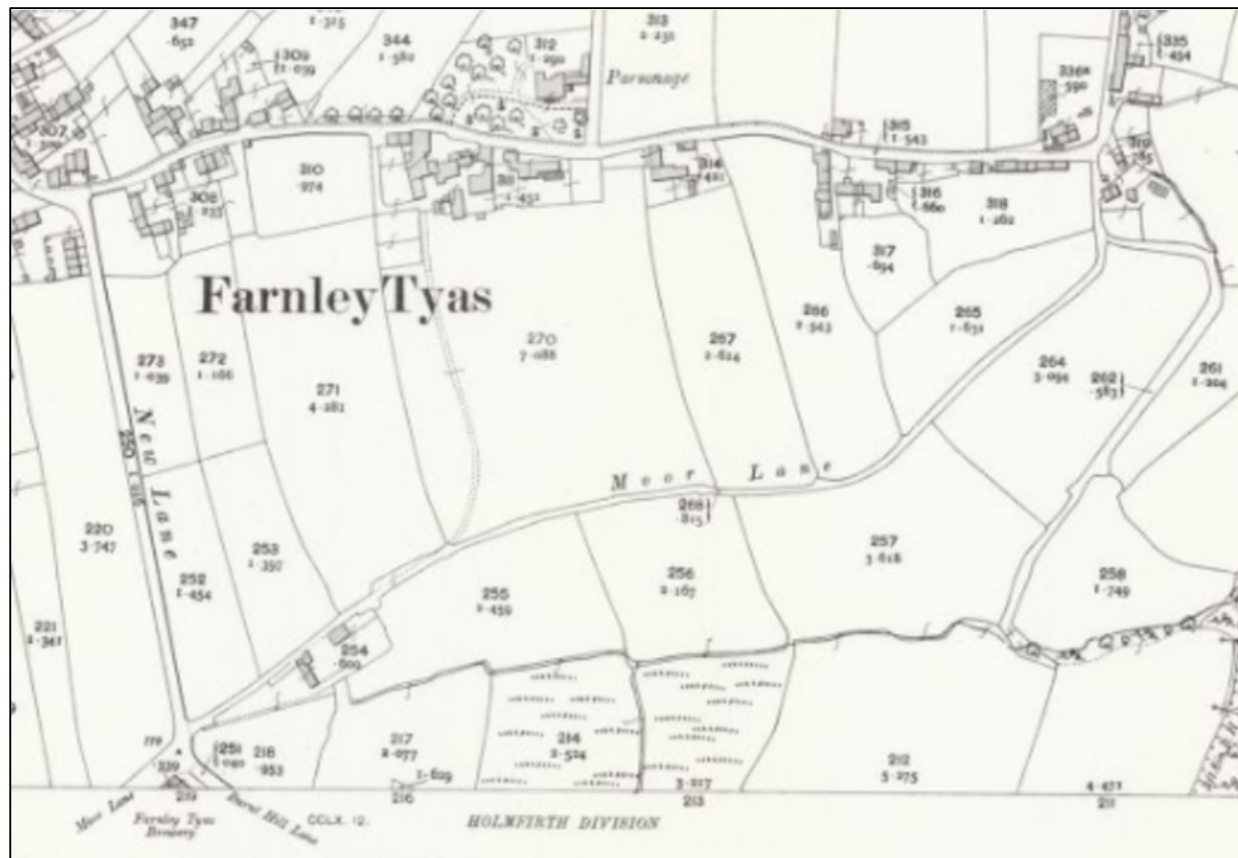
83. The 1905 Instruction to Field Examiners also stated:

“One-inch revisers deal with a larger area of country at a time than large-scale surveyors and revisers, and are more likely to arrive at a uniform classification. Hence, on the large scale, Examiners should, if possible, follow the one-inch classification. Should the latter in any case be found seriously and clearly wrong, the Examiner should report the fact in writing”.

84. The indication from the above extract is that the one-inch classification of roads is considered the most reliable and the 1:2,500 OS Maps were revised in parallel accordance. However, on the 1906 OS 1:2,500 Yorkshire [West Riding] CCLX.8 map, which was revised in 1904, the application route is no longer shown as a Second Class Road as there is no shading on its southern or eastern side. This map postdates the 1905 OS Instruction, which stated that no road should be shown as second class unless throughout the part so shown, it is fit for fast wheeled traffic at all seasons. This means that it was no longer considered to be a metalled road throughout its length in good repair and fit for fast wheeled traffic at all seasons.

85. Its depiction could therefore be consistent with a metalled public road or occupation road. One significant difference between the 1893 and 1906 OS 25 Inch maps is that the Farnley Tyas Brewery has relocated to a different section of Moor Lane, west of the New Lane/Burnt Hill Lane junction, which may have impacted on its maintenance. It appears that the 1893 OS 1:2,500 Inch Map was revised in accordance with the 1896 OS One-Inch Map to produce the 1906 OS 1:2,500 inch map as guided by the instructions to field examiners. However, it may also be that the route was no longer maintained to the standard of a second class road due to the relocation of Farnley Tyas Brewery, which occurred between 1893 and 1906, or another legal event.

Figure 14: 1906 OS 1:2,500 Yorkshire [West Riding] CCLX.8 (Source: [NLS Maps](#))



THE FINANCE (1909-10) ACT, 1910

Background

86. The Finance (1909-10) Act, 1910, ([‘The 1910 Finance Act’](#)) received Royal Assent on 29th April 1910 and introduced four new land taxes: increment value duty, reversion duty, undeveloped land duty, and mineral rights duty. To calculate the tax to be paid on the occurrence of a qualifying event under the four land duties, section 26(1) of the 1910 Finance Act required the valuation of all land in the United Kingdom under separate occupation at the antecedent date of 30th April 1909. The basic value ‘datum line’ was obtained using a series of subtracting calculation methods under section 25 of the 1910 Finance Act, each known as: the gross value, full site value, total value, and assessable site value (Short, B & Reed, B, 1986).
87. Valuation Books were the first major documentation of units of valuation based on rating tax records, including estimated extent. Each hereditament was assigned a unique reference number. Landowners were issued with forms and required to furnish the extent of their land and if it was subject to public rights of way or easements. Total value of land was calculated by deducting from the gross value the amount public rights of way or easements diminish use of the hereditament. Knowingly making a false statement was a criminal offence. The data was transcribed into a Field Book followed by a property inspection. Landowners were given notice of the provisional valuation, which after any appeals, became final (Beech, G & Mitchell, R, 2004).
88. The Valuation and Field Books were accompanied by an administrative graphical index using Ordnance Survey maps typically printed at 1:2500 scale, or enlarged 1:1250 scale for urban areas. Two sets of reference maps were created: working and reference plans. Valuation Officers transcribed in red ink the unique reference hereditament number and their extent was shown by a colour wash along fixed physical boundaries (David & Cuthbert, 1910). The project was completed in 1915 but the legislation was repealed in 1920. However, the comprehensive survey resulted in detailed volume of historic data known colloquially as ‘the New Domesday’ (Short, 1986).

89. Legal judgements known as [Maltbridge](#); Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (Ch) ([‘Agombar’](#)); Commission for New Towns and Another v JJ Gallagher Ltd [2002] EWHC 2668 (Ch) ([‘Gallagher’](#)); Todd & Anor v Secretary of State for Environment Food and Rural Affairs [2004] EWCA 1450 ([‘Todd’](#)); R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs [2009] EWHC 171 ([‘Ridley’](#)); Fortune & Others v Wiltshire County Council & Another [2010] EWHC B33 (Ch) ([‘Fortune 2010’](#)); & Fortune & Others v Wiltshire County Council & Another [2012] EWCA Civ 334 ([‘Fortune 2012’](#)); considered the 1910 Finance Act documents to be viable corroborative evidence to establish the existence of highways.

90. Specifically, as the most authoritative judgements, Agombar stated at paragraph 47:

“The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network... is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority”.

91. Almost identically, Fortune 2010 also stated at paragraph 766:

“The Lane was not shown as falling within the hereditament of any private individual, but was shown as part of the general road network... that factor is a powerful indicator that those sections of Rowden Lane were at the time thought to be in public ownership and vested in and maintainable by the highway authority”.

92. The theory proposes that routes shown excluded from private hereditaments on the 1910 reference maps are in public ownership and vested in the relevant highway authority, which are considered to be exempt from the four duties under section 35(1) of the 1910 Finance Act (Breen, 2017). However, at the antecedent date of 30th April 1909, highway ownership was dependent on geographical classification between Urban & Rural District Councils, and maintenance liability. Main Roads were vested in County Councils by virtue of [section 11\(6\) of the Local Government Act, 1888](#). Urban District Councils owned the surface of all highways maintainable at public expense by virtue of

[section 149 of the Public Health Act 1875](#) (Coverdale v Charlton (1878)). The only statutory vesting of highways in Rural District areas was in the case of Main Roads (see above); all other dedicated highways remained in private ownership (Royal Institution of Chartered Surveyors, 1901).

93. Two criteria therefore have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan at the antecedent date:
- a) the route is within the jurisdiction of an Urban District Council or is a Main Road.
 - b) the route is a highway maintainable at public expense.
94. Case law analysis has revealed a long succession of incorrectly determined judgements with regards to the 1910 Finance Act documents. As of 30th April 1909, Mill Lane in Maltbridge was within Sawbridgeworth Urban District Council jurisdiction but private conveyance documents demonstrated it was not maintained at public expense. In Agombar, Gallagher (part of the route), Todd, Ridley, and Fortune, all the relevant highway authorities were Rural District Councils. The uncoloured routes in all the judgements could not have been in public ownership as the statutory vesting concept criteria was not satisfied; the fee simple of the uncoloured routes remained in private ownership.
95. In particular, Fortune 2010 & 2012 reviewed the 1910 Finance Act evidence based on the supposition that Rowden Lane was within the jurisdiction of Chippenham Borough Council. However, the [Wiltshire XXVI. 2 OS 25-Inch 1900 Map](#), which formed the base map for the 1910 Chippenham Valuation and was analysed in Fortune 2010, clearly shows that the western bank of the River Avon formed the historical boundary between Chippenham Rural District and Chippenham Borough Council. Highway responsibility did not transfer from Chippenham Rural District Council until the borough was expanded to incorporate Rowden Lane by [Act of Parliament in 1914](#); 5 years after the antecedent date.
96. The '[Instruction to Valuers \(No.560\)](#)' detailed that based on the *ad medium filum* presumption, the owner of land generally owns half of the adjoining street; collectively forming the gross unit of valuation area (Q. C. Braham, D, 2002). [Section 4 of the 1875 Public Health Act](#) provides the most credible definition of

the term street and encompasses all types of highway maintainable at public expense listed under section 5 of the 1835 Act; not limited to public carriageway status. Only the net unit of valuation area, excluding the adjoining highway, was to be recorded in the Valuation Book and on the reference plan. However, according to legal custom and at the landowner's request, the gross unit of valuation area, including the adjoining street, could be recorded on the reference plan.

97. [A discussion of the land valuation process in the House of Commons in 1911](#) (House of Commons Hansard, Volume 31, dated 14 November 1911) provides evidence that it was the practise of District Valuers to only record the net unit of valuation area that was in sole and separate occupation on the reference plan, to the exclusion of private 'tenfoots' used in common by various owners and occupiers; conforming with section 26(1) of the 1910 Finance Act. Land dedicated as a highway in perpetuity and private ways with multiple easements, particularly in urban areas, are not in the exclusive, or beneficial, occupation of the landowners. Accordingly, it cannot be automatically inferred that the existence of a highway is the only plausible explanation to account for an uncoloured route on the reference plan. The 1910 Finance Act reference plan needs to be corroborated with other documentary sources.
98. Recording the net unit of valuation area on the reference plan creates a powerful correlation between uncoloured routes and enclosed boundaries, which also reflects the limitations of the valuation base map. Ordnance Survey maps are topographical and do not show invisible legal property boundaries, such as within the middle of a highway or private way. Consequently, land registry and conveyances utilise the effective general boundaries rule based on visible topographical features as a practical and economical alternative to the onerous 'fixed boundaries' approach first prescribed under the [Land Registry Act, 1862](#) (Lampert & Woodley, 1991). The 1910 Valuation Reference Map is an administrative graphical index and can never be a definitive map of exact property titles; making it likely the District Valuers also utilised the general boundaries procedure.
99. The hereditament colour wash adjoining an uncoloured route identifies the net unit of valuation and a physical feature to which the gross unit of valuation and

invisible property boundary is related. By contrast, Agombar and Fortune analysed the reference map by assuming the hereditament colour wash represents the gross unit of valuation and therefore concluded the uncoloured land was in public ownership. In circumstances where an uncoloured route could potentially be a highway vested in an urban district council, section 35(1) of the 1910 Finance Act remains irrelevant. The four duties could not be imposed on highways in public ownership by default. A highway fee simple cannot be sold, leased, developed and does not include possession of the subterranean minerals, which had a constant value of zero by virtue of section 23(2) of the 1910 Finance Act. Equally uncoloured land in private ownership did not qualify for a reduction under sections 25(3) and 25(4)(c) of the 1910 Finance Act because ownership of an enclosed highway or private route is generally based on the *ad medium filum* presumption, which could subsequently be rebutted by the actual owner of the fee simple, such as the Lord of the Manor in some cases.

100. Case law has mistakenly applied a uniform explanation for uncoloured routes to a non-uniform dataset. In reality, there are numerous variables to account for the depiction of a route on the reference plans, such as whether the landowner appeals a provisional valuation or requests the gross unit of valuation is recorded on the reference plan; and whether any section of a route is physically enclosed. However, the primary information recorded on the Valuation Reference Map are net units of valuation that are in separate occupation. Therefore, the only reasonable conclusion that can be elucidated from the fact an area of land leading between hereditaments is shown uncoloured on a Valuation Reference Map is that, based on a legal presumption, it forms part of the gross unit of valuation of those hereditaments but is not in the exclusive occupation of the landowner(s); leaving open the question of whether multiple occupation is due to a public or private way. The 1910 Finance Act documents have to be recognised for their purpose, limitation, and investigated objectively within the context of the encompassing historical facts to establish the existence of a highway; only then can the 1910 Finance Act gain evidential value.

Valuation Reference Maps

101. The applicant provided two working copies of the 1910 Valuation Reference Maps. The record sheet plans are held at The National Archives in Kew under catalogue No. [IR 134/6/73](#) & [134/6/74](#) and also at West Riding Archives in Wakefield using catalogue finding no: [C243/246](#). The Ordnance Survey Yorkshire [West Riding] base map sheets are: [CCLX.9](#) and [CCLX.10](#) at a scale of 1:2500, which were revised in 1904 and published in 1906. The available maps show that a significant section of Mean Lane, between Station Street to the south-west corner of hereditament 1585, including part of the Claimed Route, is shown as uncoloured and excluded from the adjacent hereditaments of: 337 Pt, 370, 656, 1306, 1316, 1436, 1602 Pt, 1603, 1620, 1657, 1666, 1879. Hereditament 1602 Pt bounds the Claimed Route on either side and is shown with a red brace to link the two land parcels together. The remainder of Mean Lane and the Claimed Route is shown leading within the hereditaments of 1583, and a land parcel of 337 Pt.
102. The applicant also provided a text extract from an unknown source, which states: *“The Finance (1909-1910 Act 1910 provided for land valuations to take place across the country so that the increase in its value could be taxed. Deductions from the assessable value could be claimed by landowners where the land was crossed by a (public) footpath or bridleway. Where a public vehicular highway crossed land, it was usually omitted from the valuation, excluded from adjacent hereditaments, and shown on the Inland Revenue’s plans as a “white road”. If the route were a private vehicular way, then it could be developed, increase in value and so be taxed. Accordingly, private tracks were not usually excluded from the assessable hereditaments”*. A note from the applicant on the 1910 Finance Valuation Map states: *“Shown Mean Lane as a White Road”*. Therefore, the applicant is inferring that, as a section of Mean Lane is shown uncoloured and excluded from adjacent hereditaments, it is a public vehicular highway. Whereas, the remainder of the route shown within the assessable hereditaments must be a private vehicular way.

Figure 15: IR 260/8 Valuation Reference Map (Source: Kirklees Bridleway Group/[West Riding Archive Service](#))



Evaluation

103. The Claimed Route satisfies Test A, as stated at paragraph 93 above and was located within the authority of Farnley Tyas Urban District Council, creating the potential for it to be in public ownership via statutory vesting. The whole of the application route is shown excluded from the adjacent hereditaments, which may indicate that Test B is also satisfied, based on the inference that it was excluded from valuation because it was a highway maintainable at public expense and therefore vested in Farnley Tyas Urban District Council.
104. Public ownership is therefore on possible theory to explain why the application route was excluded from the adjacent hereditaments. The conclusions provided by Agombar and Fortune therefore could be applicable to this case. Nevertheless, it is apparent that the 1910 Finance Act documents provide no evidential weight in isolation and must be considered within the context of the surrounding historic evidence, pre-and post-dating the record. The 1893 OS 25 Inch Map may suggest that the whole of the application route was a highway maintainable at public expense to second class road standard at this period of time. The fee simple of the application route would therefore be vested in the relevant highway authority. However, the analysis of the 1906 25 Inch Map and 1896 One Inch Map suggests otherwise and that it was not metalled throughout its length and only provided access to a brewery and a farm, in which case the application route would remain in private ownership.
105. The latter interpretation is consistent with the List of Streets held by the Council, which does not include the application route and a note on the 1974 handover records states: "*Moor Lane east of Farnley Road is private*". The relevant minute books from Farnley Tyas Urban District Council, which amalgamated with Thurstonland Urban District Council in 1925, have been reviewed and only one piece of document was discovered that may relate to the application route, as shown in **Figure 16**. The document shows that the highways within the amalgamated authority's jurisdiction were divided into three districts: No. 1 related to highways at Thurstonland township, and Nos. 2 and 3 districts to Farnley Tyas and Woodsome. Under the third district, the document states: "*Moor Lane from Longley Lane to the Brewery & to the Village*". At first glance,

this description appears to incorporate the application route. However, the document has to be analysed in light of the current list of streets and also by analysing the routes and applying them to their present names, which is provided below, focusing only on Nos. 2 & No. 3 districts:

No. 2-

- Longley Lane from Hall Ing & Brockholes Lane though to Thunder Bridge (including: Heigh Green Lane, Yard, Greenside, Green Lane, and Wood Lane) = Wood Lane, Green Side Road, Hall Ing Road
- Farnley Moor Lane from Yards to junction with Moor Lane = Yards is now known as Green Side Road and Farnley Moor Lane is now a section of Thurstonland Road
- Storthes Hall Lane and Moor to the Brewery = Storthes Hall Lane and a section of Farnley Road, which was once known as Storthes Hall Moor Lane and Birks Hill Lane

No. 3-

- Farnley Lane from High Royd through the Village and New Line to Woodsome Mill Bridge (including: Bankfoot, Farnley Bank, Rushfield, and Birksmillgate) = Honley Road and Woodsome Road
- Hey Lane = Hey Lane
- Moor Lane from Longley Lane to the Brewery & to the Village = Brockholes Lane, Moor Lane, a section of Farnley Road, and The Village
- Butts Lane to the Village = Butts Road
- The Village = Manor Road

106. Focusing on the route described as Moor Lane leading to the village, 'the brewery' refers to Farnley Tyas Brewery, which by 1906 had moved to the other side of Moor Lane, west of what is now Farnley Road. As can be seen above, the section described as 'to the Village' has been attributed to the section of Farnley Road that leads from the brewery, which is now Farnley Mill' to what is still called 'The Village'. On the other hand, the application route leads to Manor Road, which is first named as such on the [1932 OS 1:2,500 Map](#). This is because this section of Farnley Road is currently used, maintained, and

recorded today as a vehicular highway and is not included in any other description of highways in the 1925 document. Furthermore, **Figure 17** shows that the section of Farnley Road between what is now The Village and Moor Lane/the application route formed part of the motor omnibus routes between Huddersfield and Farnley Tyas, which strongly infers that it was a public carriageway at this period of time.

107. Applying the description of “... *Brewery and to The Village*” to the application route would therefore not be reasonable to allege. This section of Farnley Road is shown on the OS Maps in **Figure 12** and **Figure 14** as ‘New Road’ and was most likely created before 1817, based on Greenwoods 1817 Map of the County of York. The 1925 highway document therefore provides further background to the OS Maps. As the application route was not recorded within the list of highways maintainable at public expense in 1925, this supports the analysis that the application route is shown as a second class metalled/unmetalled private road.
108. Notably, there are multiple cul-de-sac routes that are also shown excluded from adjacent hereditaments, such as the route branching off the northern end of the application route that leads easterly and southerly to private land and is known as Crab Lane, Mill Lane which is not a highway maintainable at public expense, Cliffe Lane which is recorded as Kirkburton Footpath No. 49, the majority of Kirkburton No. 59, Best Lane which is now recorded as Kirkburton Footpath No. 48, Kirkburton Footpath No. 56, the access road to Hunter Nab, and the road to Farnley Bank which is now Kirkburton Footpath No. 54, Field Lane, which is only partly recorded as a Kirkburton Bridleway No. 222, and Toft Lane, which is recorded as Kirkburton Bridleway No. 57. Consequently, it is possible that the application route is a private road with a coexisting public right of way, but there is no automatic inference that the exclusion of the route from adjacent hereditaments infers public footpath, bridleway, or carriageway status.
109. In 1968, the Earl of Dartmouth sold the Farnley Tyas Estate. The particulars included a list of ‘ROADS IN HAND’, i.e., roads in private ownership, as shown in **Figure 18**. By reference to Ordnance Survey plot numbers, the list included: Moor Lane (the application route), Crab Lane (the track adjoining the application route), Toft Lane, Cliffe Lane, ‘Lane’, part of Best Lane, ‘Road’, Field

Lane, track off Field Lane, the road to Farnley Hey, and Woodsome Hall Lane, which are all excluded on the 1910 Finance Act map and mostly listed in paragraph 108. So, in 1925 there is a list of highways that don't include the application route or other routes that could be regarded as occupation roads, and in 1968 a list of roads in private ownership that does include the application.

110. Based on the available information, at the antecedent date for the 1910 Finance Act valuation, the application route would have been regarded as a private road in the ownership of the Earl of Dartmouth as Lord of the Manor and was excluded from adjacent hereditaments because they were in separate occupation. Accordingly, no evidential weight can be applied to the 1910 Finance Act documents because all it demonstrates is that the application route was in separate occupation to the adjacent hereditaments, there is no inference of status. However, when corroborated with other evidence, it is more than likely that the application route was regarded as a private road at the antecedent date.

Figure 16: Extract from Thurstonland & Farnley Tyas Urban District Council 1925 Minute Book (Source: [West Riding Archive Service: KMT43/1/1](#))

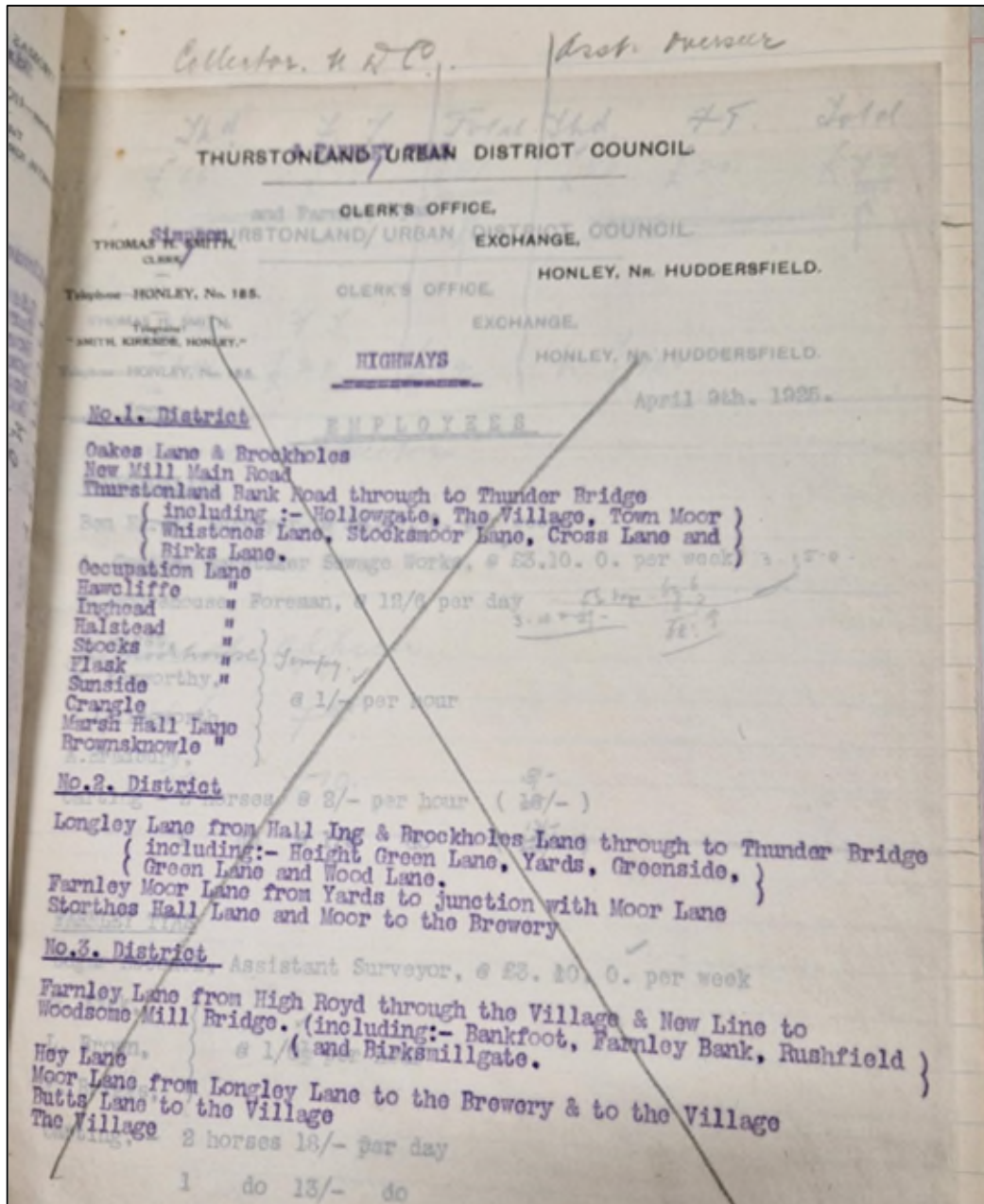


Figure 17: 1928 Omnibus Services between Huddersfield & Farnley Tyas
(Source: London Gazette)

THE LONDON GAZETTE, 1 MAY, 1928.	3061
<p>by registered letter addressed to the Secretary, Electricity Commissioners, Savoy Court, Strand, London, W.C.2, and despatched on or before the 31st day of May, one thousand nine hundred and twenty-eight, and a copy of such objection must also be forwarded to the undermentioned Solicitor.</p>	<p>for his consent to the running by them of motor omnibuses on the roads comprised in the following routes that is to say:—</p>
<p>10. Copies of the draft Order as applied for and of the Order as made may be obtained at the price of two shillings each at the office of the undermentioned Solicitor and at the shop of Miss E. M. Green, Stationer and Bookseller, 1, New Buildings, Lingfield, Surrey.</p>	<p>No. 1. Commencing at the Borough boundary at Hey Lane near Stirley Hill, Almondbury thence proceeding along the said Hey Lane, Farnley Lane and Rawgate to Farnley Tyas thence along New Lane, Burnt Hill Lane, Storthes Hall Lane, Storthes Hall Moor Lane, Green Lane, Greenside Lane, Marsh Hall Lane and School Lane to the Rose and Crown Inn, Thurstonland.</p>
<p>Dated this 26th day of April, one thousand nine hundred and twenty-eight.</p>	<p>No. 2. Commencing at the Borough boundary in Penistone Road thence proceeding along the said Penistone Road, Storthes Hall Lane, Burnt Hill Lane, New Lane and Farnley Lane to the Golden Cock Inn, Farnley Tyas.</p>
<p>V. B. BATESON, County House, 46-47, (052) New Broad Street, E.C. 2, Solicitor.</p>	<p>No. 3. Commencing at the present omnibus terminus at the Red Lion Inn, Lepton thence proceeding along the Wakefield and Austerlands Road to Shuttle Eye Collieries and thence along Liley Lane to the New Inn, Grange Moor.</p>
<p>HUDDERSFIELD CORPORATION (GENERAL POWERS) ACT 1920. OMNIBUS SERVICES.</p>	<p>And notice is hereby further given that objection to the giving of such consent may be sent in writing to the Assistant Secretary, Roads Department, Ministry of Transport, 7, Whitehall Gardens, London, S.W. 1, on or before the 16th day of May, 1928.</p>
<p>Between Huddersfield and Farnley Tyas.</p>	<p>A copy of any objection should at the same time be sent by the objector to the Town Clerk, Town Hall, Huddersfield.</p>
<p>Between Huddersfield and Farnley Tyas and Thurstonland.</p>	<p>Dated this 1st day of May, 1928.</p>
<p>Between Huddersfield and Grange Moor.</p>	<p>J. HENRY FIELD, Town Clerk</p>
<p>WHEREAS by Sub-Section 2 of Section 27 of the Huddersfield Corporation (General Powers) Act 1920, it is provided that the Corporation of Huddersfield (hereinafter referred to as "the Corporation") may with the consent of the Minister of Transport and of the Road Authority run omnibuses along any road.</p>	<p>Town Hall, (016) Huddersfield.</p>
<p>Notice is hereby given that in pursuance of the said Sub-Section the Corporation have made application to the Minister of Transport</p>	

Figure 18: Extract of Particulars from Farnley Tyas Estate Sale 1968 (Source: [West Riding Archive Service: WYL219](#))

<u>Parish of Farnley Tyas</u>		<u>ROADS IN HAND</u>	<u>Acres</u>
	718	Plump Lane	
	740	Ludhill Lane	0.488
	747	Lane to Royd Wood	1.002
	749	Road at Ludhill	0.351
Pt.	886	Road to Farnley Hey	0.208
	940	Road	0.120
	955	Moor Lane	0.388
	967	Crab Lane	0.807
	1023	Toft Lane	0.523
	1057	Cliffe Lane	0.616
	1069	Lane	0.404
Pt.	1080	part Best Lane	0.332
	1121	Field Lane	0.300
	1130	Track off Field Lane	3.335
Pt.	1280	Woodsome Hall Lane	0.250
Pt.	1292	" "	0.639
Pt.	1331	Track through Farnley Wood	0.059
Pt.	1338	Track through Copse	0.026
Pt.	1345	Road at Low Common	0.036
	1364	Road at Millgate	0.060
			0.189
<u>Parish of Lepton</u>			
Pt.	738a	Road to Rowley Grove	0.200
<u>Parish of Honley</u>			
Pt.	413	Road to Ridings	0.152
			<u>10.485</u>

45.

DEFINITIVE MAP RECORDS

111. The National Parks and Access to the Countryside Act, 1949, gave all county councils the duty of surveying and mapping all public rights of way within their authority. The survey was to be completed in three stages: draft, provisional, and definitive) with reviews conducted every five years. Schedule 3 Part II of the Countryside Act, 1968, streamlined the process to speed up the reviews and required that any representation/objection duly made in respect of alterations affected by the draft revision, or of anything omitted from the draft map, and is not withdrawn, would result in a public inquiry. The West Yorkshire Metropolitan County Council published the draft review on 1st October 1979, which was deposited at the Kirklees Metropolitan Council offices between the 29th February to 1st June 1980. [The London Gazette notice on 25th February 1980](#) stated:

“Any representations or objections with respect to alterations effected by the Draft Revision or to anything omitted therefore and the above-mentioned reclassification of roads used as public paths, should state clearly what they relate to and the grounds on which they are made. They should be sent in writing to The Regional Director, Department of the Environment, Housing and Planning, City House, New Station Street, Leeds, LS1 4JB, on or before 1st July 1980”.

112. On the 13th April 1980, within the public notice period, a letter was sent to West Yorkshire Metropolitan County Council by a member of the public who had examined the draft review of the Definitive Map and Statement. The letter submitted a list of routes recommended for inclusion to the legal record of public rights of way, which included the application route:

“Yesterday I paid a visit to the Kirklees Information Centre to examine the proposed definitive footpath map. Will you please consider the following alterations or additions:

Farnley Tyas – Following the track from Netherton MR. 172122 to Mill at MR. 166125- consider as an addition”.

113. The letter appears to be a representation/objection to the draft definitive statement due to the omission of the application route, amongst others. Remarks on claim and investigation stated:

“A site inspection reveals a well trod path varying in width from 8 to 12 feet between walls. From the evidence of the 1850 and 1895 maps it may well be an ancient highway. Local residents say it was used by horse drawn traffic many years ago. There is no known Enclosure Award for Farnley Tyas and it is not included in the Thurstonland in Kirkheaton Enclosure Award. It is capable of bridleway status but so no used although not obstructed by any locked gates”.

114. A recommendation stated that if representation had been made, then the officers would have looked favourably on including the application route on the Definitive Map and Statement subject to their being sufficient evidence of use. As no previous representation had been made, the application route was to be considered for inclusion at the next review, which never took place as section 53 of the Wildlife & Countryside Act, 1981, replaced the procedure for county-wide surveys with a system of continuous amendments to the Definitive Map and Statement.

115. The Definitive Map Officers do not appear to consider the 1850 and 1895 Ordnance Survey maps to be sufficient evidence on their own and required evidence of public user. Nevertheless, as the application route and available evidence was not fully examined at the time the latest Definitive Map and Statement was produced, the Ordnance Survey maps still amount to a ‘discovery of evidence’ (Burrows v. Secretary of State for Environment Food and Rural Affairs [2004] EWHC 132).

116. A site visit was conducted on 27th November 2000, which commented that the application was: *“Well used by pedestrians – Stile preventing horses at the Manor Road end”* and marked on a map a field gate at the western end at its junction with Farnley Road. Notably both site inspections commented that there was a well-trodden path and use by pedestrians, which is consistent with public use as a public footpath.

Figure 19: 1981 Definitive Map Review - Moor Lane, Farnley Tyas

W.Y. FORM R2.

WEST YORKSHIRE METROPOLITAN COUNTY COUNCIL
REVIEW OF DEFINITIVE MAP - DRAFT STAGE
REPRESENTATION/OBJECTION

NO. TN/437/R/25/K

DATE OF LETTER: 13 April 1980. **PERIOD OF DEPOSIT:** 29/2 - 1/7/80 **REVIEW DATE:** 1 Oct. 79

NAME	ADDRESS	HOME TEL
MR/MRS/MISS/MS	5 Siddon Drive, Almondbury, Huddersfield. HD5 8UG.	
D.W. Aldridge.		BUSINESS TEL

PARISH KIRKBURTON

PATH LOCATION: Farnley Tyas

PATH NO	GED REF
	T6T2
MAP SHEET SE 11 SE	1712

REPRESENTATION/OBJECTION ~~shown~~ / NOT SHOWN / ~~INCORRECTLY SHOWN~~ / ~~INCORRECTLY CLASSIFIED~~

GROUND(S) FOR ABOVE. Path exists on the ground and should be shown.

INVESTIGATION: Path commences off Farnley Road at Farnley Tyas at grid ref: 166124. Known as Moor Lane it proceeds north east to Manor Road at grid ref: 171127. The land is owned by a Company known as William Shaw & Sons, Huddersfield and the land agent is Carter Jonas, Manor House, Slaithwaite, Huddersfield, West Yorkshire. HD7 5AU.	DATE SHOWN	SHEET NO	SHOWN AS
	1850 MAP	260	YES/NO Moor Lane
	1895 "	30	YES/NO Moor Lane
	DRAFT "		YES/NO
	DEFINITE "		YES/NO
	REVIEW "		YES/NO
	1/2500/1/2500 "		YES Moor Lane *

NO PREVIOUS REPRESENTATION HAS BEEN RECEIVED TO INCLUDE THIS PATH ON THE MAP.

REMARKS ON CLAIM AND INVESTIGATION:

A site inspection reveals a well trod path varying in width from 8 to 12 feet between walls. From the evidence of the 1850 and 1895 maps it may well be an ancient highway. Local residents say it was used by horse drawn traffic many years ago. There is no known Enclosure Award for Farnley Tyas and it is not included in the Thurstonland in Kirkburton Enclosure Award. It is capable of bridleway status but not so used although not obstructed by any locked gates.

OBJECTOR SEEN / WRITTEN TO	DATE	RESULT:

EDTT. RECOMMENDATION: Had representation been made, favourable consideration should have been given to including the path on the map subject to there being sufficient evidence of use.

DATE:	DATE

ATTACH & MARK EXTRACTS WHERE APPROPRIATE.

W.Y. FORM R2.

DISCUSSION

117. The application route is an ancient lane that formed part of the Farnley Tyas Estate, which was owned by the Earl of Dartmouth. A key piece of evidence is the Farnley Tyas Estate Map, which has been approximately dated to at least before 1817, but could have an even earlier provenance. In particular, it shows that the application route provided access to enclosed land parcels that were leased by the Earl of Dartmouth and there was no indication that it formed a thoroughfare to the present day Thurstonland Road and beyond. The character of the way therefore fits within the definition of an occupation road: a road laid out for the benefit of adjacent occupiers and not a highway. This does not preclude the subsequent dedication of a public right of way.
118. Following re-evaluation of the route described by Warburtons surveyor in 1719 by W.B. Crump, it is more than likely that the road described as leading to Highburton is with reference to an ancient lane at the ancient parish boundary, rather than Moor Lane or the application route. The application route is not shown in its entirety on Jefferys 1772 County of York Map, but most likely did exist at this period of time. However, the reference to the map states that it shows both open and closed roads, and it is uncertain whether the surveyors distinguished between public and private roads. Greenwoods 1817 Map of the County of York shows Moor Lane as a cross road, however, it has been proved that the surveyors recorded both public and private roads. As the document does not distinguish between the two statuses, it can provide little evidential value that the application route existed at the time of survey but may provide a little evidence towards a reasonable allegation of a public bridleway, or vehicular highway status. However, given that the Farnley Estate Terrier Map shows the application route as an occupation road, this would suggest that it could also have been a private road at the time of the 1815-1817 survey for Greenwood's map.
119. The 1893 OS 1:2,500 Inch Map shows the application route as a second class metalled road; a category that also included 'carriage drive' which enclosed private roads. On the other hand, the 1:2,500 Inch Maps was revised in 1906 and the application route was no longer shown as a second class metalled

road. However, the 1896 One-Inch OS Map, and subsequent revisions, only showed the western section of the application route, which provided access to Farnley Brewery, as a third class road, whilst the remainder was an unmetalled road. The Instructions to Field Examiners implies that the one-inch maps take precedence, which may explain the 1906 revision. However, together with Greenwoods 1817 Map of the County of York, the 1893 OS 25 Inch Map may provide a little evidence towards public bridleway, or vehicular, status.

120. The 1910 Finance Act shows the application route excluded from adjacent units of land. The Farnley Estate Terrier Map and the 1968 Farnley Estate particulars both show that the land of the application route remained in the ownership of the Earl of Dartmouth. When thoroughly analysed, the 1925 list of highways in the Thurstonland and Farnley Tyas Urban District does not include the application route. However, given that the section of Farnley Road, historically known as 'New Lane', formed part of the Motor Omnibus Route between Huddersfield and Farnley Tyas, negates the inference that the application route was included on the highway list as a highway maintainable at public expense at this time. The 1910 Finance Act also shows numerous private cul-de-sac roads as excluded from valuation even though they were in private ownership. It is therefore surmised that the application route was shown as a 'white road' because it was in multiple occupation.
121. The picture that emerges from the documentary evidence is that the application route was a private occupation road. Improvements to the road network by the Earl of Dartmouth between approximately 1805-1829, or earlier, connected the application route to highways at either end, such that it was capable of potential public use and dedication. As stated above, the test to apply at this stage is whether there is a conflict of credible evidence to reasonably allege the existence of a public right of way. The 1910 Finance Act Map and Jefferys 1772 County of York Map are neutral. Greenwoods 1817 Map of the County of York is also relatively neutral as it showed both public and private routes. Similarly, the 1896 and 1903 OS Maps do not preclude the existence of public rights of way, but in isolation they do not strongly support the existence of such rights either. The re-evaluation of Warburtons map and survey in 1719 & 1720 actual points in the other direction towards private status, because if Moor Lane was

an all-purpose road at this time, the survey would have recorded a road at the point where it states 'Enter Farnley Moor'. The fact it doesn't suggests that a public right did not exist at the time. Furthermore, the Farnley Estate Terrier Map, 1968 Farnley Estate particulars, and the 1925 list of highways (together with the current list of streets), are credible documentary sources of evidence that do not support the existence of a public right of way.

122. Greenwoods 1817 Map of the County of York and the 1893 OS Map 25 Inch Map are therefore the only documents that may indicate the existence of public rights, but when subject to critical analysis, they are not credible. As stated above, the application route was not maintainable at public expense, which indicates that although the application route could potentially have been a second class metalled road, it was maintained privately. Greenwood's map included both public and private roads and the category of second class metalled road on the 1893 map also included carriage drives, whilst the 1896 One-Inch OS Map, published at a similar timeframe as the 1893 OS Map, and subsequent revisions, provide evidence that only the western section of the route at Farnley Brewery was maintained as a third class metalled road. This is a category that would include both public and private roads.

123. Furthermore, the 1893 1:2,500 OS Map included a right of way disclaimer, and OS maps were not without error. Accordingly, the document does not provide credible evidence of the existence of a vehicular highway. Ultimately, the case for a public bridleway rests on two documentary sources that also depict private roads and have a low evidential value. Accordingly, it is not considered reasonable to allege the existence of a public bridleway based on the available evidence.

USER EVIDENCE

Brought into Question

124. In total, Kirklees Council has received 41 statements from members of the public providing evidence of long standing use along the application route since 1910. Public use of the application route was directly also brought into question by the permissive footpath notices that were erected in approximately 2020, providing a relevant date of 1990 to 2020. However, on the 21st November 2012, Farnley Estates Limited deposited a map and statement under section 31(6) of the 1980 Act covering the area of land of the claimed route. The deposit was immediately followed by a declaration on the 21st December 2012 stating the landowner had not dedicated any highways over the land since the deposit. This is an overt act that both demonstrates a lack of intention to dedicate a public right of way over their land and brought the public right to use the blue route into question, under Section 31(2) & (3) of the 1980 Act. A relevant date to consider is therefore the 21st November 1992 to 21st November 2012.
125. The second Schedule 14 Application was submitted on 11th October 2007. In the absence of any evidence of another event which may have brought public use of the route into question, [subsections 7\(A\) and B of the 1980 Act](#) allow the date of the application to be used to calculate the retrospective period of use. In this case, for the purposes of section 31(2) of the 1980 Act, it follows that the relevant twenty-year period to be considered for the purpose of statutory dedication is 11th October 1987 to 11th October 2007. However, the majority of user evidence forms were completed in 1996/97, which would create an evidential hiatus.
126. The first Schedule 14 Application was submitted on 22nd February 1996 also brought public use of the application into question, providing a relevant date of 22nd February 1976 to 22nd February 1996. The investigation will therefore focus on this relevant date but noting that other potential relevant periods are available to consider.

Evidence of Use

127. The structure of the inquiry under user evidence was set out in paragraph 36 of *Powell & Anor v Secretary of State for Environment, Food, and Rural Affairs* [2014] EWHC 4009 (Admin). Firstly, the user evidence must pass the preliminary threshold of whether or not the extent and quality of the use could properly be regarded as the assertion of the right which is claimed. In total, Kirklees Council has received 41 User Evidence Forms ('UEF's)/ statements from members of the public providing evidence of long standing use along the application route since 1910. Most submissions used a Kirklees Council template information sheet, known as 'WCA8', which have been improved and modified over time.
128. Thirteen UEFs were submitted in 1996 that were not accompanied by a plan, but they provide a description of the start and end points as well as grid references and is it clear they used the entirety of the way. One UEF was provided in 1997, five in 2007, one in 2015, twenty-one UEFs/statements in 2023. Each of the UEFs, except one, from 1997 to 2023 were accompanied by a plan, pre-prepared by Kirklees Council showing the relevant area and any existing public footpaths, over which the respondents annotated the route they used and any gates, stiles, or signs, or described with certainty the walked path. The termini of the application route between Manor Road and the junction of Farnley Road/Moor Lane are consistent on nearly all the maps and, as it is a linear route between enclosures, there is no need for further investigation to determine its position/line.
129. UEFs 16, 17, 21, 22, 23, 27, 30, 32, 34, 37, and 38 did not use the application during the relevant period. UEF/10 may have used the application route with permission as their "*father was a tenant of the land including footpath*". The earliest use of the application route began in 1910, whilst eleven people commenced walking Moor Lane between 1930-1960, demonstrating long-standing use of the application route. Overall, thirty people used the application route during the relevant period: twenty people throughout the relevant period, whilst a further ten respondents used the application route for parts of the relevant period. It is not necessary that each respondent has themselves used

the application route for all of the relevant period; it is their collective use during that period which is relevant (Davis v Whitby 1974).

130. All user saw others using the application route and stated: *“Used for many years by the villagers”*; *“This route is used by villagers quite often and should be kept open as a right of way”*; *“This is a pleasurable flat walk that I have enjoyed since childhood & the only path that allows a circular walk around the village”*; *“I have seen plenty of people walking this footpath”*; *“Long been used by walkers and runners”*; and *“To my knowledge it was accepted as a right of way no questions asked (since 1971)... Moor Lane appears to be part of the route to Farnley Mill as the lane continues past Woodview Farm to Mill Lane and at some previous time was probably used by horse drawn vehicles”*. Together with the long-standing use by the users, the reputation of the application route is that of a public right of way well before it became a permissive route.

131. As the 1996 user statements predate the modern WCA8 UEF template, the terminology for frequency of each user varies compared to the modern completed UEFs. Nevertheless, during the relevant period, the application route was used by two people daily; four weekly; five monthly; five every few months; and four once a year. Others refer to using the application route ‘regularly’, ‘frequently’, ‘occasionally’, ‘quite often’, or ‘once or twice a year’. One person did not provide an answer for their frequency of use. The quantity and frequency of use are sufficient to represent public use.

132. Three members of the public that responded to the informal consultation conducted in August/September stated that they used the application route with a horse in the 1980/90s, but stopped due to the gates and stiles, which prevented use on horseback as a thoroughfare. The evidence of use with a horse is very limited and currently insufficient to demonstrate use and enjoyment by the public and does not cover the relevant period. Notably, the majority of users only saw other people walking the application route. On the other hand, Kirklees Council have on file a letter dated 1998 from an adjacent landowner, which states: *“He had a letter from Landowners Agent saying that they believed Moor Lane to be a bridlepath if this is useful evidence for you”*. The Definitive Map Officer has contacted the land agent and current landowner

requesting a copy of the letter, but unfortunately, the evidence is no longer available.

133. Overall, the thirty UEFs/statements are a sufficient representative of the public to initially satisfy the preliminary quantity and quality threshold. The weekly/monthly frequency of use is also sufficient, over a 20 year period, to alert an observant landowner(s) to the fact that, during the whole of the relevant period, a public footpath was been asserted along the application route and the landowner(s) can resist or acquiesce to the use (R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010)).

As of Right

134. The next question that arises in the investigation is whether any of the vitiating elements of the tripartite 'as of right' test apply. The tripartite test is to be applied judging the questions objectively from how the use would have appeared to the owner of the land. The phrase 'as of right' provides that for long usage to give rise to a presumption of dedication, the user had to be without force, without secrecy, and without permission. None of the remaining UEFs indicate that they used force to secure passage along the application route. All of the users walked the route in an open manner that was of such a nature that a reasonable landowner would have been aware of the use and was capable of being challenged. Lastly, with the exception of UEF/10 whose use has already been discounted, there is no indication the UEFs that any landowner gave permission to the respondents to use the application route, either expressly, for example with signage, or impliedly, or that any users have a private right of way or legal interest in the land.

Lack of Intention to Dedicate

135. None of the remaining users saw any notices inconsistent with the dedication of a public right of way during the relevant period, any other structures, obstructions that prevented their use during the relevant period. The signs shown in **Figure 4** are not mentioned by the respondent as they were not

present until 2020 at the earliest. The respondents do not state that their use was challenged.

136. Landowners, adjacent landowners, and occupiers were included in a 28 day consultation conducted in August/September 2023 and were provided with Kirklees Councils 'WCA10 Landowner & Occupier' template form to complete and provide evidence. Additionally, the Definitive Map Officer conducted a site visit with Consultee Refs 1 & 2 on 21st August 2023 to view their deeds and discuss documentary evidence. A summary of responses received is provided below. Consultee Refs 3 and 6 did not respond to the consultation.

Consultee Ref 1

137. Consultee Ref 1 understands that the application route is not a public right of way as it is now shown as a footpath and "... it is certainly not accessible on horseback and with some confidence I can state that no horse has ever ventured near it". Consultee Ref 1 clarified that the permissive access signs were first erected in 2020, and has witnessed people walking the application route, commenting that it was mostly evident during lockdown when people were walking far more. Additionally, the consultee stated that they had been asked on several occasions if the application route was a public footpath, and the consultee answered 'no', turning back two members of public who walked an alternative route. Notably, this challenge to use did not occur during the relevant period of 1976 to 1996.

Consultee Ref 2

138. Consultee Ref 2 has lived adjacent the application route after the relevant period and after both applications were submitted but comments: "I have never seen a horse use the proposed route, due mainly to it being totally unsuitable for equestrian users and in places impassable for horses. I lived [in the area] from 1986 until moving to [adjacent application route] and both properties have clear views to the proposed route". Consultee Ref 2 is also not aware that a right of way exists but also witnessed people using the application route on foot during lockdown, and occasionally at other times.

Consultee Ref 4

139. Consultee Ref 4 has owned part of the application route relatively recently and is not aware of any public right of way along the application route but was made aware of the pending applications by the previous landowner. The consultee has not witnessed any person using the application route but erected the permissive access sign on the gate at the entrance to the application route from Farnley Road in 2019 and stated: "I believe there was always a notice up from the estate and they advised me to put one up when I purchased the land in 2019, sorry I can't remember specific day...".

Consultee Ref 5

140. Consultee Ref 5 states that the Ramblers approached the landowners in 1986 to ask for the application route to become designated as a public footpath. The request was discussed but turned down by the landowner, who states: "The route was left open as a permissive route only... The route is barely passable today because it is used so infrequently". Additionally, Consultee Ref 5 answered that they have never seen people using the route, nobody has asked for permission, and they have not ever given permission to anyone to use the application route, which contradicts the statement that Moor Lane remained accessible only as a permissive route.

141. Furthermore, the consultee states that gates have always remained shut to keep livestock in, and gates and fencing have been in place for hundreds of years. The consultee also answered that they erected permissive access signs that have been replaced due to been torn down and vandalised over the years and could not recall a time when the signs weren't in place. However, none of the UEFs mention any signage prior to 2020 and Kirklees Council took photos of the application in 2013 and there were no signs at all. Lastly, Consultee Ref 5 refers to a deposit/declaration made under section 31(6) to the effect that the landowner demonstrated a lack of intention to dedicate any public right of way over the land on the 21st November 2012, which is not during the relevant period of 1976 to 1996.

Consultee Ref 7

142. Consultee Ref 7 have lived adjacent the application since 1997, so after the relevant period but have lived in the area for 80 years and comments that they have rarely seen people using the route on foot as it is unsuitable for other users as the application route is difficult to traverse. It is their understanding that there are no public rights of way over the land. The consultee is not aware of anyone ever been stopped or turned back when using the application route, they have never locked a gate, placed any obstructions, or given anyone permission to use the application route.

Landowner Evidence Evaluation

143. Overall, the majority of landowner/adjacent landowners have owned the land after the relevant period of 1976 to 1996. Consequently, there is no substantial evidence of challenge to public use or a lack of intention during the relevant period. The landowner statements are relatively consistent with regards to the use in that public use on foot has occurred but not by horse riders. Whilst Consultee Ref 5 states that signage has been in place for a significant period of time, this is inconsistent with user evidence and Kirklees Council records. The Public Rights of Way team were in correspondence with Farnley Estates in 2013 regarding permissive signs along Moor Lane, which were apparently ordered and made, whilst a map was to be provided on the Farnley Estate website showing permissive routes. However, there is no available evidence that they were erected. In any case, the current evidence of signage does not displace the fact that it is reasonable to allege that a public footpath subsists along the application route during the relevant period.

Width

144. The user evidence is relatively consistent and shows that that the public have not walked over the full width of a section of the application route, east of the former brewery site, due to overgrown vegetation. Of those users that estimated the width of the application route, many noted that it is variable. The initial 190m section of the Moor Lane, leading from Farnley Road to the first

stile structure, is of vehicular width between 4-2m wide. This width is far wider than necessary for a public footpath (see *Ford v Harrow UDC* (1903) 88 LT 394). The estimated available width narrows to 1m for some users, whilst others remark that, due to overgrown vegetation, the width is 2ft wide, or 0.6m. The latter width represents the trodden line. The [Planning Inspectorate Advice Note 16](#) states:

“There will be a small number of cases where there is little if any evidence, either documentary or user, as to the width of the route. In such cases the OMA should include a width that appears appropriate having regard to all relevant factors which may include; for instance, the type of user, location, and nature of the surface and other physical features. OMAs should bear in mind that such a width should be the minimum necessary for the reasonable exercise of the public right in these circumstance, enough for two users to pass in comfort, occasional pinch points excepted”.

145. Aerial photos from 2000 to 2021, albeit after the relevant period, show that the application route was not always difficult to traverse due to overgrown vegetation. Taking into account the available user evidence, the location and character of the application route, potential use with vehicles, and the necessity to infer the least burdensome form of dedication by the landowner(s), it is recommended that the application route should be recorded in a Definitive Map Modification Order with a width of 2m along its entire length.

Limitations

146. Eighteen respondents acknowledged the presence of gates, whilst twenty-two state that there several stiles were also present along the application route to prevent cattle straying, but to continue to allow access for pedestrians. With some stating that they had always been there. Specially, users describe: *“Various gates to stop cattle straying & stiles for pedestrian access”, “Several gates and stiles to prevent cattle from straying”, “Gates so cattle don’t stray and stiles so you can see the route”, “Gates to stop cattle from straying”, “Recently a stile has been erected at the Manor Rd end about 50 yards on by the tenant farmers of Park Farm and at the Mill end a gate has been put across but there*

is still access to walkers”, “Metal Gate Farnley Road end”, and “Metal gate... at junct with Farnley Tyas Rd”.

147. There is no evidence of gates recorded on historic Ordnance Survey maps and no available aerial imagery or photos of the structures during the relevant period. However, aerial photos from 2000 to 2021 show that the structures have remained in place for a significant period of time, and no doubt have an earlier origin. Some users remark that the structures have always been there, whilst UEF/14 marked on their map the position of the gate near to the Farnley Road junction and a stile at the Manor Road end. UEF/20 marked on their map the position of all the gates and stiles shown in **Figure 4**. Finally, UEF/19 provided photos of the structures. Accordingly, it is appropriate to record the gates and stiles as limitations in a Definitive Map Modification Order as shown in the table below:

Table 1: Limitations to be recorded

Structure	Grid Reference
<i>Gate</i>	SE 1667 1245
<i>Gate</i>	SE 1680 1255
<i>Stile</i>	SE 1687 1257
<i>Stile</i>	SE 1708 1263
<i>Stile</i>	SE 1718 1273

User Evidence Evaluation

148. The relevant period to be considered under section 31(1) of the 1980 Act is 22nd February 1976 – 22nd February 1996. Twelve UEFs have been discounted from the investigation: eleven used the application route after the relevant period, whilst UEF/10 seems to have used the way with permissive of his father who tenanted the land. Consequently, at this stage of the initial user evidence

analysis, the application is supported by thirty UEFs with overlapping use during the relevant period along the application route with a variable width, predominant weekly, monthly, or every few months frequency of use, 'as of right', and there is currently no available evidence of a lack of intention to dedicate a public footpath during the relevant period. Whilst the analysis has not been presented, the same evaluation applies to the public use during the relevant period between 1987 to 2007.

RECOMMENDATION

149. The user evidence is of sufficient quality and quantity to represent public use and enjoyment of the application route, which is consonant with the status of a public footpath, as of right, and there is currently no evidence of a lack of intention to dedicate a public right of way during the relevant period. Following the discovery by the authority of evidence which, when considered with all relevant evidence available to them, shows that a public footpath is reasonably alleged to subsist, the Definitive Map Officer recommends that the 1985 West Riding Definitive Map and Statement of Public Rights of Way should be modified under section 53(3)(c)(i) of the WCA. It is recommended that a Definitive Map Modification records a public footpath along Moor Lane, Farnley Tyas, leading between Farnley Road and Manor Road and records the gates and stiles as limitations.

CONCLUSION

150. The Definitive Map Officer is satisfied that it is reasonably alleged that the application route subsists as a public footpath following presumed dedication under Section 31 of the 1980 Act, based on user evidence. A Definitive Map Modification Order is recommended to record a public footpath leading along Moor Lane, Farnley Tyas.

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Name of Meeting: Planning Sub-Committee (Heavy Woollen Area)

Date: 09/11/2023

Title of Report: Application for a Definitive Map Modification Order (DMMO) to record a public right of way from definitive public footpath KIR55/10 at Upper High Fields to Woodsome Road at Farnley Tyas, Kirkburton, on the Definitive Map and Statement

Purpose of Report: Members are asked to consider the relevant available evidence and determine the application for a DMMO made under section 53(5) of the Wildlife & Countryside Act 1981 to record a public right of way from definitive public footpath KIR55/10 at Upper High Fields to Woodsome Road at Farnley Tyas, Kirkburton on the Definitive Map and Statement.

Members are asked to take a decision on making a DMMO and its confirmation and give full reasons for the decision made.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	David Shepherd – 10 October 2023
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 10 October 2023
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 10 October 2023
Cabinet member portfolio	Not applicable

Electoral wards affected: Kirkburton

Ward councillors consulted: Kirkburton Cllrs: Bill Armer, Richard Smith, John Taylor

Public or private: Public

Has GDPR been considered? Yes. Personal data and biographical information that could identify a person has been removed.

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Summary

1. In April 2019, Kirklees Council received an application (reference DMMO S14217) under [section 53 of the Wildlife & Countryside Act 1981](#) (the 1981 Act) to record a public footpath through Farnley Bank Wood, leading from definitive public footpath Kirkburton 55/10 at Upper High Fields to Woodsome Road, Farnley Tyas, (the application route) on the Definitive Map and Statement (DMS). The applicant provided thirty-four (34) user evidence forms and other evidence in support of the application. The Secretary of State has directed that Kirklees Council must determine the application by 11 August 2021.
2. The available evidence has been investigated under [section 31\(1\) of the Highways Act 1980](#) (the 1980 Act) for the presumed dedication of a public footpath. The public right to use the application route was first brought into question in 2012 by a section 31(6) landowner Deposit/Declaration. The relevant twenty-year period for analysing the user evidence is therefore 1992 to 2012. A second relevant period of 1988 to 2008 has also been investigated as a landowner has indicated, but not provided sufficient evidence that, a sign was erected in 2008.
3. The quantity and quality of the user evidence is sufficient to demonstrate public use and enjoyment of the application route, as of right, and without interruption during both relevant periods. No sufficient evidence of a lack of intention to dedicate a public right of way during the relevant periods has been submitted. Officers therefore consider that it is reasonable to allege that the application route subsists as a public footpath and should be recorded on the Definitive Map and Statement.
4. Accordingly, Members are asked to consider the documentary, landowner, and user evidence presented, consultation responses, and the Officers recommendations and reasons, and decide whether to make a Definitive Map Modification Order and the Councils stance on its confirmation. Factors such as suitability or desirability, safety or maintenance, privacy, or landownership, are 'other matters' that cannot be considered under s53 of the 1981 Act.

5. Officers recommend that a Definitive Map Modification Order (an Order) is duly made under [section 53\(3\)\(c\)\(i\) of the 1981 Act](#) to record a public footpath leading from definitive public footpath Kirkburton 55/10 at Upper High Fields through Farnley Bank Wood to Woodsome Road, Farnley Tyas, on the Definitive Map and Statement (DMS).
6. Officers also recommend that, should any Order be opposed, and the matter referred to the Planning Inspectorate for determination by either written representations, public hearing, or public inquiry, the Council should support confirmation of any Order.

Information Required to Take a Decision

Application

7. On the 4 April 2019, the applicant submitted an application ([DMMO S14217](#)) to Kirklees Council (the Council) under [s53\(5\) of the Wildlife and Countryside Act 1981](#) (the 1981 Act) to modify [West Yorkshire County Council Definitive Map and Statement for the Kirklees Area](#) (DMS), as shown in **Figures 1** and **2**.
8. The application, as shown by the dashed lines on annotated **Figure 3**, seeks to record a public footpath between definitive public footpath Kirkburton 55/10 at Upper High Fields through Farnley Bank Wood past Farnley Tyas Bowling Club (the Club) to Woodsome Road public highway, Farnley Tyas.
9. A public footpath is defined in [section 66 of the 1981 Act](#) as:

“... a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road”.
10. The application was properly made in April 2019 under the requirements of [Schedule 14 of the 1981 Act](#). The requisite certificate of service of notice was submitted in April 2019 confirming that notice of the application had been served on two landowners.

11. The application was submitted shortly after a boundary fence was erected across the full width of Farnley Bank Wood in January 2019 near the Club, which prevented any passage. See **Figure 4**.
12. The submission gave as evidence thirty-four (34) User Evidence Statement forms (UEFs) from wholly or largely local people, a letter from the Secretary of Farnley Tyas Community Group, copies of Email correspondence with landowner 1, and photos of the application route.
13. The Officer considered other evidence including Ordnance Survey (OS maps), aerial photos, officer photos, KC records, Email correspondence and a s31(6) landowner deposit.
14. A consultation was carried out in October and November 2021 inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, and any occupiers.

Planning Inspectorate Direction

15. Following a representation by the applicant, the Council was directed on 12 August 2020 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (decision reference [FPS/Z4718/14D/16](#)) pursuant to paragraph 3(2) of Schedule 14 of 1981 Act), to determine the Schedule 14 application (our reference DMMO S14217) no later than **11 August 2021**.

Character of Application Route

16. The application route starts at the junction with definitive public footpath Kirkburton 55 at Upper High Fields (approx. SE 1675 1344) just on the woodland side of a stile. It leads south-westerly and follows a narrow-wooded ridge for over half a kilometre, then joins an access road to Farnley Tyas Bowling Club for approximately 10m, and terminates at the junction with Woodsome Road public carriageway, Farnley Tyas (approx. SE 1650 1290) and nearest postcode HD4 6UE. Farnley Tyas is a small rural village located 3

miles southeast of Huddersfield. The physical characteristics of the application route are shown in the photos in **Figure 5**.

17. The surface of the route through the woodland is earth, leaf litter and grass within a natural habitat of deciduous mature woodland, tree canopy, shrub understorey and ground flora.
18. The route through the woodland is reported by users to be of varying width (approx. 0.5m to 2m) and averaging between 1 and 1.5m. Where the route is coextensive with the access road to the Club, it is surfaced with tarmac for vehicle use (approx. 4m in width). There are no dwellings along the route itself.
19. Aerial photographs dated in 2006 and 2012 shows the access to the Club as shown in **Figure 6**. However, the application route through the woodland lies underneath the continuous tree canopy of Farnley Bank Wood, is not particularly visible.

Statutory Provisions

Wildlife & Countryside Act 1981

20. [Schedule 14, Paragraph 3 of the 1981 Act](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make a DMMO (an Order).
21. [Section 53\(3\)\(c\)\(i\) of the 1981 Act](#) provides that the Council has a statutory duty to make an Order upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic”
22. As was made clear by case law, section 53(3)(c)(i) involves two tests at the schedule 14 stage:
 - Test A: Does a right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary.
 - Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.
23. The available evidence submitted in support of DMMO S14217 will therefore be determined according to Test B – is it reasonable to allege that a public right of way subsists. If so the Council has a duty to make an Order.
24. Confirmation of an Order is based on the ‘balance of probabilities’ (not beyond all reasonable doubt as is the case in criminal law) or Test A.

Highways Act 1980

25. The relevant provision, in relation to the dedication of a public right of way based on user evidence, is found in [section 31\(1\) of the 1980 Act](#). The legislation sets out that where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate.
26. Under section 31(2) of the 1980 Act, the period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.
27. There is no legal interpretation of the term 'the public' as used in section 31(1). It is not taken to mean the public in its widest sense. Use wholly or largely by local people may be use by the public.
28. There is no statutory minimum level of use required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from case to case as guided by the Government's [Definitive Map Consistency Guidelines](#).
29. The terms 'as of right', means the use must have been 'without force, without secrecy and without permission'. Force might include breaking locks, cutting wire, passing over through or around a blockage. The use must have been open and in a manner that a person rightfully entitled would have used it that is not with secrecy. If there is express (e.g., clear, and specific) permission, then use is not 'as of right'. The issue of toleration or acquiescence and doing nothing about it, is consistent with use being 'as of right'.
30. The presumed dedication under s31(1) of the 1980 Act is rebuttable, by proof that the landowner had a lack of intention to dedicate. The burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. In relation to signage, proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication is required under [s31\(3\) of the 1980 Act](#).

31. The test is whether a reasonable user of the path would understand that the landowner was not intending to dedicate a public right of way. There must have been some overt acts by the landowner to show the public at large that the landowner had no intention to dedicate whether by notice or otherwise (e.g., notices, signs, barriers, obstructions, charging, closing, indicating use by permission only).
32. Private land signage can imply that the public are being discouraged from using a route, but technically such a landowner's sign would be correct as there is 'private land'. In itself, such a sign is not considered to go far enough to communicate a lack of intention to dedication. A public right of way can be defined as the public's right to pass and repass over a strip of land, more often than not, land in private ownership. Furthermore, caselaw dictates that private land signage in itself, is not 'documentary evidence that would inevitably defeat the claim'.
33. Alternatively, user evidence can be considered at common law, which requires evidence of public use over a period of time to contribute to a justifiable conclusion of implied dedication by the landowner(s) based on their actions.
34. [Section 32 of the 1980 Act](#) requires a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

35. General guidance for Council members is provided at **Appendix A**. In summary, Members are asked to decide if a DMMO (an Order) should be made. This requires consideration of all available evidence (user, landowner, documentary/historic, other) including the consultation and the Officer recommendations.

36. It is the Council's statutory duty to keep the Definitive Map and Statement (DMS) up to date and make any requisite Orders where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- i. The first option for members is for the Council to make an Order to modify the DMS based on the Officer's recommendation
 - ii. The second option for members is for the Council to make an Order to modify the DMS based on members' interpretation of the evidence
 - iii. The third option is for members to turn down the application.
37. The likelihood or otherwise of any Order attracting opposition should form no part of the decision. In addition, factors such as suitability or desirability, safety or maintenance, privacy, or landownership, are 'other matters' that cannot be considered or taken into account under s53 of the 1981 Act.
38. Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its own Order, or alternatively take a neutral stance.

Documentary Evidence Evaluation

Applicant's Photos

39. The applicant provided as evidence in support of the application, several photos of the application route taken in 2010, 2013 and 2015, as shown in **Figure 7**. The photos show a well-worn earth or grass path through the wood, with views cross Woodsome Road to Castle Hill in the background.

Letter from Farnley Tyas Community Group

40. The applicant provided as evidence in support of the application, a letter from the Secretary of Farnley Tyas Community Group (on behalf of that group) dated 4 April 2019 as shown in **Figure 8**, which stated:

"This footpath stretches from Kirklees PROW number KIR/55/10 to the centre of the village exiting alongside The Bowling Club on Woodsome Road and has been in continuous use by residents for a number of decades. It is an extremely popular footpath, used on a daily basis, linking Field Lane KIR/222/10, KIR/55/10, and the centre of the village in a short circular route and is especially popular with residents with younger children and residents with elderly dogs. The added attraction of this footpath is the safety aspect as there are no roads to cross along the route."

Applicants Copies of Email Correspondence with Landowner 1

41. The applicant provided as evidence in support of the application a number of Email correspondences between the applicant, and also the Secretary of Farnley Tyas Community Group and landowner 1, which demonstrates that landowner 1 was aware of the public use of the route in 2010 and 2013, see **Figure 9**.
42. In the Email dated 17 December 2013 landowner 1 is corresponding with the Secretary of Farnley Tyas Community Group about the tree and woodland maintenance. The applicant has replied to this Email saying that they "walk every day through "club" woods along the footpath at the top".

43. In an Email dated 12 May 2010 to landowner 1, the applicant makes reports about trees in the bowling club woods saying that they “*walk the dog there every day*”. In the same Email chain dated 17 May 2010, landowner 1 “*thanks*” the applicant for their report.

Ordnance Survey (OS) Maps

44. Officers looked at OS maps published dated 1893, 1906, 1916, 1932, 1968. The land has always been woodland. The wooded block entitled ‘Farnley Bank Wood’ is shown on all of these maps. The application route through Farnley Bank Woods is not shown on any OS map, but that does not mean it did or did not exist. See **Figure 10**.
45. The 1916 Yorkshire CCLX.8 OS Map 1 to 25000 also shown in **Figure 10**, depicts a double pecked line route from Woodsome Road to the Club. The 1932 Yorkshire CCLX.8 OS Map 1 to 25000 depicts a double pecked line annotated with F.P. (meaning footpath) from Woodsome Road to the Club which is on the same alignment as the application route from point B to C. A boundary is also depicted adjacent to the footpath representing a fence or a change of surface indicating that there may not have been a route through the woodland from the Club at this time. Subsequent OS maps from 1968 1 to 25000 show a track or road bounded by solid lines indicating a fence or a change of surface from Woodsome Road to the Club.
46. These OS maps show that Farnley Bank Wood at the Club end, may have been accessible over the footpath to the Club from Woodsome Road decades ago. However, whilst OS maps are generally taken to be a reliable indication of the physical features present on the date of the survey and therefore corroborate the existence of routes, they provide no confirmation of public rights over the route.

KC Path Files

47. The Council’s path files for Kirkburton 55 public footpath has one record relating to a “private ground” sign in 1991 reported by a member of the public

as being “in a wood”, which according to the 6 figure grid reference provided places it approximately on the land lying between Woodsome Road and Farnley Bank Wood, see **Figure 11**. This is outside the relevant period of 1992 to 2012 but within the relevant period 1988 and 2008 discussed below. It may also provide some additional context to landowner 1’s evidence about any ‘private’ signage, years ago.

User Evidence Evaluation

48. Thirty-four (34) user evidence forms were submitted to the Council. The user evidence has been evaluated on the submissions from 30 (thirty) members of the public. This is because 3 (three) users (UEFs 16, 17, 18) were considered to have a type of private right and as such their evidence cannot be included as evidence for public use. Another 1 (one) user (UEF 7) used the route on only two (2) occasions and did not indicate their period of use. The user evidence is summarised in **Figure 12** and has been analysed under section 31 of the 1980 Act.
49. There are two current landowners. Landowner 1 has “*owned and occupied the land for over 50 years*”. Landowner 2 purchased land from landowner 1 in 2018 including a section of Farnley Bank Wood and including the access road to the Club. A summary of the landowners’ evidence is shown in **Figure 13**.

Bringing into Question

2019 – Fence

50. In an email dated 11 March 2019 between a KC PROW Officer and landowner 1, which discussed the application DMMO S14217, landowner 1 referred to having:
- “... recently placed a boundary fence up within this private area of woodland to divide the ownership boundary because various areas of the Estate have been sold.”*
51. Users described a fence (post and wire topped with barbed wire) erected between November 2018 and January 2019 across the width of Farnley Bank Wood at the Club. The applicant stated the fence was erected on 10 January 2019. Many users stated they regularly used the route on foot up to this point when passage was prevented. The erection of the boundary fence in 2019 was the overt act by landowner 1 that directly brought use of the route into question

resulting in the submission of the DMMO S14217 application and creates a relevant period of 1999 to 2019.

2019/2018 - Signs

52. In a Landowner/Occupier Statement Form dated 19 October 2021, landowner 1 stated that the woodland has signs up saying:

“Private No public right of way’ at ‘both ends of the woodland’, which were replaced ‘when they were vandalised’ and stating: “they have been there many, many years”.

53. Landowner 1 attached a plan of the positions of the signs as shown in **Figure 14**. Photos of signs at both ends of the route were taken in 2019 or 2021 by Officers and can be found in **Figure 15**. Any photos of signage at the same location and previous to 2019 have not been submitted.
54. Although landowner 2 stated in their landowner statement form that they had not erected any notices, their signage is present on site as of February 2019. It says, *“Private No right of way No horses”* erected near point B at the Club end of the application route.’ **See Figure 15**.
55. *“Private No public right of way”* signage is currently present at both ends of the application route. Sixteen (16) users referred to signage as shown in **Figure 16**. Users variously referred to the dates of signage and its wording. Fourteen (14) users referred to signs erected recently, last year, or in 2018/9. Three (3) users referred to recent signs that say, *“no right of way’ or ‘private no right of way”*. One user referred to a *“sign fixed to tree at bowling club section of walk 2016, more signs 2018 at each end of walk”*. Three (3) users referred to a *“private”* sign that used to be there implying before 2018/19 but specify no dates. A relevant period of 1998 to 2018 may therefore be applicable.
56. However, Landowner 1 has not submitted any further evidence of any ‘private’ signage erected before 2018. It can be noted that the Council’s path files for Kirkburton 55 public footpath has one record relating to a “private ground” sign in 1991 reported by a member of the public as being ‘in a wood’, which

according to the 6 figure grid reference provided places it approximately on the land lying between Woodsome Road and Farnley Bank Wood. Nonetheless, case law dictates that 'private' or 'private land' signage in itself, is not documentary evidence that would inevitably defeat the 'claim'. This is because it does not go far enough in itself to demonstrate or communicate a lack of intention to dedicate. For example, a public right of way can be defined as the public's right to pass and repass over a strip of land and that land is more often than not, land in private ownership.

2012 - Section 31(6) Landowner Deposit/Declaration

57. In the Landowner/Occupier Statement Form dated 15 November 2021, landowner 2 referred to the submission of the 31(6) landowner deposit/declaration in 2012/2013 by the previous landowner.
58. In November 2012, landowner 1 submitted a [section 31\(6\) landowner deposit \(plan and statement\)](#) under the 1980 Act to the Council, see **Figure 17**. This was followed by the submission of an associated s31(6) landowner declaration in January 2013. The s31(6) landowner deposit/declaration acknowledged any existing public rights of way across their land at the same time as declared that they as landowner had no intention to dedicate any further routes to the public – this includes the land in question at Farnley Bank Wood. Such a deposit brings public use of the way into question but has no retrospective effect.

Relevant Periods

59. The relevant periods of 1999 to 2019 and 1998 to 2018 are therefore rebutted, and the new relevant period to consider user evidence is between **1992 to 2012**. However, landowner 1 has indicated the presence of permissive signs since 2008, which would create an earlier relevant period of **1988 to 2008**, nevertheless the claim lacks substantive supporting evidence and is discussed in detail under the heading 'Evidence of a Lack of Intention to Dedicate a Public Right of Way' below. Nevertheless, a relevant period of 1988 to 2008 has also been considered.

A Way

60. Users described and drew (on the map) the application route starting at Upper High Fields where it joins definitive public footpath Kirkburton 55/10, through Farnley Bank Wood, and terminating at Farnley Tyas Bowling Club access road where it joins Woodsome Road public highway.
61. Users described the application route through the woodland as varying in width between 0.5m and 2m (averaging between 1 and 1.5m), or a single track/footpath.
62. Users described the surface of the application route as earth or grass. All users (except one who did not complete the question) reported that the application route followed the same line throughout their use.
63. Where specified, users commonly referred to the application route as "*Farnley Bank footpath*" or "*Farnley Bank Woods footpath*" or "*Bowling Club Woods footpath*" or "*the ridge walk*". A letter from Farnley Tyas Community Group also refers to it as the "*Farnley Bank footpath*".

Evidence of Use during Relevant Period

64. The user evidence summary shows public use of the application route on foot started mainly from the 1970/80s although one person indicated their use started in 1953.
65. As shown in **Figure 18**, at the start of the relevant period 1992 to 2012, 10 (ten) users stated they were using the route on foot. At the end of the same relevant period 23 (twenty-three) users stated they were using the route on foot.
66. In relation to the frequency of the public's use, 4 (four) used it daily, 5 (five) used it weekly, 2 (two) used monthly, 3 (three) used it weekly or monthly, 6 (six) used it every few months and 3 (three) used it yearly or occasionally. It is collective use during the 20 year relevant period that is important.

Actually enjoyed

67. All 23 (twenty-three) users described their use on foot. No user described their use by horse, cycle, or vehicle. Users described the purpose of their use on foot, for walking/ dog walking/ for leisure. Users described seeing others who were also on foot - walking/ dog walking/ running/ with children/ for leisure.
68. Users also described the application route a part of circular walk, linking Field Lane to definitive public footpath KIR/55/10 to the top of the village and back. It is also referred to as a convenient, safe, pleasant circular walk, without the need to walk on a busy, dangerous road.

By the public

69. Having discounted any private type of use, the user evidence shows all users were using the route as members of the public and were all wholly or largely local people. There are no dwellings along the application route and as such, no user described exercising private rights for access to their dwellings.
70. Part of the application route is described as a beating line for Farnley game shoot (October to January) and walked for pest control out of season.

Without interruption

71. One user mentioned they had “... *met members of the landowner’s family and nothing was ever said about not being allowed to walk the route.*”
72. No user indicated that their use was interrupted, or described ever being challenged or stopped or being turned back or being told the route was not public by landowners during the relevant period. However, landowner 1 has stated they challenged public use, see paragraph 85.

As of right - without force

73. Users do not describe any barriers, fences, impassable stiles, locked gates, building materials obstructions had ever been present on the route in question, to forced open and causing users to turn back during the relevant period.

As of right - without secrecy

74. For use to be as of right it must be open and of such a nature that if any landowner would have been aware that the way was being used had they chosen to look, and so had been in a position to object. There is no evidence to suggest that there were any attempts to conceal public use of the route during the relevant period. Indeed, the landowner evidence shows that they were aware of use by the public.

As of right – without permission

75. The user evidence shows that no user ever asked for permission and no user was ever given permission to use the route during the relevant period. In a Landowner/Occupier Statement Form dated 19 October 2021, landowner 1 stated that no user had asked for, nor had been given, permission to use the application route.
76. Although outside the relevant period of 1992 to 2012, in emails dated 10 and 16 September 2014 between an Officer and landowner 1 the subject of permissive routes was discussed. Landowner 1 was seeking advice about how to notify the Council about 'permissive footpath/bridleways' on their land. Farnley Bank Woods is not mentioned, because the advice sought was in general terms. The Officer advised
- “You may wish simply to put up signs stating that use of the way(s) in question is by permission of the landowner. Unless you follow certain procedures [and referring to the s31(6) deposit], it is generally more important that you inform the users (the public at large) that their use is permissive and ensure that they would be aware of that fact”*
77. This correspondence is after the relevant period 1992 to 2012 ended, and therefore is not relevant to presumed dedication during that period, but it does provide some context on the subject of any permissive routes.
78. Although also outside the relevant period 1992 to 2012, four users (UEFs 19, 20, 21, 22) whose use started between 2014 and 2016, believed the claimed

route was 'permissive', but they did not state ever asking for or being given permission to use it. On the 17 February 2022, an Officer contacted three of the four users indicated with a view to gathering further information. One user responded on the 19 February 2022 saying that they were told by long standing residents that the route through the woods was a permissive footpath, and when they first followed the route, they saw that a permissive path did exist through the woods from KIR/55/10 over the stile and left into the woods.

79. When questioned further by Officers, the same user mentioned that Councillor Armer had said the route was permissive at a community meeting. On the 20 June 2022, the Officer followed up with Councillor Armer who said:

... "My personal view is that some people in the local community have misunderstood the meaning of "permissive" and think that it is equivalent to a public right of way. I have only ever spoken about this path in general terms at a normal meeting of the Farnley Tyas Community Group...". "I have never referred to this path as being permissive, but may have expressed a personal opinion that it could well be a PROW. I have never thought the path to be permissive, and had I thought so would not have supported any moves to have it designated as a PROW."

80. Permission in relation to use being 'as of right', should there be any evidence of express (e.g., clear, and specific) permission, then use is not 'as of right'. A public right of way and a permissive way are mutually exclusive. A simple definition of a permissive path one where the landowner has granted permission for the route to be used by the public, but they also have the right to withdraw that permission if they choose.
81. Officers therefore do not consider that use of the application route was with any express permission. Furthermore, no user asked for nor was given permission, which concurs with the landowner's evidence that no user asked for nor was given permission. Use of the application route by the public is therefore considered to be 'as of right' meaning, without force, without secrecy and without permission.

82. As a result, the user evidence raises a presumption that the application route has been dedicated as a public footpath. It is a rebuttable presumption and therefore the Council must consider if there is sufficient evidence that there was no intention during the relevant period to dedicate the application route as a public right of way.

Evidence of Lack of Intention to Dedicate a Public Right of Way

83. In a letter dated 25 April 2019, landowner 2 wrote to the applicant that they:

“purchased the land in question in 2018 and therefore has no knowledge of the use of the route by the public prior to that date” and “... has no objection to an amendment to the definitive map and creation of a footpath along the section indicated...”.

84. In a Landowner/Occupier Statement Form dated 15 November 2021, landowner 2, stated that they are not aware they have stopped anyone using the application route nor made it impassable, no one has asked them for permission and no permission has been given to anyone, and that no obstructions, signs or notices have been erected.

85. In a Landowner/Occupier Statement Form dated 19 October 2021, landowner 1 stated they had verbally challenged public use of the route by:

“pointed them to the ‘private property’ signage and have asked them to leave”.

86. However, landowner 1 did not specify any dates for such challenges on that form. As such, Officers consider there is not sufficient proof that such a verbal challenge brought the public's use of the route into question, including no 'event' date, and therefore there can be no associated relevant period.

87. In the email dated 11 March 2019, between a KC PROW Officer and landowner 1, which discussed the application DMMO S14217, landowner 1 stated:

*“...We have placed signage there since 2008, initially for permissive access, more recently private” (See **Figure 13**).*

88. Landowner 1 detailed that signage stating the application route was a permissive footpath was erected in 2008, which is within the relevant period of 1992 to 2012. Such signage has no retrospective effect, but in turn would create a further alternative relevant period 1988 to 2008.
89. The issue is that the landowner has not submitted any further evidence (e.g., no photographs or equivalent evidence) of any 'permissive' signage erected in 2008 or any 'private' or 'private land' signage erected since between 2008 and 2019. The only evidence are the photos of the signage taken by Officers in 2019 and 2021, as shown in **Figure 15**.
90. In addition, the other issue is that no user indicated any signage specifically about permissive access. Therefore, there appears to be some inconsistencies in the evidence (landowner and user) surrounding signage, dates, and wording. As noted in paras 30 to 32, the burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. In relation to signage, proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication is required (s31(3) of the 1980 Act).
91. On the 17 February 2022, Officers asked landowner 1 for further evidence of permissive access signage and details of when this change to private signage occurred, but none has been submitted. Officers therefore consider that the evidence submitted on the landowner's signage (permissive or private) is not sufficient proof of a lack of intention to dedicate.
92. Consequently, there is insufficient evidence indicating a lack of intention to dedicate the application route as a public footpath over the relevant period of 1992 to 2012 to rebut the presumption that it has been so dedicated.

Conclusion (1992 - 2012 Relevant Period)

93. The evidence of public use considered above is sufficient to raise the presumption that the application route has been dedicated as a public footpath under section 31 of the 1980 Act. The Officer considers that the presumption is

not rebutted by the opposing evidence and an Order should be made based on a reasonable allegation that the way subsists.

Alternative Relevant Period 1988 to 2008

94. On the other hand, if the landowner's evidence on signage from 2008 is considered sufficient to demonstrate a lack of intention to dedicate then the test for presumed dedication would revert to an earlier 1988 to 2008 relevant period.
95. The user evidence has therefore been evaluated for the relevant period of use 1988 to 2008 under the provisions of s31(1) for presumed dedication, as follows.
96. As shown in **Figure 19**, at the start of the relevant period 1988 to 2008, 6 (six) users reported they were using the route on foot. At the end of the same relevant period 19 (nineteen) users reported they were using the route on foot.
97. In relation to the frequency of the public's use, 1 (one) used it daily, 4 (four) used it weekly, 2 (two) used it monthly, 3 (three) used it weekly or monthly, 6 (six) used it every few months and 3 (three) used it yearly or occasionally. It is collective use during the 20 year relevant period that is important.

Conclusion (1988 - 2008 Relevant Period)

98. This level and frequency of use demonstrates that the application route is reasonably alleged to have subsisted for 20 years or more before the erection of signage in 2008. Use was 'as of right', without force, without secrecy and without permission. No evidence has been provided about a lack of intention to dedicate prior to 2008. Therefore, the statutory test for presumed dedication is satisfied and not rebutted. during the relevant period 1988 to 2008, and an Order should be duly made based on a reasonable allegation that the way subsists.

Implications for the Council

Working with People

99. Not applicable.

Working with Partners

100. The Officer has engaged with the public, Councillors, landowners, occupiers, the Parish Council, and user groups when gathering and investigating the evidence connected with this application.

Placed based Working

101. Not applicable.

Climate Change and Air Quality

102. Work to ensure that the public rights of way network are correctly recorded on the Definitive Map and Statement and are available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with Council's response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality.

Improving Outcomes for Children

103. Not applicable.

Other (e.g., Legal/Financial or Human Resources)

104. The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded public rights of way and any other modifications that should be made to the legal record.

105. The Council must make a decision regarding the DMMO application and make an Order if required further to section 53 of the Wildlife and Countryside Act 1981.
106. Any person may make a duly made objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order made must be forwarded to the Secretary of State and most likely be considered by an appointed Planning Inspector, who may or may not confirm the Order.
107. The financial costs associated with the making or confirmation of an Order or associated with referral of an opposed Order to the Secretary of State would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.
108. If an Order is made and that order is confirmed on the basis of presumed dedication under section 31 of the 1980 Act, as recommended by the Officer, the public footpath will not be a highway maintenance at public expense as it came into existence through public use after [section 38 of the Highways Act, 1959](#), came into operation.
109. The Members should be aware that the presence of fence across a recorded public right of way without a suitable method of crossing, would be an unlawful obstruction which would lead to appropriate enforcement action.

Consultation

Consultation letters and site/website notices

110. On the 29 October 2021, Officers conducted a 28-day consultation with the public, landowners/occupiers, user groups, Kirkburton Parish Council and Kirkburton Ward Members. The consultees were invited to provide any comments and/or evidence by 29 November 2021. Consultees were also asked to provide responses to a specific set of questions.

111. Public notice of the consultation was provided on the Councils website under [Changes to the Definitive Map and Statement](#) and titled 'Farnley Bank Wood 217, Farnley Tyas'. Notices were displayed at either end of the application route as shown in **Figure 20**. Consultees were given the option to respond via email, letter, or telephone.

Consultation responses

112. Consultation responses were received from both landowners, 2 (two) members of the public, one (1) community group, one user group, 2 (two) Councillors and the applicant. See **Figure 21** for a summary of those consulted and any responses.

113. The consultation elicited responses from users and user groups that supported the applicant's case.

114. Both landowners submitted a landowner/occupier statement form. The main landowner 1 does not support the claim for public rights over the route and as already mentioned, their evidence relates to the lack of intention to dedicate in relation to permissive signage and private signage, and to lesser extent challenging use. Landowner 2 appears to be neutral having previously had no objection to the recording of a footpath on the DMS.

115. Landowner 1 also responded on 29 November 2021 that:

"The Estate - and its successor - has provided many permissive routes. This benefit will be lost if landholders are to be discouraged in this way."

116. On the 6 November 2021, one user who had previously submitted a UEF, commented that:

"....my understanding is that it was used by people residing at Hunters Nab and by people making their way to work at Farnley Mill and Storthes Hall Hospital."

117. Huddersfield Rucksack Club responded on 23 November 2021 that:

"I have asked our members about this claimed path and no one has knowledge of it. Though there was some comment that it could be a useful addition to the network. However, I do walk footpath KIR/55/10 regularly and would not like to see this route compromised". Officers followed up and the reference to 'route compromise' clarified by the respondent to mean if the *'landowner decided to try and close one path and open the other.'*

118. In an Email on the 29 November 2021 the applicant resent images of Email correspondence with the landowner 1 submitted with the DMMO S14217 application and also submitted an additional Email and stated this was:

"...evidence regarding permission given to walk through here in the past...."

The additional Email is from landowner 1 to Farnley Tyas Community Group dated 27 December 2013. It mentions a walk to be held on 15 February 2014 where:

"people can walk/drive down Field Lane (the public bridleway), park up at Westroyd and walk down to Stock Dove Wood".

Farnley Bank Wood is not mentioned, but the applicant stated that:

"Stock Dove Wood is accessed by walking along Farnley Bank".

119. On the 3 March 2022, the Officer followed up with the applicant to ask what they had meant by 'permission' in the email, because the applicant had not referred to 'permission' previously. In summary, the applicant replied that they did not mean landowner 1 had given 'permission' as such, they meant the route was used in the full knowledge of the landowner 1 and they had no objection to the public using it and it had been that way for over 30yrs.

120. Officers consider that this email correspondence does not in itself represent an express 'permission' for the applicant or members of Farnley Tyas Community Group to walk through Farnley Bank Wood – and any use by these parties is considered to be 'as of right'. Officers also consider that in itself this correspondence does not indicate in itself the application route was a permissive path.

Response from Parish Council

121. Kirkburton Parish Council were invited to respond to the informal consultation. No response has been received from them.

Response from Councillors

122. Councillor Armer responded on 28 October 2021 that:

"I have never used this path, so cannot comment, but am well aware of the local community's efforts to establish the way. I will liaise with my local contact, but I assume that you will already have communicated with her since she has played a leading role in this."

123. Officers responded that they were in touch with the applicant.

124. Councillor Smith responded on 28 October 2021 that:

"I'm not aware of anything, but is it your intention to extend this to community groups/ village associations who are made up of people who live locally and often use this area, so would be well placed to comment?"

125. Officers responded that the consultation included the landowners / occupiers, user groups, the Parish Council and the wider public. A notice and plan (map) would also be placed on the KC website.

Next Steps & Timelines

126. As soon as reasonably practicable after determining the application, Schedule 14(3)(3) requires the Council to give notice of their decision by serving a copy of it on the applicant and any landowner/occupier. If the Council decide not to make an Order, the applicant may appeal the decision to the Secretary of State within 28 days after service of notice under Schedule 14(4) of the 1981 Act. The process is usually delegated to a Planning Inspectorate who will consider the appeal and may direct the Council to make an Order.

127. If an Order is made, it will be processed under [Schedule 15 of the 1981 Act](#). This schedule provides that before making an Order, the Council shall formally consult with every local authority whose area includes the area in which the Order relates. The Order will be made in the prescribed form as set out in [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1983](#) and does not take effect until it is confirmed. On making an Order, the Council shall give public notice in the prescribed form for a forty-two (42 day) period during which representations or objections may be duly made.
128. The public notice is published in a local newspaper, displayed at both ends of the way affected by the Order, at Council offices, and served on every relevant owner/occupier, local authority affected by the Order, and user groups and statutory consultees.
129. If the Order is unopposed, it may be confirmed by the Council. On the other hand, an opposed Order must be submitted to the Planning Inspectorate who may determine the Order via written representations, public hearing, or public inquiry. The Order may be modified, unconfirmed, or confirmed as made. A final decision is similarly given public notice for a 28-day period.
130. Further information on the process and timelines is provided in these documents:

[A Guide to Definitive Map and Changes to Public Rights of Way \(2008 Revision\)](#)

[Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders html - GOV.UK \(www.gov.uk\)](#)

Officer Recommendations & Reasons

Make a DMMO

131. Based on an overall assessment of the user evidence, landowner evidence and other evidence, Officers considers that it is reasonably alleged that the application route from definitive public footpath Kirkburton 55/10 at Upper High Fields through Farnley Bank Wood to Woodsome Road, Farnley Tyas, subsists

as a public footpath during the relevant period 1992 to 2012, based on presumed dedication under section 31 of the 1980 Act, which is not rebutted by sufficient evidence of a lack of intention to dedicate.

132. Officers therefore recommend that a Definitive Map Modification Order (an Order) is made under sections 53(3)(c)(i) of the 1981 Act, to record a public footpath on the Definitive Map and Statement (DMS) leading from definitive public footpath Kirkburton 55/10 at Upper High Fields (point A on the draft map in **Figure 22**) through Farnley Bank Wood to Woodsome Road, Farnley Tyas (point C on the draft map in **Figure 22**).
133. The draft map shows the indicative route. Any Order plan would show a route with a higher level of precision. The indicative width of the route varies along its length through the woodland averaging 1 to 1.5m. Any Order would also accurately record the width with a higher level of precision. At the access road, the route would be over the full width boundary to boundary.
134. The Council can confirm the Order providing it does not elicit any objections during the formal public notice period. Confirmation of an Order is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A in relation to 53(3)(c)(i) of the 1981 Act.

DMMO Confirmation

135. Officers also recommend that, should the Order be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should support confirmation of the Order by either written representations, public hearing, or public inquiry. Confirmation of the Order would record on the DMS the application route for use by the public on foot. However, if new evidence becomes available that changes the assessment of the user evidence, such that, the application route is not considered to subsist on the balance of probabilities, the Council should take a neutral stance in relation to confirmation of the Order.

Contact Officer

136. Deborah Stephenson, Assistant Definitive Map Officer

deborah.stephenson@kirklees.gov.uk

Background Papers and History of Decisions

137. This report is accompanied by the following appendices:

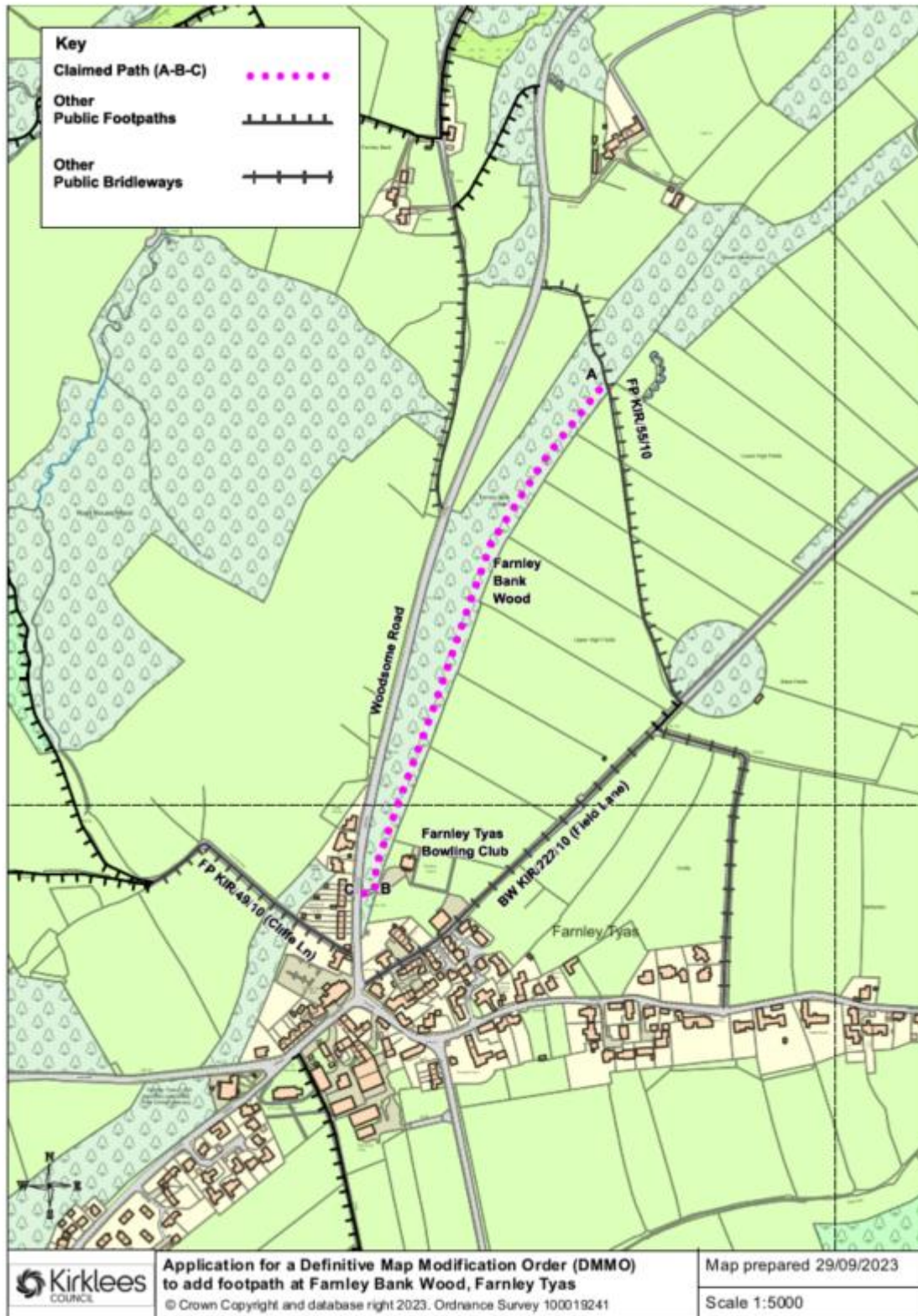
Appendix A Guidance to Members

Appendix B Figures and Photos

Service Director Responsible

138. Highways and Streetscene; Environment & Climate Change Directorate

Figure 1: Draft map - Public footpath to recommended to be added (A-C)



Map shows the indicative route

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KIRKLEES METROPOLITAN COUNCIL (Annex 1)
AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP
GUIDANCE NOTES FOR MEMBERS

Introduction

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

The Legal Tests

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

Making the Order

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.

Appendix B Figures and Photos

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Figure 1: Extract from 1985 Definitive Map showing Farnley Bank Wood

Source: Kirklees Council Kompass Mapping

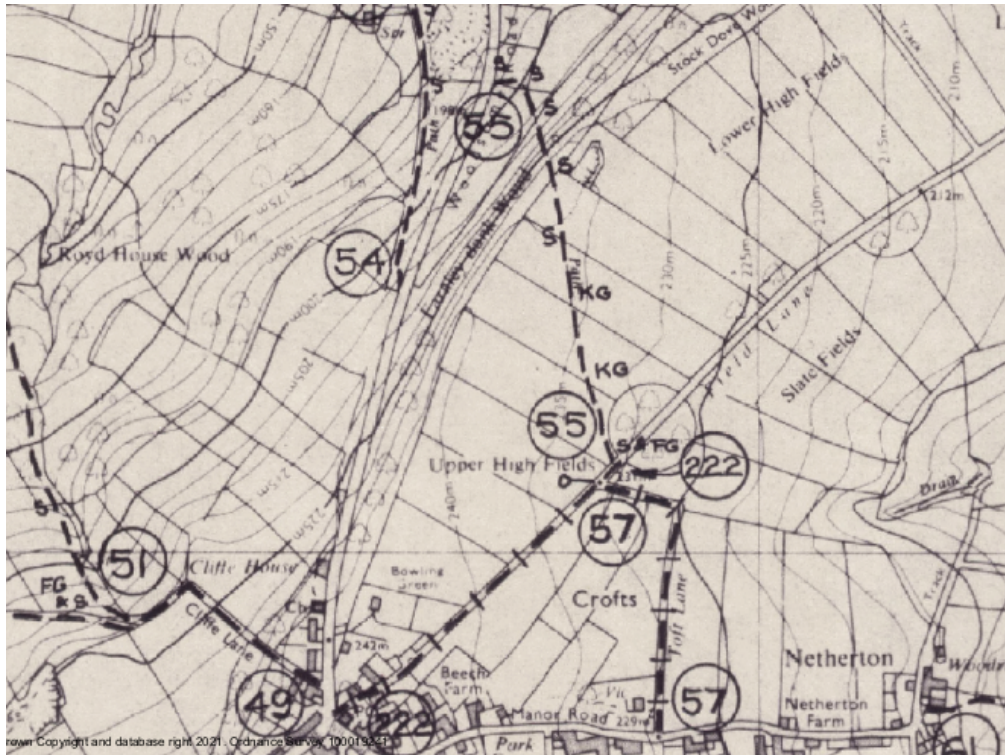


Figure 2: Extract from 1985 Definitive Statement for Kirkburton 55 Public Footpath

Source: Kirklees Council electronic file

Kirkburton							Kirkburton
Path Number	Map Reference	Description of Route	Nature Of Surface	Length (M)	Width (M)	General	
055	SE 11SE / 1613	Footpath from Woodsome Road in a southerly direction over Upper High Fields to its junction with Field Lane.	Pasture	483	1.2	1 Field Gate 2 Kissing Gates 6 Stiles	

Figure 3: DMMO S14217 Application Map

Source: Kirklees Council electronic file

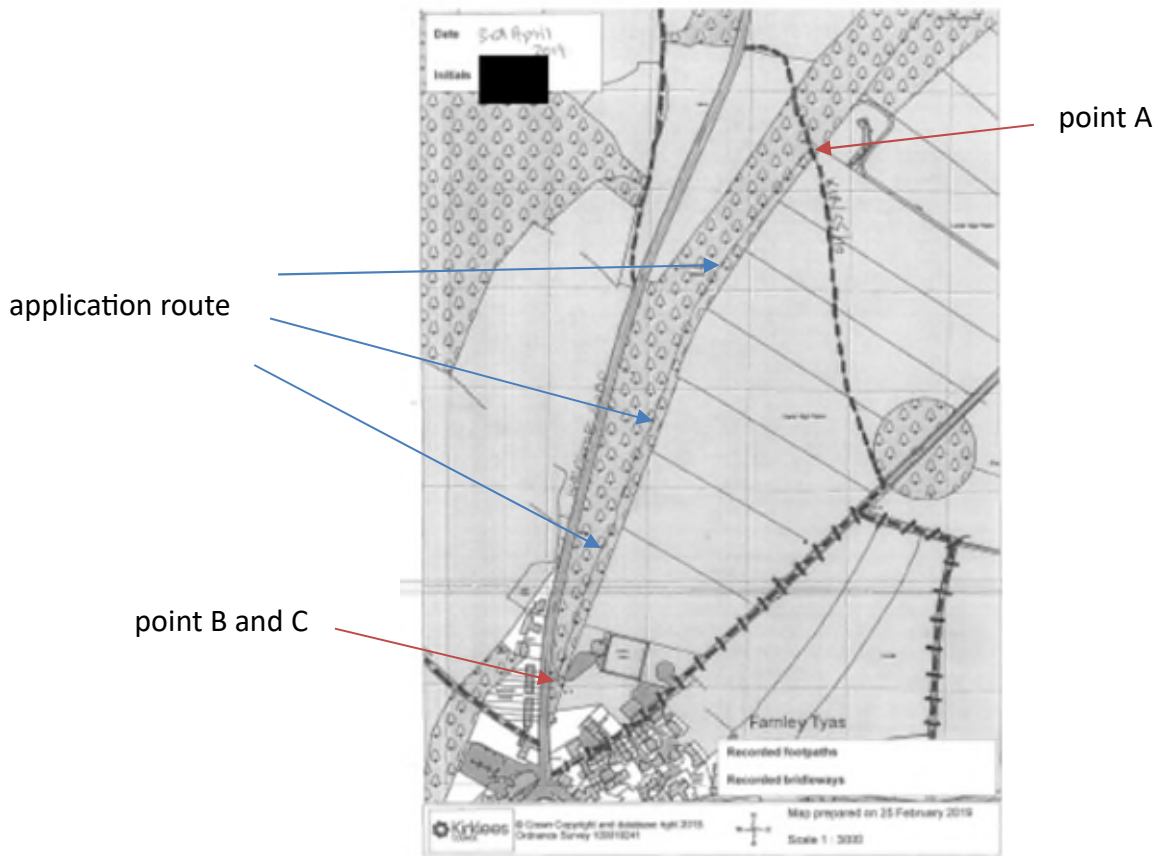


Figure 4: Boundary fence across application route

Source: Applicant's photo January 2019, near point B, Dartmouth Terrace, Woodsome Road



Figure 5: Physical characteristics of the application route in 2019 and 2021

Source: Officer photos



Photo 1: Stile on KIR/55/10 into Farnley Bank Woods at point A. Route turns left into wood. 18/2/2019



Photo 2: Route in middle, signage on tree, Woodsome Road to right. 18/2/2019



Photo 3: Close up of signage in photo 2. 'PRIVATE NO PUBLIC RIGHT OF WAY'. 18/2/2019



Photo 4: Looking back towards photo 1, route visible to left of centre. 18/2/2019



Photo 5: Continuing through wood, worn route in middle. 18/2/2019



Photo 6: Continuing through wood, worn route in centre, boundary wall to fields on left. 18/2/2019



Photo 7: Continuing through wood, worn route in centre, boundary wall to fields on left. 18/2/2019



Photo 8: Continuing through wood, worn route in centre, boundary wall to fields on left. 18/2/2019



Photo 9: Looking backwards from photo 8. 18/2/2019



Photo 10: Continuing through wood, worn route in centre, boundary wall to fields on left and ahead. 18/9/2019



Photo 11: Continuing through wood, worn route in centre, boundary wall to fields on left and ahead. 18/9/2019



Photo 12: Continuing through wood, worn route in centre, leaf litter and understorey. 18/9/2019



Photo 13: View from route in wood, across and down Woodsome Road to Castle Hill. 18/2/2019



Photo 14: View from route in wood across Woodsome Road to Castle Hill. 18/2/2019



Photo 15: Continuing through wood, worn route in centre. 18/2/2019



Photo 16: Looking back through wood, leaf litter on route in centre. 18/2/2019



Photo 17: Looking back continuing through wood, worn route on grass in centre. 18/2/2019



Photo 18: Looking back continuing through wood, worn route on grass in centre. 18/2/2019



Photo 19: Boundary fence across full width of wood. 18/2/2019



Photo 20: Boundary fence from Woodsome Road, across full width of wood. 18/2/2019



Photo 21: Looking back from other side of boundary fence across full width of wood, signage on tree 'PRIVATE NO PUBLIC RIGHT OF WAY. 4/9/2021



Photo 22: Route is overgrown but still visible in centre, joining access road to Farnley Tyas Bowling Club, at point B. 4/9/2021



Photo 23: Looking back at sign on tree at point B 'Private No right of way No horses. 4/9/2021



Photo 24: Looking back to point B from access road to the Club, overgrown route in centre, consultation notice to right, sign in photo 23 in middle. 29/10/2021

Figure 6: Aerial photos 2006 and 2012

Source: Kirklees Council Kompass Mapping

Purple lines indicate public footpaths, Green lines indicate public bridleways



Photo 25: Aerial photo 2006



Photo 26: Aerial photo 2012

Figure 7: Applicant's photos - 2010, 2013, 2015



Photo 27: Worn route in woods. May 2010



Photo 28: Worn route in woods. May 2010



Photo 29: View across Woodsome Road. May 2013



Photo 30: Worn route in woods. May 2013



Photo 31: Worn route in woods. May 2013



Photo 32: Worn route in woods. May 2013



Photo 33: Worn route in woods. April 2015



Photo 34: Worn route in woods. April 2015



Photo 35: Worn route in woods. December 2015

Figure 8: Letter from Secretary of Farnley Tyas Community Group

Source: Applicant

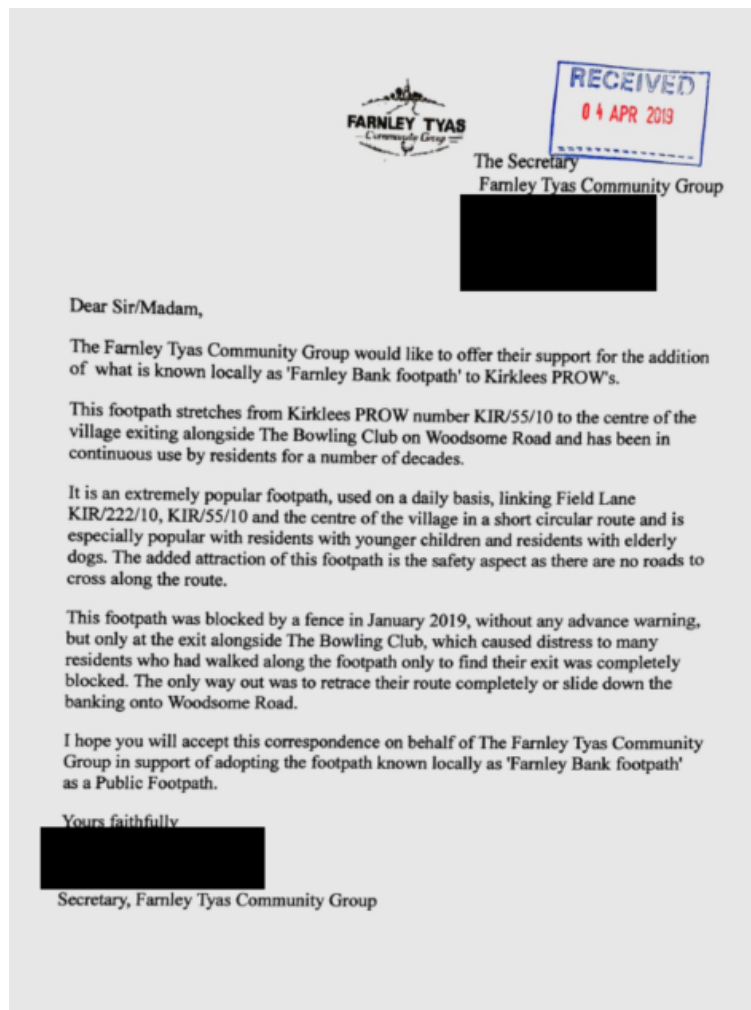


Figure 9: Applicant's copies of Email correspondence with landowner 1

Source: Applicant

Applicants covering email

Enclosed here is evidence of the use of the footpath along Farnley Bank/Club Woods dating back to 2010.

These emails show correspondence between members of Farnley Tyas Community Group and [REDACTED] who managed [REDACTED]

The emails refer [REDACTED] the woods on Farnley Bank. There are clear references to the fact that the footpath was regularly used, and that [REDACTED] were well aware of the fact, and had no objections.

Extract from email dated 17/12/2013

Hallo [REDACTED]
I walk every day through "club" woods along the footpath at the top .

Extract from email dated 12/5/2010

[REDACTED] large number of trees in the bowling club woods. I walk the dog there every day and yesterday I noticed that many of the trees along the footpath from the clubhouse [REDACTED]

Extract from reply to email of 12/5/2010 dated 17/5/2010

[REDACTED]
Subject: Bowling Club to Stock Dove Wood

[REDACTED]

17TH MAY 2010

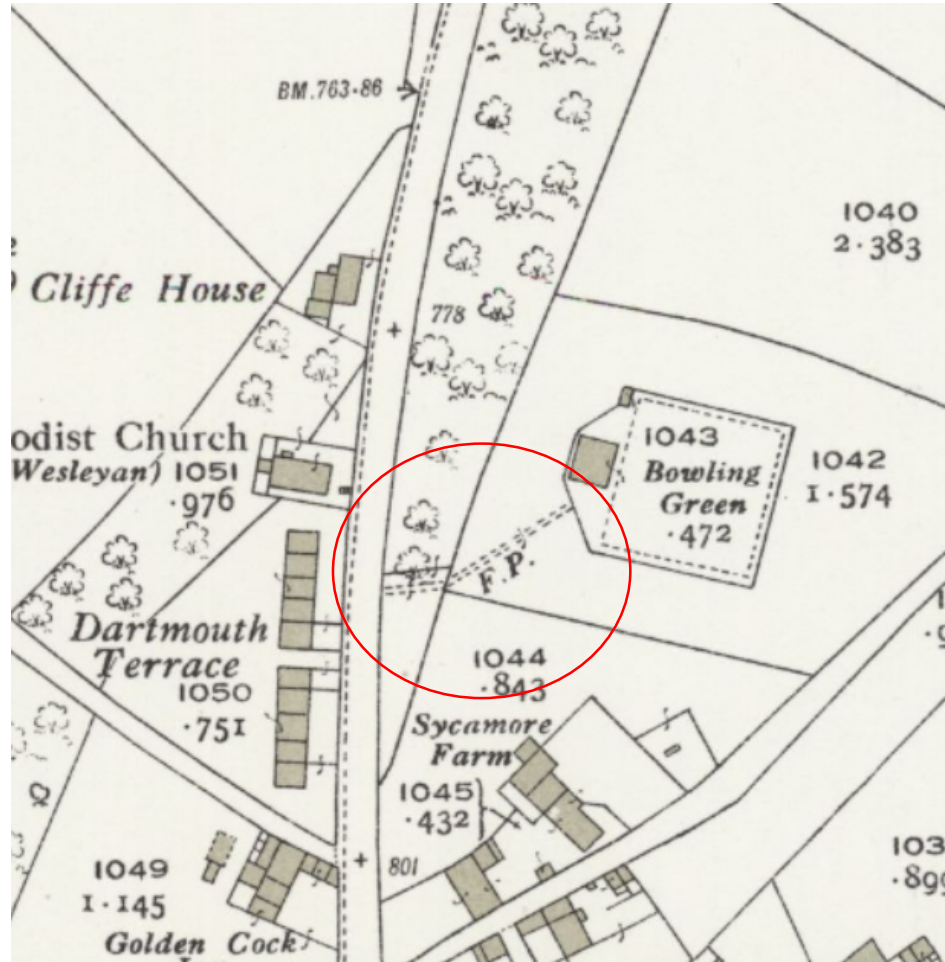
[REDACTED]

Many thanks for your e-mail of the 12th.

Figure 10: Extracts from OS Maps 1916, 1932 and 1968

Source: Yorkshire CCLX.8 1913 to 1914, **Published 1916** 1 to 25000, NLS

Source: Yorkshire CCLX.9, Revised 1929 **Published 1932** 1 to 25000, NLS



Source: SE11SE - A - OS Surveyed/ Revised 1957 to 1968, **Published 1968** 1 to 10000, NLS

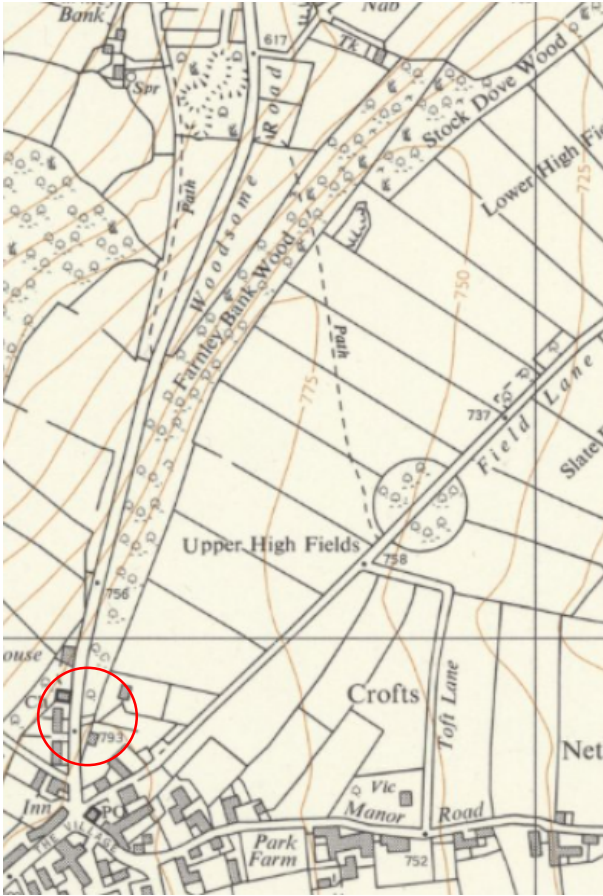
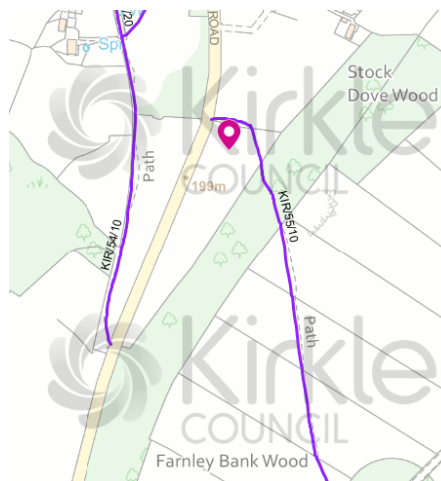


Figure 11: KC path file correspondence 1991

Source: KC electronic file



A blue form titled "WORLD RIGHTS OF WAY COMPLAINTS RECORD". It contains the following fields and information: "COMRAITOR:" and "TO BE DEALT WITH BY:" (both blank); "PATH NAME AND NUMBER: Kirkstoupeon SS"; "STATUS: footpath"; "O.S. GRID REFERENCE: 1013 1102"; "COMPLAINT RECEIVED FROM: Name: [Redacted], Address: [Redacted], Telephone: [Redacted]"; "DATE RECEIVED: 10.7.91"; "DETAILS OF COMPLAINT: 'Private Ground' sign in wood adjacent to public footpath." The Kirklees Council logo is visible in the background.



Appox. position of sign





Figure 12: User Evidence Summary

Ref	Years Used	Frequency	1951-	1956-	1961-	1966-	1971-	1976-	1981-	1986-	1991-	1996-	2001-	2006-	2011-	2016-	Mode				Purpose			Apprx. width	Route unchanged	Notices	Challenges	Permission	**Private rights	Seen others						
			1955	1960	1965	1970	1975	1980	1985	1990	1995	2000	2005	2010	2015	2020	F	H	B	V	W	V	O													
217/1	2005-2019	weekly															●						●							<1m	Y	Y	N	N	N	Y
217/2	1989-2018	every few months															●						●							person	Y	N	N	N	N	Y
217/3	1953-2015	every few months															●						●							1m	Y	Y	N	N	N	Y
217/4	2009-2019	daily															●						●							0.5-1m	Y	Y	N	N	N	Y
217/5	2009-2019	daily															●						●							2 feet	Y	Y	N	N	N	Y
217/6	1994-2015	weekly															●						●							36"	Y	N	N	N	N	Y
217/7		x2 times															●						●							1m	Y	N	N	N	N	Y
217/8	1994-2019	once a year															●						●							<1m	Y	N	N	N	N	Y
217/9	1989-2018	monthly															●						●							<1m	Y	N	N	N	N	Y
217/10	2016-2019	every few months															●						●							1-1.5m	Y	N	N	N	N	Y
217/11	2016-2019	every few months															●						●							1.5m	Y	N	N	N	N	Y
217/12	1978-2019	occasionally															●						●							single track	Y	N	N	N	N	Y
217/13	1974-2019	occasionally															●						●							single track	Y	N	N	N	N	Y
217/14	1980-2019	every few months															●						●							2ft	Y	N	N	N	N	Y
217/15	1980-2019	every few months															●						●							2ft	Y	N	N	N	N	Y
217/16	2010-2019	varies															●						●							1.5-2.5ft	Y	Y	N	N	N	Y
217/17	2010-2019	varies															●						●							2ft	Y	Y	N	N	N	Y
217/18	2008-2018	varies															●						●							1m	Y	N	N	N	N	Y
217/19	2014-2018	weekly															●						●							1m	Y	N	N	N	N	Y
217/20	2016-2018	> weekly															●						●							1-2m	Y	Y	N	N	N	Y
217/21	2014-2018	weekly															●						●							1-2m	Y	Y	N	N	N	Y
217/22	2014-2018	weekly															●						●							1-2m	Y	Y	N	N	N	Y
217/23	2013-2019	monthly															●						●							1-0.5m	Y	Y	N	N	N	Y
217/24	1973-2018	every few months															●						●							single track	Y	N	N	N	N	Y
217/25	1973-2018	every few months															●						●							single track	Y	N	N	N	N	Y
217/26	2012-2019	weekly															●						●							3ft	Y	N	N	N	N	Y
217/27	2012-2019	daily															●						●							3ft	Y	N	N	N	N	Y
217/28	1989-2019	daily															●						●							<1m	Y	Y	N	N	N	Y
217/29	1994-2019	weekly															●						●							1m	Y	N	N	N	N	Y
217/30	1994-2019	weekly															●						●							1m	Y	N	N	N	N	Y
217/31	2004-2019	monthly															●						●							2ft	Y	Y	N	N	N	Y
217/32	2004-2019	varies															●						●							2ft	Y	Y	N	N	N	Y
217/33	2004-2019	varies															●						●							2ft	Y	Y	N	N	N	Y
217/34	2004-2019	varies															●						●							2ft	Y	Y	N	N	N	Y

34 0 0 0 34 0 1 33 16 0 0 3 34

KEY

COLOUR USE

	daily
	twice weekly
	weekly
	more than once a month
	monthly
	less than monthly
	yearly
	less than yearly
	frequency or duration not stated clearly

MODE OF USE

F = Foot
H = Horse
B = Bicycle
V = Vehicle

PURPOSE

W = Walking, including dog walking
V = Visiting
O = Other

** Private Rights: Users that indicate a 'by right' use

Figure 13: Summary of landowner evidence

Description	Landowner 1	Landowner 2
Extent of land ownership	Farnley Bank Wood	section of the woodland, Farnley Tyas Bowling Club and grounds
Land use	mature woodland	woodland
Aware of any right of way on route	no, this is privately owned woodland	no
Seen people using route, what mode	yes, on foot	letter dated 4/4/2019 to applicant states no knowledge of use of the route by public prior to that date, not seen people using the route
Has the way you have used the land made the route difficult or impassable at any time	the land has always been woodland and the trees continue to grow overtime	not so far as we are aware
Stopped or turned people back	yes - pointed them to the 'private property' signage and have asked them to leave	not so far as we are aware
Asked for permission	no, the Estate has never had a request for permission	no
Given permission	no, the Estate has never given permission to anyone	no
Locked gates or obstructions	the woodland has signs up saying private no public right of way and there is a fence up dividing the ownership boundary. There is also a barbed wire fence up at the end of the woodland.	no
Erected notices or signs	yes	land owner statement form says no, but there is one sign at the Club end
Notices or signs - wording	yes, PRIVATE - No public right of way signs	landowner statement stated nil, but there is a current sign saying 'Private No right of way No horses'
Notices or signs - location	both ends of the woodland – approximate positions marked by brown dots shown on the plan attached. There are two fences shown by the orange lines on the plan. One is barbed wire and a second is barbed wire with sheep netting.	signage near point B in February 2019
Notices or signs - maintain	yes when they were vandalised	nil
Notices or signs - how long	they have been there many many years.	nil
Receipts for fencing, gates, notices, letters of permission, police reports	yes	no
s31(6) landowner deposit/declaration	copy supplied over email	the previous landowner submitted a deposit in November 2012 and declaration in January 2013
s31(5) LPA notice	nil	no
Other correspondence	email dated 11/3/2019 to KC PROW team ..."before my time at Farnley Estates you were in communication with (...) regarding public footpaths and permissive access routes in and around Farnley Tyas. Our understanding is that these were settled over ten years ago. We have recently placed a boundary fence up within this private area of woodland to divide the ownership boundary because various areas of the Estate have been sold. This fence was vandalised and cut down 3 days after it was installed. We have placed signage there since 2008, initially for permissive access, more recently private. This signage has been vandalised...."...	letter dated 25/4/2019 to applicant says '...has no objection to an amendment to the definitive map and creation of a footpath along the section indicated...'

Landowner 1, extract from email dated 11/3/2019

We have placed signage there since 2008, initially for permissive access, more recently private

Figure 14: Plan to accompany landowner 1 statement form



Position of signage at brown dots (indicated by red circles)

Figure 15: Landowner signage

Source: Officer photos



Photo 36: Landowner 1, PRIVATE, NO PUBLIC RIGHT OF WAY Near point A at Upper High Fields Off KIR/55/10. Officer photo 29/10/2021



Photo 37: Landowner 1, same as photo 36. Officer photo 29/10/2021



Photo 38: Landowner 1, PRIVATE NO PUBLIC RIGHT OF WAY, near point B at the Club end. Officer photo 4/9/2021



Photo 39: Landowner 2, Private No right of way No horses near point B at the Club end. Photo 6/2/2019.

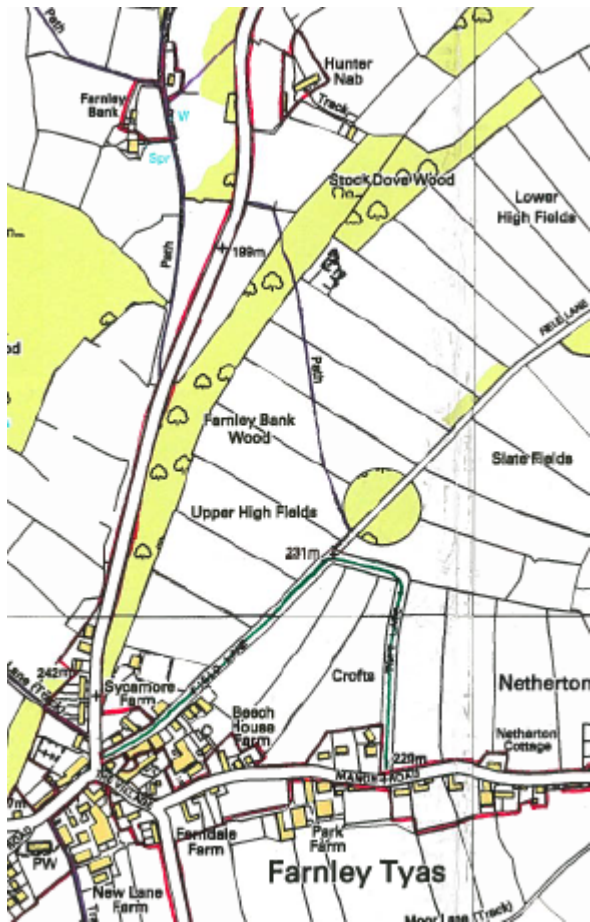


Photo 40: Landowner 1, PRIVATE NO PUBLIC RIGHT OF WAY. near point B at the Club end. Photo dated 6/2/2019

Figure 16: User evidence on signage and notices

Ref	Years used	Notices
217/1	2005-2019	No, however a sign went up on a tree just over the stile in Dec 2018
201/3	1953-2015	Recent at the start of walk where new fence starts - there is one further down Field Lane though in the past there were no problems locals using that section was used by people going to work
201/4	2009-2019	Signs erected recently
201/5	2009-2019	Signs erected stating private land approx. Jan 19
201/16	2010-2019	Signs erected last year by Farnley Estates
201/17	2010-2019	Private land signs nailed on to trees late last year...November 2018
201/19	2014-2018	There has been a sign indicating that the wood is privately owned and now there are signs saying 'No right of way'
201/20	2016-2019	There used to be a small sign saying the wood was privately owned, but now there are Private & no right of way signs at both ends of the path
201/21	2014-2018	Have only noticed signs nailed to trees at bowling club end of walk since path blocked by fence
201/22	2014-2018	Up until very recently, I have only ever seen a sign fixed to a tree close to the bowling club driveway indicating that the wood is privately owned. On inspection on 11 March 2019, there are signs saying 'No right of way'. These signs only appeared past few days.
201/23	2013-2019	Sign fixed to tree at bowling club section of walk 2016. More signs 2018 at each end of walk
201/28	1989-2019	"Private" signs went up on route around December 2018
201/31	2004-2019	Signs also nailed to the trees...only since November 2018.
201/32	2004-2019	Signs also nailed to the trees...only since November 2018.
201/33	2004-2019	Farnley Estates sign-erected last year
201/34	2004-2019	Yes - Farnley Estates put one up

Figure 17: Extract from s31(6) Landowner Deposit



Yellow/green colouring indicates land subject to s31(6) landowner deposit, including Farnley Bank Wood

KEY

COLOUR USE

	daily
	twice weekly
	weekly
	more than once a month
	monthly
	less than monthly
	yearly
	less than yearly
	frequency or duration not stated clearly

MODE OF USE

F = Foot
H = Horse
B = Bicycle
V = Vehicle

PURPOSE

W = Walking, including dog walking
V = Visiting
O = Other

** Private Rights: Users that indicate a 'by right' use

Figure 20: Consultation notices



Photo 41: Point A, stile from public footpath KIR/55/10 into Farnley Bank Wood, 29/10/2021

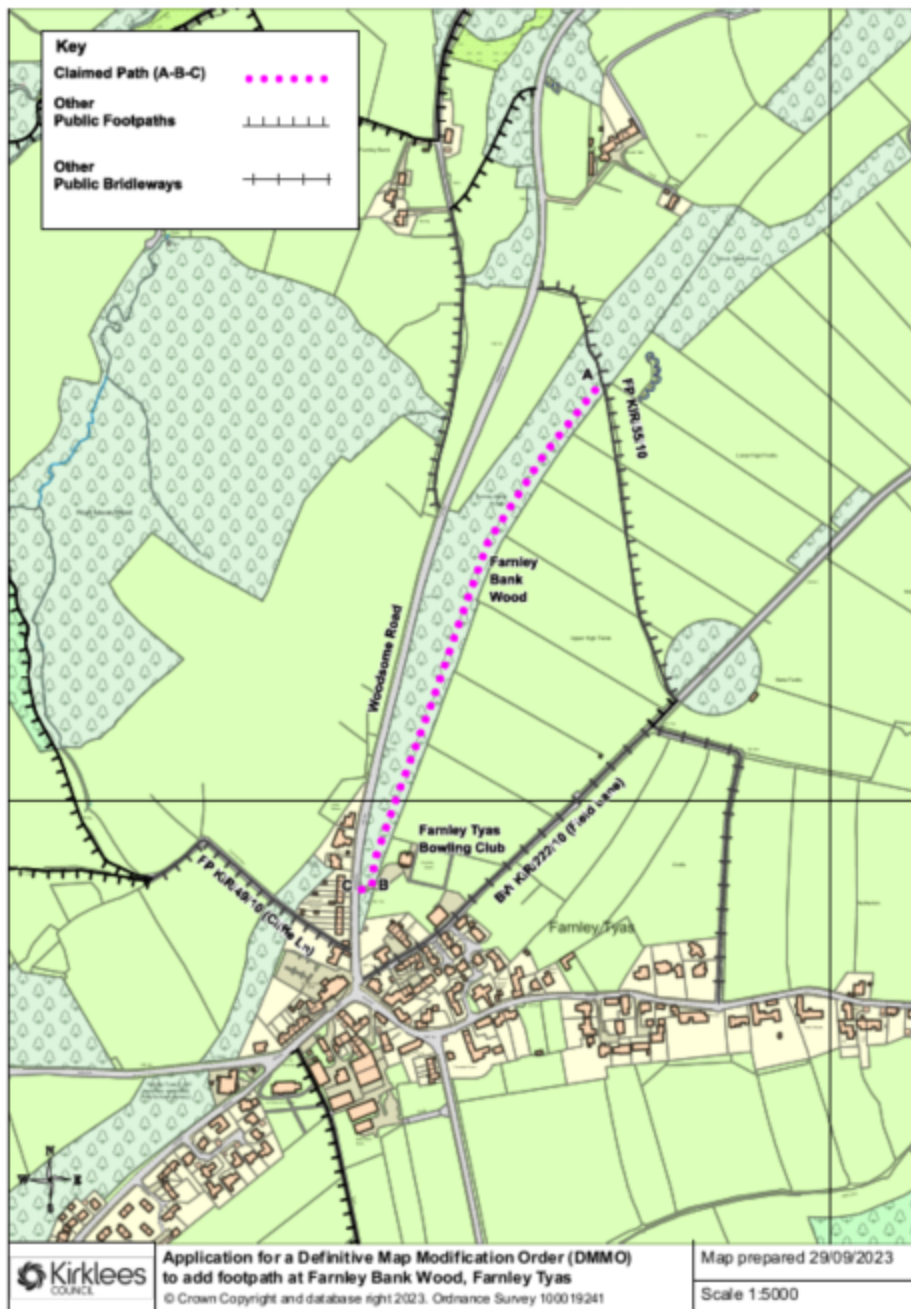


Photo 42: Point B adjacent to the access road to Farnley Tyas Bowling Club, 29/10/2021

Figure 21: Summary of consultation responses

Consultee	29 October to 29 November 2021			
	Support	Neutral	Does not support	No response
Councillor Bill Armer	✓			
Councillor Richard Smith		✓		
Councillor John Taylor				✓
Peak and Northern Footpaths Society				✓
Huddersfield Ramblers				✓
Huddersfield Rucksack Club	✓			
Mr Terry Norris				✓
Ride Kirklees				✓
Kirklees Bridleways Group				✓
Kirkburton Parish Council				✓
Owner 1-1			✓	
Owner 1-2			✓	
Owner 2		✓		
Possible Occupier				✓
Community Group	✓			
Member of the public 1 (UEF submitted)	✓			
Member of the public 2	✓			

Figure 22: Draft map – Public footpath recommended to be added (A-C)



Map shows the indicative route

Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 09-Nov-2023

Subject: Planning Application 2022/92619 Change of use of land and formation of skate park Royds Park, Bradford Road, Rawfolds, Cleckheaton, BD19 5LL

APPLICANT

Kirklees Council, Parks &
Open Spaces

DATE VALID

06-Mar-2023

TARGET DATE

01-May-2023

EXTENSION EXPIRY DATE

29-May-2023

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Liversedge and Gomersal

Ward Councillors consulted: No

Public or private: PUBLIC

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development to address any outstanding coal mining legacy issues, complete the list of conditions including those within this report and to issue the decision notice.

1.0 INTRODUCTION

1.1 The application has been brought to the Heavy Woollen Planning Sub-Committee for decision due to the significant volume of local opinion received over the lifetime of the application (27 public comments received). This is in accordance with the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS

2.1 The application site is located within the existing Royds Park in Cleckheaton. It serves a grassed, open plot of land with a small, single storey structure which appears to have once served storage facilities/changing/WCs for the adjacent sports facilities but is now abandoned. Royds Park is set to the south-eastern boundary of Cleckheaton, north-west of Littleton and north of Liversedge. There is built environment to the north-west and south-east of the site following Bradford Road (A638). There is open greenspace to the north-east and a sports field to the south.

2.2 The site is located within the Green Belt and Strategic Green Infrastructure Network as allocated on the Kirklees Local Plan. There are a number of mature trees within close proximity to the site. The site is also within combined Wildlife Habitat Network which is predominantly characterised by woodland.

2.3 The application site red line boundary measures approximately 0.15 hectares.

3.0 THE PROPOSAL

3.1 The applicant is seeking planning permission for the change of use of land and the formation of a skate park.

3.2 The application relates to the creation of a skate park in Royds Park, to be known as Spen Valley Skatepark. It replaces the original skate park which was demolished in 2019 with the redevelopment of Spenborough Swimming Pool.

- 3.3 The proposed skate park would cover a maximum of 500m² within a ~600m² plot of land. The proposal would include some street lighting (which would comprise permitted development under Schedule 2, Part 12 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015) but there would be no flood lighting. It would be constructed from concrete with ramps, bowls and base, and any rails or balustrades would be metal. The applicant also proposes to use stone from the existing building, which would be demolished, for informal seating.

4.0 RELEVANT PLANNING HISTORY

Application: 2007/93574

Description: Erection of modular building to house a voluntary boxing club.

Decision: Withdrawn 01/10/2007

Application: 2008/92105

Description: Installation of 4 no floodlights to existing MUGA

decision: Granted under reg.3 general regulations 10/01/2013

5.0 HISTORY OF NEGOTIATIONS

- 5.1 Following initial consultation with KC Ecology, additional information was requested regarding biodiversity net gain. An amended plan was submitted by the applicant.

6.0 PLANNING LEGISLATION AND POLICY

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Kirklees Local Plan. The Kirklees Local Plan was adopted on 27 February 2019 and comprises the strategy and policies document, allocations and designations document and associated proposals map.
- 6.2 The following legislation, policies, and guidance are considered relevant to the determination of this application:

Kirklees Local Plan (February 2019)

The site is within the Green Belt and Strategic Green Infrastructure Network in the Kirklees Local Plan.

- Policy LP1 – Presumption in favour of sustainable development
- Policy LP2 – Place Shaping
- Policy LP3 – Location of new development
- Policy LP7 – Efficient and effective use of land and buildings
- Policy LP20 – Sustainable travel
- Policy LP21 – Highways and access
- Policy LP22 – Parking
- Policy LP24 – Design
- Policy LP30 – Biodiversity & Geodiversity

- Policy LP31 – Strategic Green Infrastructure Network
- Policy LP32 – Landscape
- Policy LP33 – Trees
- Policy LP52 – Protection and improvements of environmental quality
- Policy LP53 – Contaminated and unstable land
- Policy LP56 – Facilities for outdoor sport, outdoor recreation and cemeteries

Supplementary Planning Documents

- Biodiversity Net Gain Technical Advice Note (June 2021)
- Open Space SPD (June 2021)
- Planning Applications Climate Change Guidance (June 2021)
- Highway Design Guide SPD (November 2019)

National Policies and Guidance

- 6.3 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published in 2012 and updated most latterly in July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for Local Planning Authorities and is a material consideration in determining planning applications.

National Planning Policy Framework (NPPF) (July 2019)

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 13 -Protecting Green Belt Land
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

Climate Change

- 6.4 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

6.5 On the 12th of November 2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the council would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 REPRESENTATIONS (PUBLIC)

7.1 Publication of the application has been undertaken in accordance with the Council's Development Management Charter (July 2015) and in line with the Council's adopted Statement of Community Involvement (December 2019).

7.2 The statutory public consultation period took place from 06/03/2023 to 14/04/2023.

7.3 During this period of public consultation, a total of 27 representations were received from 26 members of the public. Of these, 26 were received as objections, 1 as a general comment and none in support.

7.4 The key points raised in representations are summarised as follows:

- No site notices/publication
- Loss of green space
- Impact on trees
- Loss of biodiversity and wildlife
- Eye sore
- Loss of historic building
- Skate park could be located elsewhere
- Increase in anti-social behaviour/crime
- Would make the park unsafe
- Increase in traffic
- Limited parking
- Additional noise

7.5 These comments will be responded to in section 10.47 of this report.

8.0 CONSULTATION RESPONSES

8.1 A summary of consultee responses is set out below. Where appropriate, these are expanded on within the main appraisal:

8.2 **Statutory:**

KC Highways Development Management – No objections subject to conditions.

KC Health and Safety Executive – No objections subject to conditions.

The Coal Authority – Awaiting response.

8.3 **Non-Statutory.**

KC Ecology – No objections subject to conditions.

KC Environmental Health – No objections subject to conditions.

KC Crime Prevention - No objections subject to conditions.

KC Trees (informal) – No objections subject to conditions.

9.0 **MAIN ISSUES**

9.1 Taking into consideration the site allocations and constraints, the main issues for consideration as part of the appraisal of the application are:

- Principle of development
- Impact on visual amenity
- Impact on residential amenity
- Impact on highway safety
- Other matters
- Representations
- Conclusion

10.0 **OFFICER ASSESSMENT**

Principle of Development

Spatial Strategy

- 10.1 Policy LP1 sets out the Local Planning Authority's approach to the presumption in favour of sustainable development, as laid out in NPPF (Chapter 2), particularly Paragraph 11(c). Policy LP1 states that 'when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework'.
- 10.2 Policy LP2 requires that 'proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan, in order to protect and enhance the qualities which contribute to the character of these places'.
- 10.3 The application site is within the Green Belt as located on the Kirklees Local Plan. Chapter 13 of the NPPF requires local Planning Authorities to regard the construction of new buildings in the Green Belt as inappropriate development. Paragraph 150 of the National Planning Policy Framework outlines certain forms of development which are not considered inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it. This includes sub-paragraph "e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)".

- 10.4 Policy LP56 of the Kirklees Local Plan states: “In the Green Belt proposals for appropriate facilities associated with outdoor sport, outdoor recreation or cemeteries will normally be acceptable as long as the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it. Proposals should ensure that;
- a. the scale of the facility is no more than is reasonably required for the proper functioning of the enterprise or the use of the land to which it is associated;
 - b. the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas;
- 10.5 The proposed scheme is for the change of use from an existing park to a skate park. The proposal would be within an existing park and whilst it would add some additional hardstanding, this would be similar in scale to the adjacent existing sports area within the park. The scheme would be relatively low in height and would be in replacement of an existing single storey structure. When considered in the context of the existing recreation provision and in the proposed siting with a reasonable distance and adequate landscaping between any noise sensitive properties, within the area, the skate park would not appear as an incongruous form of development.
- 10.6 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and to assist in safeguarding the countryside from encroachment. For the reasons outlined above the proposed development would still be used for outdoor recreation and would therefore not conflict with the purposes of including land within it. The scale would be considered appropriate for the proposed use of the land and would not use more land than is reasonably required. It is noted there is also additional planning around the skate park.
- 10.7 Officers are satisfied that the principle of this development, which would provide an alternative recreational use within the wider recreation area, would comply with the national guidance of paragraph 150 of the NPPF and Policy LP56 of the Kirklees Local Plan. A more detailed assessment of the proposal’s design and its impact on the surrounding environment, assessed against Policy LP24 of the Kirklees Local Plan amongst other Policies, is undertaken below.

Impact on Visual Amenity

- 10.8 The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby 126 provides a principal consideration concerning design which states:

“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

- 10.9 Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.
- 10.10 LP24 states that proposals should promote good design by ensuring:
- “a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape...”*
- 10.11 Paragraph 129 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 134 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 10.12 Policy LP32 requires that proposals should be designed to take into account and seek to enhance the landscape character of the area, with particular consideration of the setting of settlements and buildings within the landscape, as well as other environmental features in the vicinity.
- 10.13 NPPF (Chapter 12) Paragraph 130 requires that proposals function well and add to the overall quality of the area, are visually attractive, are sympathetic to local character and history (including the surrounding built environment and landscape setting), establish or maintain a strong sense of place, optimise the site’s potential for sustainable development, and create safe, inclusive and accessible places.
- 10.14 As noted above, the site is within an existing park. The park includes a number of mature trees and as such the site would not be prominent within the street scene or wider landscape. The site is currently predominantly a grassed area with one unoccupied building. It is directly adjacent to a tennis court and basketball court which are covered in hardstanding.
- 10.15 The proposed development would include a significant amount of hardstanding to an existing green area within the Green Belt. As outlined in detail above, given the proposed development is for an outdoor use and is within an existing park which is well screened, the proposed development is considered acceptable in this instance.
- 10.16 The proposed revised layout plan shows the highest point of the proposed skate park would be 2.1-2.5 metres high, however the majority would be under 1 metre in height. Within the submitted Design and Access statement, the applicant has included photographs of similar schemes designed and built by the same contractors. These demonstrate what the scheme is aiming to achieve, and this is typical of the type of facilities that are found within other recreation grounds within Kirklees. The applicant has stated that the wheel park, including ramps, bowls and bases, would be constructed from concrete which is, again, a common material for this type of development. Particularly when considered in the context of the existing facilities within the park. Officers consider that the proposed skate park would not appear out of place within Royds Park.

- 10.17 The revised layout plan also includes details of soft landscaping adjacent to the concrete area which would be a welcome addition to the proposal and would mitigate the proposed concrete.
- 10.18 In light of this, the proposal is considered to be, on balance, in accordance with Policies LP24 and LP32 of the Kirklees Local Plan and NPPF (Chapter 12) in terms of landscape character impacts.

Impact on Residential Amenity

- 10.19 Policy LP24(b) of the KLP requires that proposals provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary.
- 10.20 A site plan has been submitted by the applicant with separation distances annotated. The proposal retains a minimum separation distance of ~52 metres from the nearest residential dwelling (18 New Street). This is considered a more than sufficient distance to prevent any significant overlooking, overbearing or overshadowing harm to the amenity of the neighbouring occupants. There may be some additional noise as a result of the proposal, however, given the separation distance this is unlikely to cause any significant harm to any nearby occupants. KC Environmental Health were consulted and had no objections to the proposed scheme.
- 10.21 The proposal would include some street lighting (which would comprise permitted development under Schedule 2, Part 12 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015) but there would be no flood lighting. Therefore, the scheme would not cause additional harm to the neighbouring occupants over and above the existing arrangements on site.
- 10.22 Taking the above into consideration, the proposed scheme would not result in significant harm to the residential amenity of neighbouring occupants and would therefore comply with LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

Impact on Highway Safety

- 10.23 Policy LP20 of the KLP requires that proposals are located in accordance with the Council's spatial strategy to ensure the need to travel is reduced and that essential travel needs can be met by forms of sustainable transport other than the private car. Furthermore, proposals should be designed to encourage sustainable modes of travel and demonstrate how links have been utilised to encourage connectivity.
- 10.24 Policy LP21 of the KLP requires proposals to demonstrate sustainable modes of transport and be accessed effectively and safely by all users. New development will normally be permitted where safe and suitable access to the site can be achieved for all people and where the residual cumulative impacts of development are not severe.

- 10.25 NPPF (Chapter 9) Paragraph 111 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 112 further details priority use of new roads, addressing the needs of people with disabilities, creating safe and secure places, allowing for efficient delivery of good and emergency service access, and enabling the use of electric vehicles.
- 10.26 It is likely, given the nature of the proposal that it will be used by people within the local vicinity who will most likely visit on foot. Notwithstanding this, the site is located within a reasonable walking distance of a number of bus stops on Bradford Road (A638), which provide regular bus services to Wakefield, Dewsbury, Heckmondwike and Bradford.
- 10.27 KC Highways DM do not therefore expect any additional trips generated to result in a severe impact on the operation or efficiency of the local highway network. Most users are expected to be under driving age and so will arrive by public transport, dropped off by parents etc or to arrive by bike/skate, this assumption has been accepted by other Local Planning Departments around the country due to the lack of trip generation details on TRICS for this land use, and it is considered a reasonable assumption.
- 10.28 No cycle parking has been proposed for the site. This is considered acceptable in this instance as it is expected that cyclists accessing the site will then use their cycles on the ramps and equipment provided.
- 10.29 Due to the location of the site being within a public park, KC Highways DM recommend that a condition be added requesting a construction access management plan that provides details of the routes to be taken by both delivery and contractor vehicles and how pedestrian access and movement within the park will be safely maintained, the location of contractor and delivery parking, the location of site facilities and materials storage, details of the use of a banksman for large delivery vehicles and the use of wheel washing facilities to stop mud and debris from being dragged on to the highway. This is included as a recommended condition should members approve the application.
- 10.30 There are also a number of Public Rights of Way within the wider vicinity of the site. Given the location in relation to the site, it is considered that none of the Public Rights of Way would be affected by the proposed development.
- 10.31 Given the above, Officers consider that the site is located in a sustainable location and offers good links into the local public transport and other sustainable travel networks. In light of this, the proposal is considered to be in accordance with Policy LP20 of the adopted Kirklees Local Plan.
- 10.32 Overall, subject to conditions, the proposal is considered to be in accordance with Policy LP21 of the adopted Kirklees Local Plan, the Highway Design Guide SPD, and Chapter 9 of the NPPF.

Other Matters

Trees

- 10.33 Policy LP33 states that planning permission will not be granted for developments which directly or indirectly threaten trees or woodland of significant amenity. Furthermore, proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment.
- 10.34 The site itself does not host any trees however there are a number of mature trees in close proximity to the site. Given the nature of development, and as the proposed works are likely to require minimal ground works, no significant harm is considered to be caused to any trees as a result of the proposed scheme. KC Trees officer was informally consulted on the scheme and raised no objections subject to a condition relating to protective fencing.
- 10.35 Given the above, officers are satisfied the proposal would not cause significant harm to Trees and would therefore comply with LP33 of the Kirklees Local Plan.

Ecological Implications

- 10.36 The application site lies within a Wildlife Habitat Network. The Kirklees Local Plan requires proposals to demonstrate a biodiversity net gain in accordance with LP30 (ii) which requires development to “minimise impact on biodiversity and provide net biodiversity gains through good design”. Guidance released June 2021 by Kirklees Council within the Biodiversity Net Gain Technical Advice Note indicates that a 10% net gain should be achieved. The Technical Advice Note details that sites located within the Kirklees Wildlife Habitat Network should provide information on how a biodiversity net gain is to be achieved, post development.
- 10.37 Additional information was requested and provided by the applicant regarding the biodiversity net gain within the site. The application site entirely comprises closely mown modified grassland, that is subject to routine management to maintain its amenity value within Royds Park. This grassland is extremely species poor and therefore is considered to be of little ecological value. Although the site is located within the wildlife habitat network, the landscaping proposals seek to incorporate areas of wildflowers and perennial shrubs. These areas will maintain the value of the site as a foraging/commuting area for local faunal groups.
- 10.38 KC Ecology were reconsulted on the additional information provided informally and have no objections to the proposal subject to all planting being native species and provision of a lighting design strategy. Notwithstanding this, in respect of the lighting strategy, as outlined in paragraphs 3.3 and 10.21 above, this would fall under permitted development and no conditions are considered reasonable or necessary in respect of this.
- 10.39 Officers therefore consider that the proposal is in accordance with Policy LP30 of the adopted Kirklees Local Plan, Biodiversity Net Gain Technical Advice Note, and NPPF (Chapter 15), particularly Paragraph 174.

Contaminated Land

- 10.40 Policy LP53 requires that development on land that is unstable, currently contaminated or suspected of being contaminated due to its previous history or geology will require the submission of an appropriate contamination assessment and/or land instability risk assessment. Furthermore, any development which cannot incorporate suitable and sustainable mitigation measures (if required) which protect the well-being of residents or protect the environment will not be permitted.
- 10.41 The site lies within a Coal Referral Area which is considered to be a high-risk area for new development.
- 10.42 A Coal Mining Risk Assessment was submitted as part of the application. This summarises that the proposed development would involve minimal groundworks. The Coal Authority have been consulted and officers are awaiting a response however officers do not consider that there would be an objection due to the nature of the proposed development requiring minimal ground works. Similarly, no contaminated land conditions were recommended by KC Environmental Health.
- 10.43 Given this, the proposal is considered to be in accordance with Policy LP53 of the adopted Kirklees Local Plan with regards to land stability however, the recommendation to members reflects the outstanding response from the Coal Authority.

Safety

- 10.44 It is noted that there has been significant representation which raised concerns regarding anti-social behaviour and crime. The KC Crime Prevention Officer was formally consulted regarding the proposed development. They raised no objection to the principle of this application however, they have provided advice on security measures that could be incorporated into the scheme to maximise the security including lighting and CCTV. The applicant has outlined that there would be some lighting. As outlined in paragraphs 3.3 and 10.21 above, this would fall under permitted development and no conditions are considered reasonable or necessary in respect of this. Officers would advise the applicant reviews the formal response provided by the KC Crime Prevention Officer which is available to view online.

Pre-Commencement Conditions

- 10.45 The recommendation proposes the inclusion of some pre-commencement planning conditions. Therefore, in accordance with Section 100ZA of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Local Planning Authority served notice upon the applicant to seek agreement to the imposition of such conditions. The applicant has agreed to the imposition of the relevant pre-commencement conditions.

Representation

10.46 During this period of public consultation, a total of 27 representations were received from 26 members of the public. Of these, 26 were received as objections, 1 as a general comment and none in support.

10.47 The key points raised, and officers response, are summarised as follows:

- No site notices/publication

Officer Response: Publication of the application has been undertaken in accordance with the Council's Development Management Charter (July 2015) and in line with the Council's adopted Statement of Community Involvement (December 2019).

- Loss of green space
- Impact on trees
- Loss of biodiversity and wildlife

Officer response: This is a material planning consideration which has been carefully considered within the other matters section of this report (paragraphs 10.33-10.39).

- Eye sore
- Loss of historic building
- Skate park could be located elsewhere

Officer response: This is a material planning consideration which has been carefully considered within the visual amenity section of this report (paragraphs 10.8-10.18).

- Increase in anti-social behaviour/crime
- Would make the park unsafe

Officer response: This is a material planning consideration which has been carefully considered within the other matters section of this report (paragraph 10.44).

- Increase in traffic
- Limited parking

Officer response: This is a material planning consideration which has been carefully considered within the highway safety section of this report (paragraphs 10.23-10.32).

- Additional noise

Officer response: This is a material planning consideration which has been carefully considered within the residential amenity section of this report (paragraphs 10.19-10.22).

11.0 CONCLUSION AND RECOMMENDATION

11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.2 This application has been assessed against relevant policies in the Development Plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for **approval**, in accordance with the recommendation set out within this report, subject to the imposition of the conditions listed below.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Standard timescale for implementation of permission
2. Development to be carried out in complete accordance with the approved plans
3. Planting schedule to be submitted comprising native species
4. Submission of construction management plan
5. Erection of protective fencing in accordance with British Standard BS 5837 shall be erected around the canopy extent of adjacent trees.

Background Papers:

Application details:

[Planning application details | Kirklees Council](#)

2022/92619:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2F92619>

Certificate of Ownership:

Certificate A signed.

Planning application history files:

2019/91491:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2F91491>

2019/92005:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2F92005>

2020/90352:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F90352>

2020/92195:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F92195>

2021/90369:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F90369>

2021/90373:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F90373>

2021/90376:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F90376>

2021/92888:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F92888>

2022/90252:<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2F90252>

Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 09-Nov-2023

Subject: Planning Application 2023/90434 Change of use of ground floor of vacant public house (Sui Generis- drinking establishment) to community centre with a small prayer room (Class F1) Babes In The Wood, 1039, Leeds Road, Woodkirk, Dewsbury, WF12 7HY

APPLICANT

Y Sheikh

DATE VALID

14-Feb-2023

TARGET DATE

11-Apr-2023

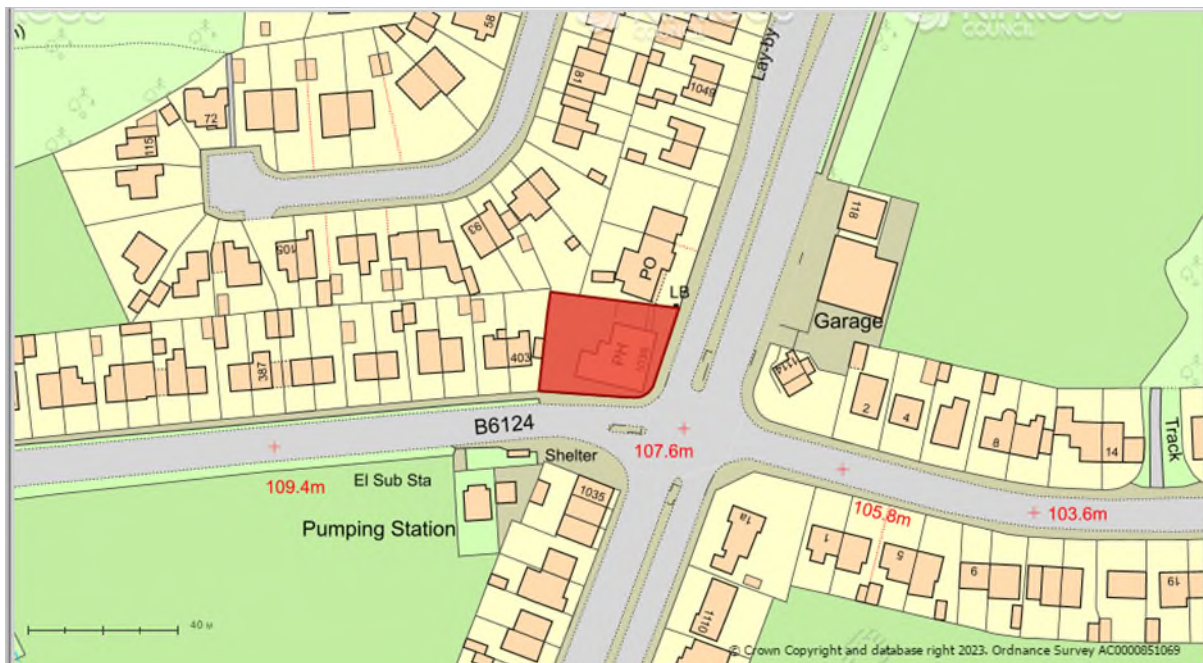
EXTENSION EXPIRY DATE

14-Apr-2023

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Batley East

Ward Councillors consulted: No

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION

1.1 The application is brought to the Heavy Woollen Planning Sub Committee for determination due to the significant number of representations received during the course of the application (100 public comments received). This is in accordance with the scheme of delegation.

2.0 SITE AND SURROUNDINGS:

2.1 Babes In The Wood, 1039, Leeds Road, Woodkirk, Dewsbury, WF12 7HY is a stone built detached building which was formerly used as a public house. The building is surrounded by hard standing with parking provision to the rear of the property.

2.2 The site is situated on the junction of Leeds Road and Soothill Lane and is predominantly bordered by residential properties which is reflective of the wider character of the area, however there is an area of undeveloped land to the north-east of the site.

2.3 The site is situated north-east of Dewsbury Town Centre, with the train station being located 2.7m from the application site.

2.4 The character of the area is not uniform in appearance with dwellings of varying scale, design and age bordering the site; however, the majority of properties are semi-detached and follow a set building line. The material palette of the area is stone and red brick.

3.0 PROPOSAL:

3.1 This application is for the change of use of ground floor of vacant public house (Sui Generis - drinking establishment) to community centre with a small prayer room (Class F1). There would be no increase in footprint to the building and the first floor of the property would be retained as a residential unit.

3.2 The ground floor would consist of a community area, prayer room, office, store, a small kitchen and a W/C.

3.3 The site has an existing car park to the rear of the building which would be utilised as part of this application and provide parking for 14 vehicles. The design and access statement associated with this application highlights that the building would provide facilities for up to 19 individuals.

4.0 RELEVANT PLANNING HISTORY

88/01630: Change of use of part of dwelling extension to public house -
Granted Conditionally

88/03665: Erection of illuminated signs - Granted conditionally.

5.0 HISTORY OF NEGOTIATIONS

5.1 Officers requested further information in the form of a noise assessment to ascertain the potential impact of the proposal on the residential amenity of the flat on the first floor of the premises. KC Environmental Health were consulted on this and removed their objections subject to the imposition of conditions.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 The application site is within the Green Belt on the Kirklees Local Plan.

6.3 Kirklees Local Plan (2019):

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP7 – Efficient and effective use of land and buildings
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP48 - Community facilities and services
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP57- The extension, alteration or replacement of existing buildings

6.4 Supplementary Planning Guidance / Documents:

- National Planning Practice Guidance Noise Report - Advice for Developers
- Waste Management Design Guide for New Developments (October 2020)
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Highway Design Guide Supplementary Planning Document (2019)
- Biodiversity Net Gain Technical Advice Note (2021)
- Climate Change Guidance for Planning Applications (2021)

6.5 National Planning Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, and the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 8 – Promoting healthy and safe communities
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt Land
- Chapter 15 – Conserving and enhancing the natural environment

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 The application was advertised by neighbour notification letters with final publicity expiring on 31/03/2023.

7.2 100 Representations have been received in response to the consultations. These comprise of 49 objections and 51 letters of support.

7.3 The objections raised the following material planning concerns:

- Highways safety concerns
- Lack of publicity of the application
- The proposal conflicts with National Policy
- Opening hours of the facility
- Works commenced prior to permission being granted
- No advertisement consents have been granted
- Noise disturbances to residential amenity
- Odours
- Overlooking
- Increased pollution concerns
- Impact to character of the area

7.4 The letters of support made the following comments:

- The proposal would benefit the community
- The area has limited youth facilities
- The proposal would not impact on the highway network
- The proposal would reduce antisocial behaviour compared to a pub
- The proposal would have social and religious benefits
- The proposal would result in improved health (in walking distance)
- The proposal would improve the character of the area

7.5 These comments will be responded to in sections 10.27 to 10.29 of the report.

8.0 CONSULTATION RESPONSES:

Below is a summary of the consultation responses; where appropriate, these are expanded on within the main assessment set out in section 10 of this report.

8.1 Statutory:

KC Highways DM: KC Highways commented on the initial scheme and objected to the proposal, further information was provided and Highways DM provided further comments confirming that they accept the proposal in principle; however, the site plan should be amended to show additional bollards to the Leeds Road frontage.

8.2 Non-statutory:

KC Environmental Health: No objection subject to conditions relating to noise.

KC Crime Prevention: No objection to the principle of the application however security measures are recommended.

9.0 MAIN ISSUES

9.1 Taking into consideration the site allocations and constraints, the main issues for consideration as part of the appraisal of the application are:

- Principle of development
- Impact on visual amenity and the openness of the Green Belt
- Impact on residential amenity
- Impact on highway safety
- Other matters
- Representations
- Conclusion

10.0 APPRAISAL

Principle of development

10.1 The site is located within the Green Belt on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

10.2 Policy LP2 requires that 'proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan, in order to protect and enhance the qualities which contribute to the character of these places.

- 10.3 Chapter 13 of the NPPF requires Local Planning Authorities to regard the construction of new buildings in the Green Belt as inappropriate development. Exceptions to this include the extension or alteration of a building providing it does not result in disproportionate additions over and above the size of the original building.
- 10.4 Paragraph 150 of the NPPF refers to other forms of development that would not be inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
- 10.5 Part (e) refers to the re-use of buildings provided that the buildings are of permanent and substantial construction. The proposed development would involve the change of use of the existing building with minimal alteration, and as such, the proposals are considered to constitute an acceptable form of development within the Green Belt.
- 10.6 Local Plan Policy LP48 is also particularly relevant in this situation as it outlines the general principles for assessing applications relating to community facilities and services:

“Community facilities should be provided in accessible locations where they can minimise the need to travel or they can be made accessible by walking, cycling and public transport. This will normally be in town, district or local centres.

Proposals will be supported for development that protects, retains or enhances provision, quality or accessibility of existing community, education, leisure and cultural facilities that meets the needs of all members of the community.”

Proposals which involve the loss of valued community facilities such as shops, public houses and other facilities of value to the local community will only be permitted where it can be demonstrated that:

- a. there is no longer a need for the facility and all options including the scope for alternative community uses have been considered; or*
- b. its current use is no longer viable; or*
- c. there is adequate alternative provision in the locality to serve the local community which is in an equally accessible location; or*
- d. an alternative facility of equivalent or better standard will be provided, either on-site or equally accessible; and*
- e. any assets listed on a Community Asset Register have satisfied the requirements under the relevant legislation”.*

- 10.7 In this case, the former use of the site was as a public house, however this has been vacant since 2020. The proposal will allow for a community facility to be retained on site, albeit a different kind of community use. In addition, there is an alternative public house 0.7 miles east of the application site which is considered a reasonable distance to serve the area. On this basis, the proposals are considered to accord with Policy LP 48 of the KLP.

- 10.8 Officers consider that given the location of the site within the Green Belt, its largely residential surroundings, and proximity to Dewsbury Town Centre, that the change of use of land for a Class F1 use would be acceptable in this instance. It is also considered that the proposal would represent a sustainable use of previously developed land whilst preserving the openness of the Green Belt.
- 10.9 In summary, Officers consider that the principle of development is acceptable and in accordance with Policies LP1, LP2, LP3 and LP48 of the adopted Kirklees Local Plan and NPPF (Chapters 2 and 11).

Impact on visual amenity and the openness of the Green Belt

- 10.10 Policy LP24 of the KLP states that good design should be at the core of all proposals in the district and should be considered at the outset of the development process. Furthermore, proposals should promote good design by ensuring that the form, scale, layout and details of the development respect and enhance the character of the area, provide high levels of sustainability, and minimise the risk of crime, amongst other criteria.
- 10.11 NPPF (Chapter 12) sets out the national approach to achieving well-designed places. Paragraph 130 states that proposals should function well and add to the overall quality of the area for the lifetime of the development, be visually attractive as a result of good architecture, be sympathetic to local character and history, establish or maintain a strong sense of place, optimise the site's potential to accommodate and sustain an appropriate amount and mix of development, and create places that are safe, inclusive and accessible.
- 10.12 Policy LP57 of the KLP also states that the alteration of buildings within the Green Belt will normally be acceptable providing that the proposal does not result in a greater impact on openness in terms of the treatment of outdoor areas, including hard standings, curtilages and enclosures and means of access.
- 10.13 As there are no alterations proposed to the external elevations of the building, the access, or the hard standing associated with the proposal, it is considered that no significant issues would arise regarding the visual impact of the proposal and the proposal would not impact upon the openness of the Green Belt, in accordance with Policies LP24 and LP57 of the KLP and guidance contained within Chapters 12 and 13 of the NPPF.

Impact on Residential Amenity

- 10.14 Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be set out, taking into account Policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.
- 10.15 The proposal would not increase the footprint of the proposal or add any additional openings/fenestration; therefore, it is considered that no significant issues would arise regarding overshadowing/loss of light/overbearing impact.

10.16 The site was previously used as a public house and a discussion with KC Licensing confirms the opening hours to have been:

Monday - Saturday 11:00 - 00:30
Sunday 11:00 - 23:30
NYE 11:00 - 11:00 (The following day)

10.17 The proposed opening times for this change of use are listed as 5am-12am. This would encompass prayer times throughout the day, and within this the associated community centre would be open to the public from 11:30am until 7:30pm.

10.18 KC Environmental Health have recommended a condition on this application for the submission of a Noise Management Plan to control any noise from the use of the development site. This should include but is not limited to, the use of amplification, event management, car park management and any other noise generating activities.

10.19 In addition, a condition has been recommended to ensure that the development is carried out in line with the sound attenuation scheme as specified in the Noise Breakthrough Assessment authored by Nova Acoustics dated 6 April 2023 Ref NP-009258.

10.20 Subject to the conditions set out above, it is considered that the proposal would not have an unacceptable impact on the residential amenity of neighbouring residents in terms of overlooking, overshadowing, loss of light/overbearing, noise or loss of privacy.

Impact on highway safety

10.21 The prayer facility is proposed to be open from 5am to 12am every day, whilst the planning statement associated with this application states that the community centre which is to the rear of the prayer facility would be open from 11:30 to 7:30pm.

10.22 The site benefits from 14 parking spaces; however, two of these spaces are to be retained for the existing residential unit on the first floor of the building. The proposed prayer hall has capacity for 19 worshippers.

10.23 KC Highways DM initially raised an objection to the scheme due to insufficient information. However, a car park plan was provided and the Highways objection was removed subject to the introduction of bollards to the front of the site adjacent to Leeds Road. These bollards can be controlled by condition.

10.24 Subject to the imposition of the conditions set out above, the proposal is considered to be acceptable in terms of Policies LP21 and LP22 of the KLP.

Other Matters

Carbon Budget

- 10.25 The proposal is for the change of use of an existing unit, as such it is not considered reasonable to require the applicant to put forward any specific resilience measures with regard to carbon emissions. However, there are controls in terms of Building Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards.

Contaminated Land

- 10.26 The site is not located within an area known to be contaminated; however, as the proposal would not involve ground works it is considered unnecessary to add any conditions to the application; although in this instance a footnote advising the applicant of the potential presence of coal is recommended.

Representations

- 10.27 During the period of public consultation, 100 representations were received, of which 49 were objections and 51 were in support.

- 10.28 The key points raised, and officers' response, are summarised as follows:

- Highways safety concerns

Officer Response: KC Highways have been consulted on the application and have not raised any objections regarding the impact of the proposals on the network. A condition has been suggested for the application which extends the existing bollards to prevent people from parking in front of the application property.

- The publicity of the application

Officer Response: Publication of the application has been undertaken in accordance with the Council's Development Management Charter (July 2015) and in line with the Council's adopted Statement of Community Involvement (December 2019).

- The proposal conflicts with National Policy

Officer Response: The assessment criteria for the application can be found within section 6 of this officer report. It has been considered that there are other equivalent community facilities within the vicinity to that which is to be lost; the proposal would not impact the Green Belt or have any significant harm regarding residential/visual amenity or the Highway Network.

- Opening hours of the facility

Officer Response: These are considered to be acceptable, subject to the imposition of conditions to mitigate noise

- Works commenced prior to permission being granted

Officer Response: This is noted, however the application is assessed on its planning merits.

- No advertisement consents have been granted

Officer Response: This is noted. Any signage may require a separate application for advertisement consent.

- Noise disturbances to residential amenity

Officer Response: A noise assessment was requested during the application period and further conditions are recommended to be imposed to control/mitigate noise disturbances within the vicinity.

- Odours

Officer Response: KC Environmental Health have been consulted on the application and have not requested any further details regarding potential odours emitted from site. The proposal would be retaining the existing kitchen facilities on site which were used whilst the site operated as a public house. As the proposal is for a community facility, it is considered that the amount of cooking would not be significant over and above the previous situation.

- Increased pollution concerns

Officer Response: KC Environmental Health have been consulted on the application and due to the application being for a change of use, it would be considered unreasonable to add further conditions on site. As the site was previously a public house, it is considered the proposal would not exacerbate pollution in the area.

- Impact on character of the area

Officer Response: The proposals potential impact on the character of the area has been assessed in the visual amenity and Green Belt section of the report. There are no external alterations proposed to the building and therefore would not appear visually different to the previous use.

10.29 The comments in support of the application are as follows:

- The proposal would benefit the community
- The area has limited youth facilities
- The proposal would not impact on the highway network
- The proposal would reduce antisocial behaviour compared to a pub
- The proposal would have social and religious benefits
- The proposal would result in improved health (in walking distance)
- The proposal would improve the character of the area

10.30 These comments are noted by officers.

11.0 CONCLUSION

11.1 This application to change the ground floor of Babes In The Wood, 1039, Leeds Road, Woodkirk, Dewsbury, WF12 7HY from a vacant public house (Sui Generis- drinking establishment) to community centre with a small prayer room (F1) has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.

- 11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.3 As set out above, this application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Time frame for commencement of development.
2. Development to be carried out in accordance with the submitted plans and information.
3. Development to be completed in accordance with the submitted sounds attention scheme specified in the Noise Breakthrough Assessment authored by Nova Acoustics dated 6 April 2023 Ref NP-009258
4. Submission of a Noise Management Plan before the development is first brought into use and thereafter implemented before the use commences, reviewed periodically and retained thereafter.
5. Bollards to be erected in accordance with Plan 22265-D02-C before the development is first brought into use and thereafter retained.

Background Papers:

Application and history files.

[Planning application details | Kirklees Council](#)

Certificate of Ownership –Certificate B signed and dated.

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