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

Samantha Lawton

Governance and Commissioning

PO Box 1720

Huddersfield

HD1 9EL

Tel: 01484 221000

Please ask for: Andrea Woodside

Email: andrea.woodside@kirklees.gov.uk

Wednesday 23 October 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 31 October 2024**.

(A coach will depart the Town Hall, at 9.15am 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.

The District-Wide Planning Committee

Member

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

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

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 19 September 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 No: 2023/91715

Demolition of existing mosque and erection of mosque and education centre Mohaddis E Azam Education Centre And Masjid E Madani at 225C, Ravenshouse Road, Dewsbury Moor, Dewsbury.

Ward affected: Dewsbury West

Contact: Sarah Longbottom, Planning Services

(Estimated time of arrival at site – 10.00am)

8: Site Visit: Planning Application No: 2024/91907

Change of use of dwelling (C3) to children's residential home (C2) at 18 Kingfisher Way, Dewsbury.

Ward affected: Dewsbury East

Contact: Edward Cheseldine, Planning Services

(Estimated time of arrival at site – 10.20am)

9: Site Visit: Planning Application No: 2024/91202

Erection of eight dwellings with associated access and external works at land off Marsh Lane, Shepley, Huddersfield.

Ward affected: Kirkburton

Contact: Nina Sayers, Planning Services

(Estimated time of arrival at site – 11.05am)

10: Site Visit: Application for Definitive Map Modification Order

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.

Ward affected: Colne Valley

Contact: Deborah Stephenson, Assistant Definitive Map Officer

(Estimated time of arrival at site – 12.00 noon)

11: Planning Applications

5 - 6

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

Please note that any members of the public who wish to speak at the meeting must register to speak by 5.00pm (for phone requests) or 11:59pm (for email requests) on Monday 28 October 2024.

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

12: Application for a Definitive Map Modification Order (DMMO)

7 - 116

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.

Ward affected: Colne Valley

Contact: Deborah Stephenson, Assistant Definitive Map Officer

13: Planning Application - Application No: 2024/91202

117 -
134

Erection of eight dwellings with associated access and external works at land off Marsh Lane, Shepley, Huddersfield.

Ward affected: Kirkburton

Contact: Nina Sayers, Planning Services

14: Planning Application - Application No: 2024/91907 135 - 148

Change of use of dwelling (C3) to children's residential home (C2) at 18 Kingfisher Way, Dewsbury.

Ward affected: Dewsbury East

Contact: Edward Cheseldine, Planning Services

15: Planning Application - Application No: 2023/91715 149 - 162

Demolition of existing mosque and erection of mosque and education centre Mohaddis E Azam Education Centre And Masjid E Madani at 225C, Ravenshouse Road, Dewsbury Moor, Dewsbury.

Ward affected: Dewsbury West

Contact: Sarah Longbottom, Planning Services

Planning Update

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

Contact Officer: Sheila Dykes

KIRKLEES COUNCIL

DISTRICT-WIDE PLANNING COMMITTEE

Thursday 19th September 2024

Present: Councillor Sheikh Ullah (Chair)
Councillor Donna Bellamy
Councillor Paola Antonia Davies
Councillor Eric Firth
Councillor Susan Lee-Richards
Councillor Mohan Sokhal

Apologies: Councillor Tony McGrath

- 1 Membership of the Committee**
Apologies were received from Councillor Tony McGrath.
- 2 Minutes of the Previous Meeting**
RESOLVED -
That the minutes of the meeting of the Committee held on 11th July 2024 be approved as a correct record.
- 3 Declaration of Interests and Lobbying**
There were no declarations of interest or lobbying.
- 4 Admission of the Public**
All items were considered in public session.
- 5 Public Question Time**
No questions were asked.
- 6 Deputations / Petitions**
No deputations or petitions were received.
- 7 Site Visit: Planning Application 2024/90881**
Site visit undertaken.
- 8 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**
The Committee considered an 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.

District-Wide Planning Committee - 19 September 2024

Under the provisions of Council Procedure Rule 37, the Committee received representations from Claire Atkinson and Paul Hobson (in objection).

RESOLVED –

That determination of the application be deferred to allow a site visit to be undertaken.

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

For: Councillors Bellamy, Paola Davies, Firth, Lee-Richards, Sokhal and Ullah (6 votes)

Against: No votes

9 Planning Application - Application No: 2024/90881

The Committee gave consideration to Application 2024/90881 in respect of the erection of two dwellings on land adjacent to 155 Longwood Road, Paddock, Huddersfield.

In accordance with Council Procedure Rule 37 the Committee received a representation from David Irving (the applicant).

RESOLVED -

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

1. 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

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

For: Councillors Bellamy, Paola Davies, Firth, Lee-Richards, Sokhal and Ullah (6 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:	31 October 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 Council's statutory duty to keep the Definitive Map and Statement (DMS) up to date and make any requisite Orders where necessary based on the discovery of evidence.

2.1.3 Please see **Appendix D** for further information including comments in reply to statements made at the last District Wide Planning Committee on 19th September 2024.

2.2 Officer Investigation

2.2.1 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**.

2.3 Current land use

2.3.1 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.

2.3.2 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.

2.3.3 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.

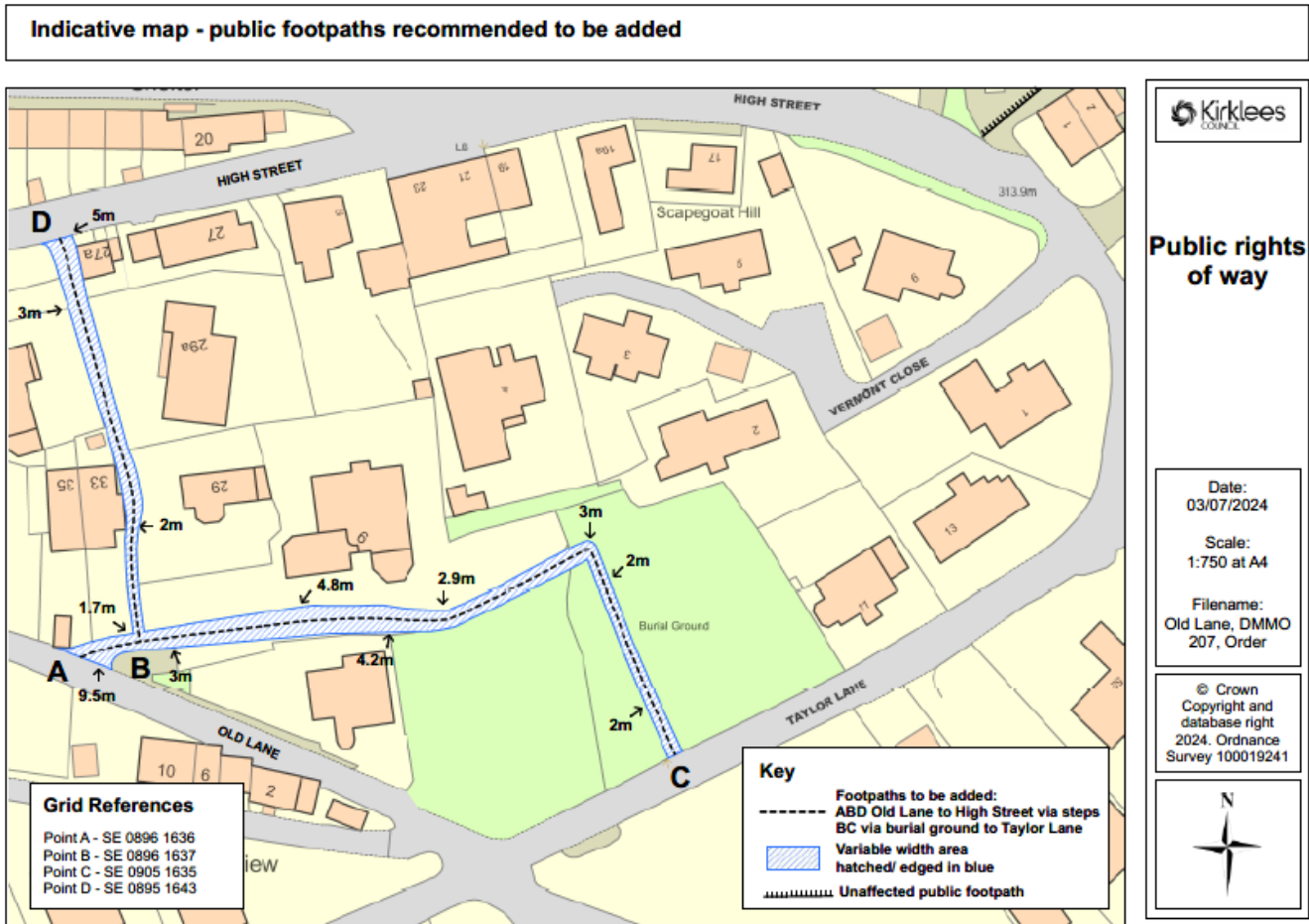
10 Appendices

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

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

Contents

Executive Summary	3
Definitive Map Modification Order (DMMO) Application	3
Planning Inspectorate Direction	4
Planning permission	4
Landownership	5
Character of application route 1	6
Character of discovered route 2	7
Character of discovered route 3	7
Statutory Provisions - Wildlife & Countryside Act 1981	8
Statutory Provisions - Highways Act 1980.....	9
Guidance for Members.....	12
Documentary Evidence Evaluation.....	13
Applicant’s historic or documentary evidence.....	13
Golcar Enclosure Award.....	14
Ordnance Survey (OS Maps)	14
Aerial photos.....	16
Finance Act 1910.....	16
Conveyances and Deeds.....	17
The National Parks And Access To The Countryside Act 1949.....	18
Highways Registry and the List of Streets	19
Conclusion on evaluation of historic or documentary evidence	19
User Evidence Evaluation	20
Bringing into Question	21
DMMO application, route 1 and 2.....	21
Gate, route 3	21
A Way	23
Evidence of Use during Relevant Periods	25

Route 1	25
Route 2	26
Route 3	26
Actually enjoyed	28
By the public.....	28
As of right - without force	29
As of right - without secrecy	29
As of right – without permission	30
Without interruption	31
Evidence of Lack of Intention to Dedicate a Public Right of Way	34
Route 1	34
Route 2	36
Route 3	37
Conclusion on a lack of intention to dedicate	39
Conclusion on presumed dedication of routes 1 and 2.....	39
Common law dedication of route 3 and conclusion	40
Width	40
Limitations.....	42
Recommendations	42
Reasons for Recommendations	43

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

Contents

Figure 1:	1952 Definitive Map	2
Figure 2:	1985 Definitive Map	2
Figure 3:	DMMO application map	3
Figure 4:	DMMO application route, and two additional discovered routes	3
Figure 5:	Extract from A Short History of the Baptist Church 1921	4
Figure 6:	Unregistered land	5
Figure 7:	Photos showing physical characteristics of application route 1	6
Figure 8:	Photos showing physical characteristics of discovered route 2	8
Figure 9:	Photos showing physical characteristics of discovered route 3	10
Figure 10:	1962 aerial photo	12
Figure 11:	1823 Golcar Enclosure Award Map	12
Figure 12:	1854 OS 6-inch map Yorkshire Sheet 246	13
Figure 13:	1893 OS 25-inch map Yorkshire CCXLV1.13	13
Figure 14:	1907 OS 25-inch map Yorkshire CCXLVI.13	14
Figure 15:	1919 OS 25 inch map Yorkshire CCXLVI.13	14
Figure 16:	1925 OS 1-inch map Sheet 31 - Leeds and Bradford	15
Figure 17:	1932 OS 25-inch map Yorkshire CCXLVI.13	15
Figure 18:	1963 1 to 2500 OS map	16
Figure 19:	2000 aerial photo	17
Figure 20:	2002 aerial photo	17
Figure 21:	2006 aerial photo	18
Figure 22:	2009 aerial photo	18
Figure 23:	2012 aerial photo	19
Figure 24:	2018 aerial photo	19
Figure 25:	1966 aerial photo route 3, EGF	20
Figure 26:	1910 Finance Act Valuation Plan	21
Figure 27:	Conveyance 6 December 1952	22
Figure 28:	Highways Registry and The List of Streets	23
Figure 29:	Summary of user evidence - all routes	24
Figure 30:	Summary of landowner statement forms	25
Figure 31:	Map of routes used by villagers	26
Figure 32:	Iron gate to burial ground from Taylor Lane at point C	27
Figure 33:	Summary of user evidence - gates	27
Figure 34:	Summary of User Evidence for Route 3 only	28
Figure 35:	Photo of hearse, parked around point E	29
Figure 36:	Summary of user evidence - obstructions	30
Figure 37:	Summary of user evidence - notices	30
Figure 38:	Landowner 1 annotated plan, showing route 2	31
Figure 39:	Photos of consultation notices on site	32
Figure 40:	Summary of consultation responses	33
Figure 41:	Draft Order map - Public footpaths recommended to be added (ABCD)	34

Figure 1: 1952 Definitive Map

Source: Kirklees Council Kompass mapping

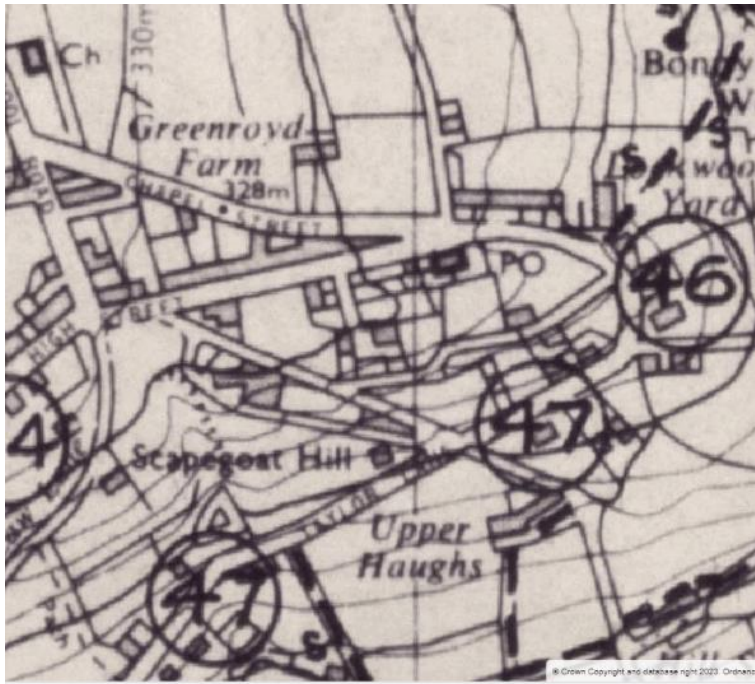


Figure 2: 1985 Definitive Map

Source: Kirklees Council Kompass mapping

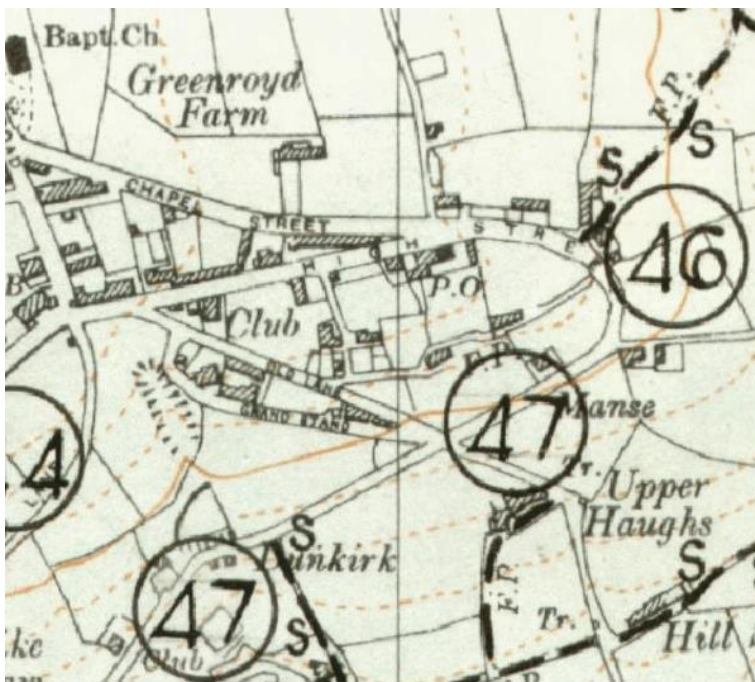


Figure 3: DMMO application map

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](#)

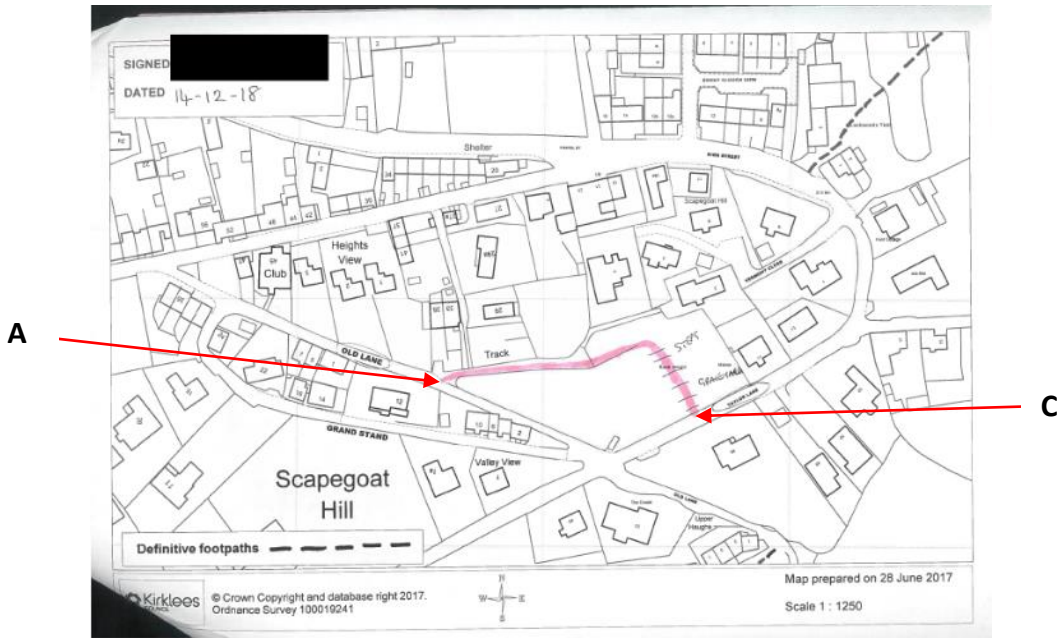


Figure 4: DMMO application route, and two additional discovered routes

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](#)

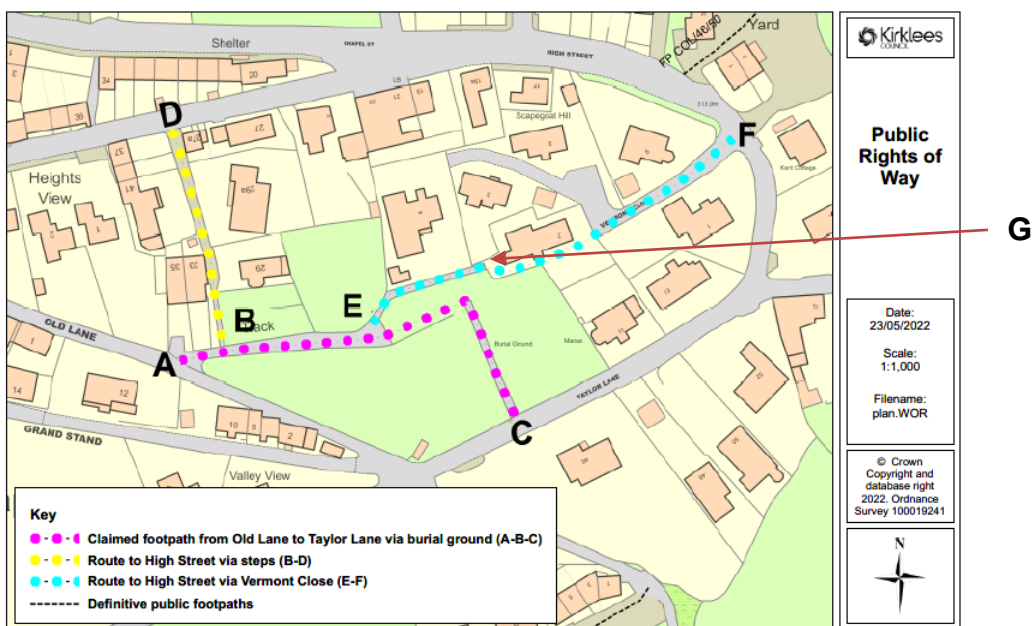


Figure 5: Extract from A Short History of the Baptist Church 1921

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>

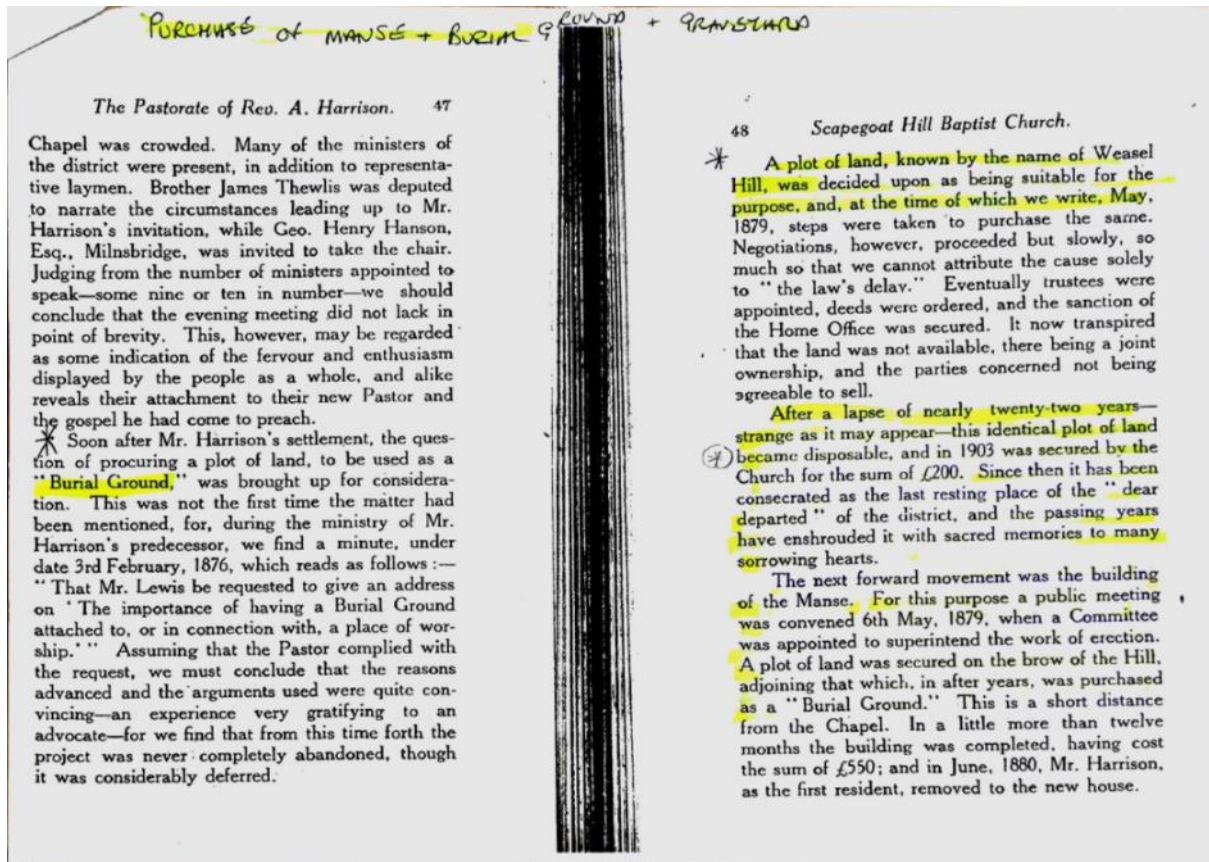
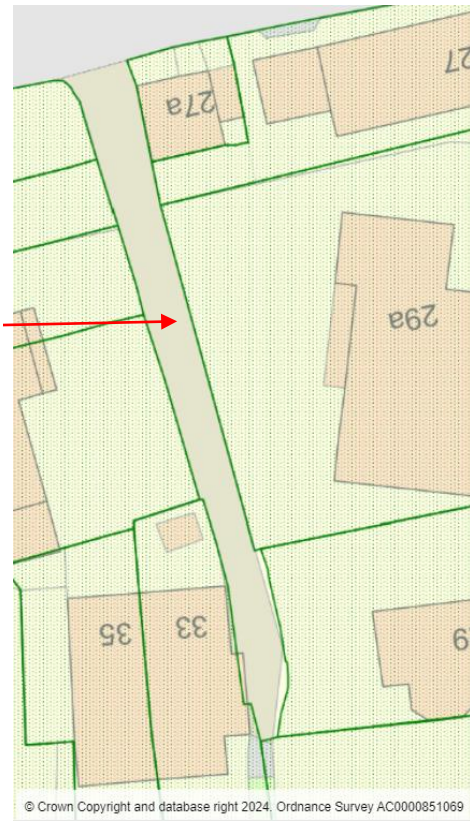


Figure 6: Unregistered land

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

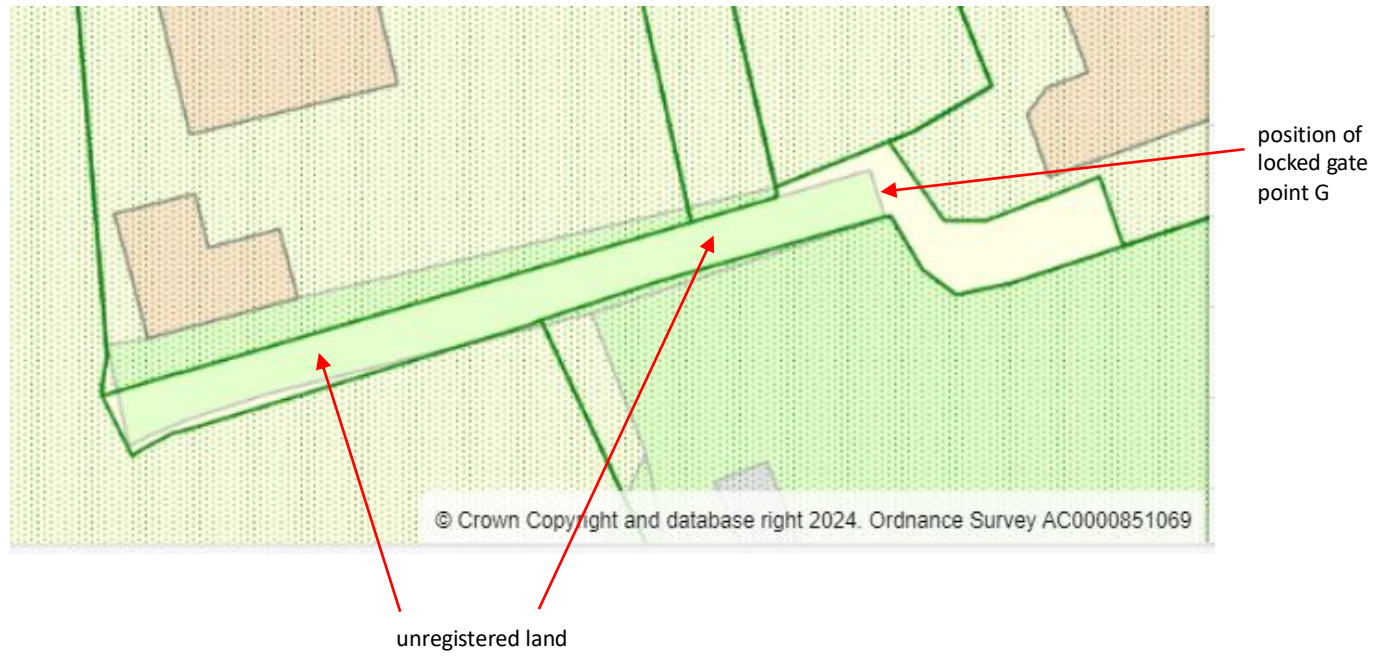


Figure 7: Photos showing physical characteristics of application route 1
Route 1, Old Lane to Taylor Lane via burial ground (ABC)



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

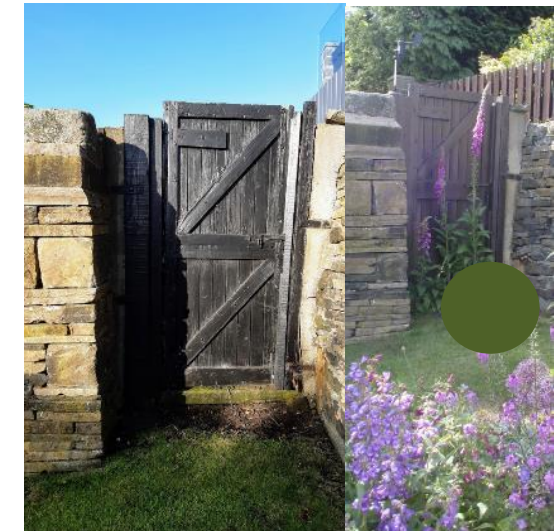


Photo 36: x2 photos of the other side of black gate point G route continues through No.2 Vermont Close (September 2019/ 2015)

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

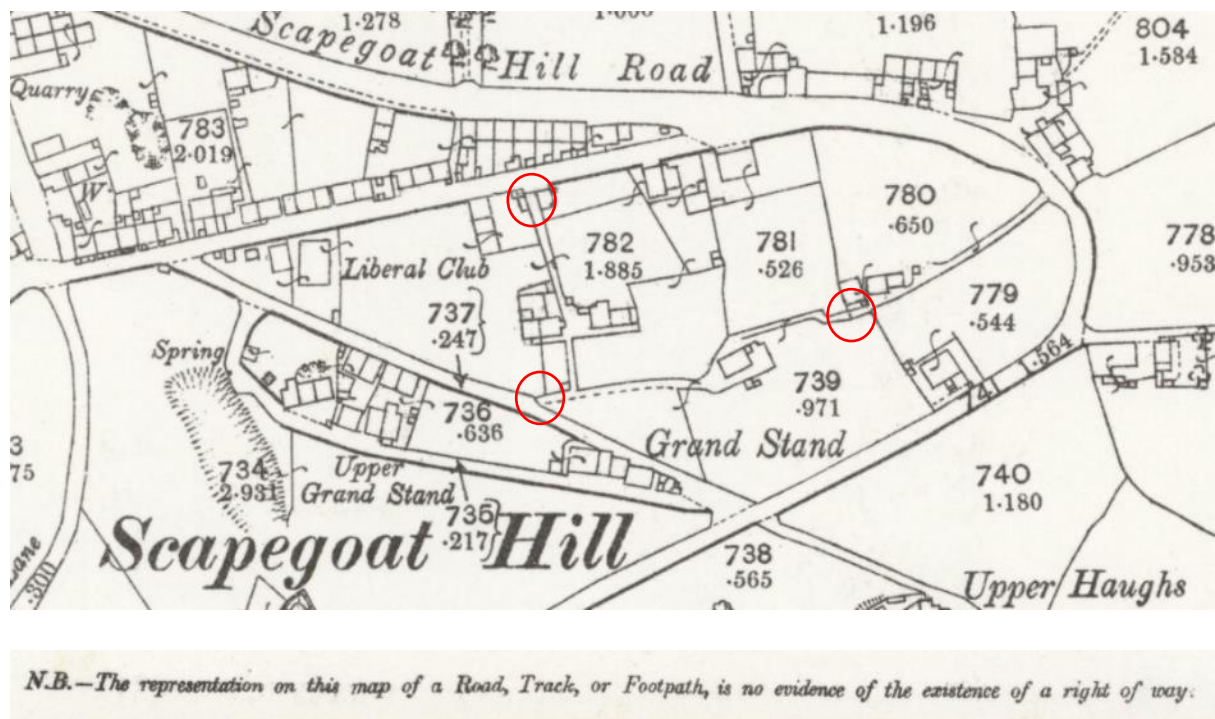


Figure 14: 1907 OS 25-inch map Yorkshire CCXLVI.13

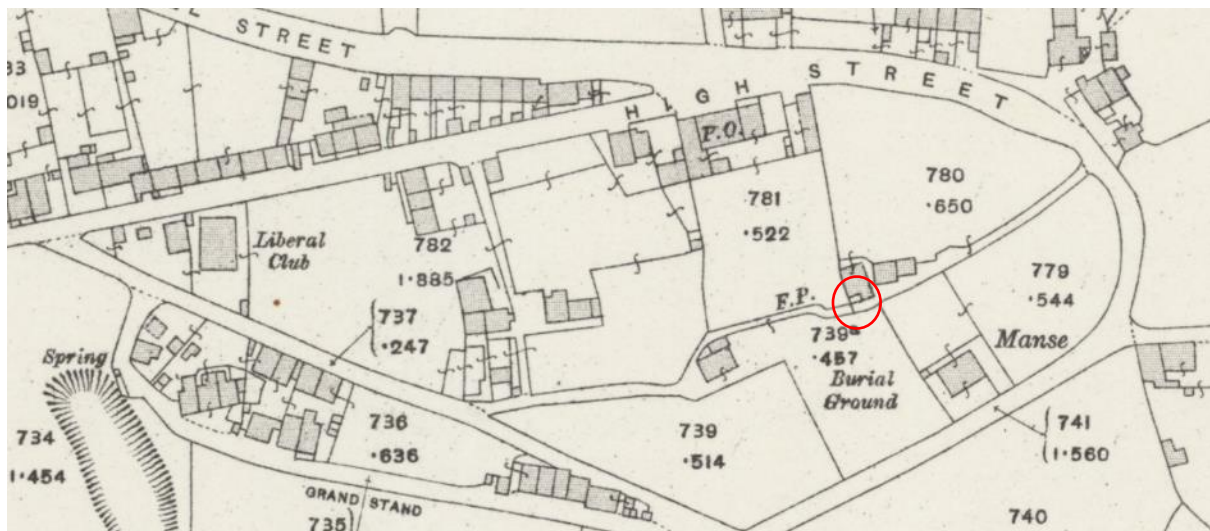
Source: [National Library of Scotland](#)
Revised 1904, Published 1907



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

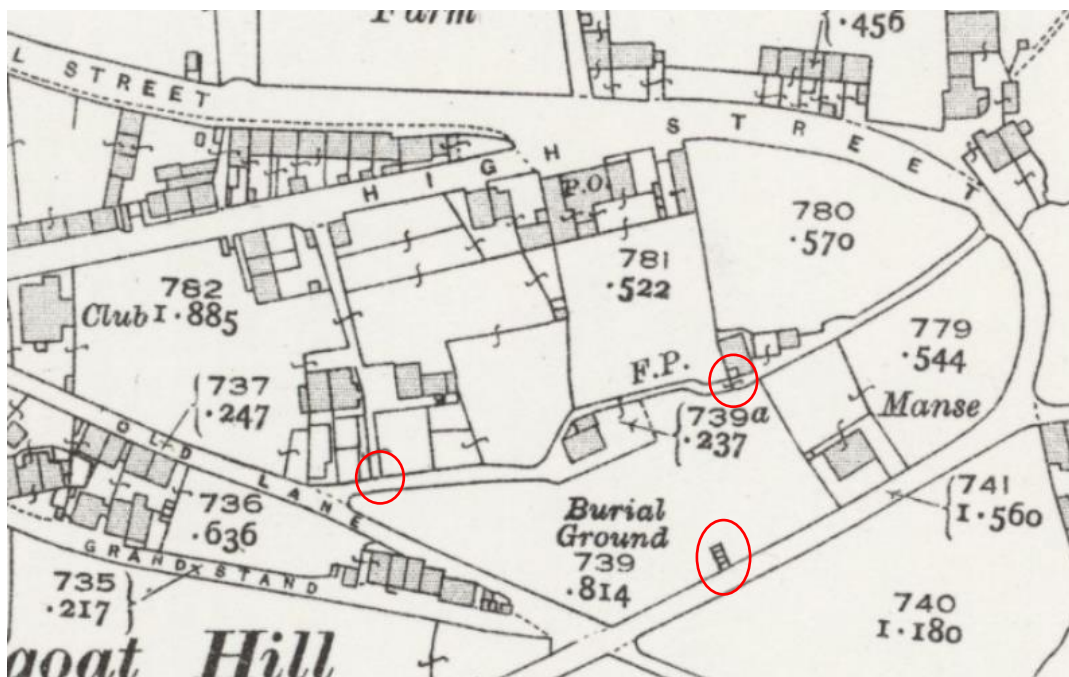
Source: [National Library of Scotland](#)
Revised 1920 to 1921, Printed 1925



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 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)

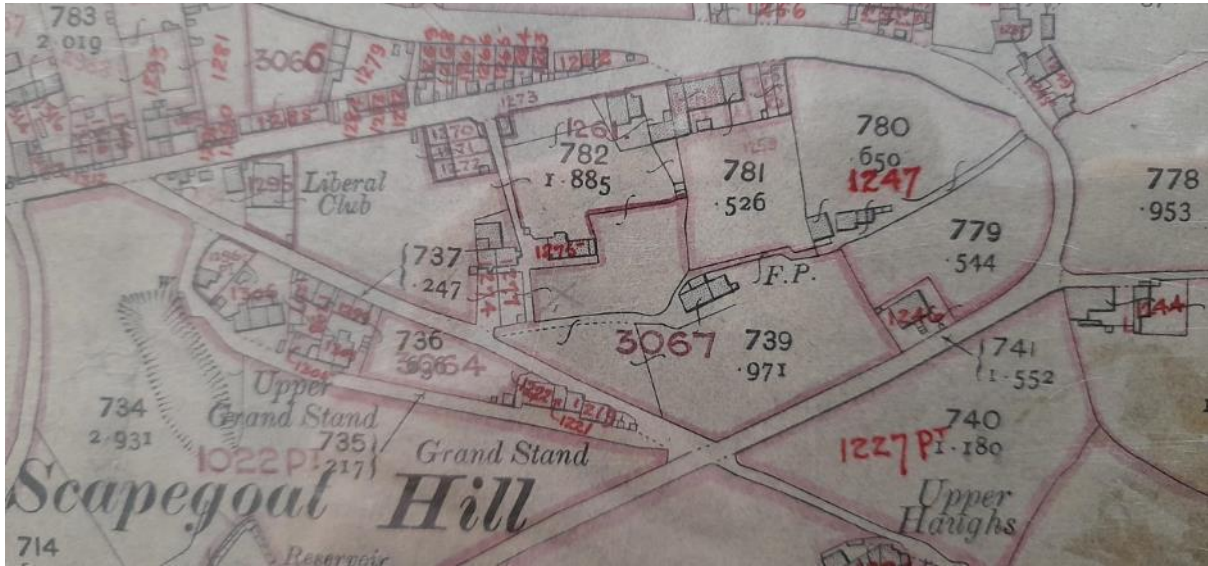
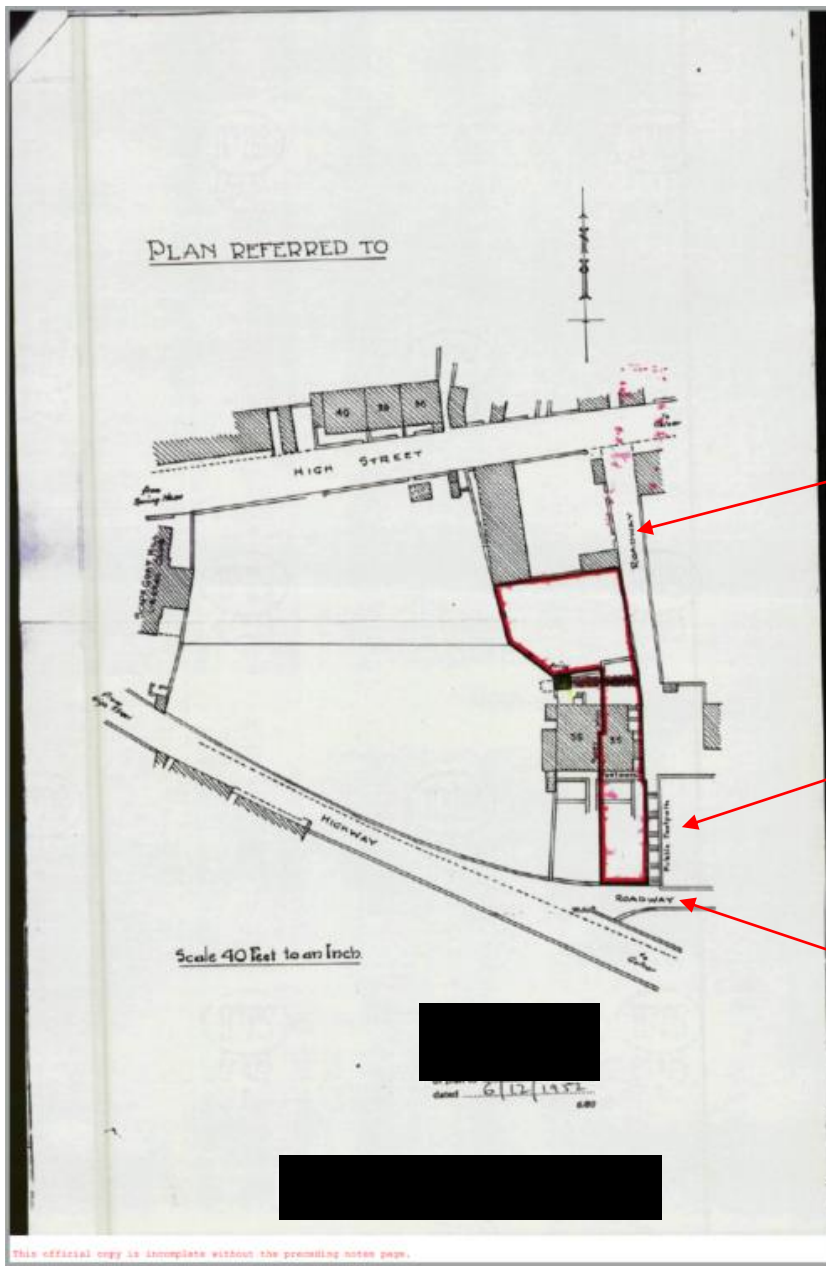


Figure 27: Conveyance 6 December 1952

Source: HM Land Registry



annotation on conveyance says 'Roadway'

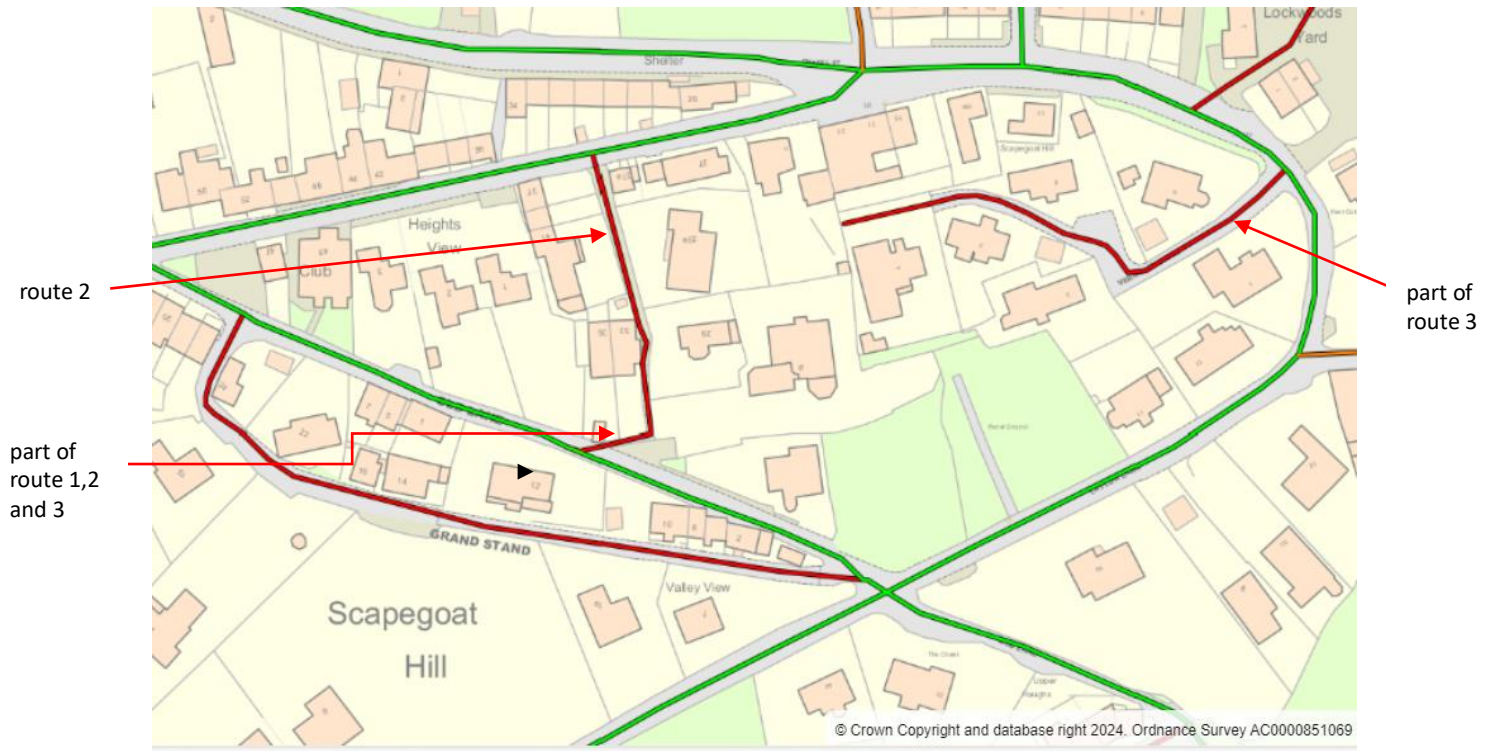
annotation on steps on conveyance says 'Public Footpath'

annotation on conveyance says 'Roadway'

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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

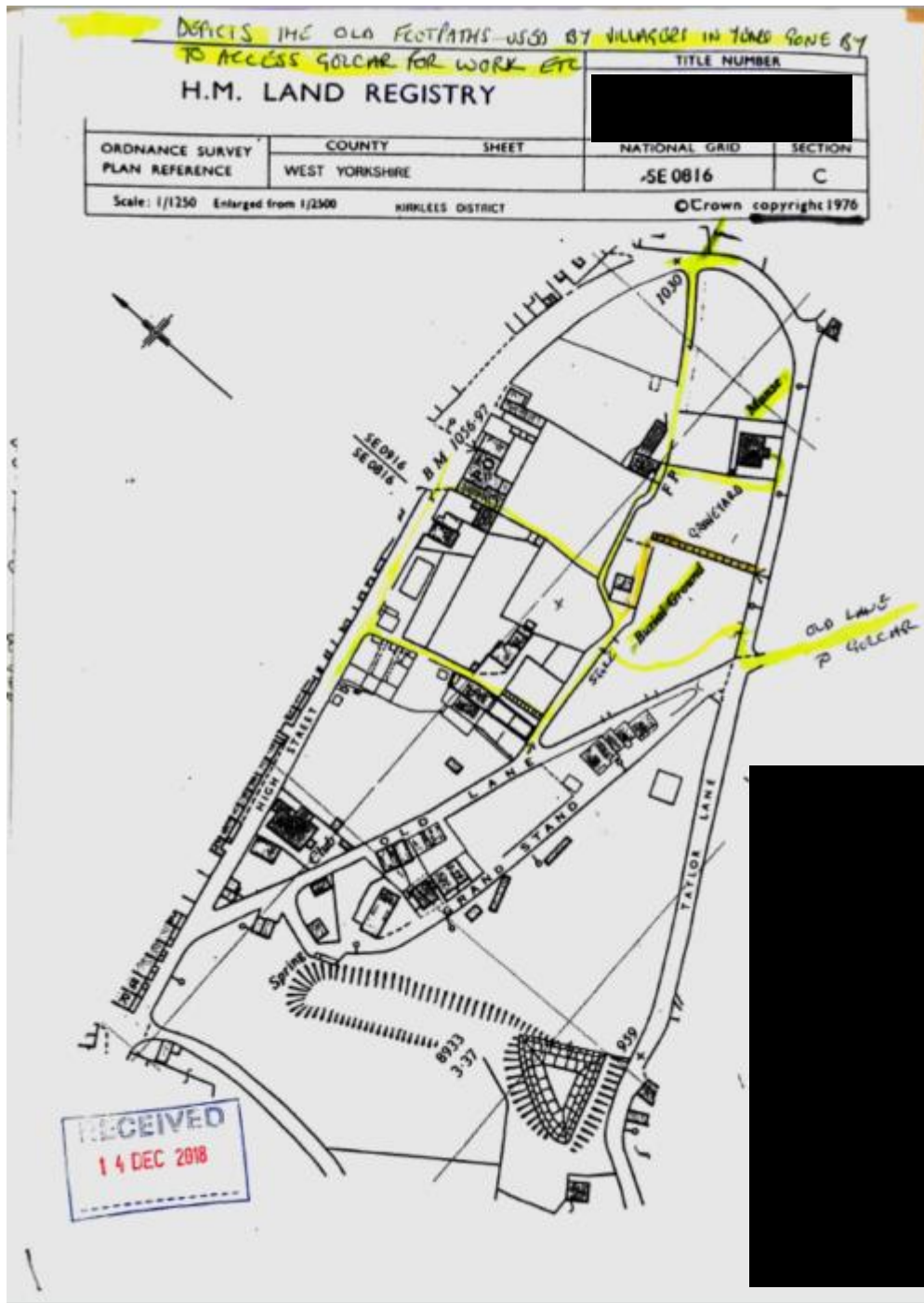


Figure 32: Iron gate to burial ground from Taylor Lane at point C

Source: Officer photo dated 19 September 2020

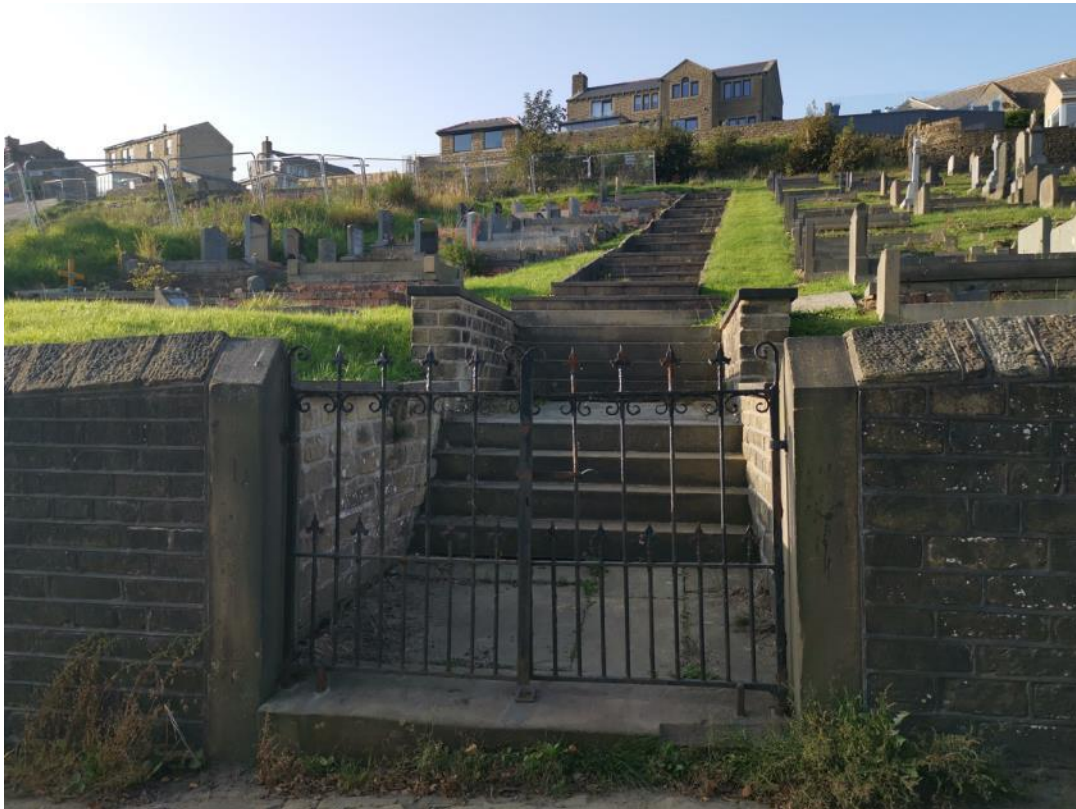


Figure 33: Summary of user evidence - gates

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

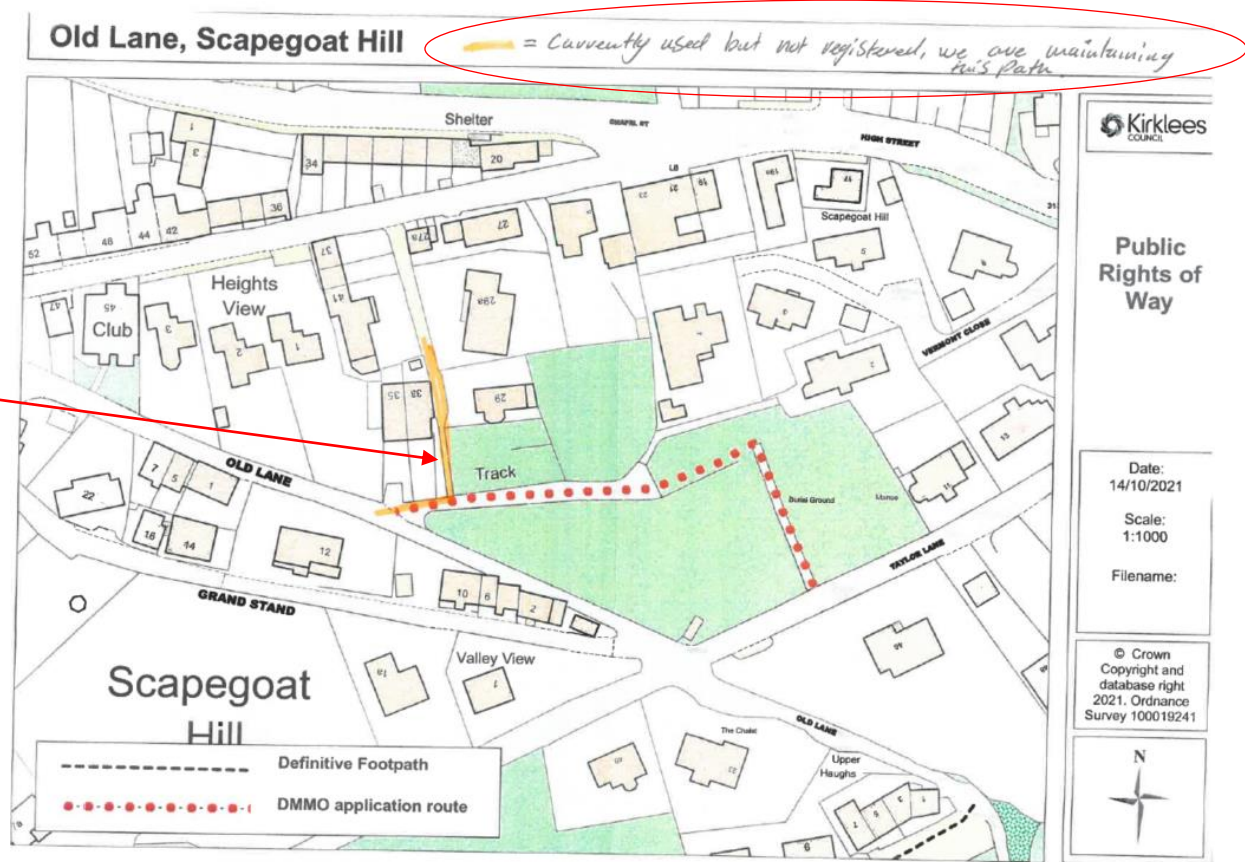
Note UEF 7/27 same user and UEF 6/25 same user

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

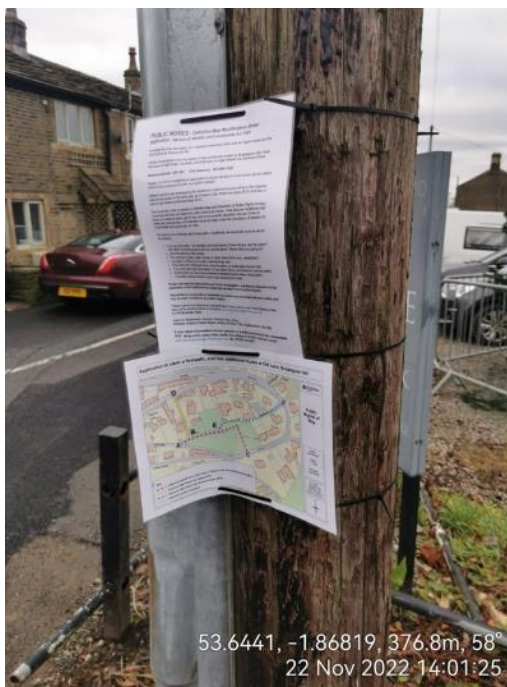


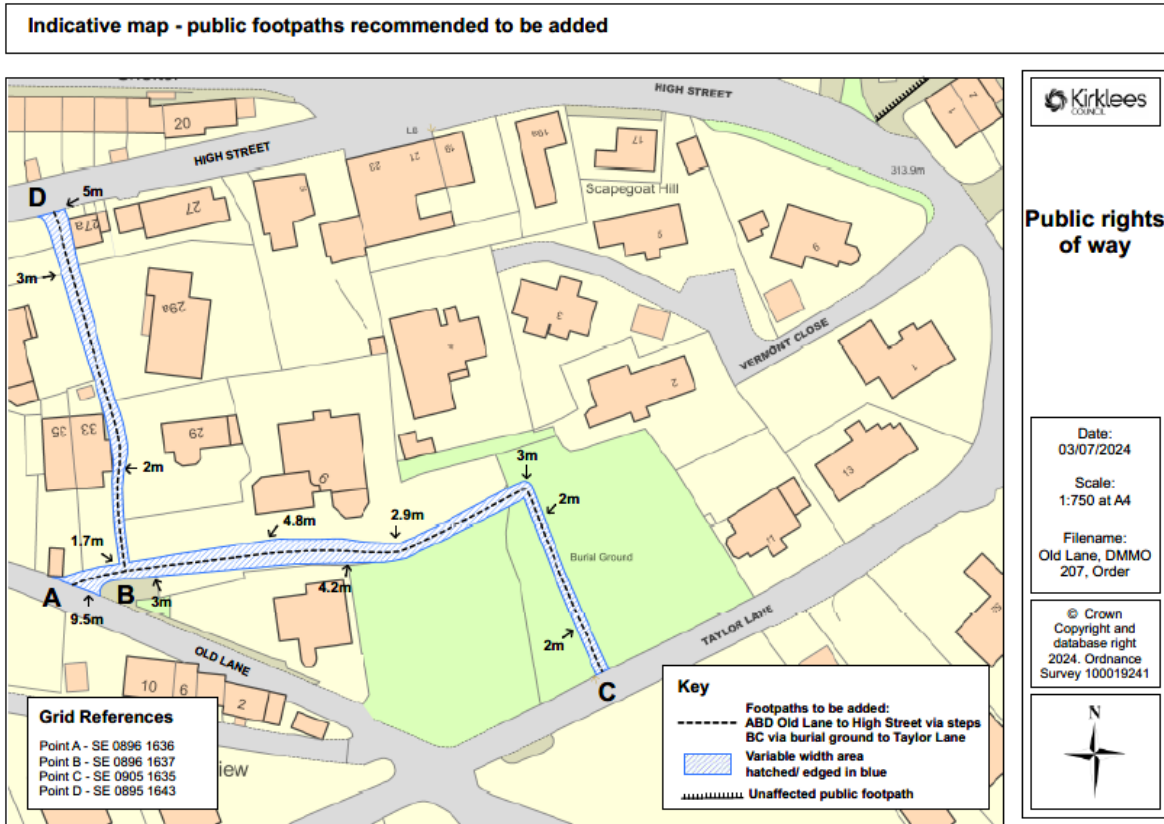
Photo 39: Photo of notice erected at car park opposite Scape House Inn, photo dated 22/11/2022

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)



Appendix D - Committee Update

Agenda Item

- 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.

Introduction

At the District Wide Planning Committee on 19th September 2024, members [resolved to defer the determination](#) of the agenda item in order to undertake a site visit and walk the routes, which was proposed by Councillor Firth, and seconded by Councillor Bellamy to further inform the determination to be made. Officers would like to take this opportunity to provide further advice for members.

Furthermore, at the same meeting, Claire Atkinson, an affected landowner and local resident, and Paul Hobson, representing Scapegoat Hill Baptist Church, also an affected landowner, spoke in opposition of the application and Officer recommendations. Additionally, Councillor Bellamy provided several comments. Officers would also like to take the opportunity to address the points raised by the aforementioned persons prior to the site visit and determination of the agenda item.

Site Visit

The determination of the agenda item by members must be based on the available evidence and especially focused on the physical character of the ways during the relevant period of 24th November 1997 to 24th November 2017. Photos of the ways during the relevant period on 22nd June 2017 are provided in Figure 7 of Appendix C. Additionally, aerial photos taken between 2000 to 2018 at Figures 19 to 23 also show the physical character of the ways during the relevant period.

These images are of significant importance as they provide a window to the past and the time period when the ways were being actually enjoyed by the public. In particular, the way from Old Lane to the burial ground route 1 is shown leading between wide drystone wall boundaries with a grassed surface and public use of this particular part of the way was not limited by gates or walls.

On the other hand, at the site visit, members will see that the physical character of the ways have changed considerably in recent years. Route 1 is obstructed by gates, leads along a tarmac driveway, and is then obstructed by a newly erected boundary wall; and route 2 is partially obstructed by a brick wall where it joins route 1, but remains open for public use. The development, purchase, and occupation of the affected property are events that have taken place outside the relevant period of 24th November 1997 to 24th November 2017

The grant of planning consent or subsequent development of the land has no extinguishing effect of any unrecorded public rights that may subsist. The developer was notified of this fact by Officers on 5th February 2019. Works undertaken to the land over which the ways are alleged to subsist were at the developers' risk. The developers were notified of this risk by Officers on 3rd July 2020.

Therefore, these factors do not constitute credible evidence that rebuts the presumption of deemed dedication, or the Officers recommendations, and cannot be taken into consideration.

Comments in reply

The statements provided by Claire Atkinson and Paul Hobson, and comments from Councillor Bellamy must be evaluated within the context of the relevant tests and statutory provisions. In particular, members must deliberate, is there a discovery of new credible conflicting evidence and/or incontrovertible documentary evidence rebutting the presumption of deemed dedication?

At the District-Wide Planning Committee meeting on 19th September 2024, Claire Atkinson raised concerns regarding the recommendations to make a Definitive Map Modification Order and record a public footpath over land that now constitutes the garden and driveway of 6 Old Lane, Scapegoat Hill, HD7 4ND.

Whilst Officers understand this is an emotive situation, and sympathise with the concerns raised, it must be emphasised that the determination of the agenda item is based on the discovery of evidence. As stated in the Committee Report and the presentation at the previous meeting, issues relating to security, any potential effect on land use, and possible future use by the public cannot, and must not, be taken into consideration when determining the agenda item.

Providing detailed answers to each of these issues invites the possibility to distract members from the relevant statutory tests that must be applied. Nevertheless, members should be aware that Officers received an email on 27th October 2023 from the agent acting on behalf of the vendor of 6 Old Lane, Scapegoat Hill, HD7 4ND, stating:

“For information, ... is in the process of selling the land to a willing buyer (which for the avoidance of doubt does know about the DMMO Application and the Council’s current investigation).”

And, earlier on 12 May 2020, the developer informed Officers that the DMMO application had shown up on a conveyancing search. The Law Societies CON29 conveyancing local search standard form includes a question about any pending applications to record public rights of way that abut, or cross the property.

Additionally, the intention of the applicant, or whether the applicant retains interest in the outcome of the application is irrelevant. The Council still has a statutory duty to determine the application, to keep the Definitive Map & Statement under continuous review, and there has been a discovery by the authority of evidence. Notwithstanding

the above, Officers note that the application was submitted on behalf of Scape Community Group, and there has been a continuity of contact with a member of this group throughout the pre-application, application, investigation, public consultation and afterwards. It can be noted that in relation to proposed development, the DMMO application refers to:

“[...] the green lane footpath leading from Old Lane to Taylor Lane used by people as a footpath for generations. Also builder proposing large gates along this footpath to stop access”.

Paul Hobson, Church Graveyard Secretary

At the District-Wide Planning Committee meeting on 19th September 2024, Paul Hobson raised concerns regarding the recommendations to make a Definitive Map Modification Order and record a public footpath over land that constitutes Scapegoat Hill Baptist Burial Ground and in the freehold possession of The Yorkshire Baptist Association. Paul Hobson was appointed Church Graveyard Secretary in approximately 2020, three years after the end of the relevant period. Nevertheless, factors have been raised that are pertinent to the presumption of dedication under section 31(1) of the 1980 Act.

In the first instance, the Council is not proposing to create, or make, a public footpath through the graveyard. The Council is acting in its capacity as the surveying authority. The Officer recommendations are based on the discovery of evidence that a public right of way already subsists or is reasonably alleged to subsist and an Order should be made to modify the Definitive Map and Statement and add the way to the legal record of public rights of way.

Paul Hobson also mentions that graveyard steps are not shown on any maps as a public thoroughfare. Officers have considered the documentary evidence tendered in evidence and conducted their own research of the evidence available to them. Officers agree that there is no inference of public status along the graveyard steps from documentary evidence, such as maps. However, the recommendation is not based on

documentary evidence, but on recent public use and deemed dedication under section 31(1) of the 1980 Act.

Paul Hobson stated that the graveyard steps were never intended to form a thoroughfare and, by deduction, the landowner had no intention to dedicate a public footpath over their land. Officers recognise that this is a sensitive issue and the steps may well have been built for the access, development, and maintenance of the graveyard. However, under section 31(1) of the 1980 Act, there is no need to infer a dedication, or an intention to dedicate a public right of way, by an owner. The way becomes a highway by operation of law providing the legal requisites are satisfied from proof of public user and acquiescence/toleration to public use by the landowner.

To benefit from the rebuttal of deemed dedication proviso, the landowner must manifest and communicate their intention to the reasonable audience, namely the users of the way, through overt acts. There is no evidence of an overt act that rebuts the presumption of deemed dedication of a public footpath over the Baptist Burial Ground. Accordingly, the allegation that the way subsists over the steps at the Baptist Burial Ground remains reasonable.

On the subject of sufficiency of public use and acquiescence/toleration by the landowner, Paul Hobson stated that none of the people he had spoken to had ever seen any member of the public using the steps through the graveyard as a walkway. The credible evidence submitted in the application that the way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years is to be judged from how the matter would have appeared to the owner of the land, or if there was an absentee owner, to a reasonable owner who was on the spot. As stated in Appendix B, Officers consider that the extent and quality of use is sufficient to alert an observant owner to the fact that a public right is being asserted and ought to be resisted if such right is not recognised.

Paul Hobson raised issues regarding the existence of a public footpath over consecrated land and Officers recognise that this is a sensitive subject. Section 31(8) of the 1980 Act states:

“Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes”.

The provision is a pragmatic test to be applied on the facts of the particular case. However, as stated in paragraph 101, page 24 of Appendix B – Investigation Report, there is no issue with any incapacity to dedicate a way over the graveyard steps as the land is not consecrated land but is a private burial ground. Therefore land forming part of the Baptist Burial Ground can after 20 years use by the public as of right be deemed to have been dedicated as a highway under section 31(1) of the 1980 Act.

Another factor raised was the purpose of members of the public using graveyard steps. During the presentation, Paul Hobson stated that route 2 formed a thoroughfare from High Street to Old Lane, whilst part of route 1 and part of route 3 formed the main thoroughfare from Old Lane to Vermont Close. The statement adds further support to the presumption of deemed dedication over the land in the possession of Claire Atkinson. However, in relation to the available evidence for route 3, Officers do not consider that an allegation that the way is a public footpath is reasonable due to insufficient documentary and user evidence, when considered under statute or at common law.

The provisos in section 31(1) of the 1980 Act do not enquire as to why the public go along the way. However, the public do not claim to use a path ‘as of right’ unless there is some point in their doing so. Paul Hobson stated that route 1 from Old Lane to Taylor Lane was not the most direct route from Scapegoat Hill to Golcar. At paragraph 118, page 28 of Appendix B – Investigation Report, Officers described that the purpose of public use on foot was for walking, dog walking, leisure, and going to the bus stop/school/shopping in Golcar. Some users annotated on the user evidence map that they walked a circular route via route 1, Taylor Lane, Old Lane, and route 1. The evidence of user is credible and there is no need to go behind the user evidence forms.

At the District-Wide Planning Committee meeting on 19th September 2024, Councillor Bellamy recalled living in Scapegoat Hill approximately 45 years ago, before the start of the relevant period on 24th November 1997, and represented the Colne Valley Ward a few years ago. Councillor Bellamy did not remember using any of the alleged routes, particularly via the burial ground.

Instead, Councillor Bellamy claimed to reach Taylor Lane via Grand Stand, a route that joins and rejoins Old Lane and is not recorded as a highway maintainable at public expense on the List of Streets held under [section 36\(6\) of the 1980 Act](#), and was awarded as a private carriage and occupation road known as Savile's Road in the [1823 Manor of Golcar Inclosure Award](#). Officers appreciate the recollection of use by Councillor Bellamy; however, it does not conflict with the discovery of credible user evidence, and five members of the public that claimed to use the ways were or are resident at Grand Stand.

Twenty-two user evidence forms were also submitted as evidence in support of the application and eight additional user evidence forms were provided during the preliminary consultation. The forms utilise a template provided by the Public Rights of Way Team, which ask several questions regarding the mode, duration, and frequency of use, as well as whether use was by force, secrecy, permission, or a private right, the width of used way, any limitations, and whether their use was challenged. Officers consider that the user evidence forms have been completed with due diligence and answered as fully as possible.

Each of the original twenty-two user evidence forms signed and dated a statement, which reads: *"I hereby certify that to the best of my knowledge and belief, the facts I have stated are true"*. The standard template user evidence forms were updated, with eight users completing a new form which includes a statement of truth: *"I believe that the facts and matters contained in this statement are true and I have read the declaration above and the warning below"*. The warning states: *"If you dishonestly enter information or make a statement that you know is, or might be untrue or*

misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment of an unlimited fine, or both".

The user evidence forms provide credible evidence of public user and can reasonably be taken at face value at the Order-making stage. There is no need to go behind the user evidence forms. The Councils duty to investigate the matters stated in the application under schedule 14, paragraph 3(1) of the WCA, has been performed by Officers tabulating and analysing the user evidence forms, which is presented in Appendix B under the heading 'User Evidence Evaluation' and in Appendix C.

Councillor Bellamy queried whether the use has commenced just before they "... *built them homes down at the bottom*". The location of the homes Councillor Bellamy refers to is unclear, however, a comparison of Ordnance Survey maps show that the residential properties west of Grand Stand and north of Taylor Lane, and at Upper Haughs are relatively recent developments, since at least 2004. As shown in Figure 29 of Appendix C, there is evidence of public use as far back as the 1940s, 60's, 70's and 80's, before the relevant period, and provided from members of the public located around the Scapegoat Hill area.

If an Order is made as recommended

In R v Secretary of State for Wales ex parte Emery [1997], Roch LJ stated:

"... the authority and the Secretary of State must bear in mind that an order under Section 53(2) made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the Order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry".

Officers consider that the relevant evidential tests have been met for making a Definitive Map Modification Order as recommended. Officers do not consider that

conflicting evidence has been presented. In any case, the statutory procedure is the considered to be the correct course of action as the affected parties may have an opportunity of being heard by the Planning Inspectorate under Schedule 15 of the Wildlife & Countryside Act, 1981.

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Report of the Head of Planning and Development

DISTRICT-WIDE PLANNING COMMITTEE

Date: 31-Oct-2024

Subject: Planning Application 2024/91202 Erection of eight dwellings with associated access and external works Land off, Marsh Lane, Shepley, Huddersfield, HD8 8AS

APPLICANT

Halstead Homes

DATE VALID

29-Aug-2024

TARGET DATE

24-Oct-2024

EXTENSION EXPIRY DATE

26-Sep-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: Kirkburton

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 and to secure a Section 106 agreement to cover the following matters:

- 1) Biodiversity – Contribution towards off-site measures to achieve biodiversity net gain.

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

1.0 INTRODUCTION:

- 1.1 This application is brought to the District-Wide Planning Sub-Committee due to receiving a significant number of representations contrary to the officer recommendation, as per the Council's Scheme of Delegation. Through the initial notification process, 43 representations were received, 41 in objection and 2 general comments. Following the re-advertising of the application, 24 representations were received, 23 in objection and 1 as a general comment.
- 1.2 This application is brought to the District Wide Planning Committee due to receiving a significant number of representation contrary to officer recommendation in accordance with the Council's Scheme of Delegation

2.0 SITE AND SURROUNDINGS:

- 2.1 The site relates to a plot of land to the rear of 119 – 129 Marsh Lane which is accessible off Marsh Lane, adjacent to nos.127 and 129. The site comprises a grassed area of land which abuts open green fields to the south and residential boundaries to the north. There are no existing structures on the site.
- 2.2 The site is unallocated within Kirklees Local Plan, however it is noted that the site is directly adjacent the Green Belt boundary. There are five mature trees along the southern boundary of the site which are covered by Tree Preservation Orders.

3.0 PROPOSAL:

- 3.1 The application is seeking permission for erection of eight dwellings with associated access and external works.

- 3.2 The proposed dwellings would consist of one pair of semi-detached dwellings and six detached dwellings. One detached dwelling (plot 1) would be located fronting Marsh Lane adjacent to no 129 Marsh Lane. The other dwellings would be located within the site in an L-shape orientation with an internal estate road providing access and turning.
- 3.3 The proposed dwellings vary in terms of design but are primarily two-storey, pitched roofed structures with gable end features. A number of the properties have contemporary glazed features incorporated into the design. The dwellings would be finished in natural stone walls, under slate roofing. Some of the properties have aspects of darker timber and aluminium cladding and glazed features.
- 3.4 All the properties have off-street parking provided and plots 5-9 also have either a detached or integral garage.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2017/94299 Outline application for erection of 3 detached dwellings. Conditional Outline Permission.

2017/90272 Outline application for erection of residential development (2 dwellings). Conditional Outline Permission.

2000/93239 Outline application for erection of 2 dwellings. Refused.

99/91477 Erection of 4 no. Detached houses with garages. Conditional full permission.

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

- 5.1 On receipt of the plans as originally submitted, officers raised concerns regarding the density of the proposal and the scale of the houses in comparison to the existing built form. They also raised concerns regarding the amenity space of some of the dwellings, particularly those to the southern boundary. Amended plans were received which incorporated one pair or semi-detached dwellings, on a similar footprint to initially proposed detached dwellings which increased the number of dwellings from 7 to 8.
- 5.2 Officers raised concerns regarding the internal road layout and requested that it was demonstrated that refuse vehicles could turn within the site. An amended Transport Plan was received.
- 5.3 It is noted that there is a mature tree with a TPO which has not been included within the submitted arboricultural information. Updated arboricultural information was requested but none has been provided.
- 5.4 The applicant submitted a statement in response to the representations received which addressed the concerns raised in public representation.
- 5.5 The application was re-advertised via neighbour notification letters and online following the above changes and further fees were requested and secured.

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).

Kirklees Local Plan (2019):

- 6.2 LP1 – Achieving sustainable development
LP2 – Place shaping
LP3 – Location of new development
LP7 – Efficient and Effective Use of Land and Buildings
LP21 – Highways and access
LP22 – Parking
LP24 – Design
LP30 – Biodiversity and Geodiversity
LP33 – Trees
LP51 – Protection and improvement of local air quality
LP52 – Protection and improvement of environmental quality
LP53 – Contaminated and unstable land

Supplementary Planning Guidance / Documents:

- 6.3 Kirklees Council has adopted (as of 29th June 2021) supplementary planning documents for guidance on house building, house extensions and alterations and open space, to be used alongside existing SPDs previously adopted. They are now being considered in the assessment of planning applications, with full weight attached. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring development to be considerate in terms of the character of the host property and the wider street scene. As such, it is anticipated that these SPDs will assist with ensuring enhanced consistency in both approach and outcomes relating to development. In this case the follow SPDs are applicable:
- Biodiversity Net Gain Technical Advice Note
 - Highways Design Guide SPD
 - Housebuilders Design Guide SPD

National Planning Guidance:

- 6.4 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.
- 6.5 The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.
- Chapter 2 – Achieving sustainable development
 - Chapter 5 – Delivering a sufficient supply of homes
 - Chapter 9 – Promoting sustainable transport

- Chapter 11 – Making efficient use of land
- Chapter 12 – Achieving well-designed and beautiful places
- Chapter 15 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by neighbour notification letters and online. Final publicity expired on 4th September 2024.

7.2 43 representations were initially received, 39 in objection and 2 as general comments. They raised the following comments:

- Site was previously green belt
- Previous applications were for smaller development
- Detrimental to outlook and amenity of neighbouring properties
- Site is agricultural and used for crops, not vacant
- Zinc sheet is more industrial than residential and not in keeping with the surrounding area
- Highway safety issues
- Bus service is infrequent so development will rely on cars
- Smaller houses are needed, not the size proposed
- Too many houses in Shepley already
- Houses are disproportionately large
- Intrusive and invasion of privacy
- Attempt to deceive planners by using old photos
- Significant glazing to the rear of neighbouring properties
- Block natural light
- Negatively impact on air quality, services and schools
- Lessen the value of existing houses
- Look unsightly
- More traffic in the village
- Impact on wildlife and trees
- Environmental impact of houses on green field
- Further houses are planned above the initial 7
- Other development in the area remains unsold
- Increase in noise, air pollution, light pollution, drainage
- Not enough parking provision
- Request for drainage information
- Speed bumps on Marsh Lane would be welcomed
- The area of proposed internal road could be used as access onto the land to the south in the future - do not want to see land within blue line developed in the future
- Reduce the number of houses and make them affordable
- Not a need for larger family homes
- Doctors surgery is at capacity
- Smaller houses needed
- Internal road not wide enough
- Tree missing on the Tree Survey
- Plans do not include conservatory at adjacent property
- 107a Marsh Lane missed off site plan
- Tree missing on plans and Tree Survey
- Previous application refused on highway safety grounds for less dwellings

- Visibility splay not achievable
- Only one visitor space - doesn't comply with Highways Design Guide
- Queries the LLFAs response as the slight slopes
- Does not meet 10.5 separation between plots 4-7 and undeveloped land
- garden space is small and not in keeping with the character
- Transport Statement refers to 8 homes and a different applicant
- Ground nesting birds
- What school would the residents attend?
- Not consistent with pre-app advice
- Farmer uses the site to access the field to the rear

7.3 The application was readvertised following amended plans being received, and an additional 24 representations were received, 23 in objection and 1 as a general comment. They raised the following additional comments:

- Nine dwellings would be too cramped
- Increases the density
- New semi-detached dwellings would be significantly taller - three stories
- Trees not included on plans
- Bins would attract flies
- Need updated additional information to include 9 dwellings
- Additional traffic
- Impact on existing residents - overlooking and overshadowing
- Number of dwellings should be reduced
- Pressure on schools and nurseries and GPs
- Black cladding will be an eyesore
- Detrimental impact on wildlife
- Large detached dwellings only which young people can't afford
- Impact on protected trees
- Existing homes struggling to sell
- affordable homes are required
- A new application should have been submitted
- Agent/Applicant have not consulted with the neighbours
- Stone posts for visibility are within third party land
- Increasing demand for electricity
- previous objections still stand
- Question whether the road would be suitable for adoption
- Additional direct access onto Marsh Lane
- Potential for plot 2 to install boundary treatment which would restrict visibility
- Concerns regarding drainage
- More hardstanding along Marsh Lane
- Small gardens

7.4 These comments will be addressed in section 10.50 and 10.51 of this report.

8.0 CONSULTATION RESPONSES:

These comments are based on the most recent plans submitted:

- 8.1 KC Highways Development Management – No objections subject to condition.
- 8.2 KC Environmental Health – No objections subject to condition.

- 8.3 KC Ecology – No comment received.
- 8.4 LLFA – No objections subject to condition.
- 8.5 KC Trees – No objections subject to condition.

9.0 MAIN ISSUES

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

10.0 APPRAISAL

Principle of development

- 10.1 NPPF paragraph 12 and Policy LP1 of the Kirklees Local Plan outlines a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.
- 10.2 The dimensions of sustainable development will be considered throughout the proposal. 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.
- 10.3 The Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. National planning policy requires local planning authorities to demonstrate five years supply of deliverable housing sites against their housing requirement.
- 10.4 The 2023 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%)
- 10.5 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.

- 10.6 The Council's inability to demonstrate a five-year supply of housing land weighs in favour of housing development but 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 below.
- 10.7 Policy generally seeks to support residential development upon unallocated sites. Thus, residential development at the site could be acceptable in principle. However, Policy LP7 of the Kirklees Local Plan establishes a desired target density of thirty-five dwellings per hectare. By that standard, this site in theory, could accommodate twelve dwellings. Eight dwellings are proposed in this instance.
- 10.8 Initially seven dwellings were proposed however, officers had concerns that the development was providing solely large detached dwellings and requested a greater variety. The detached units were subsequently amended to semi-detached dwellings to increase the density without significantly changing the footprint or layout. Following discussions, nine dwellings were proposed by the agent, as two of the detached units were altered to provide semi-detached dwellings, as discussed. However, following discussions with highways, and requirements for the width of the access, this was reduced back down to eight. When assessed against LP7, the proposed density is considered appropriate given a proportion of the site is required for access and that additional dwellings elsewhere on the site to compensate for this would likely result in a cramped form of development that would fail to sympathetically integrate with existing development in the locality.
- 10.9 Taking the above into consideration, in the broadest form, the principle of residential development on this site is considered acceptable in accordance with Local Plan Policies LP1, LP2 and LP7. However, the development must now be assessed against all material considerations.

Impact on visual amenity

- 10.10 The NPPF offers guidance relating to design in Chapter 12 (achieving well designed and beautiful places) whereby 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.”
- 10.11 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.
- 10.12 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...”
- 10.13 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. Relevant to this is the Kirklees Housebuilders Design Guide SPD 2021, which aims to ensure future housing development is of high-quality design.

10.14 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.”

10.15 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. Further to this, Principle 15 states that the design of the roofline should relate well to site context.

10.16 The application site is adjacent to the existing dwellings on Marsh Lane. Plot 1 would form part of the street scene of Marsh Lane whereas the other plots would be set behind the existing development.

10.17 Principle 5 of the Housebuilder’s Design Guide SPD highlights the importance of buildings following a coherent building line. In this instance, the majority of the dwellings would be set to the rear of the existing properties and would therefore not align with the existing building line. It is noted there have been other developments in the vicinity also set behind the main building line, such as those to the rear of 103-107 Marsh Lane and 107a Marsh Lane which is adjacent to the application site. It is also noted that the principle of residential development on this site has already been established in 2017, albeit for less dwellings. Taking this into consideration, and as a precedent has already been set within the surrounding area, the location of the proposed dwellings is considered acceptable in this instance.

10.18 Plot one would front Marsh Lane, adjacent to 127 Marsh Lane. The front of plot one would align with the existing building line thus complying with Principle 5 of the Housebuilder’s Design Guide SPD.

10.19 It is noted that concerns were raised in public representation regarding the number of houses proposed and the type of dwellings. The comments raised concerns that the site could be overdeveloped and that the dwellings are too big to meet the required market demand. Instead, representations outlined that more smaller houses should be proposed. Officer’s raised concerns regarding the proposed density and the scale of the proposed houses and as a result, a pair of semi-detached dwellings were proposed. Whilst this increases the total number of dwellings, it does not result in overdevelopment of the site as the dwellings would be on a similar footprint to the previous proposed detached dwelling. It is noted that the ratio of semi-detached to detached dwellings is similar to that already existing on Marsh Lane.

10.20 The existing development on Marsh Lane hosts a variety of design, scale and roof types but are primarily two-storey structures finished in natural stone and red brick. The proposed dwellings would all be two-storey with a pitched roofed design with gable features. The dwellings would vary in terms of design however this would be in keeping with the existing grain on Marsh Lane.

- 10.21 The proposed dwellings would be finished in natural stone walls, under slate roofing which would be in keeping with the existing development. Some of the properties have aspects of darker timber and aluminium cladding however this would be to the rear of the dwellings which would not be prominent from Marsh Lane and it is also noted that the dwellings would back onto Green Belt agricultural land and therefore the proposed timber and aluminium features would not be out of character with the rural setting.
- 10.22 It is therefore considered that, on balance, the proposed dwellings would not cause significant harm to the visual amenity of the surrounding area. The proposal is therefore considered to be in accordance Policy LP24 of the Kirklees Local Plan, the aims of the House Builders Design Guide SPD and Chapters 12 of the National Planning Policy Framework.
- 10.23 Having taken the above into account, the proposed development is considered to be in keeping with the local character of the area and would therefore not cause significant harm to visual amenity, complying with Policy LP24 of the Kirklees Local Plan (a) in terms of the form, scale and layout, Principle 2 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.

Residential Amenity

- 10.24 Section B and C of LP24 states that alterations to existing buildings should:
- “...maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers.”
- 10.25 Further to this, Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.
- 10.26 Principle 6 of the Kirklees Housebuilders Design Guide SPD states that:
- “Residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.”
- 10.27 The SPD also provides advised separation distances for two storey dwellings:
- 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;
 - 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and
 - 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.
- 10.28 The residential properties most likely to be affected by the proposed development are considered to be nos.107a, 127 and 129 Marsh Lane. The impact upon these properties will be discussed below. However, the proposed development is considered to be a sufficient distance away from any other neighbouring properties not referred to so as to prevent undue harm in terms of loss of light, loss of outlook, overlooking or

loss of privacy, or the creation of an overbearing effect. Of note, whilst there are a number of other properties near the site, and it is noted that public representation has raised concerns regarding the impact on the dwellings adjacent to the site, the proposed dwellings would be >21 metres from the surrounding properties thus exceeding the recommended distances as outlined within the Housebuilders Design Guide SPD.

Impact on 107a Marsh Lane

10.29 No 107a Marsh Lane is located east of the application site and shares a boundary with the proposed plot eight. There would be a separation distance of 14.3m between no.107a and the proposed plot eight. This is considered a sufficient distance to prevent any harmful overshadowing or overbearing harm. In the eastern elevation of the proposed plot eight, there would be two openings at ground floor, a window serving a utility and a doorway to the garage. At first floor level there would be two windows both serving bathrooms. As such no overlooking harm is considered to be caused to the occupants of either properties as a result of the proposal.

Impact on 119-127 Marsh Lane

10.30 Properties 119-127 Marsh Lane are located to the north of the application site. 127 Marsh Lane is located to the east of the proposed access. There would be 15.5m between the side elevation of no.127 and the proposed plot one. There would be a minimum of 21m separation distance between the rear elevation of 119-127 Marsh Lane and the primary inhabited openings in the proposed dwellings. It is noted that the glazed feature to the front of plot 6 would have a separation of 20.5m, however the glazed feature would serve a hallway which would not be a primary habitable space and whilst it would be marginally under 21m, this is considered acceptable. The separation distances are considered sufficient to prevent any significant overlooking, overbearing or overshadowing harm and would be in keeping with Principle 6 of the Housebuilder's Design Guide SPD.

Impact on 129 Marsh Lane

10.31 No.129 Marsh Lane would be located adjacent to the proposed plot one. There would be a separation of 3.3m between the side elevations of plot 1 and no.129, which would be similar in height and depth. This is considered a sufficient separation distance and is similar to the existing breaks in building groups within the street scene. The proposed dwelling would align with no.129 so no additional significant overshadowing or overbearing harm is considered to be caused to occupants as a result of the proposed plot one. There is one opening in the eastern side elevation of no.129 however from a site visit and desk top analysis, this appears to serve a bathroom, which is not a primary habitable space.

10.32 Plot two would be located to the rear of no.129 which serves a number of primary inhabited openings. Plot two would be oriented east, with the side elevation facing no.129. Plot two would be set 12m from the first floor elevation of no.129. It is noted that no.129 has a small extension which would leave a 10.5m separation at ground floor level. The proposed separation distance is considered acceptable given plot three would be set further east than no.129 and so there would only be a small section of plot three which is directly to the rear of no.129. It is also noted that the applicant has designed the roof type of plot two to reduce the vertical emphasis of the dwelling on no.129. There would be one opening proposed in the side elevation of plot three which would serve a bathroom so no overlooking harm is considered to be caused.

10.33 Principle 16 of the Housebuilders Design Guide SPD states that:

“All new build dwellings should have sufficient internal floor space to meet basic lifestyle needs and provide high standards of amenity for future occupiers. Although the government has set out Nationally Described Space Standards, these are not currently adopted in the Kirklees Local Plan.”

Further to this, Principle 17 of the Kirklees Housebuilders Design Guide SPD outlines that:

“All new houses should have adequate access to private outdoor space that is functional and proportionate to the size of the dwelling and the character and context of the site. The provision of outdoor space should be considered in the context of the site layout and seek to maximise direct sunlight received in outdoor spaces.”

10.34 The proposed dwellings exceed the minimum recommendations as set out within the NDSS for a dwellings. Whilst some of the garden areas are considered to be small for the proposed dwellings, it is noted that to increase these spaces would be at the detriment of separation distances between dwellings and therefore the proposed amenity space is considered acceptable on balance.

10.35 Taking the above into consideration. It is considered that the proposed dwelling, would not cause any significant harm to visual amenity of the neighbouring or future occupants. The proposal would therefore comply with LP24(b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and the aims of Chapter 12 of the NPPF.

Highway issues

10.36 Local Plan Policy LP21 states that “*All proposals shall:*
a. ensure the safe and efficient flow of traffic within the development and on the surrounding highway network...
e. Take into account the features of surrounding roads and footpaths and provide adequate layout and visibility to allow the development to be accessed safely;”

10.37 This is supported by Chapters 9 and 12 of the NPPF and guidance within the Highways Design Guide SPDs. KC Highways Development Management (KC HDM) have also been consulted as part of this application and their comments are summarised below.

10.38 The proposal is for eight dwellings with an internal road and access off Marsh Lane. The access shall be built to adoptable standards as set out in the Highways Design Guide SPD and Highways Guidance Note – Section 38 Agreements. There are existing bus stops within the recommended distance for sustainable modes of accessibility.

10.39 The TRICS database has been used to estimate related trips. The trip rates have been derived from the TRICS database for ‘Residential Houses Privately Owned’ land use for AM and PM peak period. The forecasted traffic generation is 4 vehicle movements in AM and PM. The proposed development is therefore considered not to have any detrimental impact on the existing network and therefore is considered acceptable with a priority give way arrangement onto Marsh Lane.

- 10.40 Following discussions with KC HDM, the internal layout has been amended to achieve a better arrangement in terms of access for service vehicles. KC HDM also raised concerns regarding the access for fire services and the applicant has proposed that plot 8 at the end of the survey would incorporate a fire suppression system internally. This has been demonstrated on the submitted plans and would be secured through the building control process. Officers have had sight of discussions between the agent and West Yorkshire Fire and Rescue, who raised no concerns with the proposed.
- 10.41 KC HDM raised no objections to the proposed application subject to conditions requiring appropriate surfacing and drainage, details of the new estate road, visibility splays clear from obstruction, details of adoptable estate roads, construction access and defects survey. It is noted that representation raised concerns regarding the gateposts adjacent to the access. It would be conditioned that the visibility splays are cleared of any obstruction. Therefore, subject to these conditions, the proposed scheme is considered acceptable in terms of highway safety and it would comply with LP21 and LP22 of the Kirklees Local Plan.

Other Matters

Land Contamination

- 10.42 The application site is not shown to be on land identified as potentially contaminated by its previous use. KC Environmental Health (KC EH) have been consulted on this proposal and recommend a condition in relation to unexpected land contamination. The proposed scheme therefore could comply with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

Drainage

- 10.43 The application site is located within Flood Zone 1 on the EA flood risk mapping which is an area with the lowest probability of flooding. The Lead Local Flood Authority (LLFA) have been consulted on the proposal. The proposed site is within a greenfield location, therefore surface water run-off should be limited to the equivalent GFRO rate of 5 l/s per hectare subject to the flow control outlet's minimum size of 75mm.
- 10.44 The LLFA raised no objection to the proposal subject to conditions relating to drainage details, overland flow routing and Construction Phase Surface Water Flood Risk and Pollution prevention plan. These would be added to any positive decision notice. Yorkshire Water were also consulted on the proposal and raised no objections subject to conditions. The recommended information is primarily covered by the conditions recommended by LLFA or alternatively are outside the remit of planning. Subject to condition the proposal is considered to not result in any significant harm to drainage.

Ecology

- 10.45 The applicant has submitted a Biodiversity Net Gain (BNG) Metric and Assessment, which concludes that there would be a 74.9% loss in biodiversity as a result of the proposed works. The applicant has chosen to deliver the BNG off-site as given the constraints of the site and the recommended density requirements, along with the quality of the existing land, the 10% BNG would be difficult to achieve. The applicant is instead proposing to provide the required 4.07 A1 units and 0.05 H units off-site to achieve the required BNG. The applicant has confirmed that this would be provided through an off-site financial contribution. This would likely require to be secured via a S106 agreement (as set out in the recommendation) however officers are reviewing the recent legislation and best practice as to the mechanisms available to best obtain the BNG off-site contribution. This shall be reported in the committee update.

Trees

- 10.46 There are 5 trees within close proximity to the southern boundary of the site which are protected by Tree Preservation Orders (TPOs). LP33 of the Kirklees Local Plan states “the Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity”.
- 10.47 The applicant has submitted an Arboricultural Impact Assessment, an Arboricultural Method Statement and a Tree Survey. It is noted that initially the submitted arboricultural information did not include one of the protected trees, however this has since been updated. The submitted information concludes that no trees will be removed as part of the proposal. Within the root protection areas of two of the protected trees a new parking area is proposed. This parking area covers less than 20% of any root protection area and can therefore be constructed using a cellular confinement system. It also concludes that land use and living conditions will not be adversely affected by retained trees.
- 10.48 Other than the parking area, which can be constructed from cellular confinement system, all development will take place outside root protection areas and will have no impact on the health of retained trees. KC Trees were consulted on the proposal and raised no objections. The scheme therefore complies with LP33 of the Kirklees Local Plan.
- 10.49 The application was advertised by neighbour notification letters and online. Final publicity expired on 4th September 2024.
- 10.50 43 representations were initially received, 41 in objection and 2 as general comments. They raised the following comments:

Use of the site

- Site was previously green belt
- Site is agricultural and used for crops, not vacant

Officer response: This site is unallocated within the Kirklees Local Plan and the principle of development has been assessed on this basis. Officers have visited the site and are aware of the site context.

Site history

- Previous applications were for smaller development

Officer response: Officers are aware of the history of development at the site. This application is for eight dwellings and has been assessed accordingly in line with national and local planning policy.

Residential Amenity

- Intrusive and invasion of privacy
- detrimental to outlook and amenity of neighbouring properties
- Block natural light

Officer response: The impact on residential amenity is a material planning consideration and has been carefully considered within the impact on residential amenity section of this report.

- Houses are disproportionately large
- Not a need for larger family homes
- Smaller houses are needed, not the size proposed
- Smaller houses needed

Officer response: Officers have sought and received amended plans to include smaller, semi-detached dwellings within the scheme.

- Significant glazing to the rear of neighbouring properties

Officer response: Officers have visited the site and are aware of the current site context.

- Increase in noise, air pollution, light pollution

Officer response: the proposal is for eight residential dwelling and is set within an existing residential area. Therefore, there is not considered to be a significant increase on noise, air or light pollution over and above the existing arrangements.

- Does not meet 10.5 separation between plots 4-7 and undeveloped land
- garden space is small and not in keeping with the character

Officer response: This has been considered within the impact on residential amenity section of this report.

Visual amenity

- Zinc sheet is more industrial than residential and not in keeping with the surrounding area
- Look unsightly

Officer response: The impact on visual amenity is a material planning consideration and has been carefully considered within the impact on visual amenity section of this report.

Highway Safety Issues

- Highway safety issues
- More traffic in the village
- Internal road not wide enough
- Previous application refused on highway safety grounds for less dwellings
- Visibility splay not achievable
- Only one visitor space - doesn't comply with Highways Design Guide
- Not enough parking provision
- Bus service is infrequent so development will rely on cars

Officer response: The impact on highway safety is a material planning consideration and has been carefully considered within the impact on highway safety section of this report.

- Speed bumps on Marsh Lane would be welcomed

Officer response: This is noted. The impact on highway safety has been reviewed and this is not considered necessary to support highway safety.

- Transport Statement refers to 8 homes and a different applicant

Officer response: an updated Transport Plan has been received.

Density

- Too many houses in Shepley already
- Reduce the number of houses and make them affordable

Officer response: Density is a material planning consideration and has been carefully considered within the principle of development and impact on visual amenity section of this report.

Local Services

- Negatively impact on air quality, services and schools
- What school would the residents attend?
- Doctors surgery is at capacity

Officer response: For a development of this scale, no contribution towards local services or schools is required.

Environmental Impact

- Impact on wildlife and trees
- Environmental impact of houses on green field

Officer response: The impact of the proposal on biodiversity and trees has been assessed within the other matters section of this report.

- Queries the LLFAs response as the slight slopes
- Request for drainage information

Officer response: The LLFA and Yorkshire Water have been consulted on the proposal and any additional information required would be secured by condition.

- Tree missing on the Tree Survey
- Tree missing on plans and Tree Survey

Officer response: This has been raised with the agent who is seeking revised arboricultural information.

- Ground nesting birds

Officer Response: The submitted Preliminary Ecological Assessment (PEA) concludes that "no evidence of nesting birds was found on-site during the surveys".

Other matters

- Attempt to deceive planners by using old photos

Officer response: Officers have visited the site and are aware of the current site context.

- Lessen the value of existing houses

Officer response: This is not a material planning consideration so no further comment will be made.

- Further houses are planned above the initial 7

Officer Response: This application is for eight dwellings and has been assessed as such.

- Other development in the area remains unsold

Officer response: this is not a material planning consideration.

- The area of proposed internal road could be used as access onto the land to the south in the future - do not want to see land within blue line developed in the future

Officer response: The land to the south is not being considered under the current application so no further comment will be made.

- Plans do not include conservatory at adjacent property
- 107a Marsh Lane missed off site plan

Officer response: Amended plans were received which show the relationship with 107a and neighbouring properties conservatory.

- Not consistent with pre-app advice

Officer response: officers are satisfied that the applicant has taken on board pre-application advice.

- Farmer uses the site to access the field to the rear

Officer response: This is not a material planning consideration so no further comment will be made.

10.51 The application was readvertised following amended plans being received, and an additional 24 representations were received, 23 in objection and 1 as a general comment. They raised the following additional comments, which were not raised during initially representation (addressed above):

Density

- Nine dwellings would be too cramped
- Increases the density
- Only large detached dwellings which young people can't afford

Officer response: As outlined within the principle of development section of this report, the number of dwellings was increased but the footprint did not significantly change. This was to provide some smaller housing within the proposed detached dwelling to increase the housing mix.

Residential Amenity

- New semi-detached dwellings would be significantly taller - three stories

Officer response: The proposed dwellings would still be set at a lower height than the existing dwellings on Marsh Lane and the required separation distances would be retained.

- Bins would attract flies

Officer response: the proposed development is for residential dwellings and would not result in abnormal bin provision or storage in comparison to the existing residential use in the area. However, it should be noted that any issues occurring would be covered by other regulatory functions.

Highway Safety

- Stone posts for visibility are within third party land
- Potential for plot 2 to install boundary treatment which would restrict visibility
- Question whether the road would be suitable for adoption
- Additional direct access onto Marsh Lane

Officer response: This is noted. The proposed access, and the impact on highway safety has been carefully considered in the highway safety section of this report.

Visual Amenity

- More hardstanding along Marsh Lane

Officer response: This has been taken into consideration during the assessment of the impact on residential amenity.

Other Matters

- Need updated additional information to include 9 dwellings

Officer response: officers are satisfied that significant information has been provided to assess the application.

- Agent/Applicant have not consulted with the neighbours

Officer response: this is not a statutory requirement.

- Increasing demand for electricity

Officer response: This is not a material planning consideration for a development of this scale.

- Previous objections still stand

Officer response: This is noted.

11.0 CONCLUSION

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

12.0 Conditions

1. Time scale for commencing development
2. In accordance with plans
3. Unexpected land contamination
4. Materials
5. Drainage details
6. Overland Flow Routing
7. Construction Phase Surface Water Flood Risk and Pollution Prevention Plan
8. Areas to be surfaced and drained
9. Details of junction of new estate road
10. Visibility splays clear from obstruction
11. Internal adoptable estate roads
12. Construction access
13. Defects survey

Background Papers:

Application and history files.

[Planning application details | Kirklees Council](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024%2f91202>

Certificate of Ownership – Certificate A signed.

Report of the Head of Planning and Development

DISTRICT-WIDE PLANNING COMMITTEE

Date: 31-Oct-2024

Subject: Planning Application 2024/91907 Change of use of dwelling (C3) to children's residential home (C2) 18, Kingfisher Way, Dewsbury, WF12 7DN

APPLICANT

Aysha Garda, Empower
U Yorkshire

DATE VALID

28-Aug-2024

TARGET DATE

23-Oct-2024

EXTENSION EXPIRY DATE

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

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Dewsbury East

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 to the District Wide Planning Committee due to receiving a significant number of representation contrary to officer recommendation in accordance with the Council's Scheme of Delegation. 30 representations have been made in total, 27 in objection, with 3 comments in support.
- 1.2 The Chair of the Sub-Committee has confirmed that the reason for referring the application to committee is valid having regard to the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site relates to a mid-terrace, three-storey property in Dewsbury. The dwelling is a modern residential dwelling with a modest residential garden to the rear and double driveway to the front of the property. The property sits within a modern, residential housing estate with properties that are similar in terms of age and appearance.
- 2.2 The site is allocated for housing within Kirklees Local Plan, however it is noted that the site allocation has received planning permission and dwellings have been constructed.

3.0 PROPOSAL:

- 3.1 The application is seeking permission for a change of use of dwelling (C3) to children's residential home (C2).
- 3.2 Use Class C2 is a planning use class that refers to residential institutions, such as hospitals, nursing homes, care homes.
- 3.3 Although a Planning Statement has not been included within the submitted information, the applicant has supplied details to Officers of the care facilities that will be provided on the site, which include the following:
- There would be a maximum number of 2 children on site, with round the clock care assistance, at all times.

- Care would be provided by 2 supervisors during daytime hours with 1 supervisor during nighttime hours.
- Shift patterns for supervisors would run 10am to 10pm – 10pm to 10am.
- Should a child be picked up or dropped off at the care home, this will occur within daytime hours.
- The rear outdoor garden will be used for respite during daylight hours only.
- Lights will be turned off at 11pm.
- There are curfews set for each child that will be dependent on the age of the child and their care plan.
- Children may be allowed independent time in the community, which will be monitored by staff through a curfew, contact via a mobile phone and spot checks if necessary.
- There may at times be visits from a social worker, that typically take places no more than once a month.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 No specific history related to this site apart from the original permission for the housing allocation, which has been fully implemented.

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

- 5.1 Officers sought further information regarding the use of the children's care home. This included the details stated above, such as the number of children on site, number of staff present on site at any time, arrival/drop off times and use of the outdoor space.

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).

Kirklees Local Plan (2019):

- 6.2 **LP1** – Achieving sustainable development
LP2 – Place shaping
LP21 – Highways and access
LP22 – Parking
LP24 – Design
LP30 – Biodiversity and Geodiversity

Supplementary Planning Guidance / Documents:

- 6.3 Biodiversity Net Gain Technical Advice Note
Highways Design Guide SPD
Crime and Disorder Act 1988

National Planning Guidance:

- 6.4 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.
- 6.5 The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.
- Chapter 2 – Achieving sustainable development
 - Chapter 8 – Promoting healthy and safe communities
 - Chapter 9 – Promoting sustainable transport
 - Chapter 12 – Achieving well-designed and beautiful places
 - Chapter 15 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was advertised by neighbour notification letters and online. Final publicity expired on 2nd October 2024.
- 7.2 30 representations were received, 27 in objection and 3 as comments in support. They raised the following comments:

Objections

- Properties in the area are designed for residential homes only.
- There is a covenant with the developer that agrees to this, converting it voids this and disrupts the area negatively.
- The change would likely create a lot more noise and disturbance from the workplace created by the change.
- Increase in disturbances to the local vicinity, from coming and going to the address.
- The house is attached to others and seems to be a middle terrace property, so this would more than likely be disruptive for direct and surrounding neighbours
- Additional risk of anti-social behaviour and damage to properties.
- Along with property values falling and insurance costs increasing.

- Increased traffic in the area, current parking issues will be exacerbated including blocking footpaths and parking on junctions.
- Addition impact to parking would create access issues for emergency services.
- The garden is small and not ideal for numerous children.
- It would decrease the value and would affect future remortgage and sale of neighbouring properties.
- The size of the property is not suitable for the provision of childcare with carers.
- There is a police presence and anti-social behaviour within the area, which is not safe for vulnerable children.
- There are no play areas on the estate. If the child wanted to play out, they would need to be under constant supervision as to not express any negative behaviours towards any property/land/people on the estate
- The business is not well established.
- The applicant has stated that locks will be installed to bedrooms, cupboards etc inside the proposed property, this causes concern and upset for neighbouring properties / residents as it suggests the children being housed in this property may have challenging behaviour.

Support

- The council are in dire need of homes for vulnerable children and young adults.
- The property has 2 parking bays assigned to it so parking is not as issue.
- The antisocial behaviour related to other homes on the estate which has nothing to do with this property and people.

7.4 These comments will be addressed in section 10.33 of this report.

8.0 CONSULTATION RESPONSES:

8.1 KC Highways Development Management – No objections.

8.2 KC Environmental Health – No comment

9.0 MAIN ISSUES

- Principle of Development
- Impact on Visual Amenity
- Impact on Residential Amenity
- Crime and Anti-Social Behaviour
- Impact on Highway Safety
- Environmental Matters
- Representations
- Conclusion

10.0 APPRAISAL

Principle of Development

10.1 The site is allocated for housing development; it is noted that the purposes of the allocation have been fulfilled. Policy LP1 states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. LP1 goes on further to stating that:

“The Council will always work pro-actively with applicants jointly to find solutions which mean that the proposal can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

10.2 Policy LP2 of the Kirklees Local Plan sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan.

10.3 The Local Plan has no policies specifically relating to care homes. Therefore, there is no presumption against such a use. The principle of the proposal upholds the aims of the NPPF in terms of addressing the needs of groups with specific housing requirements.

10.4 In terms of changing the use of the building, Policy LP24 of the Kirklees Local Plan is relevant in conjunction with Chapters 8 and 12 of the NPPF taking into account the character of the area, the amenities of neighbouring properties, highway safety and ensuring the safe operation of the home and community cohesion.

10.5 Therefore, in this case, the principle of the use of the building is considered acceptable and the development shall be considered against all other material considerations including the character of the area, residential amenity and highway safety.

Impact on Visual Amenity

10.6 Policy LP24 of Kirklees Local Plan and Chapter 12 of the NPPF set out that development should be of an acceptable design.

- 10.7 The site currently hosts a residential dwelling with garden space and a driveway. There is no proposed change to the exterior of the dwelling or its outdoor area. Notwithstanding the change of use, there will therefore be no visual changes to the site. It will therefore retain its residential appearance.
- 10.8 The property is already fitted with CCTV and a burglar alarm which are visible on the front elevation of the building. No further electronic devices or signage will be placed on the building because of the change of use.
- 10.9 Internal layout plans are suggestive of a residential building with 3 bedrooms, a living room and kitchen. The internal configuration of the accommodation shall remain unchanged since the erection of the dwelling. Locks will be fitted to the bedrooms for privacy.
- 10.10 It is proposed that the building would accommodate up to 2 adults with 2 staff members in attendance at the property during maximum capacity.
- 10.11 Staff arriving and departing from the property is not considered to result in a change to the character of the area due to the limited number of staff in attendance. There may be at times a number of other professional staff required to be in attendance at the property due to the nature of the change of the use of the building, any additional visitors would not be considered to be dissimilar in nature to the current use of the building as a residential dwelling.
- 10.12 Amenity space is to the rear of the property and is retained and enclosed with a timber fence.
- 10.13 It is not considered the proposed change of use would cause harm to visual amenity where there would be sufficient justification to refuse the application on the basis of impact on visual amenity on both the property itself or the wider street scene.
- 10.14 It is therefore considered that the proposed works would accord with Policy LP24 and advice within Chapter 12 of the NPPF.

Impact on Residential Amenity

- 10.15 Further to this, Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.
- 10.16 The proposal indicates the internal accommodation would be retained as existing with no enlargements to the building itself. As such, it is not considered that to change the use of the dwelling would result in impacts from overshadowing, overlooking or from being overbearing.
- 10.17 The internal configuration of the building indicates the property will have 3 bedrooms with a lounge area, kitchen and 3 no. bathrooms/ensuite. All habitable rooms on the plans have window openings and therefore it is considered that there is adequate natural light for future occupiers.

- 10.18 The plans do not provide details of specific 'staff' facilities. The applicant confirmed 'overnight staff' would have accommodation and sleeping facilities in one of the bedrooms and there would be separate washrooms for staff and children, the kitchen would be available for everyone.
- 10.19 It is not considered that a change of use from a dwellinghouse to a care home would result in significant noise or disturbances to neighbouring properties to an unacceptable degree over and above what would be expected from a residential property within a residential area, in this case.
- 10.20 Having considered the above, the development is not considered to result in any significant adverse impact upon residential amenity of any surrounding neighbouring residential properties, complying with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

Crime and Anti-Social Behaviour:

- 10.21 The fear of crime is a material planning consideration. Chapters 8 and 12 of the NPPF state that decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible so that crime and disorder and the fear of crime to not undermine the quality of life or community cohesion. In addition, and under Section 17 of the Crime and Disorder Act 1988, the Council acting as Local Planning Authority has an obligation to have due regard to the likely impact upon and to do all it reasonably can to prevent crime and disorder.
- 10.22 Chapter 8 of the NPPF states that planning decisions should achieve healthy, inclusive and safe places which are accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. This is further reiterated under Chapter 12 of the NPPF which goes on further to state that planning decision should create spaces that are safe, inclusive and accessible which promote health and wellbeing, with a high standard of amenity for existing and future users and where crime and disorder and the fear of crime to not undermine the quality of life or community cohesion and resilience.
- 10.23 Policy LP1 of the Kirklees Local Plan forms a provision for development which do not have specific policies to ensure that permission can be granted unless there are material considerations including adverse impacts, which the potential for crime and disorder would be a significant factor, where the adverse impact would outweigh the benefits.
- 10.24 It is considered, given the nature of care provided, that the care facility has suitable and adequate measures to prevent a material decrease to the quality of life of residents. A staff to child ratio of 1:1 is suitable for preventing unsociable activities from arising. The care facility is not dissimilar from a family unit in its operation. In terms of the character of the area, the area is residential, close to green spaces. It is not considered to be an unsuitable location for childcare. It is therefore considered that the use of the buildings as a care facility would not cause concerning levels of crime and anti-social behaviour or be an unsuitable location for a care home.

Impact on Highway Safety

10.25 Local Plan Policy LP21 states that '*All proposals shall:*

a. ensure the safe and efficient flow of traffic within the development and on the surrounding highway network...

e. Take into account the features of surrounding roads and footpaths and provide adequate layout and visibility to allow the development to be accessed safely;'

10.26 This is supported by Chapters 9 and 12 of the NPPF and guidance within the Highways Design Guide SPDs. KC Highways Development Management (KC HDM) have also been consulted as part of this application.

10.27 There is not considered to be a material difference to the current parking situation of the building. The property currently benefits from 2 off-street parking spaces to the front of the property, which is more than sufficient to accommodate for the total number of supervisors present during shift patterns.

10.28 There may be times when additional vehicles will arrive on time, such as at drop off times and when associated professionals visit. Parking can be accommodated adjacent to the driveway without impeding neighbouring driveways. In addition, Kingfisher Way can accommodate off-street parking.

10.29 The number of visitors is not considered to be over and above what would reasonably be expected from a property in C3 use. Care plans that relate to the number of professionals will be provided on a child-by-child basis. Social workers are likely to visit the site once a month. The type of care provided is suitable for long-term, permanent stays, limiting the frequency of drop-off periods.

10.30 It is therefore considered that the proposal would not cause significant detrimental harm to the safe and efficient operation of the highway network, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the NPPF.

Environmental Matters

Ecology

10.31 A Biodiversity Net Gain (BNG) of 10% for developments is a mandatory requirement in England under the Environment Act 2021, subject to some limited exceptions. Unless exempt, every planning permission for minor sites granted pursuant to an application submitted after 02 April 2024 is deemed to have been granted subject to a pre-commencement condition requiring a Biodiversity Gain Plan to be submitted and approved by the local planning authority prior to commencement of the development.

10.32 The applicant has stated the application falls under the '*Di-Minimus*' exemption category within the application forms. A change of use would not result in a loss of wildlife habitat. Therefore, the officer agrees, the application is exempt from a BNG uplift.

Representations

10.33 The application was advertised by neighbour notification letters and online. Final publicity expired on 2nd October 2024.

10.34 30 representations were initially received, 27 in objection and 3 letters in support comments. They raised the following comments:

It has been considered whether the objections brought forward would have a material weight to the decision for planning permission.

Objections

10.35

Visual Amenity

- Properties in the area are designed for residential homes only.

Officer Comment: The residential character of the building will be retained, there will be no external changes to the appearance of the property because of the change of use.

Residential Amenity

- The change would likely create a lot more noise and disturbance from the workplace created by the change.
- Increase in disturbances to the local vicinity, from coming and going to the address.
- The house is also attached to others and seems to be a middle terrace property, so this would more than likely be disruptive for direct and surrounding neighbours
- The garden is small and not ideal for numerous children.
- The size of the property is not suitable for the provision of childcare with carers.

Officer Comment: In this case, due to the limited number of children and supervisors, the care home would have a make-up that is not dissimilar to a family unit. Therefore the proximity to residential buildings and the existing building is suitable for its proposed use.

Crime and Anti-Social Behaviour:

- Additional risk of anti-social behaviour and damage to properties.
- There is a police presence and anti-social behaviour within the area which is not safe for vulnerable children.
- There are no play areas on the estate. If the child wanted to play out, would they be under constant supervision as to not express any negative behaviours towards any property/land/people on the estate

Officer Comment: The staff to child ratio is suitable for preventing additional risks in terms of anti-social behaviour. The residential area is suitable for

children, it is not considered there is a danger from the environment of the street.

Highway Safety

- Increased traffic in the area, current parking issues will be exacerbated including blocking footpaths and parking on junctions.
- Addition impact to parking would create access issues for emergency services.

Officer Comment: There are two designated, off-street car parking spaces associated with the property. The number of staff and visitors in attendance is suitable for the number of spaces provided. It is accepted, at times there may be the requirement to visitors to park on the street, however given the infrequency of professional visitors this will not be a detrimental impact to highway safety.

The following objections are not planning consideration, therefore minimal weight has been afforded to these comments within the planning balance.

- There is a covenant with the developer that agrees to this, converting it voids this and disrupts the area negatively.

Officer Comment: Covenants are legal documents, which cannot be considered within the planning balance.

- Along with property values falling and insurance costs increasing.
- It would decrease the value and would affect future remortgage and sale of neighbouring properties.
- The business is not well established.
- The applicant has stated that locks will be installed to bedrooms, cupboards etc inside the proposed property, this causes concern and upset for neighbouring properties / residents as it suggests the children being housed in this property may have challenging behaviour.

10.36

Support

- The council are in dire need of homes for vulnerable children and young adults.
- The property has 2 parking bays assigned to it so parking is not as issue.
- The antisocial behaviour related to other homes on the estate which has nothing to do with this property and people.

Officer Comment: Noted.

11.0 CONCLUSION

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

12.0 Conditions

1. Standard timeframe condition regarding implementation.
2. Development to be in accordance with plans.
3. Restrict the maximum number of children

Background Papers:

Application and history files.

[Planning application details | Kirklees Council](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024%2f91907>

Certificate of Ownership – Certificate A signed.

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Report of the Head of Planning and Development

DISTRICT-WIDE PLANNING COMMITTEE

Date: 31-Oct-2024

Subject: Planning Application 2023/91715 Demolition of existing mosque and erection of mosque and education centre Mohaddis E Azam Education Centre And Masjid E Madani, 225C, Ravenshouse Road, Dewsbury Moor, Dewsbury, WF13 3QU

APPLICANT

Ayub Babu, Naz Design

DATE VALID

23-Jun-2023

TARGET DATE

22-Sep-2023

EXTENSION EXPIRY DATE

04-Nov-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: Dewsbury West

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

<p>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.</p>
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1.0 INTRODUCTION:

- 1.1 This application is brought to the District Wide Planning Committee due to receiving a significant number of representation contrary to officer recommendation in accordance with the Council's Scheme of Delegation
- 1.2 The Chair of the Sub-Committee has confirmed that the reason for referring the application to committee is valid having regard to the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises a Mosque and Education Centre on the western side of Ravenshouse Road, Dewsbury Moor, Dewsbury. The site is located within a predominantly residential area, with dwellings to the east and west, a retail unit to the north and the Spen Valley Country Park further to the west. The site is separated from a commercial unit to the south by a parking area, which is also within the red line boundary of the application site.

3.0 PROPOSAL:

- 3.1 Planning permission is sought for the demolition of the existing building and erection of a new mosque and education centre. This would provide a prayer hall, ablutions, wc, reception and office at ground floor level, with conference room, office, library, meeting room/seminar room and wcs at the first floor level. The roofspace would be used for storage. The proposals would also involve the addition of a dome on the roof and minarets.
- 3.2 The proposed extensions would be faced in stone to the front elevation and buff brick to the side and rear elevations.
- 3.3 The current proposal follows two previous approvals for extensions to the building.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 2021/93450 – Discharge of Conditions 4, 6 and 7 on previous permission
2019/92515 for partial demolition of existing building and erection of first floor
and two storey extensions – Pending consideration

2021/91211 – Discharge of Conditions 3 and 7 on previous permission
2017/93161 for erection of extensions and alterations - Approved

2019/94147 (Quality Food Store) – Demolition of existing building and
erection of two storey community centre – Refused

2019/92515 - Partial demolition of existing building and erection of first floor
and two storey extensions - Approved

2018/92581 (land adjacent No.225c) – Change of use of land to car park –
Approved

2017/93161 – Erection of extensions and alterations – Approved (not
implemented)

2015/92957 – Erection of extensions and alterations – Approved (not
implemented)

2008/91573 – Erection of extensions and alterations to Muslim education
centre - Refused

2006/91570 – Change of Use from Off Licence and General Store to
Mosque/Madrassa with alterations to form 6 no. parking spaces – Approved

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

5.1 Through the course of the application, the applicant was requested to provide
additional information in relation to the amount and nature of the
accommodation proposed and resultant trip generation. A Transport
Statement and Construction Traffic Management Plan, in addition to a parking
survey were submitted, and assessed by KC Highways DM.

5.2 Following concerns raised by officers relating to the extent of accommodation
proposed, amended floor plans were requested and received. The
amendments primarily related to the first floor accommodation which, as
originally submitted, included the provision of 3 classrooms and 3 ladies
rooms. Officers considered that this would amount to an intensification in use
of the site over and above that which had been approved as part of the
previous application. The amended first floor plan shows this accommodation
to be replaced by a conference room, meeting room and ancillary
accommodation. The applicant has confirmed that the education centre
would operate in the subdivided part of the prayer hall on the ground floor.

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).

Kirklees Local Plan (2019):

- 6.2 **LP 1** – Achieving sustainable development
LP 21 – Highway Safety and Access
LP 22 - Parking
LP 24 – Design
LP 48 – Community Facilities and services
LP 52 – Protection and improvement of environmental quality
LP 53 – Contaminated and unstable land

Supplementary Planning Guidance / Documents:

- 6.3 Highways Design Guide Supplementary Planning Document

West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance

National Planning Guidance:

- 6.4 **Chapter 8** – Promoting Healthy and Safe Communities
Chapter 12 – Achieving well designed and beautiful places
Chapter 15 – Conserving and enhancing the natural environment
- 6.5 On 12th November 2019, the Council adopted a target for achieving ‘net zero’ carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change.

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 As a result of the initial site publicity, 111 representations were received including both comments in objection (68) and support (43). Within the representations received were 2 petitions in support containing 186 and 204 signatures respectively, and 1 petition in objection containing 41 signatures.
- 7.2 Two further rounds of publicity were undertaken following receipt of additional highways information and amended plans. A total of 116 objections were received in response to these, in addition to 1 representation in support.

7.3 The comments received in objection are summarised as follows:

HIGHWAY SAFETY

- Existing traffic problems caused by Mosque and their users – block drives, cause obstructions and congestion
- The extent of on-street parking that occurs is dangerous for pedestrians, including children crossing the road
- TRO and parking Enforcement officers been required due to parking issues
- Mosque been running for 12 years and they haven't managed to curtail the traffic problem
- Ravenshouse Rd already considered to be the worst in Dewsbury for parking and traffic. This would add to it
- Existing car park will not be adequate to serve additional vehicles that will arrive
- Existing parking issues prevent access to the Quality Food Store

AMENITY

- This area is not suitable for the size of building planned by the Mosque
- Building will be overbearing on surrounding properties
- Result in loss of light and loss of privacy
- Out of keeping with character of area

OTHER

- Larger Mosque on Pilgrim Avenue offering same services which does not generate any complaints
- Conserve existing education centre or staff will lose jobs and education of students will be affected for months
- The mosque has divided the community

7.4 The comments received in support are summarised as follows:

- Don't see an issue with traffic and parking
- Development would ensure the best education for children
- Any traffic issues are short-lived at specific times of the day
- Volunteers manage drop off and pick up before and after classes
- Committee Members manage the car park at Friday Prayers

- Much needed for the local community
- Development will benefit the residents and contribute to the overall development of the area
- Increased capacity will enable the Mosque to offer a wider range of services and activities
- The expansion of the Mosque will allow the car parking to increase in size
- The current building appears outdated and has a negative impact on the local area
- Mosque helps to give young people a focus and off the streets

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

The Coal Authority – Note the conclusions of the Rotary Borehole Site Investigation Report; that coal mining legacy poses a risk to stability at the site and that remedial measures are required in order to ensure the safety and stability of the development. Recommend the imposition of conditions to ensure that the remedial measures are carried out.

8.2 Non-statutory:

KC Highways DM – No objections subject to imposition of conditions requiring submission of Parking Management Plan and Construction Access Management Plan.

KC Crime Prevention Officer - Made recommendations with respect to security measures to be incorporated within the design of the development

KC Environmental Services - Recommended conditions relating to unexpected contamination and lighting, in addition to footnotes relating to hours of construction and Noise levels from the Azan

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
- 10.2 Policy LP24 of the KLP is relevant to the proposal, in conjunction with Chapter 12 of the NPPF, regarding design.
- 10.3 The application relates to the demolition of an existing community facility and erection of a new one (place of worship). Policy LP48 of the KLP states that *“Proposals will be supported for development that protects, retains or enhances provision, quality or accessibility of existing community, education, leisure and cultural facilities that meets the needs of all members of the community”*.
- 10.4 The proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety. These issues, along with other policy considerations, will be addressed below.

Urban Design issues

- 10.5 Relevant design policies include Policies LP2 and LP24 of the KLP and Chapter 12 of the NPPF. These policies seek for development to harmonise and respect the surrounding environment, with Policy LP24 (a) stating; *‘[Proposals should promote good design by ensuring]: the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape’*.
- 10.6 The existing building is of single storey scale with additions of varying design located to the rear, and is considered to have a neutral impact upon visual amenity and the character of the street scene. Surrounding the site the predominant character of existing development is that of two storey brick dwellings with hipped roofs, although immediately adjacent to the north is the attached retail unit. Further to the north lies a traditional two storey stone dwelling.
- 10.7 The proposals would result in a two storey building with parapet roof (providing storage within the roof space), and would include 4 minarets to each corner of the building, in addition to a green fibre glass dome which would be located centrally and to the front within the roof. The design of the proposals is, to a certain degree, informed by the religious function of the building.
- 10.8 The proposed building would be externally faced in stone to the front, with buff brick to sides and rear, in addition to brick window surrounds, and have a height of approximately 9.5m, with the dome on top of this. With respect to the scale of the development, section drawings submitted as part of the application demonstrate that the building (not including the dome) would not be significantly taller than the residential dwellings opposite (to the front). This would be comparable with the resultant development approved under application ref 2019/92515 for the partial demolition of existing building and erection of first floor and two storey extensions.

10.9 In summary, taking into account the previous approval on the site, the proposals are considered on balance, to be acceptable in terms of visual amenity and to accord with Policy LP24 of the KLP and guidance contained within Chapter 12 of the NPPF.

Residential Amenity

10.10 The application site is located on a predominantly residential street, and the existing building is located opposite existing residential properties both to the east and west. Furthermore, the topography of the site is such that the land falls away to the west.

10.11 Due to the circumstances set out above, the main consideration, with respect to the impact of the development upon residential amenity, relates to the impact on the properties to the west of the application site (205-209 Ravenshouse Road). The applicant has submitted a section drawing which demonstrates the relationship between the proposed development and the adjacent residential properties. Due to topography, the properties to the rear are set down in relation to the application site. Taking this into account in relation to the distance of the application property from the dwellings to the rear (approximately 20m), it is considered, on balance, that the proposals would not have a significant detrimental overbearing impact upon the occupiers of these properties. Furthermore, as the application site is located to the east of these properties, it is not envisaged that the proposals would impact detrimentally by reason of overshadowing. It should also be noted that this relationship has been previously established to be acceptable through previously approved application ref 2019/92515, which would have resulted in a building of the same height and depth. This is a material planning consideration in the assessment of the current application.

10.12 Several window openings are proposed to the rear elevation of the building as extended, and these would serve the Prayer Hall at ground floor level, and conference room, kitchen and wcs at first floor level. These are to be obscurely glazed. It is considered by officers that an adequate separation distance would be achieved between the proposed development and the dwellings to the rear, and no significant loss of privacy would result.

10.13 Turning to the properties to the east, these are located a further distance away from the site across Ravenshouse Road, and consist of relatively substantial two storey terraced properties with a relatively high eaves level. The impact of the development on the residential amenity of the occupiers of these properties is considered to be minimal.

10.14 The Planning Statement received in support of the application states that the use of any externally mounted amplification equipment for 'Call to Prayer' (Azan) will not be allowed. In the event that planning permission is approved, this could also be controlled by condition.

10.15 Taking the above into consideration, the proposals are considered to have no significant detrimental impact upon residential amenity and would accord with Policy LP24 of the KLP and the aims of the NPPF.

Highway Issues

- 10.16 Paragraph 115 of the NPPF states that: *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*
- 10.17 Policy LP21 of the Kirklees Local Plan states that proposals shall demonstrate that they can accommodate sustainable modes of transport and be accessed effectively and safely by all users.
- 10.18 Ravenshouse Road is a 30mph, two-way, single carriageway, unclassified, distributor road of approximately 9m width with a hatched central reserve to protect right turn lanes, a pedestrian refuge, footways on both sides and street lighting present. It hosts a medium frequency bus route with stops within 130m of the application site. To the north of the site the main road turns in to Low Road while the narrow estate road to the rear of the site takes the name Ravenshouse Road. This Back Ravenshouse Road is a narrow (4.75m to 5.5m) estate road that serves a small number of residential properties
- 10.19 Whilst the previous applications were approved on the basis that the additional floorspace proposed provided ancillary accommodation and would not materially intensify the use of the site, KC Highways DM have raised concerns in relation to previous applications due to the potential impact on parking and traffic generation through this residential area. As such, any increase in vehicle movements through the area must be carefully considered.
- 10.20 Since the previous approvals, the car parking area on Ravenshouse Road has been granted conditional planning permission (2018/92581) and has now been included as part of the current planning application and will provide 23 spaces. Previously the car park contained portable cabins used as teaching areas and these are not shown on the proposed layout drawing (AIB/01 dated Sept 2021) and have subsequently been removed.
- 10.21 A Transport Statement from TPS Transport Consultants dated December 2023 (issue 1) and a Construction Traffic Management Plan also from TPS Transport Consultants dated December 2023 (issue 1) was received on 19 December 2023. In addition to this information, amended plans were subsequently received through the course of the application which showed a reduction in the accommodation proposed compared to the original submission. Finally, a parking survey was received on 18 September 2024.
- 10.22 The parking survey of the area around the site was requested by KC Highways DM in order to ascertain the exact numbers of available spaces for proposed users of the site and also to assess the number of areas with parking issues.
- 10.23 The parking survey details submitted do not appear to represent what Officers have observed out on site and offers little weight to this additional information in the analysis of the proposals. It is noted that there is an increase in on street parking during prayer times on Fridays as indicated in the survey results, however Officer observations have indicated this is greater than the results submitted. The use of the on-site car park on a Friday does not appear to show occupancy above 50% during Friday prayers, although observations

show that the car park is occupied beyond its proposed capacity by using a stacking process, which is an acceptable way of managing the car park as it keeps vehicles off the adopted highway.

- 10.24 It has been observed by Highway officers that during the operation of the current mosque there is an increase in off and on-street parking within the area around the site and that some of this is observed to be anti-social parking. However, it is noted that these problems only occur during prayer times and disperse shortly after.
- 10.25 The latest iteration of the proposals for the upstairs rooms appears to be relatively similar in size and form of the previously approved application and as such, Officers do not consider that the increase in trips would be sufficiently greater to have a severe additional impact on the operation and efficiency of the local highway network. Whilst Officers acknowledge that some issues currently occur, they are not expected to be exacerbated by the proposals.
- 10.26 Should the application be approved, conditions are recommended requiring the submission of the following:
- Parking Management Plan to be submitted for approval prior to first occupation of the development and to remain in operation for the lifetime of the development;
 - Construction Access Management Plan that includes a layout plan of the site showing delivery and contractor parking, the location of site facilities and materials storage, location for larger deliveries and use of a banksman and the use and retention of wheel washing facilities to avoid mud or debris from being dragged on to the highway.
- 10.27 On the basis of the above, and subject to imposition of the recommended conditions, KC Highways DM raise no objection to the proposals, which would be in accordance with Policies LP 21 and LP 22 of the KLP.

Representations

- 10.28 The representations received are addressed as follows:

HIGHWAY SAFETY

- Existing traffic problems caused by Mosque and their users – block drives, cause obstructions and congestion.
- The extent of on-street parking that occurs is dangerous for pedestrians, including children crossing the road
- TRO and parking Enforcement officers been required due to parking issues
- Mosque been running for 12 years and they haven't managed to curtail the traffic problem
- Ravenshouse Rd already considered to be the worst in Dewsbury for parking and traffic. This would add to it.

- Existing car park will not be adequate to serve additional vehicles that will arrive.
- Existing parking issues prevent access to the Quality Food Store

Officer Response: The existing highway safety issues are acknowledged, however as set out within paragraphs 10.16 to 10.27 above, the proposals are not considered to exacerbate the existing situation. Furthermore, conditions are recommended, should the application be approved, to manage parking both whilst the development is in operation and during the construction period.

AMENITY

- This area is not suitable for the size of building planned by the Mosque
- Building will be overbearing on surrounding properties
- Result in loss of light and loss of privacy
- Out of keeping with character of area

Officer Response: The principle of the scale, design and appearance of the development and its relationship with adjacent neighbours has been previously established as being acceptable by the granting of the previous permission ref 2019/92515. This is a material planning consideration in the assessment of the current application, on which a significant amount of weight can be placed.

OTHER

- Larger Mosque on Pilgrim Avenue offering same services which does not generate any complaints

Officer Response: Whilst this is noted, this is not a material planning consideration in the assessment of the current application.

- Conserve existing education centre or staff will lose jobs and education of students will be affected for months

Officer Response: This is noted.

- The mosque has divided the community

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

Other Matters

Coal Mining Legacy

10.29 The site is located within a High Risk Area as defined by the Coal Authority. A Coal Mining Risk Assessment (including Gas Monitoring Report and Rotary Borehole Site Investigation Report) was submitted with the application. The Coal Authority concurs with the recommendations set out within the submitted CMRA, and raises no objections to the proposed development, subject to the

imposition of conditions requiring remedial works to be undertaken before the commencement of development. This would ensure that the proposals accord with government guidance contained within Chapter 15 of the NPPF.

Contaminated Land

- 10.30 The application site is within 250m of a former landfill site. The applicant has submitted a Phase I Desk Study, Rotary Borehole Site Investigation and letter by G&M Consulting.
- 10.31 Gas monitoring is referred to in the submitted information, confirming the presence of ground gases and a credible risk to end users, and as such, should the application be approved, contaminated land conditions would be required to secure the necessary remediation of the site and the safe occupation of the proposed development. This would be in accordance with Policy LP 53 of the KLP and guidance contained within Chapter 15 of the NPPF.

Climate Change

- 10.32 Chapter 12 of the KLP relates to climate change and states that “Effective spatial planning is an important part of a successful response to climate change as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development”. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development. There are controls in terms of Building Regulations, which will need to be adhered to as part of the construction process and which will require compliance with national standards.

Crime Prevention

- 10.33 The Council's Crime Prevention Officer has made recommendations regarding security measures which could be incorporated into the development, should permission be granted.

11.0 CONCLUSION

- 11.1 This application for the erection of a mosque and education centre on Ravenshouse Road, Dewsbury Moor, Dewsbury has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.
- 11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval

12.0 CONDITIONS

1. Timescale for implementation
2. Development to be carried out in accordance with approved plans and specifications
3. Samples of external materials to be submitted
4. Call to Prayer (control hours, length of time and sound level)
5. Electric Vehicle Charging Points
6. Submission of remediation strategy
7. Implementation of remediation strategy
8. Submission of verification report
9. Intrusive site investigations (in relation to coal mining legacy)
10. Details of external artificial lighting
11. Parking Management Plan
12. Construction Access Management Plan

Background Papers:

[Planning application details | Kirklees Council](#)

Certificate of Ownership – Certificate A signed:

