

Public Document Pack



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

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Wednesday 11 September 2024

Notice of Meeting

Dear Member

District-Wide Planning Committee

The **District-Wide Planning Committee** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 19 September 2024**.

(A coach will depart the Town Hall, at 11.20am 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 cursive script, appearing to read "S Lawton".

Samnatha Lawton

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.

District-Wide Planning Committee Members are:-

Member

Councillor Sheikh Ullah (Chair)
Councillor Eric Firth
Councillor Mohan Sokhal
Councillor Donna Bellamy
Councillor Tony McGrath
Councillor Paola Antonia Davies
Councillor Zahid Kahut
Councillor Paul Moore
Councillor Susan Lee-Richards

When a Member of the District-Wide 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

B Armer
D Hall
J Taylor
C Holt
M Thompson

Green

K Allison
A Cooper

Labour

M Ahmed
J Homewood
B Addy
M Crook
J Rylah
A Sewell
H McCarthy

Liberal

Democrat

A Munro
A Pinnock
C Burke
J Lawson
D Longstaff
A Marchington
A Robinson
A Smith

Community

Alliance

C Scott
A Zaman

Kirklees

Community

Independents

A Anwar
JD Lawson
A Arshad

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Committee

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

2: Minutes of the Previous Meeting

1 - 2

To approve the Minutes of the Meeting of the Committee held on 11th July 2024.

3: Declaration of Interests and Lobbying

3 - 4

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

4: Admission of the Public

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

5: 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.

6: 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.

7: Site Visit: Planning Application 2024/90881

Erection of two dwellings at land adjacent to 155 Longwood Road, Paddock, Huddersfield.

Ward affected: Golcar

Contact: Tom Hunt, Planning Services

Estimated time of arrival at site: 11:30am

8: Planning Applications

5 - 6

The Planning Committee will consider the attached reports.

Please note that any members of the public who wish to speak at the meeting must register to speak by 5.00pm (phone) or 11:59pm (email) on Monday 16 September 2024.

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

- 9: Application for a Definitive Map Modification Order to record a public footpath at Old Lane, Scapegoat Hill, Colne Valley on the Definitive Map and Statement, and two other discovered routes** 7 - 104

To consider the application.

Contact: Deborah Stephenson, Assistant Definitive Map Officer

- 10: Planning Application - Application No: 2024/90881** 105 - 122

Erection of two dwellings at land adjacent to 155 Longwood Road, Paddock, Huddersfield.

Ward affected: Golcar

Contact: Tom Hunt, 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.

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Contact Officer: Andrea Woodside

KIRKLEES COUNCIL

DISTRICT-WIDE PLANNING COMMITTEE

Thursday 11th July 2024

Present: Councillor Sheikh Ullah (Chair)
Councillor Donna Bellamy
Councillor Paola Antonia Davies
Councillor Eric Firth
Councillor Susan Lee-Richards
Councillor Tony McGrath
Councillor Paul Moore

Apologies: Councillor Mohan Sokhal

1 Membership of the Committee

Apologies for absence were received on behalf of Councillor Sokhal.

2 Minutes of the Previous Meeting

RESOLVED – That the Minutes of the Meeting held on 9 May 2024 be approved as a correct record.

3 Declaration of Interests and Lobbying

There were no declarations of interests or lobbying.

4 Admission of the Public

It was noted that all agenda items would be considered in public session.

5 Public Question Time

No questions were asked.

6 Deputations / Petitions

No deputations or petitions were received.

7 Site Visit - Planning Application No: 2024/90494

Site visit undertaken.

8 Planning Application - Application No: 2024/90494

The Committee gave consideration to Application 2024/90494 – Change of use of existing garage to business use (within a Conservation area) at 17 Ashfield Road, Birkby.

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

District-Wide Planning Committee - 11 July 2024

RESOLVED –

That the application be delegated to the Head of Planning and Development to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- plans list
- use of building annotated 'garage' to be as a beauty salon only and no other use falling within Class E of the Town and Country Planning (use classes order) 1987 (as amended)
- use of the site for beauty salon use to be restricted to the garage building only (and not including the host dwelling)
- staff of beauty salon to be by occupier(s) of no.17 only
- use shall operate on an appointment basis and there shall be no more than one appointment present at any one time
- no use of noise amplification equipment
- restriction of hours of use to be 8.00am to 8.00pm Monday to Friday, 8.00am to 3.00pm on Saturdays.

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

For: Councillors Bellamy, P A Davies, Firth, Lee-Richards, McGrath, Moore and Ullah (7 votes)

Against: (no votes)

KIRKLEES COUNCIL

DECLARATION OF INTERESTS AND LOBBYING

District Wide Planning Committee

Name of Councillor

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

LOBBYING

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

Signed: Dated:

NOTES

Disclosable Pecuniary Interests

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

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

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

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

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

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

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

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

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

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

(b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

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

Lobbying

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

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

PLANNING POLICY

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

The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019) and the Holme Valley Neighbourhood Development Plan (adopted 8th December 2021).

National Policy/ Guidelines

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th December 2023 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;
- race;
- 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 (as amended) 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 Committee have been made in accordance with the above requirements.

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER (DMMO) TO RECORD A PUBLIC FOOTPATH AT OLD LANE, SCAPEGOAT HILL, COLNE VALLEY ON THE DEFINITIVE MAP AND STATEMENT, AND TWO OTHER DISCOVERED ROUTES

Meeting:	District Wide Planning Committee
Date:	19 September 2024
Cabinet Member (if applicable)	Not applicable
Key Decision	No
Eligible for Call In	No
Purpose of Report	
<p>Members are asked to consider the available evidence and determine an application for a Definitive Map Modification Order (Order) under s53(5) of the Wildlife and Countryside Act 1981 (WCA 1981) to record a public footpath from Old Lane to Taylor Lane via burial ground at Scapegoat Hill on the Definitive Map and Statement (DMS).</p> <p>Members are also asked to consider the available evidence in relation to two discovered routes that branch off from the application route.</p> <p>Members are asked to make a decision on making an Order in respect of the application and the discovered routes, and the stance in relation to the confirmation of any Order made.</p>	
Recommendations	
<ul style="list-style-type: none"> • Make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath leading from Old Lane to Taylor Lane via burial ground (route 1) subject to the limitation of a gate, and to record a public footpath leading from Old Lane to High Street via steps (route 2) • Do not make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath leading from Old Lane to High Street via Vermont Close (route 3) • To confirm any Order if unopposed, or if objections are received and not withdrawn and the matter referred to the Planning Inspectorate for determination, to actively support confirmation of the Order at any public inquiry or hearing. 	
Reasons for Recommendations	
<ul style="list-style-type: none"> • It is reasonable to allege that route 1, Old Lane to Taylor Lane via burial ground subsists as a public footpath subject to the limitation of a gate under s31(1) of the Highways Act 1980 (HA 1980) on user evidence during the relevant period 1997 to 2017 • It is reasonable to allege that route 2, Old Lane to High Street via steps subsists as a public footpath under s31(1) of the HA 1980 on user evidence during the relevant period 1997 to 2017 • In relation to route 3, Old Lane to High Street via Vermont Close, it is not reasonable to allege that a public footpath subsists under s31(1) of the HA 1980 on user evidence during the alternative relevant periods, or at common law. • In relation to confirming its own Order or supporting the confirmation of the Order at any public inquiry or hearing, providing no new evidence is submitted, route 1 and route 2 subsist on 'the balance of probabilities'. 	

- The Council has a statutory duty to keep the DMS under continuous review, investigate and determine any Order applications and make any Orders that appear to it requisite in consequence of the discovery of evidence that the DMS requires modification and to confirm any Order if unopposed or forward any Order to the Planning Inspectorate for determination if any Order is unopposed but requires modification, or if objections are received and not withdrawn.

Resource Implications:

- Any resource implications, financial or otherwise associated with the carrying out of this statutory duty under s53 of the WCA 1981 cannot be taken into consideration when making a decision.

Date signed off by Strategic Director & name

David Shepherd – 5/9/2024

Is it also signed off by the Service Director for Finance?

James Anderson on behalf of Kevin Mulvaney – 6/9/2024

Is it also signed off by the Service Director for Legal Governance and Commissioning?

Samantha Lawton – 6/9/2024

Electoral wards affected: Colne Valley

Ward councillors consulted: Cllr Beverley Addy, Cllr Harry McCarthy, Cllr Matthew McLoughlin

Public or private: Public

Has GDPR been considered? Yes, and either omitted or redacted.

1 Executive Summary

- 1.1 The purpose of this report is to determine a Definitive Map Modification Order (Order) application submitted to Kirklees Council in 2018 to modify the Definitive Map and Statement (DMS), which is a statutory duty. The Planning Inspectorate has directed that the application should be determined by October 2021.
- 1.2 The application provided evidence of public use to support a claim that a way in Scapegoat Hill, Huddersfield leading from Old Lane to Taylor Lane via burial ground (route 1) is a public footpath.
- 1.3 On the 'discovery of evidence' submitted with the application, Officers have investigated two additional routes that branch off from the application route. These comprise a route from Old Lane to High Street via steps (route 2), and a route from Old Lane to High Street via Vermont Close (route 3).
- 1.4 The available documentary or historic evidence has been investigated for all three routes under [section 32 of the Highways Act 1980 \(the 1980 Act\)](#).
- 1.5 Scapegoat Hill was historically within the township of Golcar which was enclosed in 1823. The Golcar Enclosure Map shows that route 2 and route 3 originated as cul-de-sac routes leading to ancient enclosures and farm buildings. These routes were not awarded as public footpaths during the enclosure.
- 1.6 Various Ordnance Survey (OS) maps show that part of route 1 and routes 2 and 3 have physically existed on the ground for over 100 years. In particular, part of route 1 and route 3 are depicted on the 1854 OS map. Part of route 1, routes 2 and 3 are depicted on the 1893 OS map. Gates, walls, or fences (or change of surface) are indicated at some locations on all routes, but this does not mean that the routes were not passable on foot. The 1907 OS map annotates 'FP' meaning 'footpath' on part of route 3. The burial ground along route 1, first appears on the 1919 OS map, with a short set of steps depicted on the 1932 OS map. A longer staircase through the burial ground along route 1, is depicted on the 1963 OS map but does not join with the route 3 'footpath'. These OS maps carry a disclaimer that '*the representation on this map of a Road, Track, of Footpath, is no evidence of the existence of a right of way*' – meaning private or public.

Generally routes depicted on OS maps provide no indication of status in relation to rights of way.

- 1.7 The 1910 Finance Act Plan and Valuation Book for Golcar show the routes were largely recorded within hereditaments with no corresponding deductions for '*public rights of way or use*'. A 1952 conveyance annotates a '*public footpath*' on the steps along route 2, which provides evidence of reputation of the public status of route 2. The inference is that any public footpath may continue to a place the public have a right to be (i.e., Old Lane and High Street). The same title plan annotates a '*roadway*' on part of the route 2 and part of route 1 and 3, which is considered to indicate at least a private right of access possibly private vehicular access.
- 1.8 The burial ground is a private burial ground (and is not consecrated in the sense that The Church of England ground is consecrated) and the use of the steps which avoids the graves as a public footpath appears to be compatible with the purpose for which the land is held. Officers sincerely wish no disrespect to Scapegoat Hill Baptist Church by these statements.
- 1.9 Officers therefore consider that the available documentary or historical evidence does not in itself indicate a public right on foot along routes 1, 2 or 3. However, some of the documentary or historical evidence carries some weight and supports the user evidence case, in particular the evidence of reputation of the public status of route 2.
- 1.10 The available user evidence for routes 1, 2 and 3 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.
- 1.11 The public right to use route 1 and route 2 was first brought into question in 2017 by the DMMO application as the result of an appeal upheld by the planning inspector in relation to planning permission for a housing development affecting the routes (see [Planning application 2015/ 92476](#)). The relevant twenty-year period for analysing the user evidence is therefore 1997 to 2017. On that analysis, officers consider that the quantity and quality of the user evidence is sufficient to demonstrate public use and enjoyment of route 1 and route 2, as of right, and without interruption during the relevant

period, 1997 to 2017. No sufficient evidence of a lack of intention to dedicate public right of ways during the relevant period has been submitted.

- 1.12 Officers therefore consider that, whilst there is in part a conflict of credible evidence in relation to route 1 between the users and landowners or the agent, there is no incontrovertible evidence that route 1 and route 2 cannot be reasonably alleged to subsist. It is therefore recommended that an Order is made to record route 1 and route 2 on the DMS and approval is granted for their confirmation.
- 1.13 Alternative relevant periods have been investigated in relation route 3 (E-F) due to the erection of a gate in 2000, and its locking/bolting in 2010, and providing photo evidence dated 2015 and 2019. Although there is some evidence of reputation from landowners, residents, and users (and OS maps) that part of route 3 is an '*old footpath*', the quantity and quality of the user evidence is not sufficient to demonstrate public use and enjoyment of route 3 (E-F) under s31(1) of the 1980 Act during the alternative relevant periods. Officers therefore consider that it is not reasonable to allege that route 3 (E-F) subsists as a public footpath under statute.
- 1.14 Although route 3 (E-F) is considered to have failed the statutory test for presumed dedication due to the insufficient use by the public during the relevant period, it can also be considered at common law. Such a dedication requires the capacity to dedicate, and also requires acceptance by the public. There appears to have been an acquiescence by landowners in relation to public use over part of route 3 (E-F) branching off from route 1, from 1984 through 2000, 2003 to 2010 which may constitute a common law dedication.
- 1.15 However, in terms of acceptance by the public, the quantity and quality of the user evidence is not sufficient to imply such an acceptance has occurred under the principles of a common law dedication, which requires a more intensive (open and notorious) use over a longer or a shorter period than 20 years. This may well be in part because the unregistered part of the reputed '*old footpath*' on route 3 appears to have been variously unmaintained leading to it becoming overgrown and at times possibly impassable, together with the presence of the gate and dwelling which may have discouraged its use.
- 1.16 However, the overriding factor remains the insufficiency of user evidence in relation to route 3 (E-F). As such Officers consider that it is not reasonable to imply that there has been a common law dedication of a public footpath along route 3 (E-F) during the

period under analysis. Therefore, no Order should be made to record route 3 (E-F) on the DMS.

2 Information required to take a decision

2.1 Guidance for Members

2.1.1 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 or historic, other) including the consultation and the Officer recommendations.

2.1.2 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.

2.2 Officer Investigation

2.1.3 See **Appendix B** for the detailed Officer Investigation Report including the Statutory and Common Law provisions and certain case law. Figures and photos have been arranged in a separate document at **Appendix C**.

2.2 Current land use

2.2.1 There is an issue in that the newly built housing development has blocked route 1 and route 3 near point E by way of the erection of a wall which prevents any passage (see [Planning application 2015/ 92476](#)). Large electric gates have also been erected near point AB. Works to the driveway have also changed the alignment and levels relating to route 2 at point AB. Landowner 1 was notified by the applicant in 2018 that a DMMO application had been submitted to the Council. In correspondence with the developer (landowner 1) dated July 2020 at the time development works started on the site an Officer advised that any development that affected an unrecorded public right of way would be at their own risk. In simple terms, planning permission or any subsequent built development in itself does not extinguish or divert any recorded or any 'unrecorded' public rights of way. A public right of way can only be extinguished or diverted by a legal Order.

2.2.2 Should members accept the recommendation that public rights of way are found to subsist, and an Order made and confirmed then appropriate remedies or

enforcement action are likely to need to be considered to ensure the ways are available for public use on foot.

- 2.2.3 However, whether the routes are currently obstructed, diverted or levels changed, is not something that can and indeed must not be taken into account when determining whether any public rights already subsist under statute or at common law.

3 Implications for the Council

3.1 Working with People

- 3.1.1 Not applicable

3.2 Working with Partners

- 3.2.1 Officers have engaged with the public, Councillors, landowners, occupiers, residents, the Parish Council, and user groups when gathering and investigating the evidence connected with this application.

3.3 Place Based Working

- 3.3.1 Not applicable

3.4 Climate Change and Air Quality

- 3.4.1 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

3.5 Improving outcomes for children

- 3.5.1 Not applicable

3.6 Financial Implications

- 3.6.1 The financial costs associated with the statutory process of 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 must not be taken into account when considering the evidence regarding the status of the paths in question.

- 3.6.2 If an Order is made and that Order is confirmed on the basis of presumed dedication under section 31 of the 1980 Act, as recommended by the Officer, the public footpaths will not be highways maintainable at public expense as they came into existence through modern public user presumed dedication and after [section 38 of the Highways Act, 1959](#), came into operation. Generally, any maintenance (including the two flights of steps) generally is not something that can be taken into account when considering the evidence regarding the status of the paths or ways in question. Similarly, any remedies or enforcement action in relation to the obstruction of or the diverting of a recorded public right of way would be met by existing budgets, or 'recharge' may apply to certain works.

3.7 Legal Implications

- 3.7.1 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.
- 3.7.2 The Council must make a decision regarding the DMMO application and the discovered routes and make an Order if required further to section 53 of the Wildlife and Countryside Act 1981. The Council is acting in a quasi-judicial capacity. In accordance with the Council's delegation scheme, these are matters for the relevant planning committee or they can be delegated to the Strategic Director Growth and Regeneration in which case the relevant scheme of delegation would apply.
- 3.7.3 Any person may make a duly made objection or representation to an Order modifying the DMS. 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 by way of correspondence, at a hearing or at public inquiry and they may or may not confirm the Order.
- 3.7.4 If an application is turned down, the applicant has 28 days to appeal after notice is served by the Council of its refusal decision. A made DMMO will be subject to a 42-day public notice period. A DMMO may be objected to and sent to the Planning

Inspectorate for determination, which may take several months. A confirmed DMMO will be subject to a 28-day public notice period.

3.7.5 Should any Order be confirmed, it may be necessary to pursue legal enforcement action.

3.8 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

3.8.1 None

4 Consultation

4.1 Landowner consultation

4.1.1 In October 2021 and May 2022, Officers carried out a landowner/occupier consultation which included those fronting all three routes. As a result, nine Landowner Statement Forms were received. These included forms submitted by the current owners of route 1, and the owner and former owners of No.2 Vermont Close. The other forms were completed by residents taking access of route 2, route 3 or residing adjacent to route 1. The evidence presented in these forms and any additional documents and correspondence have all been considered during the investigation and are included in the Officer Investigation Report (**Appendix B**).

4.2 Public consultation

4.2.1 In November 2022, Officers conducted a 28-day consultation with the public, landowners/occupiers, user groups, and Colne Valley Ward Members. The consultees were invited to provide any comments and/or evidence by 14 December 2022. Consultees were also asked to provide responses to a specific set of questions. Consultees were given the option to respond via email, letter, or telephone.

4.2.2 Public notice of the consultation was provided on the Councils website under Changes to the Definitive Map and Statement and titled '*Investigation into the status of a claimed route from Old Lane to Taylor Lane via the burial ground, Scapegoat Hill. And an investigation into the status of two additional routes at Scapegoat Hill, from Old Lane to High Street via steps, and Old Lane to High Street via Vermont Close*'. Notices were displayed at either end of the application route and in a prominent public place. Three of these notice sites are shown in **Figure 39** in

Appendix C. Consultees were given the option to respond via email, letter, or telephone.

4.2.3 During the 28-day public consultation, fourteen responses were received from members of the public. Some landowners and residents including those fronting all routes, also responded. See **Figure 40** in **Appendix C** for a summary of those responding both to the consultation and also to the wider investigation.

4.2.4 In summary:

- Eight members of the public supported the recording of routes on the DMS, of these two members of the public supported the recording of route 2 only.
- Six members of the public did not support the recording of route 1 through the burial ground and steps, mainly objecting because they asserted it is for people visiting graves and the steps are quite steep and in poor condition and that it was not a pathway to the road (not a through route).
- Landowners 1, and 3 do not support the recording of route 1 mainly because its private land and now the site of a new housing development. Landowner 2 (Church) does not support the recording of route 1, and a ‘petition’ with 27 signatures against route 1 through the burial ground was also submitted via the Church.
- Landowner 7 provided more information on route 3 and later submitted a supplementary statement that they did not support the recording of route 3, through the garden of their dwelling.
- Landowners 4 and 10 completed user evidence statements and support the recording of routes 1 and 2.
- Previous landowners (landowners 5 and 6), and landowners 8 and 9 appear to be neutral.

4.2.5 On the 12/12/22 the Graveyard Secretary (Landowner 2) said that *‘I have spoken with the congregation and deacons regarding this matter and have received overwhelming feeling against a public right of way through our private burial ground out of respect for those at rest and their living relatives. I therefore have a duty to consider and to note the deep and personal emotions of those who would be affected*

by allowing a public right of way through the grounds. I have included a number of signatures attached to confirm these concerns. A 'petition' with 27 signatures was provided which read *'Please sign if you agree you would not like a public footpath through the church burial ground'*. However, as noted earlier, whether someone wants or does not want a public footpath to be recorded on the DMS, is not something that can be taken into account when determining an application.

- 4.2.6 On the 9/12/22, the Church Secretary (Landowner 2) in their capacity as a member of the public and family said that *'never in more than fifty years living in Scape have I seen a signpost anywhere giving public access on these routes'* and *'the graveyard...is used by people visiting graves, and not as a pathway to the road. The steps are also difficult to climb as they are quite steep'* that *'E-F'* was *'never in use since I took over as secretary in 2005.'*
- 4.2.7 On the 13/11/22, the current owners of No.2 Vermont Close (Landowner 7) stated that *'When we bought the house we wondered if there was a footpath into the burial ground through our garden as there is a gate at the back of the garden. Our solicitor investigated and was told by Kirklees that there wasn't a public footpath through our garden. We were not told that there was any possibility of an old footpath being added to the definitive footpath map in the future.'* And that the *'sellers of our house confirmed to our solicitor that no one had used the route that you are showing as E-F on your plan (we call it the graveyard access) whilst they owned the house (2003-2010)'*. In relation to any public use of the routes they also stated that *'Whilst I have lived in the house no-one has attempted to access the burial ground via Vermont Close, route E-F on the plan'* and *'The other two routes, A-C and D-B were well used until they were blocked off in 2020 by the people building the houses on the Old Lane side of the burial ground. Steps up the burial ground from Taylor Lane are still accessible.'*
- 4.2.8 In the Supplementary Statement dated 5/9/23 Landowner 7 strongly objected to route 3. They also stated that *'it is possible that ...the applicant, as well as possibly other members of the group will be writing to the Council to withdraw their evidence'*. Officers can confirm that no one has contacted the Council to withdraw their evidence. However, of the 22 letters sent to users with a request to clarify their evidence relating to routes 2 and route 3, there was only one initial response with no

follow through. However, two previous owners of No.2 Vermont Close were sent letters requesting further information about route 3, and both responded.

4.3 Maintenance

- 4.3.1 In the email dated 12/12/22, the Graveyard Secretary (Landowner 2) stated *'We also have concerns regarding opening a public right of way through the burial ground due to potential Health & Safety issues. We do allow families to visit their loved ones through access from the main gate on Taylor Lane but are aware of the difficulties that these large steps up to the graves can pose for elderly visitors and funerals. The cost to replace these steps would be significant and therefore we would have serious concerns regarding additional risk if they were used as a regular thoroughfare for the general public'*.
- 4.3.2 Of note is the [The Baptist Union of Great Britain : Guideline Leaflet PC07: Burial Grounds](#) via www.baptist.org.uk/resources last updated in June 2019 which states on Page 1, *'It is vital that churches are aware that the health and safety requirements and responsibilities that apply to the church premises will also apply to burial grounds. It will, therefore, be necessary for churches to carry out risk assessments of burial grounds and ensure that any memorials or trees that are potentially dangerous are repaired and pruned at the earliest opportunity.'* and *'Churches will also need to ensure that they have the appropriate insurance to cover the church if anyone is injured while visiting the burial ground even if the burial ground has been closed'*.
- 4.3.3 It should be noted that any future maintenance, is not something that can and indeed must not be taken into account when determining under the legal tests (statute or at common law), whether public rights subsist or are reasonably alleged to subsist.
- 4.3.4 For clarity though, the situation is that generally public footpaths would not be highways maintainable at public expense if they came into existence through public use after section 38 of the Highways Act 1959 came into operation. If they had come into existence before 1959 based on documentary or historic evidence under section

32 of the Highways Act 1980, the public footpaths would automatically be maintainable at public expense.

- 4.3.5 Because route 1 and route 2 came into existence after 1959, under s31(1) of the Highways Act 1980, they are not considered to be highways maintainable at public expense therefore the Council would not be responsible for any maintenance.

Response from Colne Valley Ward Councillors

- 4.4 Colne Valley Ward Councillors were consulted. No responses were received.

Response from Parish Council

- 4.5 There is no Parish Council for Colne Valley.

Response from User Groups

- 4.6 All user groups on the standard list of informal consultations were consulted by email. No responses were received.

5 Engagement

- 5.1 Not applicable

6 Options

6.1 Options considered.

- 6.1.1 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 application route 1 (and the discovered route 2).

- 6.1.2** 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,

maintenance, or privacy, are 'other matters' that cannot and must not be considered or taken into account under s53 of the 1981 Act.

- 6.1.3 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.

6.2 Reasons for recommended option

- 6.2.1 Based on an overall assessment of the historic or documentary evidence, user evidence, landowner evidence and other evidence, Officers consider that it is reasonably alleged that the application route 1 Old Lane to Taylor Lane via the burial ground (AC), and the discovered route 2 from Old Lane to High Street via the steps (ABD), both subsist as public footpaths based on presumed dedication under section 31 of the 1980 Act during the relevant period 1997 to 2017 which is not rebutted by sufficient evidence of a lack of intention to dedicate. In relation to route 3 (EF), the quality and quantity of the user evidence is not sufficient to demonstrate use by the public both under statute and at common law.
- 6.2.2 Officers recommend that no Definitive Map Modification Order (an Order) is made under sections 53(3)(c)(i) of the 1981 Act, to record a public footpath over route 3 from Old Lane at point E via Vermont Close to High Street (point F).
- 6.2.3 Officers therefore recommend that a Definitive Map Modification Order (an Order) is made under sections 53(3)(c)(i) of the 1981 Act, to record a public footpath on the Definitive Map and Statement (DMS) along route 1 leading from Old Lane (point A) via burial ground to Taylor Lane (point C) subject to the limitation of a gate at point C on the draft Order map in **Figure 1, page 17** below and to record a public footpath on the DMS along route 2 branching from along route 1 from Old Lane at point B via steps to High Street (point D) on the draft Order map in **Figure 1, page 17** below.
- 6.2.4 In relation to route 1, **Figure 1** shows that the width of the routes to be recorded would be variable relating to public use and extend over the width of what was the grassy walled track point A to point E and over the width of the flight of steps edge to edge between point E to point C. In relation to route 2, **Figure 1** shows that the width of the routes to be recorded would be variable relating to public use and extend over the width of what was the grassy walled track at point A to point B, then over the

width of the flight of steps wall to wall from point B northwards and then over the flagged and tarmacked area to point D.

- 6.2.5 The Council can confirm the Order providing it does not elicit any objections during the formal public notice period. Confirmation of an Order is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A in relation to 53(3)(c)(i) of the 1981 Act.
- 6.2.6 Officers also recommend that, should the Order be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should support confirmation of the Order relating to route 1 and route 2 by either written representations, public hearing, or public inquiry. This is because Officers consider that route 1 and route 2 subsist on the 'balance of probabilities'.
- 6.2.7 Confirmation of the Order would record on the DMS the application route for use by the public on foot. However, if new evidence becomes available that changes the assessment of the user evidence, such that, route 1 or route 2 are not considered to subsist on the balance of probabilities, the Council should take a neutral stance in relation to confirmation of the Order.

7 Next steps and timelines

- 7.1.1 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.
- 7.1.2 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 land 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.

- 7.1.3 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.
- 7.1.4 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.
- 7.1.5 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 \(www.gov.uk\)](#)

8 Contact Officer

- 8.1 Deborah Stephenson, Assistant Definitive Map Officer
deborah.stephenson@kirklees.gov.uk

9 Background Papers and History of Decisions

- 9.1 There are no previous decisions connected with the matter.

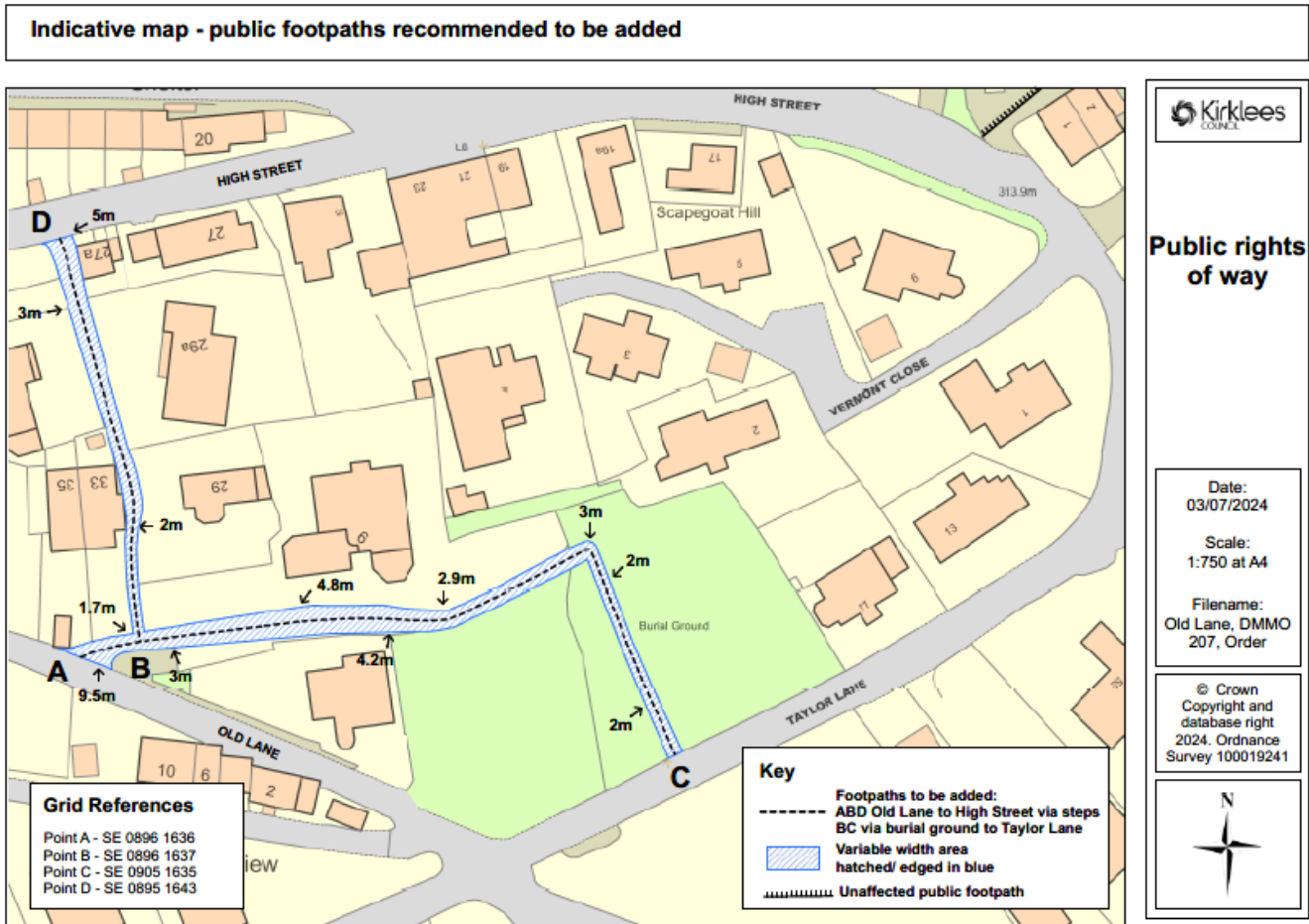
10 Appendices

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

11 Service Director responsible

- 11.1 David Shepherd, Strategic Director for Place

Figure 1: Draft Order map – Public footpaths recommended to be added (ABCD)



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

Introduction

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

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

The Legal Tests

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

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

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

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

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

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

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

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

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

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

Making the Order

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

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

Document: Appendix B

Title of Report: Officer Investigation Report

DMMO Reference: 207, Old Lane, Scapegoat Hill

Date: 3 July 2024

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Executive Summary

Definitive Map Modification Order (DMMO) Application

1. On the 13 April 2018, an application ([DMMO S14207](#)) was submitted to Kirklees Council (the Council) under [s53\(5\) of the Wildlife and Countryside Act 1981](#) to modify [West Yorkshire County Council Definitive Map and Statement for the Kirklees Area](#) (DMS), as shown in **Figure 1** (1952 DMS) and **Figure 2** (1985 DMS) in **Appendix C**.
2. The application, as shown by the pink solid line (annotated AC for clarity) in **Figure 3**, seeks to record a public footpath between Old Lane to Taylor Lane via the burial ground at Scapegoat Hill. This route shall be known as route 1.
3. In addition, and on the discovery of evidence submitted with the application and other evidence, the Council has also investigated two other routes that branch off from the application route as a route to the High Street via steps (route 2, ABD), and also a route to the High Street via Vermont Close (route 3, ABEGF), as shown in **Figure 4**, as follows:
 - R1 (route 1) Old Lane to Taylor Lane via burial ground (ABC)
 - R2 (route 2) Old Lane to High Street via steps (ABD)
 - R3 (route 3) Old Lane to High Street via Vermont Close (ABEGF)
4. 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”
5. The application was properly made in December 2018 under the requirements of [Schedule 14 of the Wildlife & Countryside Act 1981 \(the 1981 Act\)](#). The requisite certificate of service of notice was submitted in December 2018 confirming that notice of the application had been served on two landowners in relation to route 1.
6. The application was submitted in relation to [Planning application 2015/ 92476 for the erection of three detached dwellings on land at Old Lane /Taylor Lane](#),

[Scapegoat Hill, Huddersfield, HD7](#) which was granted on appeal late in 2017 and when built may have prevented passage along ABE.

7. The submission gave as evidence twenty-two User Evidence Statement Forms (UEFs) from wholly or largely local people, several annotated historic Ordnance Survey (OS) maps (1906, 1932, 60s/70s?, 1994), an aerial photograph with a yellow post it dating it as 1962, an extract from a book about Scapegoat Hill Baptist Church about purchase of the burial ground, a Huddersfield Examiner newspaper article about volunteers maintaining the burial ground dated 16 March 2006, annotated HM Land Registry title documents, and a plan of the proposed new housing development relating to the planning application [Planning application 2015/ 92476](#) and associated applications.
8. Officers considered further evidence including Ordnance Survey (OS maps), aerial photos, officer photos, Kirklees Council (KC) records, and documents at West Yorkshire Archive Service including the 1910 Finance Act Plan and accompanying Valuation Books for Golcar, and other evidence submitted by the public, residents, users, and landowners.
9. A consultation was carried out in November 2022 on all three routes inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

Planning Inspectorate Direction

10. Following a representation by the applicant, the Council was directed on 12 August 2020 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (decision reference [FPS/Z4718/14D/17](#) pursuant to paragraph 3(2) of Schedule 14 of 1981 Act), to determine the Schedule 14 application (our reference DMMO S14207) no later than 1 October 2021.

Planning permission

11. The DMMO application appears to have been triggered at the time of the appeal of the refusal of planning permission in relation to a housing development on land at Old Lane/Taylor Lane, Scapegoat Hill, HD7 in the

summer of 2017. The appeal was upheld by the Planning Inspector and planning permission was granted in November 2017. Some of the landowners relating to route 1 mentioned the grant of planning permission for planning application (see [2015/92476](#) and [2018/92336](#)) for the erection of 3 detached dwellings inferring that since it has now been developed for housing, any public rights along route 1, were no longer present. However, in simple terms, planning permission or any subsequent development in itself does not extinguish or divert any recorded or indeed any 'unrecorded' public rights of way. A public right of way can only be extinguished or diverted by a legal Order. This is also the case when a development with planning permission is built.

12. In correspondence with the developer (landowner 1) dated 3/7/2020 at the time development works started on the site of this housing development, an Officer advised that *'Works you undertake to the alleged public rights of way would be at your risk and the grant of planning consent or subsequent development of the land would have no extinguishing effect on any unrecorded public rights that may subsist.'*

Landownership

13. This first part of route 1, ABE is now within the landholding of No.6 Old Lane (Landowner 1). The second part leading through Scapegoat Hill Baptist Church burial ground is owned by The Yorkshire Baptist Association (Landowner 2).
14. Previously route 1 was solely owned by The Yorkshire Baptist Association. According to [A Short History of the Baptist Church, Scapegoat Hill \(1921\) \(huddersfield.exposed\)](#) a plot of land for a burial ground in '1903 was secured by the Church' and was 'consecrated as the last resting place of the 'dear departed' (**Figure 5**)'. It's understood that a second plot of land adjacent which contains no graves to the north and west of the burial ground was purchased at a later date by the Church and sold in 2018 to Landowner 1. Two users have referred to the southern part of this area as 'Moss Side' and one user said it was used for allotments post war.
15. In 2015, Yorkshire Baptist Association and a developer submitted planning applications for the erection of dwellings on the 2nd plot adjacent to the burial

ground dated 4 August 2015. It was initially refused on 10 May 2017, appealed on 20 July 2017 and the appeal was upheld on 24 November 2017 by a Planning Inspector and included a road widening provision for Old Lane. See [Planning application 2015/62/92476/W, Yorkshire Baptist Association, Scapegoat Hill](#) and subsequent applications including [2018/92336](#).

16. Route 2 currently has two owners including No.33 High Street (Landowner 10) adjacent to the west, and No.6 Old Lane (Landowner 1), with majority of the route lying on unregistered land from the top of the steps to the High Street (BD) (**Figure 6**). 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 adjacent landowners. This presumption is rebuttable. The landowners adjacent to the unregistered land on route 2 are Nos.37, 39, 41, 33 and 27a, 27, 29a and 29 High Street. Around nine households may use route 2 for access to their dwellings. A single garage is located near point A (**Figure 4**).
17. Route 3 at EF (which branches off from route 1 ABE) has three owners, No.5 (Landowner 8) and No.6 Old Lane (Landowner 1) and No.2 Vermont Close (Landowner 7). There is also an unregistered stretch along the narrow-walled route to and just beyond the gate at No.2 Vermont Close at its eastern end (**Figure 6**). 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 adjacent landowners. This presumption is rebuttable. The landowners adjacent to the unregistered land on route 3 are Yorkshire Baptist Association (Landowner 2), No's 2, 3 and 4 Vermont Close and presently No. 6 Old Lane. About seven households may use Vermont Close for access to their dwellings from point F.

Character of application route 1

18. The application route commences at the junction with Old Lane between 12 Grandstand and 35 High Street (SE 0896 1636) nearest postcode HD7 4NJ (point A). The route leads east for approximately 88 metres to the top of the graveyard and then turns south for approximately 36 metres over a flight of steps and through an iron gate to the junction with Taylor Lane at point C (SE 0905 1635). The physical characteristics of the application route are shown in

the photos in **Figure 7**. The photos are largely dated 22 June 2017 and prior to the development of the site for housing.

19. The surface of the application route is described by users (prior to any housing development) as a grassy drystone walled lane with stone or concrete steps and flags through the burial ground. Users reported route 1 had a varying width of between 2 feet to 12 feet or 1m to 4m or car width.
20. Route 1 has an iron gate between the burial ground and Taylor Lane at point C, as shown at the bottom of the steps in **photo 12, Figure 7**.

Character of discovered route 2

21. Route 2 commences at the junction of Old Lane and at the same point as route 1, at point A (SE 0896 1636). The route leads east for approximately 14 metres to the bottom of a flight of relatively narrow stone steps (point B) where it continues north for approximately 68 meters to the junction of the High Street adjacent to and between 27a High Street and 37 High Street at point D (SE 0895 1643). The physical characteristics of the route 2 are shown in the photos in **Figure 8**, all dated 22 June 2017.
22. The surface of the route 2 was a grassy walled lane (as with route 1) leading to a steep flight of stone steps and continuing onto flags and tarmac. Route 2 has been measured on KCs Kompass mapping as of a varying width between 1.7m and 5m.

Character of discovered route 3

23. Route 3 commences at the junction of Old Lane and at the same point as route 1 and route 2 at point A (SE 0896 1636). The route leads east for approximately 56 metres (point E, **Figure 4**) and then continues north-east for approximately 130 metres to a gate (point G, **Figure 4**) where the route continues through the garden of No.2 Vermont Close and then continues along a private road through Vermont Close to the junction of the High Street adjacent to and between No.1 Vermont Close and No.6 Vermont Close at point F, **Figure 4** (SE 0911 1643). The physical characteristics of route 3 are shown in the photos in **Figure 9**, all dated 22 June 2017.

24. Route 3 commences as a grassy walled lane along the same line as route 1 at point A and then diverges just before the old stone gates at point E to continue along a narrow-walled lane to a gate at point G at the garden of No.2 Vermont Close. The route is grassed and paved through No.2 Vermont Close, then tarmacked along the access road to Vermont Close to point F. Route 3 is of a varying width (EF) of between 1.4 to 7m as measured on KCs Kompass mapping.
25. Route 3 has a gate at point G in the wall on the unregistered land (part of the narrow-walled route) at the top of the burial ground (photo 34 and photo 35, **Figure 9**)

Statutory Provisions - Wildlife & Countryside Act 1981

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

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic’
28. As was made clear by the following case law [R v Secretary of State for Wales ex parte Emery \[1997\] QBCOF 96/0872/D](#), 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.

29. If there is a conflict of evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then members should determine that a public right of way has been reasonably alleged to subsist.
30. If either Test A or Test B are answered in the affirmative at the Schedule 14 stage, the Council has a duty to make a DMMO.
31. Confirmation of a DMMO is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A.

Statutory Provisions - Highways Act 1980

32. 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 Highways Act 1980 \(1980 Act\)](#). The legislation sets out that where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate.
33. Under s31(2), 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.
34. There is no legal interpretation of the term 'the public' as used in s31(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.
35. 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](#).
36. 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'.

37. The presumed dedication under s31(1) 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).
38. 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 as addressed under the following caselaw [Godmanchester Town Council, R \(on the application of\) v. Secretary of State for the Environment, Food and Rural Affairs \[2007\]](#) 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).
39. 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'. Such a sign in itself, is not considered to go far enough to communicate a lack of intention to dedication. A public right of way can be defined as the public's right to pass and repass over a strip of land, more often than not, land in private ownership. Furthermore, caselaw ([Paterson v Secretary of State for the Environment, Food and Rural Affairs & Ors \[2010\] EWHC 394](#)) dictates that private land signage in itself, is not '*documentary evidence that would inevitably defeat the claim*'.
40. In cases where an application route is in more than one ownership, and only one of the owners has demonstrated a lack of intention to dedicate it for public use, it should be considered whether it is possible for public rights to have been acquired over sections of the way in other ownerships.

41. [Section 31 of 1980 Act](#) was enacted to remove the need to demonstrate any capacity to dedicate a public right of way, mainly due to settled land and tenancy agreements. 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 assumed even though there is no evidence to show who was the owner at the time or that they had the capacity to dedicate. Similarly, under Common Law, sufficient evidence of public use raises an inference of implied dedication against the freeholder whoever they may be (*R v Petrie [1855]* (119 E.R. 272). Either way the onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.
42. There is case law on what constitutes an 'interruption' in relation to presumed dedication under s31(1). [Godmanchester](#) as referred to in **para 38** is of relevance in terms of an overt and effective landowner challenge to public use. There is also [Ali v Secretary of State for Environment, Food And Rural Affairs & Ors \[2015\]](#) where the main consideration is to establish whether the intention of the landowner to assert their right to close the route has been conveyed to the public. It is the 'intent' that is important. Therefore, an interruption due to short sporadic events or the presence of building materials, would not necessarily in themselves constitute an interruption.
43. Where two uses (the use of the landowner and the use of recreational users) coincide, there may be occasions when the two rights of user cannot be enjoyed simultaneously. Case law shows that the deference of one party to the other's use is simply a matter of courtesy (see [R \(on the application of Lewis\) v Redcar & Ors \[2010\]](#)) and therefore do not constitute an 'interruption'.
44. 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. The main principles of establishing a highway under common law are:

- Use by the public should be as of right, without force, secrecy, or permission.
 - It can be inferred that a reasonable landowner knows of the use but did nothing to prevent it.
 - No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).
 - The more, notorious, intensive, and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.
 - Each case is judged on the facts available.
 - The onus of proof lies with the person making the claim to show that there was use and that it can be inferred that the owner knew of it and did nothing to stop it.
45. [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

46. General guidance for Council members is provided at **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of all available evidence (user, landowner, documentary or historic, other) including the consultation and the Officer recommendations.
47. It is the Councils statutory duty to keep the Definitive Map and Statement (DMS) 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 DMS based on the Officers recommendation

- ii. The second option for members is for the Council to make a DMMO to modify the DMS based on members interpretation of the evidence
 - iii. The third option is for members to turn down the application route 1 (and the discovered route 2).
48. The likelihood or otherwise of any DMMO attracting opposition should form no part of the decision. In addition, factors such as suitability or desirability, safety, maintenance, or privacy, are 'other matters' that cannot and must not be considered or taken into account under s53 of the 1981 Act.

Documentary Evidence Evaluation

49. The available documentary or historic evidence has been investigated for all three routes under [section 32 of the 1980 Act](#), 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.

Applicant's historic or documentary evidence

50. The applicant provided several items of historic or documentary evidence (as listed in **para 7**). Several items of the applicants historic or documentary evidence appear to relate to landownership or future development of the land and do not contain any information relevant to the physical existence of the routes or the establishment of public rights, therefore they have not been discussed here.
51. However, of note is an annotated aerial photo with a yellow post it note which says '*1962 photo showing the green lane + footpath to Vermont Close*', as shown in **Figure 10**. A piece of land labelled on the photo as the '*burial ground*' does not contain any graves, it is a plot of land also known as '*Moss Side*' reported to be used as allotments post war, previously owned by the Church, sold in 2015 and is part of the site for the new housing development (built). The aerial photo shows the physical existence of part of route 1, 2 and 3 along points A to B to E. As with OS maps, this aerial photographic image can corroborate the existence of the routes, but it provides no confirmation of public rights over the routes.

Golcar Enclosure Award

52. Scapegoat Hill was historically within the township of Golcar, enclosed in 1823. The relevant documents are available online as follows:

- [Manor of Golcar: Copy of the Award Made in the Year 1823 \(1919\) by Pilkington & Jones - Huddersfield Exposed: Exploring the History of the Huddersfield Area](#) Golcar Enclosure Award, 1823
- [Golcar Enclosure Act of 1820 - Huddersfield Exposed: Exploring the History of the Huddersfield Area](#) Golcar Enclosure Act, 1820
- [Scapegoat Hill is situated, as the map shows, on the eastern edge of the Pennines, over 300m above sea level \(scapegoathillhistory.com\)](#) Golcar Enclosure Award Map

53. With reference to The Golcar Enclosure Map (**Figure 11**) High Street and Old Lane to which routes 1, 2 and 3 connect were awarded in the 1823 Golcar Enclosure Award as '*Pike Law Edge Road*' and '*Haugh's Road*' with the status of public bridle and private carriage & occupation roads. The quality of the extract of the map is relatively poor, but it shows that the routes 1, 2 and 3 did not exist at that time and were not awarded as public footpaths. There are only cul-de-sac routes leading to ancient enclosures and farm buildings (now No.2 Vermont Close, and No.33 High Street).

Ordnance Survey (OS Maps)

54. Officers looked at published OS maps dated 1854, 1893, 1907, 1919, 1925, 1932 and 1963. It can be noted that 2nd Edition OS maps carry a disclaimer which states that '*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.*' In 1905, OS instructed surveyors to record permanent gates and fences as solid black lines, and it is likely that same symbology was used to earlier maps. Importantly, whilst OS Maps are generally taken to be a reliable indication of the physical features present on the date of the survey and therefore corroborate the existence of routes, they provide no confirmation of public rights over any routes.

55. The 1854 OS 6-inch map (**Figure 12**) shows that route 3 leading easterly from Old Lane (formerly *Haugh's Road*) to High Street (formerly *Scapegoat Hill*

Road, now via Vermont Close) formed first. There is no route depicted from point C at Taylor Lane northwards and no burial ground or steps (route 1). Route 2 is shown as a cul-de-sac route southwards from point D from the High Street. However, there is a solid black line across the route between point A and point E as indicated by the red circle possibly indicating a boundary feature such as a fence, wall, gate, or it could be a change of surface. It is, most likely a gate as **photo 5** in **Figure 7** shows an old stone gate post at the same location. However, this does not mean the route was not passable.

56. The 1893 OS 25-inch map (**Figure 13**) shows that route 2 formed second as a route leading southerly from High Street (formerly *Pike Law Edge Road*) to Old Lane (formerly *Haugh's Road*). Route 2 and route 3 are shown as through routes, but solid black lines across these routes are shown in three places by the red circle annotations indicating a fence, wall, gate, or it could be a change of surface. **Photo 2** and **photo 5** in **Figure 7** show old stone gate posts. Structures such as fences, walls or gates could affect ease of access as a through route but does not mean the routes were not passable.
57. The 1907 OS 25-inch map (**Figure 14**) depicts route 2 and route 3 in the same way as the 1893 OS map. However, two (rather than 3) solid black lines as shown by the red circle annotations. What is new is the annotation 'F.P' meaning 'footpath' on the branch of route 3.
58. The 1919 OS 25-inch map (**Figure 15**) depicts route 2 and route 3 in the same way as the 1893 and 1907 OS maps, but depicts one solid black line as shown by the red circle annotation on route 3. What is new is a 'Burial Ground' and a 'Manse' adjacent to Taylor Lane. There are no steps from Taylor Lane depicted within the burial ground.
59. Neither route 1, 2 or 3 are shown on the 1925 OS 1 inch map (**Figure 16**). When colour was introduced to OS maps, roads were coloured according to a standard of repair and so the best roads were red, average roads were yellow-orange and poor or narrow roads left white. However, there is no 'road or route' at all shown where route 1, 2 or 3 might have been, as indicated by the red circle annotation.

60. The 1932 OS 25-inch map (**Figure 17**) depicts a new solid line on route 2 and the same solid line on route 3. What is new is the symbology for a short set of steps into the burial ground from Taylor Lane on application route 1, as shown by the red oval annotation.
61. The route through the burial ground is not shown until 1963 OS 1:2500 map as a series of steps (**Figure 18**), but it falls short of and does not join route 3 annotated as 'F.P'.

Aerial photos

62. Aerial photos sourced via KC Kompass mapping dated 2000 to 2018 are shown in **Figures 19 to 24**. The aerial photos show the physical existence of all 3 routes. The route EG does not appear to be heavily vegetated in the 2002 aerial photo. It appears more vegetated in the 2006 aerial photo, but it is not possible to propose whether it was impassable or not. By 2012, the trees on EG appear to have been removed and the route appears less vegetated, but it is a winter image. The 2018 aerial photo appears to show the route as more vegetated again. This suggests some seasonal changes in vegetation on route 3 and also possibly some practical maintenance over the years.
63. On 6/12/23 landowner 5 provided an aerial photo of route 3 (**Figure 25**) and they dated it July 1966. The aerial photo shows the physical existence of route 3 between points E and F and includes point G (as annotated in **Figure 4**). The narrow-walled route is shown adjacent to the line of trees just above the burial ground steps. The curved line of the old wall is in the same position as it is today (around point G in **Figure 4** and photo 34 in **Figure 9**). A double walled route continues eastward to the High Street, part of which is obscured in the photo by tree canopy.

Finance Act 1910

64. An extract from the 1910 Finance Act Valuation Plan for the area is provided at **Figure 26** and was sourced by Officers on request at West Yorkshire Archive Service - Wakefield. The plan shows that route 1 and route 3 lie within hereditaments and therefore would have been valued for incremental tax. Route 2 appears to be largely excluded from the adjacent hereditaments at the

northern half, although some interpretation is required due to gaps in the red colour wash. At the southern half it appears to be within hereditaments, but again some interpretation is required. Exclusion of a route may suggest that it was in public ownership and vested in the highway authority or for some other credible reason. However, in the absence of any other evidence, this does not indicate that the route was unrated and belonged to the highway authority.

65. The accompanying Valuation Book to the 1910 Finance Act Valuation Plan for the Parish of Golcar was checked in person by Officers at [West Yorkshire Archive Service - Wakefield \(Catalogue Reference C243/225 and C243/226\)](#). Route 1 and route 3 and the southern end of route 2 all lie with parcels 1247, 3067, as shown in **Figure 26**. Officers can confirm there are no records of deductions for '*Public rights of way or use*' for parcels 1247 and 3067. Similarly, Officers can confirm there are no records of deductions for 'Public rights of way or use' for parcels adjacent to route 2, namely parcels 1261, 1270, 1271, 1272, 1276, 1274 and 1277.
66. Whilst the OS Maps show that the routes physically came into existence over time between 1854 and 1963, the Golcar Enclosure Award shows no public rights of way were awarded in 1823, and similarly the analysis of the Finance Act 1910 documentation suggests that no public rights of way existed at the time of that survey in relation to the routes.

Conveyances and Deeds

67. A conveyance dated 6 December 1952 relating to one of the dwellings adjacent to route 2 available at [HM Land Registry](#) is shown in **Figure 27**. The word '*Roadway*' is annotated on the conveyance at point A just off Old Lane on route 1 and therefore also on routes 2 and 3. A '*public footpath*' is annotated at the steps along route 2 between D and B (closer to B). Again, the word '*Roadway*' is annotated on the northern part of route 2 as it joins point D.
68. This conveyance provides evidence of reputation in support of public status along route 2. The inference is that any public footpath may continue to a place the public have a right to be (i.e., Old Lane and High Street) and may support

implied dedication at common law together with the user evidence (discussed below).

69. In order to address any co-extensive private rights over route 2, it can be noted that a resident fronting route 2 indicated that route 2 was needed for access to houses on that route including on foot and by vehicle. Another resident mentioned that they had a private vehicular access from the High Street from D to the top of the steps as provided for in their house deeds. Such rights are considered to be private rights rather than public rights.
70. Again to address any coextensive private rights over route 3, the Registered Title for No.2 Vermont Close, also available publicly at [HM Land Registry](#) refers to a private '*right of way*' granted in 1966 along what is now part of the access road from the High Street to Vermont Close. The '*right of way*' does not continue westwards into the land holding of No.2 Vermont Close. The title is available at HM Land Registry but has not been included in this report. Two residents of Vermont Close have indicated a private right access over part of route 3, that does not include the land holding of No.2 Vermont Close.
71. 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 a conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. This evidence therefore needs to be considered along with all other relevant evidence.
72. In the absence of any other available evidence, Officers therefore consider that the annotation '*public footpath*' whilst not conclusive evidence of a public right of way, provides good evidence of 'reputation' in support of public status along route 2, however the annotation '*Roadway*' is considered to generally point to a private right rather than evidence of reputation in support of public status.

The National Parks And Access To The Countryside Act 1949

73. Neither route 1, 2 or 3 were recorded on the 1952 DMS nor on the 1985 DMS as shown in **Figure 1** and **Figure 2**, respectively. Officers can confirm that no walking schedules have been found for these routes, and they have not been

included on draft and subsequent definitive maps. There are no records of any objection or representation to the non-recording of these routes.

74. The DMS is 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. Hence the process by which the DMS can be updated by way of an evidence based DMMO.

Highways Registry and the List of Streets

75. Route 2 and part of route 3 are both recorded on the List of Streets held under [s36\(6\) Highways Act 1980](#) as highways not maintainable at public expense when the former Council took over the highways function from District Council in 1974, as shown in **Figure 28**.
76. Highways Registry index cards show that route 2 ABD called '*path adjacent 27 High Street to Old Lane*' is 'unadopted' and not maintainable at public expense. Similarly, index cards show that part of route 3 (part of F to G) called '*Vermont Close*' is also 'unadopted' and not maintainable at public expense. Photos of these cards are available on request, but are not shown in **Appendix C**.
77. Whilst public rights and maintenance at public expense are two separate things, there can be some overlap. However, there is nothing in the List of Streets or the Highways Register which points to the public status of routes 1, 2 or 3.

Conclusion on evaluation of historic or documentary evidence

78. Officers consider that whilst routes 1, 2 and 3 have physically existed for a considerable time, the available documentary or historical evidence does not in itself provide conclusive evidence of public rights on foot. The '*footpath*' depicted and annotated on part of route 3 do not in itself indicate any public rights on foot. However, the conveyance annotating a '*public footpath*' in relation to the steps on route 2 Old Lane to High Street via steps, provides good evidence of reputation in support of public status along route 2. The

inference is that any public footpath may continue to a place the public have a right to be (i.e., Old Lane and High Street).

User Evidence Evaluation

79. The available user evidence for routes 1, 2 and 3 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. A summary of the user evidence is shown in **Figure 29**, and a summary of some of the landowner evidence is shown in **Figure 30**.
80. Twenty two user evidence forms were submitted to the Council. A further ten user evidence forms were received during the investigation although two users submitted two UEFs about different routes UEF7/27 and UEF 6/25, and two users did not state their period of use (UEF10 and UEF31).
81. The user evidence has been evaluated on the submissions from members of the public without a private right, as appropriate, because such evidence cannot be included as evidence for public use. Five users are considered to have a type of private right in relation to one or more of the route either because they use the route for access to their dwellings or they were visiting relatives on the route. These are UEF 7/27 (route 2), UEF 8 (route 2), UEF 16 (route 3), UEF 6/25 (route 2), UEF 26 (route 2).
82. Although the applicant claimed route 1 only in the application, they also provided an annotated map that '*depicts the old footpaths used by villagers in years gone by to access Golcar for work etc*' (**Figure 31**) which led to or from a place the public have a right to be. In addition, the majority of users marked (initialled and dated) additional routes on the map in their User Evidence Statement Forms. The routes and part routes drawn or described are indicated by the columns with the letters AB, ABC, ABD, DBC, EG, EF as shown in **Figure 4** and summarised in **Figure 29** and will be known as:
- R1 (route 1) Old Lane to Taylor Lane via burial ground (ABC)
 - R2 (route 2) Old Lane to High Street via steps (ABD)
 - R3 (route 3) Old Lane to High Street via Vermont Close (ABEGF)

Bringing into Question

83. In relation to the presumed dedication of a public right of way under the Highways Act 1980, s31(1) the period of 20 years use is calculated retrospectively. In order for the right of the public to have been brought into question the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.

DMMO application, route 1 and 2

84. Where mentioned, users indicated in their evidence that routes 1 and 2 were open and available up until the housing development works started on site (approx. 2020). Therefore in the absence of any earlier action, the making of an application to modify the DMS would have brought any unrecorded public rights into question.
85. The DMMO application is dated 14 December 2018 however, the majority of the user evidence forms were completed the previous year and are dated 2017. However, the DMMO application seems to have been made following successful appeal of planning permission for development in November 2017. For the purposes of the 20 year period, the relevant periods relating to the routes are therefore considered to be November 1997 to November 2017 - the date of appeal of planning permission was upheld. However, Officers have also assumed that use would have continued in the same quantity and frequency through 2018 in relation to submission of the DMMO application.

Gate, route 3

86. Several users annotated a route EG on their maps with a gate at point G (see **Figure 4**, **Figure 29**, and **Figure 33**). Some users annotated a route EF with or without a gate. Some users mentioned the gate at point G was locked.
87. On 21 November 2023, Officers wrote to eleven users who had mentioned or annotated part or all of route 3 EGF in their User Evidence Statements. These users were asked to clarify when route 3 was gated, did the gate prevent use of route 3 and was the gate locked or unlocked (always or sometimes). No responses were received.

88. In their Landowner Statement dated 12/6/22 the former landowner (Landowner 5) who built No.2 Vermont Close (resided 1996 – 2002, purchased the land in 1984) stated they had *'put a gate at the end of our property in 2000, it was never locked, this gate has since been replaced by another'* (see **Figure 30**). This is the gate at point G.
89. On the 28/11/23, Landowner 5 also reported by phone that *'they had made the existing wall higher for extra privacy and erected a gate with a bolt on the inside, that gate was never locked, but added that he had occasionally locked the gate at night because kids used to play in the trees on the walled route on the other side of the gate and that these trees have since been cut down by someone'*. This is the gate at point G.
90. In a Statutory Declaration dated 27/10/23 the Agent for Landowner 1 refers to being informed by Landowner 5 that *'there was always a closed and often locked farm gate adjacent to what is now No.2 Vermont Close'* which Landowner 5 *'had in part replaced with the garden boundary when he was building what is now No.2 Vermont Close.'* However, Landowner 5 clarified on 6/12/23 in a note that *'I have never seen a farm gate, we purchased the land for No 6. Vermont Close in 1984 – no gate then'* and provided an aerial photo from 1966 (**Figure 25**) which does not show a farm gate on EGF. Landowner 5 clarified in the note that *'it wasn't a farm ...kept a few chickens'* and verbally added that the only gate was adjacent to the chicken pens (to the east).
91. In their Landowner Statement dated 2/12/23 a 2nd former landowner of No.2 Vermont Close (2003-2007(10)) (Landowner 6) stated that *'When we moved in we opened the gate to see what the path was like. To my memory it was on a latch (possibly a bolt – not sure). It did not have a lock.'* And that the *'gate was always shut on the latch'*. This is the gate at point G. Whilst the landowner stated they lived there until 2007, public records on Rightmove record no sale until 2010. On 9/2/24 Officers asked Landowner 6 by email to clarify if it was possible to open the gate from the graveyard side when it was on the latch (and not bolted). And the response by email was *'...from what I can remember, there was a latch on the graveyard side of the gate as well as the house side. I*

presume that the bolt was put on at some point to stop people using the latch, but it was never an issue for us.'

92. In their Landowner Statement dated 6/8/22 a 3rd and current landowner of No.2 Vermont Close (2010 to present) (Landowner 7) stated that *'a gate was in the boundary wall when we purchased the property. We replaced the gate/door with a similar one in 2019 – it is not locked'*. **See Figure 30.**
93. On 5/9/23 Landowner 7 wrote to Officers to seek to withdraw their earlier evidence relating to the gate at point G being *'not locked'* and reported in a Supplementary Statement dated 5/9/23 that *'We have previously stated that the gate to the graveyard has not been 'locked'. This is not correct'...**'We can lock and block the gate if we wish to, and this has always been the case as long as we have owned the property'* and *'When the current gate was first installed, we padlocked it'*. See photos 34, 35 and 36 in **Figure 9** of the old gate. Additional photos on file show that the gate was bolted on the inside with the latch removed. Landowner 7 also stated on 5/9/23 that the original gate was replaced in 2019 with a new gate has no handle on the graveyard side by deliberate design.
94. With reference to **para 37**, the burden of proof rests with the landowner to provide evidence that the gate in question was locked and when, under s31(3) of the 1980 Act. Landowner 7 said they bolted the door on the inside when they moved in 2010, and also provided photo of the bolted gate which is stated to have been taken in 2015, which another provided dated 2019 when they replaced the gate with another.
95. For route 3 only, the relevant period 1997 to 2017 is therefore considered to have been rebutted by the bolting of the gate at point G and some proof of that bolting. The alternative relevant periods are therefore 1990 to 2010 based on Landowner 7's subsequent evidence or 1995 to 2015 if based on the photo of the bolted gate.

A Way

96. As already mentioned, **Figure 31** *'depicts the old footpaths used by villagers in years gone by to access Golcar for work etc'* submitted by the applicant with

the DMMO application. There are several connected routes, including routes 1, 2 and 3 which are interconnected and lead to and from a place the public have a right to be: Old Lane (point A), Taylor Lane (point C), and two points on the High Street (point D and point F), as shown in **Figure 4**.

97. As shown in the summary of user evidence in **Figure 29**, twenty three users annotated route 1 ABC on their map and an additional six users annotated part of route 1. Sixteen users annotated route 2 (ABD) on their map and an additional ten users annotated part of route 2. Five users annotated they had used route 3 AEF on their map with a further 1 user annotated use on part of route 3. In addition five other users referred to route 3 or the gate at point G (indicated by the ? in that column) however, it has not been possible to further clarify their use as they did not respond to the request for further information.
98. As shown in **Figure 29**, four users (UEF 6, 8, 22, 29) appear to indicate that at times they visited the graves or the burial ground only, but they also used route 1 or route 2 other than to visit graves or the burial ground. Similarly, users indicated that they saw others visiting graves, as well as using a through route.
99. Users described the routes varying in width between 1m on the steps on route 2 to 5m or car width on the grassy lane on route 1.
100. Where specified, some users referred to route 1 as the '*green lane*' or the '*grass path*', route 2 as '*the gap*' or '*the ginnet*' and route 3 has been referred to as the '*old footpath*'.
101. Although not mentioned by the Church it is perhaps important to discuss whether a public right of way can be presumed dedicated over consecrated ground. According to [A Short History of the Baptist Church, Scapegoat Hill \(1921\) \(huddersfield.exposed\)](#) by Nathan Haigh', the burial ground was said to be 'consecrated' in 1903 (see **Figure 5**). Of note is the [The Baptist Union of Great Britain: Guideline Leaflet PC07: Burial Grounds](#) via www.baptist.org.uk/resources last updated in June 2019 which states on page 7 under '*Closing A Burial Ground*' that '*It is important to note that a Baptist burial ground is not consecrated ground but is a private burial ground. This is a fact which is often not understood by those who are not Baptists*'.

102. Officers therefore consider the burial ground can be treated like any other private land, and sincerely wish no disrespect to Scapegoat Hill Baptist Church and those associated by that statement. Furthermore, given that the public claim to have used the route 1 through the burial ground (BC) for over 20 years on an alignment down the steps which avoids actual graves or burial plots, and given the permanency of the steps leading to the other routes 2 and route 3, it appears to Officers that route 1 is compatible with the lands purpose as a burial ground.

Evidence of Use during Relevant Periods

103. The user evidence summary in **Figure 29** shows public use of route 1 and route 2 on foot from the 1980s steadily increasing to the present day. Two users reported their use was pre-1966 which may relate to route 1 or route 2. Eleven users appear to indicate knowledge of or use of route 3.

Route 1

104. As shown in **Figure 29**, twenty-three users stated they used route 1, ABC on foot during the relevant period 1997 to 2017. At the start of the relevant period 10 users stated they were using route 1, ABC. At the end of the relevant period 21 users stated they were using route 1 and its assumed this continued through 2018 until it was physically impossible to do so when route 1 was obstructed by development in 2020. An additional 2 users (UEF 5, 13) used BC as part of route 2 DBC during the relevant period 1997 to 2017. In relation to the frequency of the public's use was 6 daily, 6 weekly, 2 monthly, 1 every few months and 1 twice a year. In addition 7 users said their use was more than daily, more than weekly, regularly or that it varied. It is collective use during the 20 year relevant period that is important.

105. The evidence of public use of the application route 1 (ABC) is considered to be sufficient to demonstrate public use and enjoyment. The presumption of dedication is not raised until the 'as of right' together with 'without interruption' are considered.

Route 2

106. As shown in **Figure 29**, sixteen users stated they used route 2 ABD on foot during the relevant period 1997 to 2017. At the start of the relevant period nine users stated they were using route 2, ABD. At the end of the relevant period 14 users stated they were using route 2 ABD and its assumed this continued through 2018 until it was temporarily interrupted by barriers at the top of the steps due to works at the bottom of the steps due to the construction of the new housing development. In relation to the frequency of the public's use, 2 daily, 5 weekly, 1 monthly, 1 every few months and 1 twice a year. In addition, 6 users said their use was more than weekly, regularly or that it varied.
107. In addition, ten users indicated they had used part of route 2 ABD. On the 21 November 2023, Officers wrote to some users who had provided some evidence in relation to route 2, because they had annotated part of the route on their map in the User Evidence Statement Form, or mentioned it in their evidence or during the consultation. Users were asked to clarify their use in terms of dates or use, frequency etc. One user made an initial response by phone, but did not follow through on clarifying their evidence.
108. The evidence of public use of the application route 1 (ABD) is considered to be sufficient to demonstrate public use and enjoyment. The presumption of dedication is not raised until the 'as of right' together with 'interruption' are considered.

Route 3

109. Eleven users appear to indicate knowledge of or use of route 3. Five users (UEFs 4, 7, 10, 16, 20) indicated they used it during the alternative relevant periods 1990 to 2010 and, 1995 to 2015 (see **Figure 34**) ABEGF. However, one of the five users indicated they used it only once (UEF 7), and one used it to visit a family farm on route (UEF16), but this would be considered to be a type of private right. One user (UEF 10) indicated they had known the route since 1980, but they did not indicate a start date for their use.
110. Some users indicated that route 3 was impassable due to vegetation and rubble, no dates were provided as to when it became impassable.

111. In a hand-written note received on 6/12/23 Landowner 5 stated that *'The rubble is probably from the house above numerous building work has taken place over the last 15 years.'* And that *'Route E-F was usable as late as 2003 when we sold No.2 Vermont Close'*
112. In their Landowner Statement dated 2/12/23 Landowner 6 (2003-2007(10)) stated that *'The pathway was very overgrown when we moved in with brambles. It was never cut back. It was not blocked by rubble'*.
113. Landowner 7 (2010 to present) stated in a Supplementary Statement dated 5/9/23 that the *'old path on the graveyard side of our gate is, and always has been overgrown and impassable'*.
114. Officers met with a representative of the Church (Landowner 2) on site on 19/1/22 to discuss the DMMO application and the consultation. The narrow walled route EG was discussed. The representative said that the Church had employed contractors to clear the narrow walled route from E to the gate at point G approximately 18 months to 2 years ago in response to objections to the housing development (that would make the vegetation clearance sometime in the first half of 2020). The representative went onto say that Landowner 7 said they would open their gate if they (the Church) wanted to use this as a footpath - presumably for private access to the burial ground.
115. On 21 November 2023, Officers wrote to all eleven users who had mentioned route 3 EGF in their User Evidence Statements. They were asked to clarify their use and in particular when route 3 had become overgrown or impassable due to vegetation. No responses were received.
116. As such, Officers consider that the route 3 became difficult to pass EG, between 2003 and 2007, aerial photos show that some of the trees were cut down between 2006 and 2012, and the Church stated they cleared the route in 2020. However, the route may have fallen out of use prior to these dates.
117. In summary, it remains that the quality and quantity of user evidence on the basis of only three or four users, including one who used it only once, is not sufficient to demonstrate public use and enjoyment. Whilst it is not necessary

under statute or at common law to consider further tests including 'without interruption' or 'as of right', these tests have been considered below for completeness because routes 1, 2 and 3 are interconnected. Such tests may be of importance should any new user evidence relating to route 3 come to light in future.

Actually enjoyed

118. All users of route 1, 2, and 3 described their use on foot. No user described their use by horse or by cycle. Two users stated they used route 2 with a vehicle as a private right of access (UEF 6, 26), one user (UEF 16) said they used part of route 1 in a small two wheeled tractor. In addition, members of the Church (Landowner 2) used route 1 for access for the hearse and mourners during funerals at the burial ground (**Figure 35**).
119. Users described the purpose of their use on foot, for walking/ dog walking/ for leisure, going to the bus stop/school/shopping in Golcar. Four users described visiting the graveyard/burial ground (UEFs 6, 8, 22, 29). Users described seeing others who were also on foot - walking/ dog walking/ running/ with children/ for leisure/visiting the graveyard. One user (UEF 16) mentioned visiting a 'farm' at what is now Vermont Close to 'move stone'.
120. Three users mentioned a gap in the wall on the route BE (see **photo 6 and photo 9, Figure 7**). User UEF 30 mentioned an '*opening in wall to grass bank where we used to play as children*'. User UEF 29 said '*there was an opening in the wall from Moss Side into what were allotments during the rationing post war days*'. User UEF 7/27 said there was a stile in the wall along BE. The Church (Landowner 2) said that the 2nd plot of land adjacent to the burial ground has never contained any graves due to the difficult geology.

By the public

121. Having discounted any private type of use, the user evidence shows all users were using the route as members of the public and were all wholly or largely local people. Some users had moved away, but completed evidence statements for when they lived locally. Addresses are available on the original UEF's.

122. There are dwellings along all three routes and as such users who were considered to be exercising private rights for access to their dwellings have been discounted from the analysis where relevant and appropriate (UEF 6/25, 7/27, 8, 16 ,26).

As of right - without force

123. Users do not describe any barriers, fences, impassable stiles, locked gates, building materials or obstructions had ever been present on the route 1 and 2 in question to forced open and causing users to turn back during the relevant periods (see **Figures 29** and **Figure 36**).

124. However, in relation to route 3, users and landowners refer to a gate at point G which was bolted or locked on the inside at some point which brought the route into question, but generally there is no evidence of a forced use of route 3.

As of right - without secrecy

125. For use to be as of right it must be open and of such a nature that if any landowner would have been aware that the way was being used had they chosen to look, and so had been in a position to object.

126. All users except one, said they saw others using the routes (**Figure 29**), but this is taken to mean route 1 and route 2, rather than route 3. It is not known whether users used route 3 when it was possible to open the gate and the residents were out. Four landowners at Vermont Close stated in their Landowner Statement Forms that they had not seen anyone using route 3, only landowner 2 who built the bungalow in 1999/2000 witnessed use by two people.

127. In the Landowner Statement Form dated 22/11/2021, the Church (Landowner 2) stated that they had not seen anyone (meaning the general public) using route 1.

128. Given all of the above there is no evidence to suggest that there were any attempts to conceal public use of the routes.

As of right – without permission

129. In relation to routes 1, 2 and 3 the user evidence shows that no user ever asked for permission and no user was ever given permission (see **Figure 29**).
130. In relation to route 1, in the Landowner/Occupier Statement Form dated 22/11/21, the Church (Landowner 2) stated that no user had asked for, nor had been given, permission.
131. In the Landowner/Occupier Statement Form dated 7/6/22, an adjacent landowner (landowner 4) to route 2 stated that no user had asked for, nor had been given, permission.
132. In relation to route 3, in the Landowner/Occupier Statement Form dated 12/6/22 Landowner 5 (former owner of No.2 Vermont Close) stated that no user had asked for, nor had been given, permission. They also stated that *'the footpath E to F was and is a public right of way and was stated as such on the house deeds.'* And *'we used that path whilst we were living at No.2. On one occasion an elderly Scapegoat Hill Resident came past and stated she was only using it because it was a public right of way'*.
133. In relation to route 3, on the 27/10/23, the Agent for Landowner 1 said that Landowner 5 *'had only ever encountered two people attempting to pass through the gate during his ownership, who had stopped to explain that they were in what be or was his front garden'* but allowed *'them to go through on both occasions'* and the Agent stated this meant they passed with *'permission'*. However, whilst the Agent appears to suggest this means by *'implied permission'* Officers consider it is in the context of all the other evidence Landowner 5 has submitted, that it is more likely to be a toleration or an acquiescence.
134. Permission in relation to use being *'as of right'*, should there be any evidence of express (e.g., clear, and specific) permission, then use is not *'as of right'*. A public right of way and a permissive way are mutually exclusive. A simple definition of a permissive path is one where the landowner has granted permission for the route to be used by the public, but they also have the right to withdraw that permission if they choose.

135. Officers therefore do not consider that use of route 1, 2 or 3 was with any express permission of the relevant landowners at the time. Use of the routes by the public is therefore considered to be 'as of right' meaning, without force, without secrecy and without permission.

Without interruption

Users – general

136. No user indicated that their use of route 1 or route 2 had been interrupted except by development works in 2020/21 which is after the end of the relevant periods. No user has described ever being challenged or stopped or being turned back or being told by landowners that routes were not public (see **Figure 29**). Similarly, no user indicated signs other than those listed in **Figure 37** about cleaning up dog mess or no public right of way or private land signs erected in preparation for the housing development works, which is after the relevant periods.

Funerals and burials

137. At a site visit with Officers on 19/1/22, a representative from the Church (Landowner 2) said that the hearse used the lane to access the top of the burial ground during funerals. This, they said, was because parking on Taylor Lane is problematic because it is very narrow, and the steps are steep for mourners and the coffin. If the hearse and mourners could take access along route 3 (AE) then it follows that the public could physically also do the same on foot.
138. In the Landowner Statement Form dated 22/11/21, The Church (Landowner 2) answered 'no' to whether the way they had used the land made the route difficult or impassable at any time and 'no' to whether they had ever stopped or turned people back.
139. In an email dated 12/12/22 from the Church's Graveyard Secretary was stated that *'the older members are clear that they have never been aware of a public right of way through the graveyard. They agree that there has been access from D to A but not from A to C via the burial ground'...* and *'the older members thoughts on A to F are that this has been unused for many years'*. However, it

is not known what is meant entirely by the statement about there being no access A to C but if taken to mean that access was not at all possible, it conflicts with almost all of the user evidence and landowner evidence. As such they may well mean that there is no recognised or similar public access through the burial ground.

140. In an email dated 27/10/23 from the Agent of Landowner 1, the Agent stated in relation to route 1 AC and vice versa, that they were aware of '*significant updates from the Scapegoat Hill Baptist Church itself, as well as some of its affiliates*' and '*refers to permissive and managed access for funeral events, route being impassable*'...'*undoubtedly there may have been a 'way through' at times, but there is no doubt that this was neither consistent, continuous, nor available*'....'*on what were evidently the rare occasions it was opened up*'.
141. Officers consider use for '*funeral events*' to be a private use of a private burial ground to which the public could presumably attend if they wished. Whilst some users may have indeed at times only visited the burial ground (4 users said so), the user evidence on which the analysis of presumed dedication or at common law relates is based on use as a thoroughfare between highways (Old Lane to Taylor Lane), rather than visits to the burial ground for funerals or burials or otherwise.
142. See **Figure 35** for a picture of the hearse at point E, which shows sufficient room around the parked vehicle for persons to pass during funerals should they be present to, although out of a mark of respect it is expected that any public may not have used the route at the same time as a funeral service or burial.
143. It is perhaps important to discuss for completeness whether occasional funeral events taking place for no more than a couple of hours on occasion constitutes an interruption to public use in the context of a lack of intention to dedication under s31(1) of the 1980 Act .
144. There is caselaw on what is meant by 'interruption', as explained in **para 42**. According to such caselaw the main consideration is to establish whether the intention of the landowner to assert their right to close the route has been conveyed to the public. It is the 'intent' that is important. It is reasonable to

assume that the intent in relation to an occasional funeral or burial was to carry out a burial, rather than an intent to close the route to the public to convey the route was not for 'public use'.

145. Also, as referred to in **para 43** where two uses (the use of the landowner and the use of recreational users) coincide there may occasions when the two right of user cannot be enjoyed simultaneously, the deference on one party to the other's use simply being a matter of courtesy (see caselaw [R \(on the application of Lewis\) v Redcar & Ors \[2010\] UKSC 11](#)).
146. First, in their Landowner Statement Form dated 22/11/21 the Church answered 'no' to whether they had stopped or turned back anyone or made it known to them that the route was not public, no signs have been erected and they did not make the route difficult or impassable at any time, and no one asked for or was given permission. Secondly, no user has mentioned their use being interrupted by funeral events.
147. Officers consider that public use is therefore not considered to have been interrupted by funeral or burial events. Officers therefore consider that use of route 1 and route 2 has not been interrupted.
148. Whilst the quantity and quality of the user evidence is not sufficient to demonstrate public use and enjoyment of route 3 and it is therefore not necessary under statute or at common law to consider use 'without interruption', these tests have been considered below should new user evidence come to light in future.

Fencing, building materials, route 3

149. In a Statutory Declaration dated 27/10/23 the Agent for Landowner 1 refers to being informed by Landowner 5 that route 3 had been '*blocked by fencing and materials*' during the building of No.2 Vermont Close (1997 to 1999/2000).
150. In a handwritten note received on 6/12/23 the Landowner 5 stated that '*Route E-F was usable as late as 2003 when we sold No.2 Vermont Close*'.

Landowner 5 did not state the route was blocked by fencing or materials in their Landowner Statement Form.

151. No user refers to route 3 being blocked by '*fencing or materials*'. On 21 November 2023, Officers wrote to all eleven users who had mentioned route 3 EGF in their User Evidence Statements. They were asked to clarify when or whether route 3 became obstructed e.g., by building materials or walls. No response was received.
152. Officers therefore do not consider that use of route 3 was interrupted by the presence of fencing or materials.

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

Route 1

153. Landowner Statement Forms were sent out to all landowners or residents fronting route 1. Three were completed and returned (Landowners 1, 2, 3). There were also additional comments or evidence in email or letter form.
154. In an email dated 4/7/22 the Church (Landowner 2) stated that '*this is not a public graveyard, and the steps are there for people visiting the graves and also for the gardener when he is working there*'. However, land being private in itself is not generally something that can defeat a claim to add an unrecorded public right of way on the DMS. 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.
155. In their Landowner Statement Form dated 6/12/22, the Church (Landowner 2) stated '*no*' to the following questions. Whether they were aware of any right of way, seen anyone using the route, stopped, or turned anyone back, made it known to them that it was not public, made the route difficult or impassable, whether anyone had asked for or been given permission, locked any gates or placed any obstructions, erected any notices, submitted a section 31(6) landowner deposit etc.

156. In their Landowner Statement Form dated 22/11/22, the Church also stated that the iron gate between the burial ground and Taylor Lane was '*kept closed, not locked recently*'. See **Figure 32** for a photo of the iron gate.
157. When asked on the User Evidence Statement Form no user indicated that the iron gate from the burial ground to Taylor Lane had ever been locked during their use (**Figure 29** and **Figure 33**). However, one user (UEF 28) mentioned '*not in the last 10 years*' but they had only known the route for those 10 years, so they meant they did not have knowledge of any gate or its locking before then.
158. On the 23/11/23, Officers emailed the current graveyard secretary to request clarification of the evidence as to when the gate was locked and at what times of day. No response was received. With reference to **para 37**, the burden of proof rests with the landowner to provide evidence that the gate in question was locked and when, under s31(3) of the 1980 Act. No further proof has been submitted at the time of writing, as such this means the Church has not taken any actions which constitute a lack of intention to dedicate.
159. Landowner 1 completed a Landowner Statement Form for route 1 and route 2 dated 9/11/21. Landowner 1 stated they registered an interest in the land in 2015 and bought it in 2018. Landowner 1 stated that there is '*no right of way*'... '*there is an access off Taylor Lane that serves the grave/burial ground*'. They answered '*no*' to whether they had seen anyone using the route, ever stopped, or turned anyone back, whether anyone had asked for or been given permission. They answered '*yes*' to whether they had made it difficult or impassable as they were '*constructing a new private house*', they had obstructed the site/land by fencing it off for safety in April/May 2020 outside of working hours Mon-Fri and had put up notices to saying '*Private Land – No public right of way*' at the entrance to the development which were replaced when they went missing in 18 May 2020 (see **Figures 36** and **37**) This is all outside of the relevant periods and therefore cannot be considered a lack of intention to dedicate because of that.

160. Landowner 3 (adjacent to route 1) completed a Landowner Statement Form dated 20/6/22 stating that route 1 was now a *'private driveway'*, and as such *'privacy should be afforded'* adding that there is *'gated access to the graveyard 200 yards away'*. Again this is outside the relevant period.

Route 2

161. In relation to route 2, Landowner Statement Forms were sent out to all landowners or residents fronting the route or taking access over it which includes a stretch of unregistered land on the route BD. Three Landowner Statement Forms are of relevance to route 2 – Landowners 1, 2 and 4.

162. Landowner 1 in their Landowner Statement Form dated 9/11/23 and accompanying documents provided a *'plan that highlights a current path that is used occasionally which crosses our land and we have and are maintaining this for the benefit of the community'* (see **Figure 38**).

163. In an email dated 27/10/23 the Agent for Landowner 1 refers to route 2 which is partly in the ownership of Landowner 1 who *'owns a small part of this land at the bottom, adjacent to the newly gated entrance on Old Lane...has part of these works has tided the area at the site of the retaining wall and even installed steps'*. And that Landowner 1 has *'opened this up for the event that a formal order is made and confirmed against it'* and has *'no difficulty with Route A to D being formalised as PROW'*.

164. Landowner Statement Form were received dated 7/6/22 from Landowner 4 fronting route 2 and may own a section of the way up to the centre of the land based on the *ad medium filum* presumption. They answered *'no'* to whether they had stopped or turned anyone back, made it known to them that it was not public, made the route difficult or impassable, no one had asked for or been given permission, not locked any gates or placed any obstructions, not erected any notices, not submitted a 31(6) landowner deposit etc. The also went onto say that route 2 is *'needed for access to houses'* and *'it has also been used for many years for access on foot to the route marked A-B-C on the map'* (meaning route 1).

Route 3

165. In relation to route 3, Landowner Statement Forms were sent out to all landowners or residents fronting the route or taking access over it. Five forms were completed including two other residents of Vermont Close. Landowners 5, 6, 7, 8 and 9 are of relevance to route 3 branching EGF.
166. In relation to route 3 EGF, all three owners (including 2 previous owners) of No.2 Vermont Close completed a Landowner Statement Form. Landowner 5 and 6 submitted additional evidence and current landowner submitted a Supplementary Statement signed 5/9/23.
167. In a Landowner Statement Form dated 12/6/22, Landowner 5 stated they were aware route 3 EGF was a public right of way because an *'elderly Scapegoat Hill Resident came past and stated she was only using it because it was a public right of way' and because a public right of way...'* was stated as such on the *house deeds'*. However, Officers have viewed the Official Registered Title and Plan available at HM Land Registry for No.2 Vermont Close and that document refers to a private right of way, rather than a public right of way. No other *'deeds'* have been submitted by Landowner 5. Similarly, in their Landowner Statement Forms dated 8/6/22 and 12/6/22, two residents of Vermont Close (Landowners 8 and 9) referred to a private right of access from the High Street to their dwellings only.
168. In the same Form dated 12/6/22, previous Landowner 5 answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement, not locked any gates or placed any obstructions but clarified that they had *'put a gate at the end of our property in 2000 it was never locked, this gate has since been replaced by another'* and later it had sometimes been bolted at night.
169. In a Landowner Statement Form dated 2/12/23, previous Landowner 6 stated that they were *'told by the seller when we moved in that there was a right of way through the gate at the back of the property. It was very overgrown and whilst we live there it was never used'*. And *'the pathway was very overgrown*

when we moved in with brambles, it was never cut back, it was not blocked by rubble'. It is not known whether the *'right of way'* referred to is a private one or a public one. They also answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement, not locked any gates or placed any obstructions. They stated that no one had ever wanted to use route 3 EF.

170. In a Landowner Statement Form dated 8/6/22 current Landowner 7 stated *'there has been a gate/door in the wall since the property was built' ... 'We replaced this gate/door with a similar one in 2019' ... 'it is not locked'*. However, the Supplementary Statement signed 5/9/23 they state that they bolted it on the inside when they moved in. They also answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement,
171. The locked gate in the wall at point G on the route EF is situated on the unregistered land (**Figure 6 and photos 34, 35, 36 in Figure 9**). Applying the *ad medium filum* rebuttable presumption currently puts No.2, No.3, No.4 Vermont Close, No.6 Old Lane and Yorkshire Baptists Association as the adjacent owners. With no registered 'owner' whilst there can be a bringing into question of public use or rights by the erection of a locked gate on unregistered land, the issue is that under statute (presumed dedication under s31(1) of the 1980 Act) or at common law, a way can be dedicated without ownership being known, the onus is on those who seek to provide evidence that they 'own the land' to demonstrate a 'lack of intention to dedicate'.
172. Whilst the locked gate is situated on land that is not within the title of No.2 Vermont Close, the three owners of No.2 Vermont Close appear to consider themselves to be the likely owners of the land the gate was erected on as it has been absorbed into the garden, as described in their evidence and statements. Officers assume that such ownership may be by way of an ['adverse possession of unregistered land'](#) for example, by amongst other things, being in physical control and singular possession of the said land. Should adverse possession

apply then it is likely that a lack of intention to dedicate would have been demonstrated by the locking of the gate in 2010/2015 (which is also a bringing into question date for route 3).

173. In relation to route EG (the unregistered land) becoming variously overgrown with vegetation and shrubs, as there is no 'overt act' to demonstrate to the public that their use is being challenged, this does not demonstrate a lack of intention to dedicate.

Conclusion on a lack of intention to dedicate

174. Given all of the above, there is insufficient evidence indicating a lack of intention to dedicate routes 1 and 2 as public footpaths during the relevant period (1997 to 2017) or to rebut the presumption that they have been so dedicated under s31(1) of the HA 1980.

175. In relation to route 3, whilst there is insufficient evidence indicating a lack of intention to dedicate route 3 as a public footpath during the alternative relevant periods (1990 to 2010 or 1995 to 2015 etc), route 3 already failed the statutory test of presumed dedication under s31(1) of the HA 1980 due to the quantity and quality of the user evidence being insufficient.

Conclusion on presumed dedication of routes 1 and 2

176. The evidence of public use considered above is sufficient to raise the presumption the application route 1, Old Lane to Taylor Lane via burial ground (ABC) and discovered route 2, Old Lane to High Street via steps (ABD) have been dedicated as public footpaths under section 31(1) of the 1980 Act during the relevant period 1997 to 2017. Officers consider that the presumption is not rebutted by any opposing evidence of a lack of intention to dedicate and an Order should be made to record these routes on the DMS based on a reasonable allegation that the ways subsist.

177. The evidence of public use of route 3 Old Lane to High Street via Vermont Close is insufficient to raise the presumption the discovered route 3 has been dedicated as a public footpath under section 31(1) of the 1980 Act during the alternative relevant periods (1990 to 2010 or 1995 to 2015 etc).

Common law dedication of route 3 and conclusion

178. Although route 3 is considered to have failed the statutory user test for presumed dedication, the available user and landowner evidence relating to route 3 must also be considered at common law. Such a dedication requires the capacity to dedicate, and also requires acceptance by the public. There appears to have been an acquiescence by a landowner between 1984 and 2003 and another landowner up to 2010 in relation to public use over part of route 3 EGF branching off from route 1, which may constitute a common law dedication. Landowner 5 reported that they left a route through No.2 Vermont Close to accommodate the *'old footpath'* on historic OS maps, which they say they thought was a public right of way because an elderly Scapegoat Hill resident had said so. They also installed a gate with a latch on both sides in a wall between the burial ground and No.2 Vermont Close which was openable from both sides.
179. In terms of acceptance by the public, as **Figure 34** shows only 4 users, used this route and one of those only 'once'. Therefore the quantity and quality of the user evidence is not sufficient to imply such an acceptance has occurred under the principles of a common law dedication, which requires a more intensive and notorious use over a longer or a shorter period than 20 years. This may well be because a reputed *'old footpath'* had fallen out of use due to the several factors discussed above (gate, presence of a dwelling, overgrown). Indeed a representative for landowner 2 (Church) said that in relation to the congregation *'The older members thoughts on A to F are that this has been unused for many years'*. Officers consider therefore that it is not reasonable to imply that there has been a common law dedication of a public footpath along route 3. Therefore, no Order should be made to record route 3 on the DMS.

Width

180. Based on the judgements in [Hale v Norfolk County Council \(2000\)](#), the fact that at 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 or walled 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.

181. In this case, route 1 and route 2 are shown as identifiable features of a certain width on historic OS maps, but they were not awarded public rights as part of the Golcar Enclosure Award 1823 or were likely not public rights of way at the time of the Finance Act 1910. Furthermore, it has already been established that presumed dedication of public rights date from 1997 – the start of the modern user evidence relevant period. Therefore the ‘boundary to boundary’ presumption does not apply.
182. The boundaries of the routes were most likely set out in relation to private routes between houses or private tracks. 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 as they were between the relevant period 1997 to 2017 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 presumed dedication in section 31(1) of the 1980 Act.
183. It appears that routes 1 and 2 been used for many years by members of the public other than those resident at the adjacent properties. During the relevant period of 1997 to 2017 the surface of the application route 1 is described by users (prior to any housing development) as a grassy drystone walled lane with stone or concrete steps and flags through the burial ground. Users reported route1 had a varying width of between 2 feet to 12 feet or 1m to 5m or car width. And the surface of the route 2 was a grassy walled lane (as with route 1) leading to a steep flight of stone steps and continuing onto flags and tarmac. Route 2 has been measured on KCs Kompass mapping as of a varying width between 1.7 and 5m.

184. In relation to route 1, it is considered that public rights have been established over the width of the grassy walled track A to E and over the width of the flight of steps E to C (see **Figure 7**). In relation to route 2, it is considered that public rights have been established over the width of the grassy walled track A to B and over the width of the flight of steps from point B and then over the flagged and tarmacked area to D (see **Figure 8**).

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

Limitations

186. As mentioned, route 1 has an iron gate between the burial ground and Taylor Lane at point C, as shown in photo 12, **Figure 7** and **Figure 32**. Many users report a gate here, and where further comments were provided it has been unlocked, see **Figure 33**. The Church indicated in their Landowner Statement Form dated 22/11/22 that it had been in place for '*100+ years*' and was '*not locked recently*', but did not respond to a request on 23/11/23 for clarification on that locking in terms of dates and times. As such, Officers consider that route 1 is presumed dedicated subject to the limitation of a gate at point C, as shown in **Figure 41**.

Recommendations

- Make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath from Old Lane to Taylor Lane via burial ground (route 1) subject to the limitation of a gate and to record a public footpath from Old Lane to High Street via steps (route 2)
- Do not make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath from Old Lane to High Street via Vermont Close (route 3)

- To confirm any Order if unopposed, or if objections are received and not withdrawn and the matter referred to the Planning Inspectorate for determination, to actively support confirmation of the Order at any public inquiry or hearing.

Reasons for Recommendations

- It is reasonable to allege that route 1 Old Lane to Taylor Lane via burial ground subsists as a public footpath and subject to the limitation of a gate under s31(1) of the Highways Act 1980 (HA 1980) on user evidence during the relevant period 1997 to 2017
- It is reasonable to allege that route 2 Old Lane to High Street via steps subsists as a public footpath under s31(1) of the Highways Act 1980 (HA 1980) on user evidence during the relevant period 1997 to 2017
- In relation to route 3 Old Lane to High Street via Vermont Close, it is not reasonable to allege that a public footpath subsists under s31(1) of the HA 1980 on user evidence during the alternative relevant periods, or at common law.
- In relation to confirming its own Order or supporting the confirmation of the Order at any public inquiry or hearing, providing no new evidence is submitted, Officers consider that route 1 and route 2 both subsist on ‘the balance of probabilities’ or satisfy Test A (**para 28**) and the Council should support the confirmation of any Order.
- The Council has a statutory duty to keep the DMS under continuous review, investigate and determine any Order applications and make any Orders that appear to it requisite in consequence of the discovery of evidence that the DMS requires modification and to confirm any Order if unopposed or forward any Order to the Planning Inspectorate for determination if any Order is unopposed but requires modification, or if objections are received and not withdrawn.

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Document: Appendix C

Title of Report: Figures and photos

DMMO Reference: 207, Old Lane, Scapegoat Hill

Date: 3 July 2024

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Figure 1: 1952 Definitive Map

Source: Kirklees Council Kompass mapping

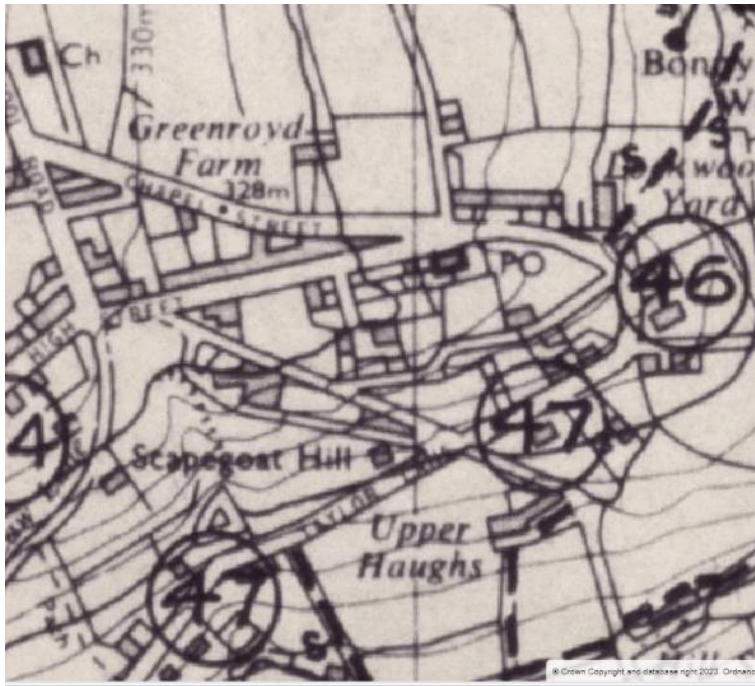


Figure 2: 1985 Definitive Map

Source: Kirklees Council Kompass mapping

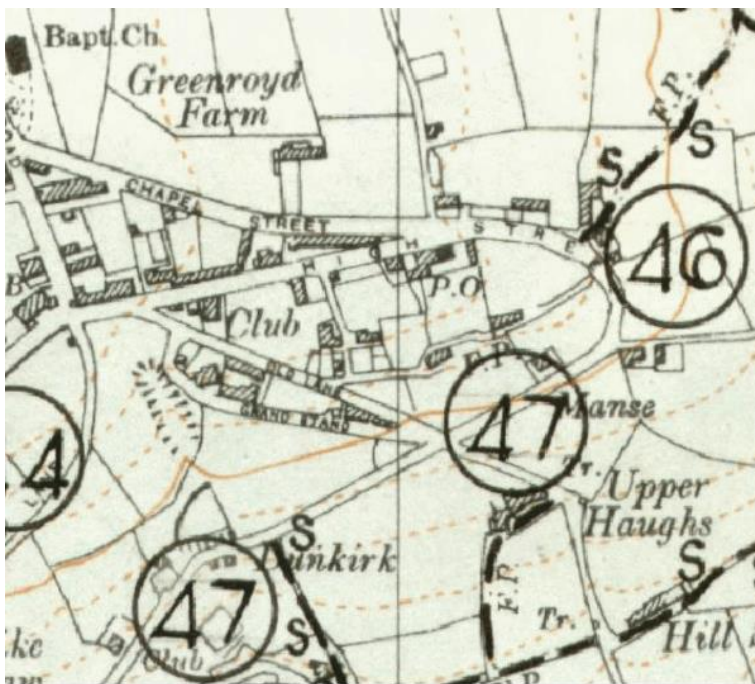


Figure 3: DMMO application map

Source: DMMO S14207 application

Point A: Old Lane (public carriageway): [Google Maps View May 2023](#)
 Point C: Taylor Lane (public carriageway) [Google Maps View March 2019](#)
[Google Maps View 2023](#)

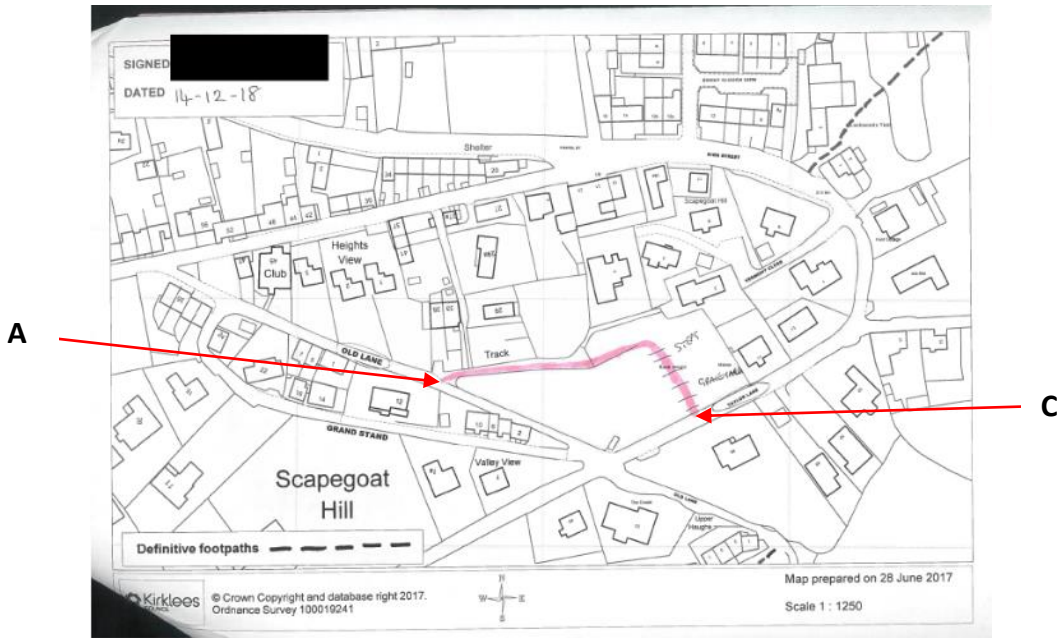


Figure 4: DMMO application route, and two additional discovered routes

Source: PROW prepared consultation plan

Point D: High Street [Google Maps View High Street, Route 2](#)
 Point F: Vermont Close [Google Maps View Vermont Close, Route 3](#)

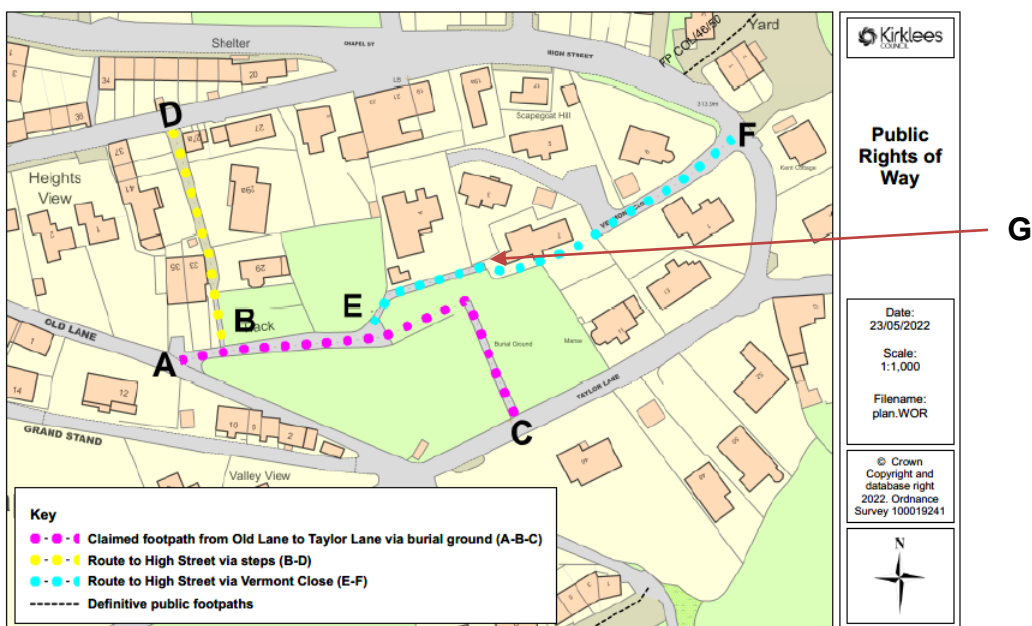


Figure 5: Extract from A Short History of the Baptist Church 1921

Source: DMMO S14207 application

Extracted by the applicant from 'A Short History of the Baptist Church, Scapegoat Hill (1921) by Nathan Haigh' available online at Huddersfield Exposed <https://huddersfield.exposed/book/2242#page/n64/mode/1up>

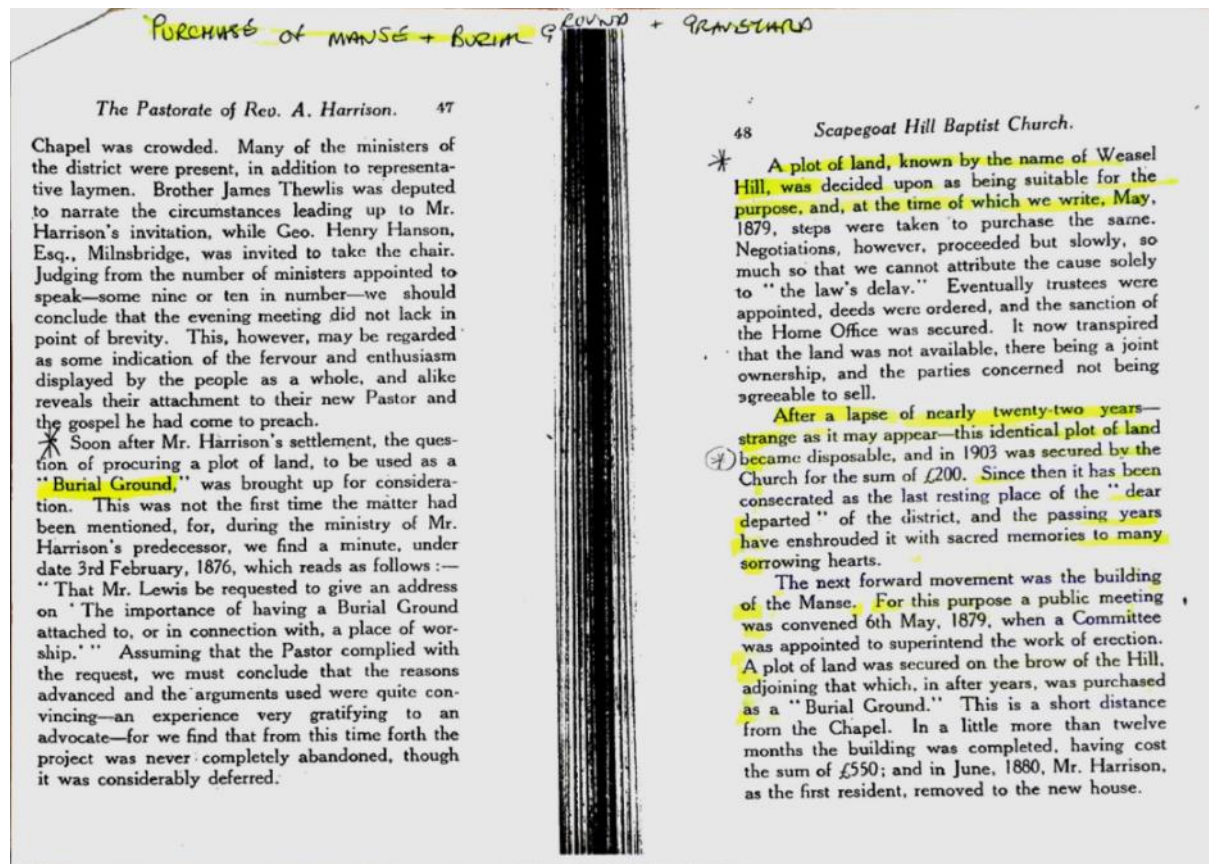


Figure 6: Unregistered land

Source: Kirklees Council Kompass mapping

Route 2 between B and D north to High Street



Route 3 between E and G via Vermont Close to High Street

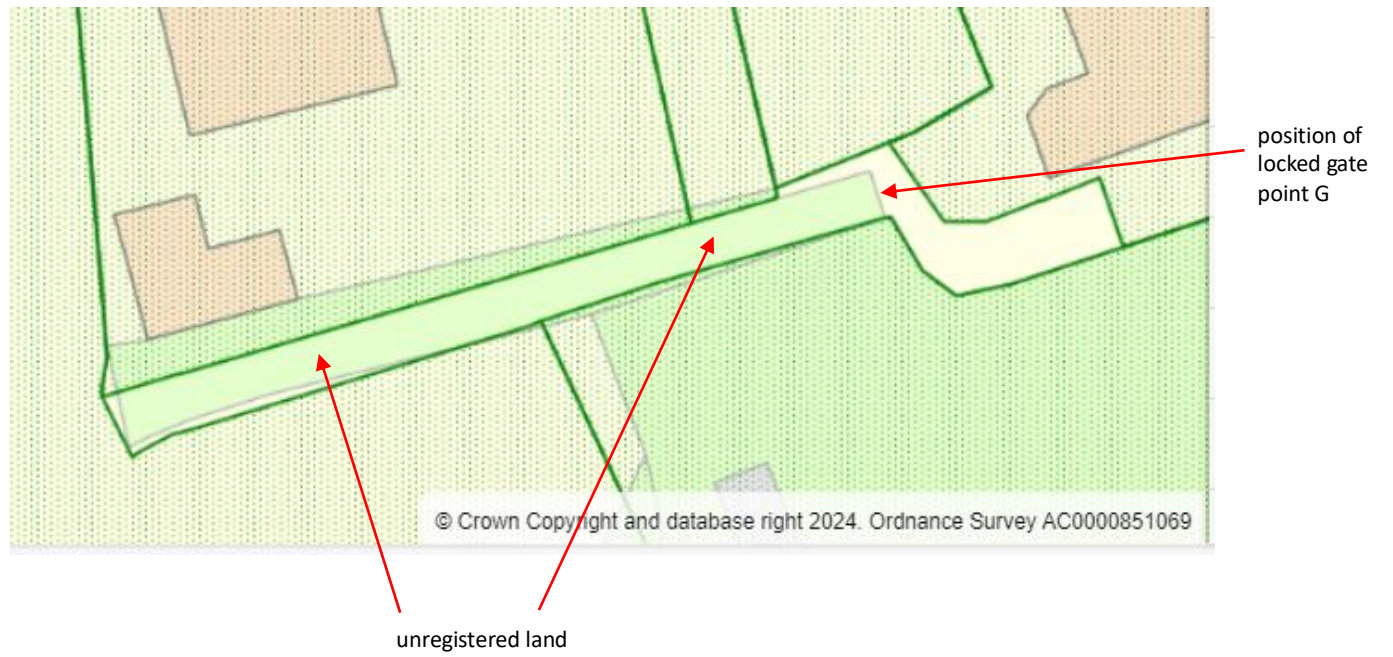


Figure 7: Photos showing physical characteristics of application route 1
Route 1, Old Lane to Taylor Lane via burial ground (ABC)



Photo 1: Old Lane near point A, application route on left shows as grassy lane and stone gate posts 22/6/2017



Photo 2: Point A junction of application route with Old Lane, wide grassy lane with vehicle tracks, garage of 35 High Street on left 22/6/2017



Photo 3: Walled wide grassy lane with vehicle tracks, 4 Vermont Close top left at BE 22/6/2017



Photo 4: Further down walled grassy lane (BE) gate posts in distance, walled on left side and partial walled on right (land including on left and right is now developed for housing) 22/6/2017



Photo 5: Further along grassy lane, walled on right side, old stone gate posts in mid-distance (BE) 22/6/2017



Photo 6: Gap in wall onto 'Moss Side' (BE) 22/6/2017



Photo 7: Looking back to point B, 29 High Street top right, metal gate on right near point E 22/6/2017



Photo 8: Looking back to point B down walled grassy lane, gate posts in foreground, vehicle tracks visible 22/6/2017



Photo 9: Gap in wall onto 'Moss Side' half way between point A and point E 22/6/2017



Photo 10: Application route opens into grassed area at top of burial ground, 2 Vermont Close and gate in distance, route turns sharply right between headstones 22/6/2017



Photo 11: Application route continues from left down flight of wide concrete and flagged steps 22/6/2017



Photo 12: Top of flight of concrete steps looking down towards point C, black iron gates onto Taylor Lane 22/6/2017

Figure 8: Photos showing physical characteristics of discovered route 2
Route 2, Old Lane to High Street via steps (ABD)



Photo 13: Old Lane near point A, application route on left shown as grassy lane and stone gate posts 22/6/2017



Photo 14: Point A junction of application route with Old Lane, wide grassy lane with vehicle tracks, garage of 35 High Street on left 22/6/2017



Photo 15: Iron gate to private walled stone steps leading 35 High Street 22/6/2017



Photo 16: Point B, stone steps and wall leading to High Street (BD) 22/6/2017



Photo 17: Flight of walled stone steps, 33 High Street on left (BD) 22/6/2017



Photo 18: Looking back down flight of stone steps towards point B 22/6/2017



Photo 19: Emerging from stone steps onto wider flagged route beside 33 High Street (BD) 22/6/2017



Photo 20: At top of stone steps, route continues north between 29A and 41 High Street (BD) 22/6/2017



Photo 21: Route is flagged with grass in middle, 27 High Street on right, looking towards point D 22/6/2017



Photo 22: Route is flagged with grass in middle, 27 High Street on right, looking towards point D 22/6/2017



Photo 23: Looking back from point D, 27 High Street on left 22/6/2017



Photo 24: Junction with High Street at point D 22/6/2017

Figure 9: Photos showing physical characteristics of discovered route 3
Route 3, Old Lane to High Street via Vermont Close (ABEGF)



Photo 25: Old Lane near point A, application route on left shown as grassy lane and stone gate posts 22/6/2017



Photo 26: Point A junction of application route with Old Lane, wide grassy lane with vehicle tracks, garage of 35 High Street on left 22/6/2017



Photo 27: Walled wide grassy lane with vehicle tracks, 4 Vermont Close top left (BD) 22/6/2017



Photo 28: Further down walled grassy lane, gate posts in distance, walled on left side and partial walled on right (BE) 22/6/2017



Photo 29: Further along grassy lane, walled on right side, old stone gate posts in mid-distance (BE) 22/6/2017



Photo 30: Route widens out, old iron field gate on right, 2 Vermont Close visible in distance, looking towards overgrown point E leading north-west 22/6/2017



Photo 31: Narrow double walled route continuing from point E eastwards, overgrown 22/6/2017



Photo 32: Narrow double walled route between point E and gate to 2 Vermont Close, overgrown, point G 22/6/2017



Photo 33: Overgrown walled route continuing eastwards (EG), 4 Vermont Close above 22/6/2017



Photo 34: Walled route above burial ground leading to a black gate in a double height wall, 2 Vermont Close behind wall (point G) 22/6/2017



Photo 35: Overgrown walled route leading to black gate in wall, 2 Vermont Close behind wall (point G) 22/6/2017

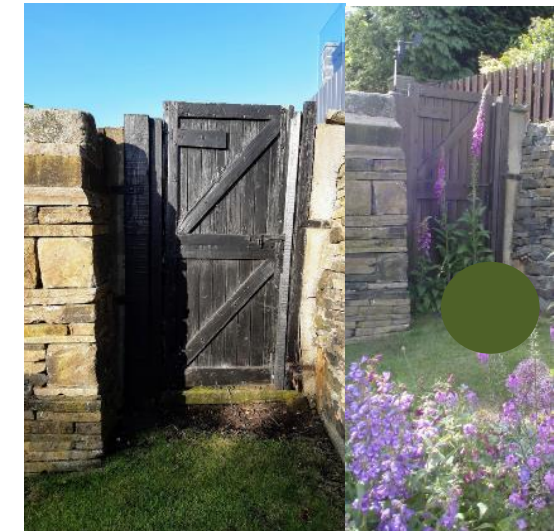


Photo 36: x2 photos of the other side of black gate point G route continues through No.2 Vermont Close (September 2019/ 2015)

Figure 10: 1962 aerial photo

Source: DMMO S14207 application



Figure 11: 1823 Golcar Enclosure Award Map

Source: https://www.scapegoathillhistory.com/_files/ugd/861cc1_2bc1d3673dc64daaa1c09a1fedacd90d.pdf



Figure 12: 1854 OS 6-inch map Yorkshire Sheet 246

Source: [National Library of Scotland](#)
Surveyed 1948 to 1850, Published 1854



Figure 13: 1893 OS 25-inch map Yorkshire CCXLV1.13

Source: [National Library of Scotland](#)
Surveyed 1890, Published 1893

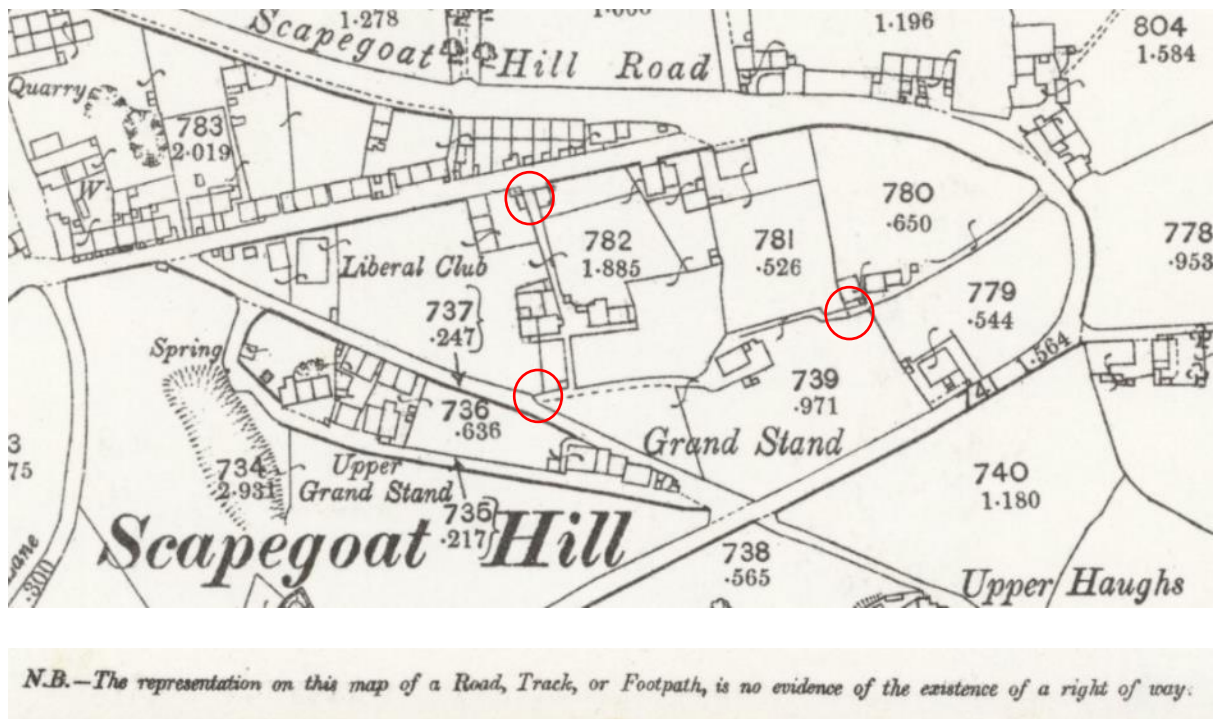


Figure 14: 1907 OS 25-inch map Yorkshire CCXLVI.13

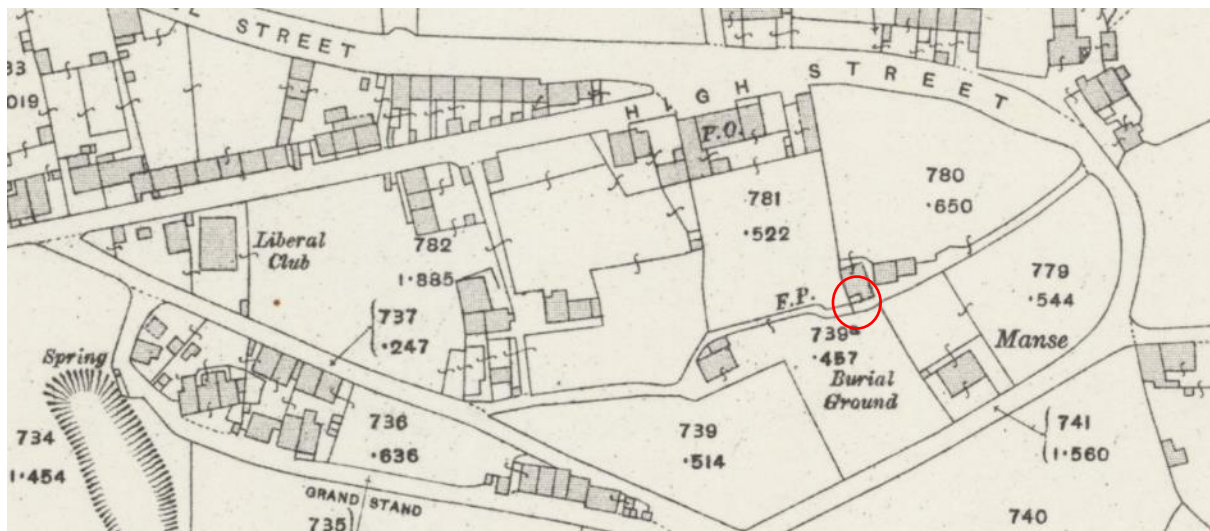
Source: [National Library of Scotland](#)
Revised 1904, Published 1907



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 15: 1919 OS 25 inch map Yorkshire CCXLVI.13

Source: [National Library of Scotland](#)
Revised 1913, Published 1919



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 16: 1925 OS 1-inch map Sheet 31 - Leeds and Bradford

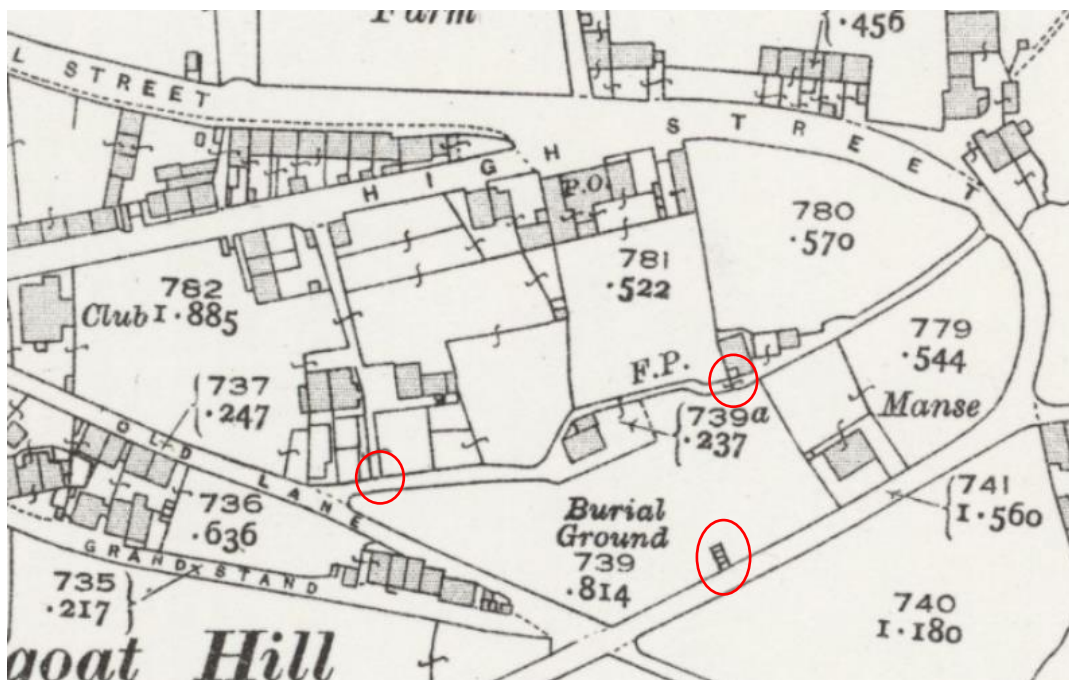
Source: [National Library of Scotland](#)
Revised 1920 to 1921, Printed 1925



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 17: 1932 OS 25-inch map Yorkshire CCXLVI.13

Source: [National Library of Scotland](#)
Revised 1930, Published 1932



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: 1963 1 to 2500 OS map

Source: Kirklees Council Kompass mapping
Surveyed 1955, Published 1963

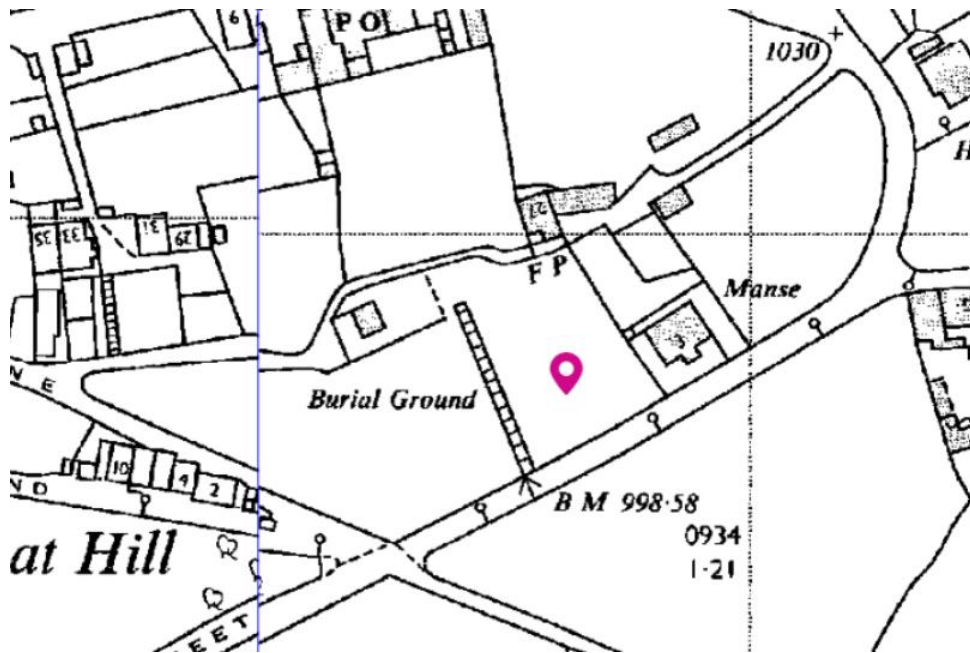


Figure 19: 2000 aerial photo

Source: Kirklees Council Kompass mapping



Figure 20: 2002 aerial photo

Source: Kirklees Council Kompass mapping



Figure 21: 2006 aerial photo

Source: Kirklees Council Kompass mapping



Figure 22: 2009 aerial photo

Source: Kirklees Council Kompass mapping



Figure 23: 2012 aerial photo

Source: Kirklees Council Kompass mapping



Figure 24: 2018 aerial photo

Source: Kirklees Council Kompass mapping



Figure 25: 1966 aerial photo route 3, EGF

Source: Original source unknown, supplied by Landowner 5
Photo dated by landowner 5 as 17 July 1966



Figure 26: 1910 Finance Act Valuation Plan

Source: West Yorkshire Archive Service (WYAS) C243/246/13
OS Sheet Reference: Yorkshire West Riding CCXLVI 13 (246.13)

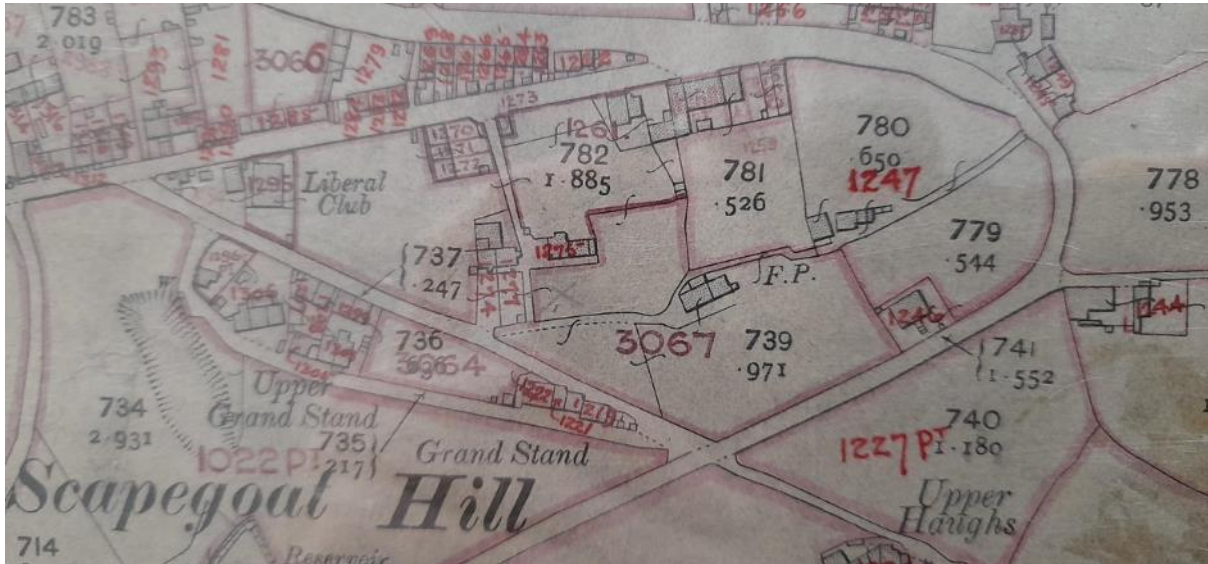
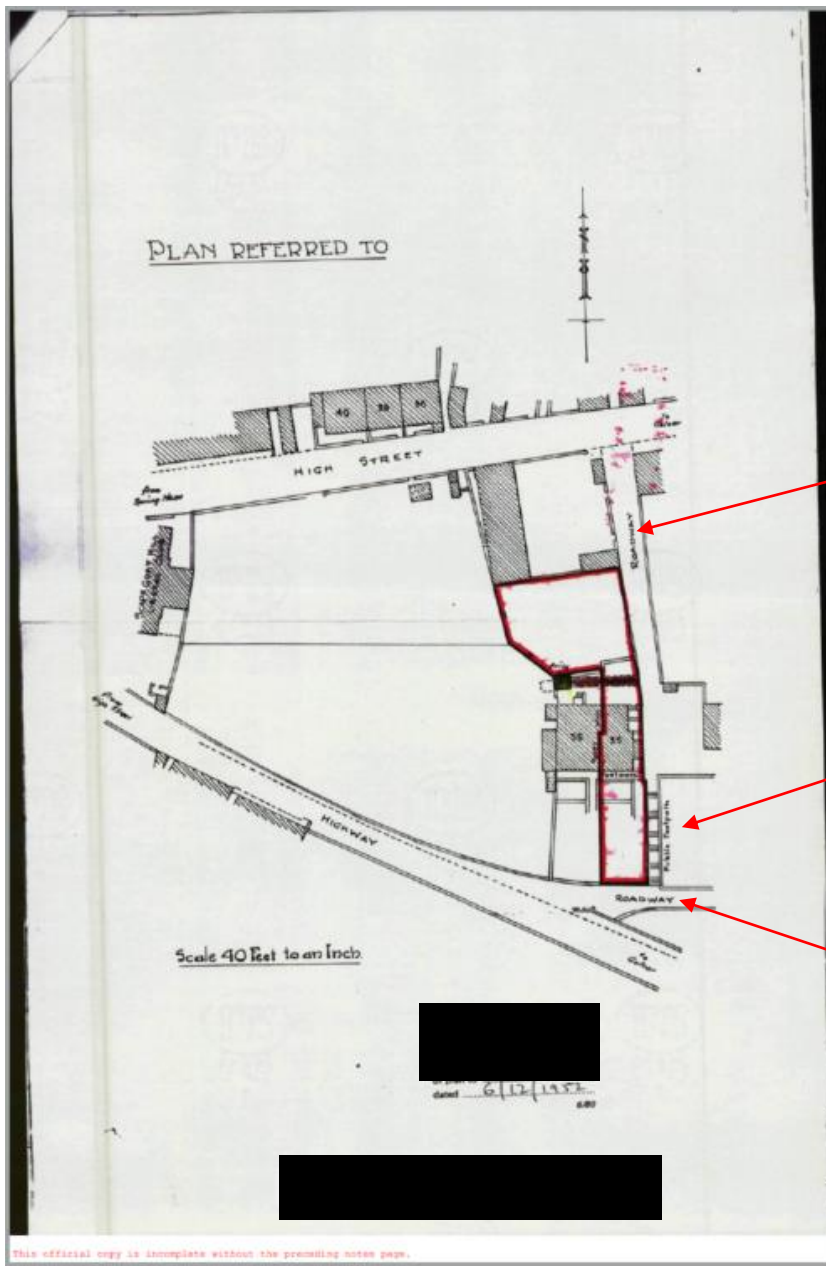


Figure 27: Conveyance 6 December 1952

Source: HM Land Registry



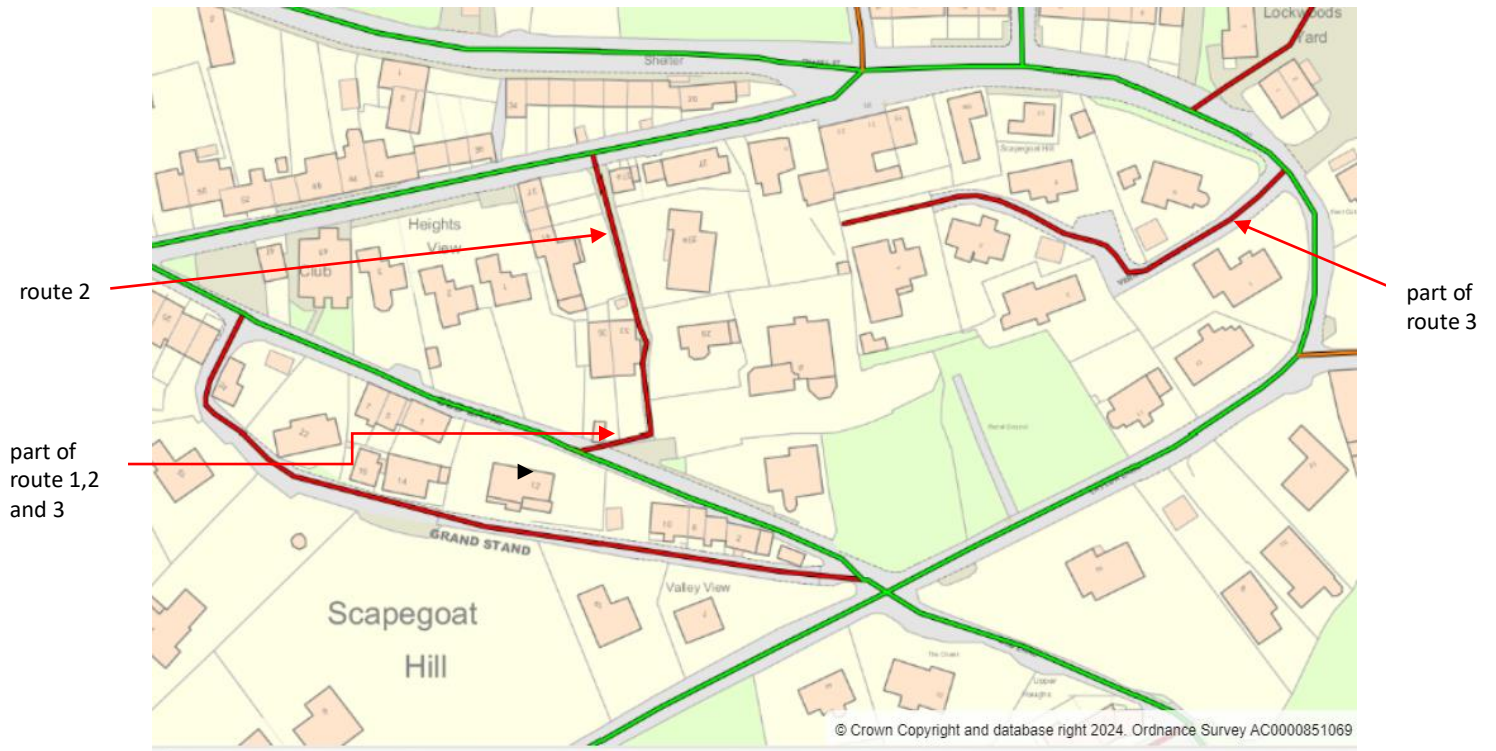
annotation on conveyance says 'Roadway'

annotation on steps on conveyance says 'Public Footpath'

annotation on conveyance says 'Roadway'

Figure 28: Highways Registry and The List of Streets

Source: Kirklees Council Kompass mapping



Green lines mean maintainable at public expense
Red lines mean not maintainable at public expense
Orange lines mean part of the length of the street is maintainable at public expense

Figure 30: Summary of landowner statement forms

Description	Landowner 1	Landowner 2	Landowner 3	Landowner 4	Landowner 5	Landowner 6	Landowner 7	Landowner 8	Landowner 9
Route	Route 1, route 2	Route 1, route 3	Adjacent to route 1	Route 2	Route 3 EG to F	Route 3 EG to F	Route 3 EG to F	Adjacent to Route 3 G to F	Adjacent to Route 3 G to F
Extent of land ownership	Freehold A to B to E including part of route 1 and small part of route 2	E to C through burial ground including part of route 1 and route 3. Former owner of all routes where registered	Adjacent to route 1	Adjacent to route 2	Former owner of No2 Vermont Close, route 3	Former owner of No2 Vermont Close, route 3	Current owner of No2 Vermont close, route 3 runs through garden and adjacent to property	Access allowed to Vermont Close	Access allowed to Vermont Close
Land use	New build dwelling, land bought 2018	Burial ground and adjacent land, pre 1900	New build dwelling 2021	Access to houses on unregistered land, ad medium filum from 2010	Bought land 1984, planning permission 1996, new build bungalow 1999/2002	Dwelling 2003 to 2010	Dwelling from 2010	Adjacent dwelling and access from May 2008	Adjacent dwelling and access from June 2021
Aware of any right of way on route	No, there is access off Taylor Lane that serves the grave/burial ground	No	It is clearly a private driveway now and provides an obstructed view into my new property due to the elevation of the land	The route is needed for access to houses. It has also been used for many years for access on foot to the route marked ABC on the map	The footpath E to F was and is a public right of way and was stated as such on the house deeds	We were told by the seller when we moved in that there was a right of way through the gate at the back of the property. It was very overgrown and whilst we lived there it was never used.	See below.	Yes, access to other occupants of Vermont Close	I have no awareness and have never seen it used
Seen people using route, what mode	No	No, the only people using the steps to the bottom were visiting graves, the only people using the top access were maintenance personnel acting for the Church	No	Yes, on foot and in motor vehicle	Yes, used that path whilst we were living at No.2. On one occasion an elderly Scapegoat Hill resident came past and stated she was only using it because it was a public right of way	No	No	No	No
Has the way you have used the land made the route difficult or impassable at any time	Yes, we are constructing a new private house	No	It is currently a building site so not accessible	No	No	No, the pathway was very overgrown when we moved in with brambles. It was never cut back. It was not blocked by rubble.	No	No	No
Stopped or turned people back	No	No	No	No	No	No	No	No	No
Asked for permission	No	No	No	No	No	No	No	No	No
Given permission	No	No	No	No	No	No	No	No	No
Locked gates or obstructions	Yes, the site/land is fenced off for safety, April/may 2020	No, Iron gate at bottom of steps off Taylor Lane, for 100+ years, kept closed not locked recently	No	No	No, I put a gate at the end of our property in 2000 it was never locked this gate has since been replaced by another	No, when we moved in we opened the gate to see what the path was like. To my memory it was on a latch (possibly a bolt - but not sure) it did not have a lock. The gate was always shut on the latch.	A gate was in the boundary wall when we purchased the property. We replaced this gate/door with a similar one in 2019. There has been a gate/door in the wall since the property was built. It is not locked. [confirmed later that the gate has been bolted and also things have been planted directly in front of the gate)	None	No
Erected notices or signs	Yes	Yes	No	No	No	No	No	No	No
Notices or signs - wording	Private land - No public right of way	Private land - No public right of way							
Notices or signs - location	Entrance to development	The sign was put up at our request by the people who bought the land from the Church, on the gate at the bottom of the burial ground							
Notices or signs - maintain	Yes, replaced 18/5/2020	Yes, when they was removed they was replaced							
Notices or signs - how long	I believe there should still be one installed to the entrance of the burial ground off Taylor Lane	Several years							
Receipts for fencing, gates, notices, letters of permission, police reports	Receipts for the purchase of the private land signage (attached)	No		No	No	No	No	No	No
s31(6) landowner deposit/declaration	No	No	No	No	No	No	No	No	No
s31(5) LPA notice	Yes, letter sent 18/1/2018 and attached for your reference	No		No	No	No		No	No

Figure 31: Map of routes used by villagers

Source: DMMO S14207 application

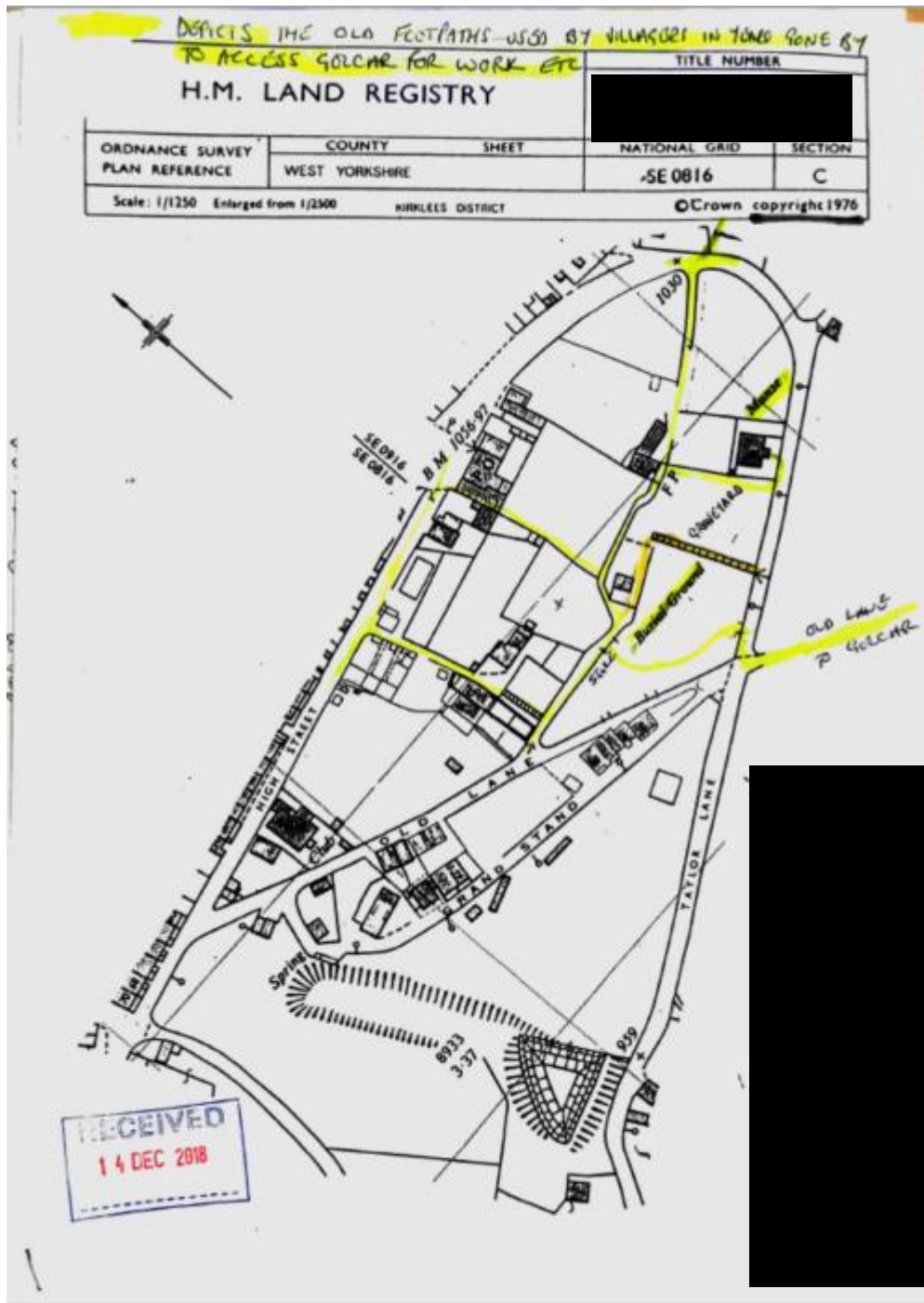


Figure 32: Iron gate to burial ground from Taylor Lane at point C

Source: Officer photo dated 19 September 2020



Figure 33: Summary of user evidence - gates

Ref	Gates
207/3	Yes, gate shown at A on the map
207/4	Yes, gate shown at A on the map
207/6	Yes there is a gate at the end of the grassed path A
207/7	Wrought iron gate at the borrom of the graveyard steps leading on to Taylor Lane - always open. Gates on green lane, always open. Gate leading to bungalow towards Vermont Close now locked
207/8	Yes wrought iron gate Always open On green land wrought iron gate, Bottom of graveyard steps. No (not ever locked)
207/15	Yes always open, midway between burial ground and staircase
207/17	Yes bottom of graveyard steps (no not locked)
207/21	Iron gate in Taylor Lane into the graveyard
207/22	Yes at bottom entrance of graveyard, on New Lane
207/24	Gate on bottom entrance to graveyard never locked
207/27	Yes, metal fence locked by electrical ties by developer from October till now
207/28	Not in last 10 years
207/29	Yes, gates into graveyard from Taylor Lane, never locked
207/30	Yes, two iron gates into graveyard from Taylor Lane, never locked

Note UEF 7/27 same user

Figure 35: Photo of hearse, parked around point E

Source: Member of public, photo dated [REDACTED] 2017



Figure 36: Summary of user evidence - obstructions

Ref	Obstructions
207/3	Tree stumps and cuttings have blocked the gate A at Vermont
207/4	Yes, over the past few years tree stumps/foilage blocked path towards Vermont Close
207/6	Yes, there are cut down bushes blocking the end of the path B
207/7	Yes, rubble on the pathway and a gate into the recently built bungalow which was vacant at the time of my walk.
207/10	Yes -fence? Buildings which stop access through to High Street see B→ D and C→ D
207/23	Yes only during house building
207/25	Developers have blocked off access down the steps by a fence (D-B) This was put up on 18 Oct 21 and is still there (marked on map)
207/27	Metal fences put up by developer from B-E route and bottom part
207/28	Only since construction work commenced
207/29	Wall built at bottom of ginnel steps by builders since 2019
207/30	Yes, since new houses built
207/31	Barriers due to building site
207/32	None, path has always been accessible with no hindrance

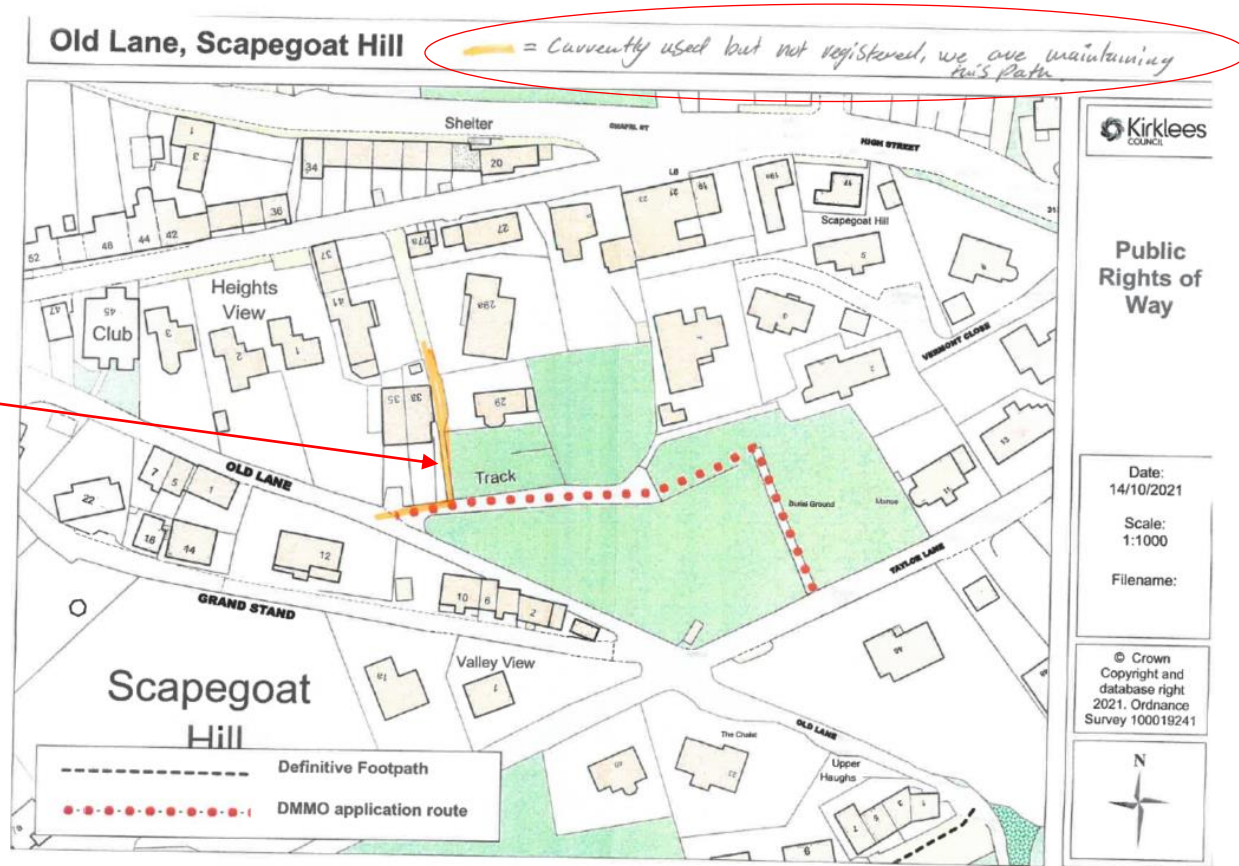
Note UEF 7/27 same user and UEF 6/25 same user

Figure 37: Summary of user evidence - notices

Ref	Notices
207/1	Yes, clean up your dog mess
207/25	Just the 'polite notice' from the developers advising 'the footpath will be temporarily closed for works to the steps from Monday 18 October
207/27	Developer put up signs in 2021 I think saying private land, also a sign saying public footpath, but access was closed by metal fence
207/31	Yes, present since at least 2019 [REDACTED] [REDACTED]

Figure 38: Landowner 1 annotated plan, showing route 2

Source: Landowner 1, submitted 10 November 2021



Source: Officer photo taken between point A and point B, bottom of stone steps (route 2), date 14/11/2022

Figure 39: Photos of consultation notices on site

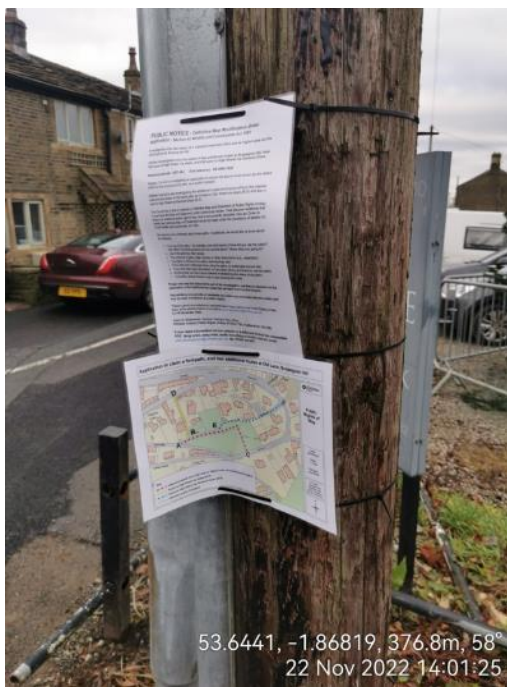
Source: Officer photos



Photo 37: Consultation notice erected near 1 Grand Stand, Old Lane, near Point A, photo dated 14/11/2022



Photo 38: Consultation notice adjacent to 37 High Street, near Point D, photo dated 14/11/2022



53.6441, -1.86819, 376.8m, 58°
22 Nov 2022 14:01:25

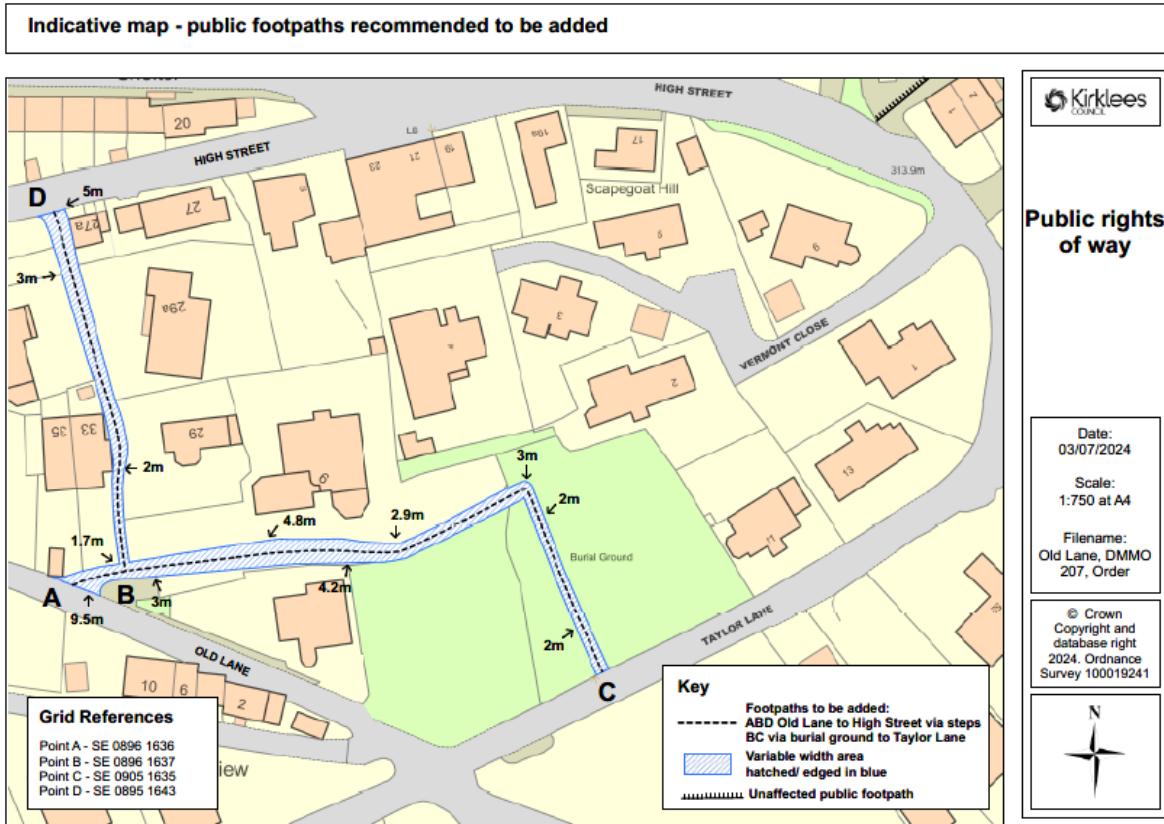
Photo 39: Photo of notice erected at car park opposite Scape House Inn, photo dated 22/11/2022

Figure 40: Summary of consultation responses

	11 November to 14 December 2022			
	Support	Neutral	Does not support	No response
Consultee				
Councillor Harry McCarthy				✓
Councillor Lesley Warner				✓
Councillor Matthew McLoughlin				✓
Auto Cycling Union				✓
British Driving Society				✓
British Horse Society				✓
Byways and Bridleways Trust				✓
Cycling UK (CTC) Cyclists Touring Club				✓
Green Lane Association (GLASS) (West Yorkshire Rep)				✓
Huddersfield Ramblers				✓
Huddersfield Rucksack Club				✓
Kirklees Bridleways Group				✓
Mr Terry Norris				✓
Open Spaces Society				✓
Peak and Northern Footpaths Society				✓
Ramblers Association				✓
Ride Kirklees				✓
The Motoring Organisations' Land Access & Recreation Association				✓
West Yorkshire Trial Riders Fellowship				✓
Landowner 1			✓	
Landowner 2			✓	
Landowner 2 and petition			✓	
Landowner 3			✓	
Landowner 4	✓			
Previous landowner 5		✓		
Previous landowner 6		✓		
Landowner 7			✓	
Landowner 7			✓	
Landowner 8		✓		
Landowner 9		✓		
Landowner 10	✓			
Resident 1				✓
Resident 2				✓
Resident 3				✓
Resident 4				✓
Resident 5				✓
Resident 6				✓
Resident 7				✓
Resident 8				✓
Resident 9				✓
Resident 10	✓			
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	✓			

In addition, 27 members of Scapegoat Hill Baptist Church (Landowner 2) signed a petition objecting to route 1 '**Please sign if you agree you would not like a public footpath through the church burial ground**'. Members of the public 5 and 6 support recording of route 2, but not route 1.

Figure 41: Draft Order map - Public footpaths recommended to be added (ABCD)



Report of the Head of Planning and Development

DISTRICT-WIDE PLANNING COMMITTEE

Date: 19-Sep-2024

Subject: Planning Application 2024/90881 Erection of two dwellings Land Adjacent, 155, Longwood Road, Paddock, Huddersfield, HD3 4EH

APPLICANT

Faz Sadiq, Longwood
Property Management
(UK) Ltd

DATE VALID

25-Mar-2024

TARGET DATE

20-May-2024

EXTENSION EXPIRY DATE

06-Aug-2024

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: Golcar

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 complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

1.1 This application is brought before the District Planning Committee for determination under the terms of the Delegation Agreement owing to significant local objection having been made, and officers being minded to approve the application. The objections received are as follows:

- 14 representations have been received with one of those being a received petition with 37 signatures and one duplicate representation.
- Following assessment, it is considered that there are a significant number of representations against the officers recommended decision

2.0 SITE AND SURROUNDINGS:

2.1 The site forms a rectangular piece of vacant land located between nos. 155 and 173 Longwood Road. The site is covered by a mix of grass and vegetation, most of which appears to be self-seeded. The land to the rear (south) of the site drops away with elements of under build/lower ground floor levels to the existing properties.

2.2 Longwood Road is a C classified road, C640, which connects Paddock to the Longwood and forms a regular bus route which is also used extensively for on street parking for the adjacent dwellings.

2.3 To the rear, south of the site, is a wooded area, with a Public Right of Way (HUD/313/10), 20 metres south. The site, including the wooded area, is within the Kirklees Wildlife Habitat Network.

2.4 The local area is residential in nature with stone-built dwellings either side and to the north with the prevailing material being natural stone.

3.0 PROPOSAL:

3.1 The application is seeking planning permission for the erection of two dwellings.

- 3.2 It is proposed to have two detached, two-storey dwellings with two, off street parking spaces each to the front and rear gardens. Those would have an understorey as the land falls from the highway/north to south. Both dwellings would have part of their rear elevation at lower ground level as a covered patio area.
- 3.3 The dwellings would be finished in natural stone to the front elevation and artificial stone to the side and rear elevation with a concrete roof slate pitched roof. Fenestration would be domestic style to front and rear only.
- 3.4 In between properties, there would be an external, shared, stepped access route to the rear garden. Bins would be to the front of the property boundary with an Electric Charging Vehicle Point for each of the two off street parking spaces per property.

3.5 *Plot One*

Plot one's dwelling would be 70.7sqm in overall footprint. It would appear as 7.5m overall height to ridge and 5.25m to eaves from the highway ground level; at rear, it would appear as 10.25m overall height with eaves at 8m height from ground level. It would be 9.6m width and 7.4m depth.

Internally, it would offer kitchen and dining rooms to lower ground, living room, snug, study and W.C to ground floor, and three double bedrooms (one with ensuite) and a bathroom to the first floor.

3.6 *Plot Two*

Plot two's dwelling would appear as a two-storey dwelling with a single-storey side projection set back 0.3m from the primary elevation. It would be 70.8sqm in overall footprint to the main body and 16.7sqm footprint to the side projection. It would appear aligned to Plot one as 7.5m overall height to ridge and 5.25m to eaves from the highway ground level; at rear, it would appear as 10.25m overall height with eaves at 8m height from lower ground level. It would be 9.6m width and 7.4m depth.

The west elevation's side projection would be 2.4m wide and 7.1m depth with an overall height of 4.7m and eaves height of 2.6m from ground level at highway level. It would have an understorey at rear, finishing 7.5m in height to ridge and 5.3m height from lower ground level.

Internally, it would offer kitchen, dining and garden rooms to lower ground, living room, snug, utility and W.C to ground floor, and three double bedrooms and a bathroom to the first floor.

3.7 Boundary treatments include:

- Front: low level natural stone wall with metal railings limited to 0.9m in height overall from ground level.
- Front flank: low level natural stone wall with close boarded timber fence limited to 1.8m height overall from ground level.
- Outer flank rear: artificial stone-faced retaining wall with close board timber fencing over. Maximum height 1.8m overall from ground level.

- Rear and inner flank: close boarded timber fence 1.8m height from ground level.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 2016/93544 Outline application for residential development.
Conditional Outline Permission

4.2 No Enforcement History.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

5.1 The agent was requested to re-check that the correct Certificate of Ownership was submitted and confirmed after their checks that Certificate A was valid. Officers accept this matter in good faith and further investigation into land ownership is not considered to be appropriate / necessary in this case.

6.0 PLANNING POLICY:

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

6.2 Kirklees Local Plan (2019):

- LP 1 – Presumption in favour of sustainable development
- LP 2 – Place shaping
- LP 3 – Location of new development
- LP 7 – Efficient and effective use of land and buildings
- LP 21 – Highways and access
- LP 22 – Parking
- LP 24 – Design
- LP 28 – Drainage
- LP 30 – Biodiversity & Geodiversity
- LP 33 – Trees
- LP 51 – Protection and improvement of local air quality
- LP 52 – Protection and improvement of environmental quality
- LP 53 – Contaminated and unstable land

6.3 Supplementary Planning Guidance / Documents:

- Highways Design Guide SPD
- Housebuilders Design Guide SPD (2021)
- Nationally Described Space Standards
- National Design Guide
- Waste Management Design Guide for New Developments (Oct 2020, v.5)
- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)

6.4 National Planning Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

6.5 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 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

6.6 Legislation

- The Town & Country Planning Act 1990 (as amended).
- The Planning and Compulsory Purchase Act 2004.
- The Conservation of Habitats and Species Regulations 2017

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was publicised in accordance with statutory publicity requirements via neighbour notification letters.

7.2 The site was initially advertised as 'adj. 153 Longwood Road', while this is still accurate, for clarity following comments received, the application was re advertised with the site referenced as 'adj. 155 Longwood Road' as the site is immediately adjacent to no. 155. Plans were retitled to reference no. 155. This revised publicity date had a final expiry date of 30/05/2024.

7.3 Final revised publicity date expired: 30/05/2024

7.4 In response to publicity, 14 representations have been received objecting with one of those being a received petition with 37 signatures and one duplicate representation. The concerns raised within these representations are summarised as follows:

Biodiversity

- Impact on biodiversity/protected species/trees disputed

Highway Safety

- Impact on traffic and congestion from four additional cars
- Entrance would be close to a bollard with harm to highway safety
- Building work would harm highway safety

Ownership and impact on private land

- Application would encroach on easement present on the land (to the west side) and is not under sole ownership.
- Use of heavy machinery and spoil will affect my land.

Public Right of Way

- The building works would impact on the PROW (ref: HUD/313/10).

Residential Amenity

- Construction Noise

7.5 *In relation to ownership:*

The Certificate of Ownership had been re-confirmed with the agent and is accepted in good faith by the Local Planning Authority. This was confirmed by the agent as a true record. In the event that planning permission is approved, an informative would be added to any grant of permission advising the applicant that land ownership is a legal matter which is not overridden by any grant of planning permission.

7.6 *Cllr B Armer (Kirkburton Ward):* A comment was received regarding terraced housing on Longroyd Bridge and bats being affected by potential roof repair. Ecology matters are addressed in the report below.

8.0 CONSULTATION RESPONSES:

8.1 Below is a summary of the consultee responses. Where appropriate, these are expanded on in the main assessment.

8.2 Non-statutory:

KC Highways Development Management – No objections.

KC Trees – No objections.

KC Environmental Health –No objections.

KC Ecology – Support. Recommended EDS following second site appraisal (following representations received).

KC Highway Structures – No objections.

9.0 MAIN ISSUES

- Principle of development
- Impact on visual amenity
- Impact on Residential amenity
- Housing issues
- Highway issues
- Drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

Sustainable Development

- 10.1 Policy LP1 of the Local Plan states that when considering development proposals, the council will take a positive and proactive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
- 10.2 Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan. Policy LP24 of the KLP is relevant and states that “good design should be at the core of all proposals in the district”.
- 10.3 The Principles in the Housebuilders Design Guide SPD have been used as a guide in considering the proposal’s visual amenity impact on the streetscene and host.
- 10.4 Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Housing Supply

- 10.5 The 2024 update of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land, and the 2022 Housing Delivery Test (HDT) measurement which was published on 19th December 2023 demonstrated that Kirklees had achieved a 67% measurement against the required level of housing delivery over a rolling 3-year period (against a pass threshold of 75%).
- 10.6 As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, and delivery of housing has fallen below the 75% HDT requirement, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making “Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (NPPF Footnote 7) ; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”
- 10.7 The Council’s inability to demonstrate a five-year supply of housing land, or pass the Housing Delivery Test, weighs in favour of housing development but this has to be balanced against any adverse impacts of granting the proposal. The judgement in this case is set out in the officer’s assessment.’
- 10.8 Policy generally seeks to support residential development upon unallocated sites of which this site is unallocated for development.

- 10.9 However, Policy LP7 establishes a desired target density of 35 dwellings per hectare unless the individual site characteristics dictate a lower density of development. This is further clarified by Principle 4 of the Housebuilders Design Guide which states that densities lower than 35 per hectare are only permitted in line with Local Plan Policy LP7.
- 10.10 In addition, LP7 echoes Chapter 11 of the National Planning Policy Framework in supporting efficient use of land using previously developed land not of high environmental value, however it also notes that land used for housing should be in keeping with the character of the area and the design of the scheme.
- 10.11 Policy LP3 of the LP is also of relevance insofar as it requires development to deliver homes in a sustainable way.
- 10.12 The application site measures 500.89sqm with a rectangular narrow site running parallel to the highway; a higher density would lead to issues in relation to parking / amenity space provision and would likely lead to overdevelopment of the site. It is deemed that 2 dwellings on this site would meet the requirements of LP7, be compatible with the surrounding development density and therefore is acceptable. The site is close to frequent public transport links and 310m to Paddock Local Centre within easy walking distance which ensures the site is a sustainable location.
- 10.13 However, the provision of housing needs to be balanced against all material planning considerations outlined below.

Impact on visual amenity

- 10.14 The NPPF offers guidance relating to design in Chapter 12 (achieving well designed and beautiful places) whereby paragraph 131 provides a principal consideration concerning design which states: *“The creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 10.15 Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.
- 10.16 LP24 states that proposals should promote good design by ensuring: *“a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape...”*
- 10.17 Paragraph 134 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

- 10.18 Principle 2 of the Kirklees Housebuilders Design Guide SPD states that: *“New residential development proposals will be expected to respect and enhance the local character of the area by:*
- *Taking cues from the character of the built and natural environment within the locality.*
 - *Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
 - *Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context.”*
- 10.19 Principle 5 of this SPD states that: *“Buildings should be aligned and set-back to form a coherent building line and designed to front on to the street, including corner plots, to help create active frontages. The layout of the development should enable important views to be maintained to provide a sense of places and visual connections to surrounding areas, and seek to enable interesting townscape and landscape features to be viewed at the end of streets, working with site topography.”*
- 10.20 Amongst other considerations, Principle 6 sets out that *“for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.”*
- 10.21 Principle 8 guides Officers to carefully consider the transition from urban to open land and how the development would *“make a positive contribution to the character and function of the landscape through sensitive siting and good design.”*
- 10.22 Relating to parking, Principle 12 requires Officers to have regard towards good design by providing visually well integrated parking with landscaping to screen its appearance and not to appear as overly dominant, hard surfaced feature in the streetscene where possible.
- 10.23 In addition to this, Principle 15 states that the design of the roofline should relate well to site context. Further to this, Principle 13 states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area, whilst Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.
- 10.24 The proposal would be modestly below with the similar roofline and behind the strong building line established by terraced housing rows to the west and be behind nos. 153 and 155 to the east. It is noted that nos. 133 and 135 further east have a similar building line to the proposed and therefore the proposal would appear in keeping with the modestly varied building line to be acceptable.
- 10.25 The proposed dwellinghouses would be separated by ~0.86m to both flank boundaries with a separation distance of 1m between the new dwellings. This would not comply with Principle 2 which aims to ensure that there be a sense of openness between neighbours however it is considered that the streetscene is dominated by terraced housing with examples of more recent development being semi-detached or detached with minimal property gaps to boundary.

- 10.26 Development within the existing open area would remove a degree of existing openness within the streetscene as raised in third party comments. However, it would achieve a setback of 6m to the footway in keeping with existing development and achieve some openness with the set back and reduced roofline of the side projection to Plot 2, adjacent to single-storey structures and would not appear cramped or incongruous on the streetscene.
- 10.27 If the neighbouring single-storey structures are replaced by two-storey side extensions, the single-storey side projection will adequately ensure that there would be no terracing. For these reasons, the proposal would be characteristic with its surrounding dense development and would retain a satisfactory level of openness.
- 10.28 The general design of the dwellings would be of a scale and roofline similar to that of adjacent properties, allowing the dwellings to sit comfortably within the street scene. The recessed rear element of the properties would visually be of low impact to the streetscene and therefore acceptable with some benefits in providing some additional sheltered outdoor amenity space for the future occupiers.
- 10.29 The use of natural stone to the frontage and artificial stone to the side and rear is on balance considered to be acceptable given that the site is not within a Conservation Area or near any Listed Building. To ensure that the two different materials match well to each another, in the event that planning permission is approved, a condition is recommended to be attached in the interests of visual amenity. The design of the properties carries through similar sized window proportions to that on the adjacent properties which would be in keeping with the local character.
- 10.30 The properties would have its parking to the front with hard surfacing part screened by a low natural stone wall with metal railings atop to provide visual interest and be in keeping with its setting. Whilst soft landscaping strips would have been preferred to soften the front amenity space, it is noted that this would have an excessively restrictive impact on safe parking and highway safety by minimising the space useable for manoeuvring to enter the highway in forward gear on a classified road. In this limited instance, Officers propose that this would be acceptable as it would appear visually in keeping with the streetscene existing hard surfaced front amenity spaces
- 10.31 The proposal would retain sufficient garden space at rear to ensure that the scheme would appear to have a rear garden curtilage similar to its neighbours and the boundary treatment would be in keeping with the locality and be acceptable.
- 10.32 With the inclusion of the aforementioned conditions, the proposal is therefore regarded as acceptable for permission in this regard as it would not significantly harm the visual amenity of the area and be acceptable and accord with Policies LP02 and LP24 of the Local Plan, the Principles of the Housebuilders Design Guide SPD and Chapter 12 of the NPPF.

Residential Amenity

10.33 Sections B of Policy LP24 of the Kirklees Local Plan states that proposals should:

“...provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings.”

10.34 Further to this, Paragraph 135f) of the National Planning Policy Framework 2023 states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

10.35 Principle 6 of the Housebuilders Design Guide SPD seeks to ensure that housing maintains high standards of residential amenity by setting the relevant recommended separation distances:

- 21 metres between facing windows of habitable rooms at the backs of dwellings
- 12 metres between windows of habitable rooms that face onto windows of a non-habitable room;
- for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary

10.36 *No. 173 Longwood Road*

This property has a blank side elevation to the host and two single-storey structures both with no side windows, appearing as garaging facilities. The single-storey structures are marked as no. 171 on the proposed site plan but are not recorded as a dwelling on Council records. Plot 2 has no windows to its side elevations to overlook no. 173 in this regard.

The Proposal would have a single-storey structure adjacent which would be of an overall height more than 4m, however it would still appear of limited single-storey height and would not appear visually overbearing. Overall, the single-storey projection and the host height positioned to the east of no. 173 would not provide significant overshadowing to this neighbour aided by no. 173's blank side elevation.

10.37 *No. 155 Longwood Road*

This neighbour has a single-storey structure projecting forward of the host building with a small window to the host's first floor, two windows to ground floor of the single-storey projection and one small window to the under storey of the projection at the side elevation. During the site appraisal, the windows to the projection appeared to be for storage and a discussion with the tenant confirmed that it was for 'cellar' use; examination of property sales records suggest the last sale of the property was circa 2021 but no floor plans were supplied to fully assess this.

Plot 1's side elevation would be separated from this property's closest side elevation by 2.5m and would be set back behind no. 155 significantly; this would still retain a 45 degree field of outlook to the window closest to the highway and be acceptable in this regard.

From the site appraisal, the small first floor window appears to serve a bathroom and would be adequately separated by ~4.8m to the new dwelling positioned west of the neighbour to not appear overbearing and to have very restricted overshadowing effects in order to be acceptable. The lower ground window being below highway level would not have significant additional impacts to outlook and overshadowing from the proposed dwelling. It is noted that the remaining ground floor window is given over to storage use; this would be separated by 2.5m to dwelling and would have a limited overbearing impact. In this instance, the non-habitable room use with outlook affected to one window indicates that the impact of the dwellinghouse sited to the west, in terms of overshadowing, overbearing and loss of outlook, would be limited enough to be acceptable.

10.38 *Nos. 110, 116, 118, 122 and 124 Longwood Road*

The properties would be sited ~23.5m to the south of those neighbours and would therefore exceed recommended minimum separation distances between habitable windows as set out in Principle 6 of the SPD. The distance would also adequately ensure that there would be no overbearing or overshadowing to those neighbours from the proposal.

10.39 *Lower Gate*

The proposed development would comfortably exceed minimum separation distances away from any other neighbouring properties on Lower Gate to the south on lower ground so as to prevent undue harm to these properties in terms of loss of light, loss of privacy or overlooking, or the creation of an overbearing effect.

10.40 Comments have been received in representations of the issue of noise during construction. These matters are outside the remit of the planning system and regularised by separate legislation. However, in the event that planning permission is approved, it is recommended that an advisory note is added to any decision providing information on the recommended methods and hours of construction.

10.41 Officers recommend a condition on finished floor levels for avoidance of doubt for residential amenity. Subject to this condition, the proposal would therefore comply with Policies LP24 of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD, and Chapter 12 of the National Planning Policy Framework.

Biodiversity/Tree issues

10.42 In terms of Biodiversity Net Gain as set out by the statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). The development is considered to benefit from the minor sites exemption as set out by The Biodiversity Gain

Requirements (Exemptions) Regulations 2024 (as the application was received prior to April 2024) and there is no requirement for BNG to be provided in respect of the aforementioned legislation.

- 10.43 Notwithstanding this point, consideration of Biodiversity and Trees is a requirement of Principle 9 of the Housebuilders Design Guide SPD, LP30 and LP33 of the Kirklees Local Plan is relevant.
- 10.44 Whilst it is acknowledged that the site is located within an identified bat alert area and the Kirklees Wildlife Habitat Network, the proposals are relatively modest and therefore considered unlikely that the proposals would have an impact on the bat population. Whilst the site may be used by bats for travel / foraging, it is considered the buildings proposed would not prevent this continued movement, and that a level of ecological features could be retained which compliment the use of the site for foraging.
- 10.45 A representation raising concerns regarding bats to a terraced row nearby were received, however, following review by the Council's Ecology Officer in two site appraisals, Officers concur that, for the scale of this development, in the event that planning permission is approved, an informative in relation to the requirements of law relating to bats would be sufficient in this case. The inclusion of an informative making the applicant aware that if bats are discovered on site during the works, any development shall cease and the applicant is advised to contact Natural England for advice on how to move forward is therefore recommended.
- 10.46 The Council's Ecology Officer reviewed the site and does not object to the scheme. They recommended the inclusion of a condition to ensure wildlife and biodiversity enhancement. Following receipt of representations and their content the site was further discussed with the Council's Ecology Team, who reviewed the site further in terms of a desk top analysis including review of photographs of the site which were taken in April 2024.
- 10.47 They have confirmed they remain of the view that subject to condition, the proposal would not have a significant impact upon the Kirklees Wildlife Habitat Network and would satisfy the aims of policy LP30 of the Kirklees Local Plan, Principle 9 of the Housebuilders Design Guide SPD and policies within Chapter 15 of the National Planning Policy Framework.
- 10.48 The site was reviewed by the Council's Trees Officer in relation to the mature trees present to the south of the site. The ground changes to the rear gardens to level those out have not been assessed as significant and would not affect the trees root protection areas below the existing ground level. It is also noted that whilst some trees are of mature growth, they are not protected specifically for their amenity value under Tree Preservation Orders or by being in a Conservation Area and were not considered as potential future candidates for Tree Preservation Order status.
- 10.49 In this instance, given the separation distance of the buildings and the lower ground level of the trees, Officers advise that in the event that planning permission is approved, an Arboricultural Method Statement is secured via condition to ensure the protection of those trees would not be required for the aims of LP33 of the Kirklees Local Plan and Chapter 15 of the NPPF.

10.50 Taking account of the responses of consultees, it is considered that the proposal would have an acceptable impact upon ecology and biodiversity, subject to inclusion of a condition requiring a level of biodiversity enhancement / mitigation the proposal is considered to meet the requirements of the aforementioned policies. Those are Policies LP30 and LP33 of the Kirklees Local Plan, Principle 9 of the Housebuilders Design Guide SPD, and Chapter 15 of the National Planning Policy Framework.

Highway issues

10.51 Turning to highway safety and parking, policies seek to ensure that new developments have an acceptable impact on highway safety and provide sufficient parking. The Highways Design Guide SPD advises that new development should have sufficient off street parking spaces to meet need and to ensure on street parking impact is limited.

10.52 For 3 bedroom dwellings, they should have a minimum of 2 off street parking spaces to achieve this aim. Confirmed by the Highway Development Management Officer, each property benefits from two off-street parking spaces, and the drawings submitted show that turning within the site is available for vehicles enter and exit the site in forward gear, which is acceptable.

10.53 Third parties have commented that the impact on traffic and congestion from four additional cars would be detrimental to highway safety however it is noted that the expected traffic generation for two properties on a classified road would not be excessive and would have its impacts adequately limited by the parking areas. The bollard location was reviewed by the Highway Development Management Officer in an informal review and is considered to be situated at a sufficient distance so as to not detract from highway safety.

10.54 The proposal would require changes to the access within the adopted highway fronting the property which would need to be constructed under a Section 184 agreement of the 1980 Highways Act (vehicle crossings over footways and verges). In the event that planning permission is approved, a footnote is recommended to be attached with regard to obtaining approval of the construction specification for the safe functioning of the highway. Interference with the highway without such permission is an offence which could lead to prosecution.

10.55 The approved vehicle parking areas will need to be surfaced and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded.

10.56 Bin storage have been sited away from the properties and still allows for an adequate visibility splay from the central access. In addition, it is noted that the metal railings and low stone wall to the front would be limited to 0.9m overall height from ground and that this would achieve sufficient visibility for vehicles using the parking area to be acceptable. Nonetheless officers recommend an informative to the Decision to ensure that developers are aware of their responsibilities to reduce fire risk and to make minor modifications to bin presentation points in this regard.

- 10.57 With regard to building work obstructing the highway, for this small-scale development, the works would be adequately managed by legislation and regulations on highways and safety. This would not need to be conditioned.
- 10.58 The Highway Structures Officer was formally consulted and advised that a condition be attached to any approval to ensure the continued safety of the highway for the construction works. Officers recommend that in the event that planning permission is approved, this be attached.
- 10.59 Subject to conditions, the proposed development would therefore comply with Policies LP21 and 22 of the Kirklees Local Plan, Principles 12 and 19 of the Housebuilders Design Guide SPD, the KC Highway Design Guide SPD and Chapter 9 of the National Planning Policy Framework.

Drainage issues

- 10.60 Policy LP28 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework are considered to be relevant in terms of foul/surface water drainage.
- 10.61 The site is within Flood Zone 1, that is land at the lowest risk of flooding (land assessed as having a less than 1 in 1,000 annual probability of river flooding). In addition to this there are no specific drainage risks associated with the site (e.g., river, culvert).
- 10.62 Considering the parking areas and manoeuvring spaces, a condition would be recommended to ensure adequate drainage through permeable surfaces or via soft landscaping in accordance with Communities and Local Government; and Environment Agencies 'Guidance on the permeable surfacing of front gardens (parking areas)' to comply with Policy LP28 of the Kirklees Local Plan and the Highways Design Guide SPD.

Land Ownership

- 10.63 Representations have been made regarding lawful land ownership and easements.
- 10.64 The Certificate of Ownership had been re-confirmed with the agent and is accepted in good faith by the Local Planning Authority. This was confirmed by the agent as a true record. In the event that planning permission be approved, an informative is recommended to be added advising the applicant that land ownership is a legal matter which is not overridden by any grant of planning permission.

Public Right of Way (PROW)

- 10.65 Representations have been made regarding the PROW and the impact of development on this. There is a registered PROW (ref: HUD/313/10) which would have the rear boundary of the development sited 20m north of the PROW and is on higher ground. Any works are considered to be at a sufficient distance to avoid impact to the PROW.

Highway Structures

- 10.66 The site is sloped and adjacent to a highway and Highway Structures had been formally consulted. There are no retaining walls/structures proposed other than what is necessary within the houses themselves to be sited on sloping land and to provide the rear understorey. In the event that planning permission is approved, it is recommended to include a Highway Structures condition to ensure the safe running of the highway with regard to any erection of permanent or temporary retaining walls/structures within the development prior to the development commencement. This would satisfy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

Representations

- 10.67 14 representations have been received with one of those being a received petition with 37 signatures and one duplicate representation. Those have been considered within the assessment of this application and are addressed in the relevant sections in the report above and summarised as follows:

Biodiversity

- Impact on biodiversity/protected species/trees disputed
Officer response: This is addressed at paragraphs 10.41 to 10.49.

Highway Safety

- Impact on traffic and congestion from four additional cars
- Entrance would be close to a bollard with harm to highway safety
- Building work would harm highway safety
Officer response: This is addressed at paragraphs 10.50 to 10.58.

Ownership and impact on private land

- Application would encroach on easement present on the land (to the west side) and is not under sole ownership.
- Use of heavy machinery and spoil will affect my land.
Officer response: This is addressed at paragraphs 10.62 and 10.63.

Public Right of Way

- The building works would impact on the PROW (ref: HUD/313/10).
Officer response: This is addressed at paragraph 10.64.

Residential Amenity

- Construction Noise
Officer response: This is addressed at paragraph 10.40.

Planning obligations

- 10.68 N/A

Other Matters

- 10.69 N/A

11.0 CONCLUSION

- 11.1 The NPPF 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 practise.
- 11.2 The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions, it is considered that the proposed development would constitute sustainable development and therefore is recommended for approval.

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

1. Time limit to commence development
2. Plans list
3. Approval of materials
4. Highway structures
5. Boundary treatments
6. Finished floor levels to be in accordance with plan
7. Drained surfaces for parking
8. Biodiversity enhancement plan
9. Land contamination phase 1
10. Land contamination phase 2
11. Remediation Strategy
12. Works to be carried out in accordance with Remediation Strategy
13. Verification of Remediation Strategy

Background Papers:

[Planning application details | Kirklees Council](#)

Application and history files.

[Website link](#)

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