

Public Document Pack



**Service Director – Legal, Governance and
Commissioning**

Julie Muscroft

Governance and Commissioning

PO Box 1720

Huddersfield

HD1 9EL

Tel: 01484 221000

Please ask for: Andrea Woodside

Email: or andrea.woodside@kirklees.gov.uk

Wednesday 17 January 2024

Notice of Meeting

Dear Member

Strategic Planning Committee

The **Strategic Planning Committee** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 25 January 2024**.

(A coach will depart the Town Hall, at 10.00am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in Huddersfield 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", on a light-colored background.

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 Strategic Planning Committee members are:-

Member

Councillor Steve Hall (Chair)
Councillor Moses Crook
Councillor Carole Pattison
Councillor Mohan Sokhal
Councillor Bill Armer
Councillor Mark Thompson
Councillor Andrew Pinnock

When a Member of the Strategic Planning Committee 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

D Bellamy
D Hall
A Gregg
R Smith
J Taylor

Green

K Allison
A Cooper
S Lee-Richards

Labour

B Addy
A Anwar
P Moore
E Firth
T Hawkins
H Zaman

Liberal Democrat

PA Davies
J Lawson
A Munro
A Marchington
A Smith

Agenda

Reports or Explanatory Notes Attached

Pages

1: Appointment of Chair

To appoint a Member to Chair this Meeting of the Committee, in the absence of Councillor S Hall.

2: Membership of the Committee

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

3: Minutes of the Previous Meeting

1 - 8

To approve the Minutes of the Meeting of the Committee held on 7 December 2023.

4: Declaration of Interests and Lobbying

9 - 10

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.

5: Admission of the Public

Most agenda items will be considered in public session, however, it shall be advised whether the 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.

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: Deputations/Petitions

The 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.

8: Site Visit - Application for a Definitive Map Modification Order (DMMO) to record a Public Right of Way at Carr Mount, Kirkheaton on the Definitive Map and Statement

Application for a Definitive Map Modification Order (DMMO) to record a public right of way at Carr Mount, Kirkheaton on the Definitive Map and Statement.

Contact: Mark Drydale, Public Rights of Way

Estimated time of arrival at site: 10.15am

9: Site Visit - Application No: 2023/92255

Section 73 application for variation of conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of previous reserved matters approval 2021/93286 pursuant to outline permission 2020/91215 for erection of 41 dwellings at Green Acres Close, Emley.

Contact: Ellie Thornhill, Planning Services

Estimated time of arrival at site: 10.35am

10: Site Visit - Application for a Definitive Map Modification Order (DMMO) to record Mean Lane, Meltham, as a Public Bridleway on the Definitive Map and Statement

Application for a Definitive Map Modification Order (DMMO) to record Mean Lane, Meltham, as a public bridleway on the Definitive Map and Statement.

Contact: Mark Drydale, Public Rights of Way

Estimated time of arrival at site: 11.15am

11: Planning Applications

11 - 12

The Planning 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 to speak by 5.00pm (for phone requests) or 11:59pm (for email requests) on 22 January 2024.

To register, please email governance.planning@kirklees.gov.uk or phone the Governance Team on 01484 221000 (ext 74993).

12: Application for a Definitive Map Modification Order (DMMO) to record Mean Lane, Meltham, as a Public Bridleway on the Definitive Map and Statement

13 - 138

Application for a Definitive Map Modification Order (DMMO) to record Mean Lane, Meltham, as a public bridleway on the Definitive Map and Statement.

Contact: Mark Drydale, Public Rights of Way

13: Application for a Definitive Map Modification Order (DMMO) to record a Public Right of Way at Carr Mount, Kirkheaton on the Definitive Map and Statement

139 -
318

Application for a Definitive Map Modification Order (DMMO) to record a public right of way at Carr Mount, Kirkheaton on the Definitive Map and Statement.

Contact: Mark Drydale, Public Rights of Way

14: Planning Application - Application No: 2023/92255

319 -
348

Section 73 application for variation of conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of previous reserved matters approval 2021/93286 pursuant to outline permission 2020/91215 for erection of 41 dwellings at Green Acres Close, Emley.

Contact: Ellie Thornhill, Planning Services

Planning Update

An update report providing further information on matters raised after the publication of the agenda will be added to the online agenda prior to the meeting.

Contact Officer: Sheila Dykes

KIRKLEES COUNCIL

STRATEGIC PLANNING COMMITTEE

Thursday 7th December 2023

Present: Councillor Steve Hall (Chair)
Councillor Bill Armer
Councillor Moses Crook
Councillor Eric Firth
Councillor Carole Pattison
Councillor Andrew Pinnock

Apologies: Councillor Mohan Sokhal
Councillor Mark Thompson

1 Membership of the Committee

Apologies were received from Councillor Mohan Sokhal and Councillor Mark Thompson. Councillor Eric Firth substituted for Councillor Sokhal.

2 Minutes of the Previous Meeting

Resolved –

That the Minutes of the meeting of the Committee held on 2nd November 2023 be approved as a correct record.

3 Declaration of Interests and Lobbying

No interests were declared.

4 Admission of the Public

All items were considered in public session.

5 Public Question Time

No questions were asked.

6 Deputations/Petitions

No deputations or petitions were received.

7 Site Visit - Application No. 2023/92187

Site visit undertaken.

8 Site Visit - Application No. 2021/93621

Site visit undertaken.

9 Planning Application - 2022/93823

The Committee considered Application 2022/93823 in respect of the variation of Conditions 2 (plans and specifications) and 5 (soft landscaping scheme) on previous permission 2016/93243 for the erection of 17 dwellings (within a Conservation Area) at Thirstin Mills, Thirstin Road, Honley, Holmfirth.

Under the provisions of Council Procedure Rule 36(3) the Committee received a representation from Councillor Charles Greaves.

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, as set out below:
 1. Deleted
 2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
 3. The dwellings hereby approved shall be faced in ‘natural coursed walling stone’ and ‘Sandtoft Cassius Antique Slate’ in accordance with the details (ref: 16/D15) received on 27/09/2017. The development shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.
 4. Notwithstanding the submitted information details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority before development commences on the superstructure of any dwelling hereby approved. The development shall be completed strictly in accordance with the details so approved prior to any of the dwellings being occupied and maintained as such thereafter.
 5. Deleted
 6. Prior to the occupation of the hereby approved dwellings, the approved vehicle parking areas shall be surfaced and drained in accordance with the Department for Communities and Local Government and Environment Agency’s “Guidance on the permeable surfacing of front gardens” as amended or any successor guidance and made operational. The surfacing material must be of a type which does not carry debris onto the highway. Thereafter the parking areas shall be so retained, free of obstructions, and available for the use specified on the approved plans.
 7. Before development commences on the superstructure of any dwelling hereby approved, a detailed scheme for the provision of a road widening including the provision of a new 2 metre wide footway to be provided as shown on drawing no. 16/D15/03 Rev F entitled ‘site layout’ and all associated works shall be submitted to and approved in

Strategic Planning Committee - 7 December 2023

writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes together with an independent Safety Audit covering all aspects of the work. The development shall be completed in accordance with all the approved details before any part of the development is first brought into use.

8. Prior to construction commencing a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include:
- The point of access for construction traffic,
 - Construction (including site preparation) traffic, timing and routing to and from the site,
 - Parking arrangement for site/construction staff,
 - Wheel washing on site and street cleaning arrangement,
 - Construction/build schedule, and
 - Details of how dust and emissions during the construction will be controlled/minimised.

The approved scheme/details shall be adhered to during and throughout the construction phase, until completion of the approved development.

9. The bin storage/collection areas as shown on drawing no. 16/D15/03 Rev F entitled 'site layout' shall be provided prior to the first occupation of the dwellings and shall be retained thereafter free of obstructions and available for storage/collection of bins only.
10. Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 (or any re-enactment with or without modification) all integral garages on all plots shall be used for the garaging of motor vehicles and no other purposes.
11. Before development commences on the superstructure of any dwelling hereby approved, the design and construction details of all temporary and permanent highway retaining structures including any modifications to the existing retaining walls and to the embankment along the western boundary of the site shall be submitted to and approved in writing by the Local Planning Authority.
The details shall include a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. The development shall be completed in accordance with the approved details before any of the dwellings are occupied and retained as such thereafter.
12. No piped discharge of surface water from the site shall take place until works to provide a satisfactory outfall, other than the local public sewerage, for surface water have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
13. Before development commences on the superstructure of any dwelling hereby approved a scheme detailing finalised foul, surface water and

Strategic Planning Committee - 7 December 2023

land drainage (including private drainage layout, trash screen design, interface between diverted watercourse and existing infrastructure) shall be submitted to and approved in writing by the Local Planning Authority. The detailed design shall be in accordance with Site Layout 16/D15/03 Rev F, Flood Plan with Trash Screen Blockage 10991-01C and Bland and Swift addendum to FRA dated 11/09/2017. None of the dwellings hereby approved shall be occupied until the drainage scheme so approved has been provided on the site to serve the development or each agreed phase of the development to which the dwellings relate and thereafter be retained in accordance with the approved details.

14. The hereby approved dwellings shall only be occupied on completion of the maintenance and management plan for the approved on-site ordinary watercourse and all its associated ancillary structures which shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the maintenance and management of the approved watercourse including all associated ancillary structures shall be adhered to in accordance with the approved plan/schedule.
15. Remediation of the site shall be carried out and completed in accordance with the Phase I Geo-environmental Investigation report hereby approved. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
16. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
17. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works on site shall not recommence until either (a) a Remediation Strategy has been

Strategic Planning Committee - 7 December 2023

submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.

18. An electric vehicle recharging point shall be installed within the garage serving each dwelling during the construction phase and before occupation of the dwelling or in a location accessible from the dedicated parking area to each dwelling. The cable and circuitry ratings for the charging points shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.
 19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order (with or without modification) no development falling within Part 1 Classes A, B, C, D, E or F or Part 2 Class A or B of Schedule 2 of the above Order shall be carried out within the red line boundary of the application site shown on the approved plans at any time, and
- (b) on completion of a deed of variation to the original Section 106 Agreement to confirm the existing obligations and to include an additional obligation to seek off-site contributions to secure the shortfall of biodiversity net gain to the previously approved landscaping scheme for the site, within the Holme Valley North Ward.
- (2) In the circumstances where the Section 106 agreement has not been completed within three 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 mitigation and benefits that would have been secured and, if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under delegated powers.

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

For: Councillors Armer, Crook, E Firth, Hall, Pattison, A Pinnock (6 votes)

Against: (no votes)

10 Planning Application - 2021/93621

The Committee considered Application 2021/93621 in respect of the erection of 12 dwellings and associated works (within a Conservation Area) on land off Fullwood Drive, Golcar, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from Hamish Gledhill (on behalf of the applicant).

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, 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. Sample of facing materials.
4. Samples of roofing materials.
5. Details of all new windows and doors.
6. Window frames and stonework for blind windows set back into reveal by 75-100mm.
7. Details of pedestrian connection.
8. Details of proposed internal adoptable roads.
9. Submission of a Construction Environmental Management Plan (CEMP).
10. Submission of road survey.
11. Permeable surfacing to all vehicle parking areas.
12. Removal of Permitted Development rights for the garages at Plots 2-7.
13. Submission of full drainage details.
14. Assessment of the effects of a 1 in 100 year storm event.
15. Submission of temporary drainage for surface water.
16. Submission of a Biodiversity Enhancement and Management Plan (BEMP).
17. Submission of a Construction Environmental Management Plan CEMP (for biodiversity).
18. Details of temporary waste arrangements.
19. Details of measures to deter crime and anti-social behaviour.
20. Submission of all hard and soft landscape materials.
21. Submission of an AIP for any new retaining walls/buildings adjacent to the adoptable highway.
22. An assessment of the adequacy of the steep embankment.
23. Details of any drainage within the highway.
24. Submission of a Phase 1 Report.
25. Submission of a Phase 2 Report.
26. Submission of a Remediation Strategy.
27. Development in accordance with approved Remediation Strategy.
28. Submission of a Validation Report.
29. Details of Electric Vehicle Charging Points (EVCP's).

Strategic Planning Committee - 7 December 2023

30. Removal of Permitted Development rights for ground floor openings within the western elevation of Plot 1.
 31. Details of renewable energy and/or energy efficiency measures
 32. Removal of Permitted Development rights within Part 1 and Class A of Part 2 of the General Permitted Development Order (GDPO).
 33. Details of finished floor levels.
 34. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive.
 35. Submission of a revised Arboricultural Method Statement.
 36. Details of any additional tree works required during the construction process that are not identified within the revised Arboricultural Method Statement.
- (b) secure a S106 agreement to cover the following matters:
- (i) Affordable housing – Two affordable housing units (1 affordable or social rent and 1 first home) to be provided in perpetuity.
 - (ii) Open space – £26,883 off-site contribution.
 - (iii) Education – £21,276 contribution to be spent on priority admission area schools within the geographical vicinity of this site. Payments would be made in instalments and on a pre-occupation basis, per phase. Instalment schedule to be agreed.
 - (iv) Sustainable transport - £5,115 contribution towards measures to encourage the use of sustainable modes of transport.
 - (v) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker). Section 106 agreement to include a plan clearly defining all land which would be the responsibility of the management company.
 - (vi) Biodiversity – £15,640 contribution towards off-site provision to achieve a 10% biodiversity net gain.
- (2) In the circumstances where the Section 106 agreement has not been completed within three 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 mitigation and benefits that would have been secured and, if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under delegated powers.

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

For: Councillors Armer, Crook, E Firth, Hall, Pattison, A Pinnock (6 votes)

Against: (no votes)

11 Planning Application - 2023/92187

The Committee considered Application 2023/92187 relating to the variation of Condition 1 (plans) on previous permission 2019/93068 for reserved matters, pursuant to outline permission 2018/91119, for the erection of residential development to the rear of 11 Holme Avenue, Dalton, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from Musarrat Khan (local resident).

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, as set out below, and release the planning permission:
 1. Works to be done in accordance with approved plans (to be varied; the wording of the condition would remain the same, but the plans table would be updated).
 2. Material samples to be provided.
 3. Details of retaining walls to PROW HUD/100/10.
 4. Details of widening of PROW HUD/100/10.
 5. Surface water details to be provided.
 6. Surface water management and maintenance strategy to be provided.
 7. Unexpected spring management strategy (if springs are identified).
 8. Works to be done in accordance with Ecological Design Strategy.
 9. Works to be done in accordance with Construction Management Plan.
 10. Plot 22 west side elevation to include obscure glazed windows.
 11. Removing Permitted Development Rights for side windows.
 12. Land stability and retaining works details along southern boundary (new condition).
 - (b) secure a Section 106 Deed of Variation agreement to cover the following matters:
 - (i) Affordable Housing: Four affordable dwellings, including two affordable rent and two intermediate units (20% of the total units)
 - (ii) Management and Maintenance: of on-site drainage infrastructure (until adoption by statutory undertaker)
- (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 and, if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under delegated powers.

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

For: Councillors Armer, Crook, E Firth, Hall, Pattison, A Pinnock (6 votes)

Against: (no votes)

<p>KIRKLEES COUNCIL</p> <p>DECLARATION OF INTERESTS AND LOBBYING</p> <p>Strategic Planning Committee</p>			
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: Strategic Planning Committee

Date: 25/01/2024

Title of Report: Application for a Definitive Map Modification Order (DMMO) to record Mean Lane, Meltham, as a public 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 Mean Lane, Meltham, as a public 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 – 08/01/2024
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 08/01/2024
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 05/01/2024
Cabinet member portfolio	Not applicable

Electoral wards affected: Holme Valley North

Ward councillors consulted: Cllr Greaves, Cllr McGrath, Cllr Bellamy

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.

Contents

List of Figures.....	3
Summary.....	4
Information Required to Take a Decision	5
Application	5
Character of Application Route	5
Planning Inspectorate Direction.....	5
Statutory Provisions.....	6
Wildlife & Countryside Act, 1981.....	6
Highways Act, 1980.....	6
Guidance for Members	8
Documentary Evidence Evaluation.....	9
User Evidence Evaluation.....	10
Implications for the Council	13
Working with People.....	13
Working with Partners.....	13
Placed based Working.....	13
Climate Change and Air Quality.....	13
Improving Outcomes for Children	13
Financial Implications for the People Living or Working in Kirklees	13
Other (e.g. Legal/Financial or Human Resources).....	14
Consultation	15
Meltham Town Council	15
Holme Valley North Ward Members	15
Applicant & User Groups	15
Adjacent Landowners/Occupiers	15
Next Steps & Timelines.....	16
Officer Recommendations & Reasons	17
Make a DMMO.....	17
DMMO Confirmation.....	17

List of Figures

Figure 1: Indicative Map 1 – Public Bridleway Recommended to be Added (A-B) ... 19

Summary

1. In 2017, Kirklees Council received an application (Reference 199) under Section 53 of the Wildlife & Countryside Act, 1981, ('WCA') to record Mean Lane, Meltham, on the Definitive Map and Statement as a public bridleway. The application provided supporting user and documentary evidence. The Secretary of State has directed that Kirklees Council must determine the application by 22nd May 2022.
2. Based on an overall analysis of the available documentary evidence, the Definitive Map Officer does not consider, on the balance of probabilities, that the application route subsists as a historic public bridleway, or public carriageway. An 1861 Railway Plan and Book of Reference, and 1895 Meltham Urban District Council Minutes provide credible contrary evidence that the application route was a private road with a co-existing public footpath. Additionally, only a section of Mean Lane was adopted as a vehicular highway maintainable at public expense, in 1892 and 1895, up to the southwest corner of Meltham Cricket Ground.
3. However, the user evidence is of sufficient quantity and quality by ten (10) people to demonstrate use and enjoyment of Mean Lane by the public on horse without interruption, and such use was 'as of right'. There is some evidence of challenges to use and occasional locking of a gate by an adjacent landowner with a private right of way along the application route. However, there is no available evidence that these actions significantly interrupted public use and were not conducted by, or on behalf, of the freehold owner(s) of the application route. Accordingly, there is no available evidence of a lack of intention to dedicate a public bridleway by the landowner(s) during the relevant period of 1997 to 2017.
4. Accordingly, the Definitive Map Officer recommends that, on the balance of probabilities, a public bridleway subsists along the application route. It is recommended that a Definitive Map Modification Order is made under section 53(3)(c)(ii) of the WCA to record Mean Lane, Meltham, between the eastern section of Mean Lane that is a public carriageway maintainable at public expense and Huddersfield Road (B6108), as a public bridleway. Members are also recommended to seek confirmation of the Definitive Map Modification Order.

Information Required to Take a Decision

Application

5. On 28th June 2017, Kirklees Council received an application (Reference: 199), on behalf of the Kirklees Bridleways Group and The British Horse Society, 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 Mean Lane, Meltham, leading between Meltham Cricket Ground and Huddersfield Road (B6108), 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 and certified under the requirements of Schedule 14 of the WCA and the submission gave as evidence 11 User Evidence Forms ('UEF') and various documents of historic evidence.

Character of Application Route

6. The character of the application route is described in detail in Appendix B with photos. In summary, it is located in the town of Meltham and is approximately 900 metres in length commencing at the southwest corner of Meltham Cricket Ground, at the eastern end of the section of Mean Lane that is a vehicular highway maintainable at public expense. The application route then leads east-north-easterly and north-easterly and is crossed by Meltham Footpath 23/50 and Meltham Footpath 22/10. The application route turns east-south-easterly and leads under the disused railway line, now known as the Meltham Greenway, and continues over Meltham Dike and passed property 223 Huddersfield Road, and joins Huddersfield Road (B6108) opposite the old Bent Ley Mill.

Planning Inspectorate Direction

7. Following a representation by the Applicants, the Council have been directed by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food,

and Rural Affairs, pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S140119, no later than 22nd May 2022.

Statutory Provisions

Wildlife & Countryside Act, 1981

8. [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. The need for a Definitive Map Modification Order ('DMMO') to be considered when evidence is submitted in support of a claim that a public right of way which is already shown on the Definitive Map and Statement is submitted to additional public rights is dealt with under section 53(2)(b) and 53(c) of the WCA. Section 53(3)(c)(ii) of the WCA provides that the Council has a duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:
 - *that a highway of a particular description ought to be there shown as a highway of a different description.*
9. Under the provisions of section 53(3)(c)(ii) there is no 'reasonably alleged to subsist' test, as is found in subsection 53(3)(c)(i). Therefore, the test by which the available evidence is to be considered is the civil standard of proof; that is, the balance of probabilities: does the claimed public right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary. The evidence submitted with the Schedule 14 application, and all research conducted by the Council, will therefore be judged to such standard of proof.

Highways Act, 1980

10. 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.

11. 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.
12. [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

13. 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.
14. 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 47 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 47 for next step and timeline).
 - III. The third option is for members to turn down the application (see paragraph 46 for next step and timeline).
15. 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

16. 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, documentary evidence in support of a historic public bridleway/vehicular highway is principally based on two documents: the 1861 Lancashire & Yorkshire Railway Meltham Branch Railway Plan, and an extract from 'The Story of Meltham' by Richard Orton, which states that Mean Lane was adopted as a vehicular highway maintainable at public expense in 1892
17. The plan and book of reference to the 1861 Lancashire & Yorkshire Railway Meltham Branch Railway Plan records the eastern section of the application route as a footpath in the ownership of the Surveyors of the Highways of the Township of Meltham. Similarly, a newspaper article of Meltham Urban District Council ('Meltham UDC') Minutes from 1895 describe the application route as a "... *private road for carts to get to the land, and also for foot passengers...*".
18. Furthermore, the newspaper articles and Council Minutes show that in 1892, Meltham UDC adopted a section of Mean Lane up the newly created Jubilee Recreation Ground, which was extended and widened in 1895 up the southwest corner of the Cricket Ground, which is at the start of the application route. This section is recorded on the Councils List of Streets. No part of the application route was adopted as a highway maintainable at expense. The documentary evidence therefore corroborates the Definitive Map & Statement and List of Streets.
19. Accordingly, the Definitive Map Officer considers that there is no clear evidence in favour of a public bridleway or vehicular highway based on the available documentary evidence. On the other hand, there are credible documents that provide sufficient evidence to the contrary and demonstrate that the application route is historically a private road with a co-existing public footpath.

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, which is available in **Appendix B**. Where there is no identifiable event which has brought into question the use of a path or way, the date of the application for a modification order can be used as the date the route was brought into question by the initial Schedule 14 application. However, there is a photograph of a locked gate taken by a Definitive Map Officer in February 2017, before the application was submitted in June 2017. Nothing significantly turns on this point, as the relevant period to consider the user evidence is still 1997 to 2017.
21. The use by five (5) people has been discounted because three (3) used the application route with a bicycle, which is not consonant with the dedication of a public bridleway and is also insufficient to presume dedication of a restricted byway. One (1) person used the application route 'by right' to access stables and ride the route with the tenant. Lastly, one (1) other person only used Mean Lane as far as the 'Meltham Greenway', which is a permissive bridleway; such use does not have the necessary characteristic of a highway. The evidence from remaining users was tested in a 'Witness Questionnaire' in 2023, regarding gates, the Meltham Greenway, signs, and the stables.
22. Following these deductions, the application route was used by ten (10) members of the public with overlapping evidence of use during the relevant period over the full width of the application route for the purpose of recreation. Several riders used the application route to access the Meltham Greenway, however, in addition they also continued to use the full length of the application route to reach Honley Woods via Huddersfield Road and Bent Ley Mills. Frequency of use was predominantly weekly or monthly. The use by these ten (10) members of the public was without force, secrecy, or permission ('as of right'), and without interruption.
23. Public use along the eastern section of the application route, from Meltham Dike to Huddersfield Road, is where the presumption of dedication has been contentious. During the relevant period, this section of the application route was owned by Quarmbly & Sykes (Holdings) Limited, who sold the land in 2018 to SDC Enterprises

Limited. Only the owner(s) of the fee simple of the application route can demonstrate a lack of intention to dedicate a public right of way. Adjacent landowners have provided a statement that since 2011 they have challenged horse riders and cyclists that have passed by their property and have locked a field gate to prevent use as a public bridleway.

24. Evidence from users suggests that some people were intimidated by the situation developing at the eastern end of the application route from 2011 onwards. Two (2) users state that their use at this section of the application route was challenged in 2011, whilst two (2) users encountered a locked gate in 2015/2016. Some of these users subsequently stopped riding the application route. Additionally, adjacent landowners have stated that signs have been in place over the last ten (10) years (2013-2023), stating that the application route was only a public footpath, but the signs were vandalised. However, there is no documentary evidence of the notices. Users were therefore asked whether they witnessed signs during the relevant period. Two (2) users answered that they did see notices but, when questioned further, were unable to confirm what the signs stated, where they were located, the date they were erected, or the duration that they were maintained for.
25. As the adjacent landowners do not own this section of the application route, the only legal interest they have is for private access. There is no evidence that such actions by the adjacent landowners were undertaken by, or on behalf, of the owner of the fee simple of this section of the application route. In [Applegarth v Secretary of State for the Environment, Transport and the Regions \[2001\] EWHC Admin 48](#) ('Applegarth') the Court decided that actions by the person who had a private right of access over a route were not actions of the owner of the fee simple for the purposes of a lack of intention to dedicate to rebut the presumption of dedication.
26. On the other hand, any action which challenges the status of a way may be a 'bringing into question' event, and it does not have to arise from the action of the owner(s) of the land or on their behalf. Nevertheless, whatever means are employed to bring the public's right to use a way into question must be sufficiently communicated to the users, so that at least some of the users are aware of the challenge. Therefore, subsequent evidence may show that the status of the application route was also brought into question in 2011 due to challenges, and

again in 2015/16 by occasional locked gates, creating relevant periods of 1991-2011 and 1995/6-2015/16.

27. However, these events do not currently rebut the 1997 to 2017 relevant period. Also, the available user evidence is only marginally affected by these earlier relevant periods, as one (1) user (199/3) rode the application route between 2013-15, therefore their use would be discounted if the 1991-2011 relevant period was considered. Whilst another user (199/8) rode the application route between 2002-2017, thereby reducing their contribution to the total evidence of use if the earlier relevant periods were analysed, compared to the 1997-2017 relevant period. However, all of the remaining users commenced using the application route at, or prior to, 1991.
28. Overall, it is considered that a public bridleway subsists on the balance of probabilities, over the full length and width of the application route, such that a Definitive Map Modification Order is recommended.

Implications for the Council

Working with People

29. Not applicable.

Working with Partners

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

Placed based Working

31. Not applicable.

Climate Change and Air Quality

32. 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

33. Not applicable.

Financial Implications for the People Living or Working in Kirklees

34. Not applicable.

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

35. 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.
36. The Council must make a decision regarding the DMMO Application and the legal status of Mean Lane, Meltham, and make a DMMO that is requisite further to section 53 of the Wildlife and Countryside Act 1981.
37. 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.
38. 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.
39. 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.
40. 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

41. On 10th August 2023, the Definitive Map Officer conducted an informal consultation with the public, landowners/occupiers, user groups, Holme Valley North Ward Members, and Meltham Town 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 '*Consultation – Definitive Map Modification Order Application (199)*'. Notices were displayed at either end of the way. The preliminary consultation elicited zero responses from members of the public. However, this may be due, in part, to a locked gate at the Huddersfield Road end of the application route, which restricts use by cyclists and horse riders.

Meltham Town Council

42. Meltham Town Council were consulted but did not respond.

Holme Valley North Ward Members

43. Holme Valley North Ward Members were consulted. Cllr Greaves had no comments to make. Cllr Bellamy and Cllr McGrath did not respond.

Applicant & User Groups

44. The applicant & user groups were consulted but did not respond.

Adjacent Landowners/Occupiers

45. 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. Their evidence is presented and discussed within the context of the user evidence at paragraphs 145, 168, and 169 of the Investigation Report in Appendix B.

Next Steps & Timelines

46. 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.
47. 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.
48. 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.
49. 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

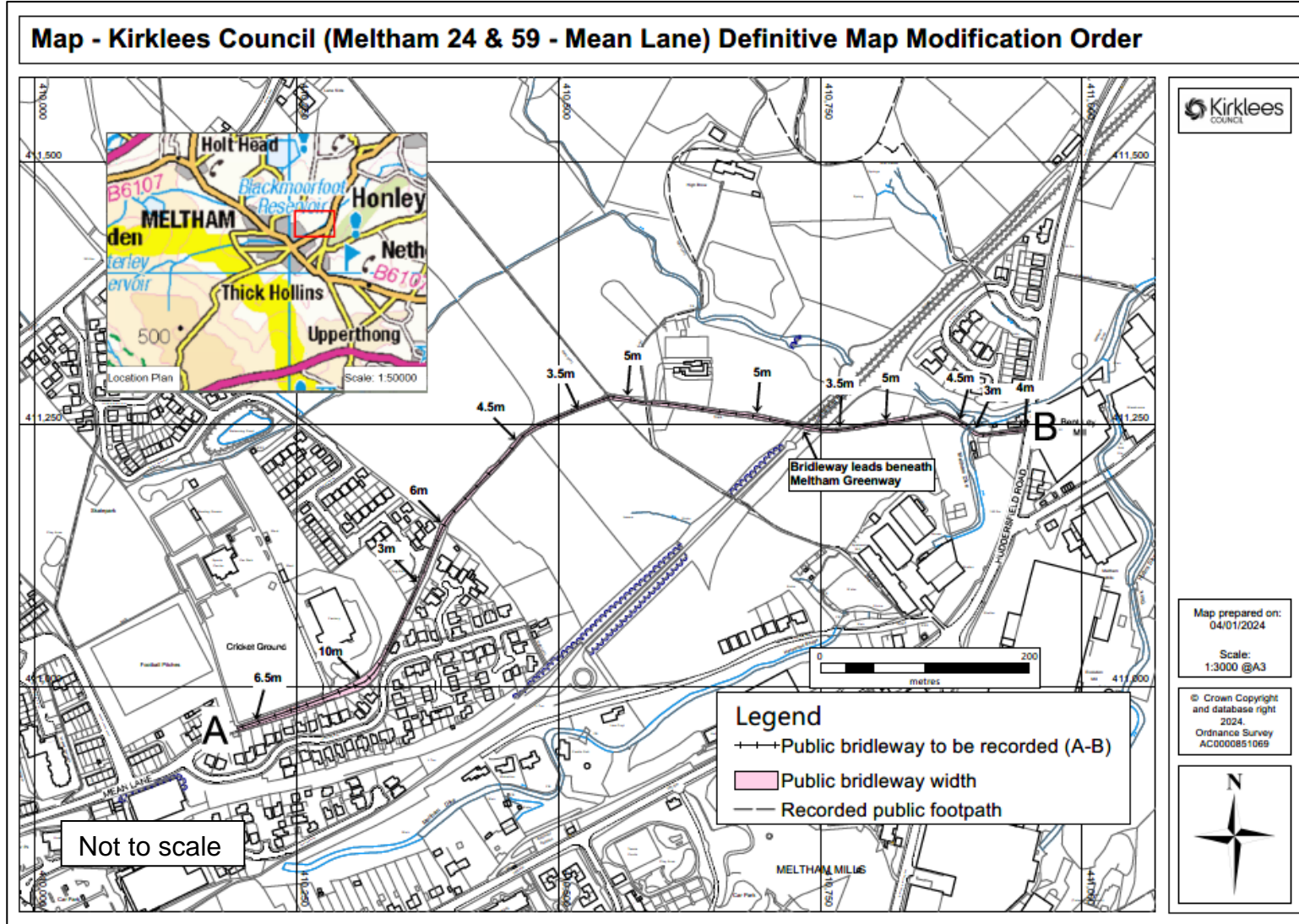
50. Based on an overall assessment of the user evidence, as discussed above under 'User Evidence Evaluation', and in Appendix B, the Definitive Map Officer recommends that, on the balance of probabilities, the application route subsists as a public bridleway.
51. The Definitive Map Officer therefore recommends that a Definitive Map Modification Order ('Order') is made under section 53(3)(c)(ii) of the WCA. The Order would upgrade Meltham 24 and 59 from public footpath to public bridleway status, leading from the eastern end of Mean Lane that is a public carriageway maintained at public expense, at the southwest corner of Meltham Cricket Ground (Point A on the Indicative Map in **Figure 1**), and leading north-easterly then easterly under the dismantled railway and across Meltham Dike to join Huddersfield Road (B6108) opposite Bent Ley Mill (Point B on the Indicative Map in **Figure 1**).
52. It is recommended that the public bridleway is recorded with a variable width over the full width of the track based on the user evidence between 3 metres and 10 metres as shown on the Indicative Map in **Figure 1**.

DMMO Confirmation

53. The Definitive Map Officer also recommends that if the recommended Order is made, members authorise confirmation of the Order as made if no duly made objections are received, or are subsequently withdrawn, such that the Order is unopposed. Or if a modification to the Order is required, to submit the unopposed Order to the Planning Inspectorate for confirmation. On the other hand, if duly made objections are received, and not withdrawn, members authorise the Order be forward to the Secretary of State for confirmation.
54. The Definitive Map Officer also recommends that, should the Order be opposed, and the matter referred to the Secretary of State, Kirklees Council should actively

support the confirmation of the Order via either written representations, public hearing, or public inquiry

Figure 1: Indicative Map 1 – Public Bridleway Recommended to be Added (A-B)



Cabinet Portfolio Holder's Recommendations

55. Not applicable.

Contact Officer

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

Background Papers and History of Decisions

57. This report is accompanied by the following appendices:

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

Service Director Responsible

58. Graeme West, 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

S140199 MEAN LANE, MELTHAM

Mark Drydale, Definitive Map Officer

06/01/2024

CONTENTS

- LIST OF FIGURES4
- SUMMARY5
- APPLICATION.....8
- CHARACTER OF APPLICATION ROUTE11
- STATUTORY PROVISIONS.....14
 - Highways Act, 1980.....14
- 1797 PLAN OF MELTHAM17
 - Background17
 - Cadastral Maps and Inclosure17
 - Evidential Weight.....18
 - Analysis19
- THE MELTHAM INCLOSURE ACTS OF 1817 & 1830.....22
 - Background22
 - Highways, Private Roads & Maintenance.....24
 - Lords of the Manor26
 - Allotment of Land.....27
 - Summary of Meltham Inclosure Acts28
- THE MELTHAM INCLOSURE AWARD 183230
 - Background30
 - Public Roads and Maintenance31
 - Private Carriage Roads, Public Bridleways, and Maintenance31
 - Bridge Houses Road35
 - Evaluation.....36
 -38
- 1861 Lancashire & Yorkshire Railway Plans & Book of Reference.....39
 - Background39
 - Analysis40
 -43
 -44
- ORDNANCE SURVEY MAPS.....45
 - Comparing the 1854 & 1892 OS Maps.....47
 -51
 -52
- LOCAL GOVERNMENT MINUTES (1888 – 1897)53
 - Background53

Analysis	57
THE FINANCE (1909-10) ACT, 1910	59
Background	59
Valuation Reference Maps	63
Evaluation.....	66
THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949	69
Background	69
Analysis	69
.....	71
.....	71
DISCUSSION	72
USER EVIDENCE	76
Evidence of Use	76
Brought into Question.....	76
As a way.....	77
Sufficiency	78
Pedal Cycle	79
Horse Riding.....	80
As of Right.....	81
Force	81
Secrecy	81
Permission/License	82
Without Interruption	84
Challenges	84
Locked Gate	85
Signs	88
Lack of Intention to Dedicate	89
Adjacent Landowner 2.....	91
Width	92
Limitations	92
User Evidence Evaluation	97
.....	98
RECOMMENDATION.....	99
CONCLUSION.....	99
REFERENCES	100
CASES	103

LIST OF FIGURES

Figure 1: Extract of Current Definitive Map and statement covering area of Mean Lane, Meltham.....9

Figure 2: S140119 Application Map.....10

Figure 3: Photos taken on 24/04/2023 showing the physical characteristics of the application route13

Figure 4: Extracts of ‘Plans of the Inclosed LANDS within the Township of Meltham in the Parish of Almondsbury’ 1797 by John Johnson (Source: West Yorkshire Archive Service, Kirklees: DD/WBE/pl/1).....21

Figure 5: The Six Key Stages directed by the 1817 Meltham Inclosure Act to be followed in the subsequent Inclosure Award.....29

Figure 6: Extract of The 1832 Meltham Inclosure Map showing the extension of Mean Lane and the Application route (Source: West Yorkshire Archive Service, Kirklees: QD5/3/Vol 3/8).....38

Figure 7: Extracts of The 1832 Meltham Inclosure Award showing the award of Bridge Houses Road (Source: West Yorkshire Archive Service, Kirklees: WYK1978/2/MT1832)38

Figure 8: 1861 Lancashire & Yorkshire Railway Plan & Section for Branch to Meltham (Source: West Riding Archives Wakefield Ref: QE20/1/1860/10).....43

Figure 9: Extract of 1861 Yorkshire & Lancashire Book of Reference44

Figure 10: 1854 OS Six Inch Map (Source: NLS Maps)51

Figure 11: 1892 OS 1:2,500 Yorkshire [West Riding] CCLX.9 & CCLX.10 (Source: NLS Maps).....52

Figure 12: Chronological List of Council Minutes Relating to Colders Lane between 1888 to 1897 Collated from Meltham Local Urban Sanitary District Board Council Minutes (Source: West Riding Archives: KMT26/1/1/6) and British Newspaper Archive55

Figure 13: IR 134/6/73 and 134/6/74 1910 Valuation Reference Maps (Source: The National Archives)65

Figure 14: Extract of Draft Definitive Map & Statement and 1955 Meltham UDC Representation & British Railway Commission Objection.....71

Figure 15: Aerial & Google Streetview Images of Eastern end of Application Route (Source: Google Earth & Google Maps)96

SUMMARY

1. In June 2017, Kirklees Council received a Schedule 14 application (reference [S140199](#)) under the 1981 Act, to record Mean Lane, Meltham, on the Definitive Map and Statement as a Public Bridleway ('the application route'). The application provided user and documentary evidence in support of the claim.
2. The 1797 Plan of Meltham shows the application route as an ancient private occupation way leading through ancient enclosures to a property known historically as 'The Lathe', at Folly Dike. Mean Lane was extended at the western end by a 15ft wide private carriage and occupation road called 'Bridge Houses Road' in the 1832 Meltham Inclosure Award.
3. Bent Ley Mill was built on Huddersfield Road by Charles Brook in 1840. In 1860, Charles Brook invited the Lancashire & Yorkshire Railway Company to invest in a railway to Meltham to increase the profitability for Mill Manufacturers and bypass the tolls on turnpike roads. The application route, Bent Ley Mill, and the railway, are all interlinked.
4. The silk mill attracted workers from Nottingham and the Midlands, who settled in nearby Helme. The workers walked from Helme to the silk mill, via a new bridge over Meltham Dike, acquiring a public right of way on foot, as shown in the 1861 Lancashire & Yorkshire Railway plans and book of reference. The alignment at the eastern end of the ancient Mean Lane changed between 1861-1892, moving the route away from 'The Lathe', creating the current configuration.
5. The western end of Mean Lane was widened, improved, and adopted between 1891 and 1896, in association with the new Jubilee Recreation Ground, by Meltham Urban District Council as a vehicular highway up to the southwest corner of the Cricket Ground, which is consistent with today's List of Streets and Definitive Map and Statement records.
6. Based on an overall assessment of the documentary evidence, on the balance of probabilities, the current highway status records held by Kirklees Council are

correct and no historical higher rights subsist along the application route above public footpath status. The application has therefore been determination based on user evidence.

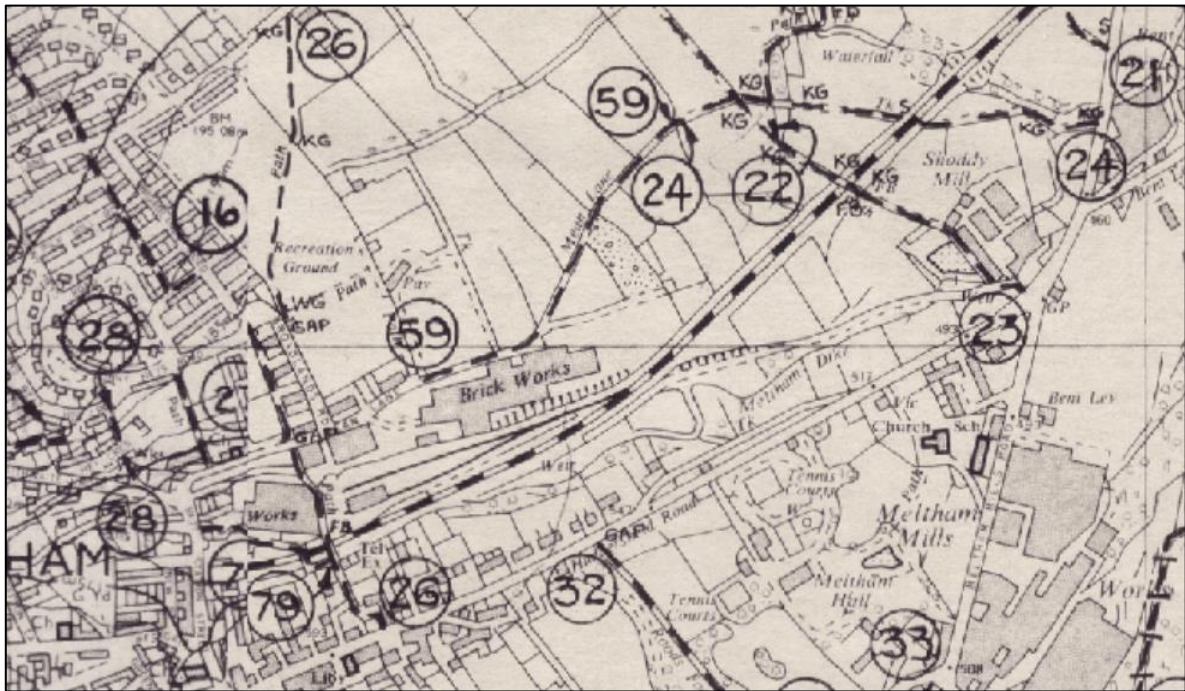
7. The public right to use the application route was brought into question in 2017. The relevant period to consider the user evidence under section 31 of the Highways Act 1980 is therefore 1997-2017. Fifteen (15) user evidence forms (UEFs) were submitted in support of the application. However, the user evidence from five (5) respondents have been discounted as their use was either: not as a 'way', 'by right', or not consonant to the dedication of a public bridleway.
8. Ten (10) respondents rode a horse along the full width of the application route during the relevant period, with the frequency ranging from weekly, monthly, and yearly. Six (6) used the application route throughout the full relevant period, and four (4) for parts of it. All users saw other members of the public riding a horse or cycling along the application route. There is no evidence that use of the application route by these ten (10) respondents was by force, secrecy, or permission during the relevant period. Users were specifically questioned on whether they used the application route to access stables and/or the Meltham Greenway.
9. There is evidence that from 2011 onwards, some users were challenged by the owners of 223 Huddersfield Road, either verbally, by a locked gate, and/or signs. These events interrupted use of the eastern end of the application route for some respondents, and their period of use has therefore been amended. However, these events were not overt acts brought to the public's attention by, or on behalf of, the landowner.
10. The only legal interest the owners of 223 Huddersfield Road have in the application route, is a private right of way. Whilst they have a license to use the field opposite their property, they do not own the fee simple of the eastern section of the application route and are therefore not able to demonstrate a lack of intention to dedicate a public right of way by the landowner.

11. Consequently, whilst some of the challenges may be sufficient to demonstrate that the public right to use the way was brought into question at an earlier date, should new evidence become available, there is currently no available evidence to rebut the presumption that a public bridleway has been dedicated. Accordingly, on the balance of probabilities, the application route subsists as a public bridleway based on user evidence and a Definitive Map Modification Order should be made to amend the legal record of public rights of way.

APPLICATION

12. On the 28th June 2017 Kirklees Bridleways Group and The British Horse Society ('the Applicant') submitted an application ([S140199](#)), 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.
13. The application, as shown highlighted yellow between Points A-B in Figure 2, seeks to upgrade both Meltham Footpath Nos. 24 & 59, Mean Lane, Meltham, to a public bridleway, 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.
14. The application was properly made under the requirements of [Schedule 14 of the WCA](#) and the submission gave as evidence in total: eleven (11) User Evidence Forms, 1861 Lancashire & Yorkshire Railway Meltham Branch Railway Plan, 1910 Finance Act Map, extract from 'The Story of Meltham' by Richard Orton, Rights of Way Law Review extract of 'The Thoroughfare Principle, along with various Ordnance Survey and Commercial Maps. The application was supplemented by four (4) further User Evidence Forms. On the 29th June 2017, the applicant certified to Kirklees Council that the requirements of paragraph 2 of Schedule 14 of the WCA had been complied with and the relevant landowners and occupiers have been notified of the application.

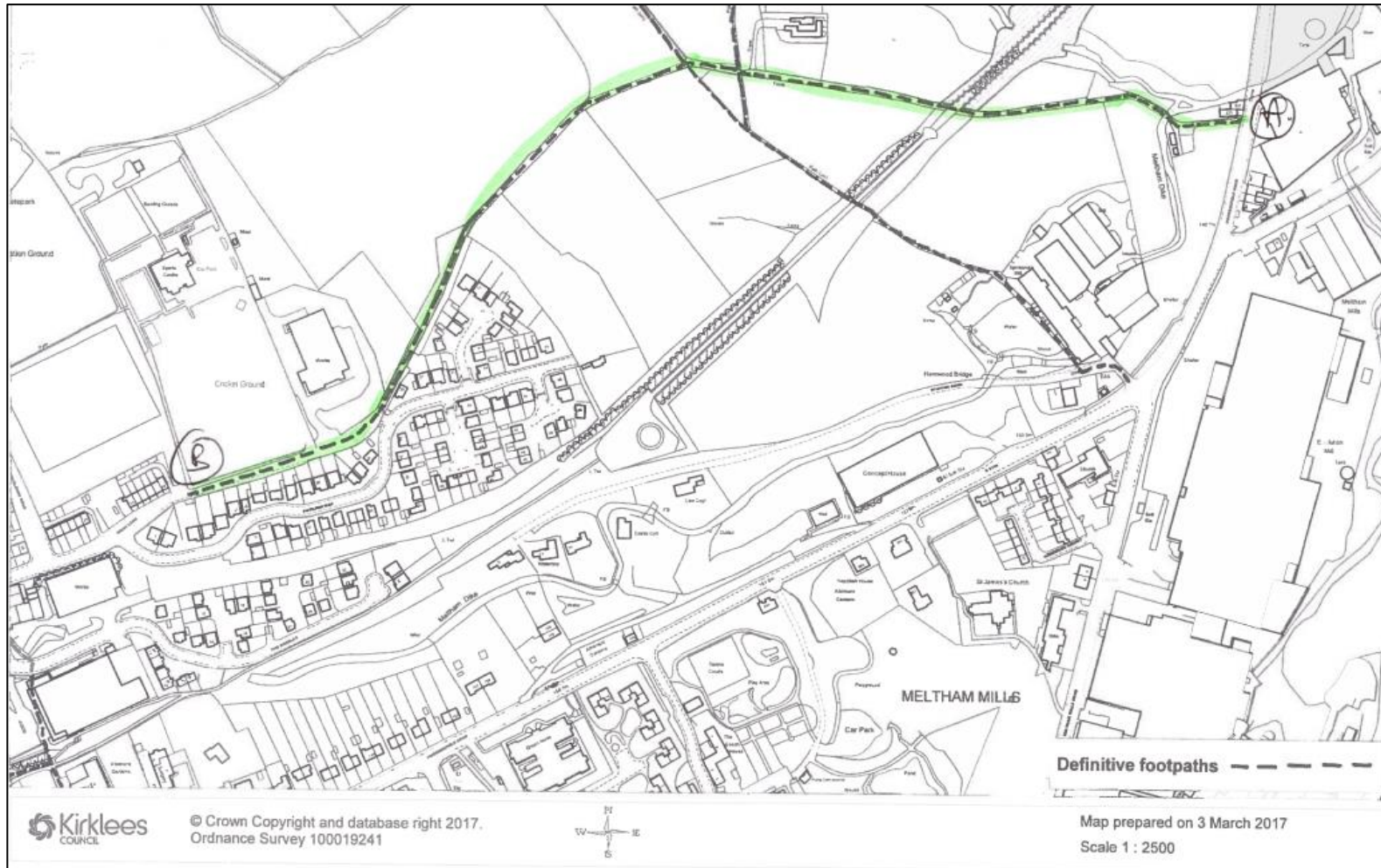
Figure 1: Extract of Current Definitive Map and statement covering area of Mean Lane, Meltham



Path No.	Map Ref	Description of Route	Nature of Surface	Length (m)	Width (m)
024	SE01SW 1011	Footpath commencing at its junction with Mean Lane Path No. 59 and proceeding eastward to its junction with the Huddersfield Road B6108 opposite Bent Ley Mill.	Ash	499	1.2
059	SE01SW 1011	Footpath from its junction with the western end of Path No. 24 and proceeding in a southwesterly direction along Mean Lane to the adopted portion at the southwestern corner of the Cricket Field.	Ash and Roughly Metalled	110	1.2

Figure 2: S140119 Application Map

(Point A: Huddersfield Road (B6108): [Google Street View](#); Point B: Mean Lane (Public Carriageway): [Google Street View](#))



CHARACTER OF APPLICATION ROUTE

15. The application route is an old historic way known as Mean Lane, which is currently recorded on the Definitive Map and Statement as Meltham Footpath Nos. 24 & 59. It is located in the town and civil parish of Meltham, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. It is approximately 4.5 miles southwest of Huddersfield in the Holme Valley below Wessenden Moor, near the Peak District National Park. The application route connects the rural countryside to the north-west urban area of Meltham and leads between two termini: the section of Mean Lane that is maintained at public expense by Kirklees Council as a vehicular highway, shown at Point B on the Application Map in Figure 2 and Photo 1 in Figure 3; and Huddersfield Road (B6108), shown at Point A on the Application Map in Figure 2 and Photo 10 in Figure 3, which is a public carriageway connecting Meltham to Huddersfield. Point B is approximately 177m above sea level ('asl') and the application route slowly descends to 169m asl until it is joined by Meltham Footpath Nos. 22 & 23 and turns east-south-easterly and continues towards Huddersfield Road at Point A, at which point it is 156m asl.
16. Commencing from Point B on the Application Map and Photo 1 in Figure 3, the application route is waymarked with a 'Public Footpath' waymark and leads north-easterly for approximately 90m in length and is roughly 6m wide between the drystone wall on the northern side, and fenced boundaries of the residential properties along Pavilion Way to the south. As the application route reaches the manufacturing factory of 'Dathan Tool & Gauge Ltd', it widens to a maximum of 9m wide until it is joined by a stepped access path from Pavilion Way, as shown in Photo 2, where it narrows to a minimum of 4m. From the start of the application route at Point A to the property of No. 35 Pavilion Way, a distance of approximately 150m, the application route is well maintained with a sealed tarmac surface and four street light columns.
17. At this point, as shown in Photo 3, a notice is displayed on the adjoining fence stating: 'STOP No Vehicular Access to Dolly Folly. Footpath only'. The application route then turns north-north-easterly for approximately 135m and narrows in width to 3.5m wide. The surface transitions from poorly metalled

irregular tarmac to levelled gravel adjacent the new residential development that bounds the application route on its northern side, as shown in Photo 4. An access path leading from Thomas Wroe Way joins the application route on its northern side. The application route then continues along a sealed metalled surface and turns north-easterly for some 120m leading between drystone walls on either side, as shown in Photo 5, which are partly dilapidated, of the adjacent agricultural fields, and then east-north-easterly for some 75m, where the northern edge of the application route is bounded by a stock proof fence.

18. Here, the application route is crossed by Meltham Footpath No. 23, as shown in Figure 1, which leads between the village of Helme and Station Road. The application route turns east-south-easterly for some 190m, descending in elevation and is crossed by Meltham Footpath No. 22, which leads to Folly Dike and Highburton. On the western side of the application route is a new agricultural building in the position of an ancient site known as 'The Lathe'. Significantly, the application route leads under the disused railway line, which is now a permissive bridleway known as the 'Meltham Greenway', as shown in Photo 6. A track leads from the southern side of the application route and up the embankment to join the permissive bridleway. The surface of the application route is no longer metalled. It is very waterlogged in places and difficult to traverse, but there is a visible layer of stones that is mostly covered in mud and earth.

19. The application route turns east-north-easterly for some 115m and is approximately 4.5m in width. It becomes progressively more vegetated and waterlogged due to a stream of water leading along the centre of the way, as shown in Photo 7. The application route leads south-easterly for some 40m and a significant brick bridge with railings on either side carries the application route over Meltham Dike, as shown in Photo 8. A padlocked field gate with a tight kissing gate is located across the application route at the west end of No. 223 Huddersfield Road, as shown in Photo 9. Two notices are displayed on the gate and a fence stating 'Private'. The application route then joins Huddersfield Road and is waymarked with a 'Public Footpath' sign, as shown in Photo 10.

Figure 3: Photos taken on 24/04/2023 showing the physical characteristics of the application route



Photo 1: Application route commences at the south west corner of the Cricket Ground, east of No. 43 Mean Lane (Point B on the Application Map in Figure 2). First 150m of Application route is metalled with four street light columns and the width is predominantly 6m but varies between 9m and 4m and is accessed.



Photo 2: Application route leads east-north-easterly and is accessed via a link from Pavilion Way.



Photo 3: Application route leads north-north-easterly and narrows in width to approximately 3.5m. A sign adjacent the Application route states: 'STOP No vehicle access to Folly Dolly Footpath only'. The surface is poorly metalled and irregular.



Photo 4: Application route is joined from the north by an access path from Thomas Wroe Way, a new residential development. The surface of the path is levelled with gravel.

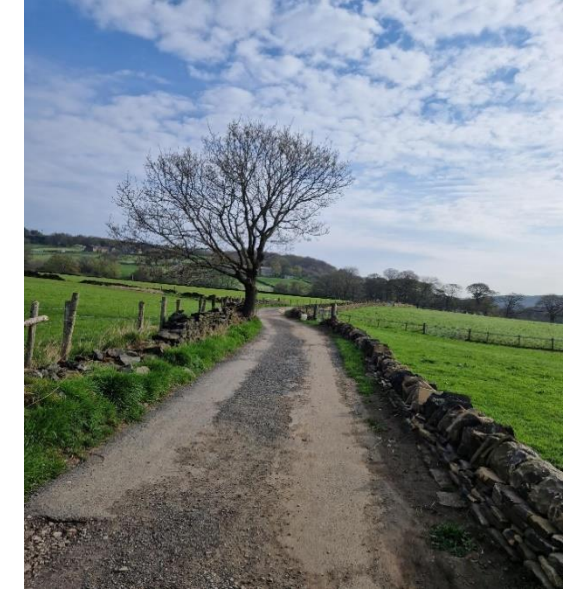


Photo 5: Application route starts to meander and leads north-easterly and east-north-easterly between drystone walls and agricultural fields. The surface of the Application route is tarmacked and is eventually joined by Meltham Footpath Nos. 22 & 23 on either side.



Photo 6: Application route turns sharply east-south-easterly and leads under the disused railway line, which is now a permissive brideway called the 'Meltham Greenway'. A worn path leads up the embankment and links the Application route with the permissive brideway. The surface is waterlogged in parts and predominantly made up of earth and stone (Photo direction is west-north-westerly)

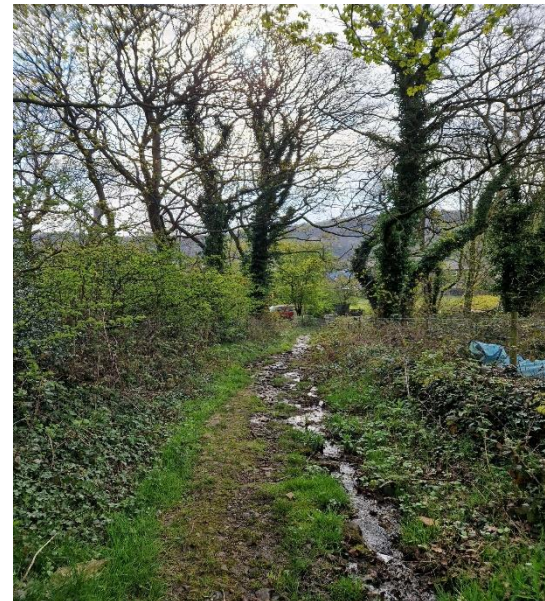


Photo 7: Application route turns east-north-easterly, south-easterly, then easterly towards Huddersfield Road. A stream of water leads along its centre and the surface is muddy and vegetated.



Photo 8: Application route leads over Meltham Dike watercourse via a brick bridge with railings on either side.

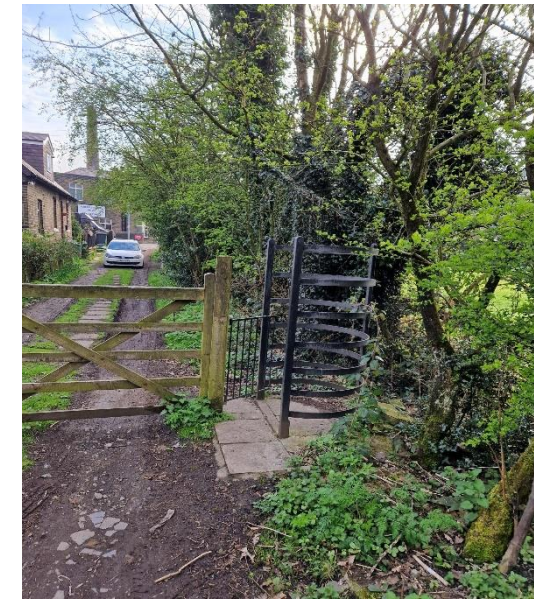


Photo 9: To the west of No. 223 Huddersfield Road, the Application route is obstructed by an unauthorised gate and side access, which is located in the wrong position. The gate is locked with a padlock and there are two signs stating 'PRIVATE'.



Photo 10: Termini of Application route opposite Riverside Works with the Public Footpath waymark (Point A on the Application Map in Figure 2).

STATUTORY PROVISIONS

20. [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. The need for a Definitive Map Modification Order ('DMMO') to be considered when evidence is submitted in support of a claim that a public right of way which is already shown on the Definitive Map and Statement is submitted to additional public rights is dealt with under section 53(2)(b) and 53(c) of the WCA. Section 53(3)(c)(ii) of the WCA provides that the Council has a duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

- *that a highway of a particular description ought to be there shown as a highway of a different description.*

21. Under the provisions of section 53(3)(c)(ii) there is no 'reasonably alleged to subsist' test, as is found in subsection 53(3)(c)(i). Therefore, the test by which the available evidence is to be considered is the civil standard of proof; that is, the balance of probabilities: does the claimed public right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary. The evidence submitted with the Schedule 14 application, and all research conducted by the Council, will therefore be judged to such standard of proof.

Highways Act, 1980

22. 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.

23. 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.
24. 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.
25. [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

26. Following a representation by the Applicant, the Council have been directed by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S140119, no later than 22nd May 2022. As the evidence submitted with the application is both historical and user to 'upgrade' two public footpaths, the application will be determined based on the balance of probabilities, firstly by analysing documentary evidence to assess whether a public bridleway, or higher public rights, 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

1797 PLAN OF MELTHAM

Background

27. A cadastral survey of Meltham by John Johnson, Land Surveyor, was made in 1797 entitled '*Plans of the Inclosed LANDS within the Township of Meltham in the Parish of Almondsbury*' ('the 1797 Plan of Meltham'), as shown in Figure 4. The plan was drawn at a scale of 3 chains (approximately 80 metres) to an inch. Unfortunately, no definitive information is available regarding the provenance or purpose of this map. Nevertheless, the objective of the survey may be surmised by the area covered in the plan and its contents. The 1797 Plan of Meltham is a comprehensive survey of inclosed land in the settlement of Meltham and shows the township within an agrarian system, providing an accurate portrayal of buildings, roads, watercourses, common land, and referenced ancient piecemeal enclosures. The map was most likely supplemented by a book of reference containing the size of each unit of land and the name of each landowner or landholder and their rates of assessment. The annotation of 'encroachments' of recently enclosed lands into common land is very valuable and shows that the purpose of the 1797 Plan of Meltham was made to ascertain legal land use and ownership.

Cadastral Maps and Inclosure

28. The 1797 Plan of Meltham is notably similar to the later 1832 Meltham Inclosure Plan and shows the bare essentials of the landscape. The information contained in the 1797 Plan of Meltham and its focus on the inclosed and common land indicates that it may have been produced with a view to enclosure on behalf of local landowners. Enclosure (or 'Inclosure') is defined as the removal of communal rights, controls or ownership over a piece of land and its conversion into private ownership (Kain *et al.* 2004). There were three methods of enclosure: piecemeal, agreement, and parliamentary act. The process of

general enclosure began long before any formal measures or legal documentation was produced or achieved with discussions among interested parties as to the desirability and viability of enclosure taking place over decades (Partida, 2014).

29. The use of maps to determine the existing cadastre and to record the new cadastre became an integral part of enclosure by parliamentary act from the middle of the eighteenth century onward (Kain & Baigent, 1992). By 1760, enclosure maps developed into a distinct genre and though usually encountered accompanying parliamentary enclosure, they occasionally complemented formal agreements; a non-parliamentary legally binding document requiring a majority consensus of persons interested in the land. Agreements were often used where possible, and parliamentary acts where necessary. Private owners were pushed into the expense of an act when an agreement ran into difficulties (Chapman & Seeliger, 1994). It was important that all existing tenorial and land use arrangements were well known to the commissioners and some pre-enclosure cadastre maps were made for this purpose. Decisions about each new allotment were judged a fair equivalent of pre-existing open lands and common rights (Delano-Smith & Kain, 1999). The 1797 Plan of Meltham is therefore likely to have formed part of the early stage of the later parliamentary enclosure.

Evidential Weight

30. The 1797 Plan of Meltham provides an accurate and impartial pre-Inclosure cadastre of the landscape and road system that existed in 1797; in contrast to the 1832 Inclosure Plan, which depicts the landscape being imposed. The map does not contain a key or annotation to indicate whether a road was considered to have public or private status. Valuably however, the map recorded ancient piecemeal enclosures; probably to determine the commutation of tithe dues based on ownership and acreage (Oliver & Kain, 1998). Piecemeal enclosure was the incremental engrossing of land, generally involving a negotiated agreement involving a single landowner or tenant purchasing or swapping strips in the open fields in order to consolidate their holdings in one place

(O'Donnell, 2015). The long process of piecemeal enclosure created a landscape of small, irregularly shaped contiguous fields (Spooner, 2016). Field shapes can provide a vital clue as to the chronological development of the landscape as, typically, the spatial arrangement of pre-existing roads determined the relative size, shape, arrangement and structure of the later piecemeal enclosures (Chapman & Seeliger, 1997; Forman *et al.* 2003). Additionally, annotates thoroughfare routes that continued beyond the area recorded on the map to public destinations, and are today all-purpose highways. Therefore, by comparison, it may be possible to deduce whether the ancient Mean Lane led to a public destination and/or was a thoroughfare.

Analysis

31. The 1797 Plan of Melham is the first cartographical map available which shows the physical existence of the application route. The primary purpose of the map was to record inclosed lands; however, the surveyor has made a deliberate effort to distinguish between highways and private roads. Therefore, by analysing the land use, it is possible to deduce the status of Colders Lane by applying the highway law at the time the document was produced. In 1793, the distinction between highways and private ways was defined as (Burn, 1793):

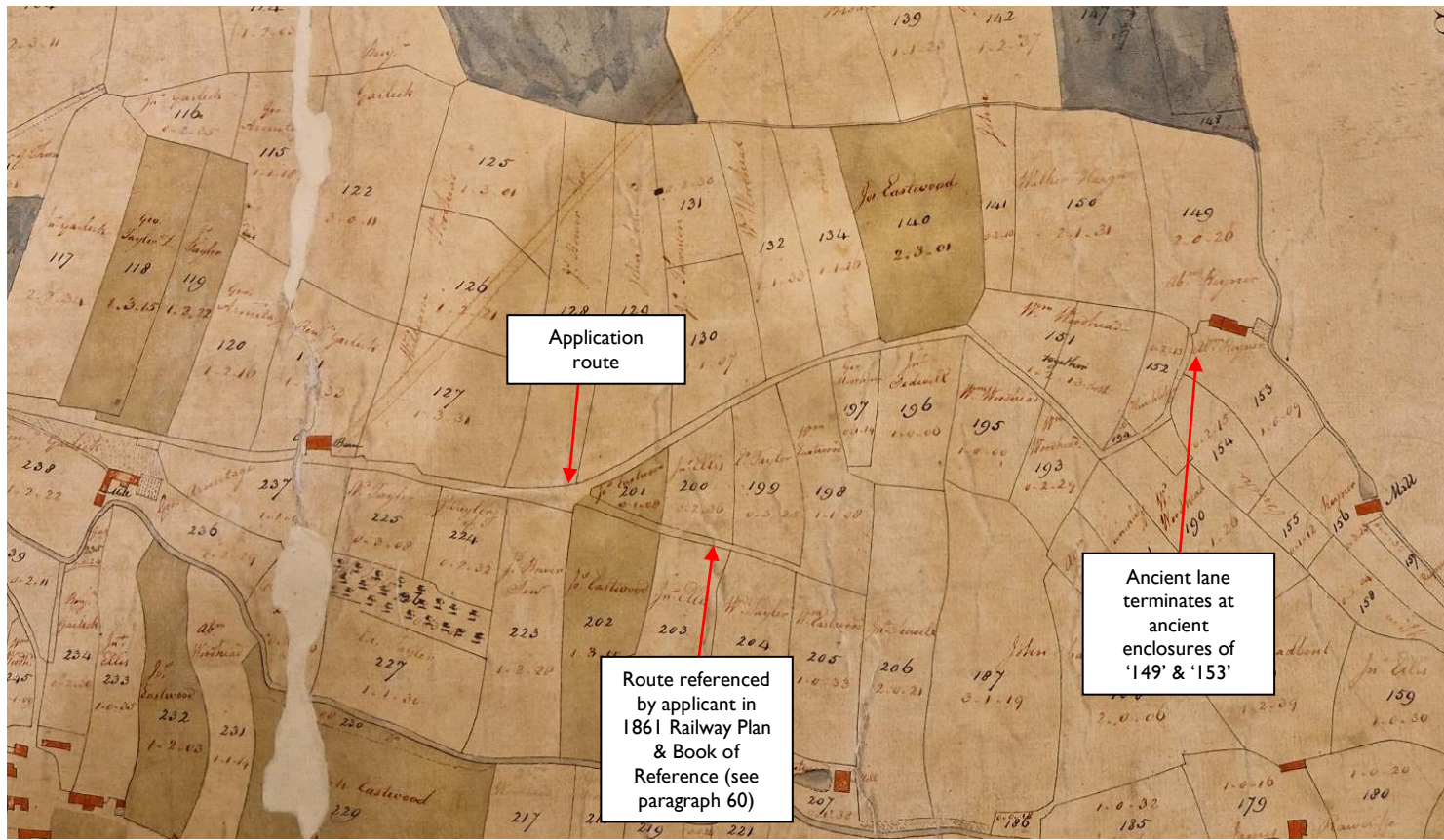
“... that every way from town to town may be called a highway, because it is common to all the king’s subjects;... but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of particular inhabitants of such parish, may be called a private way, but not a highway, because it belongeth not to all the king’s subjects, but only to some particular persons...”

32. Three routes are shown on the 1797 Plan of Meltham leading out of the township and are annotated as leading to public destinations: Helms Lane is named in bold letters and leading ‘To Huddersfield’, one route leads out of the township ‘To Honely’, and another ‘To Crosland’. Furthermore, another route is shown with two parallel dashed lines leading over common land and is named in bold black letters as ‘Marsden Road’. Lastly, one route is shown by two solid

lines as 'Manchester Road'. These were clearly recognised as highways because they were thoroughfares between public settlements.

33. On the other hand, the application route is shown with reference to the adjacent enclosures, prior to the Parliamentary Inclosure of the common land in the area. The application route is not annotated with a name or that it leads to a settlement, but it is shown as leading between ancient enclosures and terminating as a cul-de-sac at the ancient enclosures numbered '149' and '153' at a building west of Folly Dike, known as 'The Lathe'. At this period of time, there is no continuation of the occupation road along which Meltham Footpath No. 24 subsists towards Huddersfield Road (B6108), which did not yet exist.
34. The very eastern section of the ancient lane also follows a different course to the present day and instead leads south-westerly along the northern boundary of the ancient enclosures referenced '193' and '195', then east-north-easterly along the southern boundary of ancient enclosure referenced '195', and then finally north-north-easterly to its termination. Today, the route follows a curved course through the northern section of ancient enclosures referenced '151' and '152'. Notably, there appears to be drafted on the map a scheme for a route connecting the ancient lane, at a building annotated as 'Barn' to the west of the ancient enclosure referenced '127', to the highway called 'Helmes Lane', which continues 'To Huddersfield'. The term 'private' defines a restriction upon who can use the particular way. It can therefore be inferred from the 1797 Plan of Meltham that the primary use of the ancient Mean Lane at that time was as a private occupation road for the use of the adjacent owners and occupiers of ancient enclosed land within the township of Meltham.

Figure 4: Extracts of 'Plans of the Inclosed LANDS within the Township of Meltham in the Parish of Almondsbury' 1797 by John Johnson (Source: [West Yorkshire Archive Service, Kirklees: DD/WBE/pl/1](https://www.west-yorkshire.gov.uk/record-office/records/land-records))



THE MELTHAM INCLOSURE ACTS OF 1817 & 1830

Background

35. It is no coincidence that the historic evidence available to assist determining the status of the Application route at this period of time derive from Inclosure and Turnpike documents, as the two processes were intertwined. Investments in turnpikes enhanced the prospects for subsequent investment in enclosure, and vice versa, by making it more feasible to increase the profitability and modernisation of agricultural land (Albert, 1972). At Meltham, the actual enclosure process was a lengthy, expensive, and bitterly contested affair (Reed, 1984).

36. After ascertaining the ancient enclosures, as shown on the 1796 Plan of Meltham, 'An Act for inclosing Lands in the Manor of Meltham, in the Parish of Almondbury, in the West Riding of the County of York' was made in 1817 ([the 1817 Meltham Inclosure Act](#)). The preamble to the 1817 Inclosure Act recites: 'An act for consolidating in One Act certain provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts' ('the 1801 General Inclosure Act'). Together, the two Acts of Parliament were the enabling legislation establishing the procedural framework for the appointment of commissioners, surveyors, and provided the commissioners with all necessary powers for setting out, dividing, and allotting the area in question.

37. The preamble lists John Beaumont, Joseph Green Armytage, Thomas Shaw, Joseph Eastwood and Timothy Dyson as the Lords of the Manor of Meltham and owners of the soil of the commons and waste grounds, coal mines, lands, and minerals. As they also owned lands, tenements, and hereditaments within the Manor of Meltham, along with James Miller, Phillip Tinker, James Taylor, and Joseph Brooke, and 'others', they were entitled to Rights of Common. The proprietors sought to increase the economical productivity of these lands by consolidating their rights and interests into allotted freehold land; this was the sole purpose of the parliamentary Inclosure.

38. The 1817 Meltham Inclosure Act appointed William Rayner and John Buckley as commissioners for executing the two Acts, as well an umpire, Thomas Gee, for settling any difference or dispute between the two commissioners. Section 9 of the 1817 Meltham Inclosure Act appointed three surveyors of the commons, moors, waste grounds, and ancient inclosed lands: James Bulmer, William Porter, and John Johnson; the land surveyor that produced the 1796 Plan of Meltham. The surveyors were primarily tasked with conducting a survey, admeasurement plan, and valuation of the Manor of Meltham showing every proprietors' distinct property and providing the area of the land in acres, roods, and perches; the statute measure at the time. The survey plan was to be reduced into a written Award by the Commissioners, which would specify and describe the location, situation, abuttals, boundaries, quantity's and contents of each allotted parcel of land with measurements provided in acres ('a'), roods ('r'), and perches ('p'). The Inclosure Map is therefore a pictorial illustration of the Award text. The reorganised allotments are identified on the map with the abbreviated name of the individual owner and the size of the plot given, together with the lines of the named new roads, paths, stone pits, hedges, fence, drains and other topographical features. The ancient enclosures are given their own reference number, which is reproduced in the Award.

39. The commissioners, surveyors, and umpire could be replaced where necessary and were required to take an oath or affirmation legally verifying their work, which was annexed and enrolled with the subsequent Inclosure Award. Thirteen years passed and no Award was made. In that time, the 1821 Inclosure Act was made to amend certain aspects of the law regarding Inclosure. Additionally, Thomas Gee and John Buckley passed away, and William Rayner became bankrupt. Consequently, an additional Act of Parliament was passed in 1830 entitled: '*An Act to Amend an Act of King George the Third, intituled An Act for inclosing Lands in the Manor of Meltham in the Parish of Almondbury in the West Riding of the County of York*' ([the 1830 Meltham Inclosure Act](#)), which appointed James Taylor and Frederick Robert Jones as the new commissioners and Daniel Tuke as umpire. The 1830 Meltham Inclosure Act introduced various other procedures for conducting the Inclosure and demanded that the subsequent Inclosure Award was to be

executed within two years of the said Act and enrolled in the Register Office at Wakefield. The Meltham Inclosure Award should therefore be legally verified with an oath and signed by James Taylor and Frederick Robert Jones as commissioners, Daniel Tuke as umpire, and James Bulmer, William Porter, and John Johnson as surveyors, unless anyone of them should require a replacement within the stated two years.

Highways, Private Roads & Maintenance

40. As part of this exercise, it was necessary to first deal with the crucial issue as to the provision of both public and private ways in through and upon the land to be inclosed, and the ancient inclosed land. Before the allotment of land parcels, Section 17 of The 1817 Meltham Inclosure Act, together with Sections 8 and 10 of the 1801 General Inclosure Act, empowered commissioners to:

- Create public carriage roads 30ft wide over land to be inclosed, which were to be fenced on either side
- Divert, extinguish, or alter existing carriage roads (except Turnpike Roads), bridleways, and footpaths over land to be inclosed. Public Carriage Roads not extinguished until new routes are safe and convenient for Horses, Cattle, and Carriages
- Create public carriage roads, private carriage roads, bridleways, or footpaths through ancient inclosures, with landowners compensated
- Divert, extinguish, alter, or widen existing public carriage roads (up to 30ft), bridleways, or footpaths through ancient inclosures with the concurrence of two Justices of the Peace

41. The Acts, in effect, define four categories of way, namely public carriage roads, private carriage roads, bridleways and footpaths. The commissioners were clearly vested with extensive powers to substantially improve the highway and private ways network to maximise the productivity of the land, and for the convenience of the public and local proprietors. However, they had no authority

over Turnpike Roads and importantly, there was no deeming provision that automatically extinguished pre-Inclosures highways or public ways within ancient inclosures or common land. Therefore, any ancient rights of way would continue unless the commissioners actively sought to modify them. The new route network was to be accurately drawn and described on the accompanying Inclosure Map. Section 9 of the 1801 General Inclosure Act states that once the new public roads were brought up to a standard fit for the travelling public and carriages, they were to be maintained in the same manner as existing public carriage roads were by law to be amended and repaired.

42. Highways are governed by both common and statute law. The outstanding highway legislation at time of the 1817 & 1830 Meltham Inclosure Acts was the 1773 Highways Act. Highway maintenance had evolved into a system whereby repairs could be discharged through statute labour, a highway assessment rate not exceeding sixpence in the pound per year, fines, and also turnpike tolls. Money generated could be used to hire labourers to repair, amend and enlarge highways (Clifford, 1968; Jackman, 1966; Webb & Webb, 1913). In 1822, the Lockwood and Meltham Turnpike Trustees, the prosecutor, indicted the inhabitants of Meltham township, the defendants, at Wakefield Sessions for the non-repair of a highway known as Town Street, Meltham. Although the Lockwood and Meltham Turnpike Road was predominantly financed by toll charges, the prosecution shows that at common law, Meltham township, as the 'inhabitants at large', was bound by custom (prescription) and had the same footing as a parish, with respect to repairing highways lying within its own boundary. Highway maintenance was conducted by enforced statute labour and demonstrates that the new public carriage roads created in the subsequent Inclosure Award would be repaired in the same manner.

43. Contrastingly, Section 10 of the 1801 General Inclosure Act did not prescribe a defined width for private carriage roads, bridleways, or footpaths and it was left to the commissioners to determine the most appropriate width according to necessity and their use. Furthermore, they were to be made, and at all times forever thereafter be supported and kept in repair, by and at the expense of the owners and proprietors for the time being of the lands and grounds directed to

be divided and inclosed, in such shares and proportions as the commissioners shall award, order, and direct.

44. As there is no public right of pass and repass for the legitimate purpose of travel over private roads, they were not held in trust by royal government to possess, control, manage, and supervise the property for public benefit. Consequently, the private roads were not legislated, not automatically repairable by 'inhabitants at large', not subject to a highway rate or statute labour, and Justices of the Peace at Quarter Sessions had no jurisdiction to impose fines, orders, or indictments for non-repair. Sections 9 and 10 of the 1801 General Inclosure Act therefore highlight the distinct difference between the existing highway laws automatically governing the old and new public roads, and the necessity to mandate the maintenance of private ways.

45. The 1801 General Inclosure Act together with the 1817 Meltham Inclosure Act provided a systematic code of all roads and ways over the subject matter of the proposed Inclosure. The commissioners could therefore retain existing roads and ways, alter the course of existing roads and ways, extinguish them altogether and also layout wholly new routes. Before the allotment of land parcels, commissioners were also required to set out watercourses, water places and appoint one or more public stone quarries, not exceeding 10 acres for the purpose of forming and repairing the new and existing public and private ways in the Manor of Meltham, but also for every owner, occupier, and tenants for the purposes of upkeep and improvement of their estates. The grass and herbage was vested in the Surveyor of Highways to let, and the profits were put towards the repair of the highways in the Manor of Meltham. Once the stone quarries were exhausted, the land became vested in the Churchwardens and Overseers of the Poor of Meltham, and in the Surveyor of Highways, to be sold at auction for the profits shall be applied for public benefit.

Lords of the Manor

46. In lieu of and as full compensation for the rights, shares, and interests in the soil, mines, metals, and minerals (except coal mines) of the land to commons,

moors, and waste grounds, the 1817 Meltham Inclosure Act stated that the Lords of the Manor of Meltham were awarded and allotted one-sixteenth part of the remaining land to be inclosed. The allotment was to be divided among the Lords of the Manor in proportion to their respective shares of the Manor along with all underlying mines, stones, veins, metals, minerals, and beds or seams of coal associated with each division; discharging the other Lords of the Manor from all rights of claims to the land. The same applied to any allotments made by virtue of the 1817 Meltham Inclosure Act they were entitled to as proprietors of messuages, cottages, lands, and grounds, with rights of common.

Allotment of Land

47. After the commissioners had deducted and allotted lands for the roads and ways and the before-mentioned allotments, the commissioners were ordered to set out and allot the remaining residue of land. The 1817 Meltham Inclosure Act directed that the commissioners were to adjudge and proportionally distribute the remaining lands and grounds to be inclosed amongst the proprietors of ancient messuages, cottages, and toftheads, and ancient inclosures in the Manor of Meltham (except illegal encroachments). The proportion to be allotted was determined according to the annual value of the estates, which was settled by the commissioners or umpire and was in full compensation for their respective rights of common, or other rights of interests, in, over, and upon the lands to be inclosed. The allotments were to be set out as contiguous to their respective estates as conveniently possible and were to be fenced. The Act permitted the exchange of rights and interests in the land with the consent and approbation of the commissioners, which was entered into the Award.

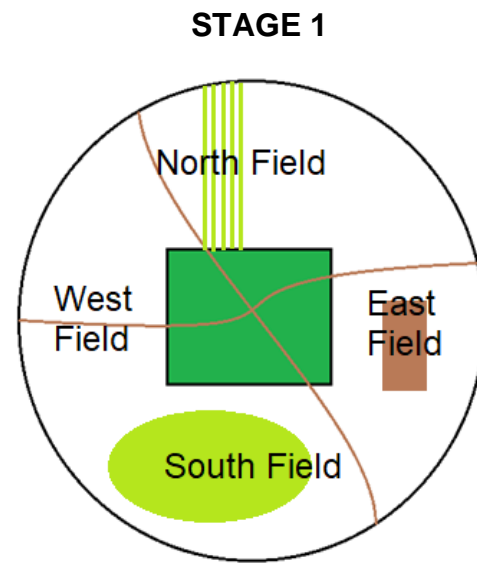
48. Additionally, by virtue of Section 11 of the 1801 General Inclosure Act, the proprietors of lands and grounds adjacent private or public ways were vested with the grass and herbage arising, up to the crown of the road. However, the Lords of the Manor retained the rights, title, and interests to the mines, beds, or seams of coal under the residual land to be allotted and had the power to

work mines and extract the coal under the allotments, ways, roads, and passages, provided they pay the respective owners double the annual value of the land, levelled the roads, and returned the land to a proper state of cultivation. The Act included a general saving to the King, his heirs and successors, and all and every other person(s), bodies politic or corporate, of all such rights and interests in respect of the lands and grounds directed to be inclosed, to which they not been assigned allotments of land or compensated by virtue of the Act.

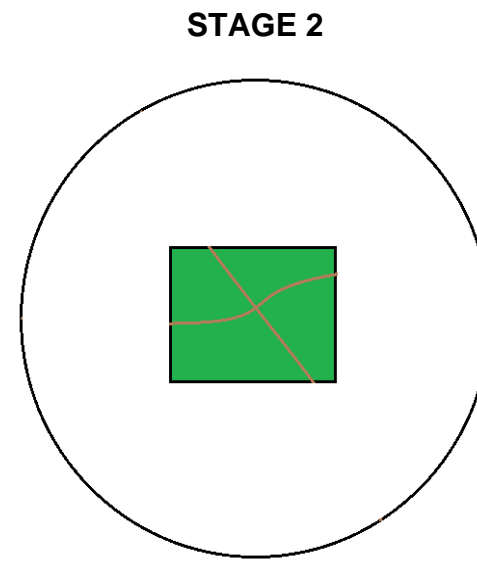
Summary of Meltham Inclosure Acts

49. The wording of the Inclosure Acts is clear that, except the general saving clause and rights reserved to the Lords of the Manor, the objective and intention of the legislation was to extinguish all rights of ownership and rights of common over the lands and grounds to be divided and inclosed, creating a blank canvas in which the equivalent compensatory allotment of property could be provided. The 1817 Meltham Inclosure Act provides a strict order in which the land was to be divided and inclosed. The allotment of land to the Lords of the Manor and the residual land to proprietors is contemplated as distinct from the improvement and provision of public and private ways, watercourses, watering places, and stone quarries, which were to be set out first, as shown in Figure 5.

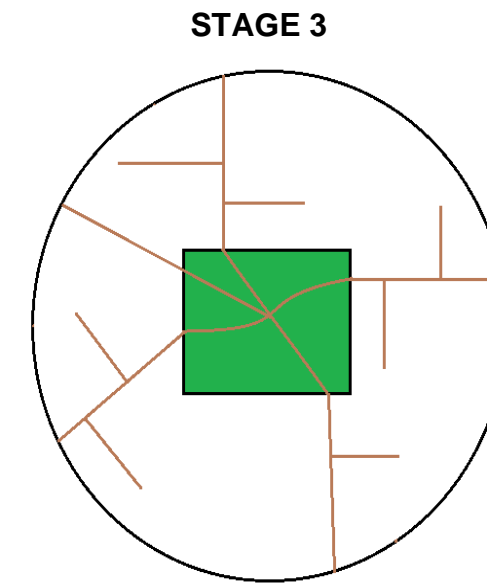
Figure 5: The Six Key Stages directed by the 1817 Meltham Inclosure Act to be followed in the subsequent Inclosure Award



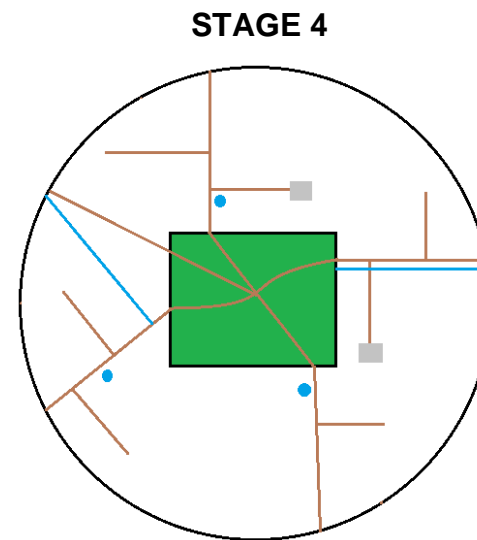
Pre-Inclosure arrangement of common land as open fields used for communal arable and pastoral farming around the ancient enclosed settlement. For centuries it formed the basis of the country's economy, but it was no longer profitable during the agricultural and industrial revolution.



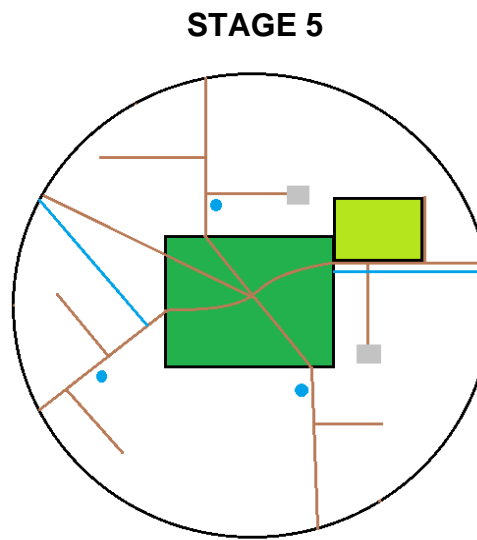
The 1817 Meltham Inclosure Act created a blank canvas by extinguishing all rights, interests, shares, and ownership in the common land in order to improve the land arrangement and yield greater profits from agriculture by intensive farming; leaving the ancient inclosed land (dark green) and existing road network behind (shown by brown lines).



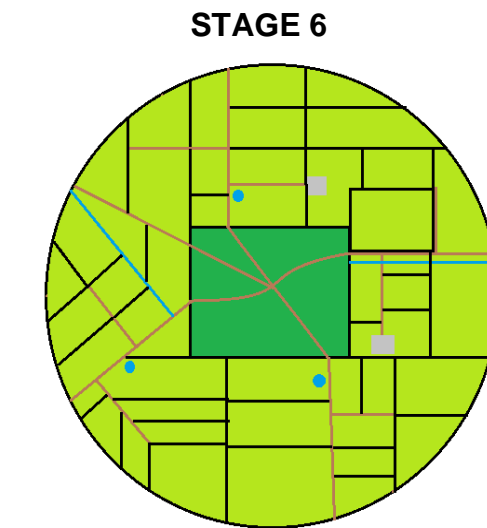
Whilst the existing public and private way network could be preserved, the Act envisages their improvement. This could be to make them more convenient to the travelling public, easier to maintain, and provide greater access to the numerous allotments to be awarded (roads shown by brown lines).



Subsequently, watercourses (blue lines), watering places (blue circles), and stone quarries (grey squares) were to be set out. The remaining land was now ready to be allotted and shared out.



Firstly, the Lords of the Manor were to be compensated for their original ownership of the soil of the common land with an allotment of land (light green rectangle). However, they retained the rights to the mining of coal under all the land to be inclosed.



The residual area of land was to be distributed amongst the remaining proprietors in compensation for their right of common (light green). Their shares were to be consolidated into freehold land, which was fenced off, to bring more land into effective agricultural use. This would form the Inclosure Map, which would be written down into the Award.

THE MELTHAM INCLOSURE AWARD 1832

Background

50. The 1832 Meltham Inclosure Award was signed and sealed by Frederick Robert Jones and James Taylor, the Commissioners, and enrolled at Wakefield Register Office in 1832. The oaths and affirmations of William Rayner & John Buckley (commissioners), Thomas Gee (previous umpire), Joseph Taylor & Frederick Robert Jones (the commissioners), Daniel Tuke (umpire), and Joseph Hall (surveyor), who replaced John Johnston following his resignation, are affixed to the Inclosure Award, legally verifying the contents therein. Another oath of John Walker for the status of umpire was also included, but he does not appear to have been sworn in. The preamble recites the relevant Acts of Parliament, setting out the statutory purpose of the Award and the powers vested in the commissioners. The Award states that the survey, admeasurement, and plan of the land to be inclosed had been made by the surveyor and reduced into writing, which was made, published and declared by the commissioners as their award, order, and determination.

51. The 1832 Meltham Inclosure Award is a written transcription of the accompanying large-scale cadastre map titled: '*Plan on the Manor of Meltham in the Parish of Almondbury in the County of York*', which was drawn by Joseph Hall ('the 1832 Meltham Inclosure Map') and signed by the two commissioners: James Taylor and Frederick Robert Jones. The 1832 Meltham Inclosure Map shows the ancient enclosures coloured in blue/green and names the respective proprietors. Some buildings are annotated with their names, but all are shown with dashed grey colouring. Watercourses and watering places are coloured in blue. Existing and new roads, whether public or private, are coloured in sienna but only the new routes are named along with their defined width. Finally, all parcels allotted by the award as freehold land are uncoloured, but their extents are defined by black lines, includes the area side in acres, roods, and perches, and provides the name of the new proprietors. Some parcels of land were too small to provide such information and instead include a reference number that

corresponds to a list on the map that shows '*allotments sold*' and '*allotments to proprietors*'.

52. Based on the 1832 Meltham Inclosure Map, the Award then registers the distribution, conversion and improvement of previously unenclosed commons, moors, and waste grounds. The 1832 Meltham Inclosure Award firstly awards carriage roads of two kinds, public and private, in through and upon the lands and grounds to be inclosed and ancient inclosed lands in the township of Meltham. The distinction accurately describes the twofold object which the commissioners had borne in mind.

Public Roads and Maintenance

53. On the one hand, thoroughfare public roads were to be straightened, widened, diverted, maintained, regulated and, if need be, provided, to improve public access and maximise the land available to be allotted (*Cubitt v Maxse*, 1873). The 1832 Meltham Inclosure Award sets out and describes eleven public carriage roads, between 30-36ft wide, that were awarded into and over the commons, moors, and waste grounds to be inclosed, between the fences of the new allotments to be awarded, and in the most commodious direction for the public, as shown in Table 1. In accordance with the preceding 1801 General Inclosure Act & 1817 Meltham Inclosure Act, the public carriage roads were authorised by two Justices of the Peace and were to be maintained in the same manner as existing public roads in the township of Meltham.

Private Carriage Roads, Public Bridleways, and Maintenance

54. On the other hand, access to various buildings and new allotments was required. Under the heading 'Private Carriage Roads', the 1832 Meltham Inclosure Award created thirty-eight private carriage roads in through and upon the lands and grounds to be inclosed, with each of varying widths between 10 and 35 feet. Two of the routes were awarded with co-existing public bridleway status. They were named and awarded as shown in Table 1. A declaration at the end of the awarding of private carriage roads states that the routes were for

the sole of exclusive use of owners and occupiers of land adjacent each respective route. The maintenance was directed to be at the general expense of the owners or occupiers based on a rate of assessment.

55. The taxation method introduced in the 1832 Meltham Inclosure Award was distinct from, but in parallel too, the collection of a highway rate that would be introduced a few years earlier in the 1835 Highways Act. Levying a rate or assessment according to the proprietors shares and proportions of the land allotted to them was an equitable system of fairly spreading the cost of maintaining private roads, resolving potential disputes, and producing a more professional standard of repair. The Award is absolutely clear beyond doubt that the private carriage roads were for the use of the owners and occupiers of adjacent allotted land as occupation roads and were to be privately maintained. The interpretation of the term 'private' was considered in the case of [Dunlop v Secretary of State for the Environment and Cambridgeshire County Council \(1995\)](#), in which Sedley J held that such a term was used to distinguish a particular road according to the rights existing over it from those roads and ways over which the public at large had a right of passage for all purposes.

56. The two public bridleways were to be maintained in the same manner as pre-existing bridleways were by law required to be maintained and kept in repair. Notably, eight public footpaths were awarded and described leading into, through, and over awarded allotted land; the owners and occupiers of which were responsible for maintaining the public footpath and its structures. This contrasts with the public/private carriage roads and public bridleways, which were specifically set out between fences, raising the question, who was allotted the freehold land of these latter routes? This could have implications for the analysis of future documents, specifically the 1910 Finance Act Valuation Map and Reference Book, which is primarily focused on land ownership at the antecedent date of 30th April 1909.

Table 1: List of Routes Awarded in 1832 Meltham Inclosure Award organised by status and width (see the [Story of Meltham](#) by Richard Orton for basic description of routes)

Name	Width
PUBLIC CARRIAGE ROADS	
<i>Mill Moor Road</i>	36
<i>The Meltham Mills & Austonely Road; The Holt Head Road; Netherthong Road; Mill Bank Road; Wilshaw & Holmfirth Road; Royd Road; Mill Moor Road; Blackmoor-Foot Road; Huddersfield Road; Netherthong & Bradshaw Road; Wash Road</i>	30
PRIVATE CARRIAGE ROADS & PUBLIC BRIDLEWAYS	
<i>Shambles Road</i>	35
<i>The New Bridge Road; Weadley Moor and Deer Mill Bent Road; Blackmoor & Deer Hill End Road; Colders Lane Bottom Road; Staithwaite Road; The Cop Road</i>	30
<i>Thickollings Road; Harding Hill Road; Harding Moss Road; The Royd & Bradshaw Road (also public bridleway); Hayes Stone Quarry Road; Bed Grains Road; Hassocks Road; The Helme Road; Mill Moor Bottom & Badger Gate Road</i>	24
<i>The Hebble Road; Fox Royd Green Bottom Road; Woodheads Road; Royd Edge Quarry Road; Green Slack Road; The Golden Hill Road; Golden Hill Quarry Road; Owlars Bar Road; Colders Lane Top Road; Moor Head Road; Ball Bents Road; Little Moor Road; Linthwaite Cross Quarry Road; The Sun Royd Road; Royd Edge Road; Cop & and Holme Road (also public bridleway)</i>	18
<i>Mill Bank Bottom Road; Calf Close Well Road; Bridge Houses Road</i>	15
<i>Pickhill Brow Road; Hey Green Road</i>	10
PUBLIC FOOTPATHS	
<i>(Leading from) Blackmoor-Foot Road; Helme Road; Hebble Road; Royd Edge Road'; The Sun Royd Road; Royd & Bradshaw Road x 2; Owlars Bar Road;</i>	5
<i>Pickhill Road</i>	3

Table 2: List of 1832 Meltham Inclosure Award Maintenance Clauses

Status	Maintenance
Public Carriage Roads	We the said Commissioners Do hereby award order and direct that all the said respective public carriage roads and highways above mentioned and kept in repair by such persons and in like manner as the other public roads within the said Manor or Township of Meltham are by Law to be amended and kept in repair.
Private Carriage & Occupation Roads	Which said private carriage and occupation roads and ways before mentioned we have set out and appointed for the sole and exclusive use of the owners and occupiers of the estates and allotments lying adjacent to any of the said roads and to which such roads respectively lead. And we do direct that the said several roads.... by us so set out (whether the same be set out jointly with public bridleways or not and so much thereof and so wide as is necessary for private carriage and occupation roads, and not as public bridle roads) so far as the same are private carriage and occupation roads, and also the said several other private carriage and occupation roads by us so set out and appointed shall for ever hereafter be supported maintained and kept in repair by and at the general expense of the owners or occupiers of allotments upon the said commons moors and waste grounds, in the shares and proportions mentioned and specified in the rate or assessment hereunto annexed, and marked or entitled "The Rate or Assessment referred to at five pence in the pound by which the owners or occupiers of allotments on the commons moors and waste grounds, within the said Manor of Meltham in the Parish of Almondbury for the time being, are to proportion the expense of the roads set out and awarded in and over the said commons moors waste grounds and the allotments thereof"...
Public Bridleway	And we do hereby award order and direct that the several and respective public bridle roads or ways by us so set out as aforesaid and whether they be set out jointly along with the private carriage and occupation roads, or not, shall (so far, and so wide, as is necessary for Bridle Ways) be made, and for ever afterwards supported and kept in repair by such persons and in like manner as the other public Bridle Roads within the said Manor or Township of Meltham are by Law required to be amended, and kept in repair
Public Footpath	And we do award order and direct that the owners or occupiers for the time being of the several allotments respectively, into or through and over which any of the hereinbefore awarded public footways, or paths shall lead, shall make support and for ever hereafter maintain food and sufficient gates or stiles, and bridges or footplanks over such of the fences and ditches of their respective allotments of allotment as such owners or occupiers are ordered and directed in and by this our award to make and maintain. And we do order and direct that all footways, excepts as hereinbefore mentioned shall be of the width of five feet, and that wheresoever any person shall fence them off, they shall to the width of five feet exclusive of fences and ditches (except where otherwise provided in the conditions of any of the allotments sold under by virtue of the said second hereinbefore recited act if any such there be, except the one hereinbefore mentioned.

Bridge Houses Road

57. The 1832 Meltham Inclosure Award created a private carriage and occupation roads called Bridge Houses Road at 15ft wide, as shown in Figure 6 and Figure 7. The private road commenced on the main highway through Meltham, now known as Station Road, at Mesne Bridge, and joining the western end of an ancient lane called 'Mesne Lane':

“One other private carriage and occupation road of the width of fifteen feet, as and where the same is now staked and set out, commencing from or near the Mesne Bridge and extending thence in a northwardly direction to the west end of a lane running through old Inclosures there commonly called Mesne Lane, and which we call Bridge Houses Road”.

58. 'Mesne' is an Anglo-French term, which translates to 'intermediate or intervening', which is likely a reference to the bridge. It is pronounced as 'meen', but also 'meien' and 'mean', which explains why the application route is now known as Mean Lane. Bridge Houses Road was awarded as a private carriage and occupation road, and it is reasonable to assume that the ancient Mean Lane was analogous to that status, as a private carriage road. The 1832 Meltham Inclosure Award confirms the analysis of the 1797 Plan of Meltham, which showed Mean Lane as, on the balance of probabilities, a private occupation road bounded by ancient piecemeal enclosures and terminating as a cul-de-sac at an ancient enclosure. The corroborative evidence shared between the 1797 Plan of Meltham, and the Inclosure documents is incontrovertible that the status of Mean Lane was a private carriage road at the time the 1832 Meltham Inclosure Award was published, declared, and enrolled.

59. The ancient Mean Lane is shown on the 1832 Meltham Inclosure Map, Figure 6, in exactly the same manner as the 1797 Plan of Meltham, leading through ancient enclosures and terminating as a cul-de-sac at the building west of Folly Dike. Most of the application route is coloured blue, in the same manner as the adjacent land parcels and where land parcels on either side of Mean Lane are within the same ownership, the owners name is written stretching across the

application route, such as: 'Meltham Curacy', 'Thomas Shaw Esquire', 'Joseph Haigh', 'Messrs Woodheads', and 'James Murphy'. On the other hand, where land parcels on either side of Mean Lane are in separate ownership, the names are recorded within the land parcel. Writing the names leading across Mean Lane may be to signify that they also owned that section of Mean Lane, and could also be for convenience, rather than repeating the same name twice.

60. The 1832 Meltham Inclosure Map also shows a bridge at the eastern end of ancient Mean Lane, north of 'The Lathe', over Folly Dike. As Bridge Houses Road was not awarded with a co-existing public footpath, the footbridge may have only been used at this time to access 'The Lathe' from the settlements of Helme and Highbrow. On the other hand, the 1832 Meltham Inclosure Map also shows a footpath, annotated as a dashed black line, commencing on Helme Lane and leading southerly through ancient enclosures to join Bridge Houses Road within the ancient enclosure of 'Joseph C Armitage', opposite the water body known as 'Mill Pond', which today is recorded as Meltham Footpath No. 26 on the Definitive Map and Statement. The ancient footpath would have been a cul-de-sac route if the public could not continue along Bridge Houses Road.

61. However, as stated at paragraph 41, there was no deeming provision that would automatically extinguish a highway over the land to be inclosed, or ancient enclosures. Consequently, if a public footpath existed along the land over which Bridge Houses Road was awarded prior to the 1832 Meltham Award, then it continued to so afterwards. As the bridge over Folly Dike at 'The Lathe' is recorded on the 1854 OS Map onwards as a 'Foot Bridge' (see paragraph 76), the depiction of the bridge on the 1832 Meltham Inclosure Map may indicate that a public footpath existed leading from the bridge along Mean Lane to and over Bridge Houses Road (currently recorded as Meltham Footpath Nos. 22, 24, & 59).

Evaluation

62. The 1832 Meltham Inclosure Award created a new private carriage and occupation roads over common land, known as Bridge Houses Road, that

extended a pre-existing private occupation road. The new private road was for the sole use of the owners and occupiers of adjacent lands, who had the right of herbage and ownership of the roads up to their centres and were to be privately maintained by a rate of assessment. The ancient Mean Lane must have had a status analogous to that of the private road that extended it, which is supported by the analysis of the 1796 Plan of Meltham. The analysis of the 1832 Meltham Inclosure Map shows that a public footpath may have subsisted over the ancient Mean Lane at this time, leading from the foot bridge at Folly Dike to and over Bridge Houses Road. Even if this was not the case, it would not preclude the way from becoming a highway through the subsequent acquisition of public rights by dedication.

Figure 6: Extract of The 1832 Meltham Inclosure Map showing the extension of Mean Lane and the Application route (Source: [West Yorkshire Archive Service, Kirklees: QD5/3/Vol 3/8](#))

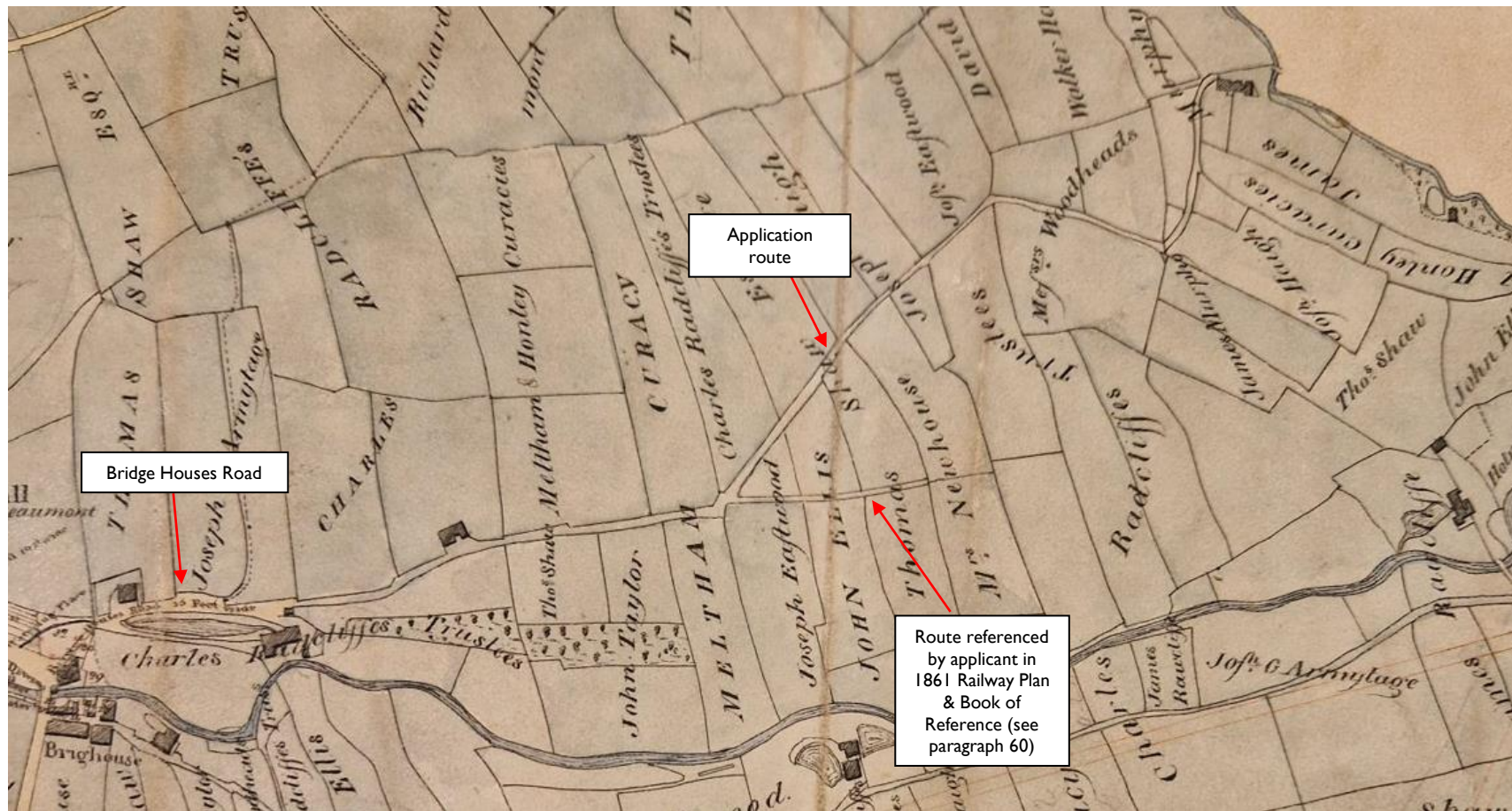


Figure 7: Extracts of The 1832 Meltham Inclosure Award showing the award of Bridge Houses Road (Source: [West Yorkshire Archive Service, Kirklees: WYK1978/2/MT1832](#))

Bridge Houses road which we call "The Mill Moor Bottom and Badger Gate Road". One other was private Carriage and occupation road of the width of fifteen feet, as and where the same is now staked and set out, commencing from or near the Mill Bridge and extending thence in a northwardly direction to the West end of a lane running through old Inclosures there commonly called the Mean Lane and which we call "Bridge Houses Road". One other private Carriage and occupation

1861 Lancashire & Yorkshire Railway Plans & Book of Reference

Background

63. In 1861, the Lancashire & Yorkshire Railway Company deposited plans and a book of reference with the Clerk of the Peace for the West Riding of Yorkshire, and with the bill before parliament, in order to obtain parliamentary approval to the railway schemes, which included a 5.6km railway branch from Lockwood (Huddersfield), via Netherton, to Meltham. The bill was opposed by Mr Bentley Shaw of 'Bentley and Shaw', which aggrieved the inhabitants of Netherton and South Crosland: "*We... resolve that we will refrain from drinking any ale, beer, or porter brewed by the firm of Bentley and Shaw, till the train shall run on the said line through our village*". The plans and book of reference were scrutinised by a committee, whilst Mr Bentley received the concession of a new carriage road to his property at Woodfield House and '[The Lancashire and Yorkshire Railway \(Dewsbury, & Branches\) Act, 1861](#)' ('The 1861 Act') received royal assent on the 7th June 1861 and stated in the preamble:

"And whereas Plans and Sections showing the lines and levels of the proposed Railways and other works, and the lands which the Company are by this Act empowered to acquire and appropriate, and Books of Reference to those Plans, containing the names of the owners or reputed owners, lessees or reputed lessees and occupiers of the said lands, have been deposited with the Clerk of the Peace for the county of Lancaster, and with the Clerk of the Peace for the West Riding of the county of York respectively".

64. The 1861 Act incorporated '[The Railways Clauses Consolidation Act, 1845](#)' ('the 1845 Act'), which was a general act of parliament that consolidated repeated provisions usually included in private Acts authorising the making of railways. The information contained in the plans, sections, and book of reference can therefore be evidentially valuable to ascertaining the existence, or otherwise, of public rights of way at the time the land was surveyed, and the documents were produced.

Analysis

65. The railway was closed to passengers on 21st May 1949, and was formally closed on 5th April 1965 and the track dismantled in 1966. Today, it known as 'The Meltham Greenway', a permissive route for walkers, riders, and cyclists. Today, the application route [leads under a bridge of the dismantled railway](#). In [Dartford Rural District Council v Bexley Heath Railway Co. \[1898\] AC 210](#) it was held that the 1845 Act did not impose a duty upon a railway company to carry a footpath over the railway, or the railway over the footpath by means of a bridge. As a result, the Definitive Map Consistency Guidelines advise that, unless there is specific provision in the 1861 Act, any public route requiring a bridge is of at least bridleway status. However, today Meltham Footpath No. 24 coexists with a private occupation road. Section 49 of the 1845 Act required that:

“Every Bridge to be erected for the Purpose of carrying the Railway over any Road shall (except where otherwise provided by the Special Act) be built in conformity with the following Regulations; (that is to say,)

The Width of the Arch shall be such as to be leave thereunder a clear Space of not less than Thirty-five Feet is the Arch be over a Turnpike Road, and of Twenty-five Feet if over a public Carriage Road, and of Twelve Feet if over a private Road;

The clear Height of the Arch from the Surface of the Road shall not be less than Sixteen Feet for a Space of Twelve Feet if the Arch be over a Turnpike Road, and Fifteen Feet for a Space of Ten Feet if over a public Carriage Road; and in each of such Cases the Clear Height at the springing of the Arch shall not be less than Twelve Feet:

The Clear Height of the Arch for a Space of Nine Feet shall not be less than Fourteen Feet over a private Carriage Road.

The Descent made in the Road in order to carry the same under the Bridge shall not be more than One Foot in Thirty Feet is the Bridge be over a Turnpike Road, One Foot in Twenty Feet if over a public Carriage Road,

and One Foot in Twenty Feet if over a public Carriage Road, and One Foot in Sixteen Feet if over a private Carriage Road....”.

66. The width of the bridge has remained unchanged since the railway was constructed and has a minimum width of 18ft and a maximum width of 21ft, based on the 'OS Premium Stack Greyscale' base map on KOMPASS. This indicates that it was built for a private carriage road, as it is less than the twenty-five required for a public carriage road. Extracts from Sheet 3 of the 1861 Lancashire & Yorkshire Railway Plan, and the accompanying section, is provided in Figure 8, which has been reorientated to northerly. The features shown on the plan, specifically the Turnpike Road, stream, footpath, and Folly Dyke have been correlated to the features annotated on the cross-section drawing. Elsewhere in the plans and cross sections, features are annotated as 'Occupation Roads', 'Footways', or 'Public Carriage Roads'. Interestingly, neither Meltham Footpath Nos 23 or 24 are annotated as a footpath on the cross-section drawing, even though provision was made for their access via a footbridge for the former, and a bridge for the latter.

67. On the other hand, the routes are shown on the plan extract as dashed lines. Meltham Footpath No. 24 is shown commencing on the ancient Mean Lane just south of the building known as 'The Lathe', within the field referenced '3'. The footpath is shown leading easterly, across the line of the proposed railway, over Meltham Dike via a bridge and joining the Turnpike Road opposite Bent Ley Mill. This is the first time the route is shown in such a manner and is discussed in greater detail at paragraph 74 onwards. The Book of Reference, as provided below in Figure 9, shows that the field referenced '3' was described as a 'meadow and footpath' in the ownership of the Surveyor of Highways of the Township of Meltham and the Local Board of Health of Meltham. The evidence strongly indicates that the application route was a public footpath maintained by the relevant highway authority at public expense. This was sufficient for the British Railway Commission to withdraw their objection to recording the footpaths on the Definitive Map and Statement (see paragraph 116).

68. The plans show that the application route is beginning to take on its present configuration. However, the ancient Mean Lane is still shown as leading easterly and then northerly to 'The Lathe'. A diversion of the private road/public footpath may have taken place at a later date. Based on the current available evidence, on the balance of probabilities, there is no evidence that the section of the application route shown on the 1861 Railway Plans has a higher status than that of public footpath.

69. The ancient Mean Lane is not shown within the limit of delineation of the railway in Figure 8 and is therefore not referenced. However, the applicant also provided a copy of the railway plans and sections in their submissions supporting the Schedule 14 application. Specifically, the applicant highlighted a cul-de-sac route that offshoots from Mean Lane and terminates at ancient enclosures. The road is shown in Figure 4 and Figure 6 and in the book of reference was described as an 'Occupation Road' in private ownership and occupation. However, the documents specifically relate to that private road, which has since been adopted as a vehicular highway 'Pavilion Way'. The indications afforded by the documentary evidence indicate that the occupation road was synonymous in status to the ancient Mean Lane to which it joined, however, as it is a separate entity, no evidential weight can be appropriated to the application route.

Figure 8: 1861 Lancashire & Yorkshire Railway Plan & Section for Branch to Meltham (Source: West Riding Archives Wakefield Ref: [QE20/1/1860/10](#))

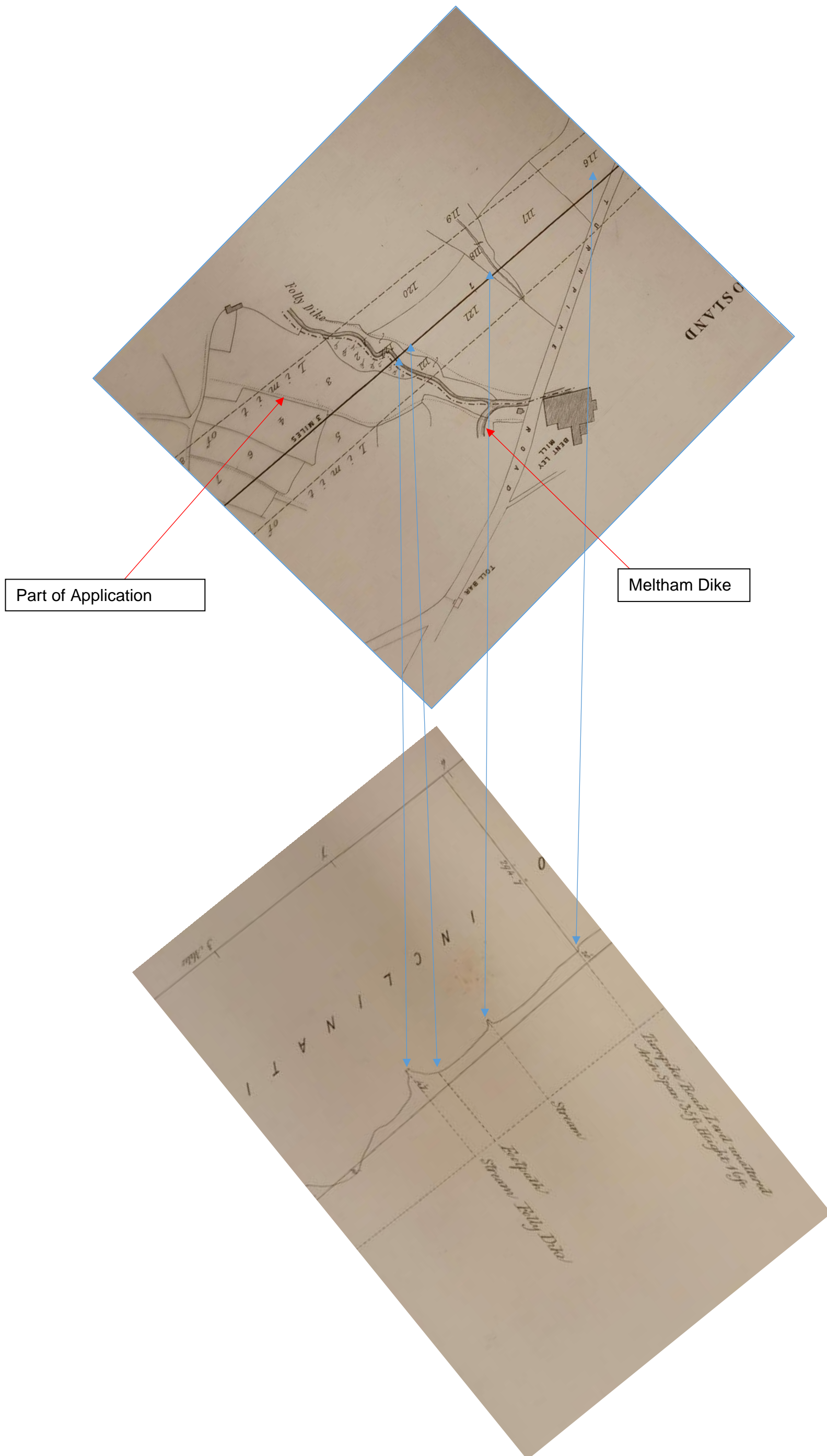


Figure 9: Extract of 1861 Yorkshire & Lancashire Book of Reference

The Township of *Meltham* in the Parish of *Almondbury* in the West Riding of the County of *York*

	Number on Plan.	OWNERS or REPUTED OWNERS.	LESSEES or REPUTED LESSEES.	OCCUPIERS.	DESCRIPTION of PROPERTY.
	1	<i>Sir Digby Cayley Baronet, and Henry Frederick Beaumont Esquire, and Charles Brooke Senior Esquire some or one of them</i>			<i>Watercourse and Well dividing the Townships of Meltham and South Osland</i>
	2	<i>Charles Brooke Senior</i>		<i>Himself</i>	<i>Wood land called "Tolly Lyke Wood."</i>
	3	<i>Ditto - and the Surveyors of the Highways of the Township of Meltham, the Local Board of Health of Meltham, Charles Brooke Senior Chairman and George Taylor Surveyor to the Local Board of Health of Meltham Township or some or one of them.</i>		<i>Ditto</i>	<i>Meadow and footpath</i>
	4	<i>Charles Brooke Senior</i>		<i>Himself and Edwin Eastwood or one of them</i>	<i>Meadow and footpath</i>
	5	<i>Charles Brooke Senior and the Local Board of Health of Meltham Charles Brooke Senior Chairman and George Taylor Surveyor or one of them.</i>		<i>John Anley Joseph Taylor and Edwin Eastwood or one of them</i>	<i>Meadow and public footpaths</i>
	6	<i>Charles Brooke Senior</i>		<i>John Anley and Joseph Taylor</i>	<i>Meadow</i>

15

ORDNANCE SURVEY MAPS

70. 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).
71. 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).
72. 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 provide 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 were 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.

73. Ordnance Survey maps provide good evidence of the physical existence of routes at the time the map was surveyed (*Attorney General v Antrobus* (1905)). 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)). Additionally, if shading of a route resembles the depiction of known highways, an inference may be drawn that the status is analogous. 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 covering the Meltham area prior to the 1910 Finance Act Valuation Reference Maps may provide evidence to support the Meltham Local Urban Sanitary District Board Minutes and provide evidence of the topographical changes the application route has undergone over the years.

Comparing the 1854 & 1892 OS Maps

74. The 1854 OS Map, as shown in **Error! Reference source not found.**, was surveyed between 1848 to 1851 and was published in 1854 at a scale of six inches to the mile and shows the entirety of the application route. On the other hand, the application route is divided across two Yorkshire [West Riding] Sheets numbered CCLX.9 & CCLX.10, as shown in Figure 11, covering the areas of Meltham and Helme, which were surveyed in 1891, and published in 1892 at scale of 25:344 inches to a statute mile, or rather 1:2.500. The maps were available as two options: coloured, which was more expensive; and uncoloured as a cheaper alternative. The Definitive Map Officer has used the National Library of Scotland to source these maps, which only shows CCLX.9 in colour, whilst CCLX.10 is uncoloured. In this respect, CCLX.9 is more informative, particularly when attempting to identify clues that distinguish between public and private roads, whilst keeping in mind that the map includes a disclaimer stating: *'The representation on this map of a Road, Track or Footpath, is no evidence of the existence of a right of way'*.
75. For instance, on CCLX.9, main thoroughfares and all-purpose carriageways like Helme Lane, Station Street, Huddersfield Road, and even estate roads such as Back Station Street, are coloured yellow. By contrast, the application route and the occupation roads leading from Spark Green to Upper Hey or from Crading Hole to Helme via Helme Hall, are shown uncoloured. The colouration is not a coincidence and most likely reflects routes that were in a good standard of repair, which would often be highways maintainable at public expense or newly created estate roads. This in turn may provide a differentiation between public carriageways and occupation roads. This is valuable information to attract investment and purchases of the pricier OS map. Notably, as the 1892 OS Map was surveyed in 1891, it predates the creation of the Recreation Ground, Cricket Ground, the Cottages, and the adoption of a section of Mean Lane up to the southwest corner of the Cricket Ground. Consequently, this section is also shown uncoloured.
76. The 1892 OS Map records several differences compared to the preceding 1854 OS Map. Firstly, as previously discussed, the Lancashire and Yorkshire

Railway branch to Meltham was built to the south and then over Mean Lane. Secondly, the eastern section of Mean Lane, along which Meltham Footpath No. 24 subsists, is shown. Thirdly, in contrast to the 1854 OS Map, 1892 CCLX.10 OS Map shows a bridge leading over Meltham Dike at the eastern end of the Application route to join Huddersfield Road opposite Bent Ley Mill. Thirdly, a route leading from Helme, through 'The Heys' to Helm Lane and continuing to the Application route, is shown for the first time. This continues to a footbridge over the railway to Spinks Mire Mill and Huddersfield Road. Today, this route is recorded on the Definitive Map and Statement as Meltham Footpath No. 23. The [Helme Conservation Area Appraisal](#) report comments:

“Charles Brook (senior) lived at Healey House until his death in 1869 and was buried in Helme churchyard with his wife. He built a silk mill and a few cottages for the skilled workers in nearby Bent Ley in 1840 but many of the workers who had emigrated from Nottingham and the Midlands settled in Helme. This may explain why historical maps show the development of a well-trodden path from Helme to Bent Ley”.

77. Similarly, Rev. Joseph Hughes states in '[The History of the Township of Meltham, Near Huddersfield \(1866\)](#)':

“Another interesting object in this part of the district which next claims attention, is the handsome and well ventilated silk mill at Bentley, erected by Mr. Charles Brook, of Healey House, in the year 1840. Adjoining this are several neat dwelling-houses for the overlookers and some of the skilled workmen connected with the establishment, which were built about the same time. In this factory, as in that of a cotton thread at Meltham Mills, great numbers of women and young girls find employment, preference being given in both to females, because of their superior delicacy of touch, which peculiarly fits them for the handling of slight material, whether silk or cotton, which has to pass through their fingers. Precisely the same harmony is observed to exist here between the employers and employed, as at Meltham Mills; nor would it be easy in any locality to find masters more

deeply interested in the welfare of their workpeople than those at Bentley Factory'.

78. In '[The Story of Meltham](#)' (1977), Richard Orton writes:

"Two paths cross there, one from Meltham to High Brow past the brickworks, and the other from Helme to Bent Ley. Before the turnpike road was built up the valley these paths would have been much used. Dolly Folly would be quite a busy cross roads".

79. However, the Definitive Map Officer has reviewed the plans submitted for the Turnpike Road from Lockwood to Meltham & Meltham Mills (Huddersfield Road) at West Riding Wakefield Archives (Reference Numbers: [QE20/2/6](#); [QE20/2/19](#); [QE20/2/29](#)) and there is no indication within the documents that the eastern section of Meltham Footpath No. 24, and therefore the application route, existed prior to the creation of the Lockwood and Meltham Turnpike Road. Newspaper reports in the 1850/60s reveal that the Meltham branch of the Lancashire & Yorkshire Railway was instigated by Charles Brook, along with the firm Jonas Book & Bros, and other Meltham Mill owners and manufacturers to bypass the fees levied on the Lockwood and Meltham Turnpike Road. In October 1860, the proposal was brought before the directors of the Lancashire and Yorkshire Railway Company ([Huddersfield Exposed – Meltham Branch Line](#)).

80. Bent Ley Mill, the railway, and the footpath are all interlinked. Bent Ley Mill attracted workers from Nottingham and the Midlands since 1840, who settled in Helme. As there was no pre-existing highway from Helme to Bent Ley Mill, they walked the route of Meltham Footpath No. 23. Charles Brook, the owner of Bent Ley Mill attracted the Lancashire & Yorkshire Railway Company to invest in the Meltham railway to increase profitability for the Mill manufacturers. In turn, the railway made provision for the preservation of the link between Helme and Bent Ley Mill via the creation of an underpass for the public footpath now recorded as Meltham Footpath No. 24. The bridge over Meltham Dike is not shown on the 1854 OS Map, but is shown on the 1861 Railway Plan, which would suggest it was created within that narrow time period.

81. Lastly, as discussed in paragraph 34, the eastern section of Mean Lane at 'The Lathe' undergoes a transformation. The 1892 OS Map CCLX.9 is the first historic document that records this change. The ancient Mean Lane is shown on the 1854 OS Map as leading directly to the west of 'The Lathe', exactly as it is shown on the 1797 Plan of Meltham and the 1832 Meltham Inclosure Map and continues to the 'Foot Bridge' across Folly Dike, north of Folly Dolly waterfall. Starting at the current western termini of Meltham Footpath No. 24, the ancient Mean Lane is shown leading east-south-easterly and then northerly to 'The Lathe'.

82. However, on the 1892 OS Map, the old section of Mean Lane adjacent 'The Lathe' no longer exists. Instead, it is replaced by a copse of trees, and the footpath is shown diverted around the copse of trees to the west, as it exists today. Again, leading from the current western termini of Meltham Footpath No. 24, Mean Lane now leads east-north-easterly, between OS Field Numbers 461 & 526, and then easterly, under the Lancashire & Yorkshire Railway, over the footbridge across Meltham Dike, to join Huddersfield Road opposite Bent Ley Mills. The northern section of Mean Lane, within OS Field Number 461, is shown as a dashed line, indicating that there was no physical boundary.

Figure 10: 1854 OS Six Inch Map (Source: [NLS Maps](#))

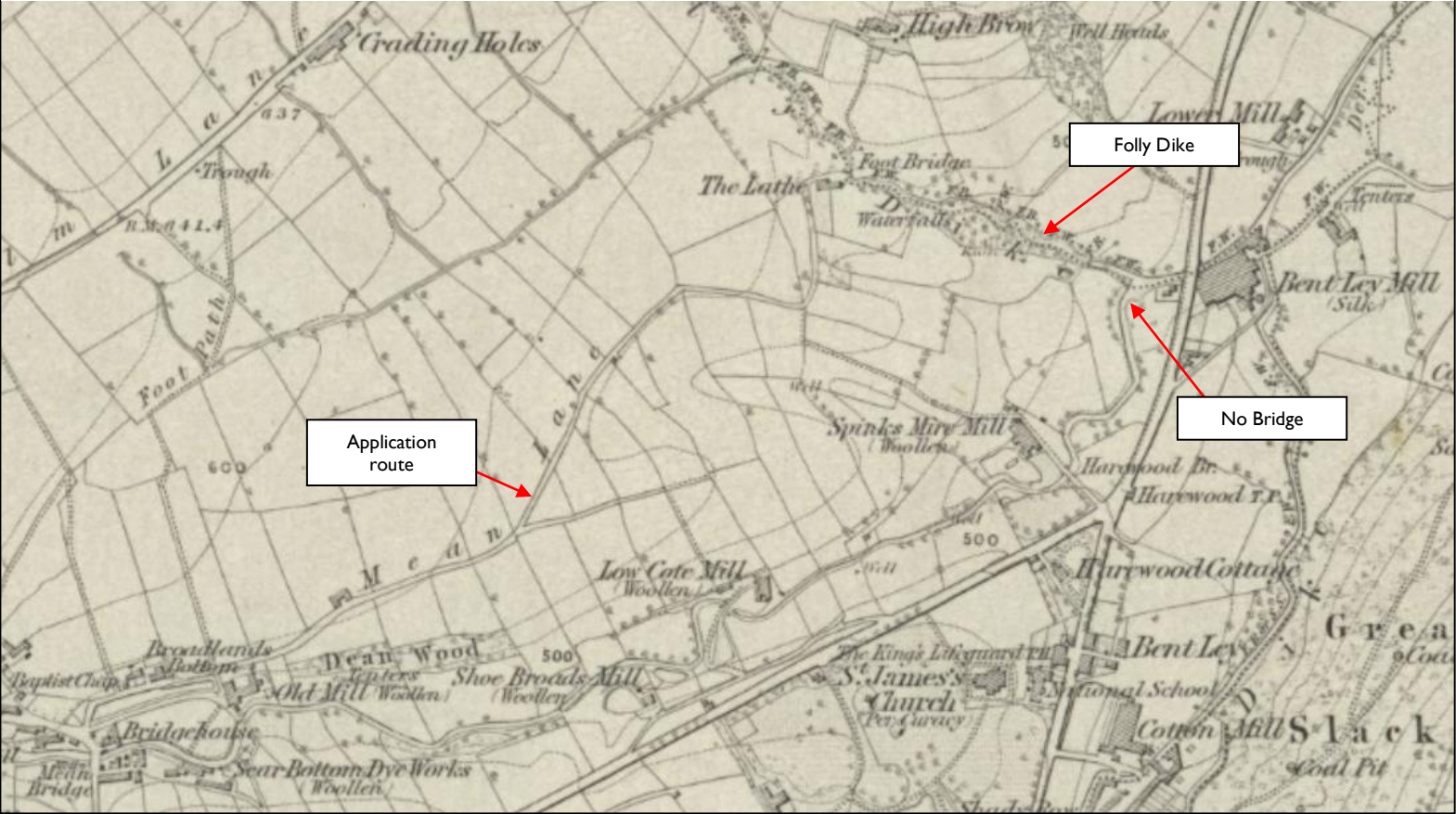
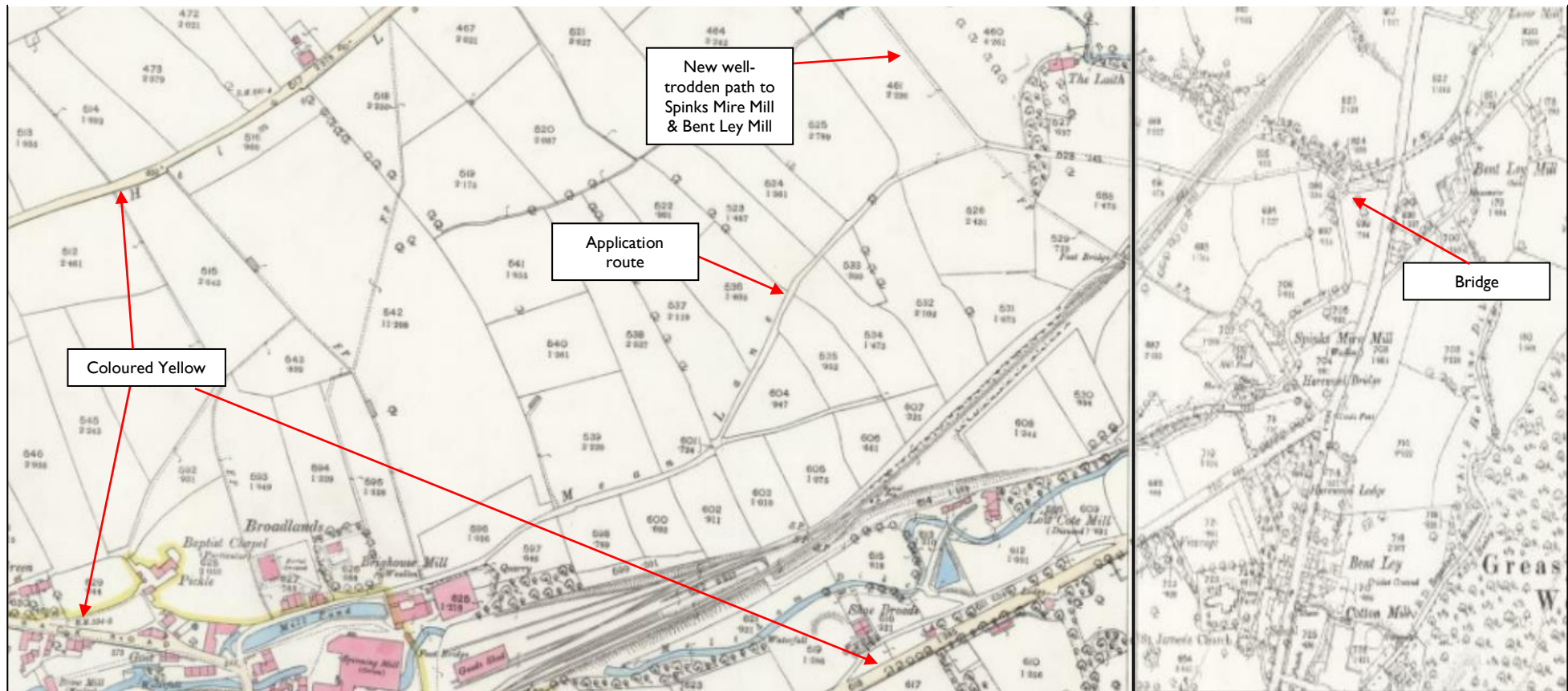


Figure 11: 1892 OS 1:2,500 Yorkshire [West Riding] [CCLX.9](#) & [CCLX.10](#) (Source: NLS Maps)



LOCAL GOVERNMENT MINUTES (1888 – 1897)

Background

83. Meltham Local District Board was formed in 1860 following The Public Health Act, 1848, and the Local Government Act, 1858, which permitted ratepayers to create local boards of health in populous areas. The Local Board was responsible for public health, sewerage, street cleaning, highways, water supply, burial grounds and building control. The country was divided systematically into urban and rural sanitary authorities under The Public Health Act, 1872, & [The Public Health Act, 1875](#). The Local Government Board was referred to as an Urban Sanitary District, reflecting the increased powers given to Local Boards to combat threats to public health. [The Local Government Act, 1894](#), ('the 1894 Act'), reorganised local administration in England and Wales and followed reforms at council level. A second-tier local government system within the county council areas created a network 535 Urban District Councils and 472 Rural District Councils, based on the earlier classification of sanitary districts. Meltham Local Urban Sanitary District Board was therefore superseded by Meltham Urban District Council in 1894 under section 21(1) of the 1894 Act.
84. Therefore, the township of Meltham was the authority responsible for the maintenance of highways repairable at public expense by the inhabitants at large before 1860. Highway liability was subsequently transferred to Meltham Local District Board in 1860, Meltham Urban Sanitary District Board, and then Meltham Urban District Council in 1895. The Local Government Minutes associated with the relevant Councils, together with newspaper articles documenting those meetings, can provide a record of their conducted duties as highway authority and can potentially yield strong evidence of both status of the application route and their responsibility to maintain it, or not.
85. The available evidence of Council Minutes date from 1891 to 1897 and cover the period just before the crossover from Meltham Local Urban Sanitary District Board to Meltham Urban District Council. The newspaper articles were obtained from the [British Newspaper Archive](#) and are of the Huddersfield Chronicle, Huddersfield Daily Chronicle and Huddersfield Examiner. They have been collated

chronologically and transcribed so that their contents can be easily analysed. The documents have to be viewed based on the preceding evidence that Mean Lane was a private carriage and occupation road that was privately maintained but with a co-existing public footpath. The Council Minutes can either confirm that, in the intervening fifty years or so, nothing changed, or the public acquired a bridleway or vehicular highway. In their submissions, the applicant provided an extract from 'The Story of Meltham' (Orton, 1977), which states that "Mean Lane became a public highway" in 1892.

Figure 12: Chronological List of Council Minutes Relating to Colders Lane between 1888 to 1897 Collated from Meltham Local Urban Sanitary District Board Council Minutes (Source: West Riding Archives: [KMT26/1/1/6](#)) and British Newspaper Archive

Meeting Date	Source	Minutes
22/09/88	Huddersfield Daily Examiner	A letter was received from Mr. E. H. Carlie, chairman of the Jubilee Committee, asking for the minimum alterations which the Board would required to be done to Mean Lane in order to qualify it for maintenance by the township. It was resolved to accept the road as a public highway as far as the east end of the recreation ground, if the road be coated with five inches of dross, pitched where required, and a drain consisting of twelve-inch earthenware pipes be laid the whole distance from the ground to the watercourse at Bridgehouse.
06/06/91	Huddersfield Daily Chronicle	MELTHAM JUBILEE MEMORIAL To the Editor of the Huddersfield Daily Chronicle. SIR,- It is now nearly 15 th months since I subscribed to a fund for repairing and widening the road leading from the gasworks to the entrance of the recreation ground and also for erecting some memorial gift of the ground by Mr. Edward Brook. From what I can gather nothing has yet been done, and if the present committee are as long-winded and dilatory in this matter as they have been in other matters concerned with the jubilee, the end of their labours is still in the remote future, and may for at the hands of the descendants and representatives a connecting link between the past jubilee and the next, whenever that comes round again. I believe there was nearly £300 collected, and it is time the subscribers knew where it is or what is going to be done with it. If the Committee have no practicable means of spending it let them return it to the subscribers, by the medium of those who collected it. Yours truly, A SUBSCRIBER
08/08/92	Supplement to The Huddersfield Examiner	Moved by Mr. W. Wood, seconded by that that portion of Mean Lane from the entrance to the recreation ground to its junction with Meltham Moor Road near Mean Bridge, having been widened, sewered, metalled, and freed from obstruction, the same be adopted and become a highway.
12/09/92	Huddersfield Daily Examiner	MEAN LANE IMPROVEMENT A letter was read from the Jubilee Committee stating that they had now completed the improvement of the above lane leading to the Jubilee recreation ground, and had carried out all the suggestions of the Board, and now asked the Board to take over the lane as a highway, henceforth repairable at the public expense.- The Chairman stated that although the Board had offered to finish the work which the Jubilee Committee might be unable to do with the money they had in hand, he was glad to say that no part of the expense, so far, would fall on the board.- The Clerk stated that the Jubilee Committee had spent £233 odd on the improvement, and they still had over £4 in hand. Mr. Alder, architect, of Bishopgate Street, London, had prepared a sketch of a memorial stone to place at the entrance of the ground. The sketch was hand round and greatly approved. It contains the following inscription: "This stone was placed here as a memorial of the gift of the Recreation Ground by Mr. Edward Brook, Meltham Mills, June, 1887." The consideration of the latter business was adjourned, and the meeting broke up, having lasted over three hours.
13/10/94	Huddersfield Examiner	The Board's attention was called to the bad state of the road at the Mean Lane entrance to the recreation ground. It was decided that the road only be repaired.
22/06/95	Huddersfield Chronicle	Mr. Allen Hollingworth and Mr Kirk (Messrs. John Kirk and Sons) waited upon the Council in reference to the proposed purchase, by the former, of land for building purposes at the bottom of the Recreation Ground. Mr Kirk said the trustees of the Recreation Ground had asked 1 1/2d per square yard for the strip of land, and his object in coming before the Council was to request them to induce the trustees to accepted 1 1/4d. If they did so, and the trustees accepted 1 1/4d., it was proposed to take 1,800 square yards of land, and build 12 houses, but if the trustees adhered to the price of 1 1/2d. it was only proposed to take 1,200 square yards and to build six houses. He also asked the Council in any event to agree to make the road in front, and drain the same.- After some discussion, the Council resolved, having passed a resolution that the price be left with the trustees, not to take any further action in regard to the price, but they consented to make the road and drain the same for the six houses to be erected at the far end of Mean Lane. It was also decided, in view of putting the road into a proper state, to straighten the continuation of it, and a committee was appointed to view the place and mark it out.
07/08/95	The Huddersfield Examiner	Councillor Wood complained of Messrs. John Moorhouse and Co. tipping soil and gravel in Mean Lane, which was a private road for carts to get to the land, and also for foot passengers. If wet weather should come the road be impassable. He did not complain of the hollow parts of the road being filled up. That would be an improvement, but he did object to the material which was being tipped there as likely to make matters worse than they were.- The Clerk remarked that Messrs. Moorhouse and Co. had obtained the consent of the owners of the land on each side of the road, so far as he knew.- Councillor Wood said they were taking no notice of some of the owners.- It was resolved that notice be given to Messrs. J. Moorhouse and Co. to stop tipping in Mean Lane until the place and material had been viewed by the Council.
31/10/95	Huddersfield Daily Chronicle	The Council resolved to widen, make, and sewer Mean Lane from the recreation ground gate up to the cricket field corner, the surplus digging to be put into the top part of the recreation ground.
02/11/95	Huddersfield Daily Examiner	A long discussion arose on the question of the widening of Mean Lane (opposite the recreation ground) and the advisability of tipping the digging in the upper part of the recreation ground to level up the hollow places. Eventually it was agreed to do as above stated, all voting for except the chairman.
13/11/95	Huddersfield Examiner	The Rev. James Brook wrote asking the Council to keep in repair the Park Field, Helme, footpath, remarking that he thought it was in every way a public way from Bent Ley to Cop and beyond. The

			lateral paths running into it from the church and schools he was quite willing to keep in repair. The Council to accede to the request.
13/11/95	Huddersfield Chronicle	Daily	The Rev. James Brook wrote asking the Council to keep in repair the Park of Churchfield (Helme) footpath, remarking that he thought it was in every respect a public way from Bent Ley, and also from Meltham, and to Cop and beyond. The lateral paths running into it from the Church Schools he was quite willing to keep in repair. The Council decided to accede to the request, and to repair the footpath mentioned in the letter.
07/03/96	Huddersfield Examiner		Mr. Riley, from the office of Messrs. John Kirk & Son, architects, attended before the Council, and explained Mr. Hollingworth's request respecting the widening of Mean Lane opposite to his newly erected cottages. When Mr Riley had left, after some discussion, it was agreed that, providing Mr Hollingworth can make satisfactory arrangements with the Spinning Company as to the strip of land opposite his cottages, and the Council consents to the deviation on condition that he previously presents plans to the Council, pays costs of the removal of the fence, and all other charges in connection therewith.
30/05/96	Huddersfield Chronicle	Daily	Messrs. Brook, Freeman, and Batley, solicitors, Huddersfield, wrote stating that they were about to complete the lease to Messrs. James and Henry Hollingworth or 920 yards of land on the south end of the recreation ground. The land to be leased adjoining Mean Lane and the eastern approach road to the recreation ground. It was to be for the term of 999 years, and the first half years rent was to be paid on the 1 st January 1897. Messrs. Hollingworth would covenant to fence on the west side of the plot of land, and the existing fence on the north and east appeared to belong to the recreation ground. With regard to the south, they understood that the District Council were constructing a sewer in Mean Lane and that Mean Lane and the sewer and footway would be paid for by the District Council, and afterwards kept in repair by them so that would be no obligation on Messrs. Hollingworth in respect of these. If the District Council had any observations to make on these conditions, or any other suggestions to make, they would be glad to hear from them at an early date, so that they might complete the matter without delay. It was decided to reply informing Messrs. Brook, Freeman, and Batley that the Council would bear the entire cost of forming the road.
14/04/97	Huddersfield Examiner	Daily	MELTHAM RECREATION GROUND This was given by Mr. Edward Brook, in commemoration of Her Majesty's jubilee, by deed of the 6 th September, 1888, which granted to the Local Board of Meltham a plot of land, near Mean Lane and Helme Lane, 10a. 0r. 11p. in extent, to be used as a recreation, exercise, and play ground for children and young persons. No buildings were to be put on it, and it was not to be laid out as a car park or pleasure grounds, nor to be used by cricket clubs nor for meetings, particularly of a religious or political character, and no games were to be allowed on Sundays. Circuses and shows may be erected on the ground temporarily at Meltham Feast. By another deed of the same date Mr. Edward Brook gave an additional 1a. 1r. for the recreation ground.

Analysis

86. The Highways Act, 1835, ([‘the 1835 Act’](#)) abolished a 300 year old system of statute labour imposed on parishes as ‘the inhabitants at large’, which was commuted into a parish highway rate levied on inhabitants. The powers, duties, and liabilities within each parish was vested in a remunerated and annually elected ‘Surveyor of Highways’. The duty of the surveyor was not to the public but to the parish as their employer. Additionally, before 20th March 1836, when the 1835 Act came into operation, a landowner could dedicate land as a vehicular highway and it automatically became the liability of the parish to maintain. No distinct act of adoption was necessary, whether the road was of great utility or not. To ensure that the parish became responsible for roads that served a public purpose, section 23 of the 1835 Act established an unequivocal responsibility as to future maintenance and stated that, after the 20th March 1836 Act, no private road or occupation road could become a highway maintainable at public expense unless the landowner followed a prescribed adoption procedure.
87. Consequently, public vehicular roads that came into being through express or implied dedication and acceptance by the public after 1835, in respect of which the section 23 procedure had not been observed, were highways not maintainable at public expense (*Cababe v Walton-on-Thames Urban District Council* (1914)). Footpaths, and presumably bridleways, that came into existence through long public use continued to be highways maintainable by the inhabitant’s at large (*Robinson v Richmond (Surrey) Borough Council* (1995)).
88. The evidence from the collated press articles demonstrates that only a section of Mean Lane was adopted as a vehicular highway maintainable at public expense up to the southeast corner of the Jubilee Recreation Ground in 1892, which was widened and improved up to the southwest corner of the cricket ground in 1896. This corroborates with the current List of Streets held by Kirklees Council and also the terminus of Meltham Footpath No. 59 on the 1985 West Riding Definitive Map and Statement (see Figure 1).

89. In 1955, Meltham Urban District Council made a representation, which is also discussed later, to the Draft Definitive Map and Statement prepared under Part IV of the National Parks and Access to the Countryside Act, 1949 that this route was a public footpath, which stated, under 'Description of Route':

“Footpath from its junction with the western end of Path No.24 and proceeding in a south westerly direction along Mean Lane to its junction with the District Road at the south western corner of the Cricket Field”.

90. Mean Lane is described in 1895 as a private cart road for adjacent landowners with a co-existing public footpath. Additionally, the record of Rev. James Brook in 1895, and the subsequent acceptance of highway maintenance by Meltham Urban District Council, that the route leading through Helme led to both Bent Ley Mill and Meltham shows that the Application route was used as a public path by the public, which is consistent with the 1861 Yorkshire & Lancashire Railway Meltham Branch plan and the current Definitive Map and Statement. Whilst they have different reference numbers for administrative purposes, Meltham Footpath Nos. 22, 23, and 24 form one continuous highway depending on the direction travel.

91. Consequently, there is no available evidence to indicate, on the balance of probabilities, that the application route was adopted as a vehicular highway. The implication is that from 1896 onwards, the application route remained a private occupation road that was privately maintained, saving the coexistence of a public footpath.

THE FINANCE (1909-10) ACT, 1910

Background

92. 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).
93. 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).
94. 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).

95. 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.

96. 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”.

97. 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”.

98. *Fortune 2012* stated 1910 Finance Acts are not definitive but form one part of the puzzle to be considered along with other relevant evidence. Routes shown excluded from private hereditaments on the 1910 reference maps are therefore inferred to be 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).

99. 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.
100. The '[Instruction to Valuers \(No.560\)](#)' detailed that based on the *ad medium filium* 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.
101. [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.

102. 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.

103. 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. For the purposes of section 35(1) of the 1910 Finance Act, where an excluded route could potentially be a highway vested in an urban district council, and thereby a rating authority, it does not appear that the four duties could 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.

104. The 1910 Finance Act documents are a non-uniform dataset and there is unlikely to be a uniform explanation for uncoloured routes. In practise, 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.
105. Therefore, a 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 and investigated objectively within the context of the encompassing historical facts to establish the existence of a highway.

Valuation Reference Maps

106. 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 application 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 application 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 application route is shown leading within the hereditaments of 1583, and a land parcel of 337 Pt.

107. 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”.

108. 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 13: IR 134/6/73 and 134/6/74 1910 Valuation Reference Maps (Source: [The National Archives](#))



Evaluation

109. The application route satisfies Test A, as stated at paragraph 99 above and was located within the authority of Meltham Urban District Council, creating the potential for it to be in public ownership via statutory vesting. A significant section of Mean Lane, and therefore the application route, is shown excluded from the adjacent hereditaments, which may also indicate that Test B is also satisfied, based on an inference that it was excluded from valuation because it was a highway maintainable at public expense and therefore vested in Meltham Urban District Council.
110. Public ownership is therefore one possible theory to explain why this section of Mean Lane, and 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 analysis of the local government minutes between 1891 to 1897 show that Mean Lane was only adopted as a vehicular highway up to the south-west corner of the Cricket Ground, which is the start of the application route. The fee simple of this section of Mean Lane was, and is, undoubtedly vested in the relevant highway authorities. As stated at paragraph 88, this corroborates the highway records held by both Meltham Urban District Council in 1955, and Kirklees Council in the present day.
111. The physical condition of most of the application route is also shown in an aerial image from [1936 of Meltham Brickworks from Historic England Archive](#) copyrighted images, which is from a similar time period. The image shows that Mean Lane has remained virtually the same for almost a century. The row of cottages at the bottom of the recreation ground is shown to the left of the image, abutting the widened metalled and levelled section of Mean Lane. A gate is shown to the right of No. 43 Mean Lane leading to the recreation ground, along with access to the Cricket Ground. Mean Lane then leads east-north-easterly, bounded to the north by a dry-stone wall, and to the south by the Brickworks. For the most part, the continuation of the application route between agricultural

land is enclosed by a dry-stone wall, except for one field through which Meltham Footpath No. 23 leads and is actually shown by a trodden line. This field is only bounded by a dry-stone wall on the southern side and there is no boundary demarking the northern extremity of the application route. The transition from dry-stone wall to open field on the northern side is terminus of Meltham Footpath No. 24, which was the only section originally claimed for inclusion on the First Definitive Map, resulting in the representation discussed in paragraph 88.

112. The section of Mean Lane, and the application route, excluded from valuation stops at a specific point at the southwest corner of hereditament 1585. At this point, a line leading across Mean Lane is shown on CCLX.9; perhaps a gate. This feature is not shown on any other Ordnance Survey map before or after 1906 or the 1936 aerial photo and therefore may have been relatively temporary. Nevertheless, the fact that a section of the application route was including within the hereditament shows that landowner was able to prove ownership to the District Valuers. Most of the remainder of the application route, leading north-easterly and easterly to Huddersfield Road, is presently recorded on Land Registry within the single ownership of proprietors, which is consistent with the 1910 records.
113. The remainder of the application route on the 1910 Finance Act Maps, leading from the southwest corner of the Cricket Ground, was not adopted as a vehicular highway maintainable at public expense at the antecedent date and, saving the existing of a public footpath, remained in private ownership, mostly based on the rebuttable *ad medium filum* presumption. Half of the application route up to its centre formed part of the gross unit of valuation of the adjoining hereditaments, whereas the District Valuers only recorded the net area of property that was in sole occupation up to the dry-stone wall enclosures, as per section 26(1) of the 1910 Finance Act. Consequently, as at least private status exists along the entirety of the application route, the Valuation Book should possibly record a deduction for the existence of either a public right of way or easement when calculating the Total Lane Value under section 25(3) of the 1910 Finance Act.

114. However, potential ownership of the ancient section of Mean Lane by the Lord of the Manor, or any other person, casts sufficient doubt on the *ad medium filum* presumption, which could one day be rebutted. The hereditaments therefore did not qualify for a discount unless they could prove ownership to the District Valuers. Ultimately, most of Mean Lane, and the application route, was never likely to have been shown as included within the valuation of hereditaments, regardless of its status, because for centuries it was permanently separated from land parcels by physical boundaries of a dry-stone wall. The 1910 Finance Act documents are relatively neutral and do not provide any significant evidential weight to determine whether the application route is a public or private route, on the balance of probabilities.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Background

115. In preparation for the first Definitive Maps of Public Rights of Way, local councils were required, under section 38 Part IV of the National Parks and Access to the Countryside Act, 1949, ([the 1949 Act](#)), to conduct a survey of all footpaths, bridleways, and roads used as public paths in their areas and pass them onto the surveying authority. Section 27(6) of the 1949 Act defined a 'public path' as a highway being either a footpath or bridleway; and a 'road used as a public path' as a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleway are so used. Public Carriageways, not being a public path or used as a public path, were therefore excluded from the claims. This is indicated in the definition of a road in section 93(8) of the 1949 Act: "*In this section the expression "road" means a highway other than a public path (as defined in Part IV of this Act)*". Although it should be noted that the meaning is prefaced with 'in this section', however, no other definition of 'road' is given in the 1949 Act.

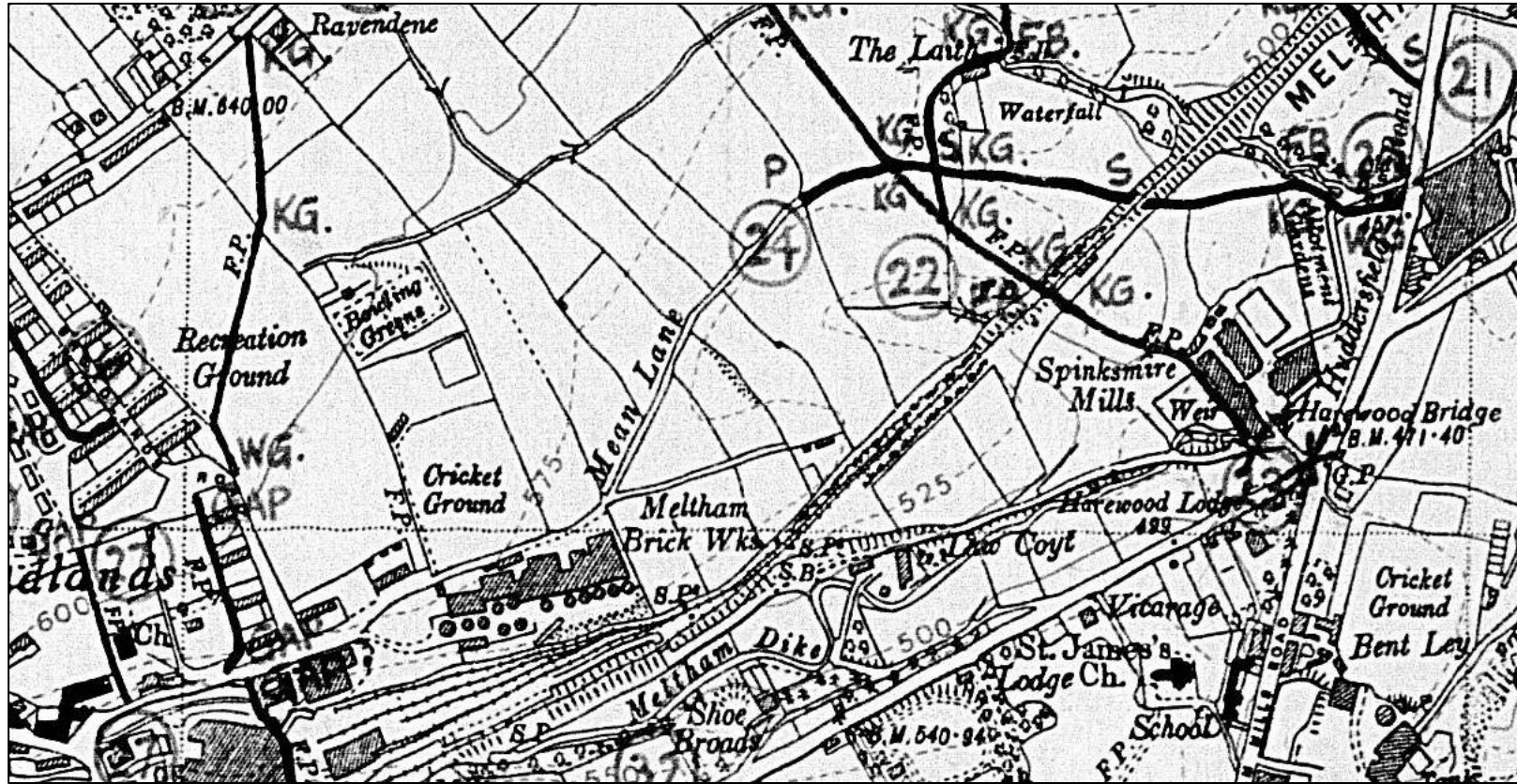
Analysis

116. Meltham Footpath No. 24 was recorded when the surveys for the preparation of the First Definitive Map and Statements were being conducted by the survey for Meltham Urban District Council in 1951, as shown in Figure 14. This was objected to by the British Railway Commission in 1953. West Riding County Council presented evidence that the route was shown on the 1894 Ordnance Survey Map and had written statements from two members of the public of their user evidence of 57 years. The British Railway Commission withdrew their objection and stated:

"I am now able to withdraw the Commission's objection to Path No. 24 Meltham Urban District as it has now been confirmed that the Authorising Act references a public (the word further is crossed out) footpath under the Meltham Branch Railway at Bridge No. 16".

117. Meltham Urban District Council also made a representation to the Draft Definitive Map and Statement in 1956, also shown in Figure 14, to essentially extend Meltham Footpath No. 24 so that the public footpath is recorded as joining the vehicular highway at the southwest corner of the cricket ground. As previously discussed at paragraph 88, this is entirely consistent with the historic and current records that Meltham Urban District Council only adopted a section of Mean Lane in associated with the Recreation Ground, Cricket Ground, and new cottages.
118. By objecting to the Draft Definitive Map and Statement, Meltham District Council demonstrated their view that the section of Mean Lane east of the southwest corner of the Cricket Ground to Huddersfield Road remained a private carriage and occupation Road with a coexisting public footpath. This is the legal position that is held to this very day. This was in contrast to the original maps and schedules prepared by Meltham Parish Council, which did not claim a significant section of Mean Lane as a public footpath because they considered it was not within the remit of the Definitive Map and Statement; presumably because it was viewed as a public carriageway.
119. However, this is more than likely due to the physical character of the application route at the junction of Meltham Footpath Nos. 25 & 59, which transitions from a field edge track, unbounded on the northern side, to a track fully enclosed by old dry-stone walls. Meltham Urban District Council were the highway authority for District Roads at this time, so their intervention is significant evidence.

Figure 14: Extract of Draft Definitive Map & Statement and 1955 Meltham UDC Representation & British Railway Commission Objection



B.R. 76017

BRITISH TRANSPORT COMMISSION

S. F. SMITH, F.R.I.C.S.
Estate Surveyor

C. L. SMITH, F.R.I.C.S.
Assistant Estate Surveyor

Telephone
YORK 53022
Ext. 616.
Telegraphic Address
SURVEYOR RAILWAY YORK

Our Reference TP/RH/C.

Your Reference NP.11/Z/2.

ESTATE SURVEYOR
NORTH-EASTERN REGION
YORK

19 JAN 1955

18th January, 1955.

For the attention of Mr. Gowling.

Dear Sir,

National Parks & Access to the Countryside
Act, 1949. Part IV. Survey of Rights of Way.
Meltham Urban District. Path No.24.

With reference to your letter of the 26th March last,
I am now able to withdraw the Commission's objection to
Path No.24 Meltham Urban District as it has now been con-
firmed that the Authorising Act references a ~~foot-~~ foot-
path under the Meltham Branch Railway at Bridge No.16.

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949 - PART IV.

REPRESENTATIONS

DISTRICT: Meltham Urban
PARISH:

Path Ref.	Map Ref.O.S. No.	Description of route.	Nature of representation.	Representation made by	Recommended modification to Draft Map and Statement.	Remarks.
59	260 S.W.	Footpath from its junction with the western end of Path No.24 and proceeding in a south westerly direction along Mean Lane to its junction with the District Road at the south western corner of the Cricket Field. Ashed and roughly metalled. 0.25 4 ft. No direction signs.	That this is a public footpath. 7.3.56	Meltham Urban District Council per Mr.H.Harris, Clerk.	Add	

EVIDENCE.

DISCUSSION

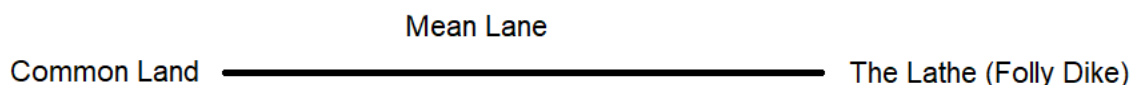
120. The chronological formation of the application route over 200 years has been schematically simplified in Table 1, bringing together the story of Mean Lane, based on the available documentary evidence. The 1797 Plan of Meltham shows that the application route has an archaic origin and existed as a private occupation road leading through ancient enclosures from common land to land parcels at a building known as 'The Lathe'. The piecemeal enclosures bounding the application route created its irregular width.
121. The 1832 Meltham Inclosure Award is very important and creates the palimpsest to which the modern day urbanisation of Meltham is superimposed. The Commissioners created an extension to the ancient Mean Lane at the western end and awarded a 15ft private carriage and occupation road called 'Bridge Houses Road', which joined the public carriageway network at Mean Bridge. On the balance of probabilities, the application route was a private carriageway in 1832.
122. The eastern section of the application route, commencing from Point A on the Application Map in Figure 2 at Huddersfield Road and leading westerly to approximately 75m west of its junction with Meltham Footpath No. 23, is a relatively new feature. This section of the application route appears to have been created by a necessity for workers situated at Helme to reach the silk mill at Bent Ley Mill, which was created in 1840. The public footpath is shown as a dashed line in the 1861 Yorkshire & Lancashire Meltham Branch Railway Plan and described as a footpath in the ownership of the surveyor of highways in the book of reference, which was sufficient for the British Railway Commission to withdraw their objection to the inclusion of Meltham Footpath No. 24 on the First Definitive Map and Statement. The railway line facilitated the coexisting occupation road and public footpath by creating an overbridge.
123. In association with the Jubilee Recreation Ground and a row of new residential cottages, a section of Mean Lane, including the route known as 'Bridge Houses Road', was widened, improved, and adopted up to the southwest corner of the Cricket Ground by Meltham Urban District Council as a vehicular highway between 1888 and 1896. This is completely compatible with today's records

held by Kirklees Council, namely the 1985 Definitive Map and Statement, and the List of Streets (or Highways Register), which confirm the same extent of adopted vehicular highway.

124. This evidence alone reveals that no part of the application route was a vehicular highway maintainable at public expense before this event, which in turn is the relevant data that must be applied to the 1910 Finance Act records. There are various rational explanations to explain why a section of the application route was shown uncoloured and excluded from adjacent hereditaments as a cul-de-sac at a seemingly random location that was not a place of popular resort. However, based on the available evidence, on the balance of probabilities, only the section of Mean Lane up to the southeast corner of the Cricket Ground was in public ownership and vested in the highway authority.
125. The 1797 Plan of Meltham and the 1832 Meltham Inclosure Award both strongly indicate that the ancient Mean Lane was a private occupation road. This implies that the remaining section of Mean Lane that was excluded from the net unit of valuation of hereditaments, leading easterly from the Cricket Ground, was because of its physical character as an enclosed track bounded by dry stone walls and in multiple occupation. Furthermore, the gross unit of valuation that would encompass this section of the application route would be based on multiple *ad medium filum* presumptions, as it is today, which could one day be rebutted, such as by the Lord of the Manor. The document is therefore of limited weight and its influence turns on the interpretation of the surrounding documentary evidence.
126. There is no available documentary evidence to indicate that, on the balance of probabilities, that the Definitive Map and Statement is incorrect, and that Meltham Footpath No. 24 should be shown as a highway of a different status. The documentary evidence shows that the application route is a private carriageway with a coexisting public footpath. The next stage is to analyse the user evidence to determine whether the evidence of public use is sufficient to show on the balance of probabilities that the application route subsists as a public bridleway.

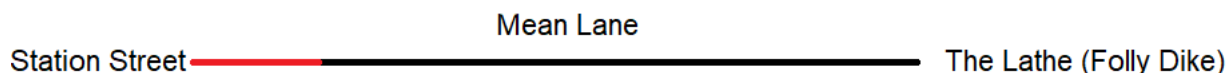
Table 3: Schematic Chronological History of Mean Lane

(1) Before 1832 – Pre-Inclosure



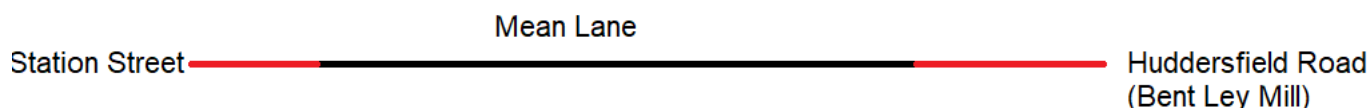
Before 1832 the Application route was an ancient lane leading through ancient enclosures between common land to 'The Lathe' at Folly Dike

(2) 1832 – Inclosure



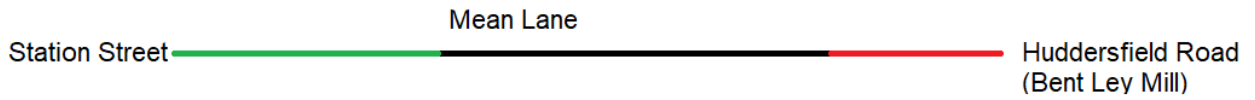
The 1832 Meltham Inclosure Award extended the application route with a private carriage and occupation road, called Bridge Houses Road, at the western end (shown in red)

(3) After 1832 – Bent Ley Mill & Railway



The ancient Mean Lane was extended at its eastern end (shown in red) with a coexisting occupation road and public footpath leading easterly from the ancient Mean Lane to Bent Ley Mill on Huddersfield Road.

(4) 1892 – 1896 Jubilee Recreation Ground



The western section of Mean Lane was adopted as a vehicular highway (shown in green) by Meltham Urban District Council between 1882-1896 in association with the Jubilee Recreation Ground.

(5) 1952 Definitive Map & Statement



The application route was recorded on the Definitive Map and Statement as a public footpath (shown in purple)

USER EVIDENCE

Evidence of Use

127. In total, fifteen (15) User Evidence Forms ('UEFs') were submitted in support of the Schedule 14 application, using Kirklees Council template information sheet, known as a 'WCA8'. Some UEFs repeated the historical evidence submitted with the Schedule 14 application to support the basis for unrecorded higher rights, such as an unspecified Ordnance Survey Map, the 1861 Yorkshire & Railway Plan and Book of Reference, and an extract from 'The Story of Meltham' stating that Mean Lane was adopted as a vehicular highway in 1892. However, these have all been thoroughly investigated and the conclusion remains that the application route is a private occupation road with at least a co-existing public footpath.
128. 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.

Brought into Question

129. The Schedule 14 Application was made on 28th June 2017. In the absence of any evidence of another event which may have brought public use of the routes 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 28th June 1997 – 28th June 2017 ('the relevant period').
130. On the other hand, a photograph taken by a Definitive Map Officer in February 2017 shows that the field gate adjacent 223 Huddersfield Road was locked with a padlock, and the adjacent landowner has stated that they occasionally locked the gate since 2013, primarily for security. This matter is discussed under 'Lack of Intention to Dedicate – Locked Gate'. Currently, the available evidence

before 2017 is insufficient to demonstrate that an occasional locked gate was brought home to most users of the way, such to bring the public right to use the way into question, as the event occurred overnight. On the other hand, it may be rational to conclude that the photographic evidence of a locked gate in 2017 is sufficient to bring the public right of way into question. Either way, this does not affect the investigation to a great extent as the relevant period remains 1997 to 2017.

As a way

131. Each of the UEFs were accompanied by a plan, pre-prepared by Kirklees Council showing the existing public footpaths recorded on the 1985 Definitive Map and Statement, over which the respondents highlighted the routes they had used. The WCA8 form states in bold capital letters that the map should be signed and dated, and the respondents should mark any notices, gates, stiles, or fences on the application route. The termini of the application route between the south-west corner of the Cricket Ground to Huddersfield Road, as a way, is 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. When questioned, users mentioned that the purpose of using the application route was as a circular, sometimes together with the Meltham Greenway, to reach Honley Woods via Huddersfield Road and Bent Ley Mills.
132. However, one respondent (Ref: 199/7) only rode the route as far as 'Meltham Greenway', a permissive bridleway along the disused railway, commenting: "*I do not ride the last 100 metres as it goes onto a very busy, fast road. I turn back under the Greenway to onto the Greenway*", which is the route shown in Photo 6 of Figure 3. In *Moser v Ambleside UDC* 919250 89 J.P. 118 it was established that a rural cul-de-sac highway can be established in some circumstances, such as where the highway led to a place of popular resort. There must exist special circumstances to justify the Meltham Greenway forming as constituting a place of popular resort.

133. The Meltham Greenway was not used by the respondent as a *terminus ad quem*, or place of popular resort, simply to return back along the same way of Mean Lane. The Meltham Greenway formed a continuation either back to Meltham as a circular route or onwards in the direction of Healey House. The license to use Meltham Greenway is with express permission, as shown by the Planning Application: [2007/48/94949/W3](#); and may be rescinded by the landowner at any time, or at some point, and lacks permanency to constitute a public destination. Therefore the use described by this respondent must be discounted (Ref: 199/7) as it does not have the necessary characteristics of a highway (*Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs & Anor* [2012] EWHC 1976 (Admin)).
134. A witness questionnaire was conducted over the period of August-October 2023 to ask users specific questions arising from an initial investigation into the UEFs. Twelve (12) users responded to the witness questionnaire, including 199/7. Nine (9) other users also answered that they used the application route to access the Meltham Greenway, seven (7) of which were aware that it was a permissive route. For most users, this was in addition to using the full length of the application route between the Cricket Club and Huddersfield Road.

Sufficiency

135. There is no statutory minimum level of user 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 (Definitive Map Consistency Guidelines 2022). It is likely that in any given location, a public bridleway will not be used by all the inhabitants of the country, and it is also likely that use will be primarily by a relatively small number of people ordinarily resident within the vicinity of the application route. The user evidence is summarised in Table 4.

Pedal Cycle

136. The status of public right of way claimed in the Schedule 14 is a public bridleway, which 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, horseback, or leading a horse. Specifically, the definition does not include bicycles, which the public are permitted to use on bridleways pursuant to [section 30 of the Countryside Act 1968](#). Subsection 4 of section 30 states that the statutory right does not affect any definition of a 'bridleway'. A bicycle is classed as a 'carriage' under [section 85 of the Local Government Act, 1888](#). [Government guidance](#) to the [Natural Environment & Rural Communities Act, 2006](#), in relation to the newly inserted subsection 1A(b) of the Highways Act, 1980, confirms that use of a way by non-mechanically propelled vehicles, such as a pedal cycle, is capable in appropriate circumstances of giving rise to a restricted byway, which is known as a restricted byway and defined under [section 48 of the Countryside & Rights of Way Act, 2000](#), as a public right of way on foot, horse, leading a horse, and for non-mechanically propelled vehicles.
137. At paragraph 42 in [Whitworth v Secretary of State for Environment, Food, and Rural Affairs \[2010\]](#) ('Whitworth'), Lord Justice Carnwath expressed the view that, under section 31 of the Highways Act, 1980, regular use by both horse-riders and cyclists is consistent with the dedication of a bridleway or a restricted byway at the start of the relevant period, as per [Turner v Walsh \[1881\]](#). As section 30 of the Countryside Act involved a statutory interference with private property rights, it is appropriate to infer the lesser burdensome form of dedication, which is a public bridleway. In such a scenario, how the matter would have appeared to the landowner is to be assessed objectively. A reasonable landowner, having dedicated a public bridleway at the start of the relevant period, may regard use by cyclists as being pursuant to the statutory right to be on land as a result of section 30 of the Countryside Act, 1968, such that the use is 'by right', so that no question of user 'as of right' can arise ([R \(on the application of Barkas\) \(Appellant\) v North Yorkshire County Council and another \(Respondents\) \[2014\] UKSC 31](#))

138. The resulting characterisation of the public right of way is therefore dependent on the balance of user. Four (4) users (119/8; 119/12; 119/13; & 119/15) cycled the application route during the relevant period, with only one (1) doing so at the start of the relevant period from 1997 to 2002. In considering the extent of the deemed dedication, the use by cyclists should therefore be disregarded as it is insufficient to represent use and enjoyment by the public with non-mechanically propelled vehicles. Nevertheless, their recollection of events along the application route and the public use they witnessed is still a relevant consideration. If the use by horse-riders is sufficient to infer dedication of a public bridleway at the start of the relevant period, it may be appropriate to infer that the use by cyclists was appurtenant to a statutory right, such that a least burdensome form of dedication by the landowner would be inferred in any case.

Horse Riding

139. The remaining respondents all used the application route on horse; six (6) throughout the relevant period, although the evidence provided by two users is untested as they have not completed a witness questionnaire, and four (4) for part 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). The claimed use is consonant with the status of a public bridleway. Additionally, all respondents saw other members of the public walking, cycling, and riding a horse along the application route. This may indicate that there is further evidence available that is not represented in the current UEFs, however, an opportunity to submit user evidence was provided in the informal consultation, which received zero (0) responses.

140. The application route was used on horseback by five (5) people weekly, four (4) people monthly, and one (1) person three-four (3-4) times a year. The frequency of use for 199/9 changes to six (6) per year after 2014, but they clarified that they didn't use the entirety of the application route after 2011, so the change in frequency is not critical. Overall, the nine remaining UEFs 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 bridleway right was been asserted over the full width of 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

141. 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.

Force

142. None of the users indicate that they used force to secure passage along the application route

Secrecy

143. One (1) UEF, 199/15 stated that their use of the application route was challenged in approximately 2013 but: "... *I continued to use Mean Lane, but always tried to slip through quietly thereafter, until it became clear that someone was trying to restrict the lane's use to a footpath, which seemed to happen round about the time of the Coronavirus Pandemic*". The use after 2013 by 199/15 was an attempt to use the application route in secret, as opposed to a member of the public openly using Mean Lane as if they had the right to use the way. In any case, the use by 199/15 was with a cycle, which has been discounted as it does not contribute towards the inference of dedication of a public bridleway. However, their recollection of challenge does corroborate with the adjacent landowner statement.

144. None of the remaining used the application route in secrecy.

Permission/License

145. In 2008, a Ward Councillor reported to the highway authority that horse riders from a stable yard at the eastern end of the application route were using Mean Lane between Huddersfield Road (B6108) and Meltham Greenway, which conflicted with use by walkers along Meltham Footpath No. 24. Kirklees Council advised that the landowner has a right to use the application route with horses. User which is with the license or permission of the owner is not 'as of right' (R (oao Barkas) v North Yorkshire County Council [2014] UKSC 31). In this case, the stables were rented from a landowner by license with a private right of way over the application route by extension from the easement attached to the freehold ownership of the land. In turn, the license to use the application route would be extended by invitation to those that use and access the premises. Use in the association with a business is qualitatively different to enjoyment of the route as a member of the public and would be 'by right', which is how the user may have appeared to other reasonable landowners of the application route who may not be able to prevent use by a permitted visitor.

146. In 2017, the adjacent landowner stated in an email to Kirklees Council:

"The footpath in question also serves as our driveway to our property as well as limited vehicle access for the various owners. We moved into this property six years ago, there had been some stables built on rented land by the previous owner, who allowed anybody to ride on the footpath past the property.

We were offered the stables as part of the deal but declined. These were sold on to somebody else who agreed to stop the riders using the path as it was technically illegal and the amount of damage being caused by the horse hoofs made it difficult to get any vehicle other than a four wheel drive up our driveway during winter or very wet weather. The stables were then sold to the current owner, who promptly told all her clients they could come and go as they pleased, this caused quite a few problems between us as I had

already spent a considerable amount of time and money repairing the damage caused to the drive and replacing the gates that had disappeared.

At this point the land owners, Sykes and Quarmby, stepped in and terminated the lease on the land where the stables had been built. They applied for planning permission to rebuilt further up the path on a field they owned. We supported this application with the proviso that they stopped using the driveway and provided access via Mean Lane. For the last six years I have maintained this footpath out of my own money to make it easier for us to get in and out and for the walkers to be able to use it. During this time both me and my wife have suffered verbal abuse and one threat of physical violence plus the threat of legal action involving the police when I have tried to point out to the riders that is not a bridlepath.”

147. One user (Ref: 199/4) stated in their user evidence form that they used the application route to ride to and from two different stable yards with the owner of the stable yards, which were marked on their accompanying plan on the field opposite No. 223 Huddersfield Road, and at a new building at the site formerly known as ‘The Lathe’, which abuts Meltham Footpath No. 22. The first stable was closed in approximately 2011, and the second stable at ‘The Lathe’ was constructed following planning permission in 2012: [2012/62/91232/W](#). During the relevant period, there has been at least one stable along the application route. However, 199/4 clarified:

“For Q8 I used the route both with implied permission as I was riding with the lady who lived there (Meltham road end) on one of her horses, and also without permission whilst riding on my own, just as an off road hacking route”.

148. Further questioning revealed that 199/4 used the route with the owner of the stabled yards only between 2009-2011. Before, during, and after that period, 199/4 also used the application route as a hacking route on their own three (3) to four (4) times a year. Their user evidence has therefore also been re-evaluated from 1984-2017 to 1984-2009 & 2011-2017, as their use during the

period of 2009-11 was predominantly by license and would have appeared that way to a reasonable landowner.

149. Three (3) other users answered that they used the application route to access the stables; the question was primarily targeted at horse riders. Firstly, 199/12 used the application route on cycle but answered that they had implied permission to use Mean Lane, but also stated: "*No objection was made, the route seemed appropriate to use and seems connected*". It appears that the user has misunderstood the question, and the fact they no received no objection to their use equates to acquiescence, rather than use with permission. 199/2 answered that they used the application route to access the stables but without permission. The user clarified in a telephone call on 12/10/2023 with the Definitive Map Officer that they knew the occupiers of the stables and occasionally stopped for a chat, but they didn't actually use the premises for private/commercial purposes. Therefore, it is not considered that their use was by permission.

150. Lastly, 199/14 was also friends with the occupiers of the stable and answered that they drove down Mean Lane to the stables and then rode a horse along the application route. This type of use is entirely different from occasionally stopping for a chat as their access to the application route with a mechanically propelled vehicle and then horse was with the permission of the occupier and an extension of their private right of way. There is no indication in the eight (8) remaining UEFs that their use was in association with the two stables.

Without Interruption

Challenges

151. In the witness questionnaire, 199/9 stated that they were unable to use the section of Mean Lane between the Meltham Greenway and Huddersfield between approximately 2009-11 due to new adjacent landowners that challenged horse riders. Subsequently, they continued to use Mean Lane but only from the Cricket Club to the Meltham Greenway. Their period of use along

the full length of the application route has therefore been re-evaluated from 2003-2017 to 2003-2011.

152. Similarly, upon further questioning, 199/11 stated that they used the Meltham Greenway after it was built/maintained in approximately 2008-10, to reach Bluebell Wood, and also rode down the old railway line embankment from the greenway and continued easterly passed the houses at the eastern end of Mean Lane, Huddersfield Road (B6108). At the same time, they continued to use the full length of the application route to reach those destinations, but it depended on which horse they rode at the particular time. However, 199/11 stopped using the eastern end of Mean Lane, between the Meltham Greenway and Huddersfield Road (B6108), when the adjacent cottage was sold in 2011. This was due to a new gate and challenges to public use on horseback by the new homeowners. Consequently, their period of use has also been re-evaluated from 1989-2017 to 1989-2011.

153. User 199/14 also stated that their use was challenged “a few years back” by the owner of the houses and told them that they weren’t allowed to ride down the lane. Similarly, 199/15 also stated that their use was challenged by the owner of the house in approximately 2013. However, the use provided by both respondents has already been discounted from the investigation as 199/14 used the application route ‘by right’, whilst 199/15 cycled the application route, which does not contribute towards the dedication/acquisition of a public bridleway. Nevertheless, it corroborates the adjacent landowner statement that they challenged members of the public other than those on foot.

Locked Gate

154. Photographs by a Definitive Map Officer show that the gate at the eastern end of Mean Lane was locked with a padlock in February 2017. Both 199/2 and 199/3 recalled encountering a locked gate in approximately 2015/16, as stated above. 199/3 recalled that they stopped using the section of the application route between Meltham Greenway and Huddersfield Road (B6108) since

approximately 2015/16 due to a locked gate the eastern end of the application route, and stated:

“No idea who locked it or why. Presumably to prevent people like myself going through. I had to stop using this route”.

155. The locked gate did dissuade 199/3 from riding along the application route and their period of use has also been re-evaluated from 2013-2017 to 2013-2015/16. 199/2 also encountered a locked gate during their period of use but could not recall the details. Notably, 199/2 did not acquiesce to the challenge and continued to use the application route on horse until the submission of the Schedule 14 application in 2017.

156. The witness questionnaire therefore asked users whether the gates were locked during their period of use. Ref 199/9 recalled:

“I rode along Mean Lane then under the railway line (Greenway) and down passed the cottage onto Huddersfield Road. There is now a locked gate preventing useage of this route but it was open for many years and people who lived in the cottage (Perkins) had no problem with the lane being used by horses. From memory the gate was set further back from the road, if the gate was as in the photo shown below it was always open when we used the track. as we used to use the garden wall near window shown to get back on the horse. We wouldn't have used that method of remounting if the gate was up to the edge of the path. I sold my land on Huddersfield Road around 2009 but still used Mean Lane for riding a few times a year. until it was inaccessible. I will answer NO to the question below as we were unable to access this route from about that time presume it was when The Perkins moved out and non horsey residents moved in. I do still ride on Mean Lane but now ride up onto the Greenway from the bridge and then ride along the Greenway to Huddersfield Road.”

157. Of the five (5) other users that answered the witness questionnaire and encountered the gate(s), three (3) of which used the application with a horse during the relevant period, answered ‘no’ that the gate was not locked.

Additionally, no user stated that the gates were locked in their user evidence forms. The evidence is nevertheless consistent with the adjacent landowners' statement that the gate was locked on some occasions for the purpose of security when their vehicle was parked and was only locked overnight.

158. However, as stated below under 'Lack of Intention to Dedicate', the test is objective and what a reasonable user would have understood the intention to be. An interruption to use, by or on behalf of the landowner, must be with the intent to prevent the public if it is to prevent the dedication of a public right of way. Therefore, if the gate was locked when the majority of public users are not likely to be riding the application route, this would not have formed a sufficient interruption for statutory purposes (*Lewis v Thomas* [1950] 1KB 438). The closure should be meaningful, and actually interrupt most users, with landowners ensuring that they are clearly communicating the message that their land is not dedicated as a public right of way ([Ali v Secretary of State for Environment, Food and Rural Affairs and others \(2015\) EWHC 893 \(Admin\)](#)). Also, the occasional and brief locking of a gate may not be not sufficiently open and notorious, and may well be *de minimis* ([Billson, R \(on the application of\) v Secretary Of State For Environment \[1998\] EWHC Admin 189](#)).

159. Although the adjacent landowners have a legal interest over the application route for access, there is no evidence that such actions were undertaken by, or on behalf, of the owner of the fee simple of this section of the application route, which was formerly Quarmby & Sykes since 1945 and now SDC Enterprises Limited. In [Applegarth v Secretary of State for the Environment, Transport and the Regions \[2001\] EWHC Admin 48](#) ('Applegarth') the Court decided that actions by the person who had a private right of access over a route were not actions of the owner of the fee simple for the purposes of a lack of intention to dedicate.

160. Consequently, there is no evidence that the locked gate in 2015/16 was a lack of intention to dedicate and did not create a significant interruption/challenge to most users. With regard to the evidence of most users on this issue, it is not considered that the occasional locking of a gate was done to such an extent as

to bring it home to the public that their use along the application route was being questioned/challenged. Further corroboration by users may establish that it brought the public right to use the way route into question and throw the inquiry back into an earlier relevant period, but that is not possible to conclude based on the available evidence.

Signs

161. Currently, three signs are located along the application route. The sign shown in Photo 3 of Figure 3 is not mentioned by the respondents, and it was not present when a Definitive Map Officer took photos of the application route in February 2017, This indicates that the sign is a relatively new feature erected after the relevant period and, in any case, the notice is intended to prevent public vehicular access along the application route to Folly Dolly Falls.
162. Two signs are located at the eastern end of the application route, positioned near 223 Huddersfield Road and Meltham Dike, which simply state 'Private'. The owners of 223 Huddersfield Road stated in their landowner evidence form that signs have been in place over the last ten (10 years), so between 2013-2023 reaffirming that the application route was only a public footpath, but the signs were vandalised. However, there is no proof or documentary evidence of the signs. Users were therefore asked in the witness questionnaire whether they witnessed the signs prior to 2017 and during the relevant period. Eight (8) people did not witness the signs, however two (2) answered that they did: 199/2 & 199/8.
163. The erection of a notice by or on behalf of the landowner in terms that the way is private can defeat the creation of a public right of way by demonstrating a lack of intention to dedicate and will usually also bring the public right to use the way into question. However, there is not necessarily always symmetry between the two concepts, and the erection of a sign by someone other than the landowner may constitute an event that only brings the public right to use the way into question ('Applegarth'; 'Godmanchester'). In the original UEF, 199/2 answered that they only saw public footpath waymarks at either end of

the application route, as did 199/15, but this use has already been discounted as it was with bicycle.

164. Whilst 199/2 & 199/8 have been asked questions regarding the signs they witnessed, they were unable to provide evidence of what the signs stated, where they were located, the date they were erected, and the duration they were maintained for. For instance, the current signs stating 'private' are not sufficient to demonstrate a lack of intention to dedicate a public right of way, even if they were erected by or on behalf of the landowner, as they are ambiguous and not expressed in clear terms that public use of the application route by horse riders was being challenged. Furthermore, there already exists a private road with a co-existing and recorded public footpath along the application route, so a reasonable user of the way would not necessarily equate the signs with a challenge to their use. None of the remaining users saw any notices inconsistent with the dedication of a public bridleway, any other structures, or obstructions.

Lack of Intention to Dedicate

165. Only the owner(s) of the fee simple of the application route can demonstrate a lack of intention to dedicate a public right of way. Under section 31(3) or section 31(6) of the Highways Act, 1980. The term 'intention' means what the relevant audience, namely the users of the way, would reasonably have understood the owner's intention to be. The test is objective: not necessarily what the owners subjectively intended, nor what particular users of the way subjectively assumed, but what a reasonable user would have understood that the owner was intending ([R \(on the Application of Godmanchester Town Council\) \(Appellants\) v SSEFRA \[2005\] EWCA Civ 1597](#) and [R \(on the application of Drain\) \(Appellant\) v SSEFRA \[2007\] UKHL 28](#)) ('Godmanchester').

166. Public use along the eastern section of the application route, from Meltham Dike to Huddersfield Road, is where the presumption of dedication has been contentious. During the relevant period, this section of the application route was owned by Quarmby & Sykes (Holdings) Limited, who sold the land in 2018 to

SDC Enterprises Limited. The adjacent landowners have lived adjacent the application route since 2011. Additionally, since 19th December 2017, after the relevant period, they have been granted permission by the owner(s) of the fee simple, by a license agreement, to tenant the field directly opposite 223 Huddersfield Road, between Meltham Dike and Huddersfield Road, for the specific purpose of using the land in connection with the licensee's residential property, for storage, and the keeping of hens.

167. Unlike a lease, a license does create a legal interest in the land and does not confer the licensee 'exclusive possession' of the property; a license is only the permission to occupy the land, which would otherwise be an act of trespass. The distinction is important because, under the general law of conveyancing, where the owner of the fee simple makes a grant of his land, the soil of the ad medium filium, such as a river, highway, or private road, passes with the grant. This law applies to land of any tenure, whether freehold, copyhold, or leasehold ([Tilbury v Silva 1889 T. 201.](#)). In 2023, the owners of 223 Huddersfield Road stated:

"Since around 2012 in line with the legal status of the footpath we have prevented horses from having access down the footpath, used signs, locking the gate on occasion and asking individuals to stop riding their horses down the footpath. Apart from it being illegal we had other reasons for preventing horses using the footpath".

168. It appears that the field to the south of the application route, between Meltham Dike and Huddersfield Road, has been subject to a long tenancy and was the location of the stables prior to approximately 2012. Previous tenants welcomed horse riders along the application route and some users recalled encounters when they opened the gate for horse riders. In summary, the only legal interest the owners of 223 Huddersfield Road have in the application route is a private right of way and therefore they do not have any right to negate the landowner's intention. The owner of the fee simple of the eastern end of the application route was Quarmby & Sykes (Holdings) Limited during the relevant period and there

is no evidence that they demonstrated a lack of intention to dedicate a public right of way to rebut the presumption of the dedication of a public bridleway.

169. On the other hand, any action which challenges the status of a way may be a 'bringing into question' event, and it does not have to arise from the action of the owner(s) of the land or on their behalf ('Applegarth'). Nevertheless, whatever means are employed to bring the public's right to use a way into question must be sufficiently communicated to the users, so that at least some of the users are aware of the challenge. Therefore, it may be that the status of the Order route was also brought into question in 2011 due to challenges, and again in 2015/16 by occasional locked gates and/or signs, however, the events do not rebut the 1997 to 2017 relevant period.

170. Furthermore, the available user evidence is only marginally affected by these earlier relevant periods, as one (1) user (199/3) rode the application route between 2013-15, therefore their use would be discounted if the 1991-2011 relevant period was considered. Whilst another user (199/8) rode the application route between 2002-2017, thereby reducing their contribution to the total evidence of use if the earlier relevant periods were analysed, compared to the 1997-2017 relevant period. However, all of the remaining users commenced using the application route at, or prior to, 1991.

Adjacent Landowner 2

171. One adjacent landowner ('AL 2') stated that they have owned land adjacent the application route, just west of Meltham Greenway, since 2013 and responded to the consultation by completing a landowner evidence form. AL 2 stated that they had seen people daily using the application route on foot, weekly using the application route with a pedal cycle, and occasionally seen horse riders. They only ever turned back members of the public using the application route with vehicles to reach Folly Dolly Falls. AL 2 also marked on a map that there was an open gate part way along the application route, approximately west of No. 47 Pavilion Way, Meltham, at the location of the sign that states: "STOP

No vehicle access to Folly Dolly Footpath only". The gate which was replaced with a bollard in 2020 to prevent vehicle access.

172. The purpose of the sign and bollard is to prevent public access with mechanically propelled vehicles, rather than use by horse riders. Furthermore, there is no reference to a gate, sign, or bollard in the user evidence forms and no evidence that they were in place during the relevant period. A Definitive Map Officer conducted a site visit in February 2017 and no obstructions are present. Another site visit was conducted in April 2023 and a bollard was seen but was removed and resting against a metal fence.

Width

173. The estimated width of public use of the application route varied between three to six (3-6) metres, or car width, with the average been approximately 4m. The user evidence is consistent with public use over the full width of the application route between boundary to boundary, and the dedication by the landowner(s) of a public bridleway with a variable width between 3 metres and 10 metres.

Limitations

174. Section 53(4)(b) of the WCA states that a DMMO shall include the addition to the statement of particulars as to any limitations, such as a gate or stile, or conditions affecting the public right of way thereover. Section 56(1)(e) of the WCA provides that the inclusion of such particulars is conclusive evidence that the way is subject to the limitations stated. In principle, any structure may be recorded as a limitation on the Definitive Map and Statement if the limitation is provided to be present at the time that the public right of way is dedicated.

175. The current Definitive Statement for Meltham 24 records two (2) kissing gates, one (1) post, two (2) stiles), and (1) wicket gate. It was held in Gloucestershire County Council v Farrow & Others [1985] 1 WLR 741 that if a right of way originally dedicated subject to a limitation or condition is subsequently used for

a twenty (20) year period during which time it is free from that limitation or condition, the highway is presumed to have been rededicated free from the limitation or condition under the terms of section 31(1) of the 1980 Act.

176. A wicket gate is defined by Oxford English Dictionaries as: “*a small gate, especially one at the side of a larger one*”. In the ‘Walking Schedule’ conducted by Meltham Urban District Council for Meltham 24 in preparation for the publication of the First Definitive Map and Statement under Part IV of the [National Parks and Access to the Countryside Act, 1949](#), the description of the public path states: “*Through wicket gate along South front of Cottage over cinder track – over watercourse...*”. The wicket gate was therefore located at the point where Meltham 24 joins Huddersfield Road. As a wicket gate is usually beside a larger gate, it is reasonable to presume that a larger gate was located at this location since the 1950’s. However, the larger gate is not recorded as a limitation in the Definitive Statement for Meltham 24. There is user evidence of a gate(s) at the Huddersfield Road termini, which require determination.

177. All respondents signed and dated the map, and eight (8) respondents recorded on their map, or described, that there was a gate at the eastern end of the route, adjacent the western side of No. 223 Huddersfield Road. One respondent (Ref: 199/4) initially didn’t acknowledge the presence of gates on their map or UEF but did so in the witness questionnaire. All users were questioned regarding the two (2) gates, and specifically if they used the application route when the gate directly abutted Huddersfield Road (B6108). Eight (8) answered ‘yes’, six (6) of which rode a horse along the application route during the relevant period. With regards to the gate directly abutting Huddersfield Road, one user (199/11) that rode the application route between 1989 to 2011 remarks:

“When we rode this track there were no stables. It is only of late they have been built and signs erected. No gate was on the Meltham Road end of track at all”.

178. Although they used the application route with a bicycle, which has been discounted, 199/12 used the application route between 2003 – 2022 and stated:

“The gate to Huddersfield road was always open when I used the route. The gate further up the route was sometimes open but I don't remember seeing any signs saying that it was private / restricted etc...”

179. It is unclear whether the reference to the gate being ‘open’ refers to it being physically ajar, or simply unlocked. However, 199/5 used the application route throughout the relevant period and provides support for the latter, stating:

“The woman at the house would come out and open the gate for us if she saw us.”

180. Google Map Streetview shows that a vehicular width field gate, with a side access for use on foot, was in place directly adjoining Huddersfield Road in [2008](#), as shown in photo 17 in **Figure 15**, and [2009](#), which is consistent with the 1985 Definitive Map of a kissing/wicket gate at this location. Similarly, aerial photos show the gate was in place in 2006. This gate has not been in place since at least [2016](#), based on Google Streetview. The new position of the gates to the west of the cottages has been in place since at least [2018](#) as shown in photo 16 in **Figure 15**, which is consistent with the new adjacent landowners moving the gate to use the application route as a driveway. Nevertheless, on the balance of probabilities, there is no credible evidence to conclude that this gate to the west of the cottages was in place at any stage during the relevant period.

181. Aerial photos similarly show that the gate directly abutting Huddersfield Road was in place in 2006, as shown in photo 15 in **Figure 15**. However, aerial imagery from 1999, 2002, 2003, and 2005, as shown in photos 11-14 in **Figure 15**, consistently show that a gate was not in place at this location, which is consistent with the evidence provided by 199/11. The gate to the west of the cottages is not shown on any available map until 2018, as shown in photos 16 & 18 in **Figure 15**, which is also consistent with Ordnance Survey Maps, which

do not show a gate at this location until relatively recently. As neither gate was present at the beginning of the relevant period under consideration, when the public right of way is deemed to be dedicated by the landowner ([Turner v Walsh \[1881\]](#)), it is not considered that the application route was dedicated to the public subject to the presence of the gate at this location as a limitation.

182. It is therefore reasonable to conclude that, having regard to the totality of the user evidence which was not restricted by the presence of such structures, and on the balance of probabilities, no kissing gates, field gates, posts, or stiles should be recorded as limitations on the public bridleway.

Figure 15: Aerial & Google Streetview Images of Eastern end of Application Route (Source: Google Earth & Google Maps)



Photo 11: 1999 Google Earth Image shows no gate at eastern end of application route.

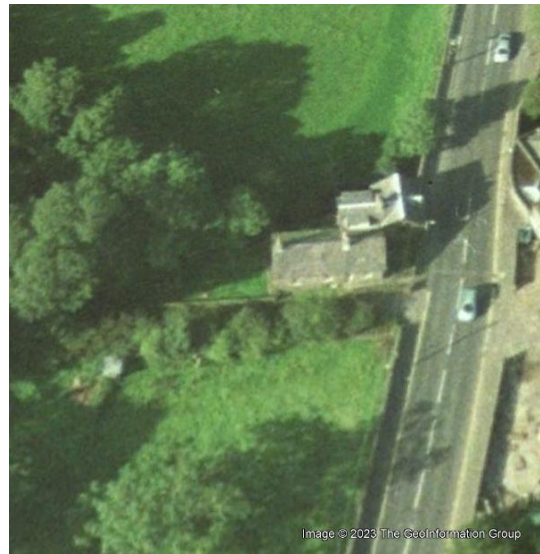


Photo 12: 2002 Google Earth Image shows no gate at eastern end of application route.



Photo 13: 2003 Google Earth Image shows no gate at eastern end of application route.



Photo 14: 2005 Google Earth Image shows no gate at eastern end of application route.



Photo 15: 2006 Google Earth Image shows field gate at eastern end of application route abutting Huddersfield Road



Photo 16: 2018 Google Earth image shows field gate at western side of cottages. Not gate abutting Huddersfield Road.



Photo 17: 2008 Google Streetview Image showing gate directly abutting Huddersfield Road.



Photo 18: 2018 Google Streetview Image showing gate to the west of the cottages.

User Evidence Evaluation

183. The public right to use the way was brought into question by the Schedule 14 application submitted in 2017. The relevant period to be considered under section 31(1) of the 1980 Act is therefore 1997 – 2017. Five (5) UEFs have been discounted from the investigation: one user (Ref: 199/7) only used the application route as far as the permissive Meltham Greenway, and therefore not as a highway; similarly, the other user (Ref: 199/14) used the route to access the stables 'by right', whilst 199/12, 199/13, and 199/15 used the application route via bicycle, which is not consonant with the dedication of a public bridleway in this case.

184. The user evidence is therefore supported by ten (10) UEFS with overlapping evidence of use during the relevant period over the full width of the application route, predominantly weekly or monthly frequency of use, as of right, without interruption. Whilst there is evidence of challenges to some users by adjacent landowners, that may have brought the public right to use the way with horses at earlier dates of 2011 and/or 2015/16, there is no evidence of a lack of intention to dedicate a public bridleway by, or on behalf, of the landowner, sufficient to rebut the presumption of the dedication of a public bridleway over the full width of the application route during the 1997-2017 relevant period free of limitations.

RECOMMENDATION

185. The documentary evidence is not sufficient to show that, on the balance of probabilities, the application route subsists as a vehicular highway. There is credible evidence to the contrary to demonstrate that the application route subsists as a co-existing private occupation road and public footpath. However, the user evidence of sufficient quantity and quality to represent public use and enjoyment of the full length and width of the application route, which is consonant with the status of a public bridleway, as of right, without interruption, and there is currently no evidence of a lack of intention to dedicate a public right of way that rebuts the presumption under section 31(1) of the Highways Act, 1980. There is clear evidence in favour of the appellant and no credible evidence to the contrary, that the application route subsists on the balance of probabilities as a public bridleway following dedication by the landowner(s).

186. Following the discovery by the authority of evidence which when considered with all relevant evidence available to them, and based on the most up to date Ordnance Survey base map, the Council determine that the 1985 West Riding Definitive Map and Statement of Public Rights of Way should be modified under section 53(3)(c)(ii) of the WCA, namely, that a highway shown in the map and statement of a particular description ought to be there shown as a highway of a different description.

CONCLUSION

187. On the balance of probabilities, the application route subsists as a public bridleway following presumed dedication under Section 31 of the 1980 Act. It is recommended, based on the available evidence, that a Definitive Map Modification Order is made to upgrade Meltham Footpath Nos. 24 & 59 to public bridleway status on the Definitive Map and Statement.

REFERENCES

- Aldridge, T. M. (1997). *Boundaries, Walls and Fences*. Sweet & Maxwell.
- Anderson, J. (2018). *Views of Political Geography in the Seven Years' War: Military Artists' Prints and British Consumers*. *Oxford Art Journal*, Volume 41, Issue 1, Pp 19-38.
- Arts, S. o. (1762). *Premiums Offered by the Society Instituted at London for the Encouragement of Arts Manufactures and Commerce*. London: Printed by Order of the Society.
- Aston, M. (1985). *Interpreting the Landscape: Landscape Archaeology and Local History*. Abington: B.T. Batsford Ltd.
- Beech, G & Mitchell, R. (2004). *Maps for Family and Local History: The Records of the Tithe, Valuation Office and Natural Farm Surveys of England and Wales, 1836-1943*. Toronto: The Dundurn Group.
- Boden, L. P. (2012). *Summary of current knowledge of the size and spatial distribution of the horse population within Great Britain*. *BMC Veterinary Research*.
- Boden, L. P. (2013). *An online survey of horse-owners in Great Britain*. *BMC Veterinary Research*.
- Breen, T. (2017). *Public or Private? An Analysis of the Legal Status of Rights of Way in Norfolk*. *Landscapes*, 18:1. Pp 55-70.
- Brown, C. M., Robillard, W. G., & Wilson, D. A. (1995). *Boundary Control and Legal Principles*. New York: John Wiley & Sons.
- Burn, R. B. (1793). *The Justice of the Peace, and Parish Officer... Continued to the Present Time*. United Kingdom: B Cadell.
- Chandler, J. (1998). *Printed Maps of Wiltshire 1787-1844: A Selection of Topographical, Road and Canal Maps in Facsimile*. Wiltshire: Wiltshire Record Society.
- Christensen, K. &. (2003). *Encyclopedia of Community From the Village to the Virtual World. English Parishes: Jones, A. . United States of America: Sage Publications*.
- Commons, H. o. (2008). *House of Commons: Communities and Local Government Committee. Ordnance Survey. Fifth Report of Session 2007-08. HC 268*. London: The Stationary Office Ltd.
- Coriden, J. (1991). *An Introduction to Canon Law*. New York: Paulist Press.
- Daspher, K. (2016). *Human-Animal Relationships in Equestrian Sport and Leisure*. Abingdon: Routledge.
- David, C. E., & Cuthbert, J. L. (1910). *Land Valuation Under the Finance (1909-10) Act, 1910: The New Land Duties, Licensing Duties, Stamp Duties and Alteration in Death Duties*. Estates Gazette Ltd.
- Davidson, C. W. (1860). *Davidson's Precedents and Forms in Conveyancing*. Dublin: William Maxwell.
- DEFRA. (2004). *A Report of Research on the Horse Industry in Great Britain*. London: DEFRA Publications.
- Delano-Smith, C., & Kain, R. J. (1999). *English Maps: A History*. London: British Library Studies in Map History; v.2.
- Eades, G. L. (2017). *The Geography of Names: Indigenous to Post-Foundational*. London and New York: Routledge Taylor & Francis Group.
- Fleet, C. (2012). *The Edinburgh History of the Book in Scotland. Vol 2. Enlightenment and Expansion 1707-1800. Map Engraving and Printing*. Edinburgh: Edinburgh University Press.

- Fletcher, D. (1999). *The Ordnance Survey's Nineteenth Century Boundary Survey: Context, Characteristics and Impact*. *Imago Mundi*. Vol. 51. Pp 131-146.
- Fordham. (1923). *An Address on the Evolution of the Maps of the British Isles*. Manchester: Manchester: At The University Press.
- Great Britain House of Commons. (1851).
- Gregory, F.-B. (2007). *Encyclopedia of the Age of Political Revolutions and New Ideologies, 1760-1815. Volume 1*. London: Greenwood Press.
- Harley. (1965). *The Re-Mapping of England, 1750-1800*. *Imago Mundi*. The International Journal for the History of Cartography. Pp 56-67.
- Harley, J B. (1962). *Christopher Greenwood, County Map-Maker and His Worcestershire Map of 1822*. Worcestershire Historical Society.
- Harley, J B; Laxton, P. (1974). *A Survey of the County Palatine of Chester*. London: The Historic Society of Lancashire and Cheshire Occasional Series, Vol. I.
- Harley, J. B. (1966). *The Bankruptcy of Thomas Jefferys: An Episode in the Economic History of Eighteenth Century Map-Making*. Vol. 20, pp 27-48. *Imago Mundi* Ltd.
- Henry, C.J. & Hose, T.A. (2016). *Appreciating Physical Landscapes: Three Hundred Years of Geotourism. The Contribution of Maps to Appreciating Physical Landscape: examples from Derbyshire's Peak District*. Pp 131-156. London: The Geological Society.
- Hodson, Y. (1999). *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales, 1919-1926*. Charles Close Society.
- Hunter, R. (1896). *The Preservation of Open Spaces: And of Footpaths, and Other Rights of Way; a Practical Treatise on the Law of the Subject*. United Kingdom: Eyre and Spottiswoode.
- Jones, A. K. (1981). *The Maps of Yorkshire, Printed in the Period 1577-1857*. Leeds: Ph.D., The University of Leeds, School of Geography.
- Kain, R J P & Baigent, E. (1992). *The Cadastral Map in the Service of the State: A History of Property Mapping*. Chicago & London: The University of Chicago Press.
- Kain, R. J., & Oliver, R. R. (2001). *The Historic Parishes of England and Wales : An Electronic Map of Boundaries before 1850 with a Gazetteer and Metadata*. Colchester: History Data Service, UK Data Archive.
- Lampert, D., & Woodley, D. (1991). *Site Selection and Investigation: A Practical Handbook*. Brookfield: Gower Publishing Ltd.
- Macnair, A., Rowe, A., & Williamson, T. (2016). *Drury & Andrews' Map of Hertfordshire. Society and Landscape in the Eighteenth Century*. Oxford: Oxbow Books.
- Macnair, A; Williamson, T. (2010). *William Faden and Norfolk's Eighteenth Century Landscape: A Digital Re-Assessment of his Historic Map*. Oxford: Windgather Press. Pp. vi, 216.
- Oliver, R. (1993). *Ordnance Survey Maps: A Concise Guide for Historians*. Charles Close Society.
- Orton, R. (1977). *The Story of Meltham*. Meltham: Meltham Town Council.
- Parsons, E. (1834). *The Civil, Ecclesiastical, Literary, Commercial, and Miscellaneous History of Leeds: Halifax, Huddersfield: The Manufacturing District of Yorkshire*. United Kingdom: F.Hobson.
- Pedley, M. H. (2020). *The History of Cartography. Volume 4. Cartography in the European Enlightenment*. Chicago: University of Chicago Press.

- Pepler, J. (2014). *The Unknown A. Bryant and His County Maps*. *Imago Mundi*. The International Journal for the History of Cartography. Volume 67, Issue 1. Pp 90-103.
- Place, A. (1999). *Routes of Our Valley's Past*. Holme Valley Civic Society.
- Pounds, N. (2000). *A History of the English Parish: The Culture of Religion from Augustine to Victoria*. Cambridge: Cambridge University Press.
- Prince, H. (2008). *Parks in Hertfordshire since 1500*. Hatfield: Hertfordshire Publications.
- Q. C. Braham, D. (2002). *Uncoloured Roads on 1910 Finance Act Maps*. *Rights of Way Law Review*. Pp 153-158.
- Raymon, L. (1970). *Antique Maps and Their Cartographers*. Michigan: Archon Books.
- Reed, M. A. (1984). *The Georgian Triumph 1700-1830*. Routledge & Kegan Paul.
- Ristow, W. W. (1976). *Thomas Jefferys' American Atlas, 1776*. *The Geographical Journal*. The Royal Geographical Society (with the Institute of British Geographers). Vol. 142, No. 2 (July., 1976), pp. 355-358.
- Royal Institution of Chartered Surveyors. (1901). *The Surveyors Institution. Transactions*. Vol. 33.
- Seward, W. W. (1797). *An Essay on the Rise and Progress of Geography in Great-Britain and Ireland: Illustrated with Specimens of our Oldest Maps*. London: J.Nichols, Printer to the Society of Antiquaries.
- Short, B & Reed, B. (1986). *An Edwardian Land Survey: The Finance (1909-10) Act 1910 Records*. University of Sussex.
- Short, B. (1986). *Landownership in Edwardian England and Wales: A New Source for Geographical Analysis*. The Royal Geographical Society (with the Institute of British Geographers).
- Skempton, A. (1996). *Civil Engineers and Engineering in Britain, 1600-1830. Volume 40, Number 1*. Aldershot: Joseph Hopkins University Press.
- Smith, D. (1982). *Antique Maps of the British Isles*. London: Batsford Ltd.
- Snell, K. (2006). *Parish and Belonging: Community Identity and Welfare in England and Wales 1700-1950*. Cambridge: Cambridge University Press.
- Spicer, J. (2016). *Beating the Boundaries: The Church God is Calling Us to Be*. New York: Morehouse Publishing.
- Tyler, R. H. (1876). *A Treatise on the Law of Boundaries and Fences: Including the Rights of Property on the ea-Shore and in the Lands of Public Rivers and other Streams, and the Law of Window Lights*. Albany: William Gould & Son.
- Whitaker, H. (2013). *A Descriptive List of the Printed Maps of Yorkshire and Its Ridings 1577 - 1900*. New York: Cambridge University Press.
- Whyte, N. (2009). *Inhabiting the Landscape: Place, Custom and Memory, 1500-1800*. Oxford: Oxbow Books.
- Winearls, J. (1996). *Thomas Jeffery's Map of Canada and the Mapping of the Western Part of North America, 1750-1768*. London: British Library Journal.
- Woolrych, H. W. (1850). *A Treatise on the Law of Rights of Common*. London: W. Benning.
- Wrigley, E. (1972). *Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data. The Census, 1801-1891: M.Drake*. Cambridge: Cambridge: University Press.

CASES

Ali v Secretary of State for Environment, Food and Rural Affairs and others (2015)
 EWHC 893 (Admin).....87

Applegarth v Secretary of State for the Environment, Transport and the Regions [2001]
 EWHC Admin 4888

Billson, R (on the application of) v Secretary Of State For Environment [1998] EWHC
 Admin 189.....88

Coverdale v Charlton (1878).....62

Dartford Rural District Council v Bexley Heath Railway Co. [1898] AC 21041

Davis v Whitby 1974.....81

Fortune & Others v Wiltshire County Council & Another [2010] EWHC B33 (Ch)61

Fortune & Others v Wiltshire County Council & Another [2012] EWCA Civ 33461

Gloucestershire County Council v Farrow & Others [1985] 1 WLR 741.....93

Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs & Anor
 [2012] EWHC 1976 (Admin).....78

Lewis v Thomas [1950] 1KB 43887

Masters v Secretary of State for the Environment, Transport, and the Regions (2000) 4
 PLR 134.....47

Powell & Anor v Secretary of State for Environment, Food, and Rural Affairs [2014]
 EWHC 4009 (Admin).....76

R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010).....81

R (oao Barkas) v North Yorkshire County Council [2014] UKSC 3182

R (on the application of Barkas) (Appellant) v North Yorkshire County Council and
 another (Respondents) [2014] UKSC 31.....80

R (on the application of Ridley) v Secretary of State for the Environment, Food and
 Rural Affairs [2009] EWHC 17161

Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (Ch)61

Tilbury v Silva 1889 T. 20190

Todd & Anor v Secretary of State for Environment Food and Rural Affairs [2004] EWCA
 1450.....61

Willsher v Scott (2007) EWCA Civ 195.....46

This page is intentionally left blank



Name of Meeting: Strategic Planning Committee

Date: 25/01/2024

Title of Report: Applications for a Definitive Map Modification Order (DMMO) to record a public right of way at Carr Mount, Kirkheaton, Kirkburton, on the Definitive Map and Statement (DMS)

Purpose of Report: Members are asked to consider the relevant available evidence and determine the applications for a DMMO made under section 53(5) of the Wildlife & Countryside Act 1981 to record a public right of way at Carr Mount, Kirkheaton, Kirkburton on the DMS.

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 – 16 January 2024
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 16 January 2024
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 16 January 2024
Cabinet member portfolio	Not applicable

Electoral wards affected: Kirkburton and Dalton

Ward councillors consulted: Kirkburton Cllrs: Bill Armer, Richard Smith, John Taylor
Dalton Cllrs: Musarrat Khan, Naheed Mather, Tyler Hawkins

Public or private: Public

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

Contents

List of Figures.....	3
Summary.....	4
Recommendation.....	6
Information Required to Take a Decision.....	7
Applications.....	7
DMMO S14201.....	7
DMMO S14306.....	8
Planning Inspectorate Direction & Application Priority.....	9
Character of Application routes.....	10
Part A DMMO S14201.....	10
Part B DMMO S14306.....	11
Statutory Provisions.....	12
Wildlife & Countryside Act 1981.....	12
Highways Act 1980.....	14
Guidance for Members.....	16
Documentary Evidence Evaluation.....	18
User Evidence Evaluation.....	25
Implications for the Council.....	32
Working with People.....	32
Working with Partners.....	32
Placed based Working.....	32
Climate Change and Air Quality.....	32
Improving Outcomes for Children.....	32
Financial Implications for the People Living or Working in Kirklees.....	32
Other (e.g., Legal/Financial or Human Resources).....	33
Consultation.....	34
DMMO S14201.....	34
Kirkburton Parish Council.....	34
Kirkburton and Dalton Ward Members.....	35
Further Evidence from Landowners, Public, & User Groups.....	35
Consultation Evaluation DMMO S14201.....	37
DMMO S14306.....	38
Kirkburton Parish Council.....	38
Kirkburton and Dalton Ward Members.....	38
Further Evidence from Landowners, Residents, & Public.....	39

Consultation Evaluation DMMO S14306.....	41
Next Steps & Timelines.....	41
Officer Recommendations & Reasons	43
DMMO S14201	43
DMMO S14306.....	43
DMMO Confirmation.....	44
DMMO S14201	44
Contact Officer	44
Background Papers and History of Decisions	44
Service Director Responsible	44

List of Figures

Figure 1: Indicative map - Public footpath to be recommended to be added (A - B) 45

Summary

1. In September 2017 and August 2021, Kirklees Council received two Definitive Map Modification Order (DMMO) applications (References [DMMO S14201](#) and [DMMO S14306](#)) under [Section 53 of the Wildlife & Countryside Act 1981](#) (the 1981 Act) to record public rights of way on land at Carr Mount, Kirkheaton, Kirkburton on the Definitive Map and Statement (DMS), as follows.
2. **DMMO S14201** claims the existence of a **public footpath** commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**). The applicant provided 29 User Evidence Forms, various OS maps, and extracts from locally published walking booklets in support of the application.
3. **DMMO S14306** claims the existence of a **public bridleway** commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**), and continuing over both public footpath Kirkburton 20 and public footpath Kirkburton169 to its junction with public bridleway Kirkburton 220 (**Part B**) at Long Tongue Scrog Lane. The applicant provided documentary and historic evidence including various OS maps and 1910 Finance Act records in support of their view that the application route is an ancient public vehicular highway which legally exists today.
4. The Secretary of State has directed that Kirklees Council must determine DMMO S14201 by 14 January 2020. The two applications are therefore being processed simultaneously.
5. The available documentary or historic evidence has been investigated under [Section 32 of the Highways Act 1980](#) (the 1980 Act).
6. In summary, the documentary or historic evidence shows that Part A of the application route originated as a private cul-de-sac route leading to agricultural fields in 1793, until approximately 1855 when the route extended over Part B to abut Long Tongue Scrog Lane. By 1893, there may have been a through route to Long Tongue Scrog Lane.

7. However, the presence of gates and/or fences which may have enclosed Carr Mount farm and vicinity shown on maps from 1893, corroborated by landowner conveyances and deeds dated 1920 to 1936, may have affected ease of use as a through route. In addition, certain maps dated 1904, 1938 and 1943 do not feature the route as a passable through route for carriage or vehicular use.
8. Furthermore, under the 1910 Finance Act the route was largely recorded within hereditaments with no corresponding deductions for 'public rights of way or use'. The same landowner conveyances and deeds in para 7., appear to show a private right of way over Part A, and a public footpath over Part B. Locally published walking routes provide some evidence of reputation that Part A was in public use as a footpath in the 1970s/80s.
9. Officers therefore consider that the available documentary or historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
- 10. There is therefore no evidence to 'reasonably allege' or determine on the 'balance of probabilities', that Part A or B subsists as a public bridleway or vehicular highway.**
11. The available user evidence for Part A of the application route has been investigated under [section 31\(1\) of the Highways Act 1980](#) (the 1980 Act) for the presumed dedication of a public right of way.
12. In summary, the user evidence shows public use on foot from the 1940s. Public rights to use Part A of the application route was first brought into question in 2014 by the erection of a landowner notice or sign, followed by several other notices or signs since then. The relevant twenty-year period for analysing the user evidence is therefore 1994 to 2014. An alternative relevant period of 1977 to 1997 associated with a section 31(6) landowner deposit which may affect part of Part A and also part of Part B of the application route has also been analysed.
13. The quantity and quality of the user evidence is sufficient to demonstrate public use and enjoyment of Part A of the application route on foot, as of right, and

without interruption during the relevant period 1994 to 2014 and also during the alternative relevant period 1977 to 1997.

14. Furthermore, 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 the user and landowner evidence indicates that a public footpath is presumed to have been dedicated over Part A of the application route.
15. **It is therefore, 'reasonable to allege' that a public footpath subsists along Part A, and should be recorded on the DMS.**
16. 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 DMMO 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.

Recommendation

17. Officers recommend that a DMMO (an Order) is duly made under [section 53\(3\)\(c\)\(i\) of the 1981 Act](#) in relation to the application DMMO S14201 to record a public footpath commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**) on the DMS.
18. 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.
19. Officers recommend that no Order is made in relation to the application DMMO S14306 to record a public bridleway commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public bridleway Kirkburton 220 (**Part B**) at Long Tongue Scrog Lane.

Information Required to Take a Decision

Applications

20. Kirklees Council (the Council) has received two applications, one in September 2017 submitted by Mr John Dunwell (DMMO S14201), and the other in August 2021 (DMMO S14306) on behalf of The British Horse Society, both under section [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 **Figure 1 in Appendix C**. 1985 DMS, and previously 1952 DMS (**Figure 2 in Appendix C**). Please note that references to '**Figures**' are provided in Appendix C.

DMMO S14201

21. DMMO S14201, as shown highlighted blue between points A to B in **Figure 3**, seeks to record a public footpath commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane and adjacent to the former Freemasons Arms through Carr Mount to its junction with public footpath Kirkburton 20. This section will be referred to as **Part A**.
22. 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".
23. The application was properly made and certified in early 2018 under the requirements of [Schedule 14 of the WCA](#). The submission gave as evidence twenty-nine (29) user evidence forms ('UEFs'). The Council received in total sixty-one (61) UEFs including several received during a public consultation in 2021. Additionally, the applicant submitted Ordnance Survey Maps from 1850 to 1960 and extracts from walking booklets titled: 'Discovering Old Lepton (c1978)' and, 'Discovering Old Lepton, and Kirkheaton, 2nd Edition' (no published date).
24. The requisite certificate of service of notice was submitted in September 2017 confirming that notice of the application had been served on two (2)

landowners, and in March 2018 confirming that notice had been served on the unregistered land.

25. Officers considered other evidence including non-OS maps, OS maps, aerial photos, officer photos, KC records, Email correspondence, deed conveyances and a s31(6) landowner deposit.
26. A consultation was carried out in July 2021 in relation to Part A, inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

DMMO S14306

27. On the other hand, DMMO S14306 seeks to record Part A as a bridleway commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane and adjacent to the former Freemasons Arms through Carr Mount to its junction with public footpath Kirkburton 20 thereby incorporating S14201 (Part A). Additionally, DMMO S14306 also seeks to upgrade part of public footpath Kirkburton 20 and also the whole of public footpath Kirkburton169 to public bridleway status to its junction with public bridleway Kirkburton 220 at Long Tongue Scrog Lane as shown in **Figure 4**. This section will be referred to as **Part B**.
28. A public bridleway is defined in [section 66 of the 1981 Act](#) 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 way on horseback or leading a horse, with or without a right to drive animals of any description along the highway”.
29. [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.
30. The application was properly made and certified in August 2021. The submission gave as evidence documentary and historical evidence, as follows: 1843 OS First

Series, Sheet 88, NL Australia Appendix C1; 1855 OS Six inch Sheet 247 Yorkshire; 1893 OS 25 inch Sheet 267 Huddersfield, Kirkburton, Mirfield; 1896 OS 1 inch Sheet 77 - Huddersfield (Hills) NLS; 1903 Cassini Historical Series Sheet 110 Sheffield and Huddersfield; 1938 The Authentic Map Directory of South West Yorkshire; 1947 OS 1 to 25000 Administrative Boundaries, Kirkheaton Ward; Inland Revenue Sheet 247-9 WYA Ref C243 and 2021 INSPIRE Land Registry.

31. The applicant also provided a discussion of the documentary evidence to support the claim that Part A and Part B of the application route is an ancient public vehicular highway. This is of relevance because there is a legal maxim "*Once a highway, always a highway*", which means that if there is evidence that a public right of way existed in the past, and if that right of way has not been legally extinguished or diverted, then it still exists today. No user evidence forms were submitted to the Council for the DMMO S14306 application.
32. The requisite certificate of service of notice was submitted in October 2021 confirming that notice of the application had been served on landowners and in November 2021 confirming that notice had been served on the unregistered land.
33. Officers considered other evidence including non-OS maps, OS maps, aerial photos, officer photos, KC records, Email correspondence, deed conveyances and a s31(6) landowner deposit.
34. A consultation relating to the DMMO S14306 to record a bridleway over Part A and Part B was carried out in November 2021, inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

Planning Inspectorate Direction & Application Priority

35. Following a representation by Mr John Dunwell, the Council were directed on 15 July 2019 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: FPS/Z4718/14D/13) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced DMMO S14201, no later than 14 January 2020.

36. [DMMO S14306](#) is currently prioritised as number 103 of 251 (at the time of writing) pending DMMO applications and a score of 7 out of a maximum of 20 points based on the priority matrix. DMMO applications would usually be investigated in the order in which the duly made applications are prioritised, subject to the availability of suitably experienced Definitive Map Officers, except where the investigation of a case would involve substantially the same evidence and forms part of, or joins, the route currently under investigation, which will provide costs of efficiency savings.
37. As DMMO S14306 is significantly linked to, and encompasses, the public footpath claimed in DMMO S14201, both are being determined simultaneously.

Character of Application routes

Part A DMMO S14201

38. Both application routes are located in the Parish of Kirkburton and commence at the junction of Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane, opposite the former Freemasons Arms public house at Grid Reference SE 1954 1780, as shown in **Figure 5**. There are two street name plates stating: 'Carr Mount' and on one of these there is a no-through road sign, as shown in **photo 2**. There is also bus stop 262 immediately nearby on the B6118.
39. The application route leads southwest from this junction for some 55m then generally meanders south-southwest for approximately 375m past a former sandstone quarry to Carr Mount hamlet.
40. The northern section of the application route is a lane surfaced with tarmac and has a varying approximate width of between 2.5m and 5.5m (measured using the Councils Kompass mapping system). The lane has a limited number of passing places and no street lighting. It is variously bordered by dry-stone walls, hedges, and gates to adjacent fields. The lane provides access to dwellings at Carr Mount Hamlet, and it can be known as Carr Mount Lane. See **photos 2 to 11 in Figure 5**.

41. At approximately Grid Reference SE 1939 1743, DMMO S14201 joins with public footpath Kirkburton 10 crossing east to west and also joins with public footpath Kirkburton 20 leading south along Part B, as shown in **photos 11 and 12 in Figure 5**. Both public footpaths are coextensive with the lane.

Part B DMMO S14306

42. Only DMMO S14306 continues along Part B (the southern section), which is approximately 360m in length with a varying approximate width between 1.5 to 2.5m. Therefore, in total, DMMO S140306 is approximately 790m in length from Liley Lane/ Bellstring Lane public carriageway B6118, over part of public footpath Kirkburton 20 and public footpath Kirkburton 169 to its junction with public bridleway Kirkburton 220 at Long Tongue Scrog Lane.
43. As shown in **Figure 6**, the application route photos are shown in reverse order starting from the most southerly of Part B at Long Tongue Scrog Lane and approximately Grid Reference SE 1917 1720. The application route continues north-northeast up the surfaced lane, as shown in **photos 17 to 22**, which is recorded on the DMS as public footpath Kirkburton169.
44. At the junction with public footpath Kirkburton 169 and public footpath Kirkburton 20, the application route continues through a gated gap (**photo 23**) and continues east along the field edge (**photos 24 to 26 in Figure 6**).
45. The application route then turns sharply north through another gated gap (**photos 27 and 28 in Figure 6**) and over a grass verge onto a branch of public footpath Kirkburton 20 and continues over the surfaced road at the bottom of Carr Mount hamlet (nearest No's. 8-11 Carr Mount).
46. The application route then continues north up Carr Mount lane over public footpath Kirkburton 20 crossing public footpath Kirburton10 where it joins Part A of the application route.

Aerial photos of Part A and Part B

47. **Figure 7** shows an aerial view of the application route over Part A and Part B in 2012.

Statutory Provisions

Wildlife & Countryside Act 1981

48. [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 an Order.
49. The need for a DMMO (an Order) to be considered when evidence is submitted in support of a claim that a public right of way which is already shown on the Definitive Map and Statement is dealt with under section [53\(2\)\(b\) and 53\(c\)\(ii\) of the 1981 Act](#).
50. [Sections 53\(3\)\(c\)\(i\) and 53\(3\)\(c\)\(ii\) 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*
 - *that a highway of a particular description ought to be there shown as a highway of a different description.*
51. As has been 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.

52. The available evidence submitted in support of DMMO S14201 (Part A) will therefore be determined according to Test B: Is it reasonable to allege that the right of way subsists?, under section 53(3)(c)(i). If so the Council has a duty to make an Order.
53. 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.
54. Arguably, Part A of DMMO S14306 should also be determined according to Test B: Is it reasonable to allege that the right of way subsists? However, under the provision of section 53(3)(c)(ii), there is no 'reasonably alleged to subsist' test for Part B because it is already recorded on the Definitive Map and Statement as public footpath. Therefore, the test by which the available evidence for DMMO S14306 is to be considered is the civil burden of proof; that is, 'the balance of probabilities' or Test A: Does a right of way subsist? This requires that the Council be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.
55. Furthermore, if the available evidence for Part B of DMMO S14306 does not meet the civil burden of proof to make a DMMO to record a public bridleway, it would not make sense for the Council to make a DMMO to record Part A of DMMO S14306 based on Test B as it would be a cul-de-sac public bridleway. Whilst there is no rule of law that at a cul-de-sac cannot become a highway by dedication at common law or under the provisions of section 31 of the Highways Act, 1980, a cul-de-sac highway must have a defined end point, such as the seashore or a viewpoint, which are known as a 'place of popular resort'. As Part A does not terminate at a place of popular resort, it cannot exist as a public bridleway. The Officers therefore recommend that the available evidence for all of DMMO S14306 is determined according to the 'balance of probabilities' or Test A: Does the right of way subsist?, under section 53(3)(c)(ii).
56. Also note that, if a right of way is shown on the DMS, that is conclusive evidence in law that there is a public right of way as shown and that it has at least the status indicated, but without prejudice as to any question of additional public rights which

may exist along it, for example in relation to a footpath, higher rights such as use on horse, cycle or motor vehicle.

Highways Act 1980

57. 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 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.
58. 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. 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.
59. 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](#).
60. 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'.
61. 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](#).

62. 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).
63. 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. Also, a private land or private road sign may be held to permit foot or horse use as it is common for a public footpath or public bridleway to be coextensive with a road which has only private foot or private vehicular rights. Furthermore, caselaw dictates that private land signage in itself, is not 'documentary evidence that would inevitably defeat the claim'.
64. In cases where there is no identified owner (e.g., unregistered land) available to produce evidence to demonstrate a lack of intention to dedicate the land for public use, s31(1) presumed dedication, would not be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that they had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.
65. 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.

66. [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

67. 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.
68. It is the Councils 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 Officers 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 applications.
69. 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.

70. 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.

Investigation of Evidence

71. Officers have conducted an investigation of the relevant available documentary or historic evidence, user evidence, landowner evidence and other evidence. The Officer Investigation Report is available at **Appendix B**, with the Figures and Photos at **Appendix C**.

Documentary Evidence Evaluation

72. The available documentary or historic evidence has been investigated under [Section 32 of the Highways Act 1980](#) (the 1980 Act), as described at **Appendix B** with accompanying **Figures and Photos** at **Appendix C**. The section below will focus on the analysis of the evidence required for the purpose of making an informed decision.
73. In summary, the applicant for DMMO S14306 has relied upon several OS maps to support a claim that Part A and Part B of the application route was an ancient public vehicular highway or part of the historic ordinary road network. This includes the applicants assertion that the application route is depicted as a through route with no boundaries or gates, and it being represented as a metalled road.
74. The 1910 Finance Act map was provided as primary evidence showing that the northern-most section of Part A and the southern-most section of Part B of the application route were shown as a 'white road' (uncoloured). The applicant proposes that the exclusion of these sections from adjacent hereditaments suggests that the land belonged to the rating authority and was therefore a public vehicular highway. Reference is also to part of the route being unregistered land which the applicant considers supports the case that the route is a public vehicular highway of ancient origin.
75. Officers investigated further historic and documentary evidence and found that the 1793 Map of Lands in Kirkheaton is a cadastral survey map produced for the Lord of the Manor of Kirkheaton shows conclusively that Part A originated as a private cul-de-sac road commencing from a public road (coloured sienna) and leading to agricultural fields, as shown in **Figure 8** and **Figure 9**.

76. The 1812 Map of Estate in Kirkheaton, also produced for the Lord of the Manor, shows an extended cul-de-sac route one field past Carr Mount farm, but does not distinguish between private and public roads, as shown in **Figure 10**. An undated cadastral survey map produced for the Beaumont Estate after 1857 (**Figure 11**) shows a cul-de-sac route to the same position as the 1812 map (**Figure 10**). The 1843 Old OS Huddersfield Sheet 88 NE one-inch map (**Figure 12**), shows a route over Part B to the same position as in Figures 10 and 11 but broken in two halves which does not indicate a through route.
77. The 1846 Tithe plan showing woods in the township of Kirkheaton does not show the application route (**Figure 13**) but it does depict three routes (**Figure 14**) annotated as an occupation road, a turnpike road, and a public road in the 1799 Kirkheaton Moor draft Enclosure Map as shown in **Figure 15**. This suggests that that in 1846 the application route was of a lesser significance than the occupation road, the turnpike road, or the public road.
78. The 1855 OS six-inch map (**Figure 16**) shows an extension of the route over Part B leading to a woodland at the southwest, and abutting Long Tongue Scrog Lane but not joining into it. The map does not show any bold black lines across the route at Carr Mount hamlet. It carries a disclaimer that '*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way*', meaning public or private.
79. The larger scale 1893 OS twenty five-inch map (**Figure 17**) shows a possible through route to Long Tongue Scrog Lane at its most southerly point and on to Lane Side. However, there are solid black lines to the north and south of Carr Mount farm which appear to indicate its enclosed with barriers, either a fence or a gate (or a change of surface). There are also solid black lines over Part B indicating possible barriers such as fences or gates (or a change in surface). The 1894 OS six-inch is similar (**Figure 18**). Barriers such as fences or gates are likely to affect the ease of use of any through route, but do not indicate in themselves that it was not passable. A timeline for the development of a possible through-route (regardless of gates or fences) is shown in **Figure 19** to illustrate the points being made.

80. On the 1896 one-inch map (**Figure 20**) and the 1903 Cassini map (**Figure 21**) the route is consistently shown as an '*unmetalled road*' a category which includes occupation roads, and is normally used to describe a road laid out for the benefit of the occupiers of adjoining land or property and in themselves therefore carry private rights rather than public rights. Being unmetalled implies it would be one that was not in good repair and not repairable by a public authority. The route is shown abutting Long Tongue Scrog Lane rather than joining into, suggesting no through route. These maps carry the right of way disclaimer.
81. In 1905 OS instructed surveyors to record permanent gates and fences as solid black lines. The 1907 OS twenty-five inch map (**Figure 22**) and the 1908 OS six-inch (**Figure 23**) also shows an additional internal barrier at Carr Mount farm, which may have affected use as a through route. This map also indicates that a through route may have been possible at its most southerly point where it joins with Long Tongue Scrog Lane. The 1919 OS twenty-five inch (**Figure 24**) and the 1932 OS twenty-five inch (**Figure 25**) does not show one of the internal barriers present in 1907/1908, but other barriers such as fences or gates still appear to be present. These maps carry the right of way disclaimer.
82. The 1938 Authentic map Directory of Southwest Yorkshire provided by the applicant which was intended to '*name all but the small less-important thoroughfares*' shows a cul-de-sac route over Part A to Carr Mount and then leading east or west, but no route leading south over Part B is shown in **Figure 26**.
83. The 1904 Bartholomew Revised Half-inch map (**Figure 27**) which according to the key showed '*first class roads*', '*second class roads*', '*passable roads*' and '*footpaths and bridlepaths*', does not show the application route at all, neither Part A nor Part B. Similarly, the 1943 Bartholomew Revised Half-inch map (**Figure 28**) which according to the key showed '*through routes*', '*other good roads, serviceable motoring roads*' and '*other road and tracks*' again does not show the application route at all, neither Part A nor Part B. These maps carry the right of way disclaimer.
84. The 1947 twenty-five inch Administrative Map showing the Kirkheaton Ward boundary is shown in **Figure 29**. The applicant states that the map shows the

route is 'a fenced Road, Ministry of Transport Class B', but the key is difficult to read, and Officers consider that the route is shown as a narrower 'fenced or unfenced other road, not classified by the Ministry of Transport'.

85. The 1961 OS 1 to 25000 map shows the private road providing access to No's 8/9 Carr Mount, deviates from the application route (**Figure 30**). And it is this route that features on the Highways Authorities 'List of Streets'.
86. The 1910 Finance Act valuation documents shows an uncoloured (white) route was excluded from hereditaments at the very south and possibly at the very north, as shown in **Figure 31** and **Figure 32**. Exclusion of a route may suggest that it was in public ownership and vested in the highway authority or for some other reason. However, in the absence of any other evidence, this does not indicate that the route was unrated and belonged to the highway authority. At the time of the 1910 land valuation, the route may have been excluded, as with other private routes, because it was in multiple occupation of adjacent tenanted fields. It can be noted that part of the route is recorded on the List of Streets (1974) as not maintained at public expense by the Council and is therefore not vested with it.
87. Furthermore, the majority of the application route lies within the hereditaments (parcels 3, 69 and 53pt) as shown in **Figure 31** and **Figure 32**. The accompanying Valuation Book for the Parish of Kirkheaton does not record deductions for 'Public rights of way or use' for these hereditaments (parcels 3, 69 and 53pt) over Part A or over part B, as shown in **Figure 33**.
88. Conveyances, and deeds in 1920 annotate a 'right of road' most likely a private right, leading to Liley Lane or the Freemasons Arms (Part A) as shown in **Figure 34**. A public footpath is also annotated over part of Part B on conveyances and deeds dated 1923 and 1936 as shown in **Figures 35, 36** and **37**.
89. Conveyances and deeds from 1923 (**Figure 36**) and 1936 (**Figure 37**) conclusively also depict gates at Carr Mount over Part A and also depict gates and gated gaps over Part B, possibly preventing use as through route.
90. Gated gaps are currently present on Part B of the route, specifically on public footpath Kirkburton 20 (**photos 23 and 28, Figure 6**), which other

landowner/resident evidence suggests have been variously locked since the 1999 and 1980s, and one resident suggests these were locked since the 1940s.

91. Part A of the application route to Carr Mount hamlet was not recorded on the 1952 DMS nor is it recorded on the 1985 DMS as shown in **Figures 2** and **Figure 1** respectively. Part B was recorded as a public footpath on the 1952 DMS and the 1985 modified DMS as shown in the same figures. There is no walking schedule on record for Part A of the application route, and route was not claimed in 1950s and not included on draft and subsequent definitive maps. There are no records of any objection or representation to the non-recording of Part A of the route.
92. The Definitive Statement for public footpath Kirkburton 20 and the corresponding walking schedule dated 14 May 1952 (part of Part B) is shown in **Figure 38** describing the route as a footpath from The Hagg to Long Tongue Scrog Lane with stiles, one at each end of the footpath. The surface is described as '*ploughed*' on the 1952 DMS (**Figure 2**) and '*arable*' on the 1985 DMS (**Figure 1**). The reason for believing the path to be public was given as '*open for years*'.
93. Whilst the 1952 DMS and the 1985 DMS shows structures (stiles, field gates) on Part B of the application route it does not necessarily follow that the route was impassable by horse, cart, or cycle here at that time. For example, some of the OS maps above appear to show a gap next to a solid line which could indicate a fence and gap or a gated gap.
94. For the southerly part of Part B, there is no walking schedule for what is now public footpath Kirkburton 169, but there is a representation made by Kirkburton Urban District Council to add it to the Draft Definitive Map as shown in **Figure 39**. The record says "*Footpath commencing at its junction with Long Tongue Scrog Lane and proceeding in a north easterly direction to its junction with path no..20'...' This is a public footpath and should be added to the draft map*". The surface is '*part ashed, part earth*' at '*3ft wide*'.
95. **Figure 40** shows the majority of Part A of the application route is unregistered land, meaning that the owner has not registered it with HM Land Registry, but it does not necessarily follow that it was a public vehicular highway of ancient

origin as suggested by the applicant. Conveyances and deeds 1920, 1923 and 1936 (**Figures 34 to 37**) appear to show Part A of the application route leading north from Carr Mount belonged to an '*other part of the Whitley Beaumont Estate*' at that time. In the absence of a registered owner, the unregistered land abutting a way may be considered to be owned *ad medium filum* meaning to the mid-point by the two adjacent landowners – this assumption is rebuttable. Indeed, one of the current adjacent landowners who has owned the land since the 1976 believes that Part A is '*only to access Carr Mount and land owned by Upper Stone Royd*', and '*only used for private purposes*' (**Figure 47**).

96. Whilst there are two 'no-through road' street name plates at the entrance to Carr Mount lane where it leaves the B6118 at Liley Lane, these should not be taken as indicate that Carr Mount lane is a public vehicular highway nor a road to which the public has vehicular access (**Figure 5, photo 2**). The Council's building control street naming team have the authority to name private roads as well as public roads.
97. In addition, Highways Registry records show that Part A or part of Part B of the application route was not recorded as vehicular highway or otherwise on the List of Streets held under s36(6) Highways Act 1980 as a highway maintainable at public expense when the former Council took over the highways function from Kirkburton Urban District Council in 1974. See **Figure 41** and **Figure 42**.
98. Again, although Part A and part of Part B of the application route has a sealed surface and a limited number of passing places, the sealed surface was provided by the residents around 2004 or 2007 (**Figure 47**). The sealed surface was not provided by the Council, nor the were passing places created by the Council and the land is not owned nor vested with the Council.
99. The reputation of Part A of the application route as a public footpath is supported by extracts from the locally published walking routes 'Discovering Old Lepton (c1978)' & 'Discovering Old Lepton & Kirkheaton 2nd Edition (no

published date)', which shows it formed part of a circular walk, see **Figures 43** and **Figure 44**.

100. The reputation of Part A of the application route being a public right of way appears to be contained within a report associated with an application to the Countryside Stewardship Scheme relating to Upper Stoneroyd, see **Figure 45**.
101. Given all of the above, Officers therefore consider that the available documentary or historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
102. Overall, the available documentary or historic evidence is insufficient to show, on the balance of probabilities, that a public bridleway or vehicular highway subsists, or is reasonably alleged to subsist, over Part A or Part B of the application route. The investigation will therefore turn next to the available user evidence.

User Evidence Evaluation

103. The available use and landowner evidence has been analysed under [s31\(1\) of the 1980 Act](#) for presumed dedication of a public right of way as described in detail in **Appendix B with Figures and Photos in Appendix C**. The section below will focus on the analysis of the evidence required for the purpose of making an informed decision. A summary of the user evidence is provided in **Figure 46**.
104. Sixty one (61) user evidence forms were submitted to the Council in support of the application DMMO S14201 which is Part A of the application route only. This shows that, public use of Part A of the application route on foot has continued through the 1940s, 50s, 60s, 70s and onwards. The earliest use started in 1935.
105. The user evidence has been evaluated on the submissions from fifty-five (55) members of the public who are collectively wholly or largely local people. This is because five (5) users (UEFs 28, 48, 51, 13/58, 60) were considered to have a type of private right and as such their evidence cannot be included as evidence for public use. One (1) user (UEF 13/58) submitted two (2) UEFs and only one of these has been counted.
106. There are four (4) landowners and one (1) tenant associated with Part A of the application route. From Liley Lane/ Bellstring Lane public carriageway B6118 through to Carr Mount hamlet, the application route is unregistered with HM Land Registry meaning there is no registered owner. Landowner 1 (land to west) and landowner 2 and a tenant (land to east) have landholdings to each side of the unregistered land which abuts a way. Under the rebuttable *ad medium filum* legal presumption they can be considered to own the track up to the centre line (meaning half the roadway each).
107. At Carr Mount hamlet landowner 3 and landowner 4 own sections of the application route. In addition, several other residents take access to their dwellings over Part A of the application route including vehicular access. The available landowner evidence is summarised in **Figure 47**.

Bringing into Question

2016 Challenge

108. Evidence from two (2) landowners at Carr Mount hamlet indicates that public use of the application route over Part A was variously challenged either by telling people it was private or that they were trespassing, since first residing at Carr Mount (1999 and 2009) (**Figure 47**). However, the burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate, and no evidence of these earlier events has been submitted by the relevant landowners.
109. The Council has a record from 1985 which suggest that access up Carr Mount lane was denied to one individual by residents in the houses (**Figure 48**). However, the user evidence indicates that it was the challenges taking place from approximately 2016 onwards that prevented many people from using the route and that directly brought use of the route into question, as shown in **Figure 49**. These later challenges resulted in the submission of the DMMO application S14201 to have the route recorded on the DMS and creates a relevant period 1996 to 2016 which Officers consider is not rebutted by previous challenges to public use (e.g., 1985). For example, UEF 61 said '*No knowledge of the owners and never confronted from 1965-2019*' and went onto state that around 2018/2019 they were told they could not use the road...outside the houses at Carr Mount.

2014 Signs and Notices

110. The user evidence indicates that notices and signs were erected 'recently' or in the 'last year' meaning around 2017 (**Figure 49**). A previous landowner (UEF 28) stated '*we used to get lots of walkers, walking to Houses Hill. There was never any issues whatsoever*'...and "*No signs when I lived there*".
111. Evidence from two landowners at Carr Mount hamlet, indicates that notices and signs had been erected which variously said '*private road*' or indicate '*no public right of way*' over Part A of the application route. **Figure 50** shows photographs of such notices and signs dated August 2014, May 2016, July 2017, and July 2021 at several locations on Part A of the application route.

112. In 2014, the Council received enquiries from members of the public complaining about notices at Carr Mount hamlet which was prior to receiving the first DMMO application. A photo was provided of a notice at the junction of definitive public footpaths Kirkburton 20 and Kirkburton 10 at Carr Mount hamlet. The notice stated '*PRIVATE ROAD Public right of way up Carr Mount ENDS HERE*' meaning that public footpath Kirkburton 20 does not continue along Part A to the Liley Lane/Bellstring Lane public carriageway B6118, as shown in photo 1 dated 14 August 2014 in **Figure 51**. Whilst the notice erected in August 2014 appears not to have prevented public use of the route the wording of the sign and subsequent signage/notices can be considered to be overt acts of a lack of intention to dedicate and brings public use of the route into question, but has no retrospective effect.
113. As such, Officers consider the date the public use was first 'brought into question' is the date of the first complaints and photo evidence in August 2014, this creates an alternative relevant period of August 1994 to August 2014 which rebuts the relevant period 1996 to 2016 created by the submission of the DMMO application.

1997 Section 31(6) Landowner Deposits

114. As shown in **Figure 52**, Landowner 1 submitted two (2) s31(6) landowner deposits in 1997 and again in 2003, which include land to the west of the application route abutting Part A and Part B. The deposits acknowledge any existing public rights of way across land at the same time as declaring that they as landowner they had no intention to dedicate any further routes to the public. Such deposits may also bring public use of the way into question, but have no retrospective effect. Therefore, there may be an earlier bringing into question date of May 1997 creating an alternative relevant period of May 1977 to May 1997.
115. However, whilst Landowner 1 owns Part A of the application route to the mid-point under the rebuttable *ad medium filum* legal presumption, they have not included any part of the application route within the s31(6) deposit. As such, Landowner 1 cannot demonstrate a lack of intention to dedicate a public right

of way over the application route. Therefore, an alternative relevant period of May 1977 to May 1997 has not been created and the relevant period August 1994 to 2014 is not considered to be rebutted.

116. However, should there be an opposing opinion that the s31(6) deposit in 1997 does apply to half the roadway (from the west to the centre-line) in relation to the unregistered land on Part A and Part B, then this would demonstrate a lack of intention to dedicate a public right of way during the 1994 to 2014 relevant period and throw the inquiry back to an earlier alternative relevant period of 1977 to 1997, which for completeness has also been briefly analysed in relation to s31(1) presumed dedication.

Relevant Periods

117. In summary, the relevant period 1996 to 2016 created by verbal challenges is considered to be rebutted, and any relevant period associated with the s31(6) deposit is not considered to have been created. Therefore, public use of Part A of the application route was first brought into question by the erection of a notice/sign in 2014. The relevant 20 year period for user evidence is therefore between August 1994 to August 2014.
118. The alternative relevant period of 1977 to 1997 associated with the section 31(6) landowner deposit which possibly affects part of Part A of the application route have also been analysed for completeness.

Evidence of Use during Relevant Period 1994 to 2014

119. The user evidence has been evaluated on the submissions from forty-eight (48) members of the public who are collectively wholly or largely local people presently or in the past.
120. Public use during the relevant period 1994 to 2014 is shown in **Figure 53**. Part A of the application route between Liley Lane and Kirkburton public footpath 20 at Carr Mount, was used by forty-eight (48) people on foot during the relevant period: thirty-five (35) throughout, and thirteen (13) for parts of the relevant period. At the start of the relevant period 1994 to 2014, thirty seven

(37) users stated they were using the route on foot. At the end of the same relevant period forty-eight (48) users stated they were using the route on foot. It is their collective use that is important.

121. Frequency of use varied and was used by one person daily; four (4) twice weekly; eight (8) weekly; two (2) more than monthly; sixteen (16) monthly; four (4) less than monthly, one (1) yearly. In addition, twelve (12) users state their use was variable and refer to using the route 'regularly, frequently, occasionally, or quite often'. It is collective use during the relevant period that is important.
122. The quantity and frequency of use are sufficient to represent use and enjoyment by the public on foot without interruption. All users saw others using the application route.
123. Several users within the relevant period indicated they believed Part A of the route to be a byway open to all traffic, a restricted byway or a bridleway with reference made to seeing motor vehicles horses and bicycles pointing to a reputation of the route beyond footpath. However, only two (2) of these users (UEF 16, 36) indicated they had used Part A on horse and this use appears to be historic and therefore likely to fall outside the relevant twenty year period under analysis, and in any case, in terms of quantity is not sufficient to demonstrate public use and enjoyment. Furthermore, the landowner and resident evidence indicated private use by horse including in groups as well as private use by motor vehicle and bicycle. Additionally, any public use by horse over Part A only would indicate a cul-de-sac bridleway which according to caselaw could not subsist at this location, as it is not a place of popular resort or destination, such as a mountain top, beach, or viewpoint.
124. Where specified, users commonly referred to Part A of the application route as 'Carr Mount'. They variously described it as either starting at Liley Lane and ending at Carr Mount or as part of a longer linear or circular route including walking to or from named local places (including Houses Hill, Hopton, Kirkheaton, Kirkheaton Cemetery, Lascelles Hall, Lane Side Lane,

Long Tongue Scrog Lane, Mirfield, Stafford Hill Lane, Upper Hopton, Whitely Willow).

125. Users describe using the way for walking/dog walking; for leisure/pleasure/recreation, for school/ work to catch the bus, to visit the [former] Freemason's Arms or visiting beyond Carr Mount (for example visiting Houses Hill).
126. Users described the width of the Part A of the application route as between 2m and 5m, over a car width, the full width of the metalled track/road.
127. Users describe the surface of Part A of the application route as a previously unmade track/ rough track/ metalled (gravel, stone, hardcore compacted) which, was later sealed with tarmac.
128. All other users describe no barriers, fences, impassable stiles, locked gates, building materials or other obstructions had ever been present on Part A of the application route in question, causing users to turn back. As such, use of the way is considered to have been un-interrupted during the relevant period.
129. None of the users indicate that they used Part A of the application route on foot by force, secrecy, or permission (as of right).
130. There is no evidence that public use was challenged or that the landowner(s) demonstrated a lack of intention to dedicate a public footpath.
131. It can be noted that post August 2014, especially since 2016/7 and to date, many users have reported being variously verbally challenged to stop trespassing over Part A of the application route at Carr Mount hamlet. Specific landowners and users report these verbal challenges at this time, but this is after the relevant date and therefore has no effect in the context of the statutory provisions of s31(1) presumed dedication of a public right of way under the 1980 Act.
132. **Consequently, it is therefore 'reasonable to allege' that a public footpath subsists along Part A of the application route, such that a DMMO is recommended, which if confirmed would add the route as a public right of way on foot to the DMS.**

133. It can be noted that if members decide that a DMMO should be made based on the documentary or historic evidence or other evidence relating to DMMO S14306, then the user evidence submitted with DMMO S14201 would actually be 'by right', not 'as of right'.

Evidence of use during alternative relevant period (1977 to 1997)

134. The same evaluation applies to the public use during the alternative relevant periods 1977 to 1997 (**Figure 54**) which may be associated with the s31(6) landowner 1 deposit. Part A of the application route between Liley Lane and Kirkburton public footpath 20 at Carr Mount, was used by forty-four (44) people on foot during the relevant period: twenty-nine (29) throughout, and fifteen (15) for parts of the relevant period. At the start of the relevant period 1977 to 1997, thirty-three (33) users reported they were using the route on foot. At the end of the same relevant period forty four (44) users reported they were using the route on foot. In relation to the frequency of the public's use was: One (1) daily, three (3) twice weekly, six (6) weekly, four (4) more than monthly, thirteen (13) monthly, four (4) every few months, one (1) yearly and fourteen (14) said their use varied. It is collective use during the relevant period that is important. All users saw others using the application route. The quantity and frequency of use are sufficient to represent use and enjoyment by the public on foot without interruption. All users saw others using the application route.
135. The Council has a record dated 1985 which would be during the relevant period 1977 to 1997. This record appears to describe the refusal of access for one individual along Part A of the application route. However, Officers does not consider this is an overt act that demonstrates a lack of intention to dedicate to the public at large.
136. Therefore, the statutory test for presumed dedication is satisfied during the relevant period and the alternative relevant period, and not rebutted. It is therefore 'reasonable to allege' that a public footpath subsists along Part A of the application route, such that a Definitive Map Modification Order is

recommended, which if confirmed would add the route as a public right of way on foot to the DMS.

Implications for the Council

Working with People

137. Not applicable.

Working with Partners

138. The Officer has engaged with the public, Councillors, the Parish Council, landowners, residents occupiers and user groups when gathering and investigating the evidence connected with these applications.

Placed based Working

139. Not applicable.

Climate Change and Air Quality

140. 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

141. Not applicable.

Financial Implications for the People Living or Working in Kirklees

142. Not applicable.

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

143. 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.
144. The Council must make a decision regarding the DMMO applications and make an Order if required further to section 53 of the Wildlife and Countryside Act 1981.
145. 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 DMMO.
146. 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.
147. 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 Officers, 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.
148. However, if an Order is made and confirmed on the basis that a public footpath or public bridleway came into existence before 1959 based on documentary or historic evidence under [section 32 of the Highways Act 1980](#), the highway would automatically be maintainable at public expense.
149. Members should be aware that the presence of speed humps without a suitable method of crossing a recorded public right of way may be considered to be an unlawful obstruction for certain users and this may lead to appropriate enforcement action.

Consultation

DMMO S14201

150. On 27 July 2021, Officers conducted a twenty-eight (28) day consultation with the public, landowners/occupiers, those with private rights of access over the application routes, user groups, Kirkburton and Dalton Ward Members, and Kirkburton Parish Council. The consultees were invited to provide any comments and/or evidence by 29 August 2021. Consultees were also asked to provide responses to a specific set of questions.
151. Public notice of the consultation was provided on the Councils website under [‘Changes to the Definitive Map and Statement’](#) and titled ‘Carr Mount 201, Kirkheaton’. Notices were displayed at either end of the way (**Figure 56**), and consultees were given the option to respond via email, letter, or telephone.

Consultation responses

152. Responses were received from seventeen (17) individuals most who did not also complete a UEF, one (1) user group, four (4) residents with private rights of access, three (3) landowners, Kirkburton Parish Council, and two (2) Ward Members. The Council also had records on file from Ward Members commenting on Part A in 2014 which have also been included below. See **Figure 58** for a summary of those consulted and any responses.

Kirkburton Parish Council

153. Kirkburton Parish Council responded on the 25 August 2021, as follows:

“The Parish Council fully supports the modification to the Definitive Map and Statement, as this is an important route for the people who live in Kirkheaton and surrounding areas. It has been used for many years as a route to the Freemasons Arms, and also forms part of circular walks around Kirkheaton and Upper Hopton. I trust that following the investigation, Kirklees Council will be able to confirm the importance of the route over many years, and add it to the Definitive Map and Statement. I look forward of hearing the outcome of the investigation.”

Kirkburton and Dalton Ward Members

154. Councillor McBride responded on 27 July 2021, as follows:

"Please keep me informed of the outcome."

155. Councillor Khan responded on 28 July 2021 that:

"Residents tell me that the path was used historically for access to Little Mill on Houses Hill and was used by the Parish Church congregation to meet in the fields. In recent years usage has declined due to walkers being challenged by residents living in the area".

156. Officers understand that whilst walking between places is considered use by the public, walking to attend a church service may be considered a type of private right.

157. Previously, Councillor Hardcastle had commented on 11 August 2014, as follows:

"To the best of my knowledge this section is an unadopted road which has always been used by walkers and has at least four intersecting footpaths along its length to enable walkers the advantage of shortest routes to various destinations. At a local level it is within the Kirkburton Parish Council boundary and the Councillors for Kirkheaton and Grange Moor may be able to comment".

158. Previously, Councillor Armer had commented on 6 August 2014 that:

"... this appears to be a road and is marked by what appears to be a standard Kirklees nameplate and cul-de-sac sign. I had always assumed it to be 'a road to which the public has access', if not a public road as such."

Further Evidence from Landowners, Public, & User Groups

159. Landowner 1 provided a completed landowner evidence statement and stated that they had never seen any public use of the application route and not ever put-up notices or signs.

160. Landowner 3 opposes the application due to the suitability of the route for walkers, as it already had quite an increase in vehicular traffic, has blind corners and high hedges. Landowner 3 provided a link to a planning application and the Highways consultation response (see **Appendix B**, Planning Applications). Landowner 3 also raised again concerns about anti-social behaviour from the public in cars and on foot, as well as fly tipping.

Member of the public 5 (former landowner), said that the track had not always been within the title of one of the dwellings at Carr Mount, that they often saw walkers using the lane and did not object to it at any time. They stated that “...*the track from the bottom of Carr Mount to Liley Lane has been in constant use by walkers and as vehicular access to the properties at the bottom for at least 40 years*”

161. Resident 1 stated that a resident used to:

“...sell home grown fruit and veg ...in the forties and fifties, they had a sign at the end of the road...and hundreds of people came down the lane to buy their produce” and that ‘*permission to others to use the lane*’ for that purpose had been given.

162. Resident 2 strongly opposes the application due to it being private land and also anti-social behaviour and the cost of maintaining the route.
163. Resident 3 strongly opposes the application due to it being a private road.
164. Residents 1, 4 and 5 support the application.
165. A member of the public 10 commented they had often talked to former owners of the house adjoining the lane when walking the route.
166. A member of the public 6, referred to the application route linking into a 6-mile circular Kirkburton Parish walk called Lizzie's Lollop.
167. A member of the public 13 submitted images extracted from www.ramblersroutes.org showing the application route is considered part of a Historical walk around Lepton and Kirkheaton No3.

168. In relation to signs or waymarks, three (3) members of the public (2,4,9) described the presence of a '*footpath sign*' in the past at the Liley Lane end of way pointing towards Carr Mount which has been long since removed. Respondents were asked to clarify whether they saw this sign and when and whether it was indicating a route from Liley Lane to Carr Mount. All three (3) respondents confirmed seeing the sign for example in 1980, 1997, about twelve (12) years ago, up to eight (8) years ago. However, no photo evidence was provided.
169. The British Horse Society (BHS) stated that they believed that higher rights exist and that the DMS should record a bridleway from Liley Lane and Bellstring Lane to public bridleway KIR/220. This is over a longer route than the claimed footpath application route. The BHS reported they would object should the Council decided to make a DMMO for a footpath only.
170. Subsequently, on the 28 August 2021 BHS submitted a new DMMO application (S14306) to record a bridleway between Liley Lane to KIR/220. This comprises a bridleway addition from Liley Lane to Carr Mount, and an upgrade of KIR20 and KIR169 to a bridleway. BHS served notice on the owners and the land in October and November 2021.

Consultation Evaluation DMMO S14201

171. In summary, all user responses and some current and previous residents support the grounds on which the application is based, and some further evidence was presented. Current landowners who responded reiterated their previous and ongoing concerns and/or objections, whilst some further landowner evidence was presented. However, the landowner and residents evidence does not provide any substantial evidence of challenge to public use of a lack of intention to dedicate during the relevant period 1992 to 2014 or the alternative relevant period of 1977 to 1997.
172. Of note is the historical use of Part A of the route to '*sell home grown fruit and veg ...in the forties and fifties, they had a sign at the end of the road*' from a residency at Carr Mount hamlet. This indicates use by permission or a type of

private use but, is outside the relevant period under analysis and in any case no public user has mentioned using the route to purchase fruit and veg.

DMMO S14306

173. On 24 November 2021, the Officer conducted a 28-day consultation with the public, landowners/occupiers, those with private rights of access over the application route, user groups, Kirkburton and Dalton Ward Members, and Kirkburton Parish Council to add/upgrade the claimed public bridleway. The consultees were invited to provide any comments and/or evidence by 24 December 2021. Consultees were also asked to provide responses to a specific set of questions.
174. Public notice of the consultation was provided on the Councils website under [Changes to the Definitive Map and Statement](#) and titled 'Carr Mount 306, Kirkheaton'. Notices were displayed at either end of the way **Figure 57**, and consultees were given the option to respond via email, letter, or telephone.

Consultation responses

175. Consultation responses were received from four (4) landowners, four (4) residents, and one (1) member of the public. See **Figure 58** for a summary of those consulted and any responses.

Kirkburton Parish Council

176. Kirkburton Parish Council were consulted. No response was received.

Kirkburton and Dalton Ward Members

177. Kirkburton and Dalton Ward Members were consulted. No Councillor responded to this consultation.

Further Evidence from Landowners, Residents, & Public

178. Landowner 1 does not support the application. Landowner 1 commented that the route has never, in their knowledge been used a bridleway and has always been inaccessible, with 2 padlocked gates and signs on part of the route indicating it is not a bridleway (see **Figure 55**). Landowner 1 also had concerns about the suitability of the route as its very narrow with insufficient passing places which is used by cars and also agricultural vehicles making it unsafe for the public on foot, horseback or cycling.
179. Landowner 3 does not support the application. As part of the landowner consultation, Landowner 3 commented on the historical presence of a gate barrier (a gate or fence) at the point where public footpath Kirkburton 20/40 ends and the footpaths to each side across the fields begin (just below the farm/ cottages) at Carr Mount, which was removed around 1935 - they had heard about a fence or gate, from a neighbour. Landowner 3 also reiterated concerns about suitability of the route in terms of safety, adaptations for protection of cattle and horses in the fields.
180. Landowner 4 does not support the application. Landowner 4 commented permission had never been given to horse ride of cycle on their property and that the gates had been replaced on public footpath Kirkburton 20/30 and they had been chained and padlocked all that time [likely meaning from 1999]. Landowner 4 also expressed concerns about anti-social behaviour, costs of maintaining the route, damage to gate/post and walls and the suitability of the route for horse due to the limited number of passing places and blind bends, especially since farm vehicles use the lane. The access out of Carr Mount onto Liley Lane was also a safety concern for any horses or indeed vehicles.
181. Landowner 5 objects to the application and commented that there are locked gates at both ends of the footpath with stiles for pedestrians [Kirkburton 20]. In the past, they challenged people riding horses along this footpath.
182. Resident 1 commented that there were two locked gates on Part B of the route which had been there for a very long time since before 1983 and the route was therefore impassable to horses. A group of people associated with

one of the landowners used to have permission from other landowners to ride horses along the access route to 8/9 Carr Mount and through go through Hagg Farm's land and onto Long Tongue Scrog Lane a very long time ago, but it was stopped due to safety concerns and gates sometimes left open and the cows walked up and down the lane lost.

183. Resident 2 objects to the application. Resident 2 commented that the route is too narrow for horses and even their own traffic, and expressed concerns about costs of maintaining the route.
184. Resident 4 commented that there had always been a gate at the end of the track where public footpath Kirkburton 20 (going south) meets with Kirkburton public footpath 20 (going east and west). There has also always been a stile-type barrier at the end of the last properties (8/9 Carr Mount) which leads onto public footpath Kirkburton 169. They are padlocked for use by the farmer.
185. Resident 5 commented that the gates had been locked as long as they can remember as the farmer had cows in the field. And horses did come down in a very long time ago, but not for long as the road was not suitable, and gates had been left open and the cattle got out.
186. Officer considers that the gates referred to in paras 177 to 184 are the ones on public footpath Kirkburton footpath 20/30 below 8/9 Carr Mount and public footpath Kirkburton 169 beside 9 Carr Mount, as shown in **Figure 6 and Figure 55**, which are also referred to in the conveyances and deeds 1923 and 1936 (**Figure 36 and Figure 37**).
187. A member of the public 18 stated that it was possible to drive from Liley Lane downhill through the hamlet of Carr Mount and continued down the hill coming out into Lane Side along Long Tongue Scrog Lane. However, Officers consider that the route driven is along the access road to 8/9 Carr Mount and therefore deviates from the application route at that point.

Consultation Evaluation DMMO S14306

188. In summary, some further evidence was presented. Current landowners who responded reiterated their previous and ongoing concerns and/or objections, whilst some further landowner evidence was presented. Most of responses refer to the locked gates on public footpath Kirkburton 20/40 at the junction of public footpath Kirkburton 20/30 and public footpath Kirkburton 169/10 at the junction of public footpath Kirkburton 20/30. These are gated gaps, currently passable on foot but not on horse or cycle due to them being padlocked.
189. In relation to Part A of the application route, the consultation responses do not provide any substantial evidence of challenge to public use of a lack of intention to dedicate during the relevant period 1994 to 2014 or the alternative relevant period 1977 to 1997.
190. Of note is confirmation of the historical presence of a gate at the point where public footpath Kirkburton 20/40 ends and the footpaths to each side across the fields begin (just below the farm/ cottages) at the junction of public footpath Kirkburton 10/10 and public footpath Kirkburton 10/20 at Carr Mount, which was removed around 1935. This corresponds to the location of the oblique solid black line shown in the documentary evidence section on the 1893 OS map (**Figure 17**) and subsequent maps including the 1932 OS map (**Figure 25**), which is not shown on the 1961 OS map (**Figure 30**), which may affect ease of use as a through route.
191. Landowner 5 mentioned challenging horse riders using the public footpath on their land in the past, but it is not known whether it was private use or public use or what route they were taking beyond landowner 5s landholding. Resident 1 mentioned past use by horse with permission and Resident 5 mentioned past use by horse, but again it is not known if this was public use, private use or with landowner permission.

Next Steps & Timelines

192. 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.

193. 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.
194. 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.
195. If the Order is unopposed, the Council may confirm it. 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.
196. 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

DMMO S14201

197. Based on an overall assessment of the user evidence, landowner evidence and other evidence, Officers consider that it is reasonably alleged that Part A of the application route leading from the Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to public footpath Kirkburton 20 subsists as a public footpath 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.
198. Officers therefore recommend that a Definitive Map Modification Order (an Order) is made under section 53(3)(c)(i) of the 1981 Act, to record a public footpath on the Definitive Map and Statement (DMS) leading from Liley Lane/ Bellstring Lane public carriageway B6118 (point A on the indicative map in **Figure 1, page 45 below**) through Carr Mount to public footpath Kirkburton 20 (point B on the indicative map in **Figure 1, page 45 below**).
199. The indicative map in **Figure 1** shows the well-defined line of Part A of the route. The width of the route to be recorded would have a variable width along the metalled track, ranging between 3 to 5 metres, as shown by the shading on the indicative plan in **Figure 1, page 45 below**.
200. 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 civil standard burden of proof which is 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 S14306

201. Based on an overall assessment of the documentary, user evidence and landowner evidence, Officers determine that the available evidence is not sufficient to either reasonably allege or demonstrate, on the balance of probabilities, that both Part A and Part B of the application route subsists as a

public bridleway or vehicular highway. It is recommended that a DMMO is not made on the basis of this application.

DMMO Confirmation

DMMO S14201

202. Officers also recommend that, should the Order relating to DMMO S14201 to record a public footpath over Part A of the application route 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 Part A of the application route on the DMS, for use by the public on foot.

Contact Officer

203. Deborah Stephenson, Assistant Definitive Map Officer, 01482 221000,
deborah.stephenson@kirklees.gov.uk

Background Papers and History of Decisions

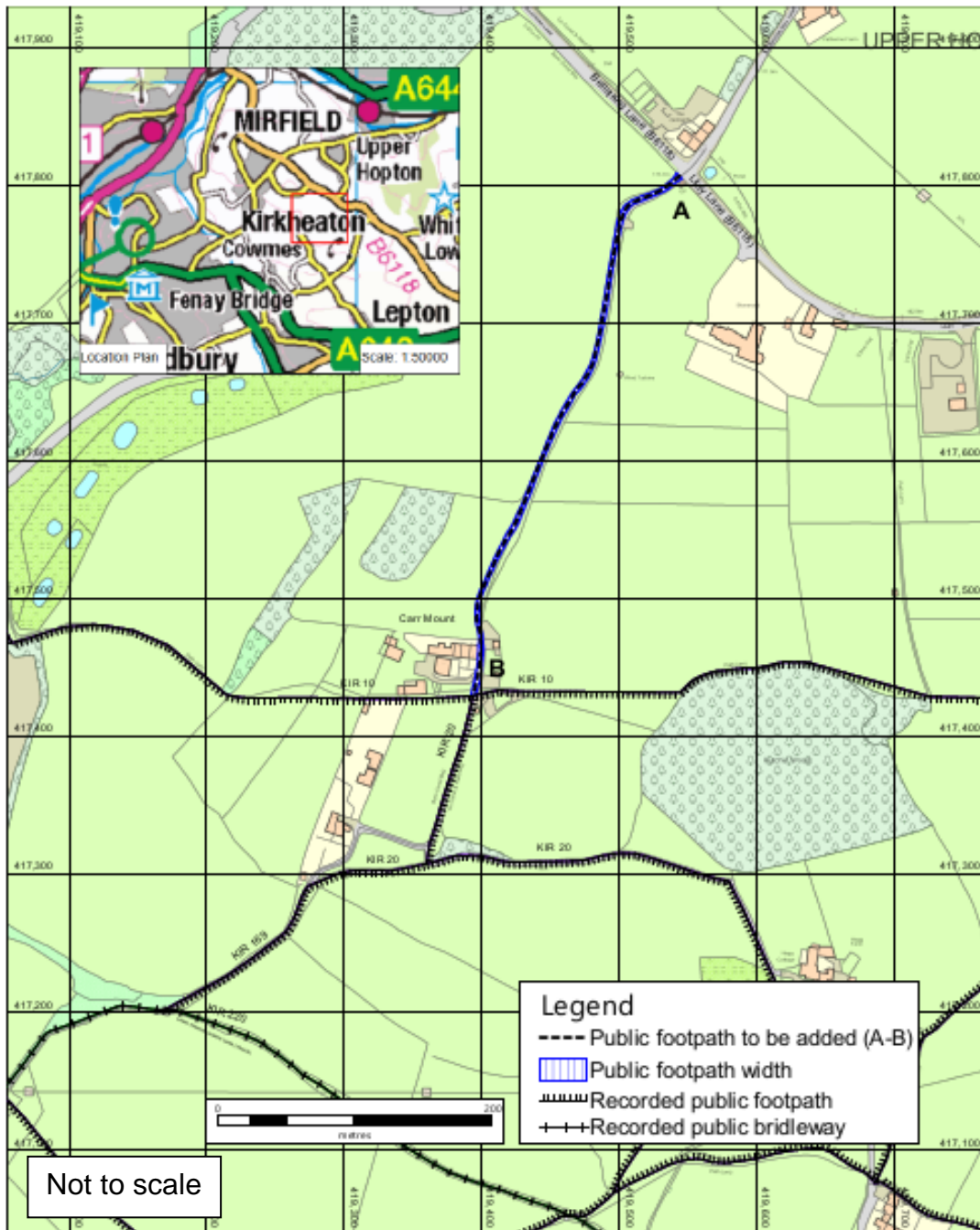
204. This report is accompanied by the following appendices:

- **Appendix A Guidance to Members**
- **Appendix B Officer Investigation Report**
- **Appendix C Figures and Photos**

Service Director Responsible

205. Highways and Streetscene; Environment & Climate Change Directorate

Figure 1: Indicative map - Public footpath recommended to be added (A - B)



	<p>Indicative Map - Public Footpath recommended to be added (A-B)</p>	
	<p>Date Map Prepared: 12/01/2024</p>	
	<p>Scale: 1:2,500 @A3</p>	
	<p>© Crown Copyright and database right 2024. Ordnance Survey AC0000851069</p>	

This page is intentionally left blank

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

Officer Investigation Report

DMMOs S14201 and S14306

Carr Mount

25/01/2024

CONTENTS

DOCUMENTARY EVIDENCE	4
NON-ORDNANCE SURVEY MAPS	4
1793 Map of Lands at Kirkheaton	4
1812 Map of Estate in Kirkheaton	6
1799 Kirkheaton Moor Draft Enclosure Map	8
1843 OS First Series NLS Australia	9
1846 Tithe Plan Showing Woods in the Township of Kirkheaton	9
1857-1913 Plan of HF Beaumont's Estate in Kirkheaton	10
ORDNANCE SURVEY MAPS	12
1855 OS 6-inch England and Wales Yorkshire Sheet 247	15
1893 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLVLL.13	16
1894 OS 6-inch England and Wales Yorkshire CCXLVLL.9	17
1896 OS 1-inch England and Wales Sheet 77 Huddersfield (Hills)	17
1903 OS 1-inch Cassini Sheet 110 Sheffield and Huddersfield	18
1907 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLV11.13	19
1908 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW	20
1919 OS 25-inch England and Wales Yorkshire CCXLVII.9 and CCXLVII.13	20
1930 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW	20
1932 OS 25-inch England and Wales Yorkshire CCXLVII.9	20
1938 The Authentic Map Directory of Southwest Yorkshire	21
1904 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9	21
1947 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW	22
1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series	22
1961 OS 1 to 25000 1 st Edition	23
THE FINANCE ACT 1910	23
CONVEYANCES AND DEEDS	28
THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949	31
HIGHWAYS REGISTRY AND THE LIST OF STREETS	33
EVIDENCE OF REPUTATION	34
Locally Published Walking Route	35
Countryside Stewardship Scheme	35
PLANNING APPLICATIONS	36
DOCUMENTAY EVIDENCE EVALUATION	37

USER EVIDENCE 40

 Bringing into Question..... 41

 Relevant Periods 45

 Evidence of Use during Relevant Period 1994 to 2014 46

 Actually enjoyed..... 47

 By the public..... 48

 Without interruption 48

 As of right 49

 Highway status..... 49

 Evidence of a Lack of intention to dedicate a Public Right of Way..... 51

USER EVIDENCE EVALUATION 56

 Conclusion (1994 to 2014 relevant period) 56

 Conclusion (alternative relevant period 1977 to 1997) 56

DOCUMENTARY EVIDENCE

NON-ORDNANCE SURVEY MAPS

1793 Map of Lands at Kirkheaton

Background

1. A cadastral survey of Kirkheaton by a John Johnson, Land Surveyor was made in 1793 entitled 'Map of Lands in Kirkheaton' (the 1793 Map of Kirkheaton), as shown in **Figure 8**. It is available at Kirklees Archives ([DD/WBE/pe2](#)). The map was produced on behalf of Richard Henry Beaumont, Esquire, of Whitley Hall, (1749-1810) who was the principal owner of the soil, and Lord of the Manor of Kirkheaton.
2. A 'cadastral' of a map or survey shows the extent, value, and ownership of land, especially for taxation. The 1793 Map of Kirkheaton is a comprehensive survey of land within the manor and provides an accurate portrayal of public and private roads, public rights of way, buildings, watercourses, common land, and inclosed land.
3. The map was supplemented by a book of reference available at Kirklees Archives ([DD/WBE/150](#)), which states that the purpose of the map and reference book was to provide a valuation of all 'demesne lands', which is all the land retained and managed by the Lord of the Manor for their own use, occupation, or support. These lands were let to farms in the manor of Kirkheaton.

Evidential Weight

4. The 1793 Map of Kirkheaton provides an accurate cadastre of the physical landscape and road system that existed in 1793. The map has a key that is difficult to read due to fading and historic water damage, but it states that public roads were coloured sienna (as shown in **Figure 9** by 'The Explanation'). The document therefore provides a distinction between roads that were considered to have a public or private status.

Analysis

5. The 1793 Map of Kirkheaton is the first cartographical map available which shows the physical existence of the application route and its character in 1793. As noted above, the primary purpose of the map was to record the valuation of lands owned and let by the Lord of the Manor, and this valuation would be affected by the existence of public or private ways.
6. In 1793, the distinction between highways and private ways was defined as

“... that every way from town to town may be called a highway, because it is common to all the king’s subjects;... but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of particular inhabitants of such parish, may be called a private way, but not a highway, because it belongeth not to all the king’s subjects, but only to some particular persons...”
7. As shown in **Figure 8**, the application route is not annotated as a public road on the 1793 Map of Kirkheaton. It is featured as a cul-de-sac route which starts on a yellow shaded road (Liley Lane) continues across a number of fields and terminates at a field in the vicinity of what is now Carr Mount, (some faint marks possibly indication a structure at Carr Mount is visible on this map).
8. To the north, the application route is enclosed for a short section by what is likely to be fences or hedges or a drystone wall. There is a faint line across the end of the enclosed section indicating it is possibly separated from the land holdings on either side by a fence, hedge, wall or gate or it may indicate this short route is in different ownership.
9. Then leading southerly across two fields to the termination point, a single boundary such as a fence, hedge, or wall on the east side of the application route is shown.

10. As the application route is neither shown as a through route or nor coloured yellow as a public road, it is most likely to be a private road providing access for owners and occupiers to the surrounding fields.

1812 Map of Estate in Kirkheaton

Background

11. This map covers a similar area and serves a similar purpose to the 1793 Map of Kirkheaton. The document titled a 'Plan of an estate situate in the township and parish of Kirkheaton in the West Riding of the County of York belonging to John Beaumont, esquire', who inherited the Beaumont Estate in 1810 and lived from 1752 to 1820. The map shown in **Figure 10** is available at Kirklees Archives [DD/WBE/pe/5](#). The map was surveyed by a Samuel Gawthorpe at a scale of three chains to one inch (1:2376).
12. The purpose of the document was most likely to provide an update of the value of lands within the manor of Kirkheaton for the new Lord of the Manor. The map is coloured with key showing buildings owned by J Beaumont and also includes field and owners/tenants' names. As with the 1793 Map of Kirkheaton, the 1812 Plan of Estate in Kirkheaton is a comprehensive survey of land and provides an accurate portrayal of roads, buildings, watercourses, common land, and inclosed land.

Evidential Weight

13. Unlike the previous document, the 1812 Plan of Estate in Kirkheaton does not provide a direct distinction between public or private roads. The evidential weight of the document is therefore based on the depiction of the application route within the physical landscape. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential through route.

Analysis

14. The 1812 Plan of Estate in Kirkheaton shows the application route leading to and passed a property named Carr Mount, probably a farm, at the centre of the image.
15. As with the 1793 Map of Kirkheaton, the very north part of the application route is enclosed on both sides as it continues to fields referenced '301' and '305'. There is a faint line across the end of the enclosed section indicating it is separated from the land holdings on either side.
16. The application route then continues southerly along the field edges numbered '304', '303', and '280', with a pecked line to the west and a boundary on one side only and to the east.
17. At Carr Mount, the route continues south across land named as 'Joseph Ramsdens Estate'. The route terminates at the boundary of Joseph Ramsdens Estate abutting field '264', as a cul-de-sac.
18. At this period of time thoroughfares from town to town (as per para 6.) on this map are annotated as leading to their destination, such as 'To Hopton'.
19. Additionally, paths on this map are recorded as dashed lines, such as a path to the east at Carr Mount which is currently Kirkburton recorded public footpath No. 10 on the DMS.
20. The 1812 Plan of Estate in Kirkheaton shows that the application route was, a cul-de-sac private road leading to Carr Mount and agricultural land. The only significant change compared to the 1793 Map of Kirkheaton is the extension of the track across land named as 'Joseph Ramsdens Estate' which terminates as a cul-de-sac to the boundary of field number '264'.
21. The application route does not form a through route and there is no indication of any public rights of way at this period of time over the application route.

1799 Kirkheaton Moor Draft Enclosure Map

Background

22. A 'Kirkheaton Moor draft enclosure map' dated 1799 as shown in **Figure 15** is available to Kirklees Archives ([WYK1978/KH1799](#)). It relates to an Enclosure Act of 1799 which confirmed an earlier agreement. An amending Act was passed in 1804, but no enclosure award was ever made. A copy of the enclosure act 1799-1804 can be found at DD/WBE/II/3, 5 & 18 and DD/WBE/112, but is not referred to further here.

Evidential Weight

23. This map shows field boundaries with names and roads such as turnpikes, occupations roads and thoroughfares. The map does not cover the location of the application route at Carr Mount, however there are such roads on this map in the vicinity of Heaton Moor worthy of note.
24. Simply put, a 'turnpike' is a road with a toll gate for the purpose of collecting road tolls for maintaining the road – the road may or may not have public rights. The term 'occupation road' is (and was) normally used to describe roads laid out for the benefit of the occupiers of adjoining properties and not a public highway. A thoroughfare from town to town would usually be a king's highway and therefore a public highway (as per para 6.)

Analysis

25. The extract in **Figure 15** shows a turnpike road from Cooper Bridge to Wakefield (present day public highway Moor Top Road B6118), an occupation road (present day public highway Moorside Road) and a road from Heaton to Mirfield (present day public highway Heaton Moor Road).
26. This map can be considered together with the '1846 Tithe Plan showing woods in the township of Kirkheaton' (**Figure 14**), which also features these three roads, supporting the inference that the route at Carr Mount was an unimportant route not worthy of featuring on the 1846 map.

1843 OS First Series NLS Australia

Analysis

27. The applicant provided a map [Huddersfield Sheet 88 NE](#) engraved and printed by Ramshaw, which is available online at the [National Library of Australia \(nla.gov.au\)](#), as shown in **Figure 12**.
28. The map shows the application route over Part A leading down from Liley lane, and a Part B leading from up from Long Tong Scrog, but Part B is two halves, one from Long Tongue Scrog, then what looks like a gap, and the one leading to Carr Mount farm, as shown in the close up image. The routes does not appear to connect to create a through route from Part A to Part B.
29. Although the applicant believes the date of the map is 1813, Officers consider the date of this map is very unlikely to be 1813. The key at the edge of the Sheet 88 says it was published on 20 February 1943, which is closer in time period to the other OS maps.

1846 Tithe Plan Showing Woods in the Township of Kirkheaton

Background

30. A tithe plan showing woods in the township of Kirkheaton by a W. Wordsworth, Black Gates made in 1846 as shown in **Figure 13** is available at Kirklees Archives ([B/AHR/p2](#)). It is part of the larger area covered by the Kirkheaton tithe map held at the National Archives (same date, also by W Wordsworth). 'The Explanation' on the map states it forms the accompanying map or plan referred to in the apportionment of the rent charge in lieu of tithes in the township of Kirkheaton. Tithes were originally a tax which required one tenth of all agricultural produce to be paid annually to support the local church and clergy.

Evidential Weight

31. This map only refers to areas of woodland with a number of connected roads some leading to settlements off map, probably to provide a spatial context to assist with the locating the woods. No distinction has been made on this map

between public and private roads. Roads on this map which are thoroughfares are annotated to say they lead to settlements e.g., 'from Dalton'.

32. The evidential weight of the document is therefore based on the depiction of the application route within the physical landscape and its significance relative to other routes and roads depicted. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential thoroughfare.

Analysis

33. Note the location of Hutchin Wood and the rectangular woodland to the north-west, as shown in **Figure 13**. The application route would have been located between these two woods, but no route is shown.
34. Note that the road indicated on the 1799 Kirkheaton Moor draft Enclosure Map (**Figure 15**) as an occupation road which later became a public highway and which in modern times is called Moorside Road, is also depicted on this 1846 map (**Figure 13**). Shown also on the 1846 map are a turnpike road (now Moor Top Road B6118), and a road from Heaton to Mirfield (now Heaton Moor Road).
35. This map infers therefore that in 1846 the application route were considered to be an unimportant private route.

1857-1913 Plan of HF Beaumont's Estate in Kirkheaton

Background

36. A map included within the Sale of Whitley Beaumont general estate papers 1857 -1913 surveyed by a WJ Dunderdal is available at Kirklees Archives ([DD/WBE/pl/10](#)), as shown in **Figure 11**. The map is titled 'Plan of the Estate situae in the township and parish of Kirkheaton in the County of York belonging to H.F.Beaumont Esquire' (Plan of H F Beaumont's Estate in Kirkheaton).
37. Kirklees Archives date this record in their collection between 1857 and 1913. The first date of 1857 refers to the date H F Beaumont inherited the estate

from his god father Richard H Beaumont (1805-1857). The last date, of '1913', is the date of H F Beaumont's death. However, the actual map is undated.

Evidential Weight

38. The plan shows field numbers, tenants' names, and names of other landowners. The purpose of the document was most likely to provide a further update of the value of lands within the manor of Kirkheaton for the new Lord of the Manor. As with the 1793 Map of Kirkheaton, the 1812 Plan of Estate in Kirkheaton is a comprehensive survey of land and provides an accurate portrayal of roads, buildings, watercourses, common land, and inclosed land.
39. The evidential weight of the document is therefore again based on the depiction of the application route within the physical landscape. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential thoroughfare.
40. Because the purpose of the survey related to landownership and tenanted lands rather than a survey of physical features only, the surveyor of this map may have had their own cartographic symbology in relation to how to depict land holdings, tenanted land, boundaries, and physical features and these would not necessarily follow any Ordnance Survey topographic or cartographic symbology at the time – particularly in relation to any structures across the application route.

Analysis

41. The application route leads off what is now Liley Lane and is enclosed between fields 305 Scotland and 301 Little Ing and to the same extent as it was in 1793 and 1812. The route is shown as separated from those two fields.
42. As with the 1793 and 1812 and 1846 maps, the solid line across the south of the enclosed section here is not thought to represent a fence or gate, it is thought to represent the area of land that makes up field number 304 Great Carr. The same annotation, a solid black line leading across the route, is used for field numbers 303 Upper Carr and 280 Upper Shrogg Close, again thought

to represent the area of land making up those fields rather than any structure across the route.

43. From the enclosed section, the route is then shown as a singled pecked line with one boundary to the east. The depiction of the route along this section contrasts with the 1855 Ordnance Survey map (**Figure 16**) which shows the route enclosed over a much longer length.
44. The route continues through a land holding at Carr Mount named Duke Oldroyd and terminates at the boundary with field 264 Four Days Work. This is the same termination point as the 1812 Map of Estate in Kirkheaton. And again, the application route is not shown as a through route.
45. At Carr Mount farm itself, there are several solid black lines across the route. These probably depict land holding boundaries, expect for the southern line leading to a building which may or may not be a structure such as a fence, wall, or gate.
46. Similar to the other preceding maps there are some roads on this map shown leading to settlements as through routes, e.g., 'to Hopton'. All roads and routes are coloured the same therefore nothing can be inferred from this map about their private or public status in relation to colouring.
47. In conclusion, the application route at this time is mostly likely to be a private route providing access to fields for owners or occupiers and for access to Carr Mount farm. There is uncertainty about whether Carr Mount farm was fenced, walled, or gated at its southern end.

ORDNANCE SURVEY MAPS

Background

48. The Ordnance Survey (OS) 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.

49. The Ordnance Survey originated for military purposes, however, rapid urbanisation and new transport networks required accurate large-scale maps and in 1841 an Act of Parliament granted the Ordnance Survey was granted the right to enter land and map physical and administrative boundaries.
50. 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.
51. Ordnance Survey maps are therefore topographical and do not fix or record the invisible line of a legal property boundary. 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* legal presumption. Property boundaries may depend on or be coincident with surveyed map features, such as: fences, walls, hedges, similar visible objects and naturally occurring divisions.
52. The Ordnance Survey produced a series of topographic maps at different scales, as follows:
 - The OS 1-inch maps (1:63360) due to their scale are schematic showing the character of routes and their standard of repair, rather than accurately depicting physical features, such as gates.
 - The Ordnance Survey 6-inch maps (scale 1:10560) record most man-made and natural features in the landscape. Every road, railway, field, fence, wall, stream, and building is shown, and even smaller features such as letter boxes, bollards on quaysides, mile posts, and flagstaffs.
 - Ordnance Survey 25-inch maps (scale 1:2500) County Series (1841-1952) are a standard topographic authority, depicting practically all human and natural features in the landscape with great accuracy – ‘...every road, railway, field, fence, wall, stream, and building is shown.

In relation to gates it also states that “the recording of bay windows, garden paths, gates (except across roads), and hedgerow timber was discontinued after 1892”.

53. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways. However, the disclaimer which has been added to editions since the 2nd edition maps (1888-1913), 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*’.
54. [Ordnance Survey Instruction to Field Examiners 1905](#) by Colonel Duncan A Johnston, CB., Director General of Ordnance Survey defines Occupation Roads, refers to fences and gates. Para 34 states that ‘.. *gates are to be shown as fences*’, meaning as a black solid line.
55. [OS Master Map real world object catalogue](#) dated 2001 states that fence, wall, or gate are shown as a topographic line barrier.

Evidential Weight

56. The Ordnance Survey maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes.
57. The detailed, large scale 1:25000 maps from the 1870’s onwards provide the best evidence of the position and width of routes and the presence of any structures on them. This may assist with consideration of any barriers affecting ease of access in relation to the existence of through routes.

1855 OS 6-inch England and Wales Yorkshire Sheet 247**Analysis**

58. An extract from the 1855 published OS 6-inch England and Wales map – Yorkshire Sheet 247 surveyed between 1850 and 1855 as shown in **Figure 16** is available online at the [National Library of Scotland \(NLS\)](#).
59. The application route is generally shown leading off Liley Lane, continuing southwards to Carr Mount and beyond and terminating westwards to a strip of woodland beside present day Long Tongue Scrog. Although the route continues to Long Tongue Scrog, there are two routes abutting each other here and it does not appear to join into Long Tongue Scrog.
60. Relative to preceding maps above, the application route is enclosed over a much longer stretch from Liley Lane to the location of the sandstone quarry. Beyond the quarry, the application route is shown variously as a double pecked line with a boundary on one side possibly indicating a ‘track’ which continues over a much wider route.
61. Should fences have been present on the application route, it can be assumed that they would have been shown on this map as a solid black bar across the road. It can also be assumed that gates were usually shown as fences. However, there are no lines shown across the application route on this 6-inch map, except where it terminates near Long Tongue Scrog.
62. In conclusion, whilst there is a much longer route shown without barriers it appears likely that at this time it is likely to be a private route providing access to fields for owners or occupiers and for access to the sandstone quarry, to Carr Mount farm and the woodlands beyond.

1893 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLVLL.13**Analysis**

63. The 1893 OS 25-inch England and Wales – Yorkshire CCXLVLL.9 and CCXLVLL.13 published in 1893 and surveyed in 1888 as shown in **Figure 17** are both available online at the [CCXLVLL.9, NLS](#) and [CCXLVLL.13, NLS](#).
64. The application route is generally shown leading off Liley Lane, with a faint line across after a short section, and then continuing south-west to Carr Mount and beyond and terminating westwards to a strip of woodland beside Houses Lane (present day Long Tongue Scrog). However, dashes are shown between the two abutting routes indicating a change of topographical unit and there is the possibility of a through route as it appears to join into Long Tongue Scrog.
65. The route from Liley Lane is enclosed by fences, walls, or hedges to the location of the sandstone quarry which is the same point as the 1855 map.
66. What is different from the 1855 map is that the route from Liley Lane to Carr Mount is now shown as a separate topographical feature with its own object number (183) and area size (.513). Bearing in mind that the OS did not record landownership or property boundaries, only physical features, this may indicate that the route was indeed bounded on both sides by a fence, hedge, or wall and/or that the route had a different topographical surface from the surrounding agricultural fields.
67. This in turn, differs to Part B of the application route leading southerly from Carr Mount, which is shown with a dotted line, with an 'S' symbol and a solid line. The 'S' symbol is an areas brace symbol or 'field tie' and joins areas of land together to give a single parcel number and may indicate that the route did not have a different surface from the surrounding fields.
68. What is also different from the 1855 map, is that Carr Mount farm is shown as enclosed. In contrast to the 1855 map, several solid black lines are shown to the north and to the south of Carr Mount farm and south of Carr Mount, possibly indicating a change of surface, fence, or a gate in each position,

particularly the oblique line immediately to the south of Carr Mount farm which may indicated a gate.

69. What is most different is that although barriers are shown south of Carr Mount, the route appears to now join into Long Tongue Scrog Lane. This is the first indication that the route may be a through route.

1894 OS 6-inch England and Wales Yorkshire CCXLVLL.9

Analysis

70. The 1894 OS six-inch England and Wales, Yorkshire Sheet CCXLVII.SW published in 1894 and surveyed in 1888 as shown in **Figure 18** is available online at the [NLS](#).
71. The application route is shown in the same manner as the 1893 OS 25-inch map expect for the lack of a line across the enclosed section as it leaves Liley Lane.

1896 OS 1-inch England and Wales Sheet 77 Huddersfield (Hills)

Analysis

72. The applicant submitted a copy of an extract from the 1896 One-Inch, England and Wales, Revised New Series 1892-1908, Sheet 77 – Huddersfield (Hills), and a corresponding map key, as shown in **Figure 20**. It's available online at [NLS](#).
73. Whilst the application route is shown an unmetalled road from Liley Lane to a similar termination point as with previous maps where it is shown abutting but not joining into Long Tongue Scrog.
74. The applicant indicated that the route was shown as a '*Third class fenced metalled road*', but Officers advise that the route is much narrower that, and whilst the unmetalled road looks like it is shaded on the key, looking more closely it is not shaded. Officers therefore consider the route is shown as an unmetalled road, abutting Long Tongue Scrog, and therefore does not indicated a through route.

75. Due to their scale, these documents are schematic, showing the character of routes and standard of repair, rather than accurately depicting physical features, such as gates.

1903 OS 1-inch Cassini Sheet 110 Sheffield and Huddersfield

Analysis

76. The applicant submitted a copy of an extract from the 1903 Cassini Revised Series Map One-Inch, England and Wales, Revised New Series 1892-1908, Sheet 77 – Huddersfield (Hills), and a corresponding map key, as shown in **Figure 21**. It is available at [NLS](#).
77. The maps are based on the Ordnance Survey's Revised New Series (in colour) maps, which were published in 1903. The historical maps have been digitally re-projected, enlarged, and combined to match the current Landranger series and reproduced with the scale changed from one inch to the mile, to 1:50000 to enable direct comparison. The 1-inch scale was a standard topography, and the physical and human landscape was considerably generalised.
78. The legend to the map provides eight categories for the depiction and classification of metalled (i.e., using compacted gravel) and unmetalled roads for vehicles:
- Fenced First Class Metalled Roads were shown coloured orange, or carmine, with wide and bold black parallel lines.
 - Fenced Second Class Metalled Roads were also shown coloured orange but thinner than the previous category and with only one bold black line.
 - Fenced Third Class Metalled Roads were uncoloured with no bold black lines, but the same width as the previous category.
 - Unmetalled Roads were thinner and coloured grey.

- All the categories had a corresponding annotation if the roads were unfenced, and this was simply shown with dashed lines.
79. In 1884, an instruction to OS surveyors directed that, “*All metalled public roads for wheeled traffic kept in good repair by the authority will in future be shaded*” meaning ‘coloured’. In the [Ordnance Survey Instruction to Field Examiners 1905](#) Second Class Metalled Roads are described as ‘*in good repair*’, and ‘*fit for fast traffic in all seasons*’ and *it should be possible to drive carriages and light carts over them at a trot*’.
80. The 1903 Cassini map shows the application route as an unmetalled fenced road which would be one that was not in good repair and not repairable by a public authority.
81. Furthermore, whilst the unfenced metalled road continues from Liley Lane to south of Carr Mount is again does not appear to join into Long Tong Scrog as shown at the red circle annotation in **Figure 21**. It is therefore not considered to be a through route at this time.

1907 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLV11.13

Analysis

82. An extract from the 1907 25-inch England and Wales, Yorkshire CCXLV11.9 and CCXLV11.13 (Huddersfield, Kirkburton and Mirfield) map shown in **Figure 22** is available online at the [CCXLV11.9, NLS](#) and [CCXLV11.13, NLS](#). It was revised in 1904 and published in 1907.
83. As with the previous maps and since 1893, Carr Mount farm is shown as enclosed. Two internal barriers appear to be depicted, which could be gates or fences, as indicated by the two red circles.

1908 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW**Analysis**

84. An extract from the 1908 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW including Dewsbury, Kirkburton Mirfield surveyed between 1904 and 1905 shown in **Figure 23** is available online at the [CCXLVII.SW, NLS](#).
85. As with the previous maps and since 1893, Carr Mount farm is shown as enclosed. Internal barriers may also be depicted, which could be gates or fences. Gates or fences are also shown on Part B.

1919 OS 25-inch England and Wales Yorkshire CCXLVII.9 and CCXLVII.13**Analysis**

86. An extract from the 1919 25-inch England and Wales, Yorkshire CCXLV11.9 and CCXLVLL.13 maps surveyed 1914 shown in **Figure 24** are available online at the [CCXLV11.9, NLS](#) and [CCXLV11.13, NLS](#).
87. The route is shown in largely the same manner as previous maps. At Carr Mount farm it is shown as enclosed, and south of Carr Mount farm there are solid lines across the route in the same positions as previous. However, there an internal barrier is not shown as it was in the 1907 25 inch or the 1908 6-inch maps.

1930 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW**Analysis**

88. The 1930 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1930 is available online at the [CCXLVII.SW, NLS](#).
89. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908 OS 6-inch map.

1932 OS 25-inch England and Wales Yorkshire CCXLVII.9**Analysis**

90. An extract from the 1932 25-inch England and Wales, Yorkshire CCXLV11.9 and CCXLV11.13 map surveyed 1930 shown in **Figure 25** is available online at the [CCXLV11.9, NLS](#) and [CCXLV11.13, NLS](#).
91. The route is shown in a similar way to previous maps, and Carr Mount farm is shown as enclosed and there are lines across the route to the south of Carr Mount. A building which is now No. 8/9 Carr Mount is shown south of Carr Mount.

1938 The Authentic Map Directory of Southwest Yorkshire

Analysis

92. The applicant submitted a copy of an extract from The Authentic Map Directory of Southwest Yorkshire dated 1938, as shown in **Figure 26**.
93. The 'Introduction' says the purpose of the map was to '*name all but the small less-important thoroughfares*' shows a cul-de-sac route over Part A, but no route at all over Part B, as shown in **Figure 26**.

1904 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9

Analysis

86. The 1904 Bartholomew Revised Half-inch map (**Figure 27**) which according to the key showed '*first class roads*', '*second class roads*', '*passable roads*' and '*footpaths and bridlepaths*', does not show the application route at all, neither Part A nor Part B.

1943 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9 (Peak District).

Analysis

94. As shown in **Figure 28**, the purpose of this map was to show '*through routes*', '*other good roads*, serviceable motoring roads and '*other road and tracks*'. However, again the map does not show the application route at all, neither Part A nor Part B.

1947 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW**Analysis**

95. The 1947 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1938 is available online at the [CCXLVII.SW, NLS](#).
96. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908 and 1930 OS 6-inch maps.

1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series**Analysis**

97. The applicant submitted a copy of an extract from the 1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series as shown in **Figure 29**.
98. The purpose of the map is to show ward boundaries. The applicant considers that according to the key, the route is shown as a '*fenced B class of Road*'. The key is difficult to read but that would make it a relatively significant road, which it is not, and Officers advise that the route is shown as a fenced or unfenced '*Other road*' not classified by the Ministry of Transport.
99. Again, looking more closely there are solid black lines to the north and south of Carr Mount, indicating it is enclosed, possibly preventing use as a through route.

1949 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW**Analysis**

100. The 1949 6-inch map England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1948 is available online at the [NLS](#).
101. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908, 1930 and 1947 OS 6-inch maps.

1961 OS 1 to 25000 1st Edition

Analysis

102. The 1961 map is available on Kirklees Council's Kompass mapping system, as shown in **Figure 30**. This map shows that the private road providing access to No's 8 and 9 Carr Mount, deviates from the application route, as indicated by the red circle. And it is this route that features on the Council's List of Streets, as shown in **Figures 41** and **42**.

THE FINANCE ACT 1910

Background

103. A land valuation survey was carried out in the UK between 1910 and 1915, organised according to income tax parish, provided for by The Finance Act 1910. This created a baseline survey for the levy and collection of duty on the incremental value of land between its valuation as at 30 April 1910 and its subsequent sale or other transfer.
104. There was a complex system for calculating the 'assessable site value' of land which allowed for deductions for the amount the gross value would be diminished if the land were sold subject to, for example, any fixed charges or public rights of way or any public rights of user or to the right of common or to any easements affecting the land. As the presence of a right of way would reduce the land value, owners were able to claim relief from tax between 1910 and 1920, when the Act was repealed.
105. The valuation survey record plans are printed OS map sheets, annotated by hand with plot numbers which act as an index for field books containing assessments of individual property or parcels of land (hereditaments) which are usually marked in red ink.
106. Valuation Books were the first major record created by the Valuation Office at the start of the survey. They are distinct from field books, which were the final record compiled after the survey was completed, and which usually contain more information.

107. As the existence of a public right of way could be off set against the increment value duty and therefore many 'ways' are recorded in Valuation Officer Field Books.

Evidential Weight

108. As indicated by caselaw, the significance of the exclusion of a route from assessable land requires careful consideration which concludes that the Finance Act records are not definitive and are simply one part of the jigsaw puzzle to be considered along with other relevant evidence. Therefore the 1910 Finance Act documents provide no evidential weight in isolation.
109. Evidence of the possible existence of a public right of way in the Finance Act documentation usually arises, as follows:
- reference to it in one or more of the various documents forming part of the valuation process (landowner forms, field books, valuation books)
 - exclusion of a route from the assessable parcel of land shown on the map record
110. As part of the 1910 valuation of land, landowners were asked whether the relevant unit of land ownership (known as hereditaments) were subject to any public rights of way or any public rights of user. Valuers produced coloured plans based on Ordnance Survey 1:2500 maps and recorded details of the hereditaments and various deductions into Field Books used for inspections and the information then transferred into Valuation Books. All land was required to be valued. Any excluded land might be for three reasons, as follows:
- routes which corresponded to known public highways, usually vehicular were not normally shown in hereditaments – this land would be shown 'uncoloured' and 'unnumbered' and separated from numbered land parcels by 'broken braces' or 'brackets. Whereas footpaths and bridleways were usually dealt with by recorded deductions in Field Books and Valuation Books.

- there are some cases of private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments
 - instructions issued by Inland Revenue to valuers in the field deal with exclusions of roadways from plans, but do not explicitly spell out all the circumstances in which such an exclusion would apply
111. Landowners did not have to claim the deduction in valuation for public rights of way. The interpretation of uncoloured or excluded roads is controversial. The primary purpose of the compilation of the record plan and field book was not to determine public rights or the status of highways, but to value land in connection with the increment value duty and inheritance tax.
112. Caselaw dictates that two criteria have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan 1) the route is within the jurisdiction of an Urban District Council, or it is a Main Road 2) the route is a highway maintainable at public expense.

Analysis

113. The applicant provided working copies of the 1910 Valuation Reference Map available at Wakefield Archives References C243 247/9 & C243 247/13 as shown in **Figures 31 and 32**.
114. The applicant reports that the extracts are from records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 134/6/47 & IR 134/6/51.
115. Generally, it can be noted that there are no broken braces across any part of the application route to confirm it was separated from the surrounding hereditaments.
116. The first section of the application route at Part A has bold red line boundaries down each side to the point where it joins the northern boundary of with field number 182, suggesting it is separated from the hereditaments. However, as there is not a red line across the route at either end, it is 'open' at both ends.

To the north it is open to Liley Lane and to the south it is open to assessable parcel 3 which stretches from Liley Lane to Upper Stone Royd to north of Carr Mount and includes the former sandstone quarry. It is therefore inconclusive as to whether the route was or was not separated from the surrounding hereditaments, but for the sake of an analysis only, it is assumed that it is separated.

117. At Carr Mount hamlet part of Part A and part of Part B is not separated from hereditaments and it lies entirely within assessable parcel 69.
118. Below Carr Mount hamlet, part of Part B is not separated from hereditaments and lies within assessable parcel 53pt (meaning part of hereditament 53).
119. The very southerly end of Part B is separated from the adjacent hereditaments.
120. Extracts from the Valuation Book for the Parish of Kirkheaton Inland Revenue 1910 Valuation Book Ref 234-236 associated with the Valuation Office survey: Record Plan IR 247/1243 above, can be found at **Figure 33**.
121. Parcel 3 is named '*Upper Stoneroyd*', owned by '*Ralph Beaumont*' and occupied by '*James ...*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 3. This means the landowner has not recorded any deductions for public rights of way or use on this land.
122. Parcel 53 is named '*Houses Hill*', owned by '*Henry Lodge*', and occupied '*Henry Fisher*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 53. This means the landowner has not recorded any deductions for public rights of way or use on this land.
123. Parcel 69 is named '*Carr Mount*', owned by '*Ralph Beaumont*', and occupied by '*Sarah Oldroyd*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 69. This means the landowner has not recorded any deductions for public rights of way or use on this land.

124. The only deductions for '*Public rights of way or use*', related to land/houses in the vicinity are at '*South Royd*' (parcel 73) and also '*Lane Side*' (parcel 83).
125. In conclusion, the map is inconclusive as to whether the route to the north is part of parcel 3 or whether it joins with Liley Lane and is part of the highway network. As such, this may or may not indicate it was excluded from any valuation. A non-valuation might be because it had several private easements, it was fenced or walled, it had no owner, it belonged to the rating authority, or for other unknown reasons. There are examples of where private roads with no owner have been left uncoloured and excluded but there does not appear to be a consistent approach.
126. However, the very south of the route is excluded from the hereditaments. Exclusion of a route may suggest that it was in public ownership and vested in the highway authority or for some other reason. However, in the absence of any other evidence, this does not indicate that the route was unrated and belonged to the highway authority. The route may have been excluded, as with other private routes, because it was in multiple occupation of adjacent tenanted fields.
127. In relation to caselaw at para 112 indicating the two criteria that have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan as follows: 1) the route was within the jurisdiction of Kirkburton Urban District Council, but was not a main road and 2) there is no evidence available to show that the route was a highway maintainable at public expense.
128. The records originating from Kirkburton Urban District Council in 1974 and now held by Kirklees Council Highways Registry show that Carr Mount was on the List of Streets as a street not maintained at public expense and is therefore not vested with it. Furthermore, the 'unadopted' route, deviates from the application route in the vicinity of No's 8/9 Carr Mount as shown in **Figure 41**. There is no evidence available that shows the route was maintainable to public expense.

CONVEYANCES AND DEEDS

Background

129. Landowner 3 and Resident 1 both provided copies of some Conveyances and Title Deeds.

Evidential Weight

130. With reference to para 6.2.17 of the Government's [Definitive map orders: consistency guidelines](#) published in 2003 and last updated in April 2016, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights.

131. Similarly, the inclusion of a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is or is not a public right of way over it. This evidence needs to be considered along with all other relevant evidence.

Analysis

132. An official copy of the conveyance plan dated 23 September 1920 relating to the sale of The Whitley Beaumont Estate and title number WK203013 is shown in **Figure 34**. This plan shows a '*Right Of Road*' over Part A of the application route from Carr Mount farm to Liley Lane. Whilst it does not say whether it's a public or a private route, it is more likely than not a 'private right'.

133. What are now public footpaths Kirkburton 10 and Kirkburton 20 are depicted as variously double and single dashed lines and annotated '*footpath*' on the same plan. However, whilst there is a dashed line over Part B through Carr Mount, it is not annotated with the words 'footpath'.

134. An official copy of the conveyance plan dated 18 August 1923 relating to title number WK203013 is shown in **Figure 35**. This plan shows a '*Road to Liley Lane*' over Part A of the application route from Carr Mount farm to Liley Lane. It also shows a '*Road Way*' at the farm itself and a '*Public Footpath*' leading

south from Carr Mount farm over what is now public footpath Kirkburton 20 and also east over what is now public footpath Kirkburton 10. At the very south of this plan over what is now public footpath Kirkburton 20 going east to west, there are the words '*Public Footpath to Carr Mount and Hagg Farm*'. It does not say public footpath to Liley Lane. Again, whilst it does not say whether the '*Road Way*' or '*Road to Liley Lane*' is public or a private route, it is more likely than not a 'private right'.

135. An official copy of the conveyance plan dated 17 August 1923 relating to title number WYK294213 is shown in **Figure 36**. The plan shows a '*Public Footpath*' coloured brown over Part B of the application route, and over what is now public footpath Kirkburton 20 – the colour brown leads past Carr Mount farm and is annotated with the words '*To Freemasons Arms*'. A 5 bar gate is depicted at the north of Carr Mount farm, and another 5 bar gate is depicted to the south in the vicinity of 8 Carr Mount. At the very south of this plan what is now public footpath Kirkburton 20 is annotated with the words '*Public Footpath to Carr Mount and Hagg Farm*'. It does not say where there is a public footpath to Liley Lane or To the Freemasons Arms. Therefore, whilst the brown colouring relating to the public footpath depiction /annotations does extend north past Carr Mount farm and therefore slightly over Part A of the application route, the evidence is inconclusive as to whether it indicates that the route to Liley Lane is a public footpath.
136. An official copy of the conveyance plan dated 9 September 1936 relating to title number WYK294213 is shown in **Figure 37**. The plan shows a '*Public Footpath*' coloured brown over Part B of the application route which says '*To Houses Hill*' leading south. Over the most southerly part of Part A of the application route are the words '*To Freemasons Arms*' leading north and '*To Liley Lane*' and the colour brown leads past Carr Mount farm. However, the plan at the very southerly edge is annotated with a track and the words '*Public F.P to Carr Mount & Houses Hill*'. It does not say public footpath to Liley Lane or public footpath to the Freemasons Arms. So again, the evidence is inconclusive as whether a public footpath is shown leading north from Carr Mount farm to Liley Lane.

137. On **Figure 37**, a 5 bar gate is depicted at the north of Carr Mount farm, and another 5 bar gate is depicted to the south in the vicinity of 8/9 Carr Mount. Two other 5 bar gates are annotated, one south of 8/9 Carr Mount and the other at the junction of what is now public footpath Kirkburton 20 and public footpath Kirkburton 169 which is annotated with the words '*Long Tongue Scrog*' on this plan. Also annotated on the map is the '*Roadway Private*' and '*Roadway*' to access No. 8/9 Carr Mount.

Unregistered Land

138. The applicant for DMMO S14306 provided a map from [HM Land Registry](#) as shown in **Figure 40** which shows the majority of Part A of the application route is unregistered land, meaning that it is the owner has not registered it with HM Land Registry. However, it does not necessarily follow that this indicates it was a public vehicular highway of ancient origin, as proposed by the applicant.
139. Also note that the **Figure 34** dated 1920, **Figure 35** dated 1923, **Figure 36** dated 1923 and **Figure 37** dated 1936 all show the application route leading north from Carr Mount belonging or appearing to belong to an '*other part of the Whitley Beaumont Estate*', suggesting that the route which is now unregistered belong to them at that time.
140. In the absence of a registered owner, the unregistered land abutting a way may be considered to be owned *ad medium filum* meaning to the mid-point by the two adjacent landowners. Indeed, one of the current adjacent landowners who has owned the land since the 1976 believes that Part A is '*only to access Carr Mount and land owned by Upper Stone Royd*', and '*only used for private purposes*' (**Figure 47**).

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

Background

141. In preparation for the first Definitive Maps of Public Rights of Way, parish councils were required, under section 38 Part IV of the National Parks and Access to the Countryside Act, 1949, ([the 1949 Act](#)), to conduct a survey of all footpaths, bridleways, and roads used as public paths in their areas and pass them onto West Riding County Council (WRCC) - the surveying authority.
142. Section 27(6) of the 1949 Act defined a 'public path' as a highway being either a footpath or bridleway; and a 'road used as a public path' as a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleway are so used.
143. Public carriageways, not being a public path or used as a public path, were therefore excluded from the claims. This is indicated in the definition of a road in section 93(8) of the 1949 Act: "In this section the expression "road" means a highway other than a public path (as defined in Part IV of this Act)". Although it should be noted that the meaning is prefaced with 'in this section', however, no other definition of 'road' is given in the 1949 Act.
144. WRCC prepared the first Definitive Map and Statement which showed all the public footpaths, bridleways and 'roads used as public paths' that subsisted or were reasonably alleged to subsist at the 'relevant date' being 22 September 1952. In short, objections or representations could be made in relation to a Draft Map, leading to the preparation of a Provisional Map and then via a similar process finally a published DMS, otherwise referred to as the 1952 Definitive Map and Statement.
145. A review of the 1952 Definitive Map and Statement started in the 1970s with a Draft Revision Map being produced in 1979 and put on public inspection in 1980. The review was formally abandoned following new legislative provisions within the Wildlife and Countryside Act 1981 to keep the DMS under continuous review and the making of individual DMMOs. The Modified

Definitive Map and Statement was published in 1985 to be kept under continuous review since that time.

Evidential Weight

146. The definitive map and statement are conclusive as to the status of the highways described generally without prejudice to the possible existence of higher rights, also meaning that the DMS is conclusive evidence of what is shown on it, but not evidence that what is not shown, does not exist.

Analysis

147. Part A of the application route to Carr Mount hamlet was not recorded on the DMS 1952 nor is it recorded on the DMS 1985 as shown in **Figures 2** and **Figure 1** respectively.
148. There is no walking schedule on record for Part A of the application route, and route was not claimed in 1950s and not included on draft and subsequent definitive maps. There are no records of any objection or representation to the non-recording of Part A of the route.
149. The walking schedule dated 2 July 1952 relating to Part B of the application route and corresponding with the path later recorded as public footpath Kirkburton 20 is shown in **Figure 38**, describing the route as a footpath from The Hagg to Long Tongue Scrog Lane with '*stiles, at beginning and end of path*'. The surface is described as '*ploughed*' with an average width of '*3ft*'. The reason for believing the path to be public was given as '*open for years*'.
150. Again, relating to Part B of the application route, there is no walking schedule for Kirkburton footpath 169, but there is a representation made by Kirkburton Urban District Council to add it to the Draft Definitive Map as shown in **Figure 39**. The record says "*Footpath commencing at its junction with Long Tongue Scrog Lane and proceeding in a north easterly direction to its junction with path no..20*". This is a public footpath and should be added to the draft map'. The surface is '*part ashed, part earth*' at '*3ft wide*'. The reason for believing the path to be public is given as '*This is a public footpath and should be added to the Draft map.*'

151. In relation to any structures or limitations on Part B of the route, the DMS 1952 shows a 'S' for stile where public footpath Kirkburton 20 meets public footpath Kirkburton 169 south of what is now No.9 Carr Mount and also a 'S' for stile at the junction of public footpath 169 and public footpath Kirkburton 220 – this 2nd stile is not shown on the 1985 Definitive Map. There is also 'FG' for field gate at the junction of public footpath Kirkburton 10 and public footpath Kirkburton 20 at Carr Mount hamlet, but it is not clear on which path is it recorded.
152. Whilst this shows there is evidence of two structures on the route at the time of survey in the 1950s and one structure on the route in 1985, it does not necessarily follow that the route was impassable by horse, cart, or cycle here at that time. The OS maps appear to show a gap next to a solid line which could indicate a fence and gap or a gate and gap.

HIGHWAYS REGISTRY AND THE LIST OF STREETS

Background

153. Kirkheaton Local Board was the local authority body primarily responsible for issues relating to public health in the township of Kirkheaton and was formed on 15 March 1860. Typically elected by local rate payers and property owners. Local Boards were formed following the Public Health Act 1848 and the subsequent Local Government Act 1858, and had responsibility for the oversight of sewers, water supplies, public toilets, street cleaning, slaughterhouses, pavements, and burial grounds within their district.
154. Elected urban districts councils replaced Local Boards following the Local Government Act of 1894 and were given increased powers and responsibilities under the Act. The Kirkheaton Urban District Council was formed at the end of 1894, replacing the Kirkheaton Local Board. On 1 April 1938 the urban district was abolished and merged with Kirkburton.

155. On 1 April 1974 and under the Local Government Act 1972 Kirkburton Urban District Council was abolished and became Kirkburton Civil Parish within West Yorkshire Metropolitan County Council (WYCC).

Evidential Weight

156. The Highways function moved to Kirklees Council in 1986. The Council holds a 'List of Streets' which are maintainable at public expense. This list includes the ordinary 'adopted' roads and also some 'adopted' footpaths. The List of Streets record cards were inherited and transferred from Kirkburton Urban District Council and date as 1974.

Analysis

157. **Figure 41** shows that all of Part A and part of Part B of the application route is recorded in the Highways Register as not maintainable at public expense ('unadopted'). The 'unadopted' road extends from Liley Lane to Carr Mount then to Long Tongue Scrog Lane via No. 8/9 Carr Mount where it joins Lane Side.
158. The local Highway Authority records inherited from 1974 are shown in **Figure 42**. Carr Mount off Long Tongue Scrog Lane is recorded as '*PRIVATE*' and also feature on the list of '*unadopted*' streets.
159. **Photo 2 in Figure 5** shows there are two 'Carr Mount' street name plates at Liley Lane, one of which shows symbology for a no-through road, but these do not indicate highway status. The Council's building control street naming team have the authority to name private roads as well as public roads.

EVIDENCE OF REPUTATION

Background and Evidential Weight

160. Other documents have been sourced or provided which can provide evidence of the reputation of a way as a public right of way. Such evidence is not conclusive in itself; it is to be considered in combination with all the other available evidence to add to the emergent picture about the status of the application route or part of it.

Locally Published Walking Route

161. The applicant for DMMO S14201 submitted extracts from 'Discovering Old Lepton', possibly published in approximately 1978. Walk 3 on page.53 describes a walk over Part A of the application route leading into Kirkburton footpath 10 at Carr Mount, as shown in **Figure 43**, as follows:

"At the Freemasons Arms find the path on the opposite side of the road leading down to Carr Mount. Our route follows this path to a stile just past the houses.... After Carr Mount the route follows a lengthy section of footpath... immediately after Carr Mount take the brick stile through the wall on the right..."

162. The applicant for DMMO S14201 also submitted extracts from the Second Edition Discovering Old Lepton and Kirkheaton, Gordon and Enid Minger (no published date), A walk is described on page.44 over Part A of the application route leading into Kirkburton footpath 10 at Carr Mount, as shown in **Figure 44**, as follows:

"At the Freemasons find the path on the opposite side of the road leading down to Carr Mount. One route follows this path to a stile just past the houses on the right".

163. These extracts are considered to be 'documentary evidence of 'reputation' and support the user evidence of a route used by the public on foot for their leisure enjoyment on the date the routes were published.

Countryside Stewardship Scheme

164. On 22 August 2001, Defra consulted Kirklees Council's PROW team about an application to the Countryside Steward Scheme for land at Upper Stoneroyd. It refers to an open access payment for accessible land. The report includes a section on 'public access/benefit' stating that '*Public access to and across the farm is extremely good, including no fewer than 5 public rights of way. All of these are well used....*' See **Figure 45**.

165. The accompanying map shows Part A of the application route from Liley Lane to Carr Mount hamlet is coloured yellow and according to the key it is defined as a '*right of way*' but does not distinguish these are 'public' however the corresponding text also shown in **Figure 45** indicates that it what was meant.
166. Also coloured yellow are parts of public footpath Kirkburton 10, and public footpath Kirkburton 20 and another path from the old wooden kissing gate at Liley Lane to a stile at Lower Stone Royd which is not currently recorded as a definitive footpath, but it was to be added at the last review of the DMS.
167. This suggests that the previous owner of Upper Stoneroyd considered the application route from Liley Lane to Carr Mount hamlet was in use by the public and, this suggests that public rights may have been acquired over it.

PLANNING APPLICATIONS

Background

168. There have been a number of relevant planning applications for developments at Carr Mount which involved the application route, some of which have been mentioned by landowners at Carr Mount hamlet in their evidence.

Evidential Weight

169. Details of these planning application are provided below to demonstrate the characteristics of Part A of the application route and also show the private maintenance responsibility for Carr Mount Lane.

Analysis

170. [Planning application 2002/62/94145/W2](#) for the erection of a hay barn at Upper Stoneroyd required details of the surfacing of the access track and hardstanding area at the farm itself to be submitted and agreed.
171. [Planning application 2007/62/94825/W2](#) related to the dwelling 6/7 Carr Mount included the provision of two passing places along the access road [the DMMO application route] and the four additional parking spaces which were to

be surfaced, sealed, and drained prior to the first occupation (adjacent to the application route).

172. Planning application 2014/92181 [Planning application details | Kirklees Council](#) 2013/60/92927/W [Planning application details | Kirklees Council](#) which states [the planning application](#) relates to the erection of 2 dwellings adjacent to 8 Carr Mount.
173. Highways were consulted at the outline stage, and a Highways Development Control consultation letter dated 29 October 2013 describes the application route as *“a narrow un-adopted lane which goes due east from the site before bending sharply due north until it joins the B6118 Bellstring Lane / Liley Lane at a priority junction. This lane is described as narrow and whilst it is surfaced there is only a limited number of passing places available. Sight lines at the junction of Carr Mount and B6118 Bellstring Lane / Liley Lane appear sub-standard particularly in the critical direction to the southeast or right when exiting the junction.”* Highways Development Control advised the council that the applicant would need to show there’s no further intensification of the lane’s use relative to their existing business work.
174. In summary, the planning applications provide further details on the characteristics and use of the application route, but they do not provide any evidence relevant to any public rights over it.

DOCUMENTAY EVIDENCE EVALUATION

175. In summary, the 1793 non-OS Estate map provides conclusive evidence that Part A of the application route originated as a private cul-de-sac route leading from a public road to agricultural fields. Later OS maps at various scales (1855, 1893, 1896, 1903 Cassini) all show the route had variously extended over several fields leading to a wooded area abutting Long Tongue Scrog Lane (Part B). Only the 1893 OS map at a larger scale indicates a possible through route to Long Tongue Scrog where the two routes abut.
176. However, larger scale OS maps (1893, 1907, 1919) also depict gates or fences across the route at several other locations, particularly at Carr Mount

farm on both Part A and Part B. Furthermore, conveyances and deeds (1920, 1923, 1936) for Carr Mount farm and cottages provide conclusive evidence of gates on Part A and Part B. The presence of gates or fences are likely to affect ease of use of a route as a through route, but does not in itself indicate it was not passable for carriages or vehicles.

177. Bartholomew maps (1904 and 1943) which surveyed for 'passable roads' and 'through routes' (respectively) do not show the application route over Part A or Part B. Similarly, the 1938 The Authentic Map Directory of Southwest Yorkshire which depicts 'thoroughfares' shows a route to Carr Mount over Part A which then leads east or west, but it does not show any route south over Part B.
178. It seems likely that historically Part A and Part B had different surfaces which may have affected use by carriages or vehicles. Part A provided access to the adjacent sandstone quarry. The smaller scale OS 1896 and 1903 Cassini maps, both show the application route as an unmetalled fenced road (and do not depict it as a through route), and this implies it would be one that was not in good repair and not repairable by a public authority. The 1952 Definitive Statement for public footpath Kirkburton 20 and corresponding earlier walking schedule conclusively describes the surface as 'ploughed', indicating it may not have been suitable for carriages or vehicles over part of Part B.
179. Whilst various OS maps depict the existence of a route as described in para 6, they generally carry a disclaimer that means that a route shown on these maps does not indicate a right of way, meaning public or private. In addition, whilst the 1910 Finance Act map records short sections at the most northerly and most southerly as 'uncoloured' routes separated from adjacent hereditaments (numbered parcels of land), the route in between (which is the majority) over Part A and Part B was recorded within hereditaments. This means that the majority of the application route was valued for incremental tax. However, the accompanying Valuation Books show no corresponding deductions for public rights of way or use. Furthermore, the same conveyances and deeds at para 6., annotate a (private) 'right of road' over Part A, and a 'public footpath' over part of Part B. In addition, locally published

walking routes from the late 70s/early 80s demonstrate the reputation of Part A as a footpath in public use.

180. Officers therefore consider that the available documentary and historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
181. Overall, the available documentary or historic evidence is insufficient to show, on the balance of probabilities, that a public bridleway or vehicular highway subsists, or is reasonably alleged to subsist, over Part A or Part B of the application route. The investigation will therefore turn next to the available user evidence.

USER EVIDENCE

183. Officers have conducted an investigation of the available documentary or historic evidence, user evidence and landowner evidence. The investigation report is available at **Appendix B**, with the Figures and Photos in **Appendix C**. The user has been analysed under section 31(1) of the 1980 Act, as described in detail in **Appendix B**.
184. Applications for DMMOs for dedication under s31 of the 1980 Act are usually supported by the completion of evidence questionnaires by users of the route otherwise generally known as User Evidence Forms (UEFs).
185. Each of the UEFs should be dated and signed. Each UEF is accompanied by a plan and in this case pre-prepared by Kirklees Council showing the existing public footpaths recorded on the DMS over which the users highlighted the routes they had used, again to be signed or initialled and dated. With reference to para 5.2.7 of the Government's [Definitive map orders: consistency guidelines](#) published in 2003 and last updated in April 2016, analysis allows the rejection of invalid UEFs (e.g. no signature, no clear description of the way or of how it was being used). A similar analysis should be made of other types of user evidence, such as sworn statements, letters, and the landowner's evidence.
186. When assessing the level of public use, it is necessary to discount all lawful private use. Every way is either a private way or a highway (a public passage). A private right is a right enjoyed by a particular person or group of people to pass over the land which belongs to another. This could include resident's access to their dwellings and visitor access to the resident's dwellings (for example, family & friends, mail & parcels, deliveries, buying produce, for employment/work etc).
187. Sixty one (61) user evidence forms were submitted to the Council in support of the application DMMO S14201 which is Part A of the application route only. A summary of the user evidence is provided in **Figure 46**. No UEFs were submitted

in support of the S14306 DMMO application to record a bridleway over Part A and Part B of the route.

188. The user evidence for Part A of the application route has been evaluated on the submissions from 54 (fifty-four) members of the public as shown in **Figure 46**. This is because 5 (five) users (UEFs 28, 48, 51, 13/58, 60) were considered to have a type of private right and as such their evidence cannot be included as evidence for public use. One user (UEF 13/58) submitted two UEFs and only one of these has been counted.
189. There are four landowners and one tenant associated with Part A of the application route.
- From the B6118 at Liley Lane/ Bellstring Lane through to Carr Mount hamlet, the application route is unregistered with HM Land Registry meaning there is no registered owner. Landowner 1 (land to west) and landowner 2 and tenant (land to east) have landholdings to each side of the unregistered land. Under the rebuttable *ad medium filum* legal presumption they can be considered to own the track up to the centre line (meaning half the roadway each).
 - At Carr Mount hamlet landowner 3 and landowner 4 own sections of the application route. In addition, several other residents at Carr Mount hamlet and beyond take access including vehicular access over Part A to the B6118 at Liley Lane/ Bellstring Lane.
190. Three of the four landowners submitted Landowner/Occupier Statement forms which was also variously supplemented by email correspondence. A summary of the available landowner evidence is shown in **Figure 47**.

Bringing into Question

2016 - Challenge

191. Landowner 1 indicated in their Landowner/Occupier Statement form that they had not stopped or turned people back because they had '*not seen anyone*', *were not aware of a public right of way; only access to houses at Carr Mount*

and land owned by Upper Stoneroyd only and that they have *'only seen used for private purposes'*.

192. Landowner 3 indicated in their Landowner/Occupier Statement form that they had *'challenged users since moving to the property (in April 2009), turned people back every time see a trespasser'*.
193. Landowner 4 indicated in their Landowner/Occupier Statement form that they challenged users by *'telling people that the road is private'*, but did not indicate a time period, however, it could not have been before 1999.
194. Whilst challenging use in the manner described *'every time see a trespasser'* and stating this was since April 2009 might be an over act by landowner 3 which brought use of the route into question, the user evidence indicates that it was the challenges taking place from approximately 2016 onwards that prevented many people from using the route and that directly brought use of the route into question as shown in **Figure 49**.
195. These later challenges resulted in the submission of the DMMO application S14201 to have the route recorded on the DMS and creates a relevant period 1996 to 2016.
196. However, it can be noted that the Council's path file for public footpath Kirkburton 20 has one record relating to a refusal of access for an individual in September 1985 entitled 'Public rights of way, Houses Hill, Kirkburton (**Figure 48**). The record shows only the Council's response which states that *'the residents of the houses were in their rights to refuse you access'* and goes onto say that *'part of the route you wished to use is a bridleway, part is a right of way for pedestrians only and the remainder from Carr Mount to Bellstring Lane near the Freemason's Arms is a private occupation road over which there are no public rights'*. Whilst this indicates a challenge to use over Part A of the application route, it is only for one person and therefore not considered to sufficiently represent a lack of intention to dedicate. In any case many users stated in their evidence that they had walked this route for many years and never had a problem. The relevant period 1994 to 2014 is therefore not considered rebutted by previous challenges.

2014 – Signs and Notices

197. Evidence (UEF28) from a previous landowner 1997 to 2000 '*When I lived there, we used to get lots of walkers, walking to Houses Hill. There was never any issues what so ever*'...and "*No signs when I lived there*".
198. The user evidence indicates that notices and signs were erected 'recently' or in the 'last year' meaning around 2017 as shown in **Figure 49**. However, **Figure 50** shows photographs dated August 2014, May 2016, July 2017, and July 2021 of various notices at several locations on Part A of the application route. The notices variously say '*private road*' or indicate '*no public right of way*' over Part A of the application route.
199. However, the Council received enquiries in 2014 from members of the public complaining about notices at Carr Mount hamlet and prior to receiving the first DMMO application. A photo was provided of a notice at the junction of definitive public footpaths Kirkburton 20 and Kirkburton 10 at Carr Mount hamlet. The notice stated '*PRIVATE ROAD Public right of way up Carr Mount ENDS HERE*' meaning that Kirkburton 20 does not continue along Part A to the B1168 Liley Lane/Bellstring Lane, as shown in photo 1 dated 14 August 2014 in **Figure 51**.
200. Simply put, 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. Whilst case law dictates that 'private' or 'private land' signage in itself, is not documentary evidence that would inevitably defeat the 'claim', because it does not go far enough in itself to demonstrate or communicate a lack of intention to dedicate a sign saying that the '*public right of way ends here*' would be considered to be more effective.
201. Whilst the notice erected in August 2014 appears not to have prevented public use of the route, it can be considered to be an overt act of a lack of intention to dedicate and brings public use of the route into question, but has no retrospective effect. As such, Officers consider the date the public use was 'brought into question' is the date of the first complaints and photo evidence in

August 2014. The relevant twenty-year period is therefore considered to be August 1994 to August 2014.

202. Therefore, the relevant period 1996 to 2016 created by the verbal challenges above is rebutted and the alternative relevant period to be considered is August 1994 to August 2014 created by the landowner notice.

1997, 2003, 2013 – Section 31(6) Landowner Deposit

203. In their Landowner/ Occupier Statement Form dated 30 July 2021 landowner 1 referred to their submission of a [s31\(6\) landowner deposit/ declaration](#) in 1997, 2003 and 2013 as shown in **Figure 52**. The purpose of a s31(6) landowner deposit/declaration is to acknowledge any existing public rights of way across land at the same time as declaring that they as landowner they had no intention to dedicate any further routes to the public. Such deposits bring public use of the way into question, but have no retrospective effect. Therefore, there may be an earlier bringing into question date of May 1997 which would create a relevant period May 1977 to May 1997.
204. However, as shown in **Figure 52**, the s31(6) deposit plan received 9 May 1997 includes land to the west of the application route which abuts Part A and part of Part B but does not include the application route. The subsequent s31(6) deposit plan dated 7 April 2003, similarly, abuts Part A and part of Part B of the application route but does not include it. A further s31(6) deposit plan dated 18 April 2013 does not include land at Carr Mount. As such, Landowner 1 cannot demonstrate a lack of intention to dedicate a public right of way over the application route.
205. Furthermore, Landowner 1 indicated in their landowner/occupier statement form that they do not own any part of the application route and provided a map excluding Carr Mount lane, indicating that it is a *'roadway which we use to access our fields'*.
206. As such Officers do not consider the submission of the three s31(6) deposits bring into question public use of Part A of the application route and any further

alternative relevant periods are not created and the lack of intention to dedicate by the s31(6) deposits is rebutted.

207. However, as the land in question is unregistered with HM Land Registry, Landowner 1 can be considered to own the track up to the centre line (meaning half the roadway each) under the rebuttable *ad medium filum* legal presumption. There may well be an opposing opinion that the s31(6) deposit abutting the unregistered Part A or Part B, applies to half of the roadway. Should this be the case, it would demonstrate a lack of intention to dedicate a public right of way during the 1994 to 2014 relevant period and throw the inquiry back to an earlier alternative relevant period of 1977 to 1997.

Relevant Periods

208. The relevant period 1996 to 2016 created by verbal challenge is considered to be rebutted, and any relevant periods associated with the s31(6) deposit have not been created. The relevant 20 year period to consider user evidence is therefore between August 1994 to August 2014 when it was first brought into question by the posting of the landowner notice/sign, and subsequent notices/signs. Also see the 'Evidence of a Lack of Intention to Dedicate a Public Right of Way' below.
209. However, if there should be an opposing opinion that the s31(6) deposit in 1997 applies to half the roadway where the land is unregistered over Part A and Part B, then this would create further alternative relevant period 1977 to 1997 which for completeness has also been briefly analysed in relation to s31(1) presumed dedication.
210. Under [s31\(1\) of the 1980 Act](#) dedication of way as highway presumed after public use for 20 years as follows:

"Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been

dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

A Way

211. The user evidence indicates a delineated way running from highway (the public carriage way Liley Lane/Bellstring Lane B6118) to highway (public footpath Kirkburton 20) that has not altered its alignment.
212. Users described the width of the application route as between 2m and 5m, over a car width, the full width of the track/road. Users describe the surface of the application route as a previously unmade track/ rough track/ metalled (gravel, stone, hardcore compacted) which was later sealed with tarmac.
213. If a route runs between fences, hedges, or ditches the presumption is that the whole area between these has to be dedicated to the public provided one is satisfied that the enclosing features were laid out by reference to the way. That is irrespective of the fact that the public’s use will generally be limited to the surfaced portion of the way.
214. Part A of the application route is therefore considered to be a nature that it could be of dedicated as a public right of way.

Evidence of Use during Relevant Period 1994 to 2014

215. Public use during the relevant period 1994 to 2014 is shown in **Figure 53**. Part A of the application route between Liley Lane and public footpath Kirkburton 20 at Carr Mount, was used by forty eight (48) people on foot during the relevant period: thirty five (35) throughout, and thirteen (13) for parts of the relevant period. At the start of the relevant period 1994 to 2014, thirty seven (37) users stated they were using the route on foot. At the end of the same relevant period forty-eight (48) users stated they were using the route on foot. It is their collective use that is important.
216. Frequency of use varied and was used by one person daily; 8 weekly; 4 twice weekly; 2 more than monthly; 16 monthly; 4 less than monthly, 1 yearly. In addition, 12 users state their use was variable and refer to using the route

'regularly, frequently, occasionally, or quite often. It is collective use during the relevant period that is important.

217. The quantity and frequency of use are sufficient to represent use and enjoyment by the public on foot without interruption. All users saw others using the application route.

Actually enjoyed

218. Where specified, users commonly referred to Part A of the application route as 'Carr Mount'. They variously described it as either starting at Liley Lane and ending at Carr Mount or as part of a longer linear or circular route including walking to or from named local places (including Houses Hill, Hopton, Kirkheaton, Kirkheaton Cemetery, Lascelles Hall, Lane Side Lane, Long Tongue Scrog Lane, Mirfield, Stafford Hill Lane, Upper Hopton, Whitely Willow).
219. Users describe using the way for walking/dog walking; for leisure/pleasure/recreation, for school/ work to catch the bus, to visit the [former] Freemason's Arms or visiting beyond Carr Mount (for example visiting Houses Hill).
220. Here are some of the user's comments: *'always been access to and from Houses Hill'* and *'the route has historically been used by generations'* and *'to my knowledge families from Houses Hill have been using this track since 1925'* and *'people have been walking along this route for many years. I started in 1998 when I got a dog'* and *'local residents have used route for walking/dog walking for at least 60 years'* and *'the children and parents living in Houses Hill attended Upper Hopton school in the past and used the route every day'* and *'I walked from home through Dodgsons Farm past Carr Mount to the Free Masons pub to catch a daily bus'* and *'to walk to school and back'* and *'I have used this public right of way as a child, teenager, man, plus my 2 sons, girlfriend and daughter'* " *Everyone has regarded this as a public footpath as long as we have lived here. We were lead along this path on an official parish boundary walk'* and *'I have been brought up in Upper Hopton and as a child used the route to go to my friends in Houses Hill. This route has been used all*

my life as access and thoroughfare' and 'Also people use it to get to the bus stop opposite where the Freemasons pub was'.

By the public

221. All other users who completed user evidence statements, indicated they used the routes as the members of the public and were wholly or largely local people presently or in the past and were not exercising private rights or visiting residents at Carr Mount only, when they used the route.

Without interruption

222. Three users described barriers or obstructions encountered on the application route. One user commented on '*...fence or gate/ tape across the path*' and one user commented that '*...someone has put two humps to go over and left large potholes.*' However, these events do not relate to the application route, nor have they affected its use.

223. Some users referred to metal gates, but these are considered to be the metal farm gates providing access to the fields off the application route or the gates on public footpath Kirkburton 20 just beyond Carr Mount hamlet

224. Several users referred to stiles, but these are considered to be the stiles for public footpath Kirkburton 10 at Carr Mount itself and at the lower end of public footpath Kirkburton 20 and therefore not stiles across Part A of the application route.

225. A number of users indicated they have been dissuaded from using the way from 2016/7 onwards, following challenge by landowners at Carr Mount hamlet or by the posting of signs/notices on the application route. However, these events are after the brought into question date and therefore are not relevant.

226. All other uses describe no barriers, fences, impassable stiles, locked gates, building materials or other obstructions had ever been present on Part A of the application route in question, to forced open and causing users to turn back.

227. In summary, the user evidence shows the public's use of the route on foot has not been interrupted by obstructions, barriers or otherwise during the relevant period 1994 to 2014 or before the public's use of the route was brought into question. As such, use of the way is considered to have been un-interrupted.

As of right

228. Any use 'as of right' that might give rise to a presumption of dedication must have been *nec vi* (without force), *nec clam* (without secrecy) and *nec precario* (without permission).

As of right – without force

229. Users note no structures, barriers, or obstructions on the way, other than the two speed humps installed in 2017. In any case, these humps can be stepped over on foot or driven over by vehicle. Many users have used the route on foot regular for all kinds of purposes individually or in small groups and do not report any barriers forced open or obstructions they removed. As such, public use of the way is considered to have been 'without force'.

As of right – without secrecy

230. Part A of the application route is accessed at the north directly from the B6118. The route provides access to the dwellings at Carr Mount hamlet and to the fields and farms adjacent. The way passes immediately adjacent to the Carr Mount cottages. For use to be as of right it must be open and of such a nature that it 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. As such, public use of the way is not considered to have been in secret.

As of right – without permission

231. Other than some Carr Mount residents who also provided user evidence, no users have described asking for, or being given permission to use the way.

Highway status

232. All users described their use on foot and also saw others walking the route.

233. Several users within the relevant period indicated they believed Part A of the route to be a byway, restricted byway or a bridleway with reference made to seeing motor vehicles, horses and bicycles pointing to a reputation of the route beyond footpath.
234. However, only two of these users indicated they had used Part A on horse and this use appears to be historic stating that use over Part A by horse which *'had not been available for some time'* or use was *'as a child'* which is therefore likely to fall outside the relevant 20 year period under analysis and in any case in terms of quantity is not sufficient to demonstrate public use and enjoyment. Furthermore, the landowner evidence indicated private use by horse including in groups as well as private use on bicycle.
235. Additionally, use by horse over Part A only would indicate a cul-de-sac bridleway which according to caselaw could not subsist at this location, as it is not a place of public resort or destination such as a mountain top, beach, or viewpoint.
236. Furthermore, Officers contacted 8 (eight) users who had mentioned seeing horses or cyclists Two of these included users seeing cyclists outwith the end of the relevant period (more recently than 2014). Officers spoke to one of the users (UEF 21) on 29 April 2022 who indicated that in the past horses had been ridden from Houses Hill along Long Tongue Scrog and up through Carr Mount hamlet (and over Part A). However, the route taken was along the driveway at 8/9 Carr Mount rather than along longer route that is currently public footpath Kirkburton 20 where there is a squeeze past the 2 locked field gates - the latter route had they said *'never been passable to horse riding'*.
237. This evidence concurs with evidence from a resident at the DMMO S14306 (Part B) at the consultation stage where there was private use in groups on horseback along the access driveway to 8/9 Carr Mount to access public footpath Kirkburton 169 and beyond.

Evidence of a Lack of intention to dedicate a Public Right of Way

238. All landowners over Part A and Part B (1 to 5) and an occupier were provided with a WCA 10 Landowner/Occupier Statement form to complete and provide evidence. Three Landowner/Occupier Statements were submitted (Landowners 1, 3 and 4), and a letter was received from landowner 5. In addition, landowner 3 corresponded via email over a number of years with further evidence or comments.
239. Whilst land ownership is not in itself generally relevant to dedication of a public right of way, it is relevant in relation to any actions landowners may have taken to demonstrate their lack of intention to dedicate. Ownership of the land crossed by the application route has changed over the 20-year statutory relevant period. However, this lack of consistency is not considered to unduly affect the lack of any owners' intention to dedicate.
240. 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. These steps must make the public at large 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 express permission', gates can be erected and locked or by verbally telling users that it is not a public right of way. The test is whether a reasonable user of the route would understand that the landowner was intending to disabuse the users of the notion that the way was a public highway. A presumed dedication will also be rebutted if the use constituted a public nuisance.

Landowner 1

241. In a Landowner/Occupier Statement form dated 31 July 2021, landowner 1 stated they owned the adjacent land to the east of Part A since 1976 and stated they were '*not aware of any public right of way only access to the houses at Carr Mount and land owned by Stoneroyd only. Only see used for private purposes*'. Landowner 1 stated had not turned anyone back because

they had not seen anyone, they had not given permission for anyone to use the route and not erected any barriers etc, nor erected any notices/signs.

242. Landowner 1 also has concerns that the application route is a '*narrow single track road with overgrown, uneven verges. Regular use of motor and agricultural vehicles along this route for access to private property and it is not suitable for public access or security for houses at Carr Mount.*'
243. However, landowner 1 indicated they had submitted three section 31(6) deposits dated 6 May 1997, 7 April 2003, and 19 April 2013, see **Figure 52**.
244. [Section 31\(6\) of the 1980 Act](#) provides for landowners to deposit a map & statement (and declaration) with Councils to formally to acknowledge the rights of way across their land and, in doing so, create a presumption that they have no intention to dedicate any further routes across their land going forward. However, it would not affect any unrecorded public rights that may already exist and therefore has no retrospective effect.
245. The deposit in 1997 expired in 2003, the deposit in 2003 expired in 2013 and the deposit 2013 is effective for 20 years to 2023. However, none of the 3 deposits actually include Part A of the application route as the red line boundary abuts rather than includes this route, and indeed the most recent deposit in 2013 does not include any land in the vicinity of Carr Mount.
246. Part A of the application route comprises the unregistered land from Liley Lane to Carr Mount hamlet, and Officers have considered whether the rebuttable *ad medium filum* legal presumption that Landowner 1 owns the unregistered land up to the centre line (meaning half the roadway each) applies to the s31(6) deposit in the sense that it may or may not bring public use of the way into question but has no retrospective effect.
247. Officers consider that as Landowner 1 does not own Part A of the application route as is indicated by the ownership plan submitted with the Landowner/Occupier Statement form, the s31(6) deposit does not necessarily apply to half the roadway to the centre line and therefore does not bring public

use of the way into question. As such, the alternative relevant period August 1994 to 2014 is not considered to be rebutted.

248. However, should there be an opposing opinion that the s31(6) deposit in 1997 applies to half the roadway over the unregistered land and also brings public use of the way into question, then this would create further alternative relevant periods 1977 to 1997. This alternative relevant period has been briefly considered for presumed dedication.

Landowner 3

249. In a Landowner/Occupier Statement form dated 10 March 2018, landowner 3 who owns a relatively short section of Part A of the application route stated that they had not shut off the way because it was inconvenient for residents, but they had put up notices saying '*Private Road – No public right of way*', '*Private Property – no trespassing on this part of the Lane*' and that there was a sign on the neighbouring land on the KMC waymarking post that says '*Public footpath up Carr Mount ends here – it does not continue to Liley Lane*'. They also stated that they had turned people back '*every time I see a trespasser*'.
250. In a letter received over email dated 12 March 2018, landowner 3 states that '*Since moving into my property I have challenged anyone as to why they were walking on my property*'. And that '*I have been told by a friend that they [users] were asked to complete the form even after they said they don't walk on Carr Mount*'.
251. A landowner 3 also commented that the purpose of the 2 speed humps as shown in **photo 13 and photo 14, Figure 5** was to slow down passing motor vehicles on that part of the route. The speed humps can be walked over or driven over, but may present difficulties for horses or mobility vehicles.
252. Thirty-one users described notices encountered on the application route (**Figure 49**). Whilst some users reported seeing notices and signs, none report any dates before the relevant 20-year period August 1994 to 2014. Where specified, fifteen users described seeing notices very recently or in the

last year or so (the earliest date of the UEF's is 17 July 2017). Of those fifteen and where specified, six users described the following wording of notices on the surface of the road ('*private road*' or '*not a public footpath*' or '*no public access*') and signs on posts ('*no footpath*' or '*private property - no trespassing on this part of the lane*' or '*no right of way*' or '*this is not a footpath*' or '*footpath ends*').

253. Landowner 3 stated that '*even after being repeatedly told the lane is a dead end, private cars, horses and bicycles try to use the lane*' and walkers go off route to continue to Liley Lane when they are told they cannot cross the boundary of landowner 3. No permission had every been given to cross the boundary '*though some have tried to claim my neighbours have; my neighbours know they cannot give permission to trespassers to cross my boundary*'.
254. Landowner 3 has raised ongoing concerns that Part A of the route is unsuitable as a public right of way due to safety concerns because it is single track, narrow and has blind bends. There are also ongoing concerns relating to privacy, anti-social behaviour, and fly tipping. Indeed, this was acknowledged by a user (UEF43) who said '*It seems that the issue is coming to a head because of certain peoples anti-social use of the road. The owner (...) is rightly aggrieved by this. However the road has been in common usage for over 70 years.*
255. In relation to landowners challenging or turning back users, 21 (twenty-one) users described being challenged face to face when using the application route. All 21 users described that face-to-face challenge had taken place very recently or in the last year or so (meaning 2016/17). Where specified, this face-to-face challenge was described as taking place at Carr Mount hamlet.
256. The issue is that landowner 3 has not submitted any further evidence (e.g., no further photographs of notices/signs, or evidence of verbal challenges) including none before the start of the relevant period 1994 to 2014. Indeed landowner 3's ownership started in 2009, and over the last 5 years of the relevant period. Being mindful that the burden of proof rests with the

landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. Consequently, there is no evidence indicating a lack of intention to dedicate Part A of the application route as a public right of way over the relevant period 1994 to 2014 to rebut the presumption that it has been so dedicated.

Landowner 4

257. In a Landowner/Occupier Statement form dated 10 March 2018, landowner 4 stated that *'as far as we know it's always been a private lane as far as the cottages'*. In relation to erecting any notices/signs landowner 4 stated that yes they had put up notices which say *'Yes we have, telling people that the road is private'* and that they had seen other notices go up *'and are all pulled down'*.
258. Landowner 4 also states that they had turned people back telling people *'it's private'* and some are abusive and some *'just go on the proper pathway and say nothing'*. Landowner 4 also stated that *'people did not use the route'* until it was surfaced by the neighbours *'never any cyclists until then'*. Whilst landowner 4 does not provide a date for surfacing of the land, landowner 3 indicated it was in 2007. Landowner 4 stated that no permission had ever been given to use the way.
259. The issue is that landowner 4 has not submitted any further evidence (e.g. no further photographs of notices/signs, or evidence of verbal challenges) including none before the start of the relevant period 1994 to 2014. Indeed landowner 4's ownership started in 1999. The burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. Consequently, there is no evidence indicating a lack of intention to dedicate Part A of the application route as a public right of way over the relevant period 1994 to 2014 to rebut the presumption that it has been so dedicated.

USER EVIDENCE EVALUATION

Conclusion (1994 to 2014 relevant period)

260. The evidence of public use considered above is sufficient to raise the presumption that Part A of the application route has been dedicated as a public footpath under section 31(1) of the 1980 Act during the relevant period 1994 to 2014. Officers consider that the presumption is not rebutted by the opposing evidence of a lack of intention to dedicate and an Order should be made based on a reasonable allegation that the way subsists.

Alternative Relevant Period (1977 to 1997)

261. On the other hand, if Landowner l's s31(6) deposit is considered sufficient to demonstrate a lack of intention to dedicate half the roadway where the land is unregistered, then the test for presumed dedication would revert to the earlier relevant period 1977 to 1997.

262. The user evidence has therefore been briefly evaluated for the relevant period of use 1977 to 1997 under the provisions of s31(1) for presumed dedication for completeness, as follows.

263. As shown in **Figure 54**, at the start of the relevant period 1977 to 1997, thirty-three (33) users reported they were using the route on foot. At the end of the same relevant period forty-four (44) users reported they were using the route on foot.

264. In relation to the frequency of the public's use was: one (1) daily, three (3) twice weekly, six (6) weekly, four (4) more than monthly, 13 (thirteen) monthly, 4 (four) every few months, 1 (one) yearly and 14 (fourteen) said their use varied. It is collective use during the relevant period that is important.

Conclusion (alternative relevant period 1977 to 1997)

265. This level and frequency of use demonstrates that the application route is reasonably alleged to have subsisted for 20 years or more before the submission the s31(6) landowner deposit in 1997. Use was 'as of right', without

force, without secrecy and without permission and without interruption. No evidence has been provided about a lack of intention to dedicate prior to 1977 to 1997, except for one record of denial of access in 1985 at para 195.

266. Therefore, the statutory test for presumed dedication of a public footpath is satisfied and not rebutted. It is therefore, 'reasonable to allege' that a public footpath subsists along Part A. An Order should be duly made based on a reasonable allegation that the way subsists, and a footpath should be recorded on the Definitive Map and Statement.

Width

267. Based on the judgements in [Hale v Norfolk County Council \(2000\)](#), the fact that a public path leads between hedges, fences, or any other type of boundary does not give rise to any presumption that a highway extends to those boundary features. It is necessary to decide, as a question of fact, if possible, whether any boundary feature was erected in order to separate the land enjoyed by the landowner from land over which the public had rights of way. Whether it may be inferred that a landowner has fenced against the highway depends on the nature of the land through which the highway passes, the width of the margins, the regularity of the boundary lines, and anything else known about the circumstances in which the boundary features were erected.
268. In this case, Part A of the application route is shown as an identifiable feature of a certain width in the 1793 Map of Lands in Kirkheaton, in **Figure 8**. The eastern boundary is shown enclosed on this document and so too is the northern section of Part A, adjacent Liley Lane. A further section of the western side of Part A is shown enclosed as a boundary feature on the 1855 OS 6-Inch Map in **Figure 16**. The remaining western boundary of the lane near Carr Mount has never been physically enclosed as it is consistently shown as 'unfenced' on the documentary evidence (see **Figures: 17, 18, 21, 22, 24, 25, 26, 29, 30, 31, 34, 35, 36, and 37**). There is no evidence at all of public rights existing in 1793, 1855, or the early 20th century. The boundary to boundary presumption therefore does not apply in this case.

269. The boundaries of the route leading to Carr Mount were most likely set out in relation to a private track, which existed in 1793. The boundaries were not, erected in order to separate land enjoyed by the landowner from land over which the public had rights of way. There can be no presumption, therefore, that the boundaries of the Carr Mount track, as they were between 1994 to 2014, define the extent of the public rights which exist over it. Public rights are likely to extend to the width over which it can be shown that there has been sufficient public use of the appropriate quality to satisfy the test for deemed dedication in section 31 of the Highways Act, 1980.
270. It has already been established that the evidence of use is sufficient to reasonably allege that a public footpath subsists along Part A of the application route. The next stage is to consider whether, the width of the public footpath. It is clear that the metalled track to Carr Mount has been used for many years by members of the public other than those resident at the Carr Mount properties. Users described the surface of Part A of the application route as a previously unmade/rough track/metalled (gravel, stone, hardcore compacted), which was later sealed with tarmac. During the relevant period of 1994 to 2014, the width of the track estimated by users ranged between 3-4 metres, which is consistent with the metalled portion of the track leading to Carr Mount.
271. Whilst it may be the case that members of the public used the grass verge either side of the metalled track to avoid passing vehicles, there is currently insufficient user evidence to conclude that public footpath rights subsist, or are reasonably alleged to subsist, over a greater width than the metalled track. This does not preclude the possibility that public rights have been established over a wider width than the metalled track.
272. It is therefore recommended that a Definitive Map Modification Order is made to record a public footpath leading from Liley Lane to Kirkburton 10, as shown by the black dashed line leading between Points A and B on the indicative map (**Figure 59**). It is also recommended that the public footpath is recorded with a variable width between 3 to 5 metres based on the user evidence and measurements of the metalled track leading to Carr Mount using Ordnance

Survey Master Map and aerial images, as shown by the shading on the indicative plan (**Figure 59**).

This page is intentionally left blank

Appendix C

Figures and Photos

DMMOs S14201 and S14306

Carr Mount

25/01/2024

LIST OF FIGURES

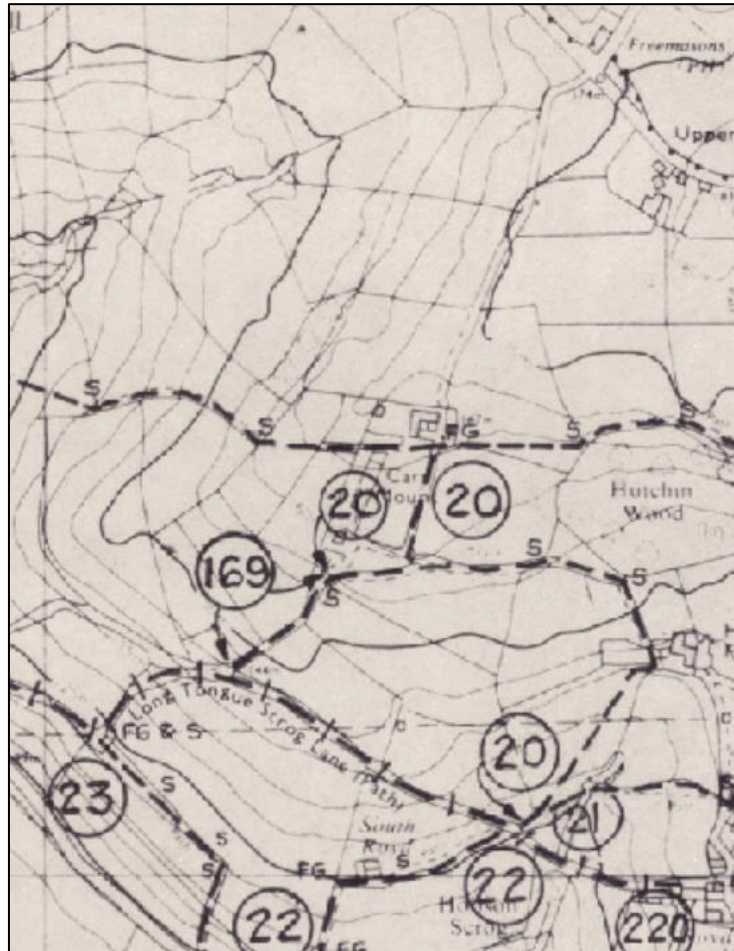
Figure 1: 1985 Definitive Map and Statement.....	4
Figure 2: 1952 Definitive Map and Statement.....	5
Figure 3: DMMO S14201 application map.....	6
Figure 4: DMMO S14306 Application map	7
Figure 5: Photos of application route Part A showing physical characteristics.....	8
Figure 6: Photos of application route Part B showing physical characteristics	10
Figure 7: 2012 Aerial photo, scale 1:2000	12
Figure 8: 1793 Map of Lands in Kirkheaton.....	13
Figure 9: The Explanation 1793 Map of Lands in Kirkheaton.....	14
Figure 10: 1812 Map of Estate in Kirkheaton	15
Figure 11: 1857-1913 Plan of H F Beaumont’s Estate in Kirkheaton.....	16
Figure 12: 1843 Old OS Australia 1 inch.....	18
Figure 13: 1846 Tithe plan showing woods in the township of Kirkheaton	19
Figure 14: 1846 Tithe plan showing woods in the township of Kirkheaton	20
Figure 15: 1799 Kirkheaton Moor draft Enclosure Map.....	21
Figure 16: 1855 OS 6-inch England and Wales, Yorkshire Sheet 247	23
Figure 17: 1893 OS 25-inch England and Wales, Yorkshire CCXLVLL.9 & CCXLVLL.13... ..	25
Figure 18: 1894 OS Six-Inch England and Wales, Yorkshire Sheet CCXLVII.SW	27
Figure 19: Timeline for development of possible through route.....	28
Figure 20: 1896 1-inch, England and Wales, Sheet 77 – Huddersfield (Hills)	29
Figure 21: 1903 Cassini Sheet 110 Sheffield & Huddersfield	30
Figure 22: 1907 OS 25-inch England and Wales Yorkshire CCXLV11.9	31
Figure 23: 1908 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW	32
Figure 24: 1919 OS 25-inch England and Wales, Yorkshire CCXLVII.9 & CCXLVII.13	34
Figure 25: 1932 OS 25-inch England and Wales, Yorkshire CCXLVII.9.....	36
Figure 26: 1938 The Authentic Map Directory of Southwest Yorkshire.....	37
Figure 27: 1904 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9 .	38
Figure 28: 1943 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9 .	39
Figure 29: 1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series ...	40
Figure 30: 1961 OS 1 to 25000, 1 st Edition	41
Figure 31: IR 1910 Valuation Reference Map C243 247/9	42
Figure 32: IR 1910 Valuation Reference Map C243 247/13	43
Figure 33: Inland Revenue 1910 Valuation Book for Parish of Kirkheaton.....	44
Figure 34: 1920 Conveyance for title [REDACTED].....	47
Figure 35: 1923 Conveyance for title [REDACTED].....	48
Figure 36: 1923 conveyance for title [REDACTED].....	49
Figure 37: 1936 conveyance for title [REDACTED].....	50
Figure 38: Walking Schedule public footpath Kirkburton 20	51
Figure 39: Kirkburton Urban District Council 1952.....	52
Figure 40: INSPIRE Index Polygons Service 23 August 2021.....	53
Figure 41: List of Streets, Highways Registry.....	54
Figure 42: List of Streets, Highways Registry cards	55
Figure 43: Discovering Old Lepton 1978, Walk 3.....	56
Figure 44: Discovering Old Lepton and Kirkheaton	57
Figure 45: Countryside Stewardship Scheme Application	58

Figure 46: Summary of user evidence	59
Figure 47: Summary of landowner evidence	61
Figure 48: 1985 letter relating to Part A of application route	62
Figure 49: User evidence - Notices/signs and Challenge	63
Figure 50: Other notices and signs.....	64
Figure 51: Landowner notice, August 2014	65
Figure 52: s31(6) landowner deposit plan	66
Figure 53: Summary of user evidence, relevant period 1994 to 2014	67
Figure 54: Summary of user evidence, alternative period 1977 to 1997	68
Figure 55: Waymakers on Part B, DMMO S14306	69
Figure 56: Consultation notices DMMO S14201	70
Figure 57: Consultation notices DMMO S14306.....	70
Figure 58: Consultation responses.....	71
Figure 59: Indicative map - public footpath recommended to be added (A - B).....	72

Figure 1: 1985 Definitive Map and Statement

Source: Kirklees Council Kompass mapping

Map



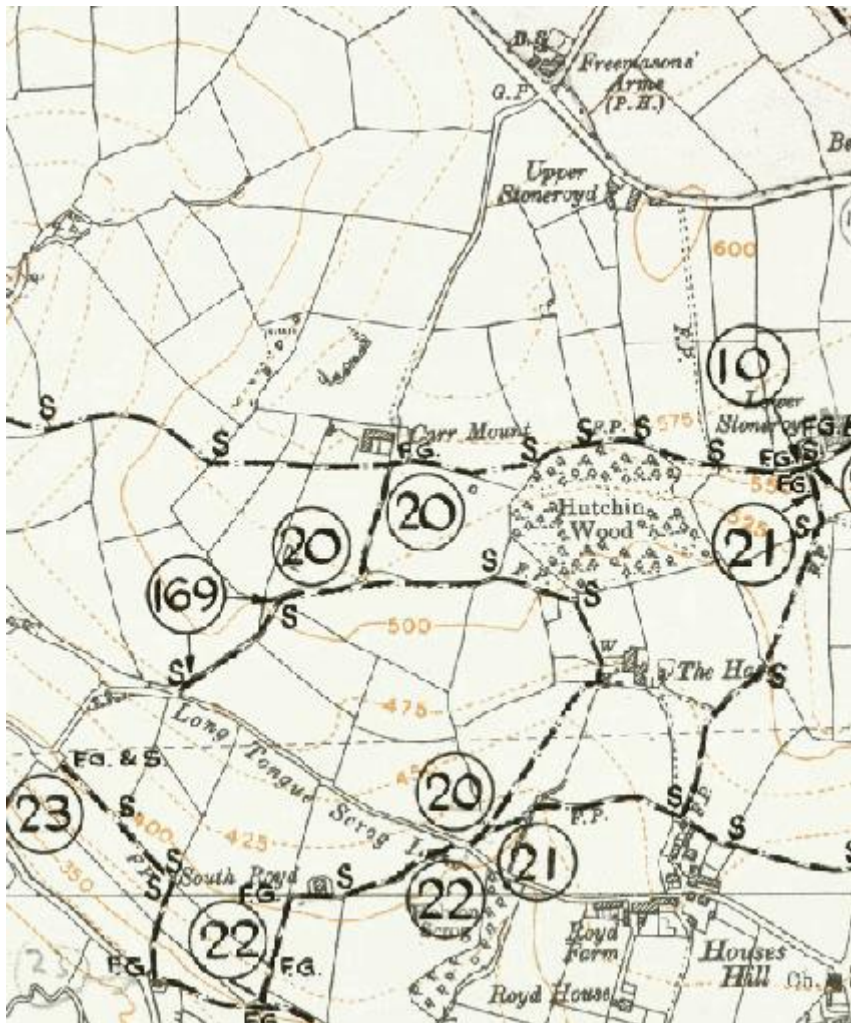
Statement

Kirkburton		Kirkburton					
Path Number	Map Reference	Description of Route	Nature Of Surface	Length (M)	Width (M)	General	
020	SE 11NE / 1917	Footpath from Carr Mount Path No. 10 in a southerly and southeasterly direction to The Hagg thence turning in a southwesterly direction to its junction with Long Tongue Scrog Lane also branch footpath in a westerly direction to Path No. 169.	Arable	675	0.9	2 Field Gates 4 Stiles	
169	SE 11NE / 1917	Footpath commencing at its junction with Long Tongue Scrog Lane and proceeding in a northeasterly direction to its junction with Path No. 20.	Part Ash and Part Earth	145	0.9		

Figure 2: 1952 Definitive Map and Statement

Source: Kirklees Council Kompass mapping

Map



Statement

20	SE 11 NE	Footpath from Carr Mount path No. 10 in a southerly and south westerly direction to The Hags thence turning in a south westerly direction to its junction with Long Tongue Scrag Lane, also branch footpath in a westerly direction to Branch Road from Long Tongue Scrag Lane.	Ploughed	0.42	3' 0"	No. 2 Field Gates No. 4 Stiles No direction signs
169	SE 11 NE	Footpath commencing at its junction with Long Tongue Scrag Lane and proceeding in a north easterly direction to its junction with Path No. 20.	Part ashed, part earth	0.09	3' 0"	No. 2 Stiles No. 1 Stiles

Figure 3: DMMO S14201 application map

Source: DMMO S14201 application

Point A: Junction of Liley Lane and Bellstring Lane opposite Hopton Hall Lane (Public Carriageway B6118): [Google Street View](#); Point B: public footpath Kirkburton 20 at Carr Mount

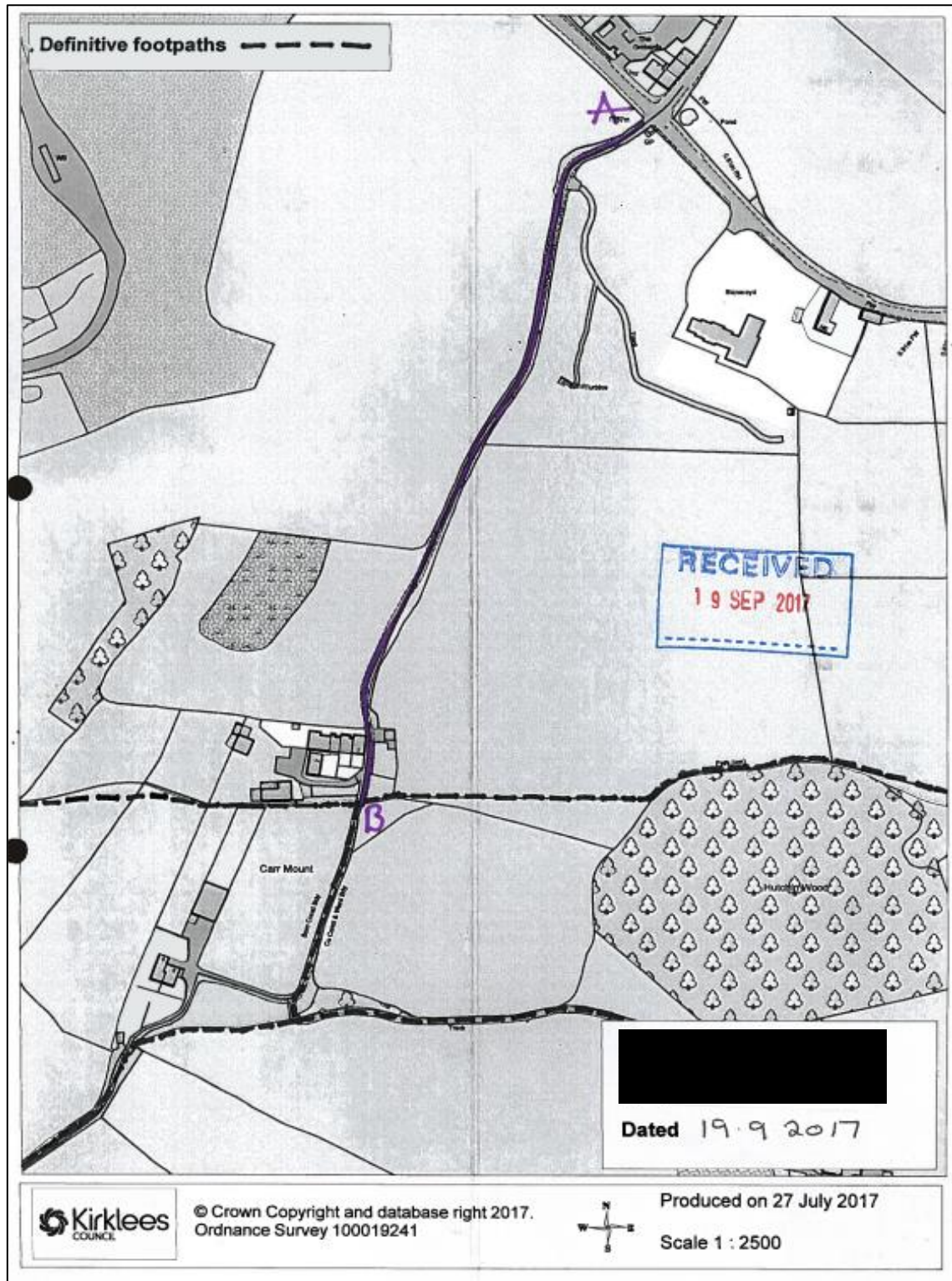


Figure 4: DMMO S14306 Application map

Source: DMMO S14306 application

Point A: Long Tongue Scrog Lane (public bridleway Kirkburton 220): [Google Street View](#);
Point B: Junction of Liley Lane and Bellstring Lane opposite Hopton Hall Lane (Public Carriageway B6118): [Google Street View](#)

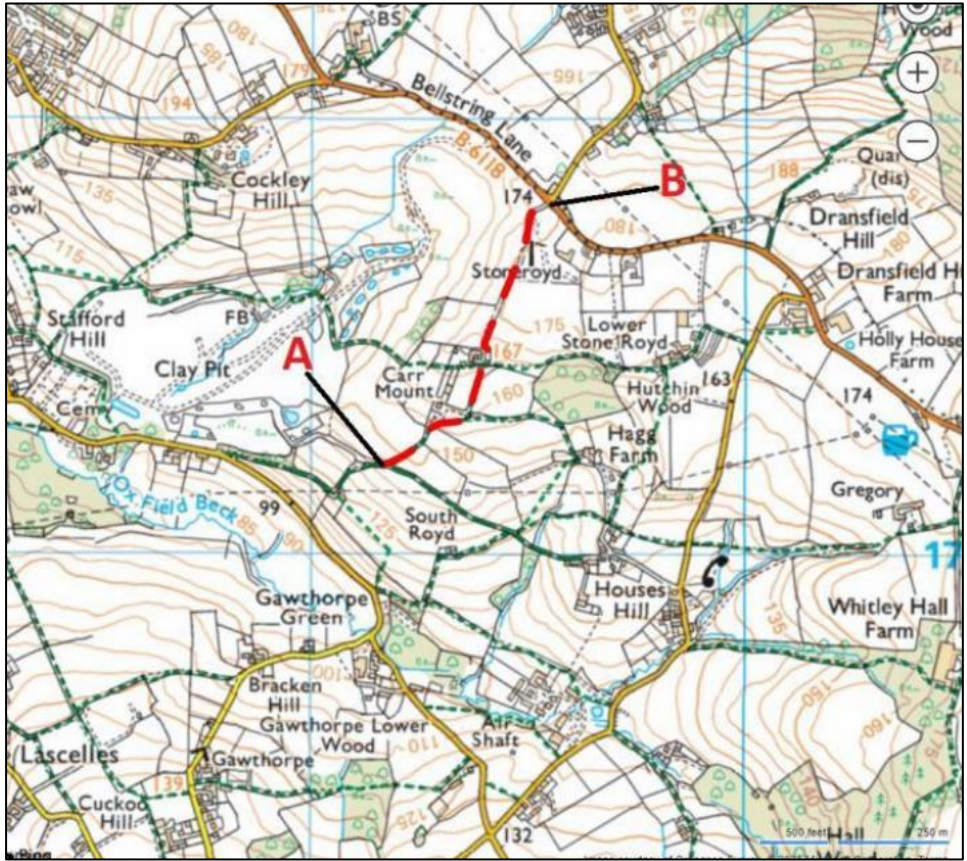


Figure 5: Photos of application route Part A showing physical characteristics



Photo 1: Junction of Liley Lane (B6118) and Carr Mount lane showing street name plate (Point A on application map, Figure 3)



Photo 2: Close up of no-through road Carr Mount street name plate (same location as photo 1)



Photo 3: Enclosed on both sides by walls and hedges, sealed surface



Photo 4: Bounded on east side by wall, wind turbine to east in distance, agricultural fields adjacent



Photo 5: Meandering south-east, bounded on east side by wall, agricultural fields adjacent



Photo 6: Looking back north-westwards to Liley Lane (B6118), former Free Masons Arms in distance, agricultural fields adjacent



Photo 7: Hedge to east side, Carr Mount hamlet in distance, agricultural fields adjacent



Photo 8: Looking back north-westwards, passing place on east side, agricultural fields adjacent



Photo 9: Near Carr Mount hamlet, same passing place as photo 8



Photo 10: At Carr Mount hamlet, passing residential dwellings to west, parking space/garage to east



Photo 11: Route joins into Kirkburton footpath 20 leading south and coextensive with sealed lane leading south



Photo 12: Looking north to Carr Mount hamlet, waymarker for Kirkburton footpath 10 crossing east to west says 'Public footpath only, No cycling, No horses'. Notice 'PRIVATE ROAD, Public right of way up Carr Mount ENDS HERE'



Photo 13: Speed hump 1 of 2, to north side of Carr Mount hamlet, 25 July 2021



Photo 14: Speed hump 2 of 2 at Carr Mount hamlet, 25 July 2021



Photo 15: Similar location as photo 12, 25 July 2021



Photo 16: Point B in Figure 3, looking south along Kirkburton footpath 20, coextensive with sealed lane, 25 July 2021

Figure 6: Photos of application route Part B showing physical characteristics



Photo 17: Point A in Figure 4, junction of Kirkburton Kirkburton footpath 169 leading north and Kirkburton bridleway 220 to right



Photo 18: Kirkburton footpath 169 leading north coextensive with track



Photo 19: Kirkburton footpath 169 leading north coextensive with track

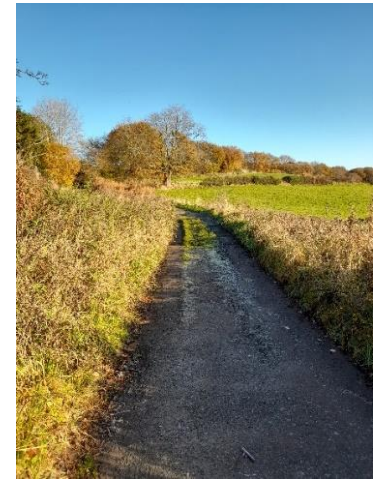


Photo 20: Kirkburton 169 footpath leading north coextensive with track



Photo 21: Kirkburton 169 footpath leading north, coextensive with track



Photo 22: Kirkburton footpath 169, agricultural fields adjacent, wrought iron gates to 8/9 Carr Mount, junction with Kirkburton 20 to east



Photo 23: Junction of Kirkburton footpath 169 and Kirkburton footpath 20, gated gap (locked), waymarker says 'No horses, No cycles'

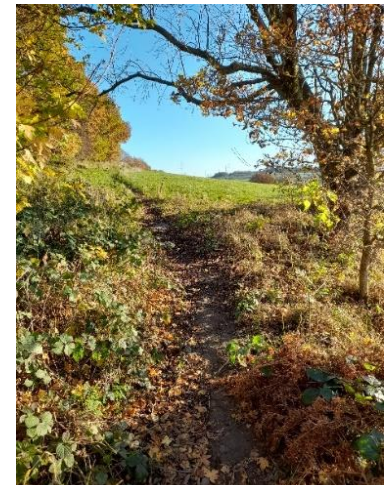


Photo 24: Kirkburton footpath 20 leading east across agricultural fields, grass and earth worn field edge path



Photo 25: Kirkburton footpath 20 leading east, grass and earth worn field edge path



Photo 26: Kirkburton footpath 20 meandering east, grass and earth worn field edge path



Photo 27: Kirkburton footpath 20 continues north to gate gap beside wall, waymarker showing 'No horses, No cycles'



Photo 28: Close up of locked gated gap in photo 27, Carr Mount hamlet in distance

Figure 7: 2012 Aerial photo, scale 1:2000

Source: Kirklees Council Kompass mapping



Figure 8: 1793 Map of Lands in Kirkheaton

Source: [Kirklees Archives: DD/WBE/pe2](#)



photo 20221212_123938.jpg

Figure 9: The Explanation 1793 Map of Lands in Kirkheaton

Source: [Kirklees Archives: DD/WBE/pe2](#)

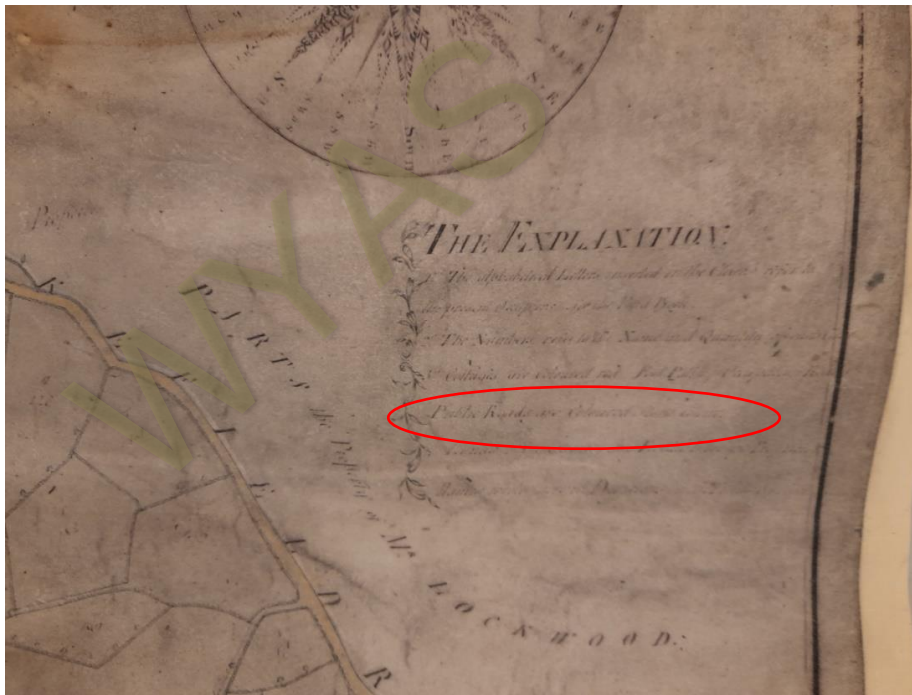


photo 20221212_124013.jpg

close up of above map

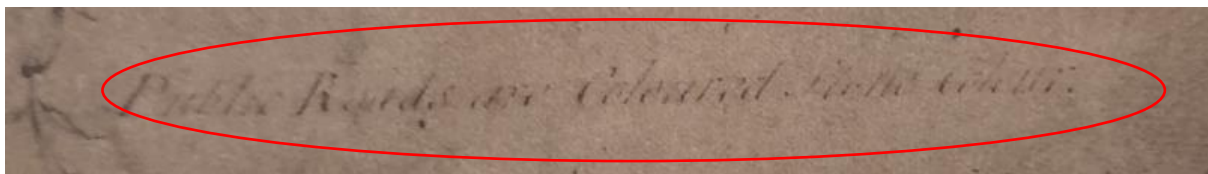


photo 20221212_124013.jpg

Figure 10: 1812 Map of Estate in Kirkheaton

Source: [Kirklees Archives: DD/WBE/pe/5](#)

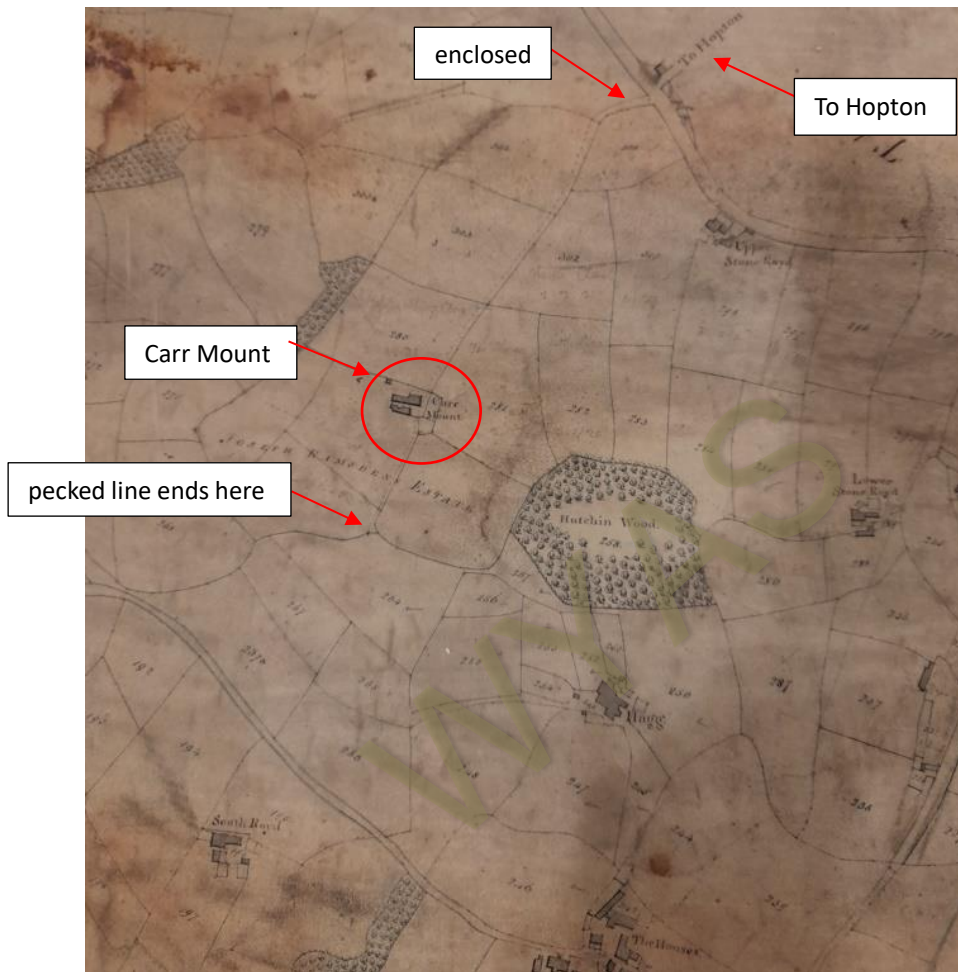


photo 20221212_112950.jpg

Figure 11: 1857-1913 Plan of H F Beaumont's Estate in Kirkheaton

Source: [Kirklees Archives: DD/WBE/pl/10](#)



photo 20221212_144348.jpg

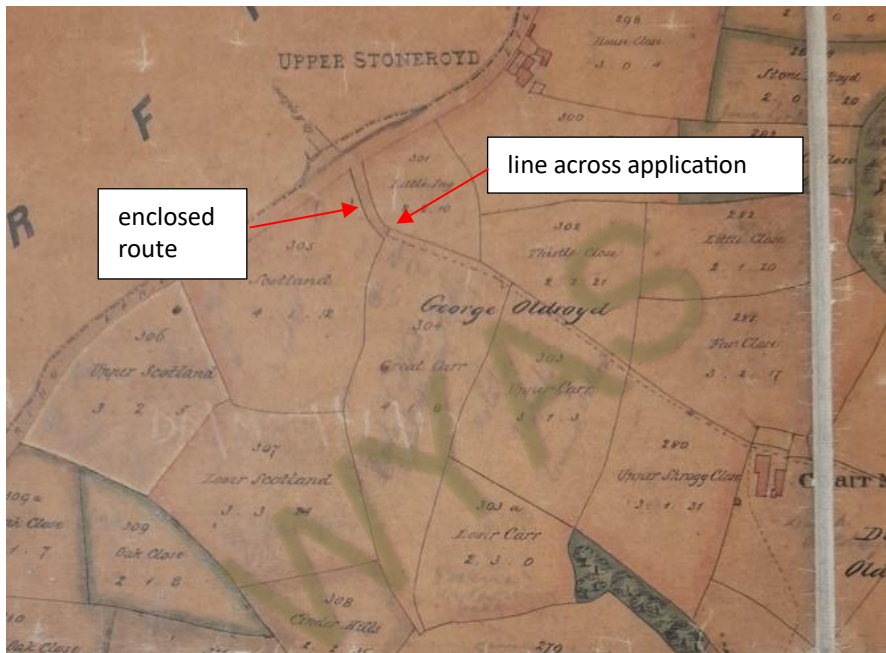


photo 20221212_144535.jpg

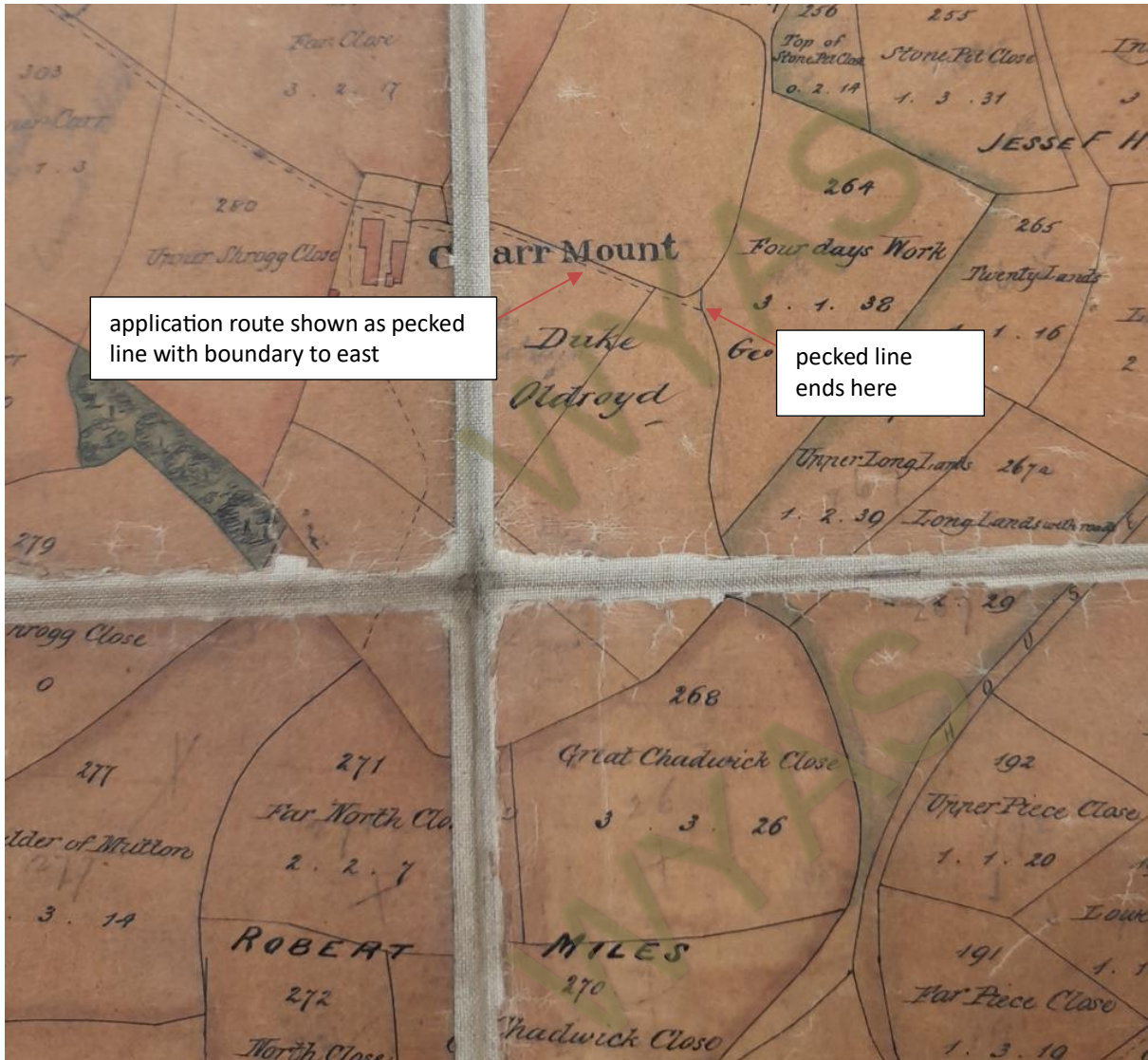


photo 20221212_144547.jpg

close up of above map

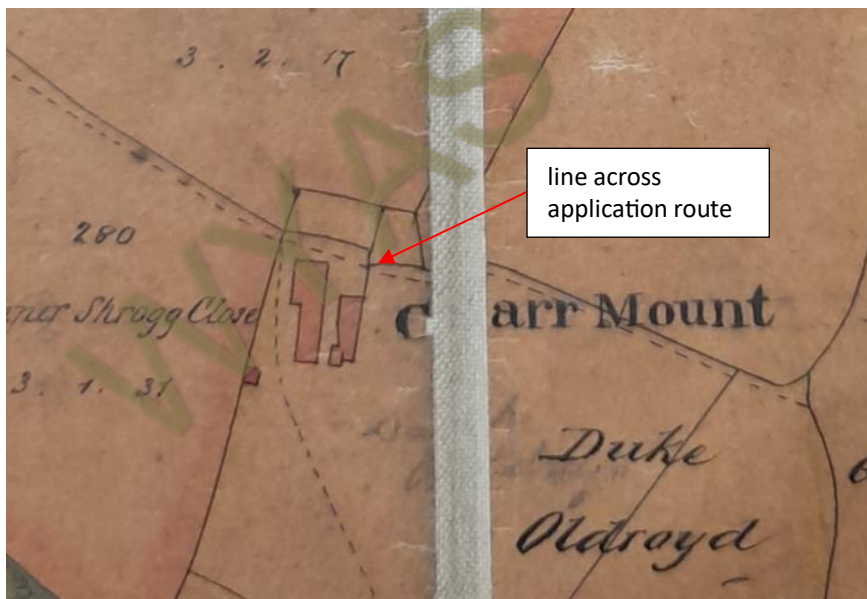


photo 20221212_144547.jpg

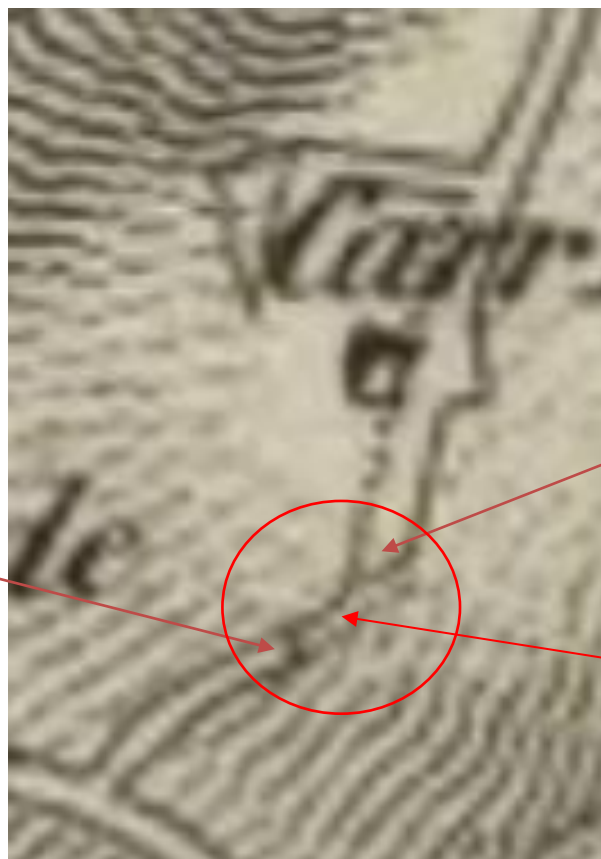
Figure 12: 1843 Old OS Australia 1 inch

Source: [Huddersfield Sheet 88 NE, National Library of Australia](#)



Engraved at Southampton in the ORDNANCE MAP OFFICE, the Outline by J. Adkins, the Writing by J. A. Harrison, the Hills by J. Peake & Published by Colonel Colby, F.R.S. L&E. M.R.I.A. &c. February 20th 1843.

close up of
above map



boundary
across route

boundary
across route

route of two halves
broken in middle

Figure 13: 1846 Tithe plan showing woods in the township of Kirkheaton

Source: [Kirklees Archives: B/AHR/p2](#)

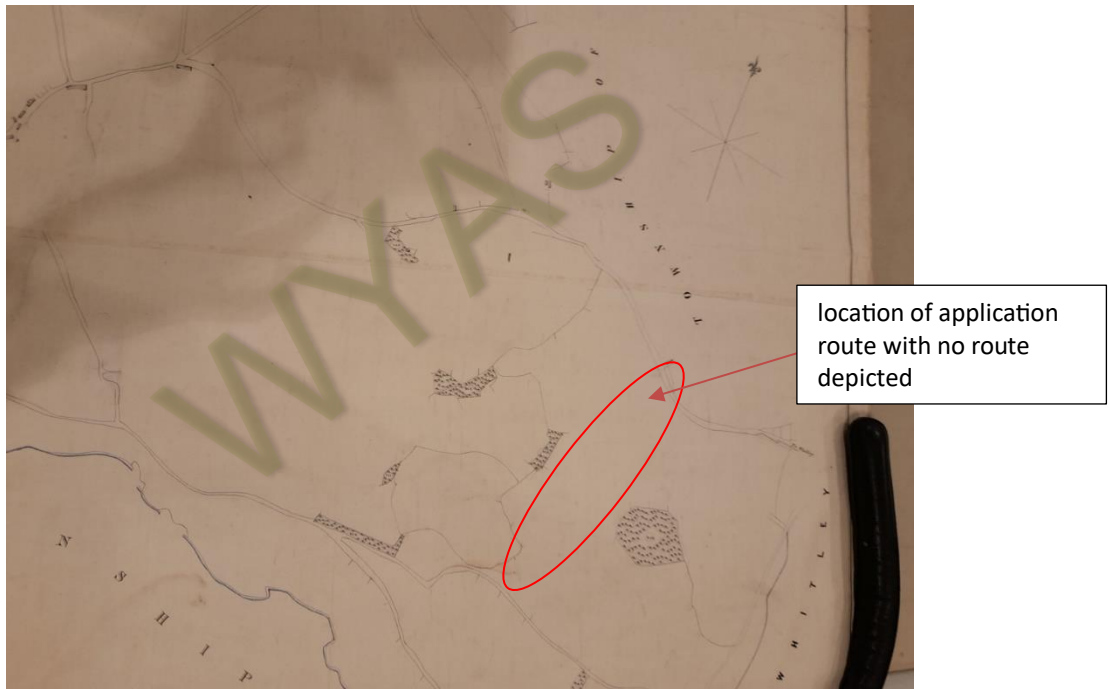


photo 20221212_122754.jpg

Figure 14: 1846 Tithe plan showing woods in the township of Kirkheaton

Source: [Kirklees Archives: B/AHR/p2](#)

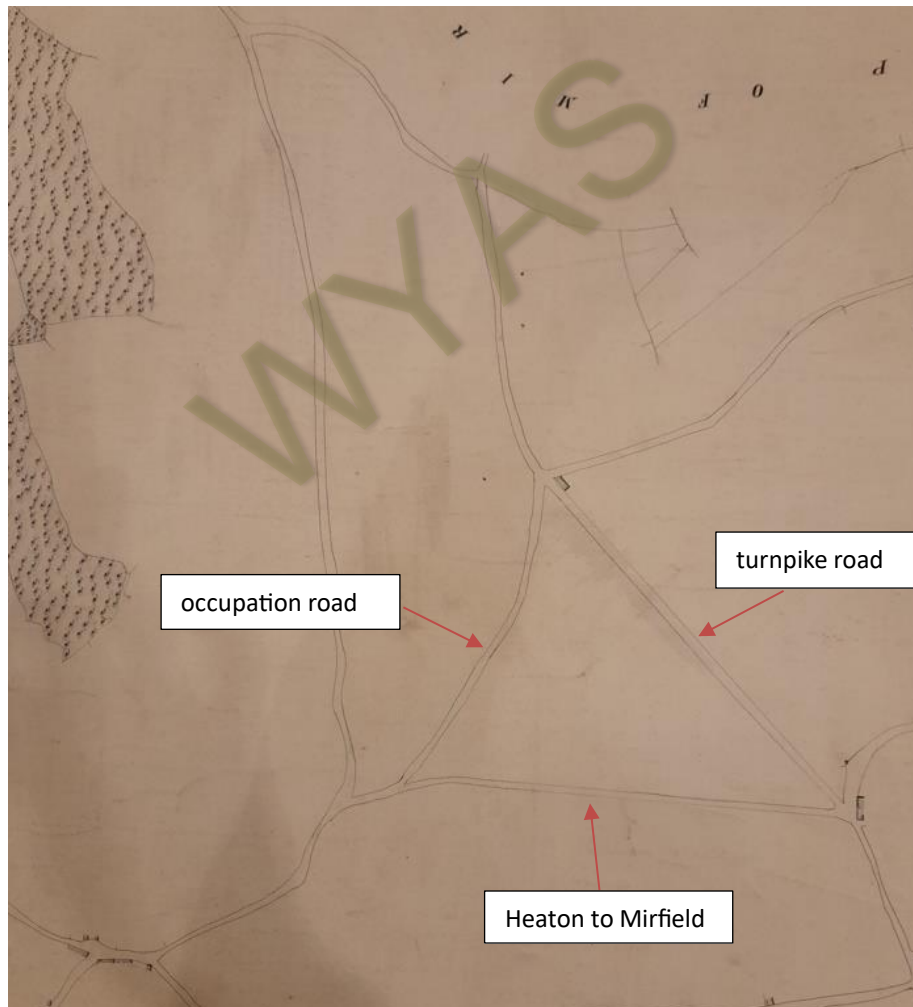


photo 2020221212_122817.jpg

Figure 15: 1799 Kirkheaton Moor draft Enclosure Map

Source: [Kirklees Archives: WYK1978/KH1799](#)

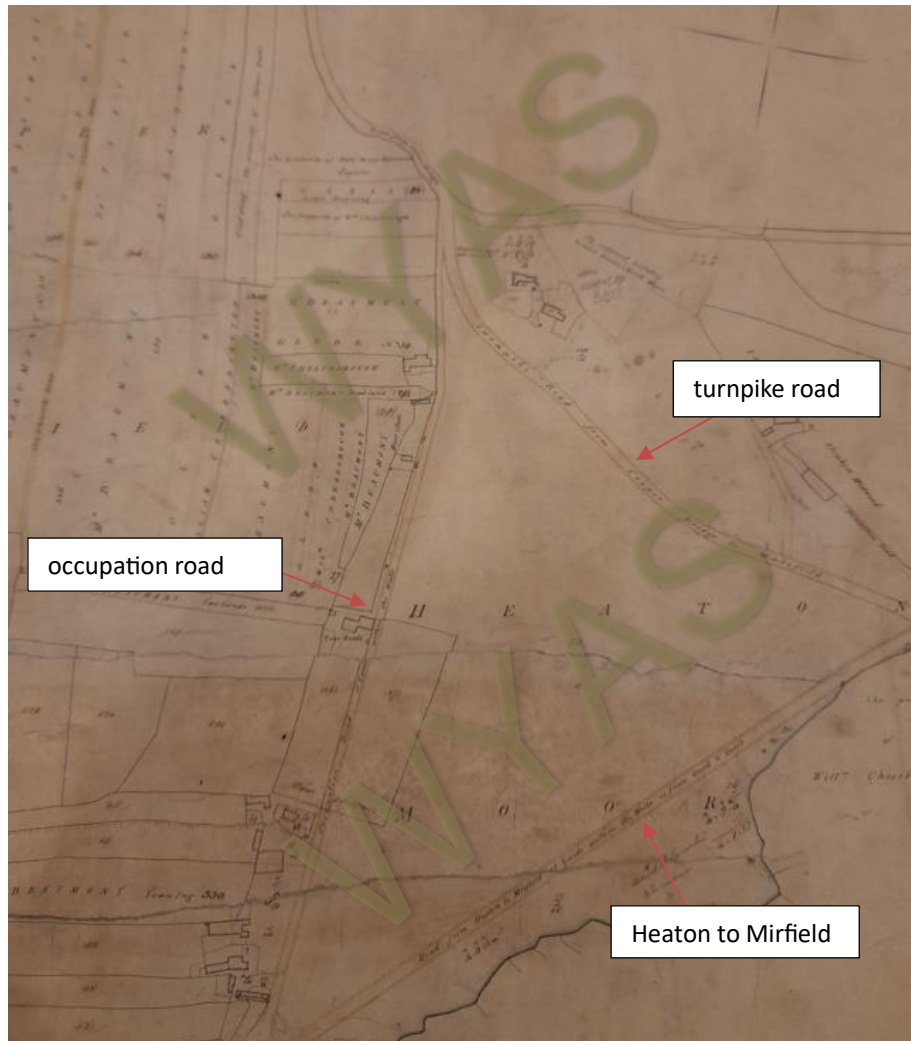


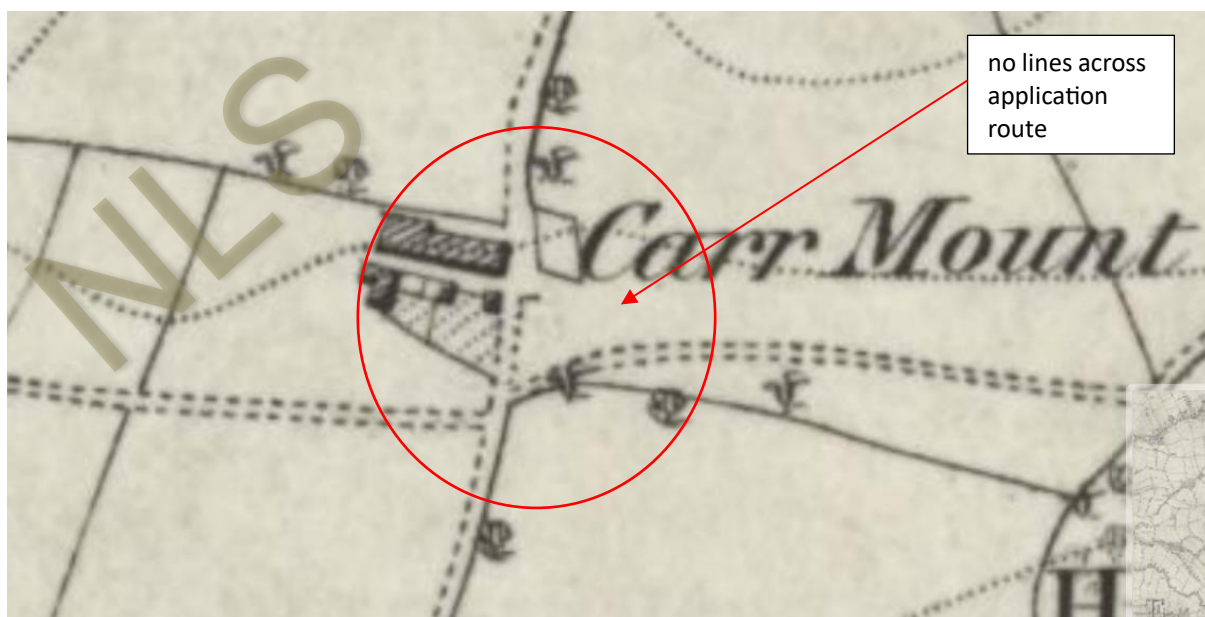
photo 20221212_120803.jpg

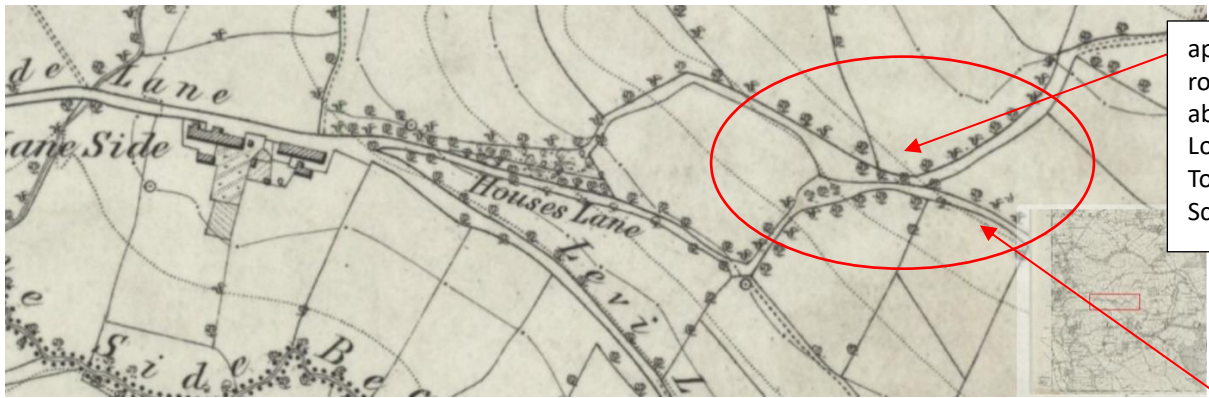
Figure 16: 1855 OS 6-inch England and Wales, Yorkshire Sheet 247

Source: National Library of Scotland (NLS)



close up of above map





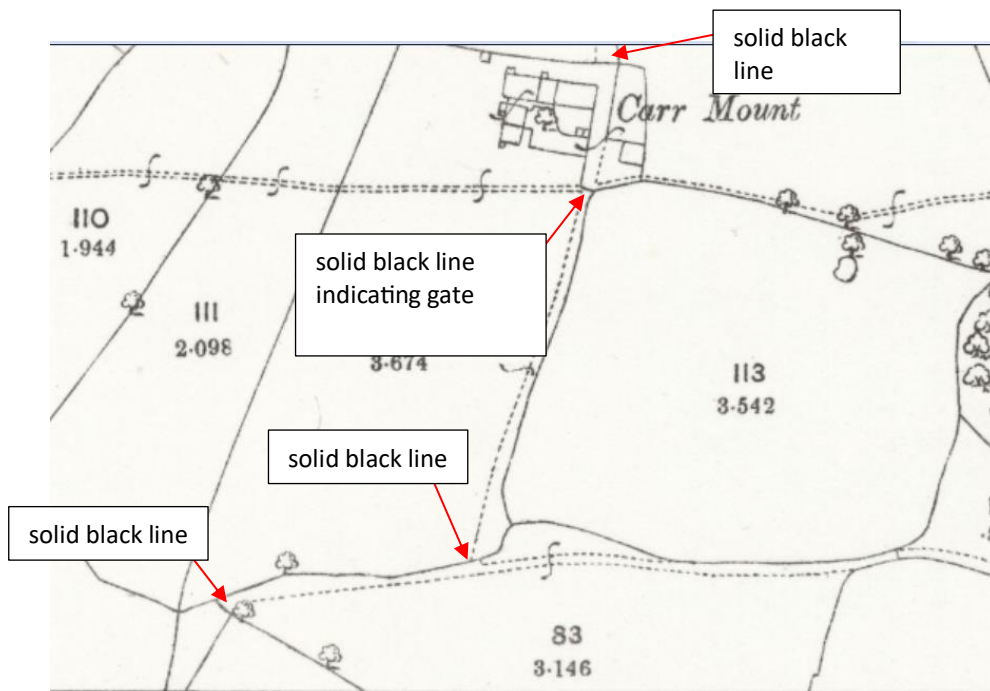
application route abutting Long Tongue Scrog

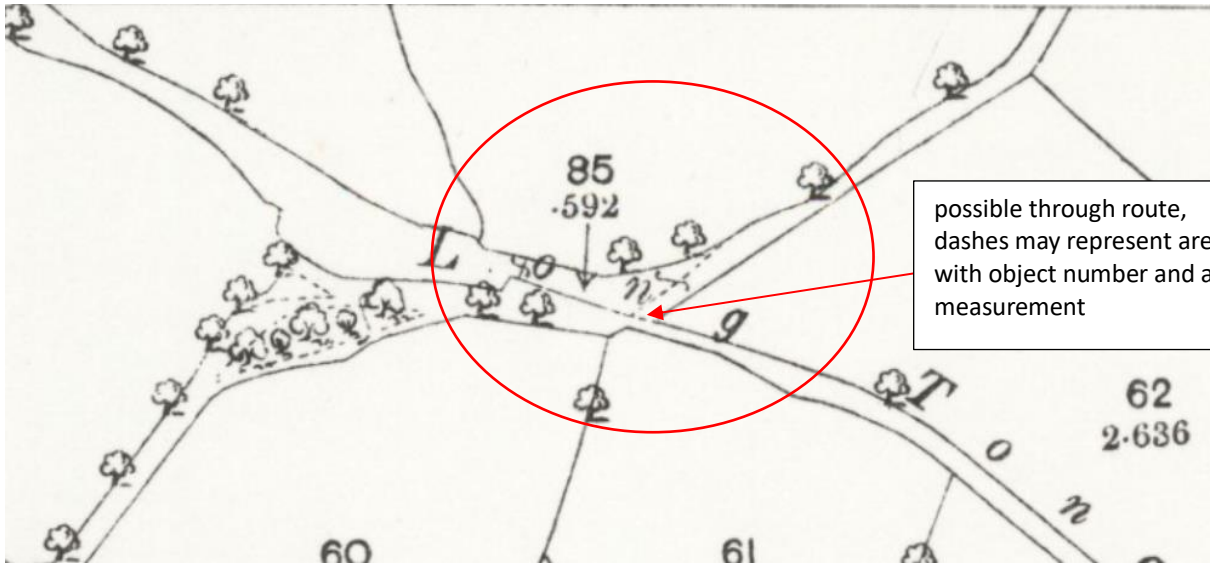
N.B. The representation on this map of a Road, Truck or Footpath, is evidence of the existence of a right of way.

Long Tongue Scrog Lane

Figure 17: 1893 OS 25-inch England and Wales, Yorkshire CCXLVLL.9 & CCXLVLL.13.

Source: NLS CCXLVLL.9 and NLS CCXLVLL.13





possible through route,
dashes may represent area
with object number and area
measurement

N.B.—The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 18: 1894 OS Six-Inch England and Wales, Yorkshire Sheet CCXLVII.SW

Source: [CCXLVII.SW NLS](#)



N.B.—The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 19: Timeline for development of possible through route

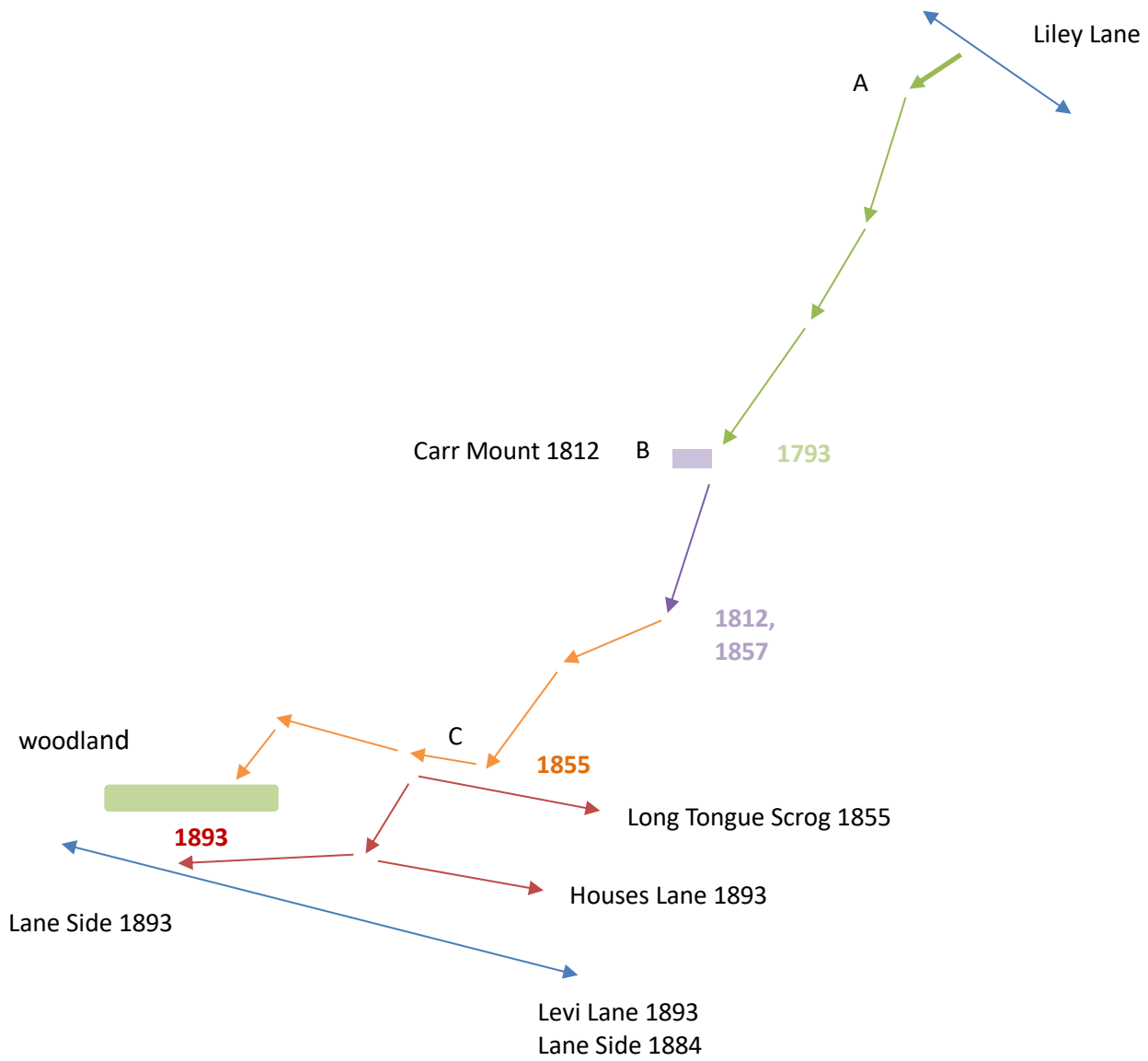


Figure 20: 1896 1-inch, England and Wales, Sheet 77 – Huddersfield (Hills)

Source: DMMO S14306 application, [Sheet 77, NLS](#)



application route
abuts Long
Tongue Scrog

OS One-Inch map key

		5 (Mile distance)	
Metalled Roads; First Class	Fenced	(Altitude) 211	Unfenced
" " Second Class			
" " Third Class			
Unmetalled Roads			
Footpaths			

N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 21: 1903 Cassini Sheet 110 Sheffield & Huddersfield

Source: S14306 application



unmetalled route
abouts Long Tonge
Scrog, there is a
line across

Cassini map key

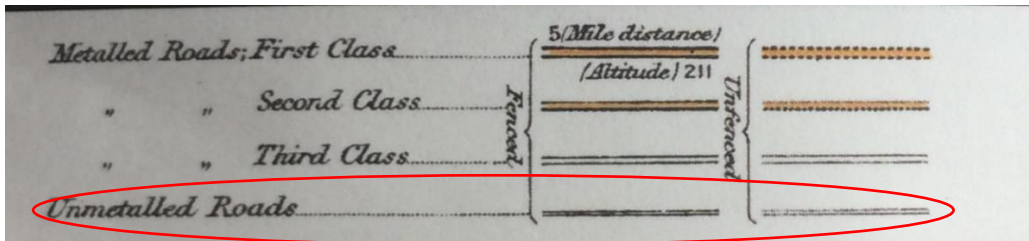
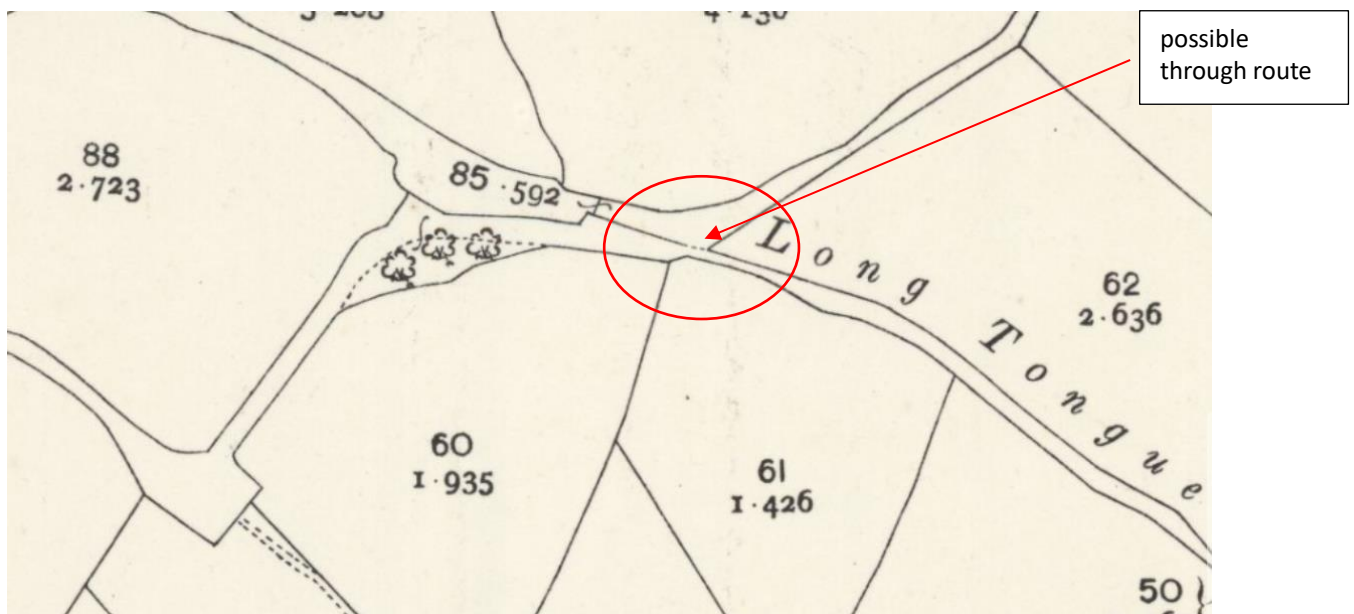
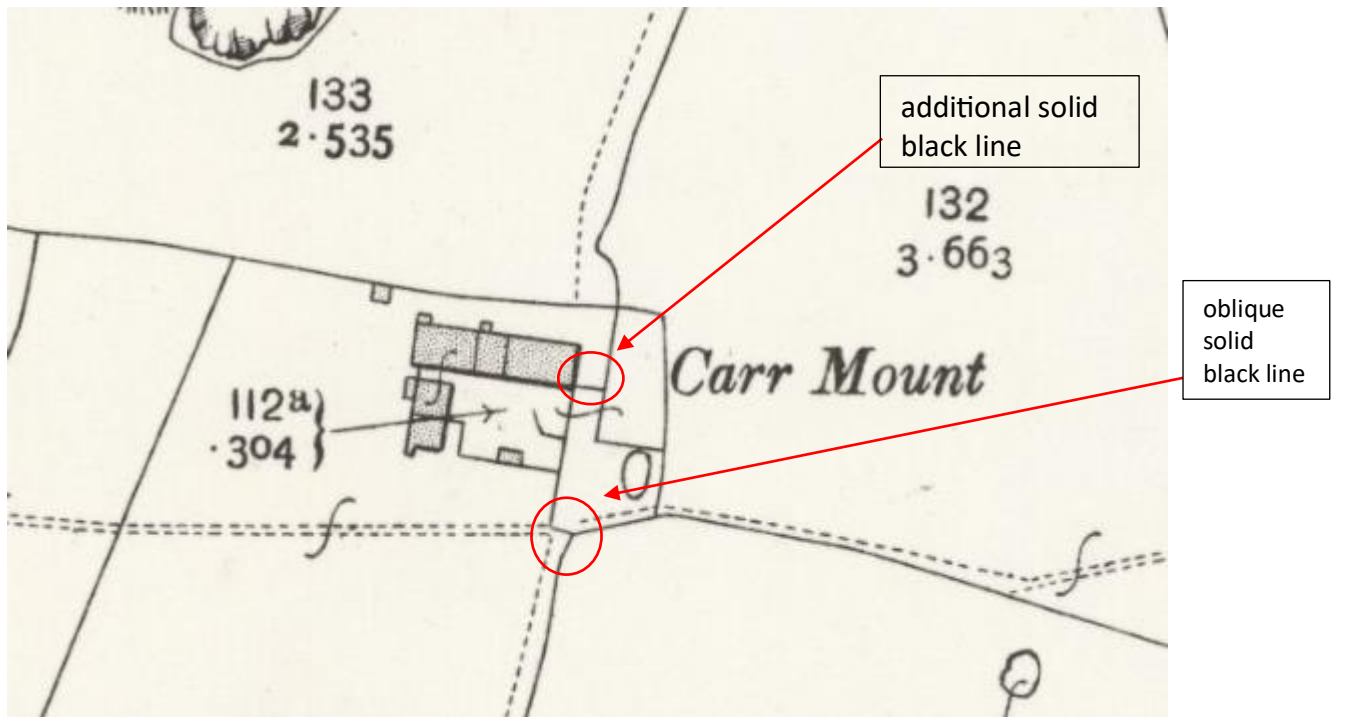


Figure 22: 1907 OS 25-inch England and Wales Yorkshire CCXLV11.9

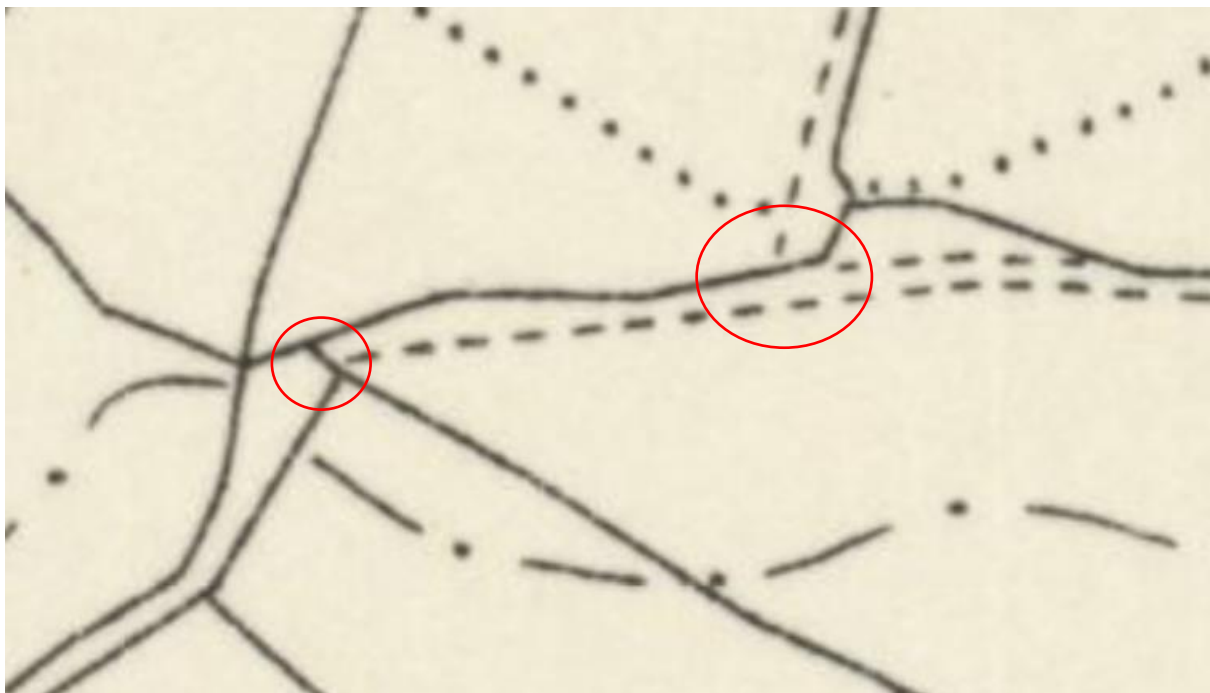
Source: CCXLV11.9, NLS



N. B.— The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 23: 1908 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW

Source: [CCXLVII.SW](#), NLS

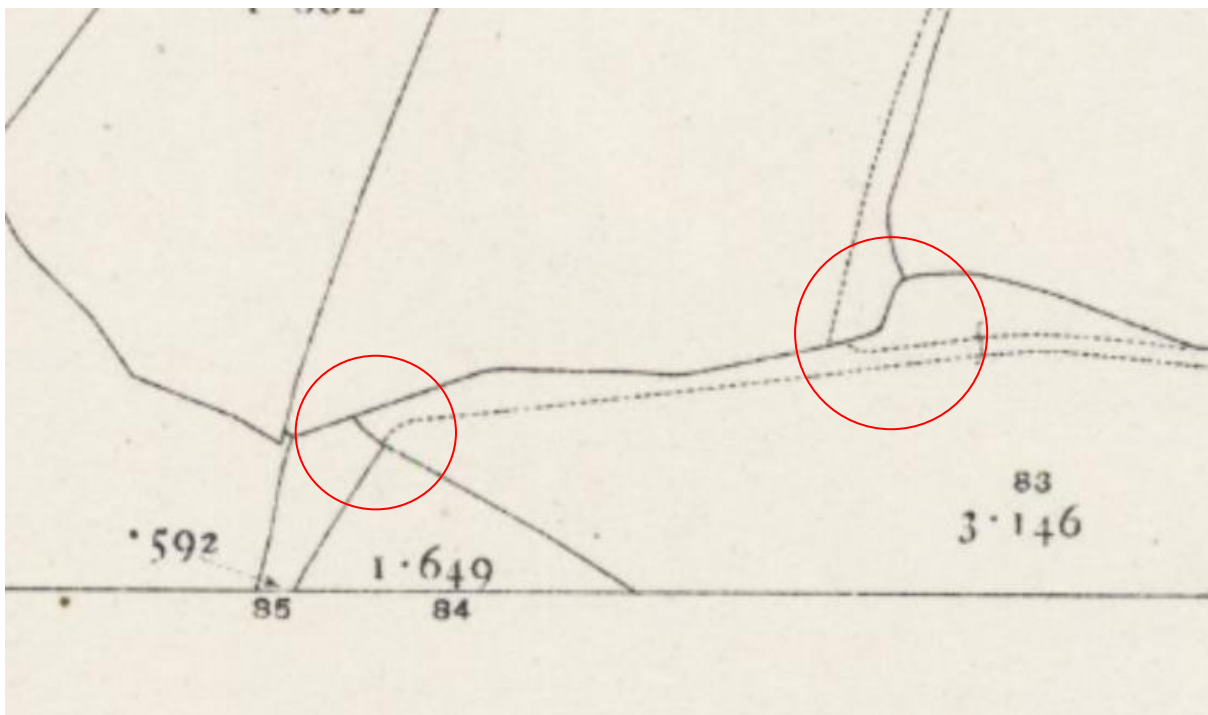
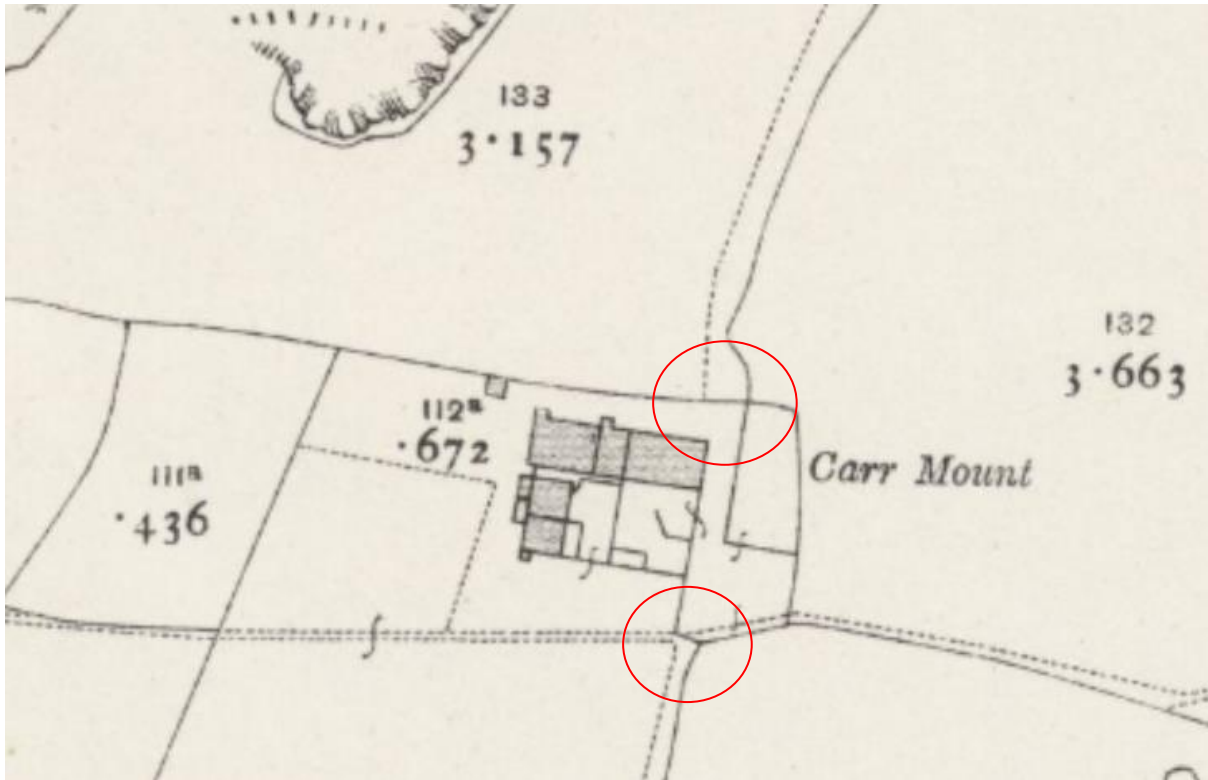


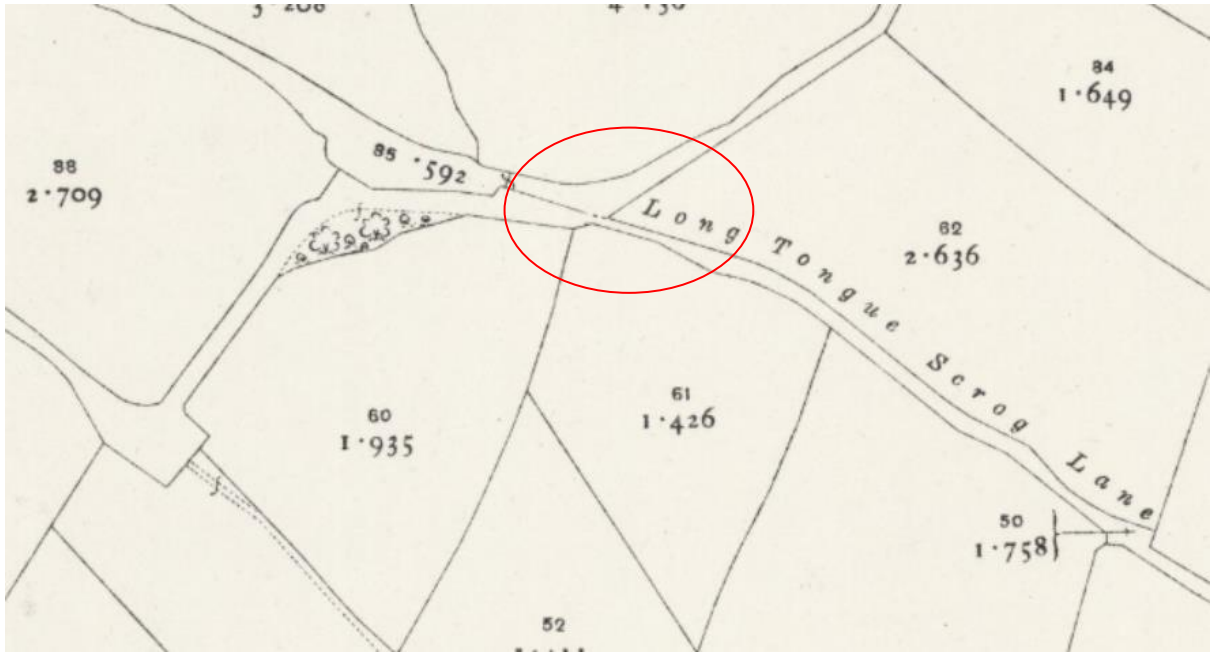


N.B.—The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 24: 1919 OS 25-inch England and Wales, Yorkshire CCXLVII.9 & CCXLVII.13

Source: [NLS CCXLVII.9](#) and [NLS CCXLVII.13](#)

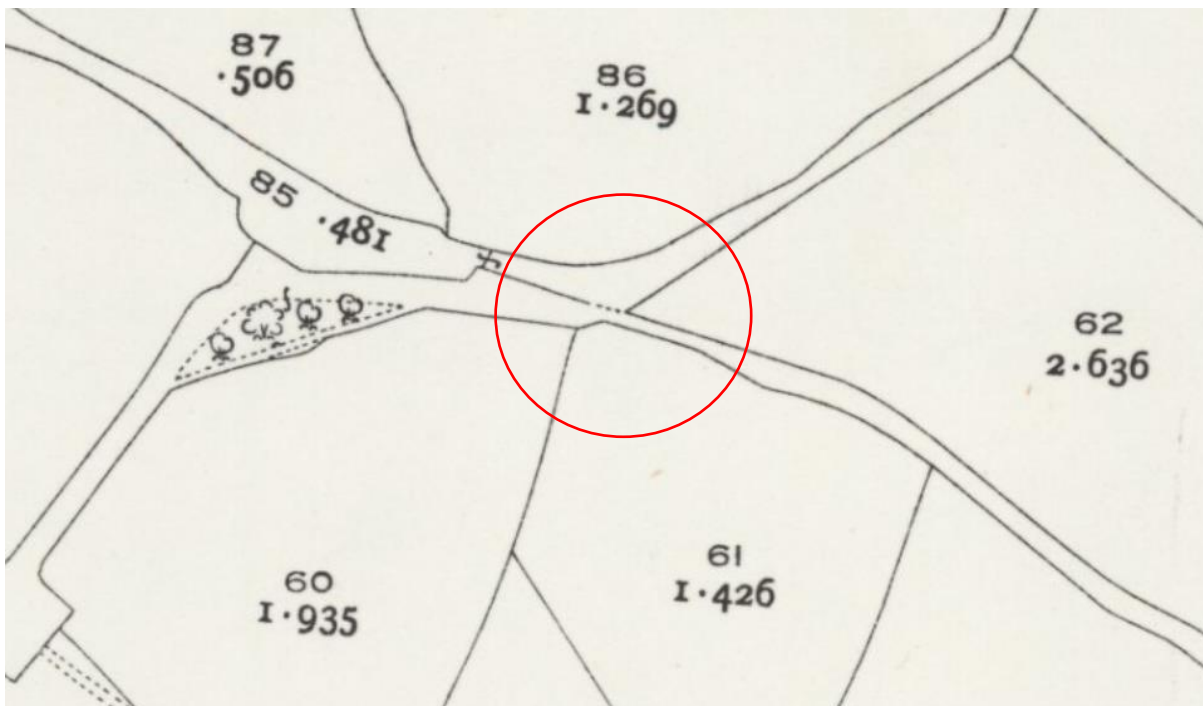




000 1000 1500 2000
N. B. — The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way.

Figure 25: 1932 OS 25-inch England and Wales, Yorkshire CCXLVII.9

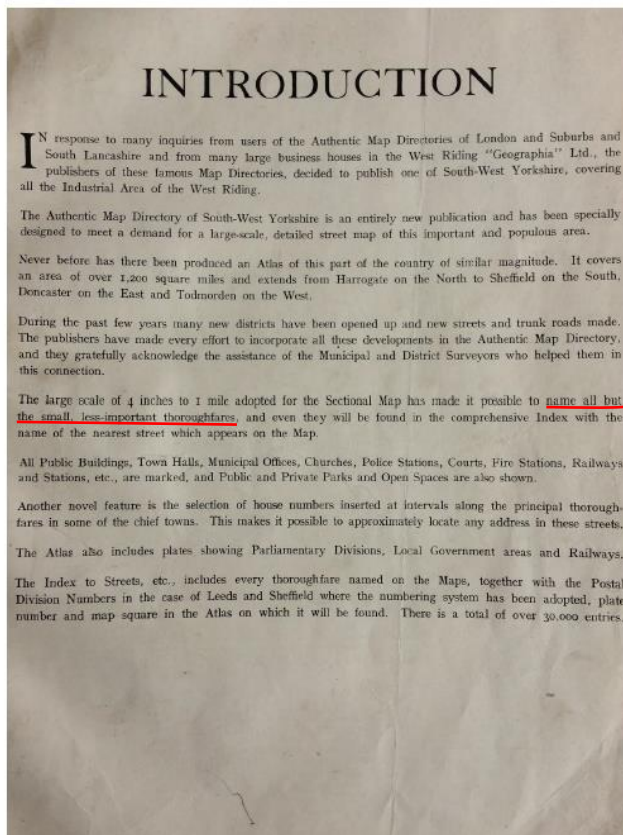
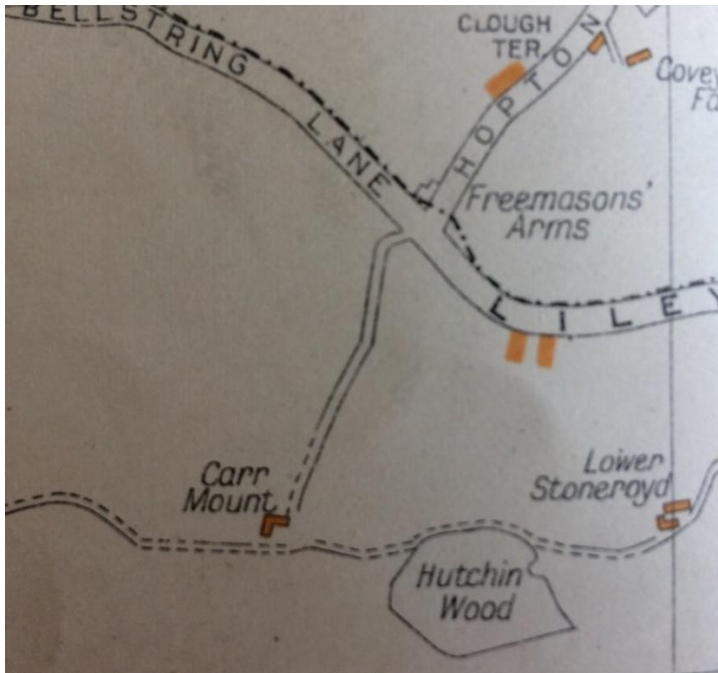
Source: CCXLVII.9, NLS



N.B.—The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

Figure 26: 1938 The Authentic Map Directory of Southwest Yorkshire

Source: S14306 application



“...name all but the small less-important thoroughfares...”

Figure 27: 1904 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9

Source: [Sheet 9 - Sheffield, NLS](#)







First Class Roads 
Secondary (Good) 
Indifferent (Passable) 
The uncoloured roads are inferior and not to be recommended to cyclists.
Footpaths & Bridlepaths 
N.B. The representation of a road or footpath is no evidence of the existence of a right of way.

Figure 28: 1943 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9

Source: Sheet 29 England & Wales No.9 Peak District, NLS

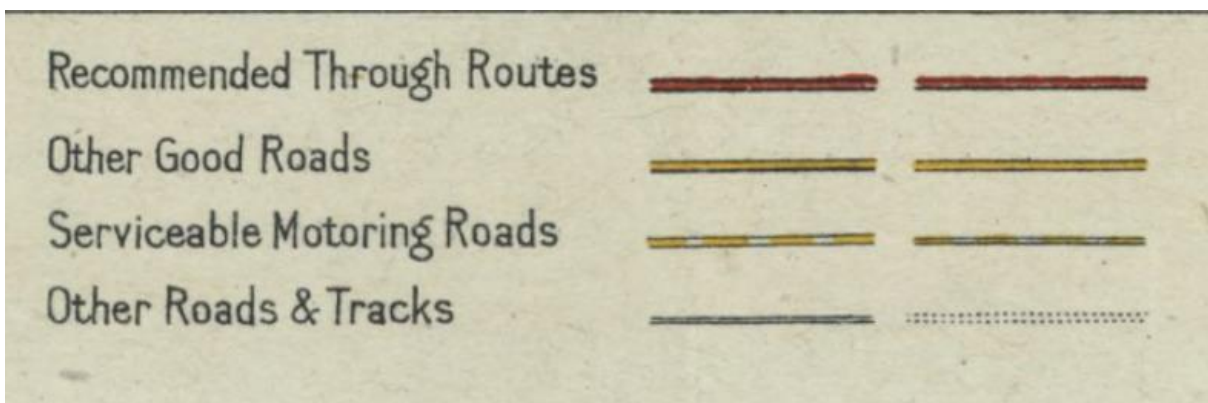
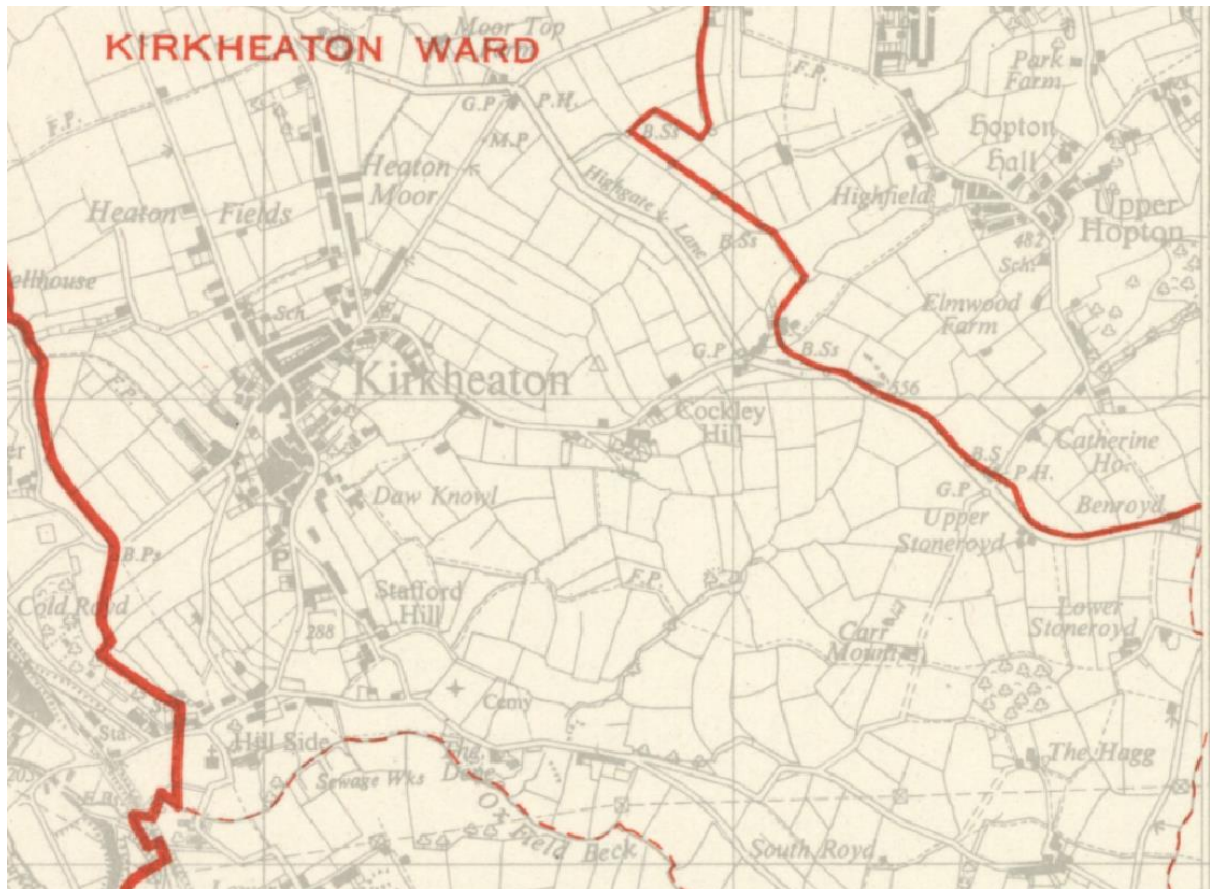


Figure 29: 1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series

Source: DMMO S14306 application



National Library of Scotland
Leabhra-làrann Nàiseanta na h-Alba

1:25,000 Provisional (Outline Edition), Administrative Area Series...
Originally published: 1947; Boundaries: 01/09/1946
Size: map 40 x 40 cm (16 x 16 inches), on sheet ca. 62 x 49 cm (ca. 24 x 20 inches)

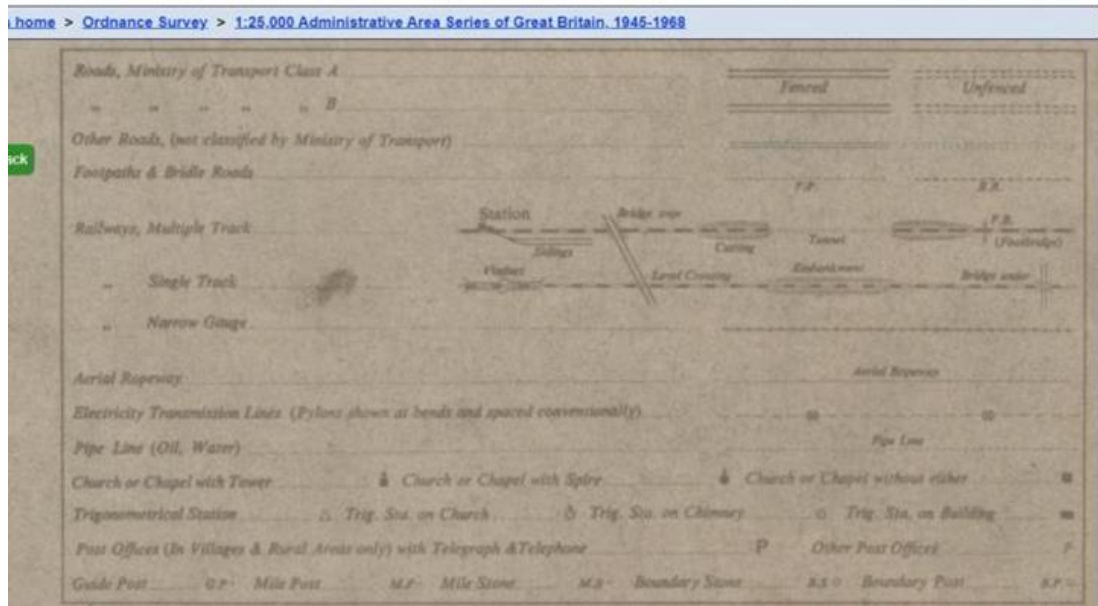


Figure 30: 1961 OS 1 to 25000, 1st Edition

Source: Kirklees Council Kompass mapping (copyright)

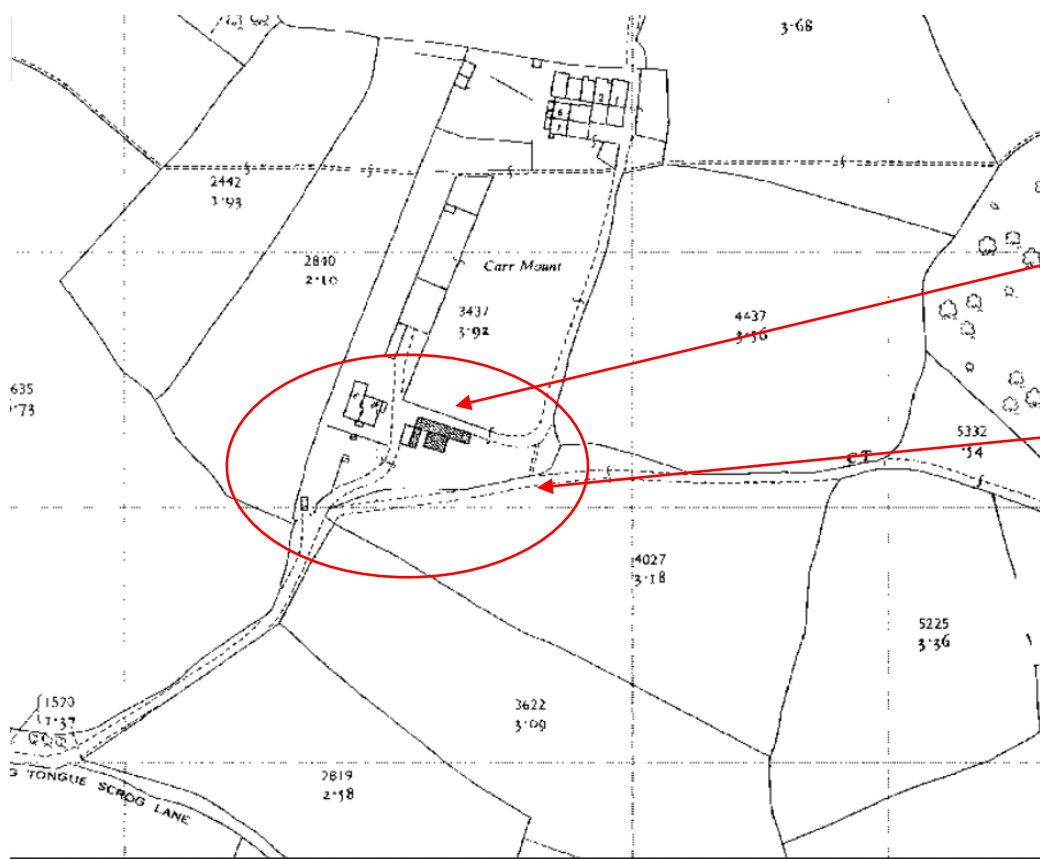
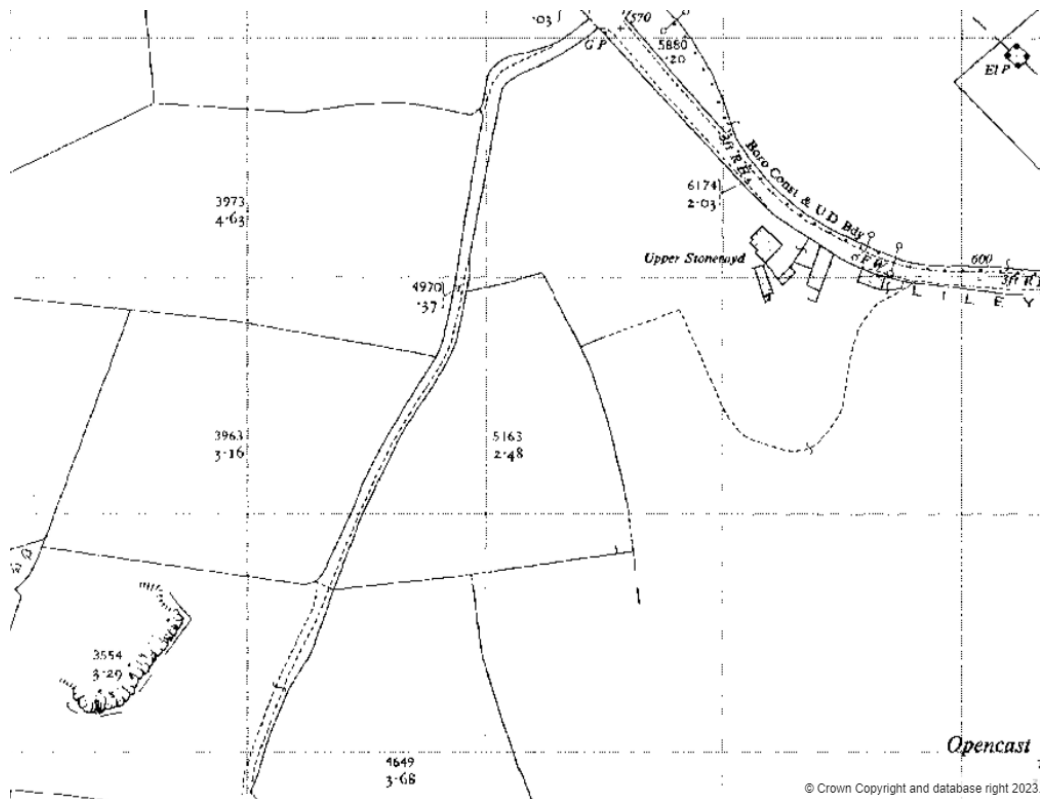


Figure 31: IR 1910 Valuation Reference Map C243 247/9

Source: DMMO S14306 application

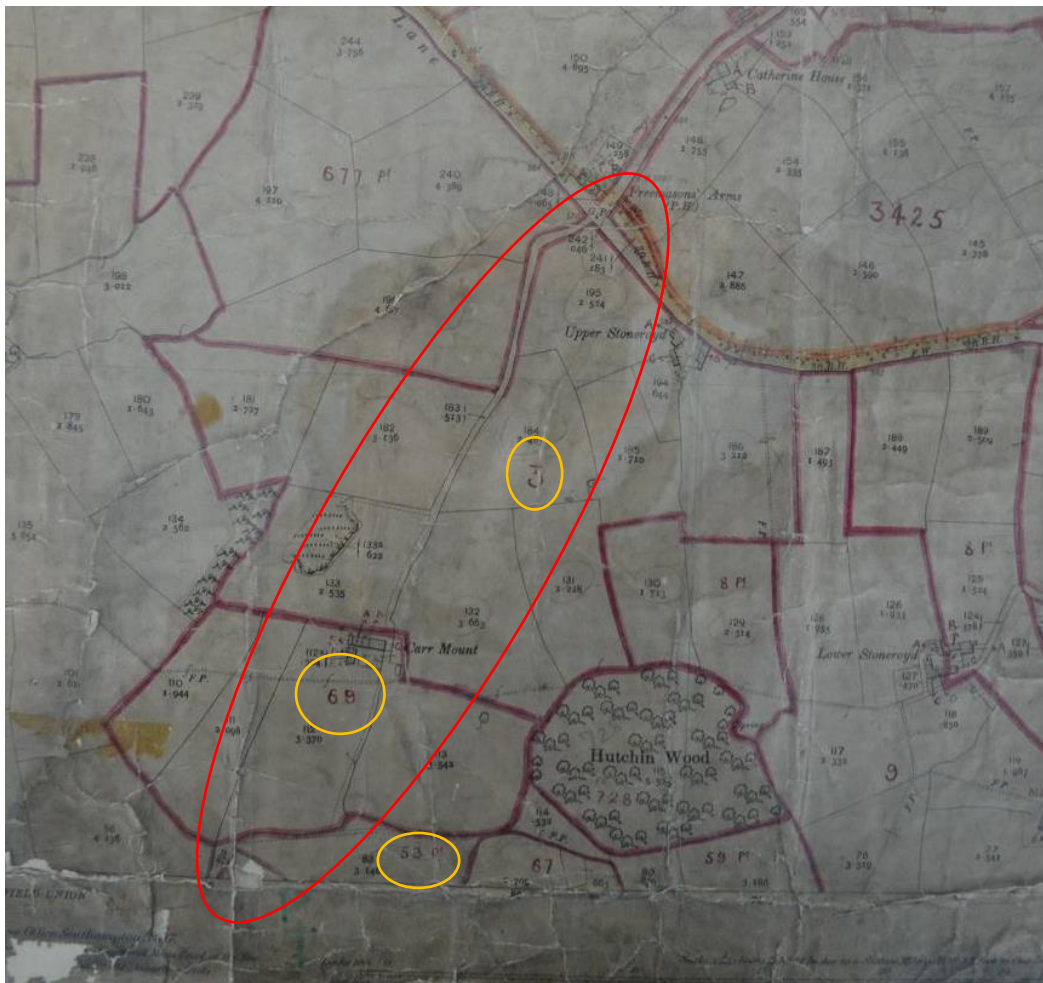


Figure 32: IR 1910 Valuation Reference Map C243 247/13

Source: DMMO S14306 application



Parish of KIRKHEATON

Beaumont Carr Mount

parcel 69

No. of Assessment	No. of Poor Rates	Christian Names and Surnames of Occupier	Christian Names of Tenants with their Residence	Description of Property - H or L, or the name or use by which known	Size of Tenement	State, Tenure and Possession of Property	Estimated Annual Value	Estimated Value	Excess as determined by Valuers				Distribution of the Excess				Original Value		Value after Deduction		Observations and Remarks
									A	B	C	D	E	F	G	H	I	J	K	L	
68		Henry Chandler	No. 11 Beaumont	House & outbuildings	1/2 A	Freehold	100	100													
69		Henry Whitehead	part of No. 11 Beaumont	Land	1/4 A	Freehold	25	25													
70		John Blampy		House & outbuildings	1/2 A	Freehold	100	100													
71		John Whitehead		House	1/4 A	Freehold	25	25													
72		Henry Leach																			
73		Richard Perry																			
74		Thomas Hunt																			
75		John Beaman Hunt																			
76		John Hunt																			
77		Henry Dr. Donohoe																			
78																					
79		John Donohoe	part of No. 11 Beaumont	Land	1/4 A	Freehold	25	25													
80		John Donohoe	part of No. 11 Beaumont	Land	1/4 A	Freehold	25	25													
81		Henry Leach																			
82		Henry Leach																			
83		John Leach																			
84		John Leach																			
Total									200	200											

no public rights of way or use for parcel 69

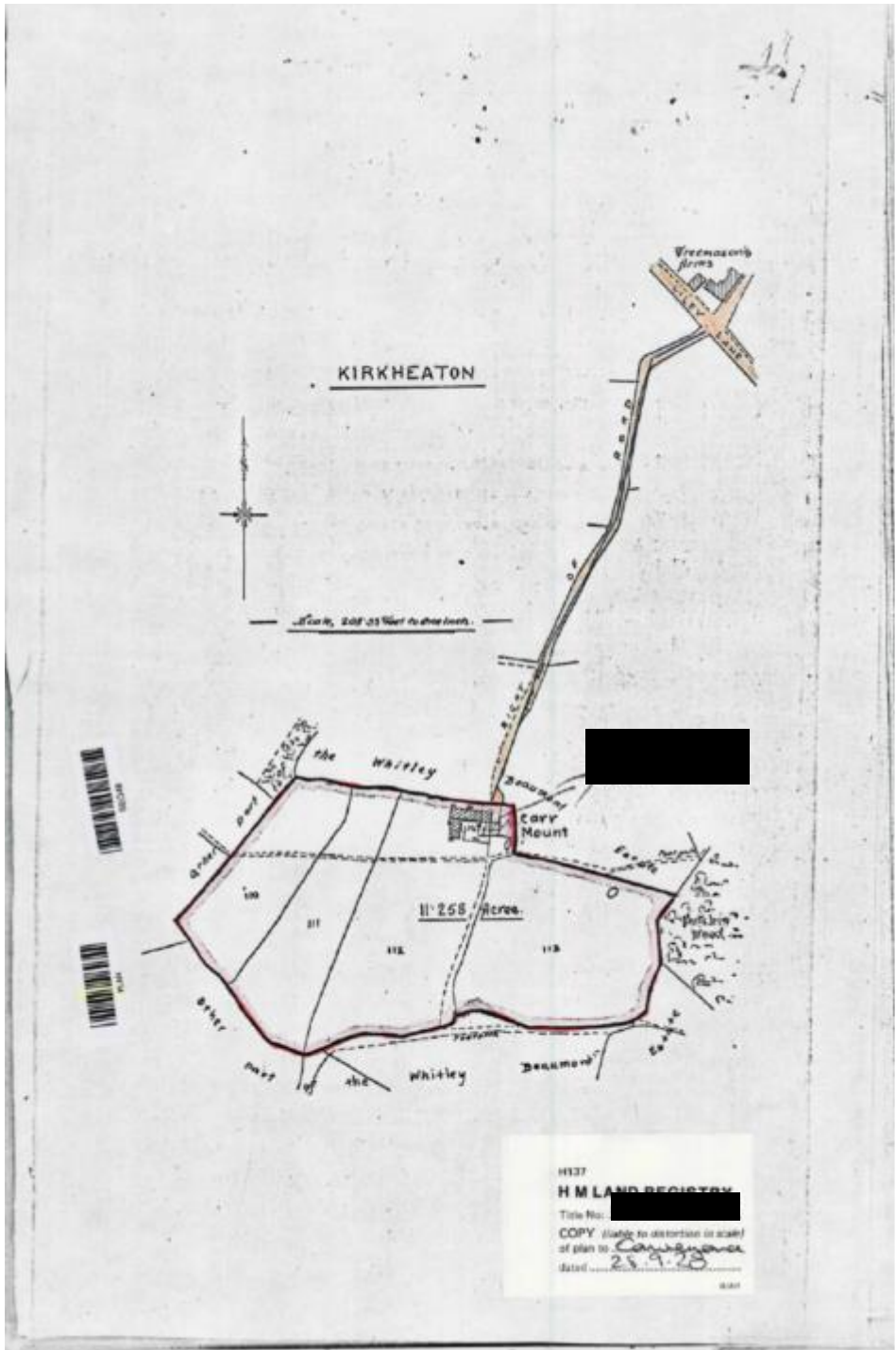
parcel 73 South Royd

parcel 83 Laneside

Excess as determined by Valuers										Distribution of the Excess										Original Value		Value after Deduction		Observations and Remarks								
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X		Y	Z	AA	AB				
22	3	101																														
Total										1250	300																					
6	1	11																														
Total										200																						
2	30																															
Total										150	420	270																				
23	3	38																														
Total										680	150																					

Figure 34: 1920 Conveyance for title [REDACTED]

Source: Landowner 3



This official copy is incomplete without the preceding notes page.

Figure 35: 1923 Conveyance for title [REDACTED]

Source: Landowner 3

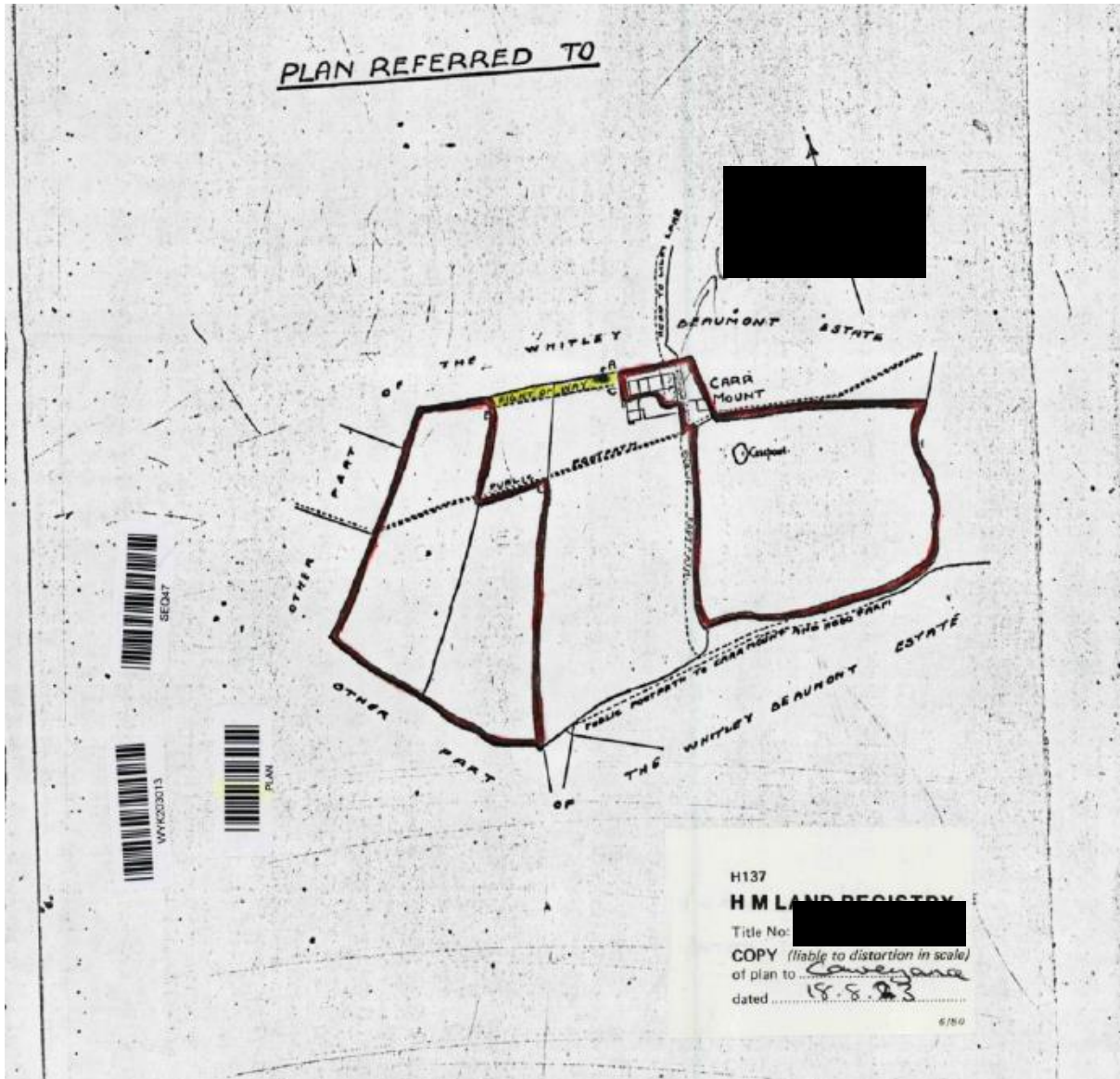
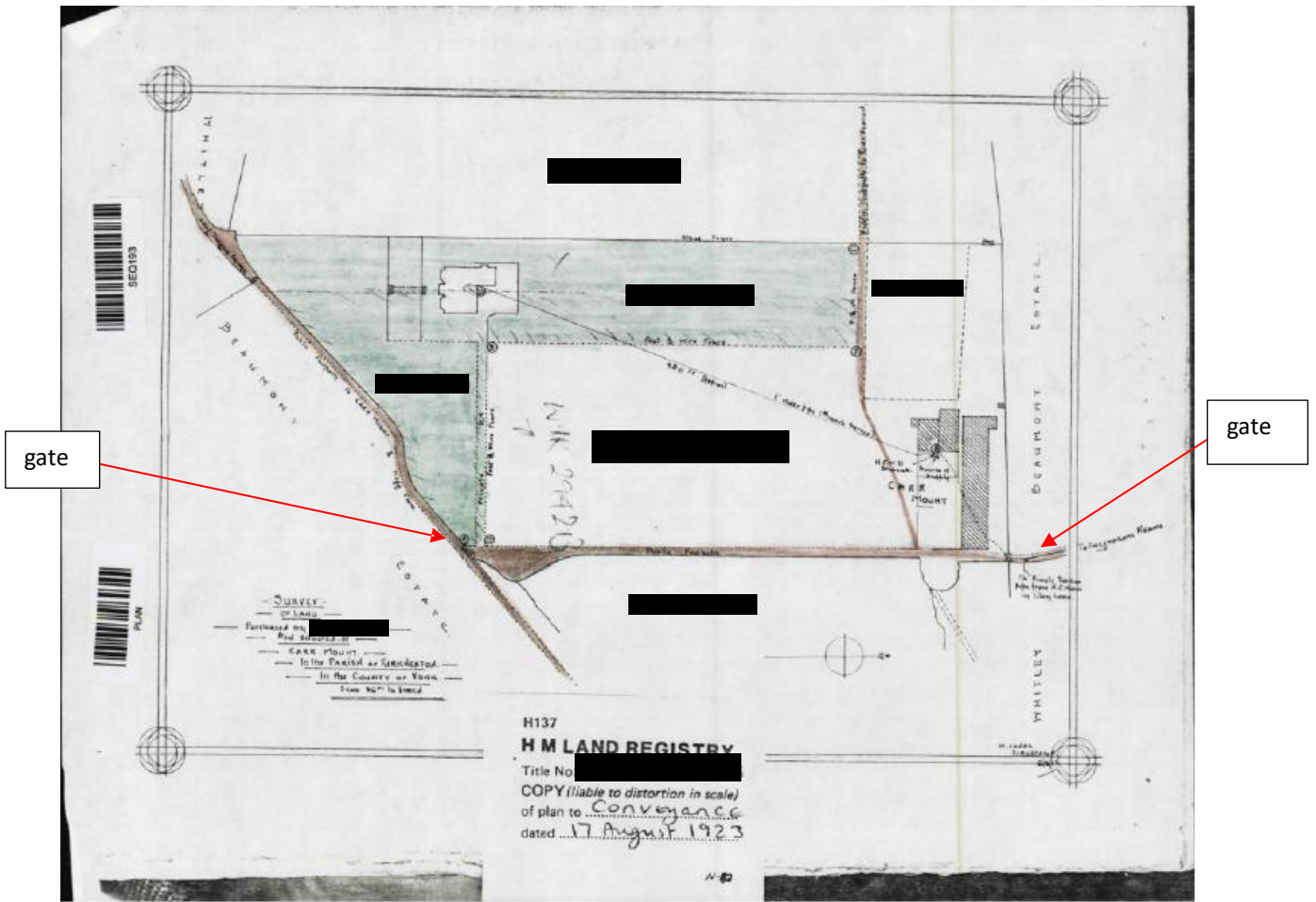


Figure 36: 1923 conveyance for title [REDACTED]

Source: Resident 1



This official copy is incomplete without the preceding notes page.

Figure 37: 1936 conveyance for title [REDACTED]

Source: Resident 1

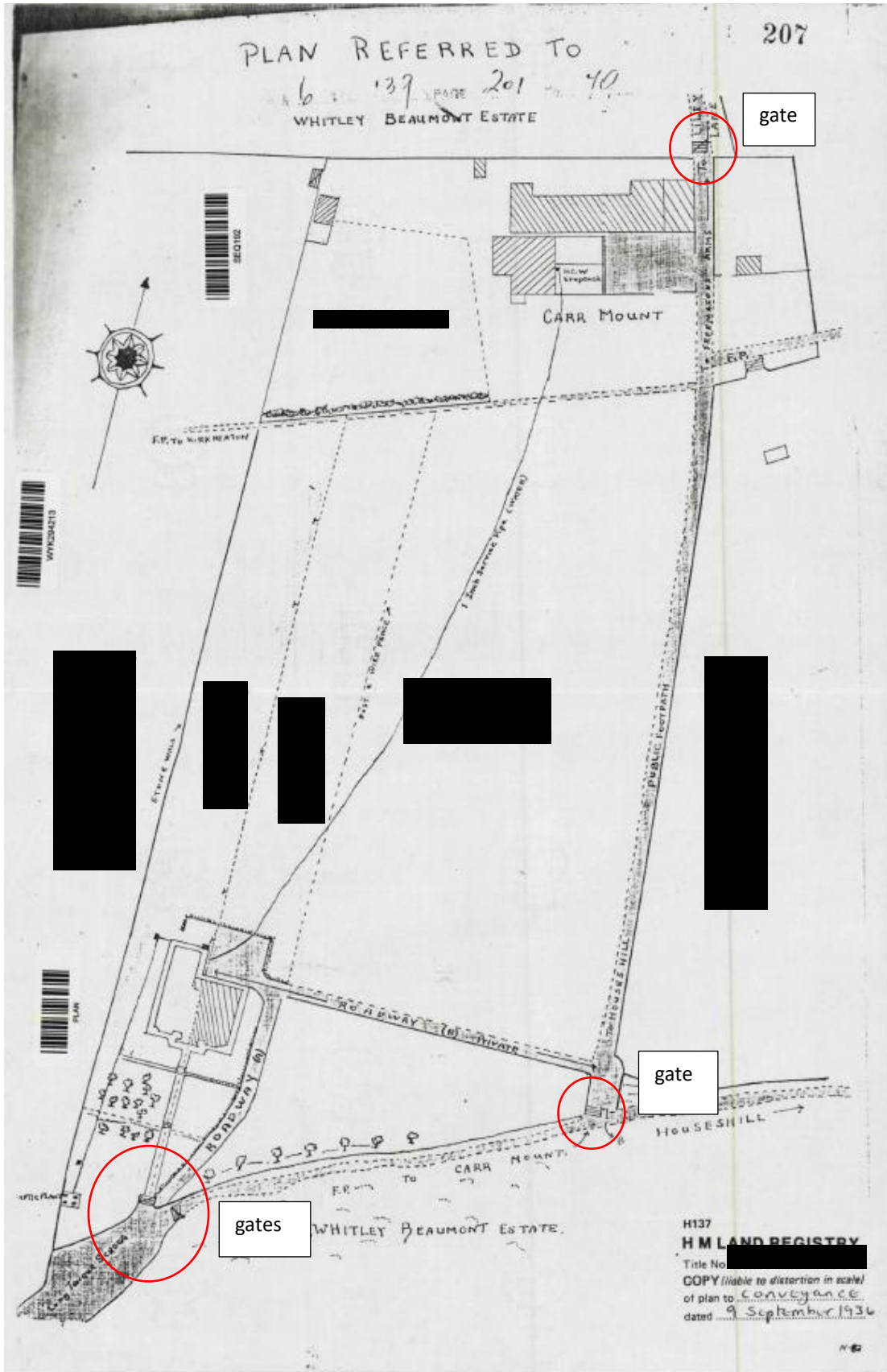


Figure 38: Walking Schedule public footpath Kirkburton 20

Source: Kirklees Council records

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
Part IV. Public Rights of Way - Ascertainment of footpaths, etc.

KIRKBURTON
URBAN DISTRICT COUNCIL

Schedule to accompany Map No. *247 D.W.*
.....Council. Parish of *Kirkburton*.....

This space to be left blank for use of the County Council.
.....Council.
Parish of.....
Code Number.....

Serial Number of path as shown on map.	Type of path, e.g. footpath, bridleway, or Road used as public path.	Name of path (if any).	Starting Point of path.	Ultimate destination of path.
<i>620</i>	<i>Footpath</i>	<i>nil.</i>	<i>The Hagg.</i>	<i>Long Tange Scrog Lane.</i>
<p>Concise information to be given here about features occurring on the path, including the nature of obstructions, the full wording of notice boards or direction posts, the nature of damage or of repairs required, particulars of the stiles and gates and any symbols shown on the Map which require further explanation.</p> <p style="text-align: center;"><i>Stiles at beginning + end of path.</i></p>				
<p>Concise information to be given here as to the average width and general condition of the path (particularly whether it is metalled or ploughed).</p> <p style="text-align: center;"><i>ploughed. average width = 3ft.</i></p>				
<p>Reasons to be given here for believing the path to be public, E.G. "Awarded", "Repaired at Public Expense (with date)", or "Uninterrupted user by public for - years," as the case may be, together with particulars of any documentary evidence referred to or producible in support.</p> <p style="text-align: center;"><i>Open for years.</i></p>				
<p>Please state here name and addresses of the persons who carried out the survey, and the date of which it was carried out.</p> <p><i>X.G. Hanks. Shaw Garth, Rowwood Green, Halifax.</i></p>				
Date <i>2. VIII. 1952</i>			<div style="background-color: black; width: 100px; height: 20px; display: inline-block;"></div> <small>ENGINEER & SURVEYOR,</small>	

14 MAY 1952

Figure 39: Kirkburton Urban District Council 1952

Source: Kirklees Council records

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949 - PART IV.

DISTRICT: Kirkburton Urban

REPRESENTATIONS

PARISH:

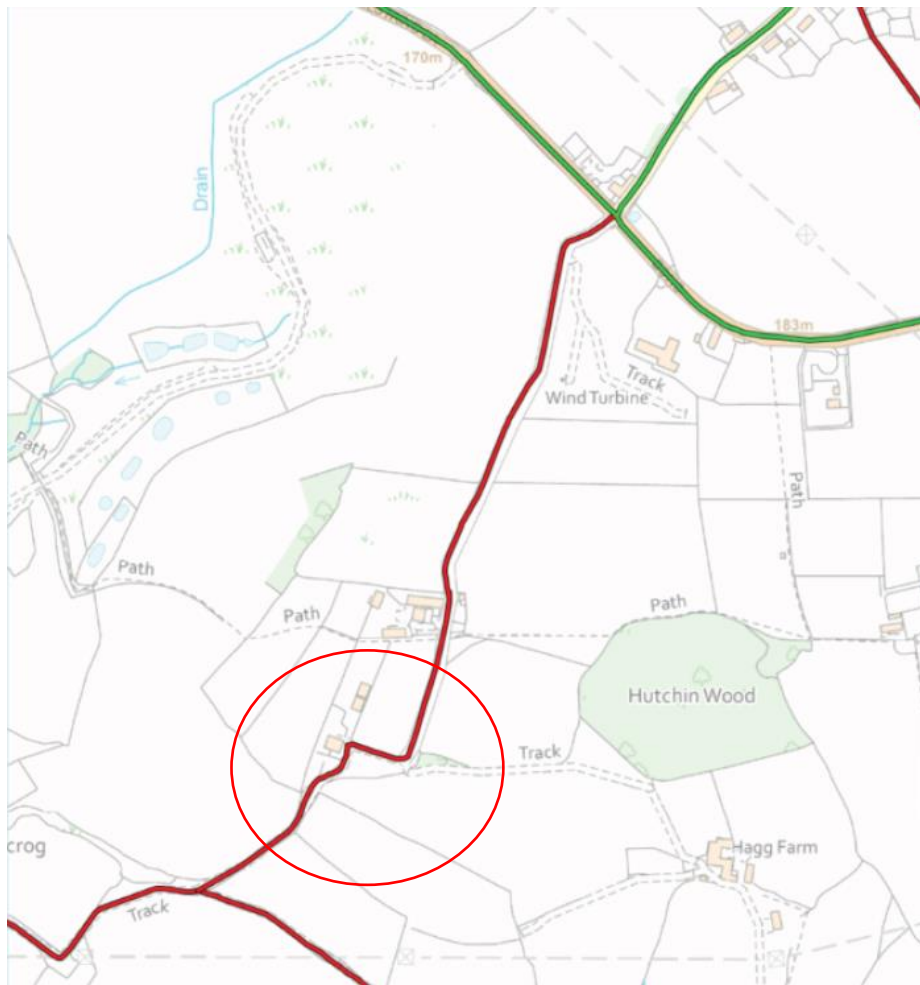
Path Ref.	Map Ref. O.S. No.	Description of route.	Nature of representation.	Representation made by	Recommended modification to Draft Map and Statement.	Remarks.
169 Footpath	247 SW.	Footpath commencing at its junction with Long Tongue Scrag Lane and proceeding in a north easterly direction to its junction with Path No. 20. 0.09 miles. 2 No. Stiles. Part ashed, part earth, 3 ft. wide.	This is a public footpath and should be added to the Draft Map.	Kirkburton Urban District Council per Mr. I. R. Mercer, Surveyor.	Add.	

EVIDENCE.

Shown on 1850 Ordnance Survey Map.

Figure 41: List of Streets, Highways Registry

Source: Kirklees Council Kompass mapping



Green indicates shown on the List of Streets maintainable at public expense

Red indicates not shown on the List of Streets as maintainable at public expense

Figure 42: List of Streets, Highways Registry cards

Source: Kirklees Council records

FROM		TO	LEN.	REF.
CARR MOUNT - MIRKHEATON - Name & area				192 173
On Map 103 as Access to Carr Mount				
off LONG TONGUE SCROG LANE				PRIVATE
exemption notice 6.4.16 adjacent to Scar Mount				

X Crishaw Lane	Six Lane Ends	Denby Dale U.D. Bound
X The Crescent	Paddock Road	Denby Dale U.D. Bound
X Cross Lane	Huddersfield Rd.	Cul-de-sac
X Cross Lane 190 108, fully	Stocksnoor Road	Greenhouse Hill
X COCKLEY HILL LANE	HEATON MOOR LANE	Crangle Wells
X CROSS LANE	A629	HIGHGATE LANE
X CLEVELAND WAY	PENISTONE ROAD	A635 AT SHEPHERD
X CLIFFE PARK A15	CLIFFE ROAD	ROCKINGHAM WEST
X CLOUGH LANE	TANHOUSE LANE	CUL-DE-SAC END
X COTSWOLD MEWS PART	NORWICH ST	WHITLEY ROAD
X CHURCH CLOSE	JOS LANE	OFF MOOR LANE 192
X CHURCH CLOSE - K HALLTD - UNADOPTED		CUL-DE-SAC 192
X COMMON LANE - FLOCKTON - UNADOPTED		
X COMMONSIDE - FLOCKTON, 236 147		
X CHAPEL LOW - GRANGE MNR. 231 152		
X CINDERHILL - KIRKHEATON	208-131	
X CARR MOUNT - KIRKHEATON	192 173	
X CLIFFE LANE - FARNLEY T/AS	164 128	
X CHESSINGTON DRIVE - FLOCKTON	216 151	

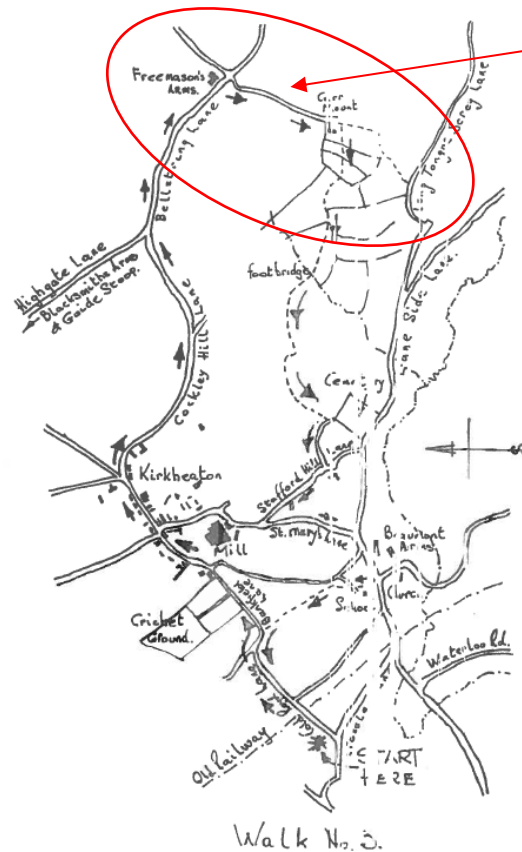
Carr Mount is on the list of unadopted streets

Figure 43: Discovering Old Lepton 178, Walk 3

Source: DMMO S14201 application

WALK - 3 -

COLDROYD, KIRKHEATON VILLAGE, TOWN ROAD, COCKLEY HILL, BELLSTRINGS LANE, CARR MOUNT, FOOTPATH TO STAFFORD HILL LANE, ST. MARY'S, THE OLD SCHOOL, FOOTPATH TO COLDROYD.



route follows Part A

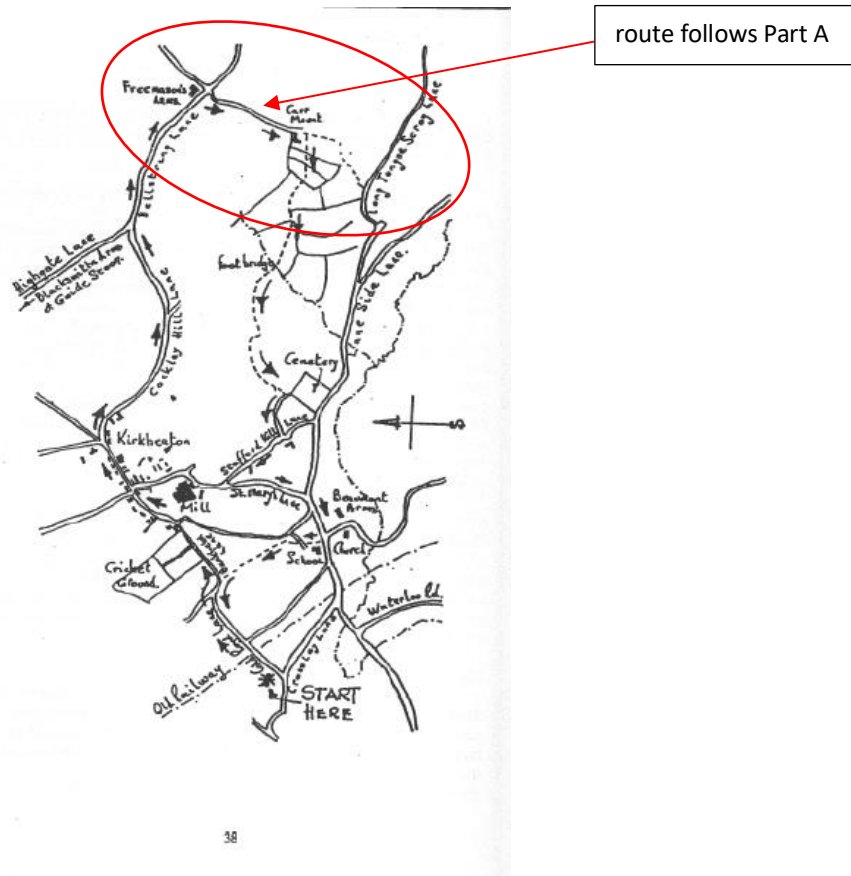
At the Freemasons Arms find the path on the opposite side of the road leading down to Carr Mount. Our route follows this path to a stile just past the houses.

CARR MOUNT

The settlement here is a characteristic mixture of 18th century buildings. Look for the blocked up windows that once lit the old weaving chambers which clearly indicate the principal occupation of the original tenants. Inevitably in such a settlement one would also expect to find some evidence of farming and indeed, the end building was once a barn with the arch springers in the wall showing the position of the doorway. The datestone on one cottage bears the legend R.I.M. 1799, but this does not indicate the initial building of Carr Mount as some of the houses have characteristics belonging to the earlier part of the 18th century.

Figure 44: Discovering Old Lepton and Kirkheaton

Source: DMMO S14201 application



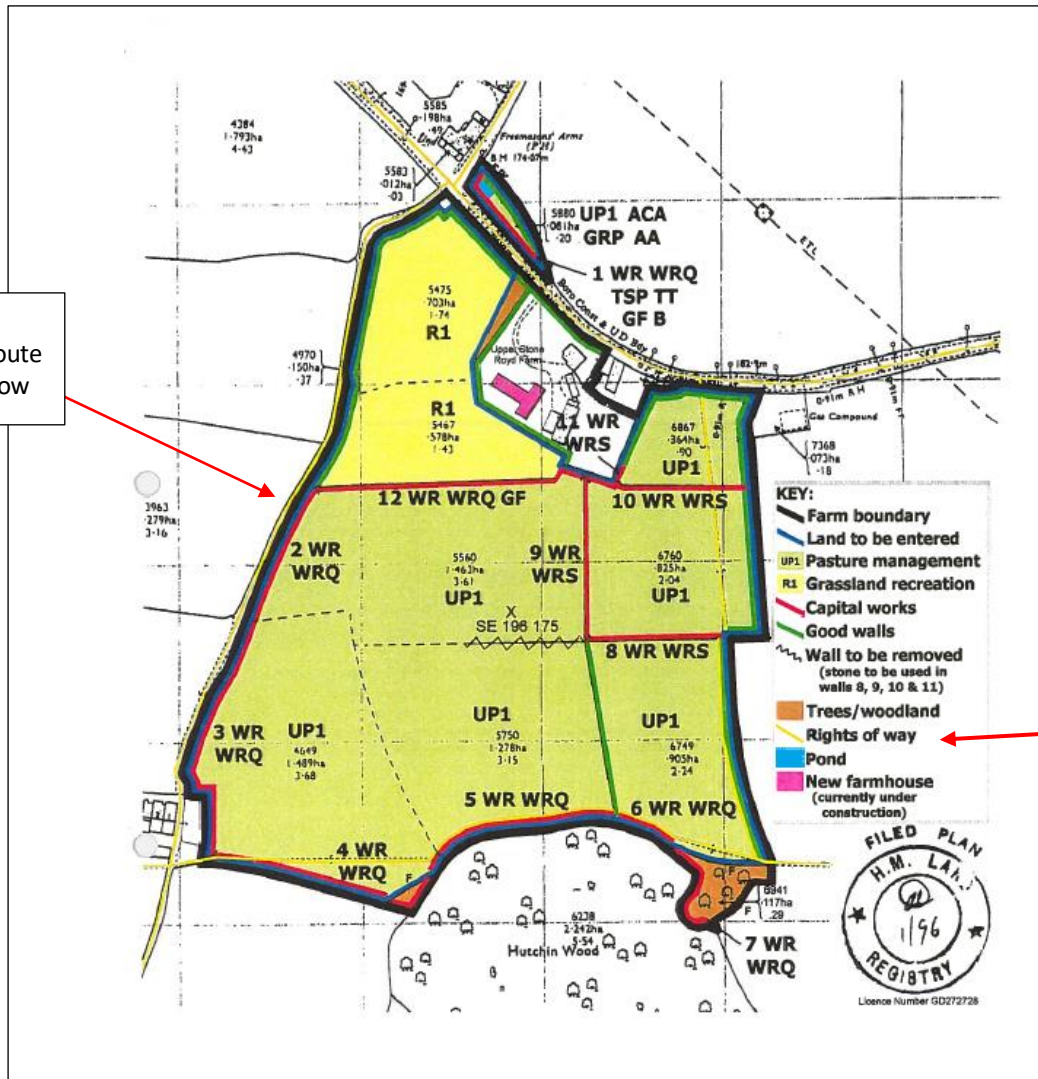
At the Freemasons Arms find the path on the opposite side of the road leading down to Carr Mount. Our route follows this path to a stile just past the houses on the right.

CARR MOUNT

The settlement here is a characteristic mixture of 18th century buildings. Look for the blocked up windows that once lit the old weaving chambers which clearly indicate the principle occupation of the original tenants. Inevitably in such a settlement one would also expect to find some evidence of farming and, indeed, the end building was once a barn with the arch springers in the wall showing the position of the doorway. The datestone on one cottage bears the legend R.I.M. 1799, but this does not indicate the initial building of Carr Mount as some of the houses have characteristics belonging to the earlier part of the 18th century.

Figure 45: Countryside Stewardship Scheme Application

Source: Kirklees Council Kirkburton 20 path file



PUBLIC ACCESS/BENEFIT

Public access to and across the farm is extremely good, including no fewer than five public rights of way. All of these are well used, the B6118 provides main road access through the farm, whilst the footpaths and bridleways are well-used by horse riders, cyclists and walkers. The Freemasons Arms public house is adjacent to the farm (as can be seen in fig. 5) which attracts additional people to the farm.

COLOUR USE	MODE OF USE	PRIVATE RIGHTS
daily	F = Foot	** Users indicateing a 'by right' use
twice weekly	H = Horse	
weekly	B = Bicycle	BROUGHT INTO QUESTION
more than once a month / less than weekly	V = Vehicle	20 year period 1994 to 2014
monthly		
less than once a month / a few times a year	PURPOSE	
yearly	W = Walking, including dog walking	
less than yearly	P = Visting former Freemasons Arms	
frequency or duration not stated clearly	B = Getting the bus	
	SCW = to School or College or Work	
	V = Visiting including to Houses Hill	
	O = Other	

Figure 47: Summary of landowner evidence

Landowner - Occupier	LO1	LO3	LO4
ownership details & dates	since May 1976	since April 2009	for 19 years (since 1999)
land use	grazing animals, silage, hay, crops	lane in middle of Carr Mount landholding; house on one side, garage and land on other	private road
public or private right of way?	not aware of public right of way; only access to houses at Carr Mount and land owned by Upper Stoneroyd only; only seen used for private purposes	private right of way for residents as shown in deeds	private because there are no notices to say it is a footpath like there is at the lower end of the road, and never been any signs to say it is a footpath while we've lived here
seen people using route, what mode?	yes, vehicle access to houses at Carr Mount, and land owned by Stoneroyd, regular use to access their properties	walkers, cars, horses, bicycles (even after being told it's a dead end and private)	people did not use the route until residents surfaced it; never any cyclists use the until then
ever shut off route?		no, it is a consideration but at present inconvenient for residents	
stopped or turned people back?	no - not seen anyone	yes, challenged users since moving to the property, turned people back every time see a trespasser	told them it's private, most give a lot of abuse, some just go on proper pathway and say nothing
difficult or impassable?	yes, single track road so unable to pass and narrow for agricultural vehicles		
asked for permission?	no		
given permission?	no	no, though some have tried to claim my neighbours have; my neighbours know they cannot give permission to trespassers to cross my boundary	no, and people come and park in the pull ins and go off on walks; there's no where to pass on the land if you meet another car, so have to back up the lane to pass
locked gates or obstructions	no	no	
notices or signs?	no	yes	yes
notices or signs - wording?		private road - no public right of way; private property - no trespassing on this part of the lane	yes; telling people that the road is private
notices or signs - location?		start, middle, end of the lane	
notices or signs - public reaction?		go around the property - through gardens, off footpaths, through fields when tell them they can't cross my boundary	seen other notices go up and all are pulled down
s31(6) deposit?	06/05/1997; 07/04/2003 abutting to unregistered land on the west of Part A of the application route; 19/04/2013 does not include Part A	no	no
s31(5) LPA notice?	no		
other comments. information	Route is a narrow single track with overgrown, uneven verges. Regular use of motor and agricultural vehicles for access to private properties. It is not suitable for public access or security for houses at Carr Mount.	Annotated copies of title deeds and maps . Cover letter about anti-social or criminal behaviour. Concerns are: privacy, trespass, safety, narrow lane, high hedges, limited passing placed, public parking on lane, threats, walking off route, dog mess, fly tipping, noise, £20k for residents to tarmac road in 2007, highways consultation letter regarding planning permission for 10/ 11 Carr Mount. Email about former gate at Carr Mount removed in approx. 1935.	Gates on KIR20/30 maintained and pack locked. Never granted access to a member of the public to ride (or cycle) on any of my property.

Figure 48: 1985 letter relating to Part A of application route

Source: Kirklees Council Kirkburton 20, path file

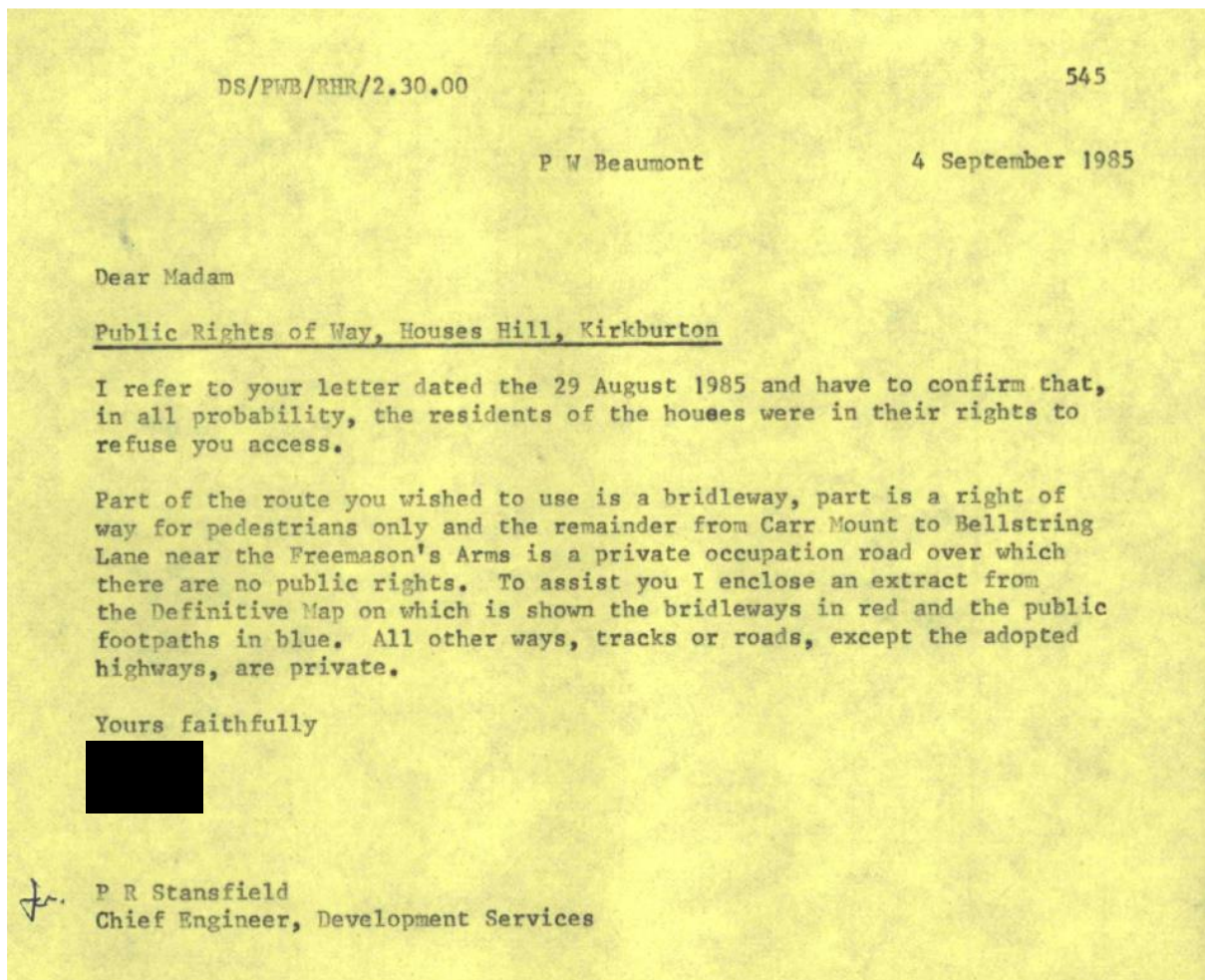


Figure 49: User evidence - Notices/signs and Challenge

Ref	Years used	Notices	Challenge
201/1	1960-2017	Yes, painted on tarmac about 12 months since	No
201/2	2015-2017	No	No
201/3	2015-2017	None official, just homemade, sprayed on road	Yes, stopped using route until everything was clarified
201/4	1998-2016	Yes, typed A4 size warning people not to travel on the road stencilled lettering on the road - "PRIVATE ROAD"	Yes, challenged pedestrians for last year...refuses to let people pass
201/5	1997-2017	Recent notice painted on road	Yes, home owner....
201/6	1970-2017	Yes, they have appeared in the last year or so and don't look very official. Home printed wet and discoloured signs	No
201/7	1964-2016	Bridleway before cottages...No	Yes by newish resident
201/8	1997-2017	Recent notice painted on road	Yes, home owner...
201/9	2002-2017	Yes, painted on road surface no entry - private road, recently	Yes, every time, watches for walkers
201/10	1965-2017	No	No
201/11	1944-2017	No	No
201/12	2009-2017	Yes, recently painted on tarmac	Yes
201/13	201/58	201/58	201/58
201/14	1935-2000	No	No
201/15	2010-2017	Yes "public footpath"	No
201/16	1955-2015	Yes, no signs for over fifty years. Until about a year ago signs up now	No, but people have been saying...trying to stop people walking the route
201/17	1960-2017	No	No
201/18	1968-1980	No	No
201/19	1960-2017	Never until very recently	No
201/20	1960-1985	No	No
201/21	1960-2016	Yes, no signs until recently approx. 1 year ago signs have appeared	No, but know that recently people are being challenged
201/22	1960-2015	Only recently about a yr ago did signs appear	No, but know that recently people are being challenged
201/23	1970-2017	No	No
201/24	1984-2017	Within the last year someone has stencilled on the road surface 'private road'. Originally there was a non official sign at the junction of Bellstring Lane and track saying 'footpath only'.	Yes, within the last year...said road is private with no right of way
201/25	1990-2017	No	Yes, after walking this route for 25 years I was told it was private property, no access
201/26	0	Yes, public footpath sign	No
201/27	1990-2017	No	Yes, this year I was told this route was private...was told I was trespassing
201/28	1997-2000	No signs when I lived there	No
201/29	1970-2017	Yes, there used to be a footpath sign at top of Carr Mount	Yes.. no right to come down here, turned around...
201/30	1964-2017	No	No
201/31	1997-2017	No	No
201/32	1967-2017	No	No
201/33	1973-2017	No	No yet
201/34	1945-2017	Yes, in recent months painted on the road presumably by some of the residents of Carr Mount. Sign saying "not a public footpath" again presumably by residents.	No
201/35	1968-2017	No	No
201/36	1970-2017	Not sure	No
201/37	2006-2017	Recent notices of private land	No, apart from recent challenges...that the land was private with no public access/row
201/38	1958-2017	No (footpath sign)	No
201/39	1942-2017	No	No
201/40	1975-2017	Yes, 'Private Road' painted on road surface + signs attached to posts	No
201/41	1972-2017	Yes, "No footpath"	Yes, told not footpath
201/42	1980-2017	No	No
201/43	0	Yes, private property, no trespassing on this part of the lane	Yes...happened once, retraced my steps to footpath
201/44	1970-2017	No (There used to be a footpath sign at the top of the road on its junction with Liley Lane)	No
201/45	1982-2017	Yes, only recently (used to be a footpath sign)	No
201/46	1970-2017	No	No
201/47	1995-2017	Until very recently there were no signs. Temporary and home made signs have now appeared.	Yes, when visiting local resident
201/48	1969-2016	No	No
201/49	1973-2014	Yes, but only in last year	No, but I believe others have been recently
201/50	1974-2017	Only very recently	No
201/51	1948-2018	Only recently over the last 6 months	No
201/52	2000-2018	Yes recently	No
201/53	2000-2018	Yes recently	No
201/54	1984-2018	1) Speed restriction notice 2) No others seen until 30/9/18, when 'no right of way' seen	On one occasion on...2018 when challenged... to say no right of way exists, we carried on walking
201/55	1994 -2018	Handmade notices saying 'this is not a footpath' 'footpath ends'. Painted on tarmac 'private road'	Yes...tried to block access...I walked on
201/56	1944-2018	No	No
201/57	1993-2018	Home made notice 'This is not a footpath' Painted on the tarmac 'Private Road'	Yes...I queried that...said it was a private road...so came back
201/58	1945-2021	Yes, signs saying no walkers horses etc which I believe are illegal	Not gone often enough, but someone has challenged friends
201/59	1972-2015	Yes, 'Private road' sign at the northern end'	No, I have have not used the route since the problems with access have been reported...
201/60	1984-2017	Yes, only recent notices put out by house owner or owners and white paint put on road surface saying 'no public access' down Carr Mount	Yes...both turned around and came home
201/61	1965-2019	Yes, private road, No Right of Way marked on map from 2018/2019	No...never confronted from 1965 to 2019. Yes...around 2018/9 told us we could not use the road...we continued down Long Tongue Scrog to Laneside

Figure 50: Other notices and signs



Photo 29: Notice, photo dated 14/08/2014



Photo 30: Notice, photo dated 01/05/2016



Photo 31: Notice, photo dated 01/05/2016



Photo 32: Notice, photo dated 01/05/2016



Photo 33: Sign photo dated 25/07/2017



Photo 34: Photo dated 27/07/2021 'PRIVATE ROAD NO FLY TIPPING CCTV IN OPERATION' (KC have no record of the white sign with the KC logo at the top of this post)

Figure 51: Landowner notice, August 2014



PRIVATE ROAD
Public right of way up Carr Mount ENDS HERE
14 August 2014

Figure 52: s31(6) landowner deposit plan

9 May 1997



7 April 2003



18 April 2013



Red line indicates land subject to s31(6) landowner deposit

Figure 53: Summary of user evidence, relevant period 1994 to 2014

Ref	Years Used	Frequency	1991-1995	1996-2000	2001-2005	2006-2010	2011-2015	2016-2020	Mode				**Private rights
									F	H	B	V	
201/1	1960-2017	varies							●				N
201/4	1998-2016	weekly							●				N
201/5	1997-2017	twice weekly							●				N
201/6	1970-2017	varies							●				N
201/7	1964-2016	varies							●				N
201/8	1997-2017	twice weekly							●				N
201/9	2002-2017	weekly							●				N
201/10	1965-2017	twice weekly							●				N
201/11	1944-2017	weekly							●				N
201/12	2009-2017	twice weekly							●				N
201/14	1935-2000	monthly							●				N
201/15	2010-2017	daily							●				N
201/16	1955-2015	varies							●	●			N
201/17	1960-2017	varies							●				N
201/19	1960-2000	varies							●				N
201/21	1960-2016	varies							●				N
201/22	1960-2000	varies							●				N
201/23	1970-2017	monthly							●				N
201/24	1984-2017	> monthly							●				N
201/25	1990-2017	monthly							●				N
201/27	1990-2017	monthly							●				N
201/29	1970-2017	varies							●				N
201/30	1964-2017	monthly							●				N
201/31	1997-2017	> monthly							●				N
201/32	1967-2017	varies							●				N
201/34	1945-2017	varies							●				N
201/35	1968-2017	weekly							●				N
201/36	1970-2017	< monthly							●	●			N
201/37	2006-2017	monthly							●				N
201/38	1958-2017	monthly							●				N
201/39	1942-2017	monthly							●				N
201/40	1975-2017	varies							●				N
201/41	1972-2017	weekly							●				N
201/42	1980-2017	monthly							●				N
201/44	1970-2017	monthly							●				N
201/45	1982-2017	yearly							●				N
201/46	1970-2017	monthly							●				N
201/47	1995-2017	< monthly							●				N
201/49	1973-2014	weekly							●				N
201/50	1974-2017	monthly							●				N
201/52	2000-2018	monthly							●				N
201/53	2000-2018	monthly							●				N
201/54	1984-2018	< monthly							●				N
201/55	1994-2018	monthly							●				N
201/56	1944-2018	weekly							●				N
201/57	1993-2018	monthly							●				N
201/59	1972-2015	< monthly							●				N
201/61	1965-2019	weekly							●				N

48 2 0 0 0

Figure 54: Summary of user evidence, alternative period 1977 to 1997

Ref	Years Used	Frequency	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000	Mode				**Private rights
								F	H	B	V	
201/1	1960-2017	varies						●				N
201/5	1997-2017	twice weekly						●				N
201/6	1970-2017	varies						●				N
201/7	1964-2016	varies						●				N
201/8	1997-2017	twice weekly						●				N
201/10	1965-2017	twice weekly						●				N
201/11	1944-2017	weekly						●				N
201/14	1935-2000	monthly						●				N
201/16	1955-2015	varies						●	●			N
201/17	1960-2017	varies						●				N
201/18	1968-1980	varies						●				N
201/19	1960-2000	varies						●				N
201/20	1960-1985	daily						●		●		N
201/21	1960-2016	varies						●				N
201/22	1960-2000	varies						●				N
201/23	1970-2017	monthly						●				N
201/24	1984-2017	> monthly						●				N
201/25	1990-2017	monthly						●				N
201/27	1990-2017	monthly						●				N
201/29	1970-2017	varies						●				N
201/30	1964-2017	monthly						●				N
201/31	1997-2017	> monthly						●				N
201/32	1967-2017	varies						●				N
201/33	1973-2017	varies						●				N
201/34	1945-2017	varies						●				N
201/35	1968-2017	weekly						●				N
201/36	1970-2017	< monthly						●	●			N
201/38	1958-2017	monthly						●				N
201/39	1942-2017	monthly						●				N
201/40	1975-2017	varies						●				N
201/41	1972-2017	weekly						●				N
201/42	1980-2017	monthly						●				N
201/44	1970-2017	monthly						●				N
201/45	1982-2017	yearly						●				N
201/46	1970-2017	monthly						●				N
201/47	1995-2017	< monthly						●				N
201/49	1973-2014	weekly						●				N
201/50	1974-2017	monthly						●				N
201/54	1984-2018	< monthly						●				N
201/55	1994-2018	monthly						●				N
201/56	1944-2018	weekly						●				N
201/57	1993-2018	monthly						●				N
201/59	1972-2015	< monthly						●				N
201/61	1965-2019	weekly						●				N

44 2 1 0 0

Figure 55: Waymakers on Part B, DMMO S14306



Photo 35: Waymaker on gate post at junction of public footpath KIR/20 and KIR/169. Waymark says 'Public footpath only, No horses, No cycles'



Photo 36: Waymaker on public footpath KIR/20 at the bottom of Carr Mount



Photo 37: Close up of photo 36 – Waymarker says 'Public footpath only, No horses, No cycles'

Figure 56: Consultation notices DMMO S14201



Photo 38: Consultation notice at junction of Carr Mount lane and Liley Lane (B6118)



Photo 39: Consultation notice at junction with public footpaths KIR 10 and KIR 20, at Carr Mount hamlet

Figure 57: Consultation notices DMMO S14306



Photo 40: Consultation notice at the junction with KIR220 Long Tongue Scrog Lane

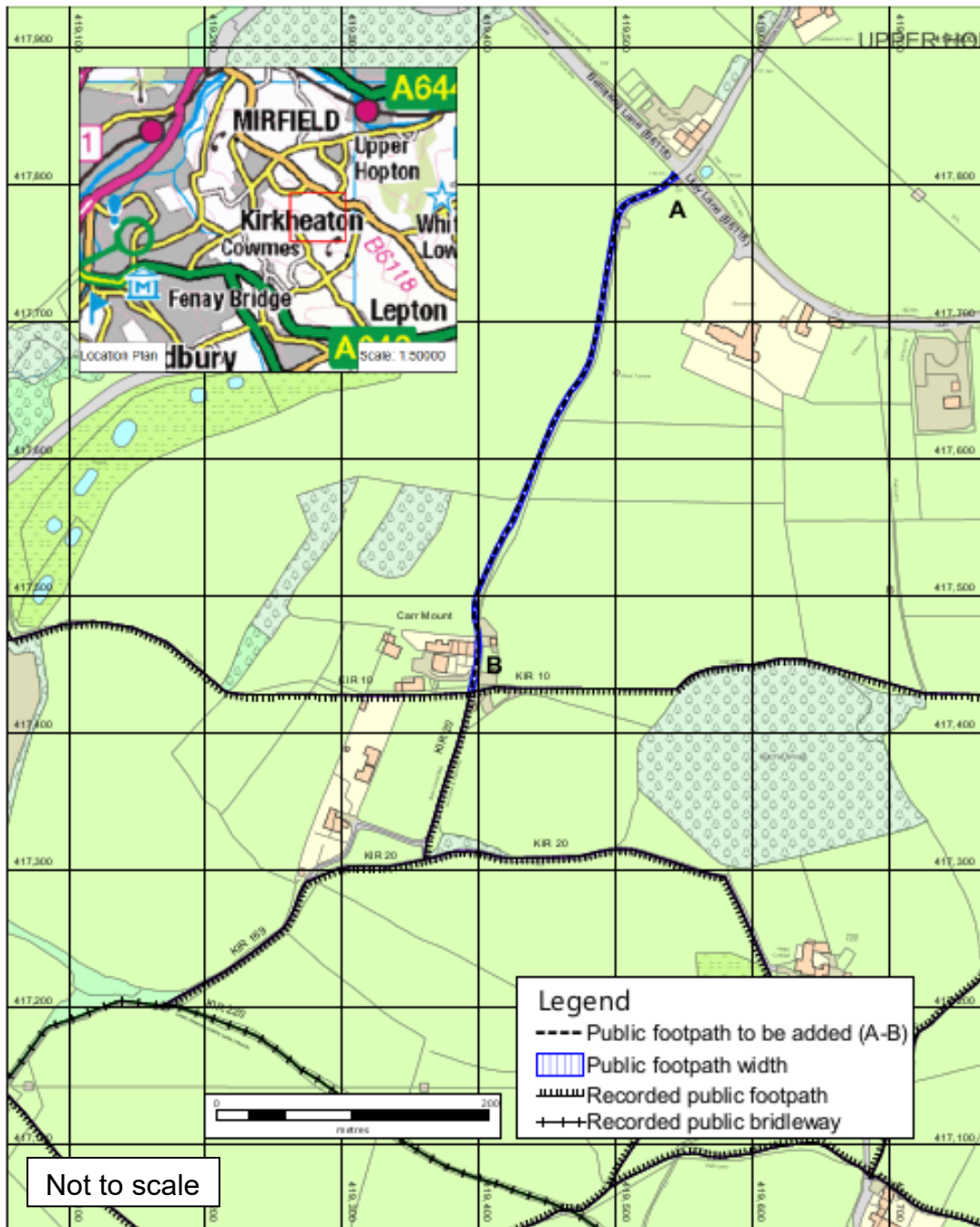


Photo 41: Consultation notice at the junction with Carr Mount lane and Liley Lane (B6118)

Figure 58: Consultation responses

Respondent	S14201, 27 July 2021				S14306, 24 November 2021			
	Support	Neutral	Does not support	No response	Support	Neutral	Does not support	No response
Councillor Bill Armer				✓				✓
Councillor Richard Smith				✓				✓
Councillor John Taylor				✓				✓
Councillor Musarrat Khan		✓						✓
Councillor Naheed Mather				✓				✓
Councillor Peter McBride		✓						✓
Peak and Northern Footpaths Society				✓				✓
Huddersfield Ramblers				✓				✓
Huddersfield Rucksack Club				✓				✓
Mr Terry Norris				✓				✓
Ride Kirklees				✓				✓
Kirklees Bridleways Group				✓				✓
British Horse Society			✓		✓			
Kirkburton Parish Council	✓							✓
Landowner 1			✓				✓	
Landowner 2				✓				✓
Landowner 3			✓				✓	
Landowner 4			✓				✓	
Tenant 1				✓				✓
Landowner 5				✓			✓	
Resident 1	✓					✓		
Resident 2			✓				✓	
Resident 3			✓					✓
Resident 4	✓					✓		
Resident 5				✓			✓	
Resident 6				✓				✓
Resident 7				✓				✓
Resident 8				✓				✓
Member of the public 1	✓							
Member of the public 2	✓							
Member of the public 3	✓							
Member of the public 4	✓							
Member of the public 5	✓							
Member of the public 6	✓							
Member of the public 7	✓							
Member of the public 8	✓							
Member of the public 9	✓							
Member of the public 10	✓							
Member of the public 11	✓							
Member of the public 12	✓							
Member of the public 13	✓							
Member of the public 14	✓							
Member of the public 15	✓							
Member of the public 16	✓							
Member of the public 17	✓							
Member of the public 18						✓		

Figure 59: Indicative map - public footpath recommended to be added (A - B)



	<p align="center">Indicative Map - Public Footpath recommended to be added (A-B)</p>	
	<p>Date Map Prepared: 12/01/2024</p> <p>Scale: 1:2,500 @A3</p>	
	<p>© Crown Copyright and database right 2024. Ordnance Survey AC0000851069</p>	

Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 25-Jan-2024

Subject: Planning Application 2023/92255 Variation of conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of previous reserved matters approval 2021/93286 pursuant to outline permission 2020/91215 for erection of 41 dwellings Land at, Green Acres Close, Emley, Huddersfield, HD8 9RA

APPLICANT

Project Emley Ltd

DATE VALID

07-Aug-2023

TARGET DATE

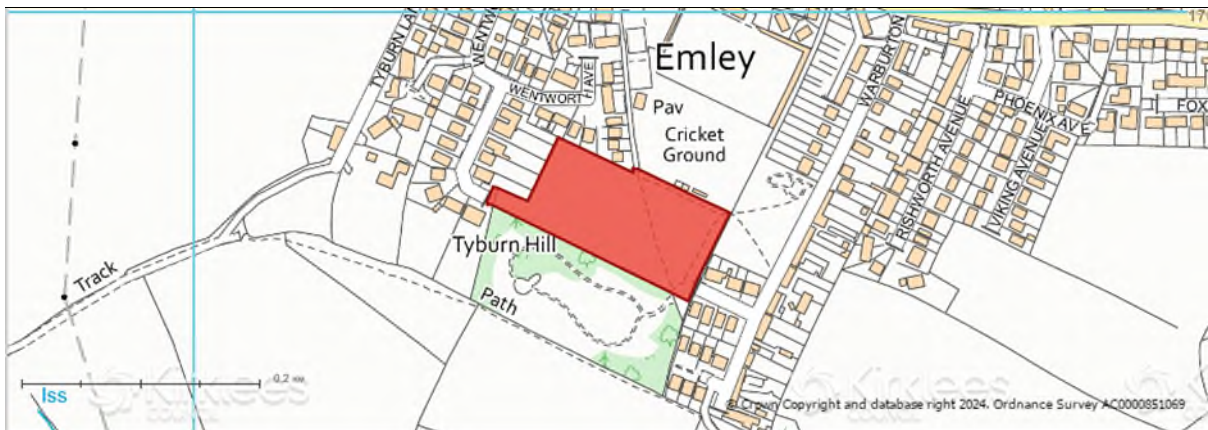
06-Nov-2023

EXTENSION EXPIRY DATE

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: Denby Dale

Ward Councillors consulted: Yes

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:

1. Secure a Section 106 Deed of Variation agreement, linking this approval to the previous Section 106 agreement (dated 23/06/2021) and Deed of Variation (dated 03/03/2023); and
2. Complete the list of conditions including those contained within this report and release the planning permission.

In the circumstances where the Section 106 agreement has not been completed within three 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 is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

- 1.1 Outline planning permission was granted at the application site for residential development (no number of units specified) under application 2020/91215. Access was a consideration as part of that application, with appearance, layout, scale and landscaping being Reserved Matters. As the quantum of development was unknown at outline stage, a Section 106 agreement (dated 23/06/2021) secured appropriate planning obligations and contributions in principle, subject to details being determined upon submission of a Reserved Matters application. The Section 106 agreement secured affordable housing, financial contributions (if triggered) towards education, highways and transport improvements (including a TRO order), open space, biodiversity and the provision of management and maintenance arrangements for land not within private curtilages and for infrastructure (until adoption).
- 1.2 Reserved Matters application 2021/93286 (for 41 dwellings) was then subsequently submitted covering all of the outstanding matters. A Section 106 agreement was not attached to the Reserved Matters approval at the time of the decision, as all relevant obligations were governed by the conditions attached to the parent outline planning application.
- 1.3 Subsequent to that Reserved Matters approval, a Section 106 Deed of Variation (dated 03/03/2023) reduced the financial contribution for the off-site Public Open Space provision, which was calculated at outline stage based on the then-indicative plan. Therefore, the correct contribution has now been secured taking into account the layout approved as part of the detailed Reserved Matters application.

- 1.4 The following discharge of condition applications are pending decisions:
- 2022/90137 for conditions 17 (remediation), 18 (unexpected contamination), 19 (validation report), 20 (electric vehicle charging) and 24 (baseline ecological value) of previous outline permission 2020/91215, 2023/92253 for conditions 6 (highways), 7 (PROW), 10 (CEMP), 11 (drainage), 27 (ball stop netting) of previous outline permission 2020/91215; and
 - 2023/92254 for conditions 6 (drainage), 7 (drainage), 14 (CEMP) of previous Reserved Matters approval 2021/93286.
- 1.5 This application is a Variation of Condition (Section 73) application relating to conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of the previous reserved matters approval 2021/93286.
- 1.6 The application has been brought to the Strategic Planning Committee given the number of representations received in objection to the application.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is 1.18 hectares in size. The majority of the site is allocated for housing in the Local Plan (site allocation ref: HS137), however a small part of the site (approximately 60sqm, at the terminus of Wentworth Drive) is outside the site allocation. At the time the case officer's site visit was undertaken, ground works had begun and an entrance from had been Wentworth Drive created.
- 2.2 To the north of the application site are residential properties on Wentworth Avenue and a cricket ground which is designated as urban green space in the Kirklees Local Plan. To the east is a recreation field and residential properties on Green Acres Close. To the south is Emley's Millennium Green, most of which is in the green belt. To the west are residential properties on Wentworth Drive.
- 2.3 The public footpath DEN/21/20 runs at a diagonal across the site from North to South, connecting Wentworth Drive to the Millennium Green and Green Acres Close. DEN/96/10 also runs adjacent to the Eastern boundary.
- 2.4 There are no protected trees on or immediately adjacent to the application site, however there are trees within the adjacent Millennium Green and elsewhere around the edges of the site.
- 2.5 The application site is not within or close to a conservation area. The site includes no listed buildings, however two Scheduled Ancient Monuments (Emley Standing Cross, which is also Grade II listed, and Emley Day Holes) are within walking distance of the site. The site also has some landscape sensitivity resulting from its location, surrounding topography and visibility from surrounding public open space, and from public footpaths.

3.0 PROPOSAL

- 3.1 Planning permission is sought to vary conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development). Those conditions read as follows:

Condition 1:

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. Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion and in the interests of highway safety in accordance with Policies LP1, LP2, LP3, LP4, LP5, LP7, LP9, LP11, LP20 LP21, LP22, LP23, LP24, LP26, LP27, LP28, LP30, LP32, LP33, LP34, LP35, LP38, LP47, LP48, LP49, LP50, LP51, LP52, LP53, LP63, LP65 of the Kirklees Local Plan and the aims of the Housebuilders Design Guide SPD and National Planning Policy Framework.

Condition 2:

The crime prevention measures hereby approved, shall be carried out in complete accordance with dwg no. P21:5463:21 Rev A. The measures shall thereafter be retained. Reason: In the interests of preventing crime and anti-social behaviour and to accord with Policy LP24 of the Kirklees Local Plan.

Condition 15:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) no development included within Classes A to E inclusive of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority on plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan P21:5463:01 Rev Q. Reason: In order to protect the trees along and adjacent to the southern boundary of the site and the ball striking net to the north. This is to accord with Policies LP24 and LP33 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

- 3.2 The reason for the proposed change is to update the design of the house types approved from the Barratt and David Wilson Homes design to the Newett Homes house types. Given the layout changes, the landscape masterplan has been amended, as has the associated the biodiversity net gain assessment and ecological design strategy.
- 3.3 Conditions 2 (crime prevention measures) and 15 (removal of permitted development rights for plots 14-20, 33, 34 and 41) also specify the site layout plan approved as part of the Reserved Matters application and therefore would need updating as part of this application.

- 3.4 The number of units would be unchanged at 41, however, there would be a slight amendment to the number of bedrooms proposed. This would be as follows:

Type	Approved	Proposed
Affordable units		
1 bed	6	6
3 bed	2	2
Open market		
3 bed	23	25
4 bed	10	8

- 3.5 In terms of design and appearance overall, the units would appear broadly similar to those approved. The most noticeable change would be that the majority of the units, apart from plots 7 and 8 and 24-29 would benefit from a dual pitched roof. Materials are governed by condition 2 on the original approval and would be unchanged from that previously approved.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application site

2023/92327 Erection of six dwellings, including associated parking, landscaping, open space and ball stop netting (modified proposal) – Pending consideration.

2023/92254 Discharge conditions 6 (drainage), 7 (drainage), 14 (CEMP) on previous permission 2021/93286 for reserved matters application pursuant to outline permission 2020/91215 for erection of 41 dwellings – Pending consideration.

2023/92253 Discharge conditions 6 (highways), 7 (PROW), 10 (CEMP), 11 (drainage), 27 (ball stop netting) on previous permission 2020/91215 for outline application for erection of residential development – Pending consideration.

2022/90137 Discharge of conditions 13 (coal legacy), 17 (remediation), 18 (unexpected contamination), 19 (validation report), 20 (electric vehicle charging), 21 (arboricultural impact assessment and method statement), 24 (baseline ecological value), 25 (ecological design strategy) and 29 (noise report) of previous outline permission 2020/91215 for erection of residential development – Pending consideration.

2021/93286 – Reserved matters application pursuant to outline permission 2020/91215 for erection of 41 dwelling – Approved.

2020/91215 – Outline application for erection of residential development – Section 106 outline permission granted.

2019/90380 – Outline application for erection of residential development and associated access – Refused and appeal dismissed.

99/91668 – Formation of grass full-size practice pitch and all weather training/fitness surface with associated lighting and formation of Millennium Green – Refused and appeal dismissed.

Enforcement history

COMP/23/0452 Alleged breach of condition 8 (2020/91215) – Pending investigation.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme)

5.1 Officers raised concern with the additional impact which a gable roof form (with two roof slopes) would have on the amenity of the existing occupiers at numbers 14 and 16 Wentworth Avenue, and therefore amended plans have been secured to change the roof types for plots 7 and 8 back into a hipped design. Further revisions to the site layout, landscape and Secure by Design plans have been sought in response to consultee comments.

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 27/02/2019).

Kirklees Local Plan (2019):

6.2 The application site is a Housing Allocation (ref: HS137) within the Kirklees Local Plan.

6.3 Relevant Local Plan policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- LP5 – Master planning sites
- LP7 – Efficient and effective use of land and buildings
- LP9 – Supporting skilled and flexible communities and workforce
- LP11 – Housing mix and affordable housing
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP26 – Renewable and low carbon energy
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity
- LP32 – Landscape
- LP33 – Trees
- LP34 – Conserving and enhancing the water environment
- LP35 – Historic environment
- LP38 – Minerals safeguarding
- LP47 – Healthy, active and safe lifestyles

- LP48 – Community facilities and services
- LP49 – Educational and health care needs
- LP50 – Sport and physical activity
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP53 – Contaminated and unstable land
- LP63 – New open space
- LP65 – Housing allocations

6.4 The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council;

Supplementary Planning Guidance / Documents:

- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)
- Affordable Housing and Housing Mix SPD (2023)

Guidance documents

- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Green Streets Principles for the West Yorkshire Transport Fund
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)
- Kirklees Interim Housing Position Statement to Boost Supply (2023)

National Planning Guidance:

6.5 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19/12/2023 and the Planning Practice Guidance Suite (PPGS), first launched 06/03/2014, 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 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed and beautiful places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment
- Chapter 17 – Facilitating the sustainable use of materials.

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015, updated 2016)

6.7 Climate change

The Council approved Climate Emergency measures at its meeting of full Council on the 16/01/2019, 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.

- 6.8 On the 12/11/2019 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 PUBLIC/LOCAL RESPONSE

- 7.1 The application has been advertised as a major development and development affecting public rights of ways via site notices and through neighbour letters sent to properties bordering the site, and has been advertised in a local newspaper. This is in line with the council's adopted Statement of Community Involvement.
- 7.2 Final publicity expired: 26/09/2023.
- 7.3 As a result of the above, 49 objections have been received. A summary of the concerns raised are as follows:

Visual amenity:

- Increasing the density of population within Emley would negatively impact the village.
- The new developer is forging ahead without adequate consultation or respect for the impact of their 'project' (not ours) on the local community. They are trying to squeeze too many homes onto the land available. The project must be scaled back.
- The ball protection nets required to protect the proposed site and new owners from ball strike from the cricket field will be an eyesore and the height required will be a blot on the landscape.
- No mention is made or samples shown of the type of stone to be used, this should be reflected by those stone fronted houses on Wentworth Drive. Not the yellow stone used by Newett Homes on their current

development in Skelmanthorpe, which is totally out of character with area and is not pleasant to look at.

- The position of Plot 30 appears to be moving very close to the existing PROW route and there is likely to be conflict with people walking along the PROW.

Residential amenity:

- Building a house, shown as plot 8 on the current plan, would block out daylight/sunlight, seriously restricting light into some of the properties along Wentworth Avenue. Residents have a right to light which will be lost as part of the development.
- Impact on health and well-being due to existing residents not being able to use their gardens.
- The feeling of enclosure.
- The impact of my concerns cannot be fully understood by looking at a flat outline plan without any scale or measurements given. This is something that Kirklees Planning should make their top priority to look into.
- 41 (+6) additional homes, with reasonably accessible roads in a relatively small space suggests cramped living arrangements internally and externally and low quality of life for future tenants. Future developments around the village should be looking to introduce substantial, quality homes, to continue to keep the village profile and desirability high.
- There are no distances/measurements drawn on the plans submitted.

Highway safety:

- Construction traffic should not be coming through Green Acres Close as Waburton is a single track in most parts. But when the contractor came to erect fencing he came through the Millennium Green gate, trouble is that is setting a precedent for the future?
- It was disappointing to note that Newett Homes initially brought in contractors through the Green Acres Close entrance despite it being clear in the Planning Consent that access through Green Acres could only be used by Emergency Service or the Millennium Green.
- There are existing traffic problems within Emley throughout the day (not only during peak times such as rush hour) with drivers exceeding safe speeds regularly due to frustrations - increasing the housing number will introduce more road traffic around play areas and the main street of the village. This will be especially noticeable on game days (football and cricket) as the village already becomes difficult and somewhat dangerous to drive through during this time.
- Lack of visitor parking. There is only one visitor parking space near the modified six plots and no pavement. There are six apartments and three directly opposite that have no provision for visitor parking. One visitor parking space is not sufficient for 15 houses. My understanding is there should be one visitor space for every four houses. On street parking at entrance to site is far too remote from the plots and therefore unlikely to be used (visitors will not want to park at the entrance and then walk a distance – they may have mobility issues/young/elderly).
- Plots 30 to 40 also have no facility for visitor parking.

- The new plan is poorly proposed and will lead to over parking in the area where PROW 21/20 crosses the Planned Development which will inevitably lead to pedestrian conflict with traffic where at present there is no conflict.
- Pedestrian safety will inevitably be compromised, overcrowding will result with too many parked cars, and an increased number of cars will have to exit the site at a tight, potentially dangerous junction. Roads into the village from the A636 are, in places, only just wide enough for two average cars to pass, the increase in vehicle numbers especially during construction and afterwards will be dangerous and potentially impede emergency vehicles.
- Wentworth Drive entrance (from Upper Lane) and route to the site location is inadequate and dangerous. Often parked on by many from all over the village (re snow) or visiting the pub. Also, there are no road marking at the junctions. Causing major safety issues.
- Significant highway and parking issues within the area.
- The police allow all parking in contravention of highway code because (they say) the council told them it's OK.
- No bin collection points are shown for plots 21, 23 and 24 and the apartments.

Ecology:

- Is the plan to take down hedges of which there are an awful lot of wildlife? Is the builder putting in preparation for them to go elsewhere?
- The Ecological Impact Assessment prepared by SLR dated 08/08/2023 submitted in support of this application and in discharge of condition 25 (ecological design strategy) makes no reference at all to the Emley Millennium Green which is directly adjacent to the building site. Nor does the supporting ecological plan show any of the 100s of trees/bushes/planting present on the Millennium Green. It is not even labelled as the Emley Millennium Green on the Plan.
- Concerns regarding the impact the development would have on Emley Millennium Green (to wildlife, hedgerows and trees etc).
- The Millennium Green has been used for several years for the release of recovering hedgehogs from a nearby hedgehog hospital. Newett Homes is aware of this. There is no mention of how wildlife will be impacted by the removal of the existing large hedgerow of trees and bushes along the length of the boundary between the Millennium Green and the development site, this is where many of the released hedgehogs are likely to be found. The ecological assessment also makes no mention of moles on the Millennium Green which are close to the development land. Nor is there mention of the large variety of wildlife found on the Millennium Green and surrounding areas including bats, barn owls, blue tits, nuthatch and treecreeper birds, to name but a few species.
- Lack of adequate wildlife and access corridor to the Millennium Green.
- No thought of hedgehog friendly fences within the development to allow them to traverse. This will impact upon these species which are already on the decline.
- It appears that Plots 34 and 41 are being moved slightly closer the boundary of the Millennium Green. There is already going to be too much removal of trees and bushes on the boundary of the Millennium Green to accommodate these two plots and they should not be brought any

closer. How will the Millennium Green trees and tree roots be affected which are in very close proximity to these two plots. The ecological updating survey by SLR dated 08/08/2023 make no reference to this.

- What are the plans to maintain the trees and hedges from the Millennium Green that will be part of the boundary of the new houses? This information should be shared prior to building commencing.
- There are diverse species of butterfly and birds within these trees, such as nut hatch tree creeper that will also be impacted.
- Concerned that the hedgerow including lots of wildlife is to be taken out at the side of Green Acres Close. Supporting biodiversity and wildlife should be at the forefront of any development and allows the site to keep in with the greenness of the surrounding area.
- We understand that on the day of the ecology report, our volunteers from Shelley Hedgehogs actually interacted with the person generating the report, advising where the nests actually are. However, the ecologist made no effort to check or confirm this. The volunteer was there checking over the local nests and has no link to Emley or the Millennium Green but uses the area to re-introduce them into the wild.

General concerns:

- Increasing the number of houses in the village by such a large amount also has a negative impact on the market value of existing homeowners in the village.
- There will be a great impact on services within Emley including an already overcrowded school, more vehicles to add to the ever increasing speeding problem.
- If we have to have new housing why not build basic, decent affordable properties in keeping with the surroundings (not apartments) which will help the younger residents onto the property ladder thereby allowing them to stay in the village. We need to think about affordability, the local environment rather than profit.
- The school is overcrowded.
- The village infrastructure cannot cope.
- The main impacts are on nature and wildlife that seem to have been completely dismissed or ignored coupled with the outrageously tall ball strike netting which will just destroy to look of the area around the cricket club, proposed houses as well as the villages much loved Millennium Green.
- Additionally, the environmental impact should be a primary concern – building phase producing large amounts of particulates and harmful gases, increase of works traffic introducing additional fumes, increase of domestic traffic as a result of increased housing, loss of green space, loss of biodiversity where pollinating species reside/feed, noise pollution for humans, pets and wildlife.
- Newett Homes have applied to alter the size and position of seven Plots (Plots 14 to 20 which are closest to the ball stop netting) and also the size and position of the ball stop netting. This is because on the original plans there wasn't enough room for the ball stop netting support stanchions as well as room for the claimed PROW which runs adjacent the cricket field stone wall boundary.
- The new position of the six plots provides more room for the Ball stop netting and the claimed PROW but in turn brings these 6 plots closer to the public highway with little or no front garden spaces.

- There is only one visitor parking space provided at this end of the development near to the modified six plots and there is no public footpath. There are six apartments and three town houses directly opposite the six modified plots which have no provision for visitor parking either. One visitor parking space for 15 plots is not sufficient. Plots 30 to 40 also have no facility for visitor parking.
- How will the refuse wagon collect bins from the modified plots and from the apartment block plus from plots 21 23 and 24, as there are no bin collection points?
- Newett Homes plan to create a corridor along their northern boundary to incorporate the ball stop netting and the claimed PROW, but surely this is creating a dark alleyway between the dwelling rear fences and the cricket field boundary wall? This could be viewed by the police as a danger zone for potential house break-ins?
- If the ball stop netting is located in this public area of the claimed PROW, in addition to the repair and maintenance issues, the fact that they are accessible to the members of the public could mean that they could be prone to vandal damage in a secluded unmonitored vicinity. Newett Homes needs to consider all these factors and clearly and provide detailed plans to show how the public area will a) provide a secure space for the ball stop netting, b) provide sufficient space for any maintenance machinery to access the area and c) provide sufficient safe space for the claimed PROW.
- I note that there has been a change to the number of houses near the PROW – surely Newetts should be sharing design and artists impression, including the type of stone, doors and windows.
- Concerns raised regarding the planning application 2023/92327 for six modified dwellings.
- The route of the existing PROW will cross the new public highway, but the crossing point is an offset raised ramp that does not run in line with the route of the PROW? Is this safe for children crossing? At the moment children walking along this PROW encounter no cars or roads but will now have to negotiate a raised offset ramp as well as looking out for vehicles? Also, potential problems for pushchairs, wheelchairs, roller skates etc.
- The Secure by design layout dated 11/07/2023 appears to show a diversion of the main diagonal PROW through the site.
- The cricket pitch section and the ball strike net plan both dated 27/06/2023 prepared by Newett Homes are not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate.
- The Labosport report LSUK.21-0698 dated 19/11/2021 commissioned by Barratts is now outdated. Labosport needs to be instructed to prepare a fresh report following a physical site inspection rather than a desk top appraisal. The report needs to factor in the changes to the position and design of the ball stop netting, and also factor in and changes to the way cricket is played at the cricket ground.
- The proposed netting and its height is not what was approved in the Planning Application 2021/93286. The Labosport LSUK.21-0698 dated 19/11/2021 gave a height of 18 metres but Newett are now using 17 metres. A new Labosport/Newett Boundary Risk assessment is required to look at the heights again particularly due to the proposed nets being moved and the claimed PROW now being incorporated into the new

design. As already stated this should be a physical survey not a desk top survey.

- The submitted 'Cricket Pitch Section' plan and the 'Ball Strike Net Plan' both dated 27/06/2023 prepared by Newett Homes is not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate. The cricket field and the development land are exposed to high winds and adverse weather and this needs to be factored into any design. The balls strike netting needs to be robust enough to withstand the extremes of weather experienced in Emley, and to prevent rattling and whistling noises disturbing residents in the vicinity.
- The proposed netting is not only lower than it should be but it does not extend to the perimeters originally proposed. It is shown as not extending the full length of the cricket field wall, i.e. where the proposed attenuation tanks are to be grassed over and the development children play this area is not covered by the safety of the nets, are the development children play this area is not covered by the safety of the nets, are children not as important as the houses. This is of course in addition to the fact that there will need be access for a "cherry picker" machine space for repair / maintenance of the ball stop netting - which would need a clear 3.00m driveway, and this is not reflected in their most recent proposals to Kirklees.

Clarification is also required of the exact position on the plan of the PROW that runs adjacent to 10 Green Acres Close and the recreation Ground (DEN/96/10) as there seems to be conflict with the site legal boundary line which appears to overlap into the garden of 10 Green Acres Close.

- Concerns raised regarding the information submitted for the Discharge of Condition applications 2023/92254 and 2023/92253.
- Labosport – these experts should be working with Newetts to ensure all Health and Safety measures are met – young families are going to be living and children playing in these gardens and areas. No chances or short cuts can be taken here. Labosport and Planning agreed 18 metre nets and the nets would be erected prior to building commencing. Newetts are not following this advice.
- Poor communication from Newett Homes to local residents.
- Clearer communication with residents needs sharing from Newetts – eg more drawings outlining layout with proposed materials to be used and measurements – size of garden and clear diagrams showing car parking spaces and access for bin wagon. Especially those on Wentworth Drive and the surrounding areas.
- All this information including all measurements of the houses and gardens should be available to all before the start of building. This information should be shared prior to building commencing.
- The plans are so small we cannot measure the minimum size agreed for the garages at 7m x 3m.
- I note the attenuation area is grassed over and will attract children playing. Could there be some assurance that this area is a safe area to play and walk across. Could it have signage?
- A request to Newetts and planning, please be open and transparent with Emley residents. We deserve this consideration and courtesy.
- Contractors were going to cut off the locks on Green Acres Close in order to access the land even though this was known to them to be against the

Planning conditions, continued for five days to bring equipment into the field from Warburton, no causeways.

- Impact on the Millennium Green and its users from a noise perspective.
- Concerned about the potential for noise, disturbance and odour from the proposed development.
- The Millennium Green is a registered charity. The green is well used and supports a variety of wildlife as well as established mature grass land and trees some of which were planted by school children. The peace of the green offers a place of reflection and emotional connection with the environment and personal memories. The effect of new housing close by and the infrastructure required to support the proposed new development will adversely affect all of this.
- The development would result in an increase to the risk of injury during a cricket match if the ball was to bounce back over the proposed area causing serious injury/death.

Denby Dale Parish Council: Defer to Kirklees Council officers.

Local ward councillors

All ward councillors have been notified of this application, however, no comments have been received.

8.0 CONSULTATION RESPONSES

8.1 Statutory:

KC Highways Development Management – Given the revised layout plan and Section 38 general agreement plan, officers consider the proposal to be acceptable. However, the applicant is reminded that the council's Section 38 team have accepted the 22m forward visibility distance on the basis that a Road Safety Audit does not raise any concerns and recommends that this is increased for road safety reasons.

8.2 Non-statutory:

KC Ecology – Following previous comments, the Section 73 scheme achieves a greater number of habitat units: 2.10, compared with 1.59 to the Reserved Matters scheme, but a lower number of hedgerow units: 1.09, compared with 1.42 secured with the Reserved Matters. As such, the on-site net change for our development is -2.97 habitat units, and 0.56 hedgerow units. This represents an increase in 0.42 habitat units, and a decrease of 0.33 hedgerow units (although still a net gain).

Due to an increase of landscaping within this full planning application, the revised layout would achieve a loss of 0.06 habitat units fewer than the original Reserved Matters scheme. However, in order to achieve a 10% net gain required by the Section 106 secured as part of the outline permission, a revised sum of £79,810 would be required towards off site biodiversity net gain.

KC Crime Prevention – The amended plans are considered acceptable as the security measures are proportionate to the scheme proposed.

KC Landscape – Initial concerns were raised as the site layout plan only showed 46 new trees to be planted rather than the 60 approved. As such, an amended plan has been sought to rectify this and show 60 new trees to be provided within the modified layout. Concern has also been raised by the inclusion of *Prunus lusitanica* on the south western side of the PROW near plots 30 and 31. However, KC Ecology have confirmed that given its location, it would need to be maintained and therefore on balance this species can be supported.

Sport England – No objection to the application subject to a condition regarding management and maintenance of the ball strike net and its associated apparatus being re-attached to this application.

9.0 MAIN ISSUES

- Scope of the application
- Assessment of changes proposed
- Previous conditions and planning obligations
- Representations
- Conclusion

10.0 APPRAISAL

Scope of the application

- 10.1 This application is made under Section 73 of the Town and Country Planning Act 1990, which allows for the ‘Determination of applications to develop land without compliance with conditions previously attached’. In addition to removing conditions, Section 73 enables the varying of a condition’s wording. The effect of a granted Section 73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained if they remain relevant. The time limit for development to commence cannot be extended through Section 73.
- 10.2 The starting point for a Section 73 application is the previously-granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.
- 10.3 In terms of policy, the previous Reserved Matters application 2021/93286 was assessed against the Local Plan (2019) which remains the development plan and therefore the assessment criteria will be consistent. The National Planning Policy Framework has been subject to minor revisions since 2021/93286 was determined, but none are deemed material or relevant to this application.
- 10.4 With regard to local context, there have been no changes in the environment (including built or natural) which would materially impact on the assessment of this application.
- 10.5 In light of the above, consideration must be given to the specific changes proposed and their interaction with adopted planning policy.

Assessment of the changes proposed

- 10.6 The site is allocated for housing within the Kirklees Local Plan. Planning permission has been granted for residential development of the site under applications 2020/91215 and 2021/93286. Therefore, the principle of development has already been established. The now-proposed variation would not impact on the principle of development and policies in relation to the development broadly remain unchanged.
- 10.7 The number of units would not change under this application. However, the changes to the house types proposed would result in two additional 3-beds being proposed at the loss of two 4-beds. This would amount to a total of 25x 3-bed dwellings (as opposed to the 23 approved) and 8x 4-bed dwellings (compared to the 10 approved).
- 10.8 In this instance, such changes can be supported due to the known housing need within Kirklees Rural East, where there is a greater need for 3-bed dwellings than 4-bed dwellings. Nonetheless, the retention of 8x 4-bed dwellings would still comply with the council's Affordable Housing and Housing Mix SPD in that 24% of the market homes would be 4-bed. This would accord with Policy LP11 of the Kirklees Local Plan.
- 10.9 Policies LP1, LP2 and LP24 of the Kirklees Local Plan are all relevant, as these policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development within the area and is visually attractive.
- 10.10 These aims are also reinforced within Chapter 12 of the NPPF (Achieving well designed plans) where paragraph 131 provides an overarching consideration of design stating that *"the creation of high quality buildings and places are 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"*.
- 10.11 The previous application concerned the Reserved Matters of layout, appearance, scale, and landscaping. The impact of the proposed plan variation will be considered through the same approach in the following paragraphs.

Layout

- 10.12 First considering layout and visual amenity, the layout changes are considered small in scale would not materially affect the visual appearance of the site. Unit positions are principally the same, with minimal variation that would not prejudice the sites visual amenity value. The ratio of detached, semi-detached and terrace properties would also remain unchanged.
- 10.13 With regards to layout and residential amenity, it has been noted that the majority of the relationships between the proposed dwellings and existing third party properties surrounding the site would remain the same. However, the footprint for plot 8 would be marginally smaller than what was previously approved.

- 10.14 The amended site layout would ensure that an acceptable level of amenity would be retained to 55 Wentworth Avenue, as separation distances of 11-15m would be retained from the rear elevations of plots 10 and 11 to the side elevation at these neighbours.
- 10.15 The submitted overlay plan to show the previous scheme compared to the one proposed as part of this application, shows the separation distance between plot 21 and 10 Green Acres Close to be reduced. However, there would still be 4.5m retained at the closest point between these two dwellings. Plot 21 would be situated to the northwest of 10 Green Acres Close meaning that any overshadowing would only be evident in an evening and therefore, the minor alteration would not be detrimental to these neighbours amenity, when taking into account the approved scheme.
- 10.16 Significant separation distances would still be retained from 25-35 Wentworth Drive to plots 1-8.
- 10.17 Considering highways, the road layout would remain unchanged, with some slight alteration to its finish in order to secure Section 38 approval. This has included the submission of a forward visibility splay plan. Adequate on-site parking would remain, in accordance with the council's Highway Design Guide SPD. As such, Highways Development Management officers are in support of the scheme.
- 10.18 Having taken the above into account, the proposed layout is not substantially different to that previously approved. The proposed varied layout would not prejudice visual or residential amenity or highway safety in accordance with Policies LP21 and LP24 of the Kirklees Local Plan, Principle 6 of the Housebuilders SPD and Chapter 12 of the NPPF. Adequately-sized gardens would be maintained with a secure outdoor area for the proposed flats.

Appearance and scale

- 10.19 The appearance and scale of most of the units would remain broadly the same as approved, benefiting from a simple and modern vernacular. It is considered that the proposed house types represent an appropriate response to the site and are in keeping with the character and appearance of the dwellings which exist in the locality.
- 10.20 Regarding the amenity of existing residents, as noted above, plots, 10, 12 and 21 would move slightly closer to third party properties. However, it has been noted that the overall height of some of the houses including plot 21 would be reduced from 8.5m to 8.25m as part of this proposal.
- 10.21 Furthermore, amendments have been sought to the roof form of plots 7 and 8 to change this back into a hip rather than a dual pitch. This is to omit any further overbearing and overshadowing onto the amenity of numbers 14 and 16 Wentworth Avenue. Officers have noted that the overall height of this pair of semi-detached properties would be reduced by 0.5m and would therefore provide a betterment to the future amenity of numbers 14 and 16 Wentworth Avenue when compared to the plans previously approved. As such, this reduction is welcomed.

- 10.22 As a result of the above, the minor changes proposed are not considered to result in a material harm to existing residents via overbearing and overshadowing. Window arrangements would remain broadly as approved and would not lead to new instances of overlooking.
- 10.23 As previously approved each unit would either meet or exceed the Nationally Described Space Standards and would benefit from a dual aspect in order to achieve adequate privacy, natural ventilation, natural light and outlook.
- 10.24 Materials were secured via condition 2 of the previous permission, to include a reconstituted stone with grey concrete roof tiles. This would be unaffected by the proposed variation and therefore does not fall to be considered under this application. In conclusion, the appearance and scale of the proposed dwellings are considered to be acceptable and would not prejudice visual amenity, residential amenity, or highway safety, in accordance with the requirements of policies LP21 and LP24.

Landscape (including biodiversity)

- 10.25 Landscaping changes between the approved and proposed scheme are minimal. Small areas of public open space would remain along the PROW and above the proposed attenuation tank, linking the site to the recreation ground. Initial plans showed a reduction in the number of trees to be planted, however, concern was raised by KC Landscape, and this has been amended to show 60 as approved.
- 10.26 The detailed planting plan has been reviewed and considered acceptable on balance. The plan shows a small area of *Prunus lusitancia* adjacent to the PROW, which is considered to be an invasive species. Officers have requested for this to be amended to a non-invasive species, however, the applicant's agent has responded outlining that this species is only used in a small area adjacent to the PROW, given its low maintenance and not requiring significant pruning. Therefore, given these extenuating circumstances this species can on balance be supported.
- 10.27 Overall the proposed variation would not prejudice the proposals' landscaping arrangements which would remain of a high quality and would be visually acceptable, in accordance with Policies LP24 and LP32 of the Kirklees Local Plan. The previous off-site contribution towards public open space would still be required.

Summary

- 10.28 The application is a Section 73 variation of condition to a Reserved Matters application where the considerations were layout, appearance, scale, and landscape. The impact of the proposed variation to the plans has been considered against these considerations and found to be acceptable and in accordance with the policies contained within the Local Plan.

Previous conditions and planning obligations

- 10.29 As this is an application under Section 73 of TCPA 1990 it would, in effect, be a new permission. Planning Practice Guidance (The Use of Conditions) confirms that the original planning permission would continue to exist whatever

the outcome of the application under Section 73 and that the conditions imposed on the original permission still have effect unless they have been discharged.

- 10.30 The PPG also confirms that for the purpose of clarity, decision notices for the grant of planning permission under Section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).
- 10.31 The 15 conditions from the 2021/93286 permission should therefore be repeated and amended where necessary. For reference, these conditions are:
- 1) Development in accordance with the plans and specifications schedule (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
 - 2) Crime prevention measures to be completed in accordance with plan P21:5463:21 Rev A (to be varied – the wording of the condition would remain the same, but the plan reference would be updated)
 - 3) Details of external lighting
 - 4) Detailed design of ball-stop net and associated support columns
 - 5) A management maintenance plan to include the routine inspection and maintenance, and long-term repair and replacement of columns, netting and such other associated apparatus
 - 6) A scheme detailing foul, surface water and land drainage
 - 7) A scheme, detailing temporary surface water drainage
 - 8) Development in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference, Wharnccliffe Trees and Woodland Consultancy
 - 9) Full details of hard and soft landscaping, including and management and maintenance programme
 - 10) Details of all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways
 - 11) Details of any new surface water attenuation pipes/manhole located within the proposed highway footprint
 - 12) Removal of permitted development rights for windows and doors within the northern facing side elevation of plot 8
 - 13) A plan detailing the position and location of bat and bird boxes and hedgehog friendly fence panels
 - 14) A Construction Environmental Management Plan
 - 15) Removal of permitted development rights for Class Classes A to E inclusive of Part 1 of Schedule 2 for plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan P21:5463:01 Rev Q (to be varied – the wording of the condition would remain the same, but the plan reference would be updated)
- 10.32 For the avoidance of doubt, the 28 conditions attached to the outline permission 2020/91215, would not be affected by this Section 73 Variation of Condition application, and would continue to be in effect.

Planning Obligations

10.33 If approved, this application would result in a new stand-alone planning permission being issued. As contributions have already been dealt with under the original outline application, a Deed of Variation would be required to tie this approval to the original Section 106 agreement (dated 23/06/2021 and secured at outline stage in connection with application 2020/91215) and the subsequent Deed of Variation dated 03/03/2023. For Members' information, the previously-agreed obligations and contributions were:

- 1) Affordable housing – eight affordable housing units (either 6 social/affordable rent, two intermediate/discount market sale or four social/affordable rent, and four intermediate/discount market sale) to be provided in perpetuity.
- 2) Open space – A sum of £44,006 towards off site provision.
- 3) Education – £78, 891 contribution to be spent on priority admission area schools within the geographical vicinity of this site. Payments would be made in instalments and on a pre-occupation basis, per phase. Instalment schedule to be agreed.
- 4) Highways and transport - £20,520.50 towards a Sustainable Travel Plan Fund (£500.50 per dwelling)
- 5) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).
- 6) Biodiversity - £77,970 contribution towards off-site provision (to be amended, please refer to paragraph 10.30).
- 7) Traffic Regulation Order – £7,000 contribution.

10.34 As part of the assessment of this application, officers have noted that the off-site biodiversity contribution calculated at Reserved Matters stage was based on a no-net-loss scenario. However, having reviewed the Section 106 agreement attached to the outline permission, it states that a 10% net gain should be secured. Therefore, it recommended that a revised sum of £79,810, based on the most up-to-date scheme and biodiversity metric, achieving a 10% net gain, be secured as part of this application.

Other matters

Crime prevention measures

10.35 A revised Secure by Design layout plan has been received as part of this application process, taking into account the comments raised by the West Yorkshire Designing Out Crime Officer (DOCO). The plan shows proportionate security measures for the development proposed, taking into account the minor layout changes proposed as part of this application. This is considered acceptable and would accord with Policy LP24(e) of the Kirklees Local Plan.

Representations

10.36 The following are responses to the matters raised within the public representations received, which have not been previously addressed within the above assessment.

Visual amenity:

- Increasing the density of population within Emley would negatively impact the village.
- The new developer is forging ahead without adequate consultation or respect for the impact of their 'project' (not ours) on the local community. They are trying to squeeze too many homes onto the land available. The project must be scaled back.
- The ball protection nets required to protect the proposed site and new owners from ball strike from the cricket field will be an eyesore and the height required will be a blot on the landscape.
- **Comment:** This application does not provide an opportunity to re-assess the principle of development, nor would the number of units be changed.

- No mention is made or samples shown of the type of stone to be used, this should be reflected by those stone fronted houses on Wentworth Drive. Not the yellow stone used by Newett Homes on their current development in Skelmanthorpe, which is totally out of character with area and is not pleasant to look at.
Comment: Materials would include a reconstituted stone with grey concrete roof tiles, as approved as part of the Reserved Matters application.

- The position of Plot 30 appears to be moving very close to the existing PROW route and there is likely to be conflict with people walking along the PROW.
Comment: This has been noted, however, officers do not consider this to cause any conflict with the PROW or for its users.

Residential amenity:

- Building a house, shown as plot 8 on the current plan, would block out daylight/sunlight, seriously restricting light into some of the properties along Wentworth Avenue. Residents have a right to light which will be lost as part of the development.
- Impact on health and well-being due to existing residents not being able to use their gardens.
- The feeling of enclosure.
- The impact of my concerns cannot be fully understood by looking at a flat outline plan without any scale or measurements given. This is something that Kirklees Planning should make their top priority to look into.
- 41 (+6) additional homes, with reasonably accessible roads in a relatively small space suggests cramped living arrangements internally and externally and low quality of life for future tenants. Future developments around the village should be looking to introduce substantial, quality homes, to continue to keep the village profile and desirability high.
Comment: A detailed assessment upon residential amenity can be found earlier in this report.

- There are no distances/measurements drawn on the plans submitted.
Comment: The plans are drawn to a scale and therefore can be measured (on paper if printed, and electronically).

Highway safety:

- Construction traffic should not be coming through Green Acres Close as Waburton is a single track in most parts. But when the contractor came to erect fencing he came through the Millennium Green gate, trouble is that is setting a precedent for the future?
- It was disappointing to note that Newett Homes initially brought in contractors through the Green Acres Close entrance despite it being clear in the Planning Consent that access through Green Acres could only be used by Emergency Service or the Millennium Green.
Comment: Condition 8 on the outline permission states that “No vehicular access shall be provided from Green Acres Close, other than that already provided for the Millennium Green and that required for emergency services access”. This condition therefore remains in force. Should access be taken from Green Acres Close by construction traffic, then residents are advised to contact Planning Enforcement.
- There are existing traffic problems within Emley throughout the day (not only during peak times such as rush hour) with drivers exceeding safe speeds regularly due to frustrations – increasing the housing number will introduce more road traffic around play areas and the main street of the village. This will be especially noticeable on game days (football and cricket) as the village already becomes difficult and somewhat dangerous to drive through during this time.
Comment: This application is not to re-assess the principle of development, nor would it have any further impact on highway safety, as the road layout is to remain the same with adequate on-site parking.
- Lack of visitor parking. There is only one visitor parking space near the modified six plots and no pavement. There are six apartments and three directly opposite that have no provision for visitor parking. One visitor parking space is not sufficient for 15 houses. My understanding is there should be one visitor space for every four houses. On street parking at entrance to site is far too remote from the plots and therefore unlikely to be used (visitors will not want to park at the entrance and then walk a distance - they may have mobility issues/young/elderly).
- Plots 30 to 40 also have no facility for visitor parking.
Comment: The number of visitor parking spaces would remain as approved, along with the number of dwellings.
- The new plan is poorly proposed and will lead to over parking in the area where PROW 21/20 crosses the Planned Development which will inevitably lead to pedestrian conflict with traffic where at present there is no conflict.
- Pedestrian safety will inevitably be compromised, overcrowding will result with too many parked cars, and an increase number of cars will have to exit the site at a tight, potentially dangerous junction. Roads into the village from the A636 are, in places, only just wide enough for two average cars to pass, the increase in vehicle numbers especially during construction and afterwards will be dangerous and potentially impede emergency vehicles.
- Wentworth drive the Entrance (from upper lane) and route to the site location is inadequate and dangerous. Often parked on by many from all

over the village (re snow) or visiting the pub. Also there are no road marking at the junctions. Causing major safety issues.

- Significant highway and parking issues within the area.
- The police allow all parking in contravention of highway code because (they say) the council told them it's OK.

Comment: The highway arrangement will remain unchanged as part of this application and therefore is as approved. The application is not to re-assess highway safety.

- No bin collection points are shown for plots 21, 23 and 24 and the apartments.

Comment: Bin collection would be as approved under the Reserved Matters application.

Ecology:

- Is the plan to take down hedges of which there are an awful lot of wildlife? Is the builder putting in preparation for them to go elsewhere?

Comment: Some hedgerow removal may be required to facilitate the proposed development, however, from the submitted information, there will be a significant uplift in the quantity and quality of hedgerows throughout the site, that will provide benefits for a range of ecological receptors.

- The Ecological Impact Assessment prepared by SLR dated 08/08/2023 submitted in support of this application and in discharge of condition 25 (ecological design strategy) makes no reference at all to the Emley Millennium Green which is directly adjacent to the building site. Nor does the supporting ecological plan show any of the 100s of trees/bushes/planting present on the Millennium Green. It is not even labelled as the Emley Millennium Green on the Plan.

- Concerns regarding the impact the development would have on Emley Millenium Green (to wildlife, hedgerows and trees etc).

Comment: This has been noted, however, none of the trees/hedges within the Millennium Green adjacent to the sites (southern boundary) would be impacted by this proposal.

- The Green has been used for several years for the release of recovering hedgehogs from a nearby hedgehog hospital, Newett Homes is aware of this. There is no mention of how wildlife will be impacted by the removal of the existing large hedgerow of trees and bushes along the length of the boundary between the Emley Millennium Green and the development site, this is where many of the released hedgehogs are likely to be found. The ecological assessment also makes no mention of moles on the Millennium Green which are close to the development land. Nor is there mention of the large variety of wildlife found on the Millennium Green and surrounding areas including bats, barn owls, blue tits, nuthatch and treecreeper birds, to name but a few species.

Comment: The trees/woodland area along the boundaries between the Millenium Green and the site are outside the red line boundary for this application and therefore will not be removed. The Ecological Design Strategy sets out that hedgehog highways will be created in all garden fences. The access gaps shall be appropriately labelled with signs on both sides, to deter householders from blocking the purpose made gaps.

These highways will act as suitable corridors for a variety of small mammals. Condition 23 on the outline application details measures to avoid impacts to nesting birds throughout the construction.

- Lack of adequate wildlife and access corridor to the Millennium Green.
- No thought of hedgehog friendly fences within the development to allow them to traverse. This will impact upon these species which are already on the decline.

Comment: The Ecological Design Strategy sets out that hedgehog highways will be created in all garden fences. The access gaps shall be appropriately labelled with signs on both sides, to deter householders from blocking the purpose made gaps.

- It appears that Plots 34 and 41 are being moved slightly closer the boundary of the Millennium Green. There is already going to be too much removal of trees and bushes on the boundary of the Millennium Green to accommodate these two plots and they should not be brought any closer. How will the Millennium Green trees and tree roots be affected which are in very close proximity to these two plots. The ecological updating survey by SLR dated 08/08/2023 make no reference to this.
- What are the plans to maintain the trees and hedges from the Millennium Green that will be part of the boundary of the new houses. This information should be shared prior to building commencing.

Comment: The aforementioned plots would be moved marginally closer to the boundary with the Millennium Green, which is not considered to result in the removal of any additional trees/bushes which may have been required to facilitate the layout approved at Reserved Matters Stage. Condition 22 on the outline application states that trees will be protected in accordance with BS5837:2012.

- There are diverse species of butterfly and birds within these trees, such as nut hatch tree creeper that will also be impacted.

Comment: This has been noted. Integral bird boxes (e.g., supplied by Bird Brick Houses), to include 48 swift bricks, will be incorporated into buildings at a minimum height of 3 to 4 m above ground, with east or north facing aspects, looking onto semi-natural vegetation (i.e., hedgerow).

- Concerned that the hedgerow including lots of wildlife is to be taken out at the side of Green Acres Close. Supporting biodiversity and wildlife should be at the forefront of any development and allows the site to keep in with the greenness of the surrounding area.

Comment: This has been noted and adequate biodiversity enhancement measures have been proposed as part of this application.

- We understand that on the day of the Ecology report, our volunteers from Shelley Hedgehogs actually interacted with the person generating the report, advising where the nests actually are. However, the ecologist made no effort to check or confirm this. The volunteer was there checking over the local nests and has no link to Emley or the Millennium green but uses the area to re-introduce them into the wild.

Comment: This has been noted, however, the Ecological report has been undertaken by a competent consultancy. The council accepts the findings of the report and they make a robust impact assessment regarding the potential impacts to not only hedgehogs, but other protected faunal groups.

General concerns:

- Increasing the number of houses in the village by such a large amount also has a negative impact on the market value of existing homeowners in the village.

Comment: This is not a material planning consideration, nor does this application seek to re-assess the principle of development, as this has already been established under the outline and reserved matters applications.

- There will be a great impact on services within Emley including an already overcrowded school, more vehicles to add to the ever increasing speeding problem.
- If we have to have new housing why not build basic, decent affordable properties in keeping with the surroundings (not apartments) which will help the younger residents onto the property ladder thereby allowing them to stay in the village. We need to think about affordability, the local environment rather than profit.
- The school is overcrowded.
- The village infrastructure cannot cope.
- The main impacts are on nature and wildlife that seem to have been completely dismissed or ignored coupled with the outrageously tall ball strike netting which will just destroy to look of the area around the cricket club, proposed houses as well as the villages much loved Millenium Green.

Comment: This application does not seek to re-assess the principle of development, as this has already been established under the Outline and Reserved Matters applications.

- Additionally, the environmental impact should be a primary concern - building phase producing large amounts of particulates and harmful gases, increase of works traffic introducing additional fumes, increase of domestic traffic as a result of increased housing, loss of green space, loss of biodiversity where pollinating species reside/feed, noise pollution for humans, pets and wildlife.

Comment: This has been noted and appropriate measures were secured via conditions on the Outline and Reserved Matters application. This application is just to assess the change to the house types proposed.

- Newett Homes have applied to alter the size and position of 7 Plots (Plots 14 to 20 which are closest to the ball stop netting) and also the size and position of the ball stop netting. This is because on the original plans there wasn't enough room for the ball stop netting support stanchions as well as room for the claimed PROW which runs adjacent the cricket field stone wall boundary.

- The new position of the six plots provides more room for the Ball stop netting and the claimed PROW but in turn brings these 6 plots closer to the public highway with little or no front garden spaces.
- There is only one visitor parking space provided at this end of the development near to the modified six plots and there is no public footpath. There are six apartments and three town houses directly opposite the six modified plots which have no provision for visitor parking either. One visitor parking space for 15 plots is not sufficient. Plots 30 to 40 also have no facility for visitor parking.
- How will the refuse wagon collect bins from the modified plots and from the apartment block plus from plots 21 23 and 24 as there are no bin collection points?
- Newett Homes plan to create a corridor along their northern boundary to incorporate the ball stop netting and the claimed PROW, but surely this is creating a dark alleyway between the dwelling rear fences and the cricket field boundary wall? This could be viewed by the police as a danger zone for potential house break-ins?
- If the ball stop netting is located in this public area of the claimed PROW, in addition to the repair and maintenance issues, the fact that they are accessible to the members of the public could mean that they could be prone to vandal damage in a secluded unmonitored vicinity. Newett Homes needs to consider all these factors and clearly and provide detailed plans to show how the public area will a) provide a secure space for the ball stop netting, b) provide sufficient space for any maintenance machinery to access the area and c) provide sufficient safe space for the claimed PROW.
- I note that there has been a change to the number of houses near the PROW – surely Newetts should be sharing design and artists impression, including the type of stone, doors and windows.
- Concerns raised regarding the planning application 2023/92327 for 6 modified dwellings.

Comment: These comments appear to relate to the modified proposal (2023/92327) rather than this particular Section 73 (variation of condition) application.

- The route of the existing PROW will cross the new public highway, but the crossing point is an offset raised ramp that does not run in line with the route of the PROW? Is this safe for children crossing? At the moment children walking along this PROW encounter no cars or roads but will now have to negotiate a raised offset ramp as well as looking out for vehicles? Also, potential problems for pushchairs, wheelchairs, roller skates etc.

Comment: This has been noted and Highway Officers have confirmed that there is sufficient space at the top of the ramp for pushchairs, wheelchairs and people on roller skates to cross the road and join back onto the PROW.

- The Secure by design layout dated 11/07/2023 appears to show a diversion of the main diagonal PROW through the site.

Comment: The alignment of the PROW would remain as existing and as approved.

- The cricket pitch section and the ball strike net plan both dated 27/06/2023 prepared by Newett Homes are not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate. The cricket field and the development land are exposed to high winds and adverse weather and this needs to be factored into any design. The balls strike netting needs to be robust enough to withstand the extremes of weather experienced in Emley, and to prevent rattling and whistling noises disturbing residents in the vicinity.

Comment: In the absence of acceptable information pursuant to conditions 4 and 5 on the Reserved Matters application, these conditions will be re-attached as part of this current S73 application.

- The Labosport report LSUK.21-0698 dated 19/11/2021 commissioned by Barratts is now outdated. Labosport needs to be instructed to prepare a fresh report following a physical site inspection rather than a desk top appraisal. The report needs to factor in the changes to the position and design of the ball stop netting, and also factor in and changes to the way cricket is played at the cricket ground.

Comment: Given that this application is a modification to the Reserved Matters relating to house type/minor layout changes, it is not considered necessary or reasonable to require the applicant to submit a new Labosport report.

- The proposed netting and its height is not what was approved in the Planning Application 2021/93286. The Labosport LSUK.21-0698 dated 19/11/2021 gave a height of 18 metres but Newett are now using 17 metres. A new Labosport/Newett Boundary Risk assessment is required to look at the heights again particularly due to the proposed nets being moved and the claimed PROW now being incorporated into the new design. As already stated this should be a physical survey not a desk top survey.

Comment: The proposed height of the ball strike net is to remain at 17m as approved at Reserved Matters stage and set out within the Labosport assessment. The net would also remain in the same location as approved.

- The proposed netting is not only lower than it should be but it does not extend to the perimeters originally proposed. It is shown as not extending the full length of the cricket field wall, i.e. where the proposed attenuation tanks are to be grassed over and the development children play this area is not covered by the safety of the nets, are the development children play this area is not covered by the safety of the nets, are children not as important as the houses. This is of course in addition to the fact that there will need be access for a “cherry picker” machine space for repair / maintenance of the ball stop netting – which would need a clear 3.00m driveway, and this is not reflected in their most recent proposals to Kirklees.

Comment: The length of the net would not change as part of this application. It is still be proposed to the rear of plots 14-20. The net is to protect the houses adjacent to the cricket pitch from damage and to not prejudice the playing of this sport given the location of the houses proposed. The risk of ball strike to users of the green space above the attenuation tank would be similar to that which currently exists (where

the site is currently open with no ball strike net in situ to protect the users of the public footpaths). Sport England have not requested that the net be extended to cover other parts of the application site.

Clarification is also required of the exact position on the plan of the PROW that runs adjacent 10 Green Acres Close and the recreation Ground (DEN/96/10) as there seems to be conflict with the site legal boundary line which appears to overlap into the garden of 10 Green Acres Close.

Comment: The location of public footpath DEN/96/10 has been shown on the site layout plan. Any concerns regarding land ownership/legal boundary lines is outside of the remit of this planning application.

- Concerns raised regarding the information submitted for the Discharge of Condition applications 2023/92254 and 2023/92253

Comment: This has been noted.

- Labosport – these experts should be working with Newetts to ensure all Health and Safety measures are met – young families are going to be living and children playing in these gardens and areas. No chances or short cuts can be taken here. Labosport and Planning agreed 18 metre nets and the nets would be erected prior to building commencing. Newetts are not following this advice.

Comment: This concern has been noted.

- Poor communication from Newett Homes to local residents.
- Clearer communication with residents needs sharing from Newetts – eg more drawings outlining layout with proposed materials to be used and measurements – size of garden and clear diagrams showing car parking spaces and access for bin wagon. Especially those on Wentworth Drive and the surrounding areas.

- **Comment:** This concern has been noted.

- All this information including all measurements of the houses and gardens should be available to all before the start of building. This information should be shared prior to building commencing.

- The plans are so small we cannot measure the minimum size agreed for the garages at 7m x 3m.

Comment: The plans submitted are all to scale and therefore can be scaled electronically or on paper if printed at the correct size.

- I note the attenuation area is grassed over and will attract children playing. Could there be some assurance that this area is a safe area to play and walk across. Could it have signage?

Comment: The onus would be on the developer to provide adequate signage should there be any health and safety risks associated with the green space above the attenuation tank.

- A request to Newetts and planning, please be open and transparent with Emley residents. We deserve this consideration and courtesy.

Comment: All documents and files submitted for this application are showing on the Council's website for transparency.

- Contractors were going to cut off the locks on Green Acres Close in order to access the land even though this was known to them to be against the Planning conditions, continued for five days to bring equipment into the field from Warburton, no causeways.
Comment: Damage to public/private property is outside of the remit of planning and the police should be contacted. Should access be taken from Green Acres Close, then residents are advised to contact Planning Enforcement.
- Impact on the Millenium Green and its users from a noise perspective.
- Concerned about the potential for noise, disturbance and odour from the proposed development.
Comment: A Construction Environmental Management Plan was secured as part of the Reserved Matters application to control and reduce disturbance during construction.
- The Millennium Green is a registered charity. The green is well used and supports a variety of wildlife as well as established mature grass land and trees some of which were planted by school children. The peace of the green offers a place of reflection and emotional connection with the environment and personal memories. The effect of new housing close by and the infrastructure required to support the proposed new development will adversely affect all of this.
Comment: This has been noted, however, this relationship has already been established.
- The development would result in an increase to the risk of injury during a cricket match if the ball was to bounce back over the proposed et causing serious injury/death.
Comment: This has been noted and adequate precautions/measures are required by conditions 4 and 5 on the Reserved matters application.

11.0 CONCLUSION

- 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 As this is a Section 73 application, the principal consideration is the planning implications of the proposed variation. The principle of development was established at outline stage. The considerations relevant to this Section 73 are limited to the variation's impacts on the layout, scale, appearance, and landscaping of the proposal. It is concluded that the proposed variation would not introduce new concerns, prejudice material considerations or conflict with planning policy, having regard to the previous approval. The minor changes to the design of the house types would improve visual amenity and would in some instances, provide a betterment in respect of amenity to third party dwellings, given the reduction in overall height to some of the units along the edge of the site.
- 11.3 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, subject to conditions and planning obligations to be secured via a Deed of Variation to the original Section 106 agreement.

12.0 CONDITIONS (summary list – full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Development in accordance with the plans and specifications schedule
2. Crime prevention measures to be completed in accordance with plan reference Z115.113 rev B
3. Details of external lighting
4. Detailed design of ball-stop net and associated support columns
5. A management maintenance plan to include the routine inspection and maintenance, and long-term repair and replacement of columns, netting and such other associated apparatus
6. A scheme detailing foul, surface water and land drainage
7. A scheme, detailing temporary surface water drainage
8. Development in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference, Wharncliffe Trees and Woodland Consultancy
9. Full details of hard and soft landscaping, including and management and maintenance programme
10. Details of all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways
11. Details of any new surface water attenuation pipes/manhole located within the proposed highway footprint
12. Removal of PD rights for windows and doors within the northern facing side elevation of plot 8
13. A plan detailing the position and location of bat and bird boxes and hedgehog friendly fence panels
14. A Construction Environmental Management Plan
15. Removal of permitted development rights for Class Classes A to E inclusive of Part 1 of Schedule 2 for plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan Z155.002 rev E

Background Papers:

Website link - [Planning application details | Kirklees Council](#)

[Link to Reserved Matters application – Planning application details | Kirklees Council](#)

[Link to Outline application - Planning application details | Kirklees Council](#)

Certificate B signed and notice served.