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Wednesday 22 July 2026

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 30 July 2026**.

(A coach will depart the Town Hall, at 10.45am 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".

Samantha Lawton

Service Director – Legal, Governance and Commissioning

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

District-Wide Planning Committee

Member

Councillor James O'Leary (Chair)
Councillor Tina Bamford
Councillor Michael Howard
Councillor Abdul Jabar
Councillor David Knight
Councillor Brian Moughtin
Councillor Khalid Patel
Councillor Andrew Pinnock
Councillor Mark Smith

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

T V Bamford
M Bolt
D Brook
J Taylor

Green

A Cooper
T Cooper
M Jawaid
S Lee-Richards
M Price
I Safdar

Holme Valley Ind.

C Greaves
J Roebuck

Kirklees Independents

K Amjad
A Anwar
T Bramwell
Z Kahut

Liberal Democrat

D Ridgway
A Robinson

Reform UK

S Brophy
S Dransfield
L Fallas
G France
J Hardie
P Harvey
P James
C Smith

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 - 4

To approve the Minutes of the Meeting of the Committee held on 16 April 2026.

3: Declaration of Interests and Lobbying

5 - 6

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

To receive any public questions.

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

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

7: Site Visit - Planning Application No: 2026/90484

Change of use from dwelling to C2 for 4 children, erection of first floor extension and front porch, internal and external alterations at 143 Church Lane, Gomersal, Cleckheaton.

(Estimated time of arrival at site – 11.05am)

Ward affected: Liversedge and Gomersal

Contact: Jennifer Booth, Planning Services

8: Planning Applications

7 - 10

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 27 July 2026.

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

Note: If you do not receive acknowledgement of your email by 5:00pm on Tuesday 28 July 2026, please telephone the Governance Team on the above number.

9: Planning Application - Application No: 2026/90484

11 - 26

Change of use from dwelling to C2 for 4 children, erection of first floor extension and front porch, internal and external alterations at 143 Church Lane, Gomersal, Cleckheaton.

Ward affected: Liversedge and Gomersal

Contact: Jennifer Booth, Planning Services

10: Council's stance on confirmation of the 'Kirklees Council (Kirkburton 256 - Moor Lane) Definitive Map Modification Order 2024'

27 - 336

To consider the report.

Contact: Mark Drydale, Definitive Map Officer

Planning Update Report

A further report providing information on matters raised following the publication of the agenda may be published prior to the meeting.

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Contact Officer: Andrea Woodside

KIRKLEES COUNCIL

DISTRICT-WIDE PLANNING COMMITTEE

Thursday 16th April 2026

Present: Councillor Sheikh Ullah (Chair)
Councillor Paola Antonia Davies
Councillor Eric Firth
Councillor Susan Lee-Richards
Councillor Tony McGrath
Councillor Mohan Sokhal
Councillor Cathy Scott
Councillor John Taylor

61 Membership of the Committee

Under the provision of Council Procedure Rule 35 (7) Councillor Taylor substituted for Councillor Bellamy.

62 Minutes of the Previous Meeting

RESOLVED – That the Minutes of the Meeting held on 5 March 2026 be approved as a correct record.

63 Declaration of Interests and Lobbying

All Members present advised that they had been lobbied on Applications 2025/92443 and 2025/93197.

64 Admission of the Public

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

65 Deputations / Petitions

No deputations or petitions were received.

66 Site Visit - Applications 2025/92443 and 2025/93197

Site visit undertaken.

67 Planning Application - Application No: 2025/92443

The Committee gave consideration to Application 2025/92443 - External works to Market Building and wider site including alteration and demolition of modern additions to the Market building, new glazed screens, new WC and welfare facilities, provision of services and lighting including associated works, remodelling to the stone annexe, alterations to catering facilities, and self-contained commercial units, works to floor surfaces of Market Building. Use of Market Building for a mix of uses (sui generis) including retail, hot food takeaway, drinking establishment, restaurant / café uses, market office, public welfare facilities, storage facilities as well as provision of areas that provide a mix of fixed and flexible indoor and outdoor market stalls. Creation of areas for open market, siting of associated structures, installation

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of new fixed market stalls demolition of external bin store and creation of waste compound area, storage compounds, vehicular parking, remodelling and surfacing of areas of hardstanding, street furniture, car park layout, installation of parcel lockers, landscaping and associated works (Listed Building within a Conservation Area) at Huddersfield Open Market, Brook Street, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received representations from (i) Alex Mettrick, Abdulah Kotoric, Lorraine Howell, Jeff Needham, Pam Day, Jez Gunnell, Jonathan Adamson, Naeem Nazir, Sandra Jackson and Andrew Wilson in objection to the application and (ii) Clare Plant, Adele Poppleton, Marcus Westmoreland, Nick Mitchell, Chelsea Atkinson, Samantha Sharp, Rowan Bailey, Gerard Quinn and Justin Roche in support of the application.

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

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

- Time limit to commence development
- Development to be completed in accordance with the submitted plans and specifications
- Unit 01 upon drawing 0410revP01 to be used for retail only
- Hours of use to be between 08:00 and 23:00
- Servicing hours (deliveries / unloading) to be between 08:00 and 18:00
- Submission of a lighting scheme to be approved in writing
- Safety and security measures to be submitted and approved in writing
- Compiling of a remediation strategy in relation to land quality to be agreed by the Local Planning Authority
- Undertaking of the remediation strategy or any other such strategy so approved in writing by the Local Planning Authority
- Completion of verification of land quality which is submitted to the Local Planning Authority in writing
- Submission of a scheme of electric vehicle charging infrastructure
- Submission of a scheme which details of the finalised materials and colour finishes of construction of the development including all surfacing
- Finalised design, materials and colour finishes of all means of enclosure and screening including any bollards, gates, fences and walls
- Waste Management is undertaken in accordance with the submitted strategy
- Submission of a Construction Noise Environmental Management Plan to be agreed with the Local Planning Authority prior to development commencing
- Submission of a noise assessment in relation to events
- Noise limits for events
- Noise limit for all plant and machinery to be use
- Submission of a swept path analysis plan to be approved by the Local Planning Authority
- Access management plan submitted to, and approved in writing by, the Local Planning Authority

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- Details of construction access management to be approved in writing by the Local Planning Authority and in place prior to development commencing / for the duration of the construction phase of the development.

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

For: Councillors Firth, Sokhal, Taylor, McGrath and Ullah (5 votes)

Against: Councillors Davies, Richards and Scott (3 votes)

68 **Planning Application - Application No: 2025/93197**

The Committee gave consideration to Application 2025/93197 - Erection of free standing single storey structure to be used as a temporary indoor market (sui generis) with associated facilities, office cabins, waste compound, parking spaces and works (within a Conservation Area) adjacent to Huddersfield Open Market, Brook Street, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Alex Mettrick in objection to the application and Adele Poppleton, Nick Mitchell and Chelsea Atkinson in support of the application.

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

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

- Temporary consent requiring the development to be removed within 5 years of the date of issuing permission
- Development to be undertaken in accordance with the submitted plans and specifications
- Submission of a scheme of lighting prior to installation to be approved by the Local Planning Authority
- Hours of use 09:00 to 16:00 with servicing / deliveries within these times also
- Unexpected contamination
- Submission of a waste collection / management strategy to be approved in writing by the Local Planning Authority
- Details of safety and security measures to be submitted to the Local Planning Authority for written approval
- Submission of a lighting scheme prior to installation of any artificial lighting to be agreed by the Local Planning Authority
- Requirement that the colour finishes of the buildings annotated 'Male + Female Temporary Toilet Cabin', 'Market Operations Office Cabins', 'Accessible Toilet Cabin' as well as the walls and roller shutters of the building annotated 'Temporary Covered Market Canopy' upon submitted drawing ref 1003RefP02 be of a dark grey or black colour finish.

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

For: Councillors Davies, Firth, Lee-Richards, McGrath, Sokhal, Taylor and Ullah (7 votes)

Against: (no votes)

KIRKLEES COUNCIL

DECLARATION OF INTERESTS AND LOBBYING

District Wide Planning Committee

Name of Councillor

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

LOBBYING

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

Signed:Dated:

NOTES

Disclosable Pecuniary Interests

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

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

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

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

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

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

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

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

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

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

(b) either -

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

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

Lobbying

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

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

PLANNING POLICY

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

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

National Policy/ Guidelines

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published December 2024 and updated February 2025, 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

The Council's Development Management Charter (December 2024) 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 56 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, 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.

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Report of the Head of Planning and Development

DISTRICT-WIDE PLANNING COMMITTEE

Date: 30-Jul-2026

Subject: Planning Application 2026/90484 Change of use from dwelling to C2 for 4 children, erection of first floor extension and front porch, internal and external alterations 143, Church Lane, Gomersal, Cleckheaton, BD19 4QN

APPLICANT

Eddie Elliott-Smith,
Harmony House Retreat
Ltd

DATE VALID

02-Mar-2026

TARGET DATE

27-Apr-2026

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: Liversedge & Gomersal

Ward Councillors consulted: NO

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development 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. 40 representations have been made.
- 1.2 The Chair has reviewed the application and confirmed the application should be referred to planning committee for decision, in line with the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS:

- 2.1 143 Church Lane is a detached, brick built dwelling with garden and drive to the front, a garage attached to the side and single and two storey extensions with a rear garden. The property is located on Church Lane with a mix of house ages and types.

3.0 PROPOSAL:

- 3.1 The application is seeking planning permission to change the use to a children's home. The home is to provide care for four children with up to four staff members (1 per child) during the day and two staff overnight with a manager during the day.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 None

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

- 5.1 Amended plans were sought and received altering the design of the front extension.

6.0 PLANNING POLICY:

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

6.2 Kirklees Local Plan (2019):

- **LP 1** – Achieving sustainable development
- **LP 2** – Place shaping
- **LP 7** – Efficient use of buildings
- **LP 11** – Housing mix
- **LP 22** – Parking
- **LP 24** – Design
- **LP 30** – Biodiversity
- **LP 57** – Green Belt

6.3 Supplementary Planning Guidance / Documents:

Kirklees Planning Guidance for Children's Homes 2025 provides guidance to assist applicants, planning officers, and stakeholders in the preparation and assessment of planning applications for children's homes within Kirklees. While it sets out key considerations, policy context, and good practice principles, it is important to note that this guidance does not form part of the statutory development plan and has not been adopted as a Supplementary Planning Document (SPD). As such, it carries limited weight in the formal decision making process but may be used as a material consideration where relevant to the planning judgement of individual cases.

Insofar as the extensions to the building relate to a building which is currently a dwelling it is considered that the House Extensions and Alterations SPD is relevant to the consideration of this application.

6.4 National Planning Policy Framework (NPPF):

- Chapter 2 – Achieving sustainable development
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable travel
- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

A consultation draft of the National Planning Policy Framework (the Framework) was published on 16 December 2025. As a consultation, the document is at an early stage and subject to change. Accordingly, for the purposes of this application, no weight is given to the current consultation document.

6.5 Legislation

- The Town & Country Planning Act 1990 (as amended).
- Section 17 of the Crime and Disorder Act 1998 (as amended)

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Publicity has been undertaken in accordance with the Council's Development Management Charter. Site notice with an expiry date of 09/04/2026. Following this publicity, 40 representations have been received. The matters raised are summarised as follows:

- Ongoing works without planning permission in place.
- The modern design would be out of character with the area.
- The scale of extension is too large for the green belt.
- The plot is constrained; further extensions would further constrain the plot.
- Overbearing impact.
- Overlooking.
- Noise from the future occupants.
- Parking concerns in terms of staff, shift changeovers and visitors.
- Intensification and institutionalisation of the property.
- Suitability of the location for vulnerable children.
- Compatibility of the use as a children's home in a residential area.
- The police have objected on safeguarding grounds.
- Children's Services have commented that there is sufficiency in the wider area and that this model of children's home is not currently required.
- The broad scope of a C2 use could result in future uses that are incompatible with the residential area.
- The management plan is internally inconsistent and lacks operational credibility.
- The loss of an "ordinary" dwelling from housing stock.
- The future residents may display anti-social behaviour.
- Inadequate space to the rear for the proposed occupants.
- The bus stops in close proximity represent a danger to the children.
- The cost of housing in the area is such that 18-year-olds leaving children's homes to access appropriate, semi-independent accommodation locally.
- Inadequate bathroom provision.

7.2 The representations received are addressed within the following report.

8.0 CONSULTATION RESPONSES:

8.1 **K.C. Designing Out Crime Officer (DOCO)** – Objection to application

8.2 **K.C. Children's Commissioning** – Comments received which are not in support of the application

9.0 MAIN ISSUES

- Principle of development
- Green belt
- Visual amenity
- Residential amenity
- Highway issues
- Crime & antisocial behaviour
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The site is within the Green Belt on the Kirklees Local Plan Proposals Map. As such a key consideration will be its impact on the Green Belt and it will be assessed having regard to Policy LP57 and NPPF chapter 13.
- 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 A children's home differs from residential dwelling because, although the children live there full-time, the home is run with professional care staff working in shifts rather than as a single household. This means the use functions as a residential care facility than a typical family home. As a result, the development falls under use Class C2 (Residential Institution), rather than a dwelling which is use Class C3 (Dwellinghouse).
- 10.6 On the basis the development is considered acceptable in respect of all relevant material considerations, as discussed within the following report, the principle of development is considered to be acceptable and accord with the aforementioned policies.

Green Belt:

- 10.7 The NPPF identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The NPPF also identifies five purposes of the Green Belt. Paragraph 153 of the NPPF states that inappropriate development should not be approved except in 'very special circumstances'.
- 10.8 Paragraphs 154 and 155 of the NPPF set out that certain forms of development are exceptions to 'inappropriate development'. Paragraph 154 sets out that the extension or alteration of a building could be appropriate provided it does not result in disproportionate additions over and above the size of the original building. Policy LP57 of the Kirklees Local Plan is consistent with advice within the NPPF. Policy LP57 of the Local Plan relates to the extension, alteration and replacement of existing buildings in the Green Belt. In the case of extensions, it notes that these will be acceptable provided that the original building remains the dominant element both in terms of size and overall appearance.

- 10.9 Policy LP57 also outlines that such development should not result in a greater impact on openness in terms of the treatment of outdoor areas, including hard standing, curtilages and enclosures and means of access. Further to this, Policy LP57 states that with such development, the design and materials should have regard to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting.
- 10.10 The site lies within the designated Green Belt; however, it is located within the built-up stretch of road with residential properties to either side. As such, the proposal would not encroach into open countryside, and the openness of the Green Belt—both in spatial and visual terms—would not be harmed. The porch and first floor side extension represents modest additions to the host dwelling, with its scale, footprint and overall massing considered to be modest relative to the existing building. The main house remains the dominant element, and the proposal does not result in disproportionate additions over and above the size of the original dwelling. The scheme therefore preserves the openness of the Green Belt and does not conflict with the purposes of including land within it, in accordance with national and local Green Belt policy.

Visual amenity

- 10.11 Policy LP24 of the Kirklees Local Plan, consistent with chapter 12 of the NPPF, states, inter alia, that the form, scale, layout and details of all development respects and enhances the character of the townscape.
- 10.12 The site currently hosts a detached dwelling. The proposal would include a front porch, a first floor extension over the garage with associated alterations.
- 10.13 *Front porch:* Paragraph 5.13 of the House Extensions & Alterations SPD states that front extensions are highly prominent in the street scene. As per paragraph 5.14 of the House Extensions & Alterations SPD, careful consideration needs to be given to ensure that they are carefully designed to limit the potential for them to erode the character, they should be small and subservient to the main house and constructed using appropriate materials. The scale of the front extension has been reduced to a single storey extension. The materials proposed would match the main building and the extension would form an appropriate relationship with the host property. The dwelling is located on a residential street with mixed style properties, as such the alteration is not considered to be out of character.
- 10.14 *First floor side extension:* Paragraphs 5.15, 5.19 & 5.21 of the House Extensions & Alterations SPD are of relevance with regards to the side extension as these require the development to be located and designed to minimise the impact on the character of the area, reflect the original building in terms of materials and detailing and ensure adequate space is retained to provide a sense of space. The first floor side extension would be set back from the front of the dwelling, with a corresponding set down of the roof, allowing the extension to appear subservient. There would be a limited space to the side. However, the property adjacent has a different orientation – fronting onto The Coppice and is set at a lower level. As such, the sense of space along Church Lane would not be eroded. The materials proposed would match the main building. Furthermore, the mixed character of the properties on Church Lane are such, that the extended property is not considered to be out of character. It is considered the alterations in terms of the fenestration would be acceptable in the street scene.

- 10.15 With regards to the proposed use of the property as a children's home, staff arriving and departing from the property, when considered in isolation, would not ordinarily be expected to result in a significant change to the character of the area, given the limited number of individuals typically in attendance at any one time. It is acknowledged that up to four staff members and a manager may be present during the day to accommodate shift patterns, handovers, and operational requirements, which may generate periods of increased activity and vehicle movements. Occasional visits from other professionals may also occur. However, these operational characteristics, taken alone, are broadly comparable to the comings and goings associated with a dwelling and would not, in themselves, be out of keeping with the established residential character of the street.
- 10.16 It is considered the proposed change of use would not cause any significant harm to visual amenity on both the property itself or the wider street scene. It is therefore considered that the proposed works would accord with Policy LP24 and policies contained within Chapter 12 of the NPPF.

Residential Amenity

- 10.17 Policy LP24 of the Kirklees Local Plan require of developments, inter alia, a good standard of amenity for future occupants and neighbouring occupiers, as well as a minimising of the impact on residential amenity of future and neighbouring occupiers. Key Design Principles 3, 4, 5 and 6 of the Council's adopted House Extensions & Alterations SPD seek to ensure development does not have a detrimental impact upon privacy of neighbouring occupiers, cause unacceptable levels of overshadowing or be unacceptably oppressive / overbearing.
- 10.18 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.
- 10.19 There are no properties directly to the front which could be affected by the works proposed.
- 10.20 *Impact on 141 Church Lane:* The limited scale of the front extension together with the set back from the shared boundary with the adjacent neighbour to the west is such that there would be no overlooking, overshadowing or overbearing.
- 10.21 *Impact on 1 The Coppice:* The adjacent property to the east occupies a lower land level than the host property. There are limited openings within the western elevation of this property that would be adjacent to the first floor extension. Specifically, at first floor the single openings serve an en-suite. There would also be some alignments with the side garden of the neighbour, which serves as the primary amenity space of the adjacent property. However, the increase over and above the existing arrangements on site is such that there would be limited additional overshadowing or overbearing. There are no openings proposed which would result in unacceptable levels of overlooking occurring.

- 10.22 *Impact on 3 The Coppice*: This property is to the north of the site, and the proposal would face the side of no.3. The size and scale of the proposal and fact no.3 has a blank side elevation with the main habitable openings being to the east / west elevations is such that the proposal is not considered to significantly impact upon no.3.
- 10.23 In considering noise and general disturbance, it is recognised that the use of a property as a children's home would not, in itself, be materially different from that of a typical family dwelling in residential amenity terms. The level and nature of activity associated with a small-scale children's home is likely to be comparable to that of a family household, with day-to-day comings and goings, internal activity, and outdoor use falling within what would reasonably be expected within a residential area. As such, the proposal would not be anticipated to generate noise levels or patterns of activity that would result in a harmful impact on the amenity of neighbouring occupiers over and above that ordinarily associated with a dwellinghouse use.

Highway issues

- 10.24 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. 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.
- 10.25 It is acknowledged that there may be occasions when additional vehicles are present at the site, such as during staff changes, professional visits, or drop-off and collection periods. While the level of comings and goings associated with a single children's home is generally comparable to that of a dwellinghouse (Use Class C3), the presence of a recently approved children's home in very close proximity has the potential to result in overlapping patterns of activity. This could give rise to periods of increased on-street parking demand and vehicle movements within a localised area.
- 10.26 However, having regard to the level of on-site parking available, the relatively low frequency of professional visits (with social workers typically visiting on a monthly basis), and the nature of the care proposed—being long-term and stable placements—it is not considered that the cumulative impact of the two uses would give rise to severe or unacceptable pressure on parking provision or the local highway network.
- 10.27 Two spaces have been formed to the front of the property. The applicant has also submitted a parking policy document which would seek to ensure that as far as practicably possible the use of the off street parking within the site would be utilised.
- 10.28 The development therefore is considered to be acceptable in terms of highway safety and parking and inconsistent with policies LP21 and LP22 of the KLP.

Crime & Anti-social Behaviour

- 10.29 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 1998, 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.
- 10.30 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.
- 10.31 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.
- 10.32 The potential for increased crime or anti-social behaviour arising from the behaviour of children residing in a children's home is a commonly held perception; however, national and local guidance make clear that there is no substantive evidence to support a direct causal link between such facilities and elevated levels of crime or disorder. Kirklees Council guidance explicitly identifies this concern as a prevalent misconception, noting that children's homes are subject to regulation by Ofsted and operate within robust safeguarding, staffing, and behavioural management frameworks. Furthermore, the submitted Management Plan sets out appropriate operational procedures and mitigation measures designed to manage residents' behaviour and promote positive outcomes, thereby minimising any potential impacts on the surrounding community. On this basis, the proposed development is not considered likely to result in any demonstrable or unacceptable increase in crime or anti-social behaviour within the locality.
- 10.33 The safety and wellbeing of the future occupants of the proposed children's home is a key consideration in the assessment of this application. The guidance provided by Kirklees Council highlights the importance of locating such facilities in safe, inclusive, and accessible areas, with appropriate safeguards in place to protect vulnerable children. The application is supported by a detailed Management Plan which outlines the operational arrangements to ensure a safe living environment.
- 10.34 The Designing Out Crime Officer (DOCO) has objected and highlighted concerns about potential threat factors to occupiers of the site within the wider area. However, it is noted that these are not located in close / immediate proximity to the application site.

- 10.35 In addition, the comments from the DOCO also include the input from the Neighbourhood Policing Team, who have raised no objection in principle.
- 10.36 Whilst the concerns raised from the West Yorkshire Police Designing Out Crime Officer are noted, it is considered that it would be unreasonable of the Local Planning Authority to refuse permission in this case on the basis of potential wider threats in the wider locality to occupiers of the property. The comments of West Yorkshire Police are informed by the Neighbourhood Policing Team which raise no objection.
- 10.37 No immediate or threat in close proximity is identified by the DOCO in their response and on balance, in this case it is considered the scale / nature of the proposal would not be such that refusal could be substantiated in this case.
- 10.38 The proposal is therefore concluded acceptable having regard to the aforementioned policy / legislation.

Other Matters

- 10.39 *Biodiversity*: Chapter 15 of the National Planning Policy Framework is relevant, together with The Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers. Policy LP30 of the Kirklees Local Plan requires that proposals protect Habitats and Species of Principal Importance. 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. 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, the scale of the extensions would not impact upon more than 25m² of habitat. Therefore, the application is considered to be exempt from a BNG uplift requirement. Furthermore, given the scale and nature of the proposal it is not considered to have a significant impact upon bats and is considered acceptable having regard to the aforementioned policies.
- 10.40 *Sufficiency*: Comments have been received from the Council's Commissioning Manager regarding the sufficiency of provision, specifically in relation to the number of homes currently operating within Kirklees. While these observations are noted and provide useful context, it is important to clarify that sufficiency alone is not a material planning consideration that would justify refusal of the application. The planning assessment must remain focused on land use and planning policy matters, and as such, the concerns raised could not form a basis for refusal.

10.41 *Climate change*: 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. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Representations

10.42 The representations received have been summarised earlier in this report, for clarity they are repeated again (in italics) and addressed below.

- *Ongoing works without planning permission in place.*

10.43 **Officer comment:** General renovation of a domestic property is likely to be permissible without the need for a planning application to be submitted. This application is considered on the basis of the scheme as submitted.

- *The modern design would be out of character with the area.*

10.44 **Officer comment:** The dwelling is located on a residential street where the properties are mixed in terms of age and style. As such, the modernisation of the property would not be out of character.

- *The scale of extension is too large for the green belt.*

10.45 **Officer comment:** The property sits within a developed stretch of roadway, flanked by residential properties on both sides. Accordingly, the proposal would not extend into the open countryside, and the Green Belt's openness - both spatially and visually - would remain unaffected. The proposed porch and first-floor side extension are modest in scale, footprint, and overall massing when compared to the existing dwelling. The host property would continue to be the predominant feature on the site, and the additions would not constitute disproportionate extensions relative to the original building. As such, the development is considered to preserve the openness of the Green Belt.

- *The plot is constrained, further extension would further constrain the plot.*

10.46 **Officers comments:** Given that the proposed works comprise of a modest porch and a first-floor side extension, the development is not regarded as resulting in a constrained form of development. The additions are limited in scale and proportion, ensuring that the overall functionality and usability of the property are maintained without leading to overdevelopment of the site.

- *Overbearing impact.*
- *Overlooking.*

10.47 **Officer comments:** In terms of neighbouring amenity, it is not considered that the proposal would give rise to unacceptable levels of overbearing impact or overshadowing. This is set out in more detail in the 'Residential Amenity' section of this report.

- *Noise from the future occupants.*

10.48 **Officer comments:** With regard to potential noise and disturbance, the use of the property as a children's home is not considered to differ materially from that of a conventional family dwelling in terms of residential amenity. The scale and nature of activity associated with such a use would typically mirror normal domestic patterns, including everyday movements, internal living activities, and use of external areas. Consequently, it is not anticipated that the proposal would give rise to noise levels or general activity beyond what would ordinarily be expected within a residential setting, and therefore it would not result in any undue harm to the living conditions of neighbouring occupiers.

- *Parking concerns in terms of staff, shift changeovers and visitors.*

10.49 **Officer comments:** Concerns relating to parking associated with staff, shift changeovers and visitors have been carefully considered. Whilst it is acknowledged that there may be occasional periods where additional vehicles are present at the site, such as during staff handovers, professional visits, or drop-off and collection times, the overall level of activity is not considered to be significantly greater than that typically associated with a dwellinghouse. Although a similar use operates in close proximity, which may on occasion result in some overlap of vehicle movements, the frequency of such occurrences would be limited. Furthermore, the provision of two off-street parking spaces, together with the submitted parking management details, would assist in accommodating vehicles associated with the use. Taking these factors into account, it is not considered that the proposal would result in severe or unacceptable pressure on on-street parking or the surrounding highway network.

- *Intensification and institutionalisation of the property.*
- *Suitability of the location for vulnerable children.*
- *Compatibility of the use as a childrens home in a residential area.*
- *The broad scope of a C2 use could result in future uses that are incompatible with the residential area.*
- *The loss of an "ordinary" dwelling from housing stock.*
- *The cost of housing in the area is such that 18-year-olds leaving children's homes to access appropriate, semi-independent accommodation locally.*

10.50 **Officer comments:** The concerns raised have been carefully considered in the context of the proposed use. The change to a children's home would not result in an undue intensification or institutionalisation of the property, as the scale of occupation and day-to-day activities would remain broadly comparable to that of a family household. The site is located within an established residential area, which is considered suitable for providing a stable and supportive environment for vulnerable children, and the use is compatible with surrounding residential properties. While it is acknowledged that Use Class C2 can encompass a wider range of uses, the current proposal relates specifically to a small-scale children's home, and any

material change to a different form of care provision would be subject to further assessment as necessary. The loss of a single dwellinghouse from the housing stock is noted but is not considered significant enough to warrant refusal, particularly when weighed against the identified need for such accommodation. Matters relating to housing affordability for care leavers fall outside the remit of planning considerations of this application, and similarly, the adequacy of internal facilities, including bathroom provision, is primarily a matter for building regulations and care standards rather than planning control. Overall, the proposal is considered acceptable in land use terms.

- *The police have objected on safeguarding grounds.*
- *The future residents may display anti-social behaviour.*

10.51 **Officer comments:** The Designing Out Crime Officer (DOCO) has raised an objection, highlighting concerns regarding potential threat factors to future occupiers within the wider area. However, it is noted that these factors are not situated in close or immediate proximity to the application site. Concerns about increased crime or anti-social behaviour associated with children's homes are often raised; however, both national and local guidance indicate that there is no substantive evidence to support a direct link between such facilities and higher levels of crime or disorder. Kirklees Council guidance identifies this as a common misconception, emphasising that children's homes are regulated by Ofsted and operate within established frameworks for safeguarding, staffing, and behavioural management.

- *Children's Services have commented that there is sufficiency in the wider area and that this model of children's home is not currently required.*

10.52 **Officer comments:** Comments have been received from the Council's Commissioning Manager regarding the adequacy of existing provision, particularly in relation to the number of children's homes currently operating within Kirklees. Whilst these observations are acknowledged and provide helpful context, it should be noted that issues of sufficiency do not, in themselves, constitute a material planning consideration that would justify refusal. The assessment of the application must be based on relevant land use and planning policy matters, and therefore the concerns raised cannot reasonably form a basis for withholding planning permission.

- *The management plan is internally inconsistent and lacks operational credibility.*

10.53 **Officer comments:** The Council acknowledges the concerns raised regarding the management plan; however, it is not considered that the document is inconsistent or lacks operational credibility. The plan has been prepared to provide a proportionate framework for the day-to-day management of the site, setting out clear roles, procedures, and review mechanisms. Any perceived inconsistencies largely reflect the need for flexibility to respond to changing operational circumstances rather than a lack of coherence. Furthermore, the measures outlined are consistent with comparable schemes and are capable of being effectively implemented and monitored. Where necessary, compliance can be secured and refined through appropriately worded planning conditions, ensuring that the development operates in accordance with the approved details. As such, the management plan is considered robust and fit for purpose in planning terms.

- *Inadequate space to the rear for the proposed occupants.*

10.54 **Officer comments:** The objection regarding inadequate rear space for the proposed occupants is noted. However, it is not considered that the level of amenity space falls below an acceptable standard in this instance. The submitted details indicate that the rear area, which extends to approximately 48sqm and is to remain free from built development, would provide a reasonable and usable level of private amenity space once cleared of existing vegetation and appropriately maintained. In its cleared condition, the space is capable of accommodating outdoor seating and general domestic use commensurate with the scale and nature of the proposed accommodation. Furthermore, the site's proximity to public open space serves to supplement the on-site provision. On balance, it is therefore considered that the proposal would provide an acceptable level of amenity for future occupiers, and the objection is not sufficient to warrant refusal of the application.

- *The bus stops in close proximity represent a danger to the children.*

10.55 **Officer comments:** The objection regarding the proximity of bus stops and the associated risk to children is noted. However, it is not considered that the presence of nearby bus stops would not give rise to a material safety concern. Bus stops are a common and established feature within built-up areas and are located within highway environments designed to safely accommodate pedestrian and vehicular movements. The activity associated with bus services is intermittent and occurs at recognised stopping points, typically supported by existing footways and pedestrian infrastructure.

Furthermore, the presence of bus stops in close proximity contributes positively to the sustainability of the site, providing convenient access to public transport and reducing reliance on private vehicles in accordance with local and national planning objectives. The proposal does not introduce any unusual or intensified activity that would exacerbate risk beyond that typically experienced in a residential setting.

As such, it is not considered that the proximity of bus stops would result in an unacceptable impact on the safety of children, and the objection does not warrant refusal of the application.

- *Inadequate bathroom provision.*

10.56 **Officer comments:** The objection regarding inadequate bathroom provision is noted. However, this matter is not considered to raise a material planning concern. When assessed in the context of the proposal, the level of bathroom provision is consistent with what would typically be expected within a dwelling capable of accommodating a single household. As such, the arrangements are comparable to standard residential occupation and would not result in unacceptable living conditions for future occupiers. On this basis, the objection is acknowledged but does not warrant refusal of the application.

11.0 CONCLUSION

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

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

- 1. Development to be commence within 3 years.
- 2. Development to be undertaken in accordance with the submitted plans and specifications.
- 3. Matching materials.
- 4. Number of children no more than 4
- 5. Use to be in accordance with the submitted management plan.

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Report title: Councils' stance on confirmation of the 'Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map Modification Order 2024'.

Meeting:	District Wide Planning Committee
Date:	30th July 2026
Cabinet Member (if applicable)	Not Applicable
Key Decision Eligible for Call In	Not Applicable
Purpose of Report Members are asked to make a decision on the Councils stance for confirmation of an opposed definitive map modification order.	
Recommendation - Officers recommend authority is given to the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation. - Officers recommend that authority is given to support confirmation of the opposed Order with modifications to record the way as a public footpath based on use by the public (Option 3 para 6.1).	
Reasons for Recommendation - The Order is opposed; therefore the Council is unable to confirm the Order. - Officers have revisited the available documentary and user evidence and consider that, on the balance of probabilities, the Order route subsists as a public footpath, rather than a restricted byway, based on deemed dedication under section 31(1) of the Highways Act, 1980.	
Resource Implications None. It is the Councils statutory duty under section 53(2) of the Wildlife & Countryside Act, 1981, as the surveying authority, to keep the definitive map and statement under continuous review.	

Date signed off by Strategic Director & name	David Shepherd – 15/07/2026
Is it also signed off by the Service Director for Finance?	Kevin Mulvaney – 15/07/2026
Is it also signed off by the Service Director for Legal Governance and Commissioning (Monitoring Officer)?	John Chapman (on behalf of Samantha Lawton) – 15/07/2026

Electoral wards affected: Kirkburton

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

Public or private: Public

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

1. Executive Summary

- 1.1. This report seeks a decision on the Council's position regarding the confirmation of an opposed Definitive Map Modification Order (DMMO) relating to Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, within the Kirkburton ward.
- 1.2. The Order was made on 19 January 2024 under section 53 of the Wildlife and Countryside Act 1981 following the discovery of evidence suggesting that a public right of way subsists over the route. Initially, the route was proposed to be recorded as a restricted byway. During the statutory consultation period, two duly made objections were received, both arguing that the evidence supports the existence of a public footpath, not a restricted byway.
- 1.3. As the Order is opposed, the Council is legally unable to confirm it and must forward it to the Secretary of State (via the Planning Inspectorate) for determination. In doing so, the Council must also set out its stance on whether it supports confirmation of the Order and, if so, in what form.

- 1.4. At the confirmation stage, the evidential test is the civil standard of proof, the balance of probabilities, which is more stringent than the “reasonably alleged” test applied when making the Order. Officers have therefore revisited both the documentary and user evidence in detail
- 1.5. Following this reassessment, officers conclude that:
- The documentary evidence demonstrates continuity of the route and some public reputation but is insufficient on the balance of probabilities to establish that the Order route subsists as a vehicular highway or restricted byway.
 - The user evidence, assessed under section 31(1) of the Highways Act 1980, is sufficient to demonstrate deemed dedication of the Order route as a public footpath, with an approximate width of 3.6 metres (with a pinch point of 2.6 metres at the eastern end).
- 1.6. Officers therefore consider it is not appropriate for the Council to take a neutral stance or to support confirmation of the Order as made. Instead, Officers recommend that the Council supports confirmation of the Order with modifications, replacing references to a restricted byway with a public footpath and amending the recorded width.
- 1.7. Accordingly, the Officer recommendation (**Option 3, para 6.1**) is to:
- Authorise the Service Director of Legal, Governance & Commissioning to forward the opposed Order to the Secretary of State for confirmation; and
 - Support confirmation of the Order with modifications to record Moor Lane as a public footpath.
- 1.8. There are no additional resource implications arising from this recommendation. The action accords with the Council’s statutory duty to keep the Definitive Map and Statement under continuous review. The final decision on confirmation, including whether a hearing, inquiry, or written representations procedure is used, will rest with the Planning Inspectorate.

2. Information required to take a decision

- 2.1. On 9th November 2023, the Planning Sub-Committee (Heavy Woollen Area) determined two definitive map modification order applications to add Moor Lane, Farnley Tyas, a historic route between Manor Road and Farnley Road, as a public path on the West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area ('the definitive map and statement') and [resolved](#):

“That approval be given to make a Definitive Map Modification Order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a restricted Byway on the Definitive Map and Statement, and that a further report be submitted to a future meeting to consider the Council’s position on confirmation of the Order.”

- 2.2. The '[Kirklees Council \(Kirkburton 256 – Moor Lane\) Definitive Map Modification Order](#)' ('the Order') was made on 19th January 2024 under [section 53\(2\)\(b\) of the Wildlife & Countryside Act, 1981](#) in consequence of an event specified in section 53(3)(c)(i), namely the discovery by the authority of evidence that Moor Lane is reasonably alleged to subsist as a restricted byway. The 42-day public notice period for the Order commenced on 26th January 2024 and ended on 8th March 2024. A duly made objection to the Order was received from a member of the public on 6th February 2024 stating:

“I disagree with the decision that Moor Lane should be a restricted byway. Based on user evidence it should be a public footpath.”

- 2.3. A second duly made objection to the Order on behalf of the Huddersfield Rucksack Club, an applicant for the Order, was received on 12th February 2024 stating:

“I am writing on behalf of the Huddersfield Rucksack Club to object to the Council decision to make a modification order under section 53 to add a restricted byway to the definitive map and statement.

Based on the claim which we made to Kirklees in 2007, and on evidence of usage as a footpath for at least 90 years, we claim that Moor Lane

should be designated as a public footpath on the Definitive Map, and not as a restricted byway.”

- 2.4. As the Order is opposed, the Council must forward the Order to the Secretary of State (Planning Inspectorate) for confirmation, in accordance with [Schedule 15, paragraph 7\(1\) of the Wildlife and Countryside Act, 1981](#). The Council must also determine its stance of confirmation in light of the objections. As the Planning Sub-Committee (Heavy Woollen Area) was decommissioned on 23rd May 2024, it is appropriate for the decision to be made by the District-Wide Planning Committee, as its replacement.
- 2.5. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonable alleged to subsist at the order-making stage, at the confirmation stage, the authority or the Secretary of State must revisit the material on which the original order was made and subject it to the more stringent civil standard of proof, that is the balance of probabilities test to determine if the Order route does subsist. If the evidence is such that a tribunal of fact can say: we think it more probable than not, then the burden is discharged. But if the probabilities are equal, such as there is a conflict of credible evidence that cannot be resolved, it is not.
- 2.6. Therefore, an Order that was correctly made based on a reasonable allegation may ultimately not be confirmed as made, if at all, if the evidence is insufficient to show, on the balance of probabilities, that the way subsists. In order to determine the Council's stance on confirmation of the Order, it is necessary to re-visit the material on which the original order was made. The Council may actively support confirmation of its Order as made, support confirmation with modifications, or alternatively take a neutral stance.

Documentary Evidence

- 2.7. In making the Order, the Council's investigation considered all documentary evidence available to them in accordance with [section 32 of the Highways Act, 1980](#), namely:
- Warburton: The Road Between Huthersfield and Penistone 1719 & 1720 Map of Yorkshire; 1772 Jefferys County of York Map, Undated Farnley Tyas Estate Terrier Map; 1817 Greenwoods Map of Yorkshire; 1893 OS 1: 2,500 Map, 1896 OS One-Inch Map, 1906 OS One-Inch

Map, the 1910 Finance Act Map, 1925 Thurstonland and Farnley Tyas Urban District Council Records, 1928 Omnibus Order Notice in the London Gazette, 1968 Farnley Tyas Sale Document, and Definitive Map Review Records & 1998 Letter.

- 2.8. Officers have revisited the material on which the original order was made and discovered new documentary evidence, namely 1805 Farnley Estate Map, 1827 Quarter Sessions Stopping-Up Order, and 1910 Finance Act Field Book Extracts. Each piece of evidence has to be initially considered on its own to assess their reliability. However, each aspect of evidence must also be assessed in light of the other aspects of documentary evidence. In the end, after considering all the aspects together, the decision-maker has to determine whether they are satisfied on the balance of probabilities that the use and reputation of the Order route was such to justify the inference that it was dedicated as a highway.
- 2.9. The documentary evidence demonstrates that the Order route is a long-established physical way of considerable antiquity. The earliest evidence, including the 1719/1720 Warburton material, was considered in context with other contemporary sources, but on balance was found to relate to the through routes comprising the existing public road network and not specifically to the Order route itself. The 1805 Farnley Tyas Terrier Map confirmed the physical existence of the Order route leading to Farnley Moor, but, as an estate management document, is equivocal as to public status.
- 2.10. Greenwoods 1817 Map of Yorkshire depicts the Order route as a 'Cross Road', which gives some indication that the surveyor regarded it as a through route to public use on horseback or cart. However, the evidential weight of the document is limited as Greenwood's mapping did not distinguish reliably between public and private roads and therefore the document cannot by itself establish public rights.
- 2.11. Ordnance Survey maps from 1893 onwards show the Order route as an enclosed way and indicate changes in its physical character over time. Whilst the 1893 large scale OS map suggests a metalled surface, this corroborates the existence of brewery and tannery along the Order route. Later mapping reclassifies the Order route in a manner more consistent with a private road than with a public carriageway.

- 2.12. The 1910 Finance Act map provides an indication of public status as the route is shown uncoloured and excluded from adjacent hereditaments. This treatment may suggest it was a public carriageway in public ownership and exempted from taxation. However, the 1910 Finance Act material is only corroborative and cannot be viewed in isolation, particularly because other clearly private routes in the area were also left uncoloured.
- 2.13. Later twentieth-century records point towards private status. The 1925 Thurstonland and Farnley Tyas Urban District Council highways list was found, on the balance of probabilities, to refer to the surrounding highway network rather than the Order route itself. The inclusion of the Order route in the 1968 Dartmouth Estate sale catalogue under Roads in Hand' strongly suggests that it was regarded by the estate as private land. This is reinforced by the highway's registry card/list of streets, which records the Order route as "Private Unmade".
- 2.14. The definitive map review records add further context and acknowledge the Order routes historic character and reputation for pedestrian and horse-drawn use but also record that the available documentary evidence alone was insufficient to justify the addition of the Order route to the definitive map without supporting evidence of public use.
- 2.15. Overall, the documentary evidence is sufficient to show a long and consistent history of the Order route's existence but is generally equivocal on status. At the order-making stage, the combined effect of Greenwoods 1817 map, the 1893 Ordnance Survey map, and the 1910 Finance Act material was sufficient to reasonably allege that higher rights might subsist. However, on the balance of probabilities, the cumulative documentary evidence does not establish that the Order route was dedicated at common law as a public carriageway.

User Evidence

- 2.16. Overall, there is evidence of public use from 41 members of the public, submitted between 1996 and 2023, showing longstanding public use of the Order route, principally on foot, over several decades. The available evidence demonstrated use of the full route between Manor Road and Farnley Road for walking and recreation, with some use dating back to the early twentieth century.

- 2.17. For the purposes of section 31(2) of the Highways Act, 1980, Officers identified three events that brought the public right to use the way into question: the dates of the 1996 and 2007 definitive map modification order application, and the landowners 2012/13 section 31(6) deposit and declaration. Three overlapping retrospective twenty year relevant periods were considered for the purposes of section 31(1), namely: 1976-1998, 1987-2007, and 1992-2012.
- 2.18. The quantity and quality of public use on foot was found to be sufficient in all three relevant periods to demonstrate actual public enjoyment of the Order route. Evidence was provided by 30 users in the 1976-1996 relevant period, and 35 users in each of the latter relevant periods. The user evidence supported public footpath status only. Although there was some evidence of horse rider use, this was limited to a small number of witnesses and was not sufficient to show use on horseback for the full twenty-year periods.
- 2.19. The public use was as of right: open, without force, and without permission. The landowner's assertion that the Order route was a permissive way was not supported by the available evidence indicating that permissive signs were erected only in 2019/20, outside any of the relevant periods.
- 2.20. The evidence also showed that use was without interruption. Whilst gates and stiles were present for stock control, there was no evidence that they prevented public passage or were used during the relevant periods to challenge public use of the Order route.
- 2.21. There is insufficient evidence negating an intention to dedicate the way as a highway during the relevant periods. There were no effective notices, no sustained challenges to users, and no statutory deposit until 2012/13, capable of rebutting the presumption of dedication for the earlier periods.
- 2.22. Although gates and stiles are now present, the evidence indicates that these were introduced after the beginning of the earliest relevant period and therefore should not be recorded as limitations. In relation to width, the evidence supports a recordable width of approximately 3.6 metres, with a pinch point of 2.6 metres near Manor Road.
- 2.23. Overall, Officers consider that there is sufficient evidence to show, on the balance of probabilities, deemed dedication of the Order route as a public footpath under

section 31(1) of the Highways Act, 1980, and the definitive map should be modified by adding the way to the legal record of public rights of way.

3. Implications for the Council

3.1. Council Plan

3.1.1 Not applicable

3.2. Financial Implication

3.2.1. The financial costs associated with the confirmation and referral of the opposed Order to the Secretary of State would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the Order route in question.

3.3. Legal Implications

3.3.1. The Council has a statutory duty under section 53(2) of the Wildlife and Countryside Act, 1981, to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3)(c), shall by Order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

3.4. Climate Change and Air Quality

3.4.1. Not applicable.

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

3.5.1 Not applicable

4. Consultation

4.1. Kirkburton Ward Members were consulted at the pre-Order stage. No responses were received.

5. Engagement

5.1. Not applicable.

6. Options

6.1 The Options for Members are as follows:

Option 1 to authorise the Service Director of Legal, Governance & Commissioning to forward to the Order to the Secretary of State at Defra for confirmation but take a neutral stance on its confirmation.

Option 2 to authorise the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation and to support confirmation of the Order as made.

Option 3 to authorise the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation and to support confirmation of the Order with modifications.

6.2 Should Members choose Options 1 or 2 they are requested to clarify the evidential basis behind the decision.

7. Officer Recommendation

7.1 Officers recommend that Members choose **Option 3**, para 6.1 above.

8. Reasons for Recommended Option

8.1. Officers have revisited the evidence on which the original order was made and subjected it to the more stringent balance of probabilities test at the confirmation stage.

8.2. Officers consider that the documentary evidence establishes continuity of existence and some degree of public reputation. However, whilst it was reasonable to allege the existing of a vehicular highway at the order-making stage, there are indications pointing either way.

8.3. Overall, at the confirmation stage, the documentary evidence is not sufficient, on the balance of probabilities, to infer that the Order route subsists as a vehicular highway and the burden of proof is not discharged. Therefore, Officers do not recommend that the Councils support confirmation of the Order as made.

- 8.4. Officers subsequently evaluated the available evidence of public use in accordance with section 31(1) of the Highways Act, 1980, and determined that the Order route is deemed to have been dedicated as a public footpath free from limitations with an approximate width of 3.6 metres and a pinch point of 2.6 metres at its eastern end.
- 8.5. Officers conclude that, on the balance of probabilities, the Order route subsists as a public footpath and the definitive map requires modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Wildlife & Countryside Act, 1981. Therefore, it is not appropriate for the Council to take a neutral stance.
- 8.6. On the contrary, Officers recommend that the Council support confirmation of the Order but with modifications to replace all references to 'restricted byway' with 'public footpath' and a modification of the width to be recorded in the definitive statement.

9. Next steps and timeline

- 9.1. The Council forward the Order to the Secretary of State at Department for Environment, Food & Rural Affairs (DEFRA) for confirmation in accordance with paragraph 7(1) of Schedule 15 of the Wildlife and Countryside Act, 1981.
- 9.2. The Planning Inspectorate will decide whether to hold a hearing or an inquiry, or whether a written exchange of evidence and comments would be the most efficient way to decide the case.
- 9.3. The Planning Inspectorate will publish a decision report online and send copies of the decision report and a copy of the order map to the Council, all statutory objectors, the applicant, and supporters or interested parties.
- 9.4. If the Order is not confirmed, the Council shall give notice of the decision by serving a copy of it on any persons on whom notices were required to be served under paragraph 3(2)(b) or (4) of Schedule 15 of the Wildlife and Countryside Act, 1981.
- 9.5. If the Order is confirmed as made, the Council shall give a 42-day public notice in accordance with paragraph 3(1)(c) of Schedule 15 of the Wildlife and Countryside Act, 1981 of the decision to confirm the Order in accordance with paragraph 11 of Schedule 15 of the Wildlife and Countryside Act, 1981.

- 9.6. Under paragraph 8(1)(c) of Schedule 15, the Secretary of State shall not confirm an order with modifications so as to show as a highway of one description a way which is shown in the order as a highway of another description.
- 9.7. Therefore, if the Order is proposed to be confirmed with modifications, as per the Officer recommendations, a notice of proposed modification(s) will be published followed by a 28-day public notice period under paragraph 8(2)(a) of Schedule 15 of the Wildlife and Countryside Act, 1981. If no duly made representations or objections to the proposed modifications are received, the Planning Inspectorate may confirm the Order (see para 9.5 above). If a representation or objection is duly made and not withdrawn (see para 9.2 above). The Planning Inspectorate will publish a final decision report.

10. Contact officer

Mark Drydale, Definitive Map Officer,

11. Background Papers and History of Decisions

- Decision of the Planning Sub-Committee (Heavy Woollen Area) (09.11.23)
- Pre-Order Officer Investigation Report
- Confirmation Stage Officer Investigation Report & Appendixes

12. Appendices

None.

13. Service Director responsible

Service Director: Tony Galloway (Interim)

Highways and Streetscene, Place Directorate



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

Julie Muscroft

Governance and Commissioning

PO Box 1720

Huddersfield

HD1 9EL

Tel: 01484 221000

Decision Summary

Committee:
WOOLLEN AREA)

Date:

Committee Clerk:

TEL:

PLANNING SUB-COMMITTEE (HEAVY

THURSDAY 9 NOVEMBER 2023

Andrea Woodside

01484 221000

Chair

Councillor Eric Firth

Councillors Attended

Councillor Ammar Anwar

Councillor Adam Gregg

Councillor Steve Hall

Councillor John Lawson

Councillor Gwen Lowe

Councillor Andrew Pinnock

Councillor Jackie Ramsay

Councillor Joshua Sheard

Councillor Mohan Sokhal

Apologies

Councillor Timothy Bamford and Councillor Mussarat Pervaiz

1 Membership of the Sub-Committee

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

Apologies for absence were received from Councillors Bamford and Pervaiz.

Councillor Sokhal substituted for Councillor Pandor.

2 Minutes of Previous Meeting

To approve the Minutes of the Meeting of the Sub Committee held on 21

September 2023.

Approved as a correct record.

3 Declaration of Interests and Lobbying

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

None declared.

4 Admission of the Public

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

Determined.

5 Deputations/Petitions

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

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

None received.

6 Public Question Time

To receive any public questions.

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

Any questions must be submitted in writing at least three clear working days in

advance of the meeting.

No questions were asked.

7 Site Visit - Application No: 2023/90434

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

Contact: Sarah Longbottom, Planning Services

Ward affected: Dewsbury East

Estimated time of arrival at site: 11.10am

Site visit undertaken.

8 Site Visit - Application No: 2022/92616

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

Contact: Sarah Longbottom, Planning Services

Ward affected: Cleckheaton

Estimated time of arrival at site: 11.50am

Site visit undertaken.

9 Application to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statement

To consider the report.

Ward affected: Kirkburton

Contact: Mark Drydale, Definitive Map Officer

That approval be given to make a Definitive Map Modification Order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a restricted Byway on the Definitive Map and Statement, and that a further report be submitted to a future meeting to consider the Council's position on confirmation of the Order.

10 Application for a Definitive Map Modification Order (DMMO) to

record a Public Right of Way from Definitive Public Footpath at Upper High Fields to Woodsome Road at Farnley Tyas, Kirkburton on the Definitive Map and Statement

To consider the report.

Ward affected: Kirkburton

Contact: Mark Drydale, Definitive Map Officer

That approval be given to make a Definitive Map Modification Order under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a public footpath on the Definitive Map and Statement from Definitive Public Footpath 55/10 at Upper High Fields to Woodsome Road at Farnley Tyas, Kirkburton on the Definitive Map and Statement and to confirm the order if unopposed, or support confirmation of the Order if opposed.

11 Planning Application - Application No: 2022/92619

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

Contact: Nina Sayers, Planning Services

Ward affected: Liversedge and Gomersal

Application approved (delegated).

12 Planning Application - Application No: 2023/90434

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

Contact: Elenya Jackson, Planning Services

Ward affected: Batley East

Application approved (delegated).



KIRKLEES COUNCIL INVESTIGATION REPORT

S14026 & 197 MOOR LANE, FARNLEY TYAS

Mark Drydale, Definitive Map Officer

22/09/2023



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SUMMARY

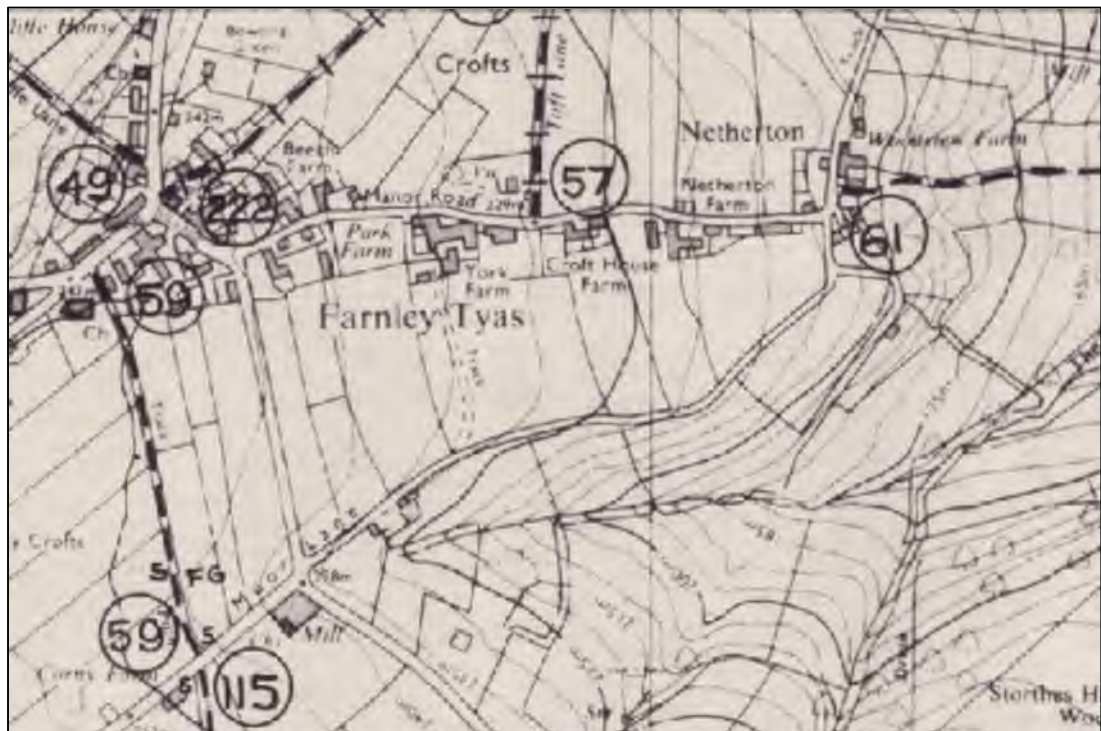
1. In February 1996, and October 2007, Kirklees Council received a Schedule 14 application (reference [S14026 & 197](#)) under the 1981 Act, to record Moor Lane, Farnley Tyas, on the Definitive Map and Statement as a public footpath/public bridleway ('the application route'). The applications provided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

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

APPLICATION

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

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



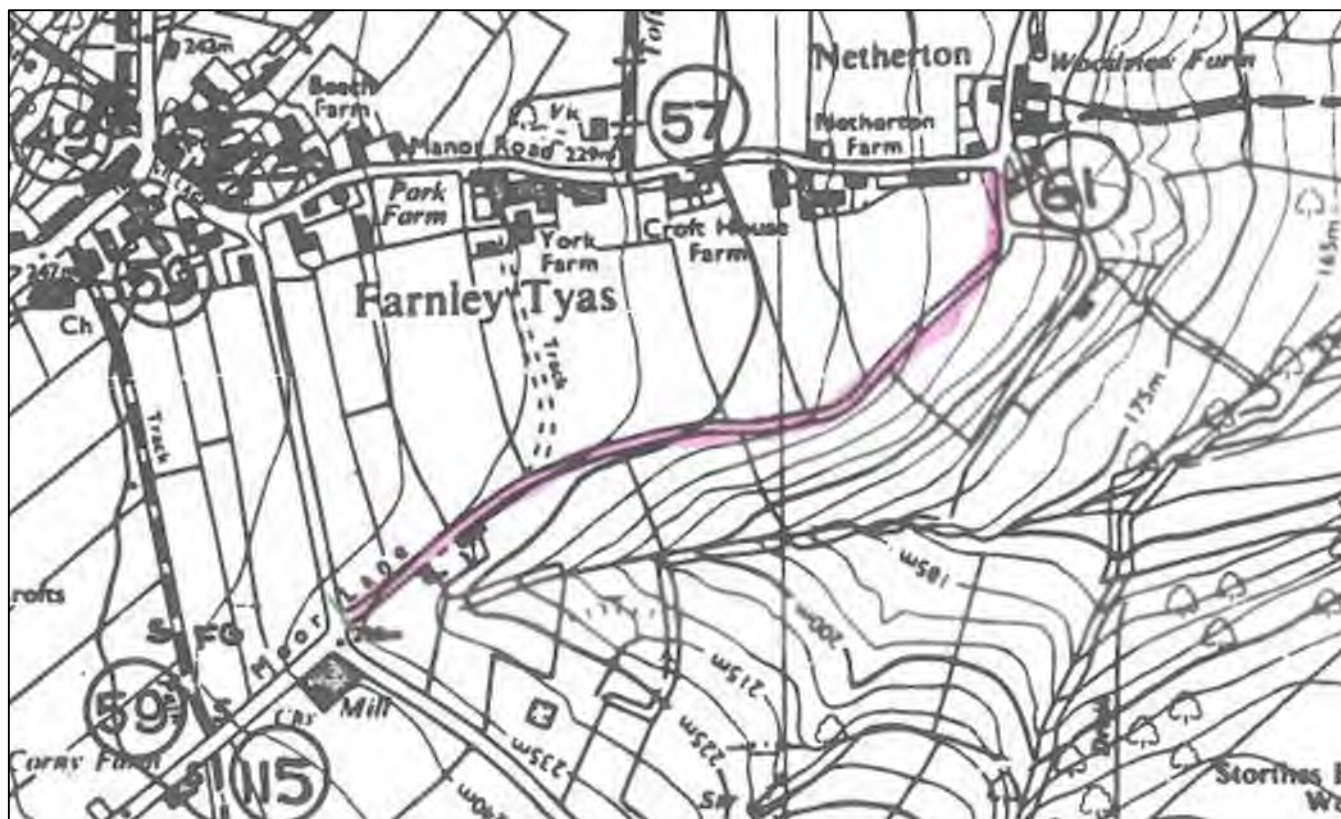
10. The application, as shown highlighted pink in **Figure 2**, seeks to record a route known as Moor Lane, leading between Farnley Road and Manor Road, as a public bridleway on the Definitive Map and Statement. Which is defined in [section 329\(1\) of the Highway Act 1980](#) as a highway over which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

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

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

Figure 2: S14026 Application Map

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



Kirklees

ENVIRONMENT & TRANSPORTATION SERVICE

T.M BROWN
B ScEngg, M.Sc., C.ENG, M.I.C.E.
Assistant Director Highways and Transportation
Pine Street, Partown, Huddersfield, HD1 6LG

REVISIONS		
REF.	DATE	DESCRIPTION

SECTION

DRAWN PROW	CHECKED
SCALE 1:2000	PROJECT NO. 0491/2006
DATE 04/01/2006	

PROJECT --- DEFINITIVE PATH

-/-1-1 DEFINITIVE

TITLE Class 3

DRAWING NO.

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CHARACTER OF CLAIMED ROUTE

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

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

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

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



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



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



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



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



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



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

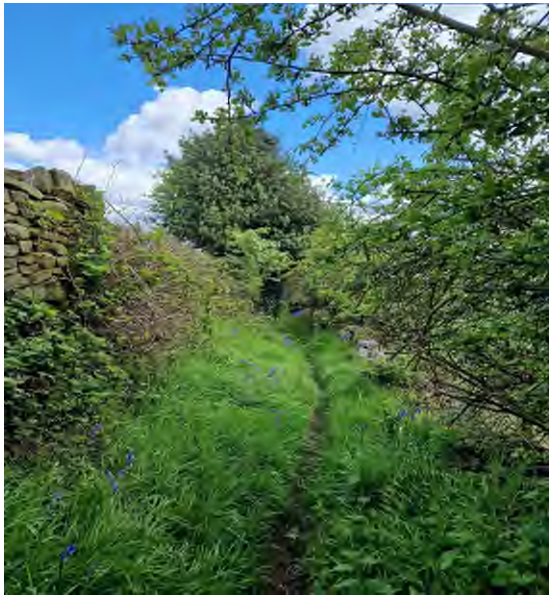


Photo 10: The claimed route momentarily widens to its full width of 2.5m. It has a grass surface and is tree-lined with a high drystone wall on its northern side.



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



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



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



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



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



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

STATUTORY PROVISIONS

Wildlife & Countryside Act, 1981

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

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

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

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

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

Highways Act, 1980

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

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

MAIN ISSUE

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

DOCUMENTARY EVIDENCE

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

Background

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

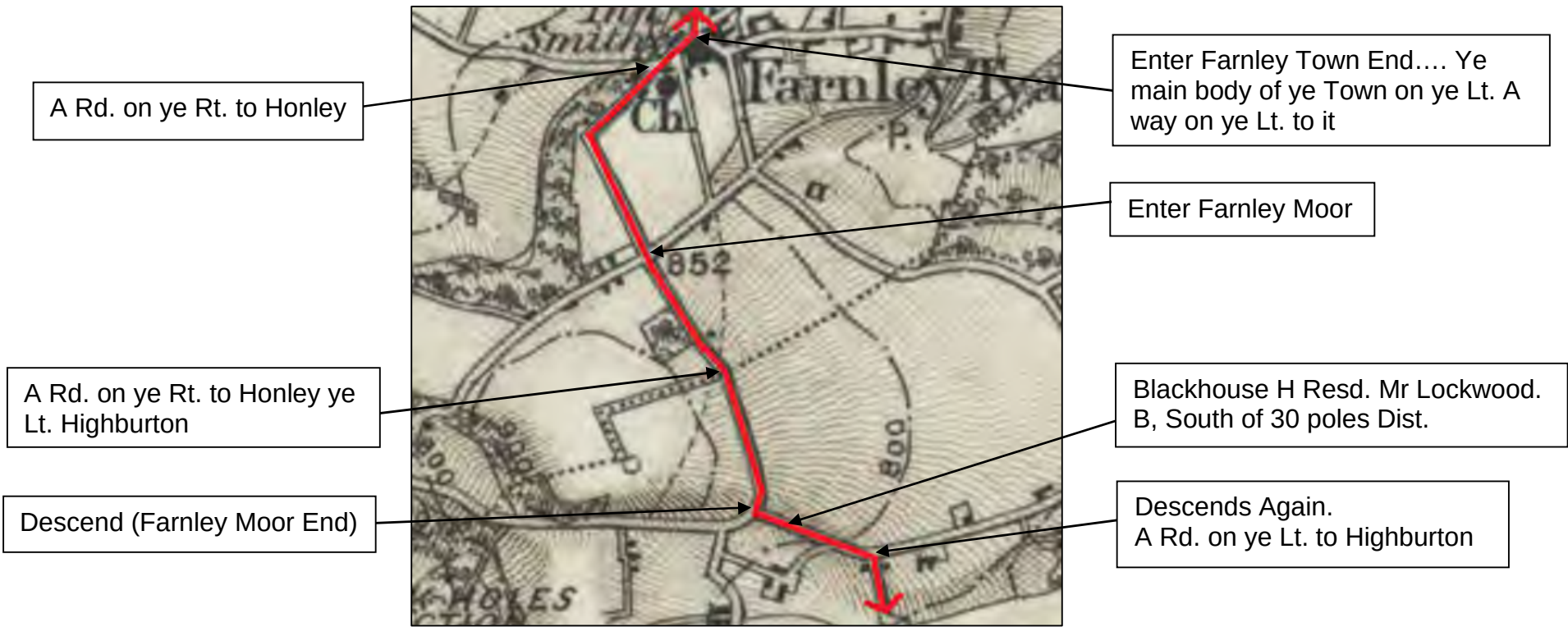
Figure 5: 1719 from Huddersfield to Penistone as followed by Warburton (Source: [Huddersfield Highways Down the Ages](#))

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

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



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



1772 JEFFERYS COUNTY OF YORK MAP

Background

34. Thomas Jefferys ('Jefferys') was one of the most significant and prolific London map publishers of the 1750's; success growing out of a double professional identity as geographer and engraver. Jefferys considered himself to be primarily an engraver despite his designation as Geographer to King George III, an official title which gave him semi-official access to government intelligence and an aura of authority (Anderson, 2018); (Winearls, 1996). Today, it is as geographer that Jefferys is best known and he profited considerably from demands for maps during the Seven Years War and made a speciality of producing maps of North America, which were largely based on inexpensive secondary sources (Ristow, 1976)). In the early 1760's, Jefferys occupied an influential position in the renaissance of English cartographical science, carefully surveying and producing maps of English counties, and was associated with, both as organiser of survey and engraver, at least ten original county maps (Harley J. B., 1966); (Whitaker H. , 2013).

35. The impetus for accurate county surveys was inspired by an advert from the Society for the Encouragement of Arts, Manufacturers, and Commerce ('Society of Arts'), one of the major 'improving' bodies of the period, envisioning that the resulting maps might produce a unified national atlas; the precursor to the Ordnance Survey (Henry, C.J. & Hose, T.A., 2016). The initial 1759 advert was amended over several years and offered awards up to £100 for county maps based on original surveys, triangulation, accurate measurements for latitude and longitude, a two year time scale for completion, and at a scale of one inch to a mile or larger (Arts, 1762); (Macnair, Rowe, & Williamson, 2016)). The county maps required sufficient advanced funds to meet the cost of actual surveying and expensive engraving (Fordham, 1923). The overly-ambitious projects ultimately led to Jefferys bankruptcy in 1766. Jefferys was only able to continue in business through the intervention of William Faden ('Faden') and Robert Sayer, fellow leading map publishers, who acquired substantial shares of his enterprises (Harley J. B., 1966).

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

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

Evidential Weight

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

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

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

Analysis

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

43. The cartographic convention described above was proposed by Dr Hodson and accepted as correct by Neuberger MJ in Commission for New Towns and Another v JJ Gallagher Ltd [2002] EWHC 2668 (Ch) ('[Gallagher](#)')

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

Although initially inclined to dismiss this suggestion as heretical, Professor

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

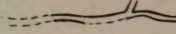
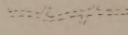
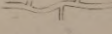
On the basis of the documentary evidence, particularly the 1758 Estate Map, and on the basis of Professor Kain's acceptance that Beoley Lane had a visible vehicular route across the common, and, indeed, that members of the public would not have had a right to stray on the common, I have reached the conclusion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

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

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

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



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

FARNLEY TYAS ESTATE TERRIER MAP

Background

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

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

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

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

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

Analysis

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

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

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

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



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



GREENWOODS 1817 MAP OF THE COUNTY OF YORK

Background

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

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

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

"PROPOSALS FOR PUBLISHING, by subscription,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

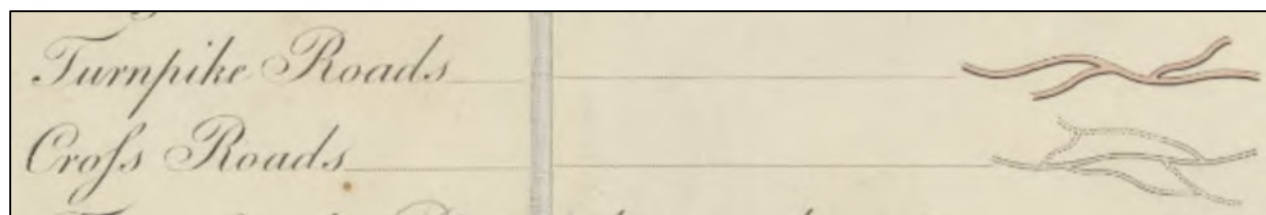
Analysis

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

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

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

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



ORDNANCE SURVEY

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Occupation Roads, Metalled.

Public Roads, Mud.

Occupation Roads, Mud.

Cart Tracks.

Bridle Roads.

Footpaths.

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

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

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

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

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

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

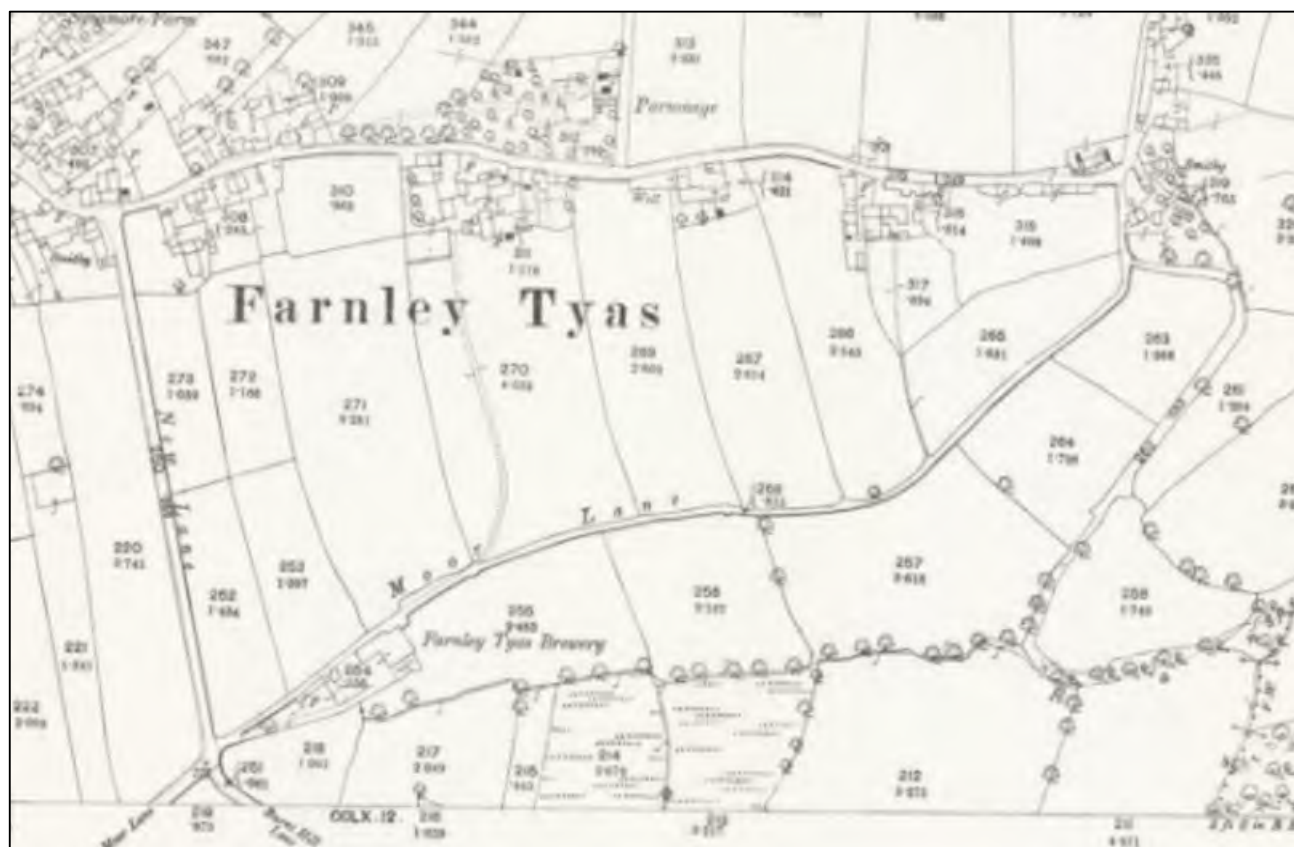
1893 OS 1:2,500 Map

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

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

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

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



1896 OS One-Inch Map

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

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

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

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

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

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



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

1906 OS One-Inch Map

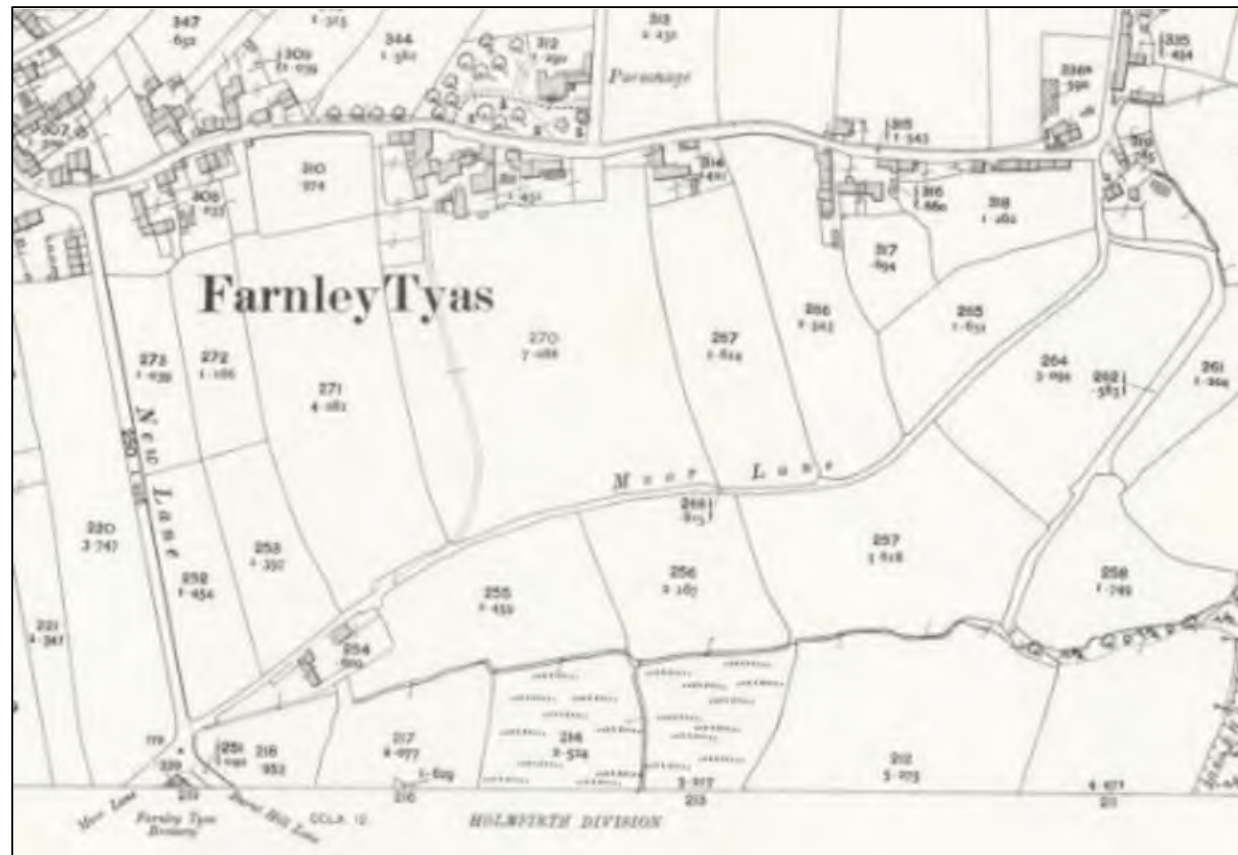
83. The 1905 Instruction to Field Examiners also stated:

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

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

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

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



THE FINANCE (1909-10) ACT, 1910

Background

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

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

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

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

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

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

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

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

93. Two criteria therefore have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan at the antecedent date:

- a) the route is within the jurisdiction of an Urban District Council or is a Main Road.
- b) the route is a highway maintainable at public expense.

94. Case law analysis has revealed a long succession of incorrectly determined judgements with regards to the 1910 Finance Act documents. As of 30th April 1909, Mill Lane in Maltbridge was within Sawbridgeworth Urban District Council jurisdiction but private conveyance documents demonstrated it was not maintained at public expense. In Agombar, Gallagher (part of the route), Todd, Ridley, and Fortune, all the relevant highway authorities were Rural District Councils. The uncoloured routes in all the judgements could not have been in public ownership as the statutory vesting concept criteria was not satisfied; the fee simple of the uncoloured routes remained in private ownership.

95. In particular, Fortune 2010 & 2012 reviewed the 1910 Finance Act evidence based on the supposition that Rowden Lane was within the jurisdiction of Chippenham Borough Council. However, the [Wiltshire XXVI. 2 OS 25-Inch 1900 Map](#), which formed the base map for the 1910 Chippenham Valuation and was analysed in Fortune 2010, clearly shows that the western bank of the River Avon formed the historical boundary between Chippenham Rural District and Chippenham Borough Council. Highway responsibility did not transfer from Chippenham Rural District Council until the borough was expanded to incorporate Rowden Lane by [Act of Parliament in 1914](#); 5 years after the antecedent date.

96. The '[Instruction to Valuers \(No.560\)](#)' detailed that based on the *ad medium filum* presumption, the owner of land generally owns half of the adjoining street; collectively forming the gross unit of valuation area (Q. C. Braham, D, 2002). [Section 4 of the 1875 Public Health Act](#) provides the most credible definition of

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

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

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

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

Valuation Reference Maps

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

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



Evaluation

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

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

No. 2-

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

No. 3-

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

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

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

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

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

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

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

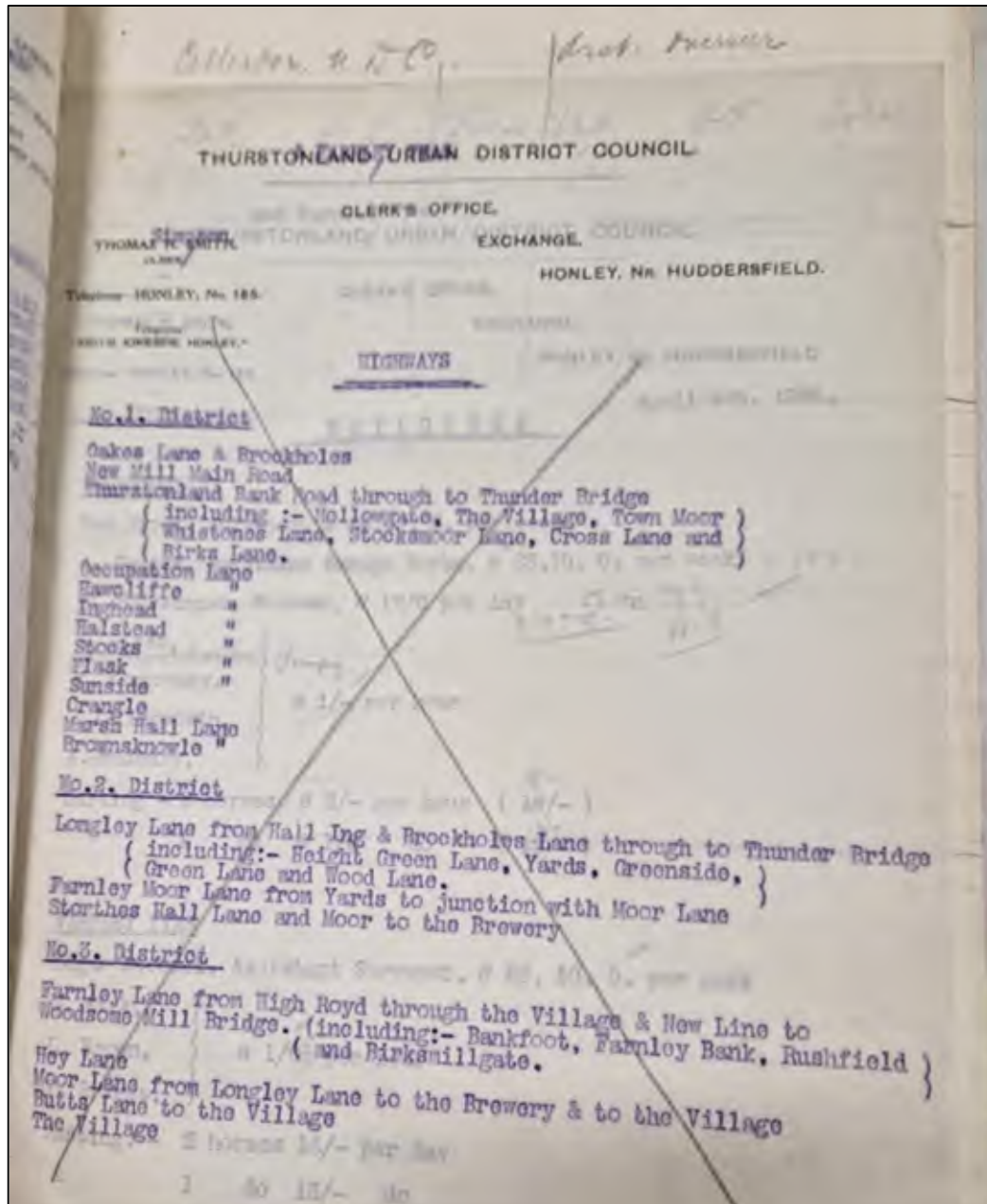


Figure 17: 1928 Omnibus Services between Huddersfield & Farnley Tyas
(Source: London Gazette)

THE LONDON GAZETTE, 1 MAY, 1928.	3061
by registered letter addressed to the Secretary, Electricity Commissioners, Savoy Court, Strand, London, W.C.2, and despatched on or before the 31st day of May, one thousand nine hundred and twenty-eight, and a copy of such objection must also be forwarded to the undermentioned Solicitor.	for his consent to the running by them of motor omnibuses on the roads comprised in the following routes that is to say:—
10. Copies of the draft Order as applied for and of the Order as made may be obtained at the price of two shillings each at the office of the undermentioned Solicitor and at the shop of Miss E. M. Green, Stationer and Bookseller, 1, New Buildings, Lingfield, Surrey.	No. 1. Commencing at the Borough boundary at Hey Lane near Stirley Hill, Almondbury thence proceeding along the said Hey Lane, Farnley Lane and Rawgate to Farnley Tyas thence along New Lane, Burnt Hill Lane, Storthes Hall Lane, Storthes Hall Moor Lane, Green Lane, Greenalme Lane, Marsh Hall Lane and School Lane to the Rose and Crown Inn, Thurstonland.
Dated this 28th day of April, one thousand nine hundred and twenty-eight.	No. 2. Commencing at the Borough boundary in Penistone Road thence proceeding along the said Penistone Road, Storthes Hall Lane, Burnt Hill Lane, New Lane and Farnley Lane to the Golden Cock Inn, Farnley Tyas.
V. B. BARSON, County House, 46-47, (052) New Broad Street, E.C. 2, Solicitor.	No. 3. Commencing at the present omnibus terminus at the Red Lion Inn, Lepton thence proceeding along the Wakefield and Austerlands Road to Shuttle Eye Collieries and thence along Liley Lane to the New Inn, Grange Moor.
HUDDERSFIELD CORPORATION (GENERAL POWERS) ACT 1920.	And notice is hereby further given that objection to the giving of such consent may be sent in writing to the Assistant Secretary, Roads Department, Ministry of Transport, 7, Whitehall Gardens, London, S.W. 1, on or before the 16th day of May, 1928.
OMNIBUS SERVICES.	A copy of any objection should at the same time be sent by the objector to the Town Clerk, Town Hall, Huddersfield.
Between Huddersfield and Farnley Tyas.	Dated this 1st day of May, 1928.
Between Huddersfield and Farnley Tyas and Thurstonland.	J. HESKY FORD,
Between Huddersfield and Grange Moor.	Town Clerk
WHEREAS by Sub-Section 2 of Section 27 of the Huddersfield Corporation (General Powers) Act 1920, it is provided that the Corporation of Huddersfield (hereinafter referred to as "the Corporation") may with the consent of the Minister of Transport and of the Road Authority run omnibuses along any road.	Town Hall, (016) Huddersfield.
Notice is hereby given that in pursuance of the said Sub-Section the Corporation have made application to the Minister of Transport	

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

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

45.

DEFINITIVE MAP RECORDS

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

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

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

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

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

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

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

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

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

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

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

W.Y. FORM 1001

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

NO. TN/437/R/25/k

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

NAME: MR/MRS/MESRS **ADDRESS:** 5 Bidden Drive,
Almondbury,
Huddersfield,
ED9 8UG. **HOME TEL:**
BUSINESS TEL:

PATH LOCATION: Farnley Tyas

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

REASONS FOR ABOVE: Path exists on the ground and should be shown.

INVESTIGATION: Path commences off Farnley Road at grid ref: 166134. Known as Moor Lane it proceeds north east to Manor Road at grid ref: 171127. The land is owned by a Company known as William Shaw & Sons, Huddersfield and the land agent is Carter Jones, Manor House, Slaithwaite, Huddersfield, West Yorkshire. HD7 5NP.

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

DATE OF SUBMISSION	SHEET	SHOWN AS
1850 MAP	260	YES/NO Moor Lane
1895 "	30	YES/NO Moor Lane
DRAFT "		YES/NO
DEFINITE "		YES/NO
REVIEW "		YES/NO
1/2500/1/2500 "		YES Moor Lane

REMARKS ON CLAIM AND INVESTIGATION:

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

OBJECTOR SEEN/WRITTEN TO DATE RESULT:

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

DATE:

COPIES OF THIS SHEET TO:

TO:	DATE:
RA.	
DOE.	

ATTACH & MARK EXTRACTS WHERE APPROPRIATE. W.Y. FORM 102.

DISCUSSION

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

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

120. The 1910 Finance Act shows the application route excluded from adjacent units of land. The Farnley Estate Terrier Map and the 1968 Farnley Estate particulars both show that the land of the application route remained in the ownership of the Earl of Dartmouth. When thoroughly analysed, the 1925 list of highways in the Thurstonland and Farnley Tyas Urban District does not include the application route. However, given that the section of Farnley Road, historically known as 'New Lane', formed part of the Motor Omnibus Route between Huddersfield and Farnley Tyas, negates the inference that the application route was included on the highway list as a highway maintainable at public expense at this time. The 1910 Finance Act also shows numerous private cul-de-sac roads as excluded from valuation even though they were in private ownership. It is therefore surmised that the application route was shown as a 'white road' because it was in multiple occupation.

121. The picture that emerges from the documentary evidence is that the application route was a private occupation road. Improvements to the road network by the Earl of Dartmouth between approximately 1805-1829, or earlier, connected the application route to highways at either end, such that it was capable of potential public use and dedication. As stated above, the test to apply at this stage is whether there is a conflict of credible evidence to reasonably allege the existence of a public right of way. The 1910 Finance Act Map and Jefferys 1772 County of York Map are neutral. Greenwoods 1817 Map of the County of York is also relatively neutral as it showed both public and private routes. Similarly, the 1896 and 1903 OS Maps do not preclude the existence of public rights of way, but in isolation they do not strongly support the existence of such rights either. The re-evaluation of Warburtons map and survey in 1719 & 1720 actual points in the other direction towards private status, because if Moor Lane was

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

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

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

USER EVIDENCE

Brought into Question

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

Evidence of Use

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

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

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

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

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

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

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

As of Right

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

Lack of Intention to Dedicate

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

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

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

Consultee Ref 1

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

Consultee Ref 2

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

Consultee Ref 4

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

Consultee Ref 5

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

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

Consultee Ref 7

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

Landowner Evidence Evaluation

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

Width

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

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

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

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

Limitations

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

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

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

Table 1: Limitations to be recorded

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

User Evidence Evaluation

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

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

Table 2: User Evidence Summary

UE F Ref No.	Years Used	Frequency		Relevant Period (Years)																								Mode			Purpose			Width (m)	Structures/Signs			Seen Others			Permission	Challenged	Landowner/Tenant				
			76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	F	H	B	W	H	C	Gates	Stiles	Notices	F		H	B											
1	46-96	Occasionally																									Y			Y							Y	Y		Y							
2	66-96	Monthly																									Y			Y							Y	Y		Y							
3	59-96	Monthly																									Y			Y							Y	Y		Y							
4	60-96	Frequently																									Y			Y							Y	Y		Y							
5	39-96	Daily																									Y			Y				Y													
6	86-96	Weekly																									Y			Y				Y													
7	1910-1996	Frequently																									Y			Y							Y			Y							
8	89-96	Often																									Y			Y				Y													
9	46-96	Every few months																									Y			Y								Y		Y							
11	71-97	Every few months																									Y			Y								Y		Y							
12	49-96	n/a																									Y			Y							Y	Y		Y							
13	79-96	Quite Often																									Y			Y								Y		Y							
14	57-97	Monthly																									Y			Y						7-2ft	Y	Y		Y							
15	79-2007	Monthly																									Y			Y									Y								
17	1955 - 2023	Every few months																									Y			Y							Y	Y		Y							
18	1965-2007	Weekly 1-2x a year																									Y			Y						3m	Y	Y		Y							
19	1940s-2007	Once a year																									Y			Y						2ft	Y	Y		Y							
20	1949-2015	Weekly																									Y			Y						Vehicular to 2ft wide	Y	Y		Y							
24	1960-2023	Once a year																									Y			Y						1m - 2.5m				Y							
25	1950-2019	Monthly																									Y			Y						2m but narrows	Y	Y		Y							
26	1979-2023	Every few months																									Y			Y						4m but narrows				Y							
28	1958 - 2021	Once a year																									Y			Y						Variable	Y	Y		Y							
29	1992 - 1994	Weekly																									Y	Y		Y	Y																
31	1990 - 2023	Monthly																									Y			Y						Variable	Y	Y	Y	Y							
33	1993 - 2023	Once a year																									Y			Y																	
35	1973 - 2023	Daily																									Y			Y																	
36	1989 - 2023	Regularly																									Y			Y									Y								
39	1984 - 2023	Seasonally																									Y			Y						Variable				Y							
40	1950-2023	Weekly																									Y			Y						1.5y			Y								
41	1977 - 2023	Every few months																									Y			Y						Variable	Y	Y		Y							
			Total																								30	1	0	30	1	0				18	22	2	28	1	0	0	0	0			

KEY

COLOUR

Daily

Weekly

Monthly

Less than monthly

MODE OF USE

F = Foot

H = Horse

B = Bicycle

V = Vehicle

FREQUENCY

W = Weekly

M = Monthly

PURPOSE

W = Walking

H = Horse Riding

C = Cycling

RECOMMENDATION

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

CONCLUSION

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

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Confirmation Stage – Investigation Report

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

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Executive Summary

1. The Statement of Case concerns the 'Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map Modification Order 2024', made following two long definitive map modification order applications to record public rights along Moor Lane, Farnley Tyas. The applications, dated 1996 and 2007, sought the addition of a bridleway or footpath along the Order route, supported by witness statements and later documentary submissions in 2020. After the Council was directed by the Planning Inspectorate to determine the 2007 application, a pre-Order consultation was conducted in 2023, which produced additional user evidence and landowner submissions.
2. The Council subsequently made the Order under section 53(2)(b) of the Wildlife and Countryside Act, 1981, in January 2024 to record Moor Lane as a restricted byway in consequence of an event specified in section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. The Order was made based on an investigation of documentary evidence in accordance with section 32 of the Highways Act, 1980, which was sufficient to reasonably allege that the way had been historical dedicated at common law as a public carriageway and taking into account the extinguishment provision for mechanically propelled vehicular rights in section 67 of the Natural Environment and Rural Communities Act, 2006. Two duly objections were received, which have not been withdrawn, on the grounds that the Order route should be recorded as a public footpath. The Order must therefore be referred to the Secretary of State for confirmation. The purpose of this report is to determine the Councils stance on confirmation of the Order.
3. The Order route leads between Manor Road and Farnley Road along a historic lane forming part of the long-established network of tracks in Farnley Tyas. The land has historically been owned by the Kaye family, later the Dartmouth Estate, and subsequently Farnley Estates Limited, with a short unregistered segment at its eastern end adjacent No. 40 Manor Road. The investigation report sets out the statutory requirements for modifying the definitive map under section 53 of the Wildlife and Countryside Act 1981 and explains the differing evidential tests for making and confirming an order. While the reasonably alleged test suffices at the order-making stage, confirmation requires proof on the balance of probabilities. Section 31 of the Highways Act 1980 also applies, providing for deemed

dedication where the public have used a route as of right and without interruption for at least twenty years.

4. A comprehensive review of documentary evidence has been undertaken, drawing upon estate maps, commercial maps, Ordnance Survey mapping, Finance Act material, local authority records, and the 1968 estate sale catalogue. While these sources consistently show the physical existence of Moor Lane as a long-established way, and there is some corroboration between Greenwoods 1817 Map of Yorkshire, the 1893 1:2500 Ordnance Survey map, and 1910 Finance Act map sufficient to reasonably allege that a restricted byway subsists to make the Order, having revisited the available evidence, overall Officers do not consider that the documentary evidence provides sufficient evidence, on the balance of probabilities, to demonstrate that the Order route was dedicated as a public carriageway.
5. Officers have therefore considered deemed dedication under section 31 of the Highways Act, 1980. For the purposes of section 31(2), the right of the public to use the way was considered to have been brought into question by the definitive map modification order applications in 1996 and 2007, and a later two-stage section 31(6) deposit of a map and statement and lodged declaration in 2012/13. The first relevant period of twenty years was therefore calculated retrospectively as 1976 to 1996 ('the relevant period'); however, two overlapping relevant periods have also been considered: 1987 to 2007 and 1992 to 2012.
6. The investigation concluded that each element of the first question of fact, whether the way has been "*actually enjoyed by the public as of right and without interruption for a full period of 20 years*", was met in all relevant periods to raise the rebuttable deemed dedication of a footpath. The burden of proof then shifted to whoever sought to rebut the statutory conclusion. However, the second question of fact was not satisfied, namely that there is "*sufficient evidence that there was no intention to dedicate*". Although there is some evidence of equestrian use and reputation as a bridleway, the evidence is sparse and insufficient to show that the way has actually been enjoyed by the public for a full period of 20 years to provide the landowner with an opportunity of resisting and challenging the use.
7. Currently, there are two gates and three stiles along the Order route. However, the available documentary and user evidence shows that they were erected towards the end of the first relevant period and not at the date of dedication coeval with the early user in 1976. Therefore, the Order route is not deemed to have been dedicated subject to

limitations. Owing to the presence of structures and dense vegetation, the width of the Order route currently used by the public is presently narrow. However, documentary and user evidence show that the full width of the Order route was used by the public at the date of dedication, with an approximate width of 3.6 metres and a pinch point of 2.6 metres at its eastern end.

8. Officers conclude that the Council should support confirmation of the Order with modifications to replace all references to restricted byway with public footpath and a modification of the width to be recorded on the definitive statement.

Background Information

9. On the 22nd February 1996, The Ramblers submitted a definitive map modification order application to Kirklees Council ('the Council') under [section 53\(5\) of Wildlife and Countryside Act, 1981](#), ('WCA'). The application sought to modify the West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area ('the definitive map and statement') by Order to add a bridleway along a route known as Moor Lane, Farnley Tyas, leading between Manor Road and Farnley Road. The application was properly made under the requirements of Schedule 14 of the WCA and the submission gave as evidence 13 witness statements. The 1996 application was later supplemented by a further witness statement in 1997. The applicant certified to the Council that the requirements of [paragraph 2 of Schedule 14 of the WCA](#) had been complied with and the relevant landowners and occupiers have been notified of the application.
10. Subsequently, on 11th October 2007, a second definitive map modification order application was submitted to the Council on behalf of the Huddersfield Rucksack Club ('the second applicant'). The second application sought to modify the definitive map and statement by Order to add a footpath along Moor Lane commencing on Manor Road and leading south-westerly towards, but stopping short of, its junction with Farnley Road. The second application was properly made under the requirements of Schedule 14 of the WCA and the submission have as evidence 6 witness statements. Lastly, on 10th December 2020, Kirklees Bridleways Group submitted documentary evidence to support the claims, namely: 1719 Warburtons Route (Huddersfield Highways Down the Ages), 1841 Ordnance

Survey Boundary Sketch Map & Remark Book, 1893 Ordnance Survey 1:2500 First Edition Map, and 1910 Finance Act Map.

11. The Council had a statutory duty to determine the applications under [Schedule 14, paragraph 3](#), of the WCA. The Council also have a free-standing duty under section 53(2) to continuously review the definitive map and statement together with a duty under section 53(3)(c) of the WCA to consider all relevant evidence available to it, which includes the documentary evidence submitted by Kirklees Bridleways Group. Following a representation by the second applicant, the Council were directed by the Planning Inspectorate (Ref: [FPS/Z4718/14D/19](#)), on behalf of the Secretary of State for Environment, Food, and Rural Affairs, pursuant to paragraph 3(2) of WCA, to determine the application no later than 20th November 2022.
12. A pre-Order consultation was conducted with Kirkburton Parish Council, Almondbury Ward Members, user groups and landowners between 9th August 2023 and 11th September 2023. The consultation elicited several responses: Kirkburton Parish Council, Huddersfield Ramblers, and Huddersfield Rucksack Club all supported the claims; 21 members of the public provided further evidence of public use. Four landowners/adjacent landowners submitted 'Landowner Statements'. All the new evidence was duly considered as part of the investigation.
13. A report on the application, investigation and consultation was submitted to the Council's [Planning Sub-Committee \(Heavy Woollen Area\)](#) on 9th November 2023. The committee considered all the available evidence set out in the report and [resolved](#) to make a definitive map modification order under section 53(2)(b) of the WCA in consequence of the occurrence of an event specified in section 53(3)(c)(i) to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a restricted byway on the definitive map and statement. However, the committee resolved that a further report be submitted to a future meeting to consider the Council's position on confirmation of the Order. The purpose of this investigation report is to determine the Council's stance on confirmation of the Order.
14. The '[Kirklees Council \(Kirkburton 256 – Moor Lane\) Definitive Map Modification Order 2024](#)' ('the Order') (see **Appendix A**) was duly made by the Council on 19th January 2024 under section 53(2)(b) of WCA in consequence of the occurrence of an event specified in section 53(c)(i). For the purposes of the Order, the relevant date is 9th November 2023. If confirmed as made, the Order will record a restricted byway on the definitive map and

statement along a route known as 'Moor Lane' leading between Manor Road and Farnley Road ('the Order Route').

15. A [public notice](#) was published in the Huddersfield Examiner on 26th January 2024, served on statutory consultees, at local offices, and posted on site at either end of the Order route in accordance with the requirements of [paragraph 3 of Schedule 15 to the WCA](#). The 42-day public notice period commenced on 26th January 2024 and ended on 8th March 2024. The Order elicited two duly made objections received by the Council on 9th February 2024 and 12th February 2024 respectfully, which have not been withdrawn. As required by paragraph 7(1) of Schedule 15 to the 1981 Act, the authority has submitted the Order to the Secretary of State for confirmation.

16. The investigation report will address why Officers consider that the Order should be confirmed in light of any new evidence and provide comments on the objections.

Description of Order Route

17. The Order route is partly an old historic way known as Moor Lane. It is located in the town of Farnley Tyas, in the civil parish of Kirkburton, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. Farnley Tyas is a small rural village located 3 miles southeast of Huddersfield and is situated on a hilltop approximately 900ft above sea level between Almondbury, Castle Hill, Thurstonland, and Honley. The Order route commences on Manor Road and leads southerly along a tarmac access road that provides access to the properties of 40 Manor Road and Ash Croft. The Order route continues southerly to its junction with an ancient route known as 'Crab Lane' and then leads generally south-westerly along a predominantly vegetated track with a relatively narrow width between 2.5-3 metres to its junction with Farnley Road (Photos of the Order route shown in **Appendix B**).

Landownership

18. Farnley Tyas is a historic village that was first mentioned in the Domesday Book of 1086 as 'Fereleia' (Darby, 2008). Tyas is a manorial affix from the family name of 'le Tyeis' who held land in the area from the 13th century (Mills, 2011). The majority of the village was owned by the Kaye family of Woodsome that built Woodsome Hall since 1378 (Yorkshire Archaeological Society, 1895). By 1732 the lands were in the possession of the Earl of Dartmouth and the village grew into a predominantly farming community. In 1969, the land was sold to a William Shaw & Sons (Huddersfield) Limited, which became Farnley Tyas Estates Limited and has remaining in their ownership until the present day but is now known as 'Sprillers' (Land Registry Title 'WYK479161') (see **Appendix C**). The relevant land was included in an Agricultural Holdings Act tenancy to Malcolm Kaye. The Kaye family had been farming the land as tenant farmers for 300 years for rough grazing land for grazing predominantly cattle.
19. In 2019, Farnley Estates Limited sold the freehold of an area of land known as 'The Old Brewery' covering part of the western section of the Order route at its junction with Farnley Road (Land Registry Title 'YY120185') (see **Appendix C**). A small section of the Order route is unregistered and despite extensive enquiries, the Council was not able to ascertain the ownership of the land in question. On 17th January 2024, in accordance with paragraph 3(4) of Schedule 15 to the WCA, the Secretary of State directed that it was not necessary for the Council to serve notices on the owners and occupiers of the land over which the route runs as required by paragraph 3(2)(b)(i).

Statutory Provisions

Section 53 of the Wildlife and Countryside Act, 1981

20. The Council have a statutory duty to keep the definitive map and statement under continuous review and under [section 53\(2\)\(b\) of the WCA](#):

“... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.”

21. In this case, as the applications seek to add the Order route to the definitive map and statement as either a footpath or bridleway, the relevant evidential event to investigate the documentary and user evidence contained in [section 53\(3\)\(c\)\(ii\) of the WCA](#), namely:

“(3) The events referred to in subsection (2) are as follows-

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) 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”.

22. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist at the order-making stage, the standard of proof is higher for the order to be confirmed. At this stage, the test to be applied to the available evidence is the civil standard of proof, that is, the balance of probabilities. If the evidence is such that a tribunal of fact can say: we think it more probable than not, then the burden is discharged. But if the probabilities are equal, such as there is a conflict of credible evidence that cannot be resolved, it is not.

23. A bridleway, footpath, and restricted byway are defined in [section 66 of the WCA](#) as:

““bridleway” means a highway over which the public have the following but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;”

““footpath” means 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;”

““restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;”

24. A restricted byway is defined in [section 48\(4\) of the Countryside and Rights of Way Act, 2000](#) as:

“In this Part-

“restricted byway rights” means-

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles; and

“restricted byway” means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.”

Section 31 of the Highways Act, 1980

25. [Section 31 of the Highways Act, 1980](#), so far as material to this case, provides:

“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes-

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

(6) An owner of land may at any time deposit with the appropriate council-

(a) a map of the land, and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

Any, in any case in which such a deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time-

(i) within the relevant number of years from the date of the deposit or

(ii) within the relevant number of years from the date on which the previous declaration was lodged under this section.

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(6A) Where the land is in England-

(a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,

(b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and

(c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years.

(7) For the purposes of the foregoing provisions of this section “owner”, in relation to any land, means a person who is for the time being entitled to dispose of the fee simple of the land;...

(7A) Subsection (7B) applies where the matter bringing the right of the public to use the way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

26. It is not necessary for present purposes to refer to the remainder of s.31 of the Highways Act, 1980. Deemed dedication under statute therefore involves consideration of a proviso, and then two questions of fact. The meaning of the proviso *“other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication”* have the same legal effect as, and are equivalent to, the words *“as a highway”*.

27. The first question of fact is whether the way has been *“actually enjoyed by the public as of right and without interruption for a full period of 20 years”*. Each element of must be met to raise the presumption that a way has been dedicated as a highway. The burden of proof to satisfy the first question of fact rests on the applicant for the modification order. If the first question can be given the answer ‘yes’, there will be a rebuttable ‘deemed’ dedication. The burden of proof then shifts to whoever seeks to rebut the statutory conclusion, which stands unless the specified statutory condition of escape, the second question of fact, is satisfied, namely that there is *“sufficient evidence that there was no intention to dedicate”*.

Section 32 of the Highways Act 1980

28. The relevant legal framework for assessing documentary evidence is under s.32 of the Highways Act, 1980, which provides:

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place,

shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

29. The provision is declaratory of the common law and confirms that any map or other document, adduced in evidence in determining whether a way has been dedicated a highway must be take into consideration. In assessing the value of a document, those considerations include: the antiquity of the document; the status and reputation of the person by whom it was made; the facts surrounding its creation and the purpose from which it is produced. Analysis of evidence usually comprises of three stages: the identification of fact, the derivation of an inference from the fact, and an assessment of the evidential weight of the inference.
30. Direct evidence of highway status will often be impossible to find over the passage of time and inferences must be drawn from the circumstantial evidence. Circumstantial evidence does not carry as much weight as direct evidence, and no matter how reasonably the inference drawn, it is generally no more than a rebuttable presumption. Each aspect of evidence has to be initially considered on its own to assess their reliability. However, each aspect of evidence must also be assessed in light of the other aspects of documentary evidence. The cumulative effect of a number of separate issues of circumstantial evidence is to increase the weight of that evidence.
31. This is often expressed through the use of the ‘rope analogy’. One strand of rope on its own may be weak and insufficient to carry a weight, but several strands together increase the strength of the rope and may then carry more weight (see [R v Exall \[1866\] 176 ER 850](#)). In the end, after considering all the aspects together, the decision-maker has to determine whether they are satisfied on the balance of probabilities that the use and reputation of the Order route was such to justify the inference that it was dedicated as a highway (see paragraph 83 of [Commission for New Towns v JJ Gallagher \[2003\] 2 P&CR 24](#)).

Reasons For Confirming the Order

32. In [R. \(on the application of Roxlena Ltd.\) v Cumbria County Council & Another \[2019\] EWCA Civ 1639](#), the Appellant contended that if documentary evidence before a Council was not sufficient to demonstrate on the balance of probabilities at the order-making stage that a public right of way subsisted to justify confirmation, it could not have been reasonable to make a definitive map modification order. Lord Justice Lindholm disagreed and confirmed that the reasonably alleged test applies equally to documentary evidence cases as it does to user evidence, citing the relevant authorities. However, at the confirmation stage, the legislation implies a revisiting by the surveying authority of the material on which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage:

[37] Under the 1981 Act the order-making part of the process is separate from confirmation, and involves a different approach to the evidence. This has been consistently recognized by the courts. The procedure under Schedule 14 to the 1981 Act was described by Roch L.J. in ex p. Emery (at p.377b) as "preliminary". He said (at p.377e-h) that "[where] there is no credible evidence of 20 years' user or where there is incontrovertible evidence that the landowner had no intention during the period to dedicate the way to the public, ... then the decision should be not merely that the allegation that a right of way subsists is not reasonable, but that no right of way as claimed subsists". However, where there is "conflicting evidence on one or other or both issues", an authority "must bear in mind that an order under [section] 53(2) made following a [Schedule] 14 procedure still leaves [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". He went on (at p.379c) to approve observations made by Owen J. in R. v Secretary of State for the Environment, ex p. Bagshaw (1994) 68 P. & C.R. 402 (at pp.407 to 409) – that the words of section 53(3)(c)(i) indicate "that the evidence necessary to establish that a right of way is reasonably alleged to subsist over land must be less than that which is necessary to establish that a right of way does subsist", and that "bearing in mind the structure of [the 1981 Act], this seems to be clear". He also endorsed Owen J.'s formulation of the relevant question as being "Does the evidence produced by the claimant together with all the other evidence available show that it is reasonable to

allege a right of way?". Consistent with this is another observation made at first instance, by Evans-Lombe J. in Todd v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 1450 (Admin) (at paragraph 51(iii)) – that the provisions of paragraph 6 of Schedule 15, which confer on an authority a discretion to confirm unopposed modification orders, "... imply a revisiting by the authority ... of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage".

"[74] The reasons I have given for rejecting the parallel argument relating to the footpaths are also relevant here. The crucial question is whether the allegation is a "reasonable" one. This is not a high test, and deliberately so. The fact that the allegation is based on primary documents rather than user evidence as such does not bear on the principle. A reasonable allegation can properly be based on documentary material alone – as Roch L.J. effectively accepted in ex p. Emery (at p.379c) when endorsing Owen L.'s observation in ex p. Bagshaw (at p.409) that "if... the evidence were to be wholly documentary it might be possible, satisfactorily or reliably, to evaluate that evidence without any necessity for a hearing, and in these circumstances answer the question whether a reasonable person could reasonably allege a right of way to subsist."

33. In making the Order, the Officers investigation considered all documentary evidence available to them in accordance with section 32 of the Highways Act, 1980, namely:

- Warburton: The Road Between Huthersfield and Penistone 1719 & 1720 Map of Yorkshire; 1772 Jefferys County of York Map, 1805 Farnley Tyas Estate Terrier Map; 1817 Greenwoods Map of Yorkshire; 1893 OS 1: 2,500 Map, 1896 OS One-Inch Map, 1906 OS One-Inch Map, the 1910 Finance Act Map, 1925 Thurstonland and Farnley Tyas Urban District Council Records, 1928 Omnibus Order Notice in the London Gazette, 1968 Farnley Tyas Sale Document, and Definitive Map Review Records & 1998 Letter.

34. Officers have revisited the material on which the original order was made and discovered new documentary evidence, namely 1805 Farnley Estate Map, 1827 Quarter Sessions Stopping-Up Order, and 1910 Finance Act Field Book Extracts. All of the documentary evidence has been considered using the balance of probabilities test at the confirmation stage.

Documentary Evidence

Warburton: The Road Between Huddersfield and Penistone 1719 & 1720 Map of Yorkshire

35. Warburton's 1720 Map of Yorkshire was published at a scale of 24 miles to 1 inch and was made from an actual survey (see **Appendix D**). The notebooks of the survey are discussed in 'Huddersfield Highways Down the Ages' by W.B. Crump in 1968. An extract of the surveyors' notes is transcribed by W.B. Crump and were submitted in evidence to Kirklees Bridleway Group to support a claim that the Order route subsists as a public bridleway on the basis that the Order route is described as a thoroughfare road to Highburton (see **Appendix D**).
36. The documents show that a main route between Huddersfield to Penistone, and onwards to London, was through Farnley Tyas via Woodsome Road, The Village, Butts Road, Thurstonland Road, Green Side Road, and Brown's Knoll Road. Warburton's route therefore does not lead directly passed the Order route, as confirmed by the measurements and the 1720 Map. However, the surveyors' notes describe: "*A Rd. on ye Rt. to Honley ye Lt. High Burton + (Moor Lane)*". It is clear that W.B. Crump names the route and corrects the surveyors' spelling mistakes. The reference to 'Moor Lane' is therefore based on W.B. Crump's interpretation of the survey. Kirklees Bridleway Group infer that the Order route was used as a thoroughfare to Highburton via the route through Carr Wood to Woodsome Lees.
37. However, as shown in **Appendix D**, Warburton's route does not lead directly passed the Order route. Therefore, in the first instance, 'Moor Lane' may only refer to the section of present day Moor Lane that leads between Brockholes Road and Farnley Road, which joins Storthes Hall Lane and in turn leads to Highburton. Today, Moor Lane forms a thoroughfare with Farnley Road and Storthes Hall Lane to Highburton and Kirkburton. In an 1827 stopping-up order of a public footpath, two Justices of the Peace describe Storthes Hall Lane as follows (see **Appendix E**):

“... a certain Highway in the Township of Thurstonland aforesaid leading from Farnley Tyas aforesaid to Kirkburton in the Riding aforesaid called Storthes Hall Lane...”.

38. Similarly, an extract of plate 17 of [Jefferys 1772 County of York Map](#) (see **Appendix F**) also confirms that Moor Lane and Storthes Hall Lane forms a thoroughfare road from Farnley Tyas to Highburton. On the balance of probabilities, the route to Highburton described in Warburtons 1719 survey includes the section of Moor Lane maintained at public expense as a public carriageway, Farnley Road, and Storthes Hall Lane, rather than the Order route. Moreover, the surveyor provided the distances between points in miles, furlongs, and poles. One furlong equals 200 metres, and one perch equals 5 metres; 8 furlongs make up a mile, and 40 perches make up 1 furlong.
39. The distance between station 14 ‘Enter Farnley Town End’ (3m, 3f, 15p) and station 16 ‘A Rd. on ye Rt to Honley ye Lt. Highburton + (Moor Lane)’ (4m, 1f, 0p) is 5 furlongs and 25 poles, which equates to approximately 1,131 metres. Measuring this distance on modern Ordnance Survey mapping from approximately just north of the ‘The Village’ at ‘Field Lane’, leading along ‘The Village’, ‘Butts Lane, and part of ‘Thurstonland Road’, places the point that the surveyors/W.B. Crump notes as ‘Moor Lane’, as exactly at the ancient parish boundary between Thurstonland and Farnley Tyas. On the other hand, the distance from Farnley Tyas village to the junction of the Moor Lane, is only 780 metres.
40. Measuring the distance leading northerly from the parish boundary to ‘Enter Farnley Moor. Open’ (3m, 7f, 10p) is 0m, 1f, 39p, which is approximately 350 metres and is, give or take, the distance between the ancient boundary and the present day junction of Brockholes Lane/Moor Lane/Butt Lane. The junction of Moor Lane with the start of Farnley Moor is consistent with Jefferys 1772 County of York Map and the 1805 Farnley Tyas Estate Terrier Map. Overall, the inference to be drawn from Warburtons 1719 and 1720 documentary evidence is therefore equivocal with regard to the Order route.

Table 1: Analysis of 1719 Warburtons of Road between Huddersfield & Penistone

Station	Progressive Distance (miles, furlongs, perches)	Distance Between Point and Station 14 (metres)	Description	Modern Description
14	3 3 15	0	Enter Farnley Town Junction of End. A house on ye Rt. Woodsome Road, & Scattering houses on and The Village ye Lt. ye main body of ye Town on ye Lt. A way on ye Lt. to it.	
	3 4 0	90	Leave Farnley. Open Rt.	The Village
	3 ? ?		A Rd. on ye Rt. to Honley Road. Honley (Farnley Lane) Junction with Butt Lane	
16	3 7 10	780	Enter Farnley Moor. Junction of Butt Open. Lane, Moor Lane, Brockholes Lane, and Thurstonland Road.	
	4 1 0	1131	A Road + ye Rt. to Farnley Tyas and Honley ye Tl. Thurstonland Parish Highburton + (Moor Boundary Lane)	
17	4 3 0	1533	Descend (Farnley Moor End) End)	Farnley Moor End. Junction with Greenside.

1805 Farnley Tyas Estate Terrier Map

41. At the Order-making stage, Officers analysed a traced terrier map of the Dartmouth Estate, approximately dated to 1828, which showed referenced plots of land and the alignment of existing ways at that time, although there was no direct evidence of status. Following the making of the Order, Officers have obtained a copy of 'Farnley Tyas: A History' by Dr

Caroline Page from Honley Civic Society, which contains a copy of a survey map, dated 1805, 'Terrier of the Dartmouth Estate' (see **Appendix G**). Dr Caroline Page comments:

"... in 1805 Lord Dartmouth's agents Kent, Pearce and Kent completed a rent revision for the Yorkshire Estates. They then considered it advisable to prepare 'a register' giving detailed information of the whole of the Estates. In a letter to Lord Dartmouth Mr. Pearce said that 'it shows the represent disposition of the property'. In this Survey of 1805 (Dartmouth Estate 1805) each holding is dealt with separately, giving the name of the building or farm, the name of the tenant, the name of each field and its number on the key map, its type of cultivation, i.e. meadow, pasture or arable, the rents before and after the increase and the buildings on the holding. The mills and collieries are listed with detailed information on each. The script is in a beautiful copperplate hand and there are delightful illustrations. A part from the value of the information it contains, the book itself is a work of art".

42. The cartouche to the 1805 survey map states 'Farnley & Rowley Sections' and shows and names woodlands, fields, houses, watercourses, and a dashed black line in the manner of a footpath leading to Birks Wood. The 1805 survey predates the diversion/stopping up of the ancient Woodsome Lane and the creation of part of Farnley Bank Road between the Order route and Manor Road. The map shows all routes, whether throughfare or cul-de-sac, public or private, generally as enclosed routes coloured sienna.
43. The 1805 survey map confirms that the Order route led to Farnley Moor, which is annotated as 'non cultivating', providing an indication of the provenance of the name 'Moor Lane' and its purpose. The continuation of Moor Lane through Farnley Moor is shown as unenclosed and then is enclosed once it becomes 'Brockholes Lane'. The 1805 survey map also shows that the southern section of the route now known as 'Farnley Bank Road' existed at this point in time and continued towards Storthes Hall Moor Lane and 'Highburton'. Notably, the northern section of 'Farnley Bank Road' did not exist (also historically known as 'New Lane'), but it is shown on 1817 Greenwoods Map of Yorkshire, indicating that it was dedicated at some point between 1805 and 1817. Nevertheless, overall, the document confirms the existence of the Order but is equivocal with regards to its status.

1817 Greenwoods Map of the County of Yorkshire

44. The Order-route is depicted on Greenwoods 1817 Map of the County of Yorkshire (see **Appendix H**) as a thoroughfare ‘Cross Road’, leading between what is now Farnley Road and Manor Road, at a time when highways were reparable by the inhabitants at large, before section 23 of the Highways Act, 1835, came into effect on 20th March 1836. A research paper titled: ‘*What is a Cross Road?*’ was presented by the author at the Order-Making stage, in support of the argument that any route described as a ‘cross road’ on a commercial map should be accepted as a public carriageway.
45. On behalf of Kirklees Bridleways Group, reference was also made to case law, such as *Trafford v St Faith’s Rural District Council* [1910] (‘*Trafford*’), *Hollins v Oldham* [1995], ‘*Gallagher*’, and [Fortune & Others v Wiltshire Council & Another \[2010\] EWHC B33 \(Ch\)](#) & [Fortune & Others v Wiltshire & Another \[2012\] EWCA Civ 334](#). With the exception of *Fortune*, the judgements in question were considering a map produced by a different cartographer and either many years before or after Greenwoods 1817 Map of Yorkshire. The precedents set should be considered, but in the context of any individual map.
46. In *Trafford*, Neville J considered that commercial maps are: “... *admissible as some evidence of reputation, but the weight of the evidence is another matter*”. In particular, the depiction of a route as a ‘Good Cross or Driving Road’ on Bryant’s 1826 Map of Norfolk was considered to provide an indication of reputation and provided a: “... *little bit of evidence to indicate that as early as 1826 this road was considered to be a public road*” as it was inferred that the characterisation of the road was based on information provided by local inhabitants. However, the case was mainly decided on a sale plan of 1848, which described the way as a public road. Furthermore, in [Norfolk v Mason \[2004\] EWHC B1 \(Ch\)](#), Judge Roger Cooke stated with regards to *Trafford*:
- “It would be unwise ever to rely on this decision as saying that Bryant is something on which great weight should be put as to status or anything else. The significance of the result was that Bryant was consistent with everything else”.*
47. Judge Roger Cooke also considered the status to be inferred from the depiction of a route as a ‘Good Cross or Driving Road’ on the same Bryant’s Map, and its evidential value, concluding that whilst the depiction of a route as a ‘Good Cross or Driving Road’ on

Bryant's map is prima facie consistent with, in the absence of contrary evidence, "... a little piece of evidence in support of public rights", but by itself, Bryant's map is anything but a firm indicator and not too much reliance should be placed on the document. Similarly, although with regards to a route depicted as a parochial road on a commercial map by John Cary, HHJ Neuberger stated in *Gallagher*:

"However, it appears to me that there is one factor which provides a little support for the Commission's case. One of the historical maps, namely Cary, does tend to suggest that Beoley Lane was a public carriageway. This is because it was denoted as a "parochial road".

48. The judgements in *Trafford*, *Mason*, and *Gallagher* are consistent on the 'little' evidential weight attributed to commercial maps. This is due to the reliance that can be placed on the surveyor/cartographer, as explained in *Hollins v Oldham* [1995]. HHJ Howarth analysed 'Burdetts Map of 1777, which included two types of road on its key: 'turnpike roads' and 'cross roads', and therefore comparable to Greenwoods 1817 Map of Yorkshire. HHJ Howarth stated:

"The latter category, it seems to me, must mean a public road in respect or which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged".

49. The depiction of the route in question, known as 'Pingot Lane' as a Cross Road, raised a *prima facie* inference of public status for the travelling public on horseback or horse and carriage. However, the judgement continues: "*Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles*", which indicates that the depiction and characterisation of a route on the commercial map is evidence of what the surveyor/mapmaker thought, which would depend on their methodology. Similarly, in [Price v Nunn \[2023\] EWHC 3200 \(Ch\)](#), HHJ Russen KC considered an 1824 Map surveyed by Bryant and stated:

"The experts agreed that this was the type of map produced for the benefit of the travelling gentry and I therefore accept Mr Carr's point that that it would show routes

that could be used by the public. However, without more, that does not establish that every route shown was suitable for vehicular use.”

50. The decision in *Fortune* noted that Greenwoods Map of Wiltshire, 1829, showed a thoroughfare including the lane in question as a ‘Cross Road’ and concluded that the map supported “*the emerging picture*” of an established thoroughfare. The Court of Appeal noted that in their judgement, the label ‘Cross Road’ added further support. They noted that:

“... the consistency of treatment of Rowden Lane and Gypsy Lane in commercially produced maps for well over a century showed, if nothing else, the reputation enjoyed by Rowden Lane... [the judged tested] each provisional conclusion against what had come before and what came after [and his] approach to ‘consistent depiction’ was fully justified”.

51. *Fortune* highlights the fact that commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. Commercial maps may nevertheless be corroborative evidence, and combined with other sources, they can tip the balance of probability in favour of such status.

52. Where public or private status can be inferred from a commercial map, depending on the associated key/reference, it can infer the class of highway as either bridleway or vehicular class of public status. However, it is considered to reflect no more than the opinion of the cartographer and may be dependent on their methodology and how effective their inquiries were into determining status. It is quite possible that surveyors may have wrongly classified some ways and therefore, whilst the documents can provide an inference of reputation, the evidential weight is significantly less than from some other documentary sources where the legal status of the way was critical to the purpose of the survey (Discovering Lost Ways).

53. Officers discovered information relating to the production of Greenwoods Map of Yorkshire. An advertisement in the Leeds Mercury, April 15, 1815, related to the “*Proposals for publishing by subscription a new map of the County of York, from an actual survey... In this map... the course of... public and private roads... will be correctly exhibited...*” (see **Appendix I**). In the absence of evidence to the contrary, it is logical to deduce that

Greenwoods 'Cross Roads' would have included both public and private. In *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77, the judge stated:

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

54. This is supported by a paper in the Rights of Way Law Review titled: 'Nineteenth and Early Twentieth Century Non-OS Maps' (September 2001) by Dr Yolande Hodson, an expert in the *Gallagher* judgement, which states:

"We know that Greenwood employed several surveyors and draftsmen, but we know nothing of their competence or instructions, and very little detail about the methods used and whether there was any systematic checking for error".

"Greenwood's portrayal of roads was very simple. They were either 'Turnpike Roads' or Cross Roads'. If they were enclosed they were shown by solid lines, and if they were unfenced, the roads were shown by dashed lines. The enclosing line or casing of the turnpike roads was shaded (thickened) on the south and east sides (a convention also used by Ordnance Survey). The cross roads were drawn with a narrower width and lacked the shaded line. Public and private roads were not differentiated. A cursory examination of Greenwood's maps will show that the term 'cross road' seems to have been a catch-all phrase to mean roads other than turnpike roads. A significant number of the so-called cross roads do not, in fact, cross from one route to another, but end up, on the map, in the middle of nowhere or at isolated buildings".

55. These factors do not support the proposition that all routes depicted as a cross road on Greenwoods 1817 Map of Yorkshire map were public and lessens the weight to be placed on the document. The nature of the Order route as a thoroughfare, connecting with accepted highways at both ends, following the interpretation of 'cross roads' in *Hollins v Oldham* [1995], may suggest the reputation of a public way rather than private. However, noting that the depiction may only represent the right or wrong opinion of the cartographer, and the 1815 advert, this is not hugely persuasive and would require corroboration from other documentary evidence. For example, a route from Farnley Tyas to Woodsome Leas

is also shown as a 'Cross Road'. Today, it is recorded on the definitive map and statement as a public footpath and was described by two Justices of the Peace in an 1827 stopping-up order as an "... *a certain occupation road in the Township of Farnley called Lees Lane*".

56. This conclusion concurs with the Barristers opinion provided to Officers on behalf of Kirklees Bridleways Group at the Order-Making stage, titled 'RE: Status of Cross Roads' at paragraph 16-18 when considering the proposition "*whether on the balance of probabilities a cross road is definitely a public carriageway and byway*". The Barrister considered at paragraphs 17 and 18 that this was too wide a proposition without taking into account the evidential weight of the commercial map, and all other relevant evidence relating to a particular way.

1893 – 1906 Ordnance Survey Maps

57. At the Order-Making stage, Kirklees Bridleway Group presented Officers with an extract of [Yorkshire \[West Riding\] Sheet CCLX.8 First Edition 1893 1:2500 Ordnance Survey Map \(Appendix J\)](#). The contents of the map were surveyed in 1888, and it was published in 1893. The Order route is shown as an enclosed route and is the only route from the 1968 list of 'Roads in Hand' depicted with shading on its southern side leading from the junction of New Lane and Burnt Hill Lane, passed 'Farnley Tyas Brewery' to the eastern end of what is now called Manor Road, at a 'Smithy'. At this period of time the Order route was most likely used to access the brewery, tannery, smithy, adjacent fields, and farms. The depiction of the Order route with shading on its southern side provides an indication that it was a metalled road, less than 14 feet wide, and well maintained at the time of the survey, in 1888. The term 'well-maintained' was defined:

"... as meaning a road capable of being travelled over at high rate of speed all year round. Roads inferior to these were again to be divided into two classes by distinct characteristics".

58. The 1893 OS 25 Inch Map includes a disclaimer, which states: "*The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way*". However, the depiction of the Order route in the same manner as known vehicular highways may provide an inference that the status of the Order route is similar and was

maintained at public expense. In this instance, the Order route is shown in the same manner as the surrounding road network, with Honely Road, Butts Road, The Village, Manor Road, Farnley Road, and Woodsome Road also shown with shading either on their eastern and southern side.

59. However, a circular that applied to published 1:2500 OS plans is dated 30th November 1885, and this specifies that both public and private roads were to be shaded. Whilst a distinction between public and private roads was intended, with the latter shading being less prominent, in the Rights of Way Law Review Paper, titled: ‘Roads on OS 1:2500 Plans 1884-1914’, Dr Yolande Hodson states:

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

60. The author concludes that, when viewed in isolation, the inference that can be drawn from shading of a second class road on the 1:2500 maps was the character of the roads themselves, rather than clarifying their legal status or who was bound to repair them. In the High Court in *Fortune*, HHJ McCahill QC derived a similar inference at paragraph 744, following a consideration of quotes from Dr Yolande Hodson as the leading expert on the matter, that the OS maps could never be definitive of legal status as it was simply not their purpose.

61. On the other hand, Dr Yolande Hodson indicates that an inference on status may be drawn in comparing the 1:2500 plans with the relevant one-inch map:

“Private roads, which might have been shown as at least second class on the 1:2500 plans, were generally shown as third or fourth class at the one-inch scale. It follows that if any interpretation is attempted on large-scale plans published between November 1885 and 1912, the relevant one-inch maps should also be consulted.”

62. Officers have therefore consulted the applicable one-inch [1896 Ordnance Survey Revised New Series Map \(Sheet 86 – Glossop\)](#), surveyed between 1871 to 1872, revised in 1894, and published in 1896 (**Appendix J**). The plan shows a four-fold classification scheme for roads: (1) First Class Metalled Road; (2) Second Class Metalled Road; (3) Third Class Metalled Road; and (4) Unmetalled Road. Each category was subdivided further into

‘fenced’ or ‘unfenced’. The new scheme followed the 1892 Dorrington Committee, which considered the original classification of roads was bad, and recommended the adoption of the classification of roads adopted by the Military Committee of 1891. The Committee intended for a distinction in the first and second class roads between those maintained by authorities as highways, and private roads. However, the differentiation was never made on the one-inch map.

63. The Order route is shown on the 1896 one-inch map as a fenced Third Class Metalled Road leading from Farnley Road, passed the brewery, and then diverges as two routes. One route turns north-north-westerly as an unfenced Unmetalled Road to what was known as ‘Park Farm’. The Order route continues easterly then northerly to join Manor Road as a fenced Unmetalled Road. The 1892 Donnington Committee defined Third Class Metalled Road as: “... of an inferior character, whether maintained by a public authority or not” and the fourth class as “*Unmetalled roads, tracks, and green lanes*”.

64. At face value, the surveyor’s interpretation of the Order route on the 1896 One-Inch Map as a third and fourth class road is therefore equivocal because many private roads would be included in these categories. Nevertheless, the depiction of the Order route from the 1893 25-Inch OS Map to the 1896 One-Inch OS Map has followed the projected treatment of private roads as theorised by Dr Yolande Hodson. Furthermore, the Order route is the only route in the area that is never again shown on any subsequent 25-Inch OS Maps with shading on either its eastern or southern side. This may reflect a coordination with the One-Inch Maps, as indicated in the 1905 OS [‘Instruction to Field Examiners’](#), which states:

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

65. The instructions notes that OS maps are not entirely error free. The Order route is continuously shown as a Third Class/Fourth Class Road, on all subsequent ‘New Series’ OS One-Inch Maps. Overall, each Ordnance Survey maps are generally equivocal with no indication of public or private status when viewed in isolation. The *prima facie* inference is that the Order route possibly had a well maintained surface when surveyed in 1888 and when it was used for multiple purposes but had a poor/unmetalled surface throughout the

20th century. Nevertheless, the depiction of a second class road on the 1893 25 Inch Map but then reclassified as a third/fourth class road on the 1896 One-Inch Map is more consistent with private status, as suggested by Dr Yolande Hodson, as is the differentiation between the Order route and known vehicular highways on all 20th century 25-Inch and One-Inch OS Maps.

1910 Finance Act Map

66. The 1910 Finance Act, often referred to as the ‘1910 Survey’ or ‘Domesday Book of the 20th century’, was a national value of land conducted subsequent to s.26(1) of [The Finance \(1909-10\) Act, 1910](#) for the purpose of taxation. The exclusion of a road from adjoining taxable hereditaments (shown as uncoloured and unnumbered) could provide evidence that the route was a highway. In [Robinson Webster \(Holdings\) v Agombar \[2001\] EWHC 510 \(Ch\)](#) (‘Agombar’) Mr Justice Etherton described the 1910 Finance Act records as “most powerful” evidence and states at paragraph 47:

“[47] The 1910 Finance Act map and schedule are, in my judgement, most material evidence in relation to the status of the Blue Land at that time. It would have been in the interest of the owner of the Blue Land to acknowledge that the Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Lane was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority. In the circumstances, whether or not the Commissioners consulted with officers of the Rural District Council about the status of the Blue Land, I see no reason to infer, as I was urged to do by Mr Hodge QC, that the designation of the Blue Land on the 1910 Finance Act plan and schedule was simply a mistake.”

67. However, in the Rights of Way Law Review publication titled ‘Uncoloured roads on 1910 Finance Act maps’, dated 2002, David Braham Q.C. writes:

“In Agombar, Etherton J. referred to ‘untaxed public roads’. It is tempting to conclude that the treatment of the uncoloured roads stemmed from the exemption afforded to land owner by a rating authority, but Instruction 560 shows that the Inland Revenue were regarding the frontagers, not the highway authority, as the relevant owners of the uncoloured roads.

See also RWLR s.1.1 p.42 for the point that roads for whose maintenance a R.D.C was responsible did not vest in the R.D.C. Many of the uncoloured roads were in ‘R.D.C areas.’

68. Nevertheless, the view in *Agombar* was endorsed and adopted as a statement of the practice and procedure for carrying out the survey by HHJ McMahon QC in *Fortune* in the High Court by at paragraph 757, correctly in the judgement of Lewison LJ in the Court of Appeal. In *Fortune*, the disputed part of Rowden Lane was shown on the 1910 Finance Act map as uncoloured and not forming part of any taxable hereditament:

“[80] Mr Mould submitted, correctly in our judgement, that the treatment of the disputed section of Rowden Lane on the Finance Act map shows very clearly that it was regarded at that time as a highway. For it to have been so regarded it must necessarily have been dedicated as a highway at some time earlier than 1910. That in turn entails that the then owner of the land over which it ran had the necessary intention to dedicate at common law (because there was no statutory presumption of dedication at that time). The action of Mr Rich (who was in fact the owner of the soil) in claiming that Rowden Lane was a highway is in itself powerful evidence of previous dedication. At the time of the Finance Act map it is also clear from all the cartographical evidence that Rowden Lane was physically capable of accommodating vehicles. Not only that, but Mrs Fortune asserts that it was in fact used by vehicles (although not by members of the public). It had existed in that physical configuration for centuries.”

69. However, Lewison LJ stated that the 1910 Finance Act records formed part of a jigsaw and not to be viewed in isolation. In [Maltbridge Island Management Company v Secretary of](#)

[State for Environment and Hertfordshire County Council \[1998\] EWHC Admin 820](#), Justice Sullivan stated the 1910 Finance Act documents are of corroborative evidential value and *“It is true that different explanations can be advanced for what is shown in the 1910 Act material”*, and the decision-maker is entitled to consider which explanation seemed the more likely on the balance of probabilities. In *Gallagher*, Neuberger J stated that the treatment of a route as uncoloured on the record plans together with a width wide enough to carry vehicles raises the inference of public carriageway but did not regard it as a strong point and cautioned, at paragraph 106, that the maps are unambiguous in this regard and appear to have been prepared in a hurry.

70. In [‘Land and Society in Edwardian Britain’](#), Brian Short further emphasises that the 1910 Finance Act documents should be viewed collaboratively with other documentary evidence and to consider the various possible explanations why a route is shown uncoloured, to answer *“Whose input led to the map showing an uncoloured route?”*. The question to be addressed in such cases is whether such a route is a genuinely public one, given that there was no public consultation, and therefore correctly left uncoloured: *“Much depends on the local context, and the importance of considering the 1910 material alongside supporting documents is again emphasised”*. Equally, in ‘Public or Private? An Analysis of the Legal Status of Rights of Way in Norfolk’, Tom Breen underlines the corroborative nature of Finance Act documents and their limitations when inferring status from the record plans:

“The act instructed that ‘each piece of land... shall be separately valued’, overlooking instances when the use of a road, and the costs of its upkeep, were known to be shared. This is perhaps the biggest limitation of the source: the simple binary distinction between white and coloured does not represent the multi-faceted and complex nature of many rights of way. There are also examples of adjacent map sheets contradicting one another, one sheet may leave a road white, while another may colour it. We must question whether the valuers colouring each sheet understood the implications of their actions. Much like the tithe maps and apportionments, the Finance Act assessed land for tax purposes and was not primarily concerned with the status of rights of way. Nevertheless, legal cases in 1998, 2001, and 2012 all considered the Finance Act to be viable evidence. It is worth noting however that in these cases the Finance Act evidence was corroborated by other sources”

“Neither Tithe nor Finance Act documents can therefore establish, unequivocally, the legal status of particular roads. These sources offer only a pale reflection of the legal status of roads, but a reflection nonetheless”.

71. The relevant 1910 Finance Act record plan showing the area of land to which the Order relates is 'IR 134 6 72' (see **Appendix K**). The base map is the [1906 Second Edition 25-Inch OS Map](#), which was revised in 1904, and shows the relevant area of land within the boundary of Farnley Urban District Council. The whole of the Order route is shown uncoloured on the reference plan prepared by District Valuers under s.26(1) of [The Finance \(1909-10\) Act, 1910](#) and not within the hereditament of any private individual. The document therefore provides some indication that the Order route was considered to be in public ownership and vested in Farnley Tyas Urban District Council under [s.149 of the Public Health Act, 1875](#), on the basis that it was a public carriageway maintainable at public expense and dedicated as a highway at some time prior but must not be viewed in isolation.
72. However, it is noted that generally all routes in the Farnley Tyas area, whether known public thoroughfares or private cul-de-sacs leading to fields, mills, or farmsteads, are all shown uncoloured. The Earl of Dartmouth was the [Lord of the Manor for Farnley Tyas](#) and owned most of the land recorded in the Valuation Book as the land was never enclosed by parliamentary act. Of the 289 hereditaments, the Earl of Dartmouth owned 234. The units of valuation abutting the Order route were nos. 20, 23, 29, 30, 32, 34, 36, 44, 49, and 199. With the exception of no. 23, all the hereditaments are owned by the Earl of Dartmouth, and with the exception of nos. 29 & 30, they are all in separate occupation. Therefore, it is equally reasonable to infer that the Earl of Dartmouth owned the soil of the Order route but it was in multiple occupation and left uncoloured on that basis.
73. In arriving at the 'Total Value' of a unit of valuation, the valuer may make deductions from the 'Gross Value' in respect of 'Public Rights of Way or User'. Since the making of the Order, the Council have also investigated available Field Books created by the District Valuer during the 1910 Finance Act survey. Unit of valuation nos. 20, 30, and 49 are partly adjacent the Order route and record deductions for public rights of way (see **Appendix K**). However, the deductions are, on the balance of probabilities, in respect of other parcels of land away from the Order route crossed by public footpaths known as Kirkburton 55 and 61.

1925 Thurstonland and Farnley Tyas Urban District Council Minutes

74. The Thurstonland and Farnley Tyas Urban District Council was formed in 1925 following an amalgamation of Thurstonland Urban District and Farnley Tyas District. On the 9th April 1925, the highways in the district were divided in the three areas, with the second and third group in the Farnley Tyas area (see **Appendix L**):

Table 2: Analysis of 1925 UDC List of Highways

No. 2 District	Modern Name
<i>Longley Lane from Hall Ing & Brockholes Lane through to Thunderbridge (including:- Height Green Lane, Yards, Greenside, Green Lane, and Wood Lane)</i>	Hall Ing Lane, Greenside Road, Wood Lane
<i>Farnley Moor Lane from Yards to junction with Moor Lane</i>	Thurstonland Road (to junction of Brockholes Lane/Moor Lane)
<i>Storthes Hall Lane and Moor to the Brewery</i>	Storthes Hall Lane, Farnley Road (up to Farnley Mill)
No. 3 District	Modern Name
<i>Farnley Lane from High Royd through the Village & New Line to Woodsome Mill Bridge. (Including:- Bankfoot, Farnley Bank, Rushfield, and Birksmillgate)</i>	Honley Road, The Village, Woodsome Road, Bankfoot Road, Millgate, Farnley Bank, St Helens Gate
<i>Hey Lane</i>	Hey Lane
<i>Moor Lane from Longley Lane to the Brewery & to the Village</i>	Brockholes Lane/Moor Lane
<i>Butts Lane to the Village</i>	Thurstonland Road
<i>The Village</i>	The Village/Manor Road

75. Today, the majority of these routes are the ordinary road network and are maintained at public expense. The inference of the 1925 list of highways is therefore that the routes shown therein were all-purpose highways repairable by the inhabitants at large. The production of the list predates the coming into force of section 84 of the Public Health Act, 1925 on the 7th August 1925 and the requirement of every urban authority to prepare a list

of streets within their district of the streets which are repairable by the inhabitants at large. Nevertheless, it can be inferred that the list was prepared for the administration of maintenance.

76. The 1925 list notably states: “*Moor Lane from Longley Lane to the Brewery & to the Village*”. At face value, the description of the route could encompass the Order route. Storthes Hall Lane and Storthes Moor Lane are also described as leading to “*the Brewery*”. As shown on the 1893 OS 1:2500 map, a brewery was located at the western end of the Order route. However, by 1904, the brewery relocated from the Order route to its present location at the junction of Moor Lane/Farnley Road as shown on the [1906 OS Second Edition 1:2500 map](#) (see **Appendix J**). Furthermore, the Order route now joins Manor Road, which was allocated its name in 1931 and was described as “... *the Road from the Village to Town Bottom*” (see **Appendix L**). Therefore, if the description encompassed the Order route, it may be expected that it would state “to Town Bottom”.
77. Moreover, the Order route now joins Farnley Road, which in 1925 was known as ‘New Lane’. There are numerous examples of involvement by the highway authority in New Road before and after the 1925 list of highways (see **Appendix L**). For instance, New Lane was repaired in 1908, widened in 1929/30, described as a ‘Main Road’ in 1930 and responsibility was transferred to West Riding County Council. Lastly, since 1928, New Lane has formed part of the omnibus service under The Huddersfield Corporation (General Powers) Act, 1920 (see **Appendix M**).
78. Finally, the [1924 Ordnance Survey ‘Manchester District \(Special Sheet\)’ One Inch Popular Edition](#) (see **Appendix J**), which was revised between 1919 to 1921, corrected and printed in 1924. On this map, Hey Lane, Brockholes Lane, Moor Lane (to Farnley Road), The Village, Storthes Hall Lane, New Lane and Farnley Road are all shown coloured either orange or dashed orange, with shading on their southern or eastern side, indicating that they were ‘Other Roads’, with a 14ft wide metalled surface, fit for ordinary traffic, or an indifferent/winding road. In contrast, the Order route was shown uncoloured as either a private road or a road with under 14ft wide metalled surface in bad condition. On the balance of probabilities, the description “... *from Longley Lane to the Brewery & to the Village*” includes New Lane as the natural continuation of both Moor Lane and Storthes Moor Lane (now Farnley Road) as ordinary vehicular highways and does not provide evidence of highway status along the Order route.

1968 Farnley Tyas Sale Catalogue (Dartmouth’s Estate)

79. In 1968, the Earl of Dartmouth sold the ‘Farnley Tyas Estate’ in a sales catalogue (see **Appendix N**) which included a list of lands in the possession of the estate, together with grants, wayleaves, and easements affecting the land. The catalogue states:

“(3) None of these statements contained in these particulars as to this property are to be relied on as statements or representation of fact.

(4) Any intending purchase must satisfy himself by inspection or otherwise as to the correctness of each of the statements contained in these particulars.”

80. The information contained in the Sales Catalogue must therefore be viewed with caution but nevertheless inferences from its contents can be made. A list of ‘Roads in Hand’ is provided, which are referenced to the plot numbers, names, and acreage included in the relevant [1932 Ordnance Survey 25-Inch Map](#) (see **Appendix J**). The Order route is included in this list:

Table 3: Analysis of 'Roads in Hand' list in 1968 Farnley Estate Sale Catalogue

Roads in Hand		
OS No.	Name	Modern Status/Name
718	Plump Lane	Private
740	Ludhill Lane	Private road, public footpath
747	Lane to Royd Wood	Private
749	Road at Ludhill	Private road, public footpath
Pt. 886	Road to Farnley Hey	Private road, public footpath
940	Road	Private road, public footpath
955	Moor Lane	Order route
967	Crab Lane	Private
1023	Toft Lane	Private road, public bridleway
1057	Cliffe Lane	Private road, public footpath
1069	Lane	
Pt. 1010	Part Best Lane	Private road, public footpath

1121	Field Lane	Private road, part public footpath, part public bridleway
1130	Track off Field Lane	Private
Pt. 1280/1292	Woodsome Hall Lane	Private road
Pt. 1331	Track through Farnley Wood	Private
Pt. 1338	Track through Copse	Private
Pt. 1345	Road at Low Common	Private
1364	Road at Millgate	Private

81. None of the routes included on the list are ordinary vehicular highways today, however, many are private roads with coexisting public paths. This correlates with the fact that none of the routes recorded on the 1925 Thurstonland & Farnley Tyas Urban District Council highways list, which are ordinary vehicular highways today, are duplicated on the 1968 'Roads in Hand' list. The inference of inclusion on the 1968 list of 'Roads in Hand' is that the soil of the routes, including the Order route, were considered by the Dartmouth Estate to be in their possession as private land and not in public ownership and vested in the highway authority under section 226 of the Highways Act, 1959, which was in operation at the time. This is supported by Farnley Tyas Urban District Council minutes dated 1892 and 1893, which show that Ludhill Lane was in private ownership and was considered for adoption to be repairable by the inhabitants at large (see **Appendix O**).

82. A route in private ownership does not necessarily mean that it was not a highway, for instance they could have been repairable *ratione tenurae*. However, whilst it is a possibility, the 1968 list does not provide supporting evidence of such a contention. On the contrary, there is evidence that other routes included on the list were of private status. For instance, the 'Road to Farnley Hey' is described in the Farnley Tyas Urban District Council minute book on 5th June 1907 as a "... *private road leading from the Councils Highway to Farnley Hey Fold*" (see **Appendix O**).

Definitive Map Review Records

83. Sections 27 to 33 of [the National Parks and Access to the Countryside Act, 1949](#), gave all county councils the duty of surveying and mapping all public rights of way within their area. The survey was to be completed in three stages: draft, provisional, and definitive) with reviews conducted every five years. Schedule 3, Part II of [the Countryside Act, 1968](#), streamlined the process to speed up the reviews and required that any representation/objection duly made in respect of alterations affected by the draft revision, or of anything omitted from the draft map, and is not withdrawn, would result in a public inquiry:

“(3) If any representation or objection is duly made in respect of alterations effected by the draft revision, or of anything omitted therefrom, and is not withdrawn, the Minister shall cause a local inquiry to be held.

(4) If any such representation or objection is duly made, and is not withdrawn, the Minister shall, subject to the following provisions of this paragraph, and after taking into consideration any report by the person appointed to hold the local inquiry, take a decision on the objection or representation, and if he considers that the draft revision should be modified to give effect to his decision he shall give to the authority such directions as appear to him necessary for the purpose.”

84. The West Yorkshire Metropolitan County Council published the draft review on 1st October 1979, which was deposited at the Kirklees Metropolitan Council offices between the 29th February to 1st June 1980. [The London Gazette notice on 25th February 1980](#) stated:

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

85. On the 13th April 1980, within the public notice period, a letter was sent to West Yorkshire Metropolitan County Council by a member of the public who had examined the draft review of the definitive map and statement (see **Appendix P**). The letter submitted a list of routes

recommended for inclusion to the legal record of public rights of way, which included the application route:

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

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

86. The letter appears to be a representation to the draft definitive statement due to the omission of the application route, amongst others, although it does not provide any user or documentary evidence to support the claim. An investigation considered the 1850, 1895, and 1:2500 Ordnance Survey maps and noted that it was shown as ‘Moor Lane’. Remarks on the claim and investigation commented that no previous representation had been made although there was some evidence that the route had the reputation of being used by horse-drawn traffic (see **Appendix P**):

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

87. The officer’s recommendation further states:

“Had representation been made, favourable consideration would have been given to including the path on the map subject to there being sufficient evidence of use.”

88. Overall, the recommendation indicates that the officers were not satisfied that the available documentary evidence and reputation of the Order route was sufficient to add the Order route to the definitive map and statement, and evidence of use was required. As no previous representation had been made, the application was to be considered for inclusion at the next review, which never took place as section 53 of the Wildlife & Countryside Act, 1981, replaced the procedure for county-wide surveys with a system of continuous amendments to the definitive map and statement.

89. A site visit was conducted by definitive map officers on 27th November 2000 (see **Appendix Q**), which commented that the Order route was: “*Well used by pedestrians – Stile preventing horses at the Manor Road end*” and marked on a map a field gate at the western end at its junction with Farnley Road. Notably, both site inspections commented that there was a well-trodden path and use by pedestrians, which is consistent with the status of at least public footpath.

90. Finally, subsequent to the 1997 definitive map modification order application, the Council have on file a notes of a meeting that took place on 15th October 1998 (see **Appendix S**), which states:

“A Stuart Hirst (663675) of 40 Manor Rd came into reception with some queries re Moor Lane + track past Woodview Farm at Netherton/Farnley Tyas. He had a letter from Landowners Agent (Carter Jonas) saying that they believed Moor Lane to be a bridlepath of this is useful evidence for you.”

91. At the time Carter Jonas represented the landowner ‘William Shaw and Sons’. The Council contacted Carter Jonas on 8th August 2023 requesting a copy of the letter. Unfortunately, owing to successive relocations of offices, the letter is no longer available. Overall, there is some evidence of reputation that the Order route is a highway of at least footpath status with some indications of bridleway status, but not sufficient evidence.

Highways Registry Card (List of Streets)

92. The statutory function and evidential value of the list of streets was described in [Trail Riders Fellowship v Secretary of State for the Environment, Food And Rural Affairs \[2017\] EWHC 1866](#) at paragraphs 14 and 15:

“[14] The function and purpose of the DMS is clearly to record in a way which is “conclusive” (in accordance with the provisions of the 1981 Act) the existence and course or alignment of rights of way. Quite separate and distinct are the provisions of Part IV of the Highways Act 1980 (the 1980 Act) which relate to the maintenance of highways which are maintainable at public expense. Section 36(6) of the 1980 act provides that:

"The council of every county ... shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense."

[15] *The word "street" is very widely defined in that Act and includes "any highway, road, lane, footway, alley or passage", and it is common ground that Oakridge Lane falls within that definition of a street. A list of streets (LoS) is a public document which is required to be kept available for public inspection (see section 36(7) of the 1980 Act). A LoS may serve a range of purposes, but it is apparent that its essential and primary purpose is to enable anyone to find out whether or not a given street or highway is maintainable at public expense and, if so, by which authority. There is no provision in relation to a LoS corresponding to the "conclusive" provisions of section 56 of the 1981 Act in relation to a DMS."*

93. The relevant highways registry card (see **Appendix S**) the section of Moor Lane between Farnley Road and Thurstonland Road, a length of approximately 363 metres, as "*Public*". On the other hand, the Order is described as "*Moor Lane East of Farnley Road*" as "*Private Unmade*" with the annotation of "*GW 4.1.90*", which may suggest a date when a survey took place. The Order route was originally described as "*Private Road*", but the word "*Road*" was later crossed out.

94. As the primary purpose of the list of streets is to identify highways maintainable at public expense, the designation 'private' on the Highways Registry Card is strong evidence that the Order route is not publicly maintainable. This inference is consistent with the inferences afforded by the 1925 Thurstonland and Farnley Tyas UDC list of highways and the 1968 Farnley Tyas Estate Sale Catalogue. However, unlike the definitive map and statement, the list of streets is not conclusive and the 'Private' notation neither provides positive or negative evidence that public rights of way do or do not exist.

Overall Conclusion on Documentary Evidence

95. Overall, the documentary evidence presents a long and consistent history of the existence of the Order route but are generally equivocal or limited to infer public status. The 1719

Warburton, when assessed together with the surrounding contemporary evidence such as Jefferys 1772 Map of the County of York and 1827 Quarter Sessions Stopping-Up Order, on the balance of probabilities refer to the section of Moor Lane that is an ordinary vehicular highway, together with Farnley Road and Storthes Hall Lane to Highburton, rather than the Order route. The 1805 Farnley Estate Map offers a valuable insight into the early landholding pattern and confirms the Order route's purpose leading to Farnley Moor. However, the document is a record of property, not public rights, and is equivocal with regards to status.

96. Greenwoods 1817 Map of Yorkshire similarly demonstrates that the Order route has existed along broadly the same alignment for at least three centuries and is annotated as a 'Cross Road' with the appearance of a thoroughfare. The document was produced for the travelling public and provides some indication that the surveyor considered the way to be either a bridleway or carriageway. However, the evidential value of the commercial map is limited as the 1815 advert shows that the term 'Cross Road' did not distinguish between public and private ways.
97. The Order route is shown as a second-class metalled road on the 1893 1:2500 Ordnance Survey map, which is an indication of surface condition rather than status. At this point a tannery and a brewery were located adjacent the Order route. The reclassification of the Order route from a second-class metalled road on the 1893 1:2500 Ordnance Survey map to a partly third and fourth class road on the 1906 One-Inch series, in contrast to the surrounding vehicular highway network, is more consistent with a minor or private route rather than a public carriageway. It is notable that between the publication of the 1:2500 and one-inch maps, the brewery moves away from the Order route, which may indicate its metalled surface served a private purpose. Whilst this does not preclude public rights, it equally cannot elevate the Order route to more than equivocal evidence of status.
98. The 1910 Finance Act map provides the most significant positive indication of possible public status, because the Order route was left uncoloured and excluded from adjacent hereditaments. This treatment may suggest that it was regarded as a public carriageway vested in Farnley Tyas Urban District Council at the time of valuation. However, the Finance Act material must not be viewed in isolation and is only of corroborative value. The uncoloured treatment may arise from several possible explanations, including mapping practice rather than legal certainty, and the courts have emphasised that such

evidence is corroborative only. Significantly, all public and private routes in the Farnley Tyas are shown uncoloured regardless of status.

99. The 1925 list of highways created by the Thurstonland and Farnley Tyas Urban District Council is ambiguous with regards to the Order route. However, interpreted together with contemporary 1919 Ordnance Survey mapping and 1925 Omnibus Order indicate, on the balance of probabilities, that the description: “*Moor Lane from Longley Lane to the Brewery & to the Village*” encompassed Brockholes Lane, Moor Lane, and Farnley Road (New Lane), rather than the Order route on the basis that New Lane was maintained and widened at public expense at this time and the brewery was no longer located on the Order route.
100. The inclusion of the Order route in the 1968 Dartmouth Estate Sale Catalogue list of ‘Roads in Hand’ strongly indicates that the landowner, at least by the mid-twentieth century, considered the route to be private and within their ownership and not part of the publicly maintainable highway network, which is consistent with the 1974 List of Streets. There is also a strong correlation between the 1925 and 1968 documents in that the routes included in each are mutually exclusive.
101. The definitive map review material from the late twentieth century provides further context. Officers at that time acknowledged the route’s historic character and reputation for pedestrian use and even noted claims of former horse-drawn traffic. However, there is no confirmation that such use by horse-drawn traffic was by the public or was in association with the tannery or brewery that was historically located on the Order route. Officers concluded that the available documentary evidence was insufficient to justify the addition of the route to the definitive map without supporting user evidence.
102. At the Order-making stage, the synergy between Greenwoods 1817 Map of Yorkshire, the 1893 1:2500 Ordnance Survey map, and the 1910 Finance Act Map was considered sufficient to reasonably allege that the Order route subsists as a restricted byway, taking into account the provisions contained in [section 67 of the Natural Environment and Rural Communities Act, 2006](#). However, having revisited the available documentary evidence at the confirmation stage, the cumulative effect does not demonstrate, on the balance of probabilities, that the Order route was dedicated as a public carriageway at common law.
103. The corroborative effect of the 1893 and 1906 Ordnance Survey maps, the 1925 highways list, the 1968 Roads in Hand list, and the 1974 List of Streets collectively indicate that the

Order route was not considered to be a vehicular highway. Whilst there is some corroboration between Greenwoods 1817 Map of Yorkshire and the 1910 Finance Act map, they are of limited evidential value and equally showed private roads as ‘Cross Roads’ or ‘uncoloured’, respectively. However, there is no longer synergy with the 1893 Ordnance Survey Map and the inference is not sufficient to outweigh the inference pointing towards a private road. The 1719 Warburton Survey, the 1805 Farney Estate Map, and the Definitive Map records are equivocal with regards to public carriageway status.

104. The most likely explanation is that the Order route originated as a private track across land in the ownership of the Earl of Dartmouth to Farnley Moor. The documentary evidence is compatible with the existence of a public footpath but does not rise to the level required to establish higher rights. Accordingly, the documentary material establishes continuity of existence and some degree of public reputation, there are indications pointing either way and therefore, in the Officers opinion, the probability that the Order route subsists as a public carriageway is, at most, equal. Therefore, it is necessary to consider, on the balance of probabilities, whether the way was dedicated as a public right of way based on evidence of use by the public.

Section 31 of the Highways Act, 1980

... the date when the right of the public to use the way was brought into question...

105. Section 31(2) of the Highways Act, 1980, requires that the relevant twenty year period of use is to be calculated retrospectively from the date on which the public use of the way is brought into question. In order for the right of the public to be 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 challenged, so that they might be apprised of the challenge and have a reasonable opportunity of meeting it, as per Lord Denning in *Fairey v Southampton County Council* [1956] QB 439.

106. In [R \(oao\) Godmanchester Town Council v Secretary of State for the Environment Food and Rural Affairs \[2007\] UKHL 28](#) (*'Godmanchester'*), Lord Hoffman concluded (see paragraphs 37 and 38) that section 31 of the Highways Act, 1980, contemplates that there will ordinarily be symmetry between the concept of a landowner providing sufficient evidence to negative the intention to dedicate, such as under paragraphs (3), (5), or (6) of section 31 of the Highways Act, 1980, and the concept of bringing the public right to use the way into question for the purposes of section 31(2).
107. Section 31(6) provides for a two-stage approach to the provision by the landowner. Stage 1 is the deposit with the Council of a map and statement indicating the ways which the owner admits are highways. The role of the map and statement is to provide a date from which to reference the lack of intention to dedicate and to identify the land in respect of which each deposit is being made. Stage 2 is the lodging of a declaration, formerly a statutory declaration under Schedule 1 of the Statutory Declarations Act, 1835, which may be made "*at any time*" within the relevant period of time, which confirm that no additional highways have been dedicated over the land as shown in the map and statement.
108. In order to take advantage of the statutory declaration afforded by section 31(6), both the stage 1 deposit and stage 2 lodging of a statutory declaration must have occurred. It is only the subsequent statutory declarations, when combined with the stage 1 deposit, which will satisfy the provisions of section 31(6) and it is in fact the declarations which amount to the sufficient evidence (as outlined by Lord Hope of Craighead at paragraph 53 in *Godmanchester*). By completing both stages, the landowner confirms their intention not to dedicate any additional highways during the time interval between the date the map and statement was deposited and the date the declaration was lodged.
109. On the 12th November 2012, a map and statement were deposited with the Council under section 31(6) on behalf of Farnley Estates Limited relating to the land over which the application routes are alleged to subsist. The deposition was followed by a stage 2 lodged declaration on 13th January 2013 (**Appendix T**). Therefore, the landowner has sufficiently negated the intention to dedicate the way as a highway and simultaneously brought to the public right to use the way into question, creating a relevant period of:
- (1) 12th November 1992 to 12th November 2012.
110. The section 31(6) submissions postdate the two definitive map modification order applications. In the absence of any other event that brought the public right to use the way

into question, subsections (7A) and (7B) of s.31 of the Highways Act, 1980, which were inserted by [section 69 of the Natural Environment and Rural Communities Act, 2006](#), provide that the date an application is made according to paragraph 1 of Schedule 14 to the Wildlife and Countryside Act, 1981, can be taken as the date at which the public's right to use the claimed path was brought into question.

111. Paragraph 1 of Schedule 14 to the Wildlife & Countryside Act, 1981 requires that:

“(1) An application shall be made in the prescribed form and shall be accompanied by-

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

112. Paragraph 8 of [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1993 \[SI 12 1993\]](#) (*‘the 1993 Regulations’*) stipulates that:

“(1) An application for a modification order shall be in the form set out in Schedule 7 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.

(2) Regulation 2 above shall apply to the map which accompanies such an application as it applies to the map contained in a modification or reclassification order.”

113. Paragraph 2 of the 1993 Regulations states:

“A definitive map shall be on a scale of not less than 1/25,000 but where the surveying authority wishes to show on a larger scale any particulars required to be shown on the map, or in addition, an inset map may be used for that purpose.”

114. The applications were made in the form prescribed by Regulation (2) & 8(1) and Schedule 7 of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 [SI 12 1993] (*‘the 1993 Regulations’*) and accompanied by copies of the evidence on which the applicant sought to rely. The 1996 definitive map modification order application was accepted by the authority as compliant with paragraph 1 of Schedule 14 on 6th March 1996.

The 2007 definitive map modification order application was accepted by the authority as compliant on 11th November 2007.

115. Therefore, for the purposes of s.31(2), (7A) and (7B) of the Highways Act, 1980, it is considered that the right of the public to use the way was also brought into question on 6th March 1996 and 11th November 2007, creating two further overlapping relevant twenty year periods of:

- (2) 6th March 1976 to 6th March 1996
- (3) 11th November 1987 to 11th November 2007

Where a way over any land... has actually been enjoyed by the public

116. The next preliminary stage of the inquiry is to examine the quality and quantity of use which is relied upon to determine whether the way ‘... *has been actually enjoyed by the public...*’. This requires an assessment of whether the public have had the amenity or advantage of using a way and the evidence is of sufficient quantity to amount to the assertion of the right and consonant in quality to the nature of the right which is being claimed. The preliminary threshold was set out by Mr Justice Ouseley at paragraph 21 in [Wright & Anor v Secretary of State for Environment, Food and Rural Affairs \[2016\] EWHC 1053](#):

“The relevant case law is not contentious. Mann v Brodie (1885) 10 App. Cas. 378 shows that use must be by a sufficient number of people to show that it was use by the public, a number which may vary from case to case. R (Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11, [2010] 2 AC 70, and others cited in it, deal with the quality of the user. The use had to be sufficient to bring home to the mind of the reasonable non-absentee landowner that the public were asserting a continuous right to use each route in question. The user over the twenty year period did not have to be by the same people.”

117. In total, there are forty-one statements from members of the public providing evidence of long standing use along the application route since 1910 for the purpose of leisure and

recreation. Thirteen user evidence forms were submitted in 1996 that were not accompanied by a plan, but they provide a description of the start and end points as well as grid references and it is clear that they used the entirety of the way. One user evidence form was provided in 1997, five in 2007, one in 2015, and twenty-one user evidence forms/statements in 2023. The majority of the forms from 1997 to 2023 were accompanied by a pre-prepared plan showing the relevant area and any existing public footpaths, over which the witnesses annotated the route they used and any gates, stiles, or signs. The depiction of the Order route is a linear way between Manor Road and the junction of Farnley Road/Moor Lane are consistent on nearly all the maps.

118. In [Rowley & Another v Secretary of State for Transport Local Government and the Regions \[2002\] EWHC 1040 \(Admin\)](#), Mr Justice Elias acknowledged at paragraph 12 that when determining sufficiency of public use, it is necessary to discount any use inconsistent with the assertion of a public right of way:

“Accordingly in determining whether there is sufficient use to raise the issue of whether a public right of way has been established, the issue is whether there is enjoyment of a kind which lead a reasonable landowner to believe that those using the land were asserting a public right. In my view it follows that the landowner is not required to have regard to those whom he knows are using the pathway with his express permission, because he would not believe that they were seeking to assert a right. But if others are using the particular path to a sufficient degree to suggest the assertion of a right, then the issue of whether if that use is open, unforced and not precarious comes into play.”

119. The test is therefore whether a reasonable landowner would anticipate that such persons were seeking by their conduct alone to assert a public right of way. UEF/10 may have used the Order route by licence and their use has therefore been discounted:

“Father was a tenant farmer including the footpath.”

120. During the (1) 1992-2012 and (2) 1987-2007 relevant periods, there is evidence of use on foot by a total of thirty-five members of the public and thirty users during the 1976-1996 relevant period, which consonant with the status of a public footpath. However, as shown in Graph 1 below, although there was use of the Order route by different members of the public during relevant periods (2) and (3), collectively the level and frequency of public was highest between 1976 to 1996, when the public walked the Order route predominantly on

a ‘daily’, ‘weekly’, ‘monthly’, or ‘every few months’ basis. Furthermore, some users used terms to indicate their interval of use as ‘often’, ‘occasionally’, ‘frequently’, or ‘regularly’, which although difficult to categorise, suggests a recurrent pattern of use. In comparison, from 1996 to 2012, and during relevant periods (1) and (2), the frequency of use is predominantly ‘every few months’ or ‘yearly’. The evidence is not limited to their own individual use and all witnesses saw others walked the Order route.

Table 4: Public Use During Overlapping Relevant Periods

<i>Relevant Period</i>	<i>Total</i>	<i>Throughout</i>	<i>Part</i>
(1) 1992-2012	35	11	24
(2) 1987-2007	35	14	21
(3) 1976-1996	30	20	10

121. Three members of the public (UEFs 29, 37, & 38) provided evidence that they used the Order route with a horse in the 1980/90s, but stopped due to the erection of gates and stiles, which prevented use on horseback as a thoroughfare. The evidence of occasionally use by the public is consistent with the survey conducted by the Council in 1980 during the review of the definitive map and statement that the Order route was capable of bridleway status but not use used although not obstructed by any locked gates. Notably, the majority of users only saw other people walking the Order route and an adjacent landowner of 40 Manor Road states:

“... it is certainly no[t] accessible on horseback and with some confidence I can state that no horse has ever ventured near it”.

122. Similarly, an adjacent landowner has lived in the area since 1986 and also stated:

“I have never seen a horse use the proposed route, due mainly to it being totally unsuitable for equestrian users and in places impassable for horses.”

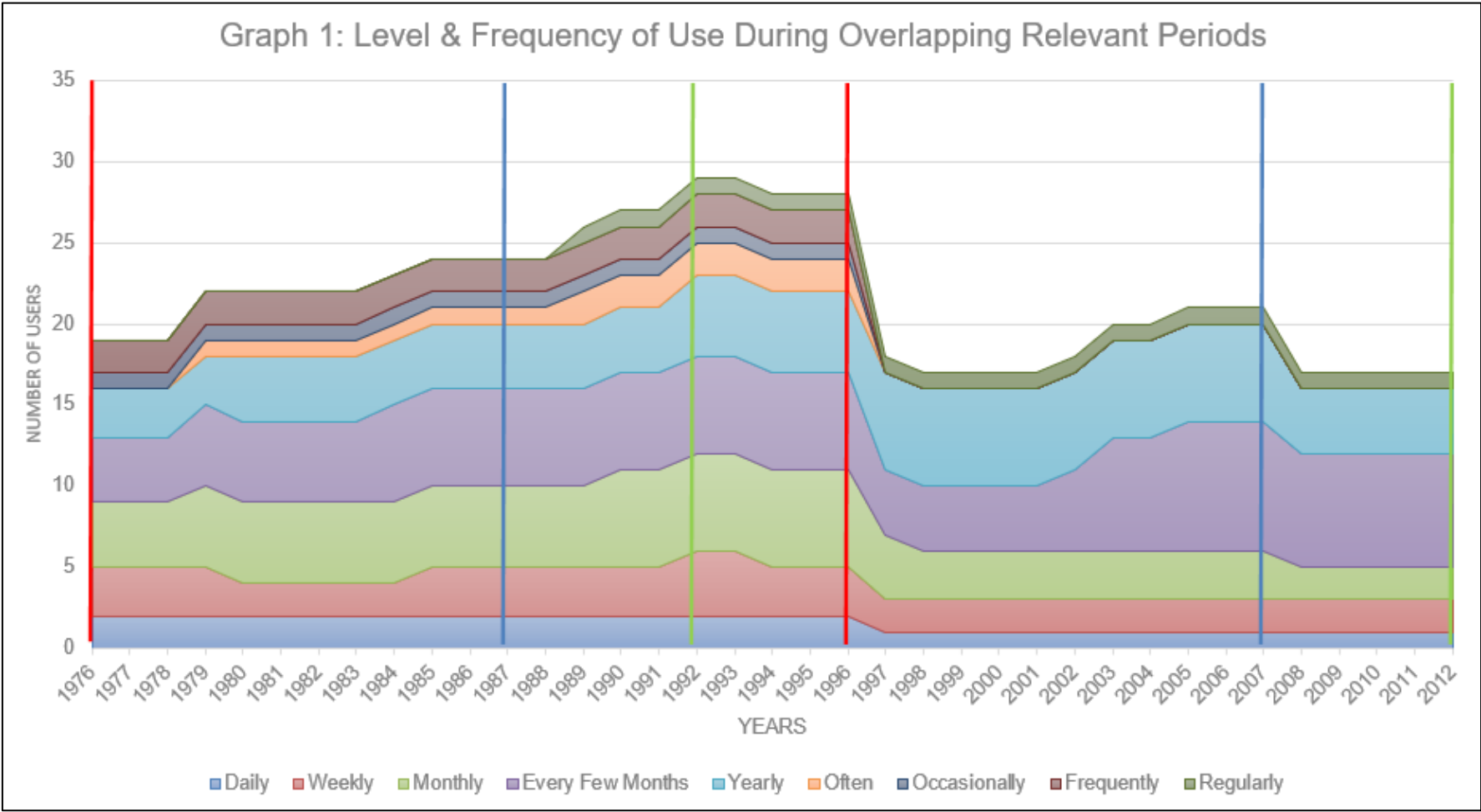
123. Overall, the evidence on use on horseback is very limited and insufficient to demonstrate that the Order route has actually been enjoyed by the public for a full period of 20 years. During all relevant periods, the number of users on foot is relatively significant in terms of the number of people given the rural location of the Order route and the use being of a recreational nature. In the circumstances, the use is such as might reasonably have been

expected given the location of the Order route and sufficient to show that it was use by the public. The user evidence is also of sufficient quality to show that the Order route has been actually enjoyed by the public and is sufficient to bring home to the mind of the reasonable-non absentee landowner that the public were enjoying and asserting a continuous right to use the way, which provided an opportunity of resistance and interruption. As the public right to use the way was first brought into question in 1996 and the quantity and quality of use is sufficient during the relevant period of 1976-1996, this will be considered further.

Red Line = Relevant Period (1) (1976-1996)

Blue Lines = Relevant Period (2) (1987-2007)

Green Lines = Relevant Period (3) (1992-2012)



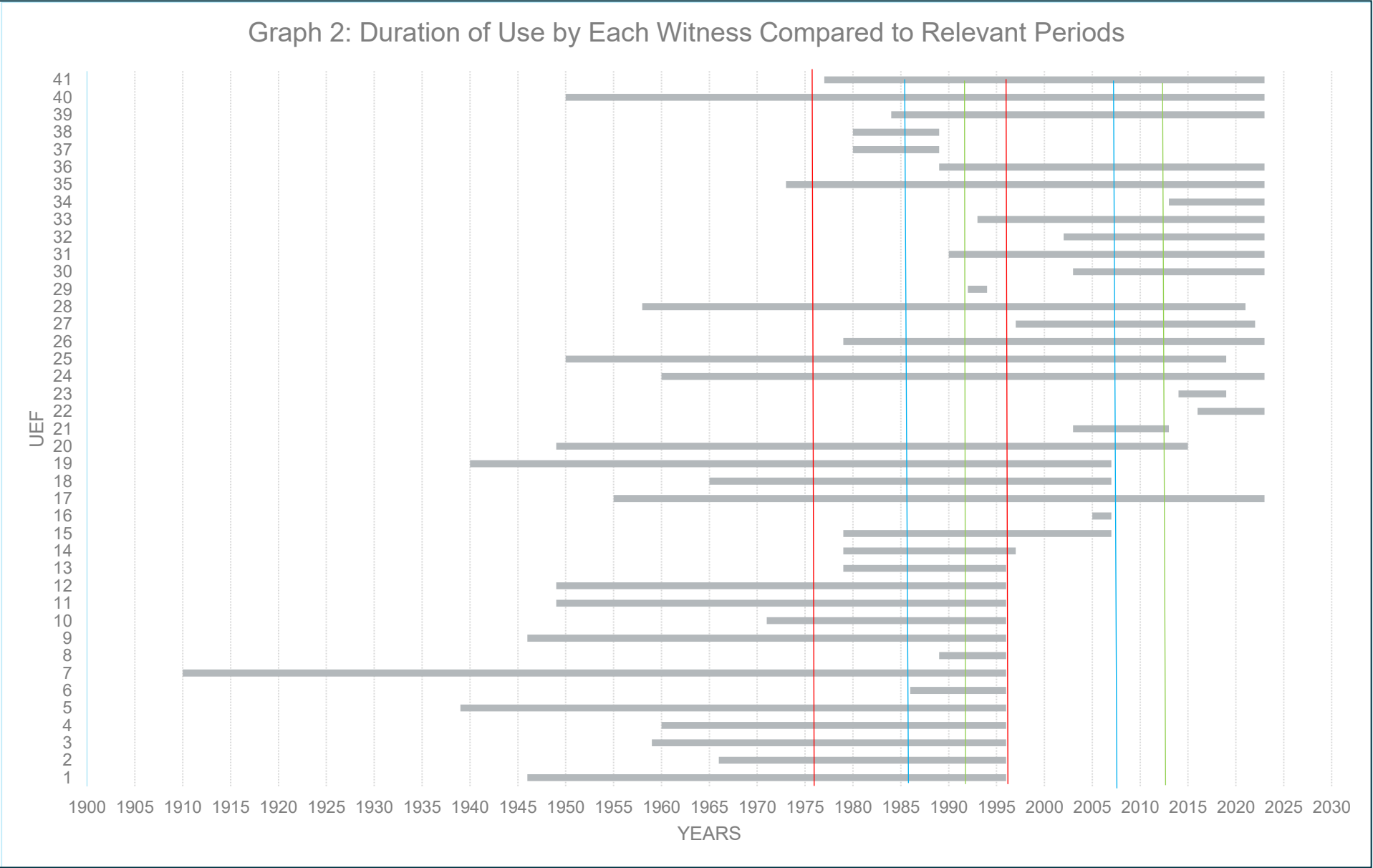


Table 5: User Evidence Summary

UEF Ref No.	Years Used	Frequency	Mode			Width (m)	Structures/Signs			Seen Others			Permission	Challenged	Landowner/Tenant	Additional Information
			F	H	B		Gates	Stiles	Notices	F	H	B				
1	46-96	Occasionally	Y				Y	Y	N	Y			N	N	N	"Various gates to stop cattle straying & stiles for pedestrian access" "Used for many years by the villagers"
2	66-96	Monthly	Y				Y	Y	N	Y			N	N	N	
3	59-96	Monthly	Y				Y	Y	N	Y			N	N	N	"This is a pleasurable flat scenic walk which I have enjoyed since childhood & the only path that enables a circular walk around the village"
4	60-96	Frequently	Y				Y	Y	N	Y			N	N	N	"Several gates & stiles along route to prevent cattle from straying"
5	39-96	Daily	Y				Y	Y	N	Y			N	N	N	"Gates so cattle don't stray and stiles so you can see the route"
6	86-96	Weekly	Y					Y		Y			N	N	N	
7	1910-1996	Frequently	Y				Y			Y			N	N	N	"... used as of right"
8	89-96	Often	Y				Y	Y	N	Y			N	N	N	"This route is used by villagers quite often and should be kept as a right of way"
9	46-96	2-3x a year	Y					Y		Y			N	N	N	
10	26-96	Very often	Y				Y	Y	N	Y			N	N	Y	"Father was a tenant farmer including the footpath"
11	71-97	2-3x a year	Y					Y		Y			N	N	N	"Recent squeeze stiles" "... near Moor Lane End"
12	49-96	n/a	Y				Y	Y		Y			N	N	N	"Gates to stop cattle straying" "I have seen plenty of people walking this footpath"
13	79-96	Quite Often	Y					Y		Y			N	N	N	
14	57-97	Several x 12	Y			7-2ft	Y	Y	N	Y			N	N	N	"Recently a stile has been erected at the Manor Rd end about 50 yards on by the tenant farmers of Park Farm and at the Mill end a gate has been put across but there is still access to walkers"
15	79-2007	Several x 12	Y				Y	Y	N	Y			N	N	N	
16	2005-2007	3x a year	Y			2-3ft	Y	Y	N	Y			N	N	N	"Metal Gate Farnley Road end"
17	1955 - 2023	Every few months	Y			0.5-1.5m	Y	Y	N	Y			N	N	N	"Structures similar to at present"
18	1965-2007	Weekly 1970s/1-2x a year after	Y			3m	Y	Y	N	Y			N	N	N	"Metal Gate Farnley Road end" "On Map SE11 Huddersfield" "Long been used by walkers and runner"
19	1940s-2007	Once a year	Y			2ft	Y	Y	N	Y			N	N	N	"Metal gate... at junc with Farnley Tyas Rd"
20	1949-2015	Weekly	Y			Vehicular to 2ft wide	Y	Y	N	Y			N	N	N	"To my knowledge it was accepted as a right of way, no questions asked (since 1971)" "Moor Lane appears to be part of the route to Farnley Mill as the land continues past Woodview Farm to Mill Lane and at some previous time was probably used by horse drawn vehicles".
21	2003 - 2023	Every few months	Y			1m	Y		N	Y			N	N	N	
22	2016-2023	Monthly	Y			2-3m variable	Y	Y	N	Y			N	N	N	
23	2014-2023	Once a year	Y			10 yards	N	N	N	N			N	N	N	
24	1960-2023	Once a year	Y			1m - 2.5m			N	Y			N	N	N	
25	1950-2019	Monthly	Y			2m but narrows	Y	Y	N	Y			N	N	N	"There was a building near point B where I once kept hens and before that a brewery/lemonade factory that was the last information I was told as a child"
26	1979-2023	Every few months	Y			4m but narrows	Y		Y	Y			N	N	N	"Gates - in May 2020 a gate was installed at the Farnley Road end which was fitted with a lock making it difficult to access the route. The lock was removed a short while after and the gate remains but is unlocked. Also in May 2020 two further gates were erected along the footpath with signs...". "In May 2020 two further gates were erected along the footpath, one a few hundred yards from the Farnley Road end and the other approximately 100 yards from the Manor Road end and attached to each gate was a sign stating "Permissive Footpath Caution Livestock Grazing".
27	1997 - 2022	Once a year	Y			Variable			Y	Y			N	N	N	"Signs indicating that the route is a public footpath"
28	1958 - 2021	Once a year	Y			Variable	Y	Y	N	N			N	N	N	
29	1992 - 1994	Weekly	Y	Y		2m	Y	Y	Y	Y	Y		N	N	N	"I rode this as a bridleway as a child/teen in the early 1990's..." "Derelict house on the Farnley end, now fences and gates all along the path" "Fences x3" "Recent signs saying permissive footpath"
30	2003 - 2023	Every few months	Y					Y		Y			N	N	N	"Our children... have also frequently joined us on these walks"
31	1990 - 2023	Monthly	Y			Variable	Y	Y	Y	Y						"There are signs at each end saying that the route is granted permissive footpath status by the landowner"
32	2002 - 2023	Every few months	Y			2ft in winter, width varies	Y	Y	N	Y			N	N	N	"I walked this route between 2003 and 2013, on many occasions, with my husband... I recall [husband] telling me about this path as a young schoolboy while on nature walks in a class of children with his Kirkburton school teacher in the late 1930s. From what he said it was clearly an historic track linking old local industries..."
33	1993 - 2023	Once a year	Y										N	N	N	
34	2013-2023	Every few months	Y				Y		Y	Y			N	N	N	
35	1973 - 2023	Daily	Y										N	N	N	"Moor Lane is part of the original route from Kirkburton to Honley through Farnley Tyas and should be accessible to all"
36	1989 - 2023	Regularly	Y							Y			N	N	N	"I have been told that Moor Lane is part of a historic path which ran from Kirkburton through Farnley Tyas to Honley"
37	1980's			Y												"I have been talking to my friends & we believe we used the path in the 80's riding from Kirkburton"
38	1980's	Regularly		Y												"This is a route which myself and fellow horse riders utilised in the 1980s"
39	1984 - 2023	During summer months	Y			Variable			N	Y			N	N	N	"It is likely that it was originally wide enough to allow a horse and cart to travel along it"
40	1950-2023	Weekly	Y			1.5y		Y	N	Y			N	N	N	"Horses would never have been able to traverse the path due to the stiles (maybe 3 at intervals)
41	1977 - 2023	Every few months	Y			Variable	Y	Y	Y	Y			N	N	N	"I think this land is or was owned by Farnley Estates looking at the right of access notice on the top gate near Shottons. Farnley Estates have many notices about access dotted about their land. The notice they have on the gate near point A opposite Shootons seemed to appear when the public footpath sign disappeared" "The only evidence I have are the public footpath sign posts. There is no double they were there but have now disappeared unfortunately I do not have any photos or anything as I wouldn't have ever considered I needed them"
Total			39	3	0		26	28	6	35	1	0	38	38	37	

as of right...

124. The use and enjoyment by the public must be “as of right”, which is a tripartite test meaning without force, without secrecy, and without permission. The quality of the use by the public must therefore be peaceable, open, and not based on any license. Its meaning is closer to “user as if of right”. The test is strictly objective, the actual state of mind of the user is irrelevant. Use ‘as of right’ is use which would have the outward appearance to the reasonable landowner of the assertion of a right, but which is, in fact, trespassory. In, [R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council \[1999\] UKHL](#), at paragraph 18, Lord Hoffman expressed the meaning of the term ‘as of right’ as follows:

“It became established that user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the license of the owner... The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user, and in the third, because he had consented to the user, but for a limited period.”

125. In this case, there is no clear evidence that the use of the Order route was anything other than open and peaceable. However, the majority landowner has stated that public use of the Order route took place with their license as the freehold owner during the relevant periods. The landowner stated in their ‘Landowner Statement’ that they not given anyone permission to use the Order route nor been asked for permission by anyone wanting to use the Order route, but also states:

“The ramblers approached us in 1986 to ask for this route to become a public footpath. We turned down the request. This was all by way of discussion. The route was left open as a permissive route only.”

126. Additionally, UEF/19 appended to their witness statement a copy of a letter dated 15th October 2007 from the Estate Manager to ‘Rights of Way and Highways’ at Kirklees Council, made subsequent to the 2007 definitive map modification order application regarding ‘Permissive Access’, stating:

“The Estate over the last couple of years have been looking to create a number of permissive footpaths and bridleways. A recent meeting was held with a Mr Neil Windett, Countryside Manager at Kirklees Council.

I enclose a copy of correspondence, being an application form for a modification order in order to have a former track dedicated as a public footpath The Estate would most strongly contest such application.

Moor Lane is one of a number of former cart tracks to which permissive access is to be sought, in fact work was undertaken to Moor Lane, that is the spraying and control of brambles, during both 2006 and 2007, to create a viable access way prior to application for designation as permissive footpath/bridleway.”

127. The letter indicates that there was a prospective intention, not overtly brought to the attention of the public, to dedicate the Order route as a permissive access, and certainly not during the 1976-1996 relevant period. However, as clarified by Lord Bingham of Cornhill in [R v City of Sunderland ex parte Beresford \(FC\) \[2003\] UKHL 60](#) at paragraphs 5 and 6, use of a way will not be by permission due to inaction by the landowner with knowledge of use of the way:

“[5] I can see no objection in principle to the implication of a license where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants’ use of the land is pursuant to his permission, This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants’ use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.

[6] Authority, however, establishes that a license to use land cannot be implied from mere inaction of a landowner with knowledge of the use to which his land is being put...

128. The landowner also states that permissive access only signs have been erected at either end of the Order route, which have been maintained and replaced when required and could

not recall a time when signs weren't in place. The landowner confirmed that the signs have never been torn down or vandalised throughout the years. None of the users provided any evidence of signage during the relevant period. As stated in [Taylor v Betterment Properties \(Weymouth\) Ltd and Another \[2012\] EWCA Civ 250](#) by Lord Justice Patten, where there is a conflict of evidence regarding the presence of notices:

"[52] I agree with the judge that the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with. Evidence from some local inhabitants gaining access to the land via footpaths that they did not see the signs is not therefore fatal to the landowner's case on whether the user was as of right. But it will in most cases be highly relevant evidence as to whether the landowner has done enough to comply with what amounts to the giving of reasonable notice in the particular circumstances of that case. If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land."

129. Similarly, in [R \(Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust v Oxfordshire County Council \[2010\] EWHC 530](#), in paragraph 22 of the judgement, Justice Waksman QC set out guiding principles for considering the sufficiency of landowner signage on claimed public right of way. In particular, paragraph 22(2) states:

"Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user."

130. On the other hand, there is corroboration between users (UEFs 26 & 28) and an adjacent landowner that permissive signs were first erected at either end of the Order route in 2020, after the relevant periods. In particular, UEF 26 states:

"In May 2020 two further gates were erected along the footpath, one a few hundred yards from the Farnley Road end and the other approximately 100 yards from the Manor Road end and attached to each gate was a sign stating, "Permissive Footpath Caution Livestock Grazing."

131. Furthermore, the owner of No. 40 Manor Road confirmed in their 'Landowner Statement':

“Notices claiming permissive access, from the stile to the gate before the old brewery, were erected for the first time in 2019/20 not in 2013/14 as claimed.”

132. The witness statements are confirmed by the ‘Landowner Statement’ by the new owner of the old brewery, which states:

“Advised by previous owner to put a sign same as theirs on front gate.”

133. Finally, a Definitive Map Officer conducted a site visit on 14th August 2013 and took photos of the Order route. The photos show the presence of gates and stiles but no notices. In fact, the site visit was conducted with a view to securing permissive access along the Order route subsequent to an email dated 29th July 2013, after the relevant periods, from the estate manager:

“The above track runs between OS points SE171127 and SE166124 and is not a right of way on the definitive plan. The estate would like to give permissive usage over the total length of the track possible for both footpath and bridleway. As such I enquire as to whether Kirklees do have a standard document to ‘declare’ the permissive usage.”

134. The statement by the landowner that permissive notices were erected prior to 2020 is not supported by independent witnesses or documentary evidence. On the balance of probabilities, the use of the Order route by the public was without permission throughout the relevant periods.

... and without interruption for a full period of 20 years...

135. The meaning of the proviso “without interruption” and the relevant case law was summarised in [Fernlee Estates Ltd v City and County of Swansea \[2001\] EWHC Admin 360](#), at paragraph 16:

“In order to constitute an interruption for the purposes of Section 31(1) of the Highways Act 1980 there must be some physical and actual interruption which prevents enjoyment of the way rather than merely acts which challenge the user while allowing it to go on: Merstham Manor Ltd v Coulsdon and Purley [1937] 2 KB 77, 84-85. A mere absence of continuity in the de facto user will not stop time running, there must be an interference with the enjoyment of a right of passage.

Jones v Bates [1938] 2 All 237, 246. Thirdly, “interruption” means “interruption of fact.” However, the circumstances of and the intention with which the barring of the way takes place are relevant. For example, the blocking of a road by a broken down vehicle would not amount to a relevant interruption. Lewis v Thomas [1950] 1 KB 438.”

136. Most users refer to various gates and stiles along the length of the Order route for the purposes of stock control and this is confirmed by the landowner:

“There are gates and fencing to keep the livestock in. Always been there to keep the livestock in the field. Gates have always remained shut to keep the livestock in. Gates and fencing have been in place for 100s of years.”

137. The only reference to a locked gate is by UEF/26, stating:

“Gates - in May 2020 a gate was installed at the Farnley Road end which was fitted with a lock making it difficult to access the route. The lock was removed a short while after and the gate remains but is unlocked. Also in May 2020 two further gates were erected along the footpath with signs...”.

138. However, there is no evidence that the enjoyment of the way by the public was physically and actually interrupted by a positive act by the landowner with the intention of challenging the public’s right of passage during the relevant periods.

the way is deemed to have been dedicated as a highway...

139. Consequently, in this case, there is sufficient evidence that the enjoyment of the way by the public was ‘as of right’ and was not physically and actually interrupted by a positive act by the landowner with the intention of challenging the public’s right of passage during the relevant periods of 1976-1996, 1987-2007, and 1992 to 2012. Therefore, each element of the first question of fact under s.31(1) of the 1980 Act is satisfied, such that the Order route is deemed to have been dedicated as a footpath. The presumption is rebuttable.

unless there is sufficient evidence that there was no intention during that period to dedicate it.

140. The burden of adducing evidence sufficient for the purposes of negating an intention to dedicate the Order route as a footpath rests with whoever in the particular case needs to rebut the presumption. There is no evidence of any signs or notices consistent with section 31(2) sufficient to negative the intention the landowner to dedicate the way as a highway during the relevant periods, letters submitted to the Council under section 31(5), or deposits/declarations under section 31(6) of the Highways Act, 1980. On the contrary, one witness (UEF/41) stated that public footpath signs were located at the western end of the Order route at its junction with Farnley Road, which is also corroborated by UEF/27, stating:

"I think this land is or was owned by Farnley Estates looking at the right of access notice on the top gate near Shootons. Farnley Estates have many notices about access dotted about their land. The notice they have on the gate near point A opposite Shootons seemed to appear when the public footpath sign disappeared."

"The only evidence I have are the public footpath sign posts. There is no doubt they were there but have now disappeared unfortunately I do not have any photos or anything as I wouldn't have ever considered I needed them."

141. The freehold owner of the Order route during the relevant period answered in their 'Landowner Statement' that they had never stopped or turned back anyone using the route, or made it known to them that they route was not public. An adjacent landowner of 40 Manor Croft stated that they had been asked on several occasions if the Order route was a public footpath, and the adjacent landowner answered 'no', turning back two members of the public who walked an alternative route. However, events occurred after 2016 and not during the relevant periods.

142. The statutory conclusion is therefore not rebutted by "*sufficient evidence that there was no intention to dedicate*" the way as a footpath during the relevant periods and, on the balance of probabilities, the way is deemed to have been dedicated under statute.

Overall Conclusion on Deemed Dedication

143. Officers conclude that the public right to use the Order route was brought into question in 1996, 2007, and 2012, creating three overlapping relevant periods of 1976-1996, 1987-2007, and 1992-2012. In all relevant periods, each element of the first question of fact under section 31(1) of the Highways Act, 1980, has been met to raise the presumption that a way has been dedicated as a footpath. The primary evidence negating an intention to dedicate the way as a highway postdates 2012 and primarily occurred in 2019/20 with the erection of permissive signage. Accordingly, there is not sufficient evidence to rebut the presumption and show that the freehold owner of the Order route negated the intention to dedicate the way as a footpath. The statutory conclusion therefore stands.
144. Therefore, Officers consider that, as it is more probable than not that the Order route subsists as a public footpath, the definitive map and statement require modification in consequence of the occurrence of an event as specified in section 53(3)(c)(i) of the WCA. It is recommended that the Council support confirmation of Order with modifications.

Limitations

145. In [Turner v Walsh \(1881\) 6 App Cas 636](#), the court observed at common law, the date of dedication by the landowner is coeval with and at the start of the period of use by the public:

“Would not the inchoate right run on to maturity rather than be blocked by the intermediate passing of this Act? This language does not accurately express the presumption which arises from long-continued user. It is not correct to say that the early user establishes an inchoate right capable of being subsequently matured. If the right had been inchoate only in 1861, the argument of the Appellant that it could not have matured or acquired after 1861, except in the mode prescribed by the Act, would have great force. The proper way of regarding these cases is to look at the whole of the evidence together, to see whether there has been such a continuous

and connected user as is sufficient to raise the presumption of dedication; and the presumption, if it can be made, then is of a complete dedication, coeval with the early user. You refer the whole of the user to a lawful origin rather than to a series of trespasses.”

146. Although this was a decision of the Privy Council, and technically not binding on the English courts, the underlined passage is accepted to be a correct statement of English Law. The effect of that the act of dedication is deemed to have occurred at the beginning of the period of continuous user, not at the end of it. The observation was applied in the context of section 31 of the Highways Act, 1980, by Lightman J in [Oxfordshire County Council v Oxfordshire City Council \[2004\] Ch 253](#) at paragraph 98:

*“Four general observations should be made regarding this section. The first is that the public right of way arises by reason of a dedication deemed to have been made at the commencement of the 20 year user: see *Turner v Walsh* (1881) 6 App Cas 636 at 642...”*

147. Similarly, at paragraph 42 in [Whitworth & Ors v Secretary of State for Environment, Food & Rural Affairs \[2010\] EWCA Civ 1468](#), Lord Justice Carnwath gave an *obiter* in with regards to deemed dedication under statute:

“In my view, the same conclusion would follow even if there had been no finding of pre-existing bridleway rights, so that the claim had rested solely on use after 1973. One would then be considering the inference to be drawn from the actual use between 1973 and 1993. It is true that regular use by both horse-riders and cyclists over that period would be consistent with as assumed dedication as a restricted byway at the beginning of the period (had that concept then existed)...”

148. Therefore, for a limitation to be recorded it must have been present at the start of the relevant 20 year period under consideration, such that the Order route was dedicated to the public subject to the presence of that limitation. With reference to **Appendix B**, currently, a wooden field gate is located at the western end of the Order route near its junction with Farnley Road at grid reference SE 1667 1245 with a sign stating: ‘*Permissible right of way on foot. PLEASE CLOSE THE GATE*’ (see photos 2 & 3). Photos taken in 2013 (see photos 40 & 41), and an annotation of map following a site visit in 2000 by council officers (see **Appendix Q**), show that the wooden field gate replaced a metal field gate. Further along the Order route, a second wooden field gate is located at grid reference

SE 1676 1252 with a sign stating: '*Permissive Footpath CAUTION Livestock grazing*' (see photos 6 & 7). The available evidence indicates that the wooden field gates were erected in 2019/20.

149. A wooden fence with a squeeze stile structure is located at grid reference SE 1680 1255, which was present in 2013, 2007 (see photos 9, 39, and 42), and appears to be recorded as a feature on 1994 Ordnance Survey landline mapping (see **Appendix J**). Two squeeze stiles are located at SE 1697 1258 (see photos 12, 13) and SE 1708 1273 (see photos 16, 17) where at field boundaries where the southern drystone wall is no longer present and were present in 2013. At the eastern end of the Order route near Manor Road and its junction with Manor Road, at grid reference SE 1718 1273, a fence lined with barbed wire limits public use of the way to a narrow gap between the structure and the drystone wall, with a sign attached stating: '*Permissive Footpath CAUTION Livestock grazing*'. Photos accompanying the 2007 definitive map modification order application at this point indicates that a structure crossed the full width of the Order route. The structure is also shown on the 2000 map annotation.
150. Most user evidence forms indicate the presence of various gates and stiles limiting public use during the relevant periods to prevent cattle straying. However, there is corroborating witness and documentary evidence that the stiles and gates were not in place at the start of the 1976-1996 relevant period:
- (1) The way was enclosed by drystone walls and there is no indication [1964 1:2500 Ordnance Survey](#) (**Appendix J**) mapping preceding the relevant period of any structures limiting public use of the Order route.
 - (2) The site inspection conducted in 1980 (**Appendix P**) during the review of the definitive map and statement noted a well-trod path varying in width from 8 to 12 feet between walls, which was capable of bridleway status but not so used although not obstructed by any locked gates. This remarks indicate that no stiles limited public use, otherwise potential use by horse riders would not be possible.
 - (3) There is some evidence of use by horse riders (UEFs 29, 37, & 38) in the late 1980s/early 1990s, which although insufficient to presume dedication of a bridleway, indicate the Order route was free from structures at that point in time.

(4) UEF/11 completed their witness statement in 1996 and refers to “*Recent squeeze stiles*” near “*Moor Lane End*”.

(5) UEF/14 completed their witness statement in 1997 and marked the location of structures along the Order route on their appended map and stated: “*Recently a stile has been erected at the Manor Rd end about 50 yds on by the tenant farmer of Park Farm and at the Mill end a gate has been put across but there is still access to walkers.*”

(6) UEF/20 stated in evidence that the stiles and gates were: “*Erected by Tenant famer (now deceased) to control his cattle in specific areas (1980-1990) simple home-made wooden.*”

151. Overall, there is sufficient documentary and witness evidence that the Order route was not dedicated subject to the limitation of any stiles or gates at the start of the first relevant period in 1976. Such structures across the Order route amount to an obstruction unless subsequently authorised. Accordingly, Officers conclude that it is not appropriate to record limitations in the Order since they were not present at the beginning of the relevant 20 year period.

Width

152. The Order route is consistently shown on 1:2500 Ordnance Survey maps from [1893](#) to [1964](#), and up to 1994 landline as an enclosed way approximately 3 to 3.5 metres wide. The physical layout of the Order route does not appear to have changed significantly since the 1805 Farnley Estate Terrier Map. As the features of the way existed prior to the date of dedication at the start of the 1976-1996 relevant period, it cannot be said that the boundary features were set out by reference to the highway, as per Chadwick LJ at paragraph 33 in [Hale v Norfolk County Council \[2001\] Ch 717](#):

“[33] *It seems to me much less clear that there is any foundation for a presumption of law that a fence or hedge which does, in fact, separate land over part of which there is an undoubted public highway from land enjoyed by the landowner has been erected or established for that purpose. It must, in my view, be a question of fact in*

each case. To take an obvious example: there could be no room for any such presumption unless the highway predated (or was contemporary with) the fence of hedge...”.

153. The ‘boundary to boundary’ principle will therefore not apply to the Order route. Nevertheless, the full width of the way between the two drystone wall boundaries could be presumed to have been dedicated under statute or at common law on the basis that that was the extent of the public use at the time of dedication. There is a distinction between the availability of the width between boundary features and the actual dedication of the width between boundary features. The width of the way that is presumed to have been dedicated as a highway is a question must be derived from the available user evidence. Where there is no such clear evidence, will be based on the mode of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features may dictate what may be considered reasonable. In the absence of evidence to the contrary, the width recorded should be sufficient to enable two users to pass comfortably. This width may well be greater than the width of the “trodden path”.
154. The user evidence forms completed in 1996 do not provide evidence as to width. The determination is therefore based on user evidence submitted in 2007 onwards by 17 users. Of those users that estimated the width of the Order route, many noted its variability. Today, the western section of the Order route commencing at its junction with Farnley Road to the second wooden field gate, is of vehicular width between 2-4 metres wide. Beyond that point, the Order route is heavily vegetated such that the estimated width of the Order route narrows to 1 metre for some users, whilst others estimate that, due to overgrown vegetation, the width of the Order route is 2ft wide, or 0.6 metres. The latter width estimate represents the trodden line.
155. On the other hand, several users provide evidence that the full width of the Order route was historically available at the date of dedication:
- The 1980 site investigation by West Yorkshire Metropolitan County Council (**Appendix P**) measured a width between 2.4 to 3.6 metres: “*A site inspection reveals a well trod path varying in width from 8 to 12 feet between walls.*”

- UEF/14 commenced using the Order route in 1955 and estimated the historical width used by the public as 2 metres: *“Used to be approx 7ft but now very much overgrown now reduced to 2ft.”*
- UEF/18 commenced using the Order route in 1965 and stated that the Order route was: *“Originally 3m. Now not as wide.”*
- UEF/26 commenced using the Order route in 1979 and stated: *“The route is predominantly a track of circa 4 metres wide which over the years due to collapsing walls and tree/shrub has narrowed significantly in places.”*

156. As the Order route was not originally dedicated subject to gates and stiles, they are a nuisance at common law and unlawful obstruction. Therefore, the width of the Order route to be recorded in the definitive statement should reflect the use by the public at that start of the relevant period, which is most accurately observed by a site survey conducted by West Yorkshire Metropolitan County Council officers in 1980 of varying between 2.4 to 3.6 metres. The measurements strongly corroborate with the [1964 1:2500 Ordnance Survey \(Appendix J\)](#) mapping and 1994 Ordnance Survey landline (**Appendix J**), which show that the Order route has a width mostly of approximately 3.6 metres with a pinch point of 2.6 metres at the northern end of the Order route near its junction with Manor Road and adjacent No. 40 Manor Road.

Recommendations

157. On the balance of probabilities, the Order route subsists as a 3.6 metre wide, with a 2.6 metre pinch point, public footpath free from limitations based on deemed dedication of the way under section 31 of the Highways Act, 1980. [Schedule 15, paragraph 8\(1\) of the Wildlife and Countryside Act, 1981](#), states:

“8(1) The Secretary of State shall not confirm an order with modifications so as-

(a) ...

(b) ...

(c) *to show as a highway of one description a way which is shown in the order as a highway of another description,*

Except after complying with the requirements of sub-paragraph (2).

(2) *The said requirements are that the Secretary of State shall-*

(a) give such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which shall not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal, which must include particulars of the grounds relied on, may be made;

(b) if any representation or objection duly made is not withdrawn (but subject to sub-paragraph (3)), hold a local inquiry or afford any person by whom any such representation or objection has been made an opportunity of being heard by a person appointed by the Secretary of State for the purpose; and

(c) to consider the report of any person appointed to hold an inquiry or to hear representations or objections.

(3) *The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order in accordance with his proposal.*

(4) *Sub-paragraph (2)(a) shall not be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under this paragraph."*

158. Officers therefore recommend that the Council support confirmation of the Order with the following modifications:

- In the preamble to the Order, after "*the right subsists is a*", delete "*restricted byway*" and add "*public footpath*".
- In the Schedule, Part 1 – Modification of the Definitive Map, under the heading 'Description of Path or Way to be Added', after "A", delete: "*restricted byway*" and add "*public footpath*". After "*by the broken*", delete "*green*" and add "*black*". After

“(Point B on the map) with a”, delete “varying”. After “width”, delete “as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72)” and add “of 3.6 metres and a pinch point of 2.6 metres at Grid Reference SE 1718 1275”.

- In the Schedule, Part 2 – Modification of Definitive Statement under the column heading “Description of Route” delete *“Restricted byway”* and add *“Public footpath”*. Under the column heading “Width (M)” delete *“Varying width as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72).”* and add *“3.6 metres with a pinch point of 2.6 metres at grid reference SE 1718 1275”*.
- In the map attached to the Order, in the ‘Legend’ delete “Restricted byway” and add “Public footpath”. Change the colour notation from a broken green line with short bars at intervals to a broken black line with short bars at intervals to represent a public footpath.

**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
WEST YORKSHIRE METROPOLITAN COUNTY COUNCIL DEFINITIVE MAP AND
STATEMENT FOR THE KIRKLEES AREA**

**KIRKLEES COUNCIL (KIRKBURTON 256 – MOOR LANE) DEFINITIVE MAP
MODIFICATION ORDER 2024**

This Order is made by Kirklees Council under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to that authority that the West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area require modification in consequence of an event specified in Section 53(3)(c)(i) namely the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in 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 restricted byway.

The Authority has consulted with every local authority whose area includes land to which the Order relates. Kirklees Council hereby order that:

1. For the purpose of this Order the relevant date is 09 November 2023.
2. The West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area shall be modified as described in Parts I & II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the “Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map Modification Order 2024”.

GIVEN UNDER the)
CORPORATE COMMON SEAL of)
THE BOROUGH OF KIRKLEES)
this Nineteenth day of January)
Two thousand and twenty four)

S - M



021043

Service Director – Legal, Governance & Commissioning/Authorised Signatory

**KIRKLEES COUNCIL (KIRKBURTON 256 – MOOR LANE), DEFINITIVE MAP
MODIFICATION ORDER 2024**

SCHEDULE

PART I – MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF PATH OR WAY TO BE ADDED

A restricted byway as indicated on the map annexed hereto by the broken green line at Farnley Tyas some 685 metres in length commencing at the eastern end of Manor Road west of Ash Croft at Grid Reference SE 1718 1279 (Point A on the map) and leading southerly for some 60 metres then southwesterly for some 625 metres to join Farnley Road opposite Farnley Mill at Grid Reference SE 1665 1244 (Point B on the map) with a varying width as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72).

PART II

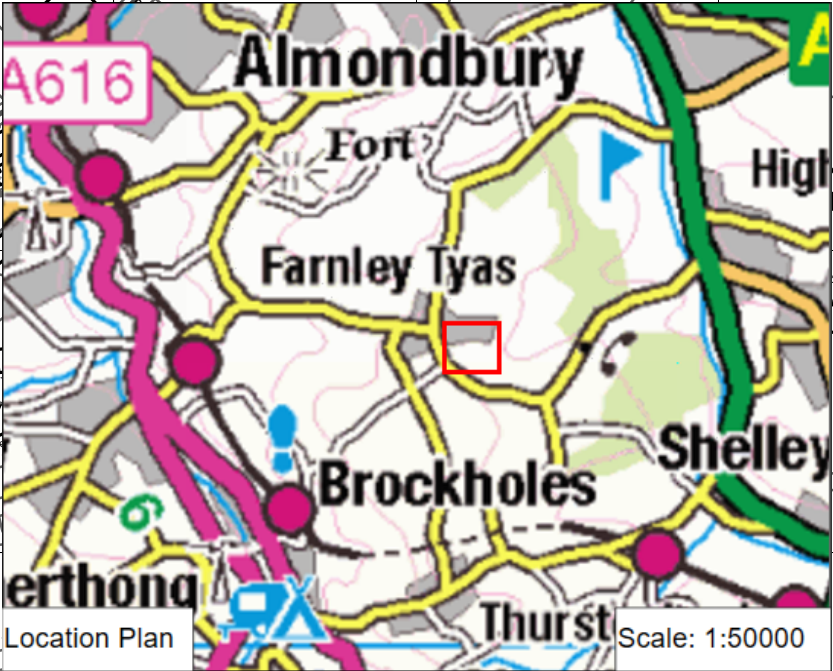
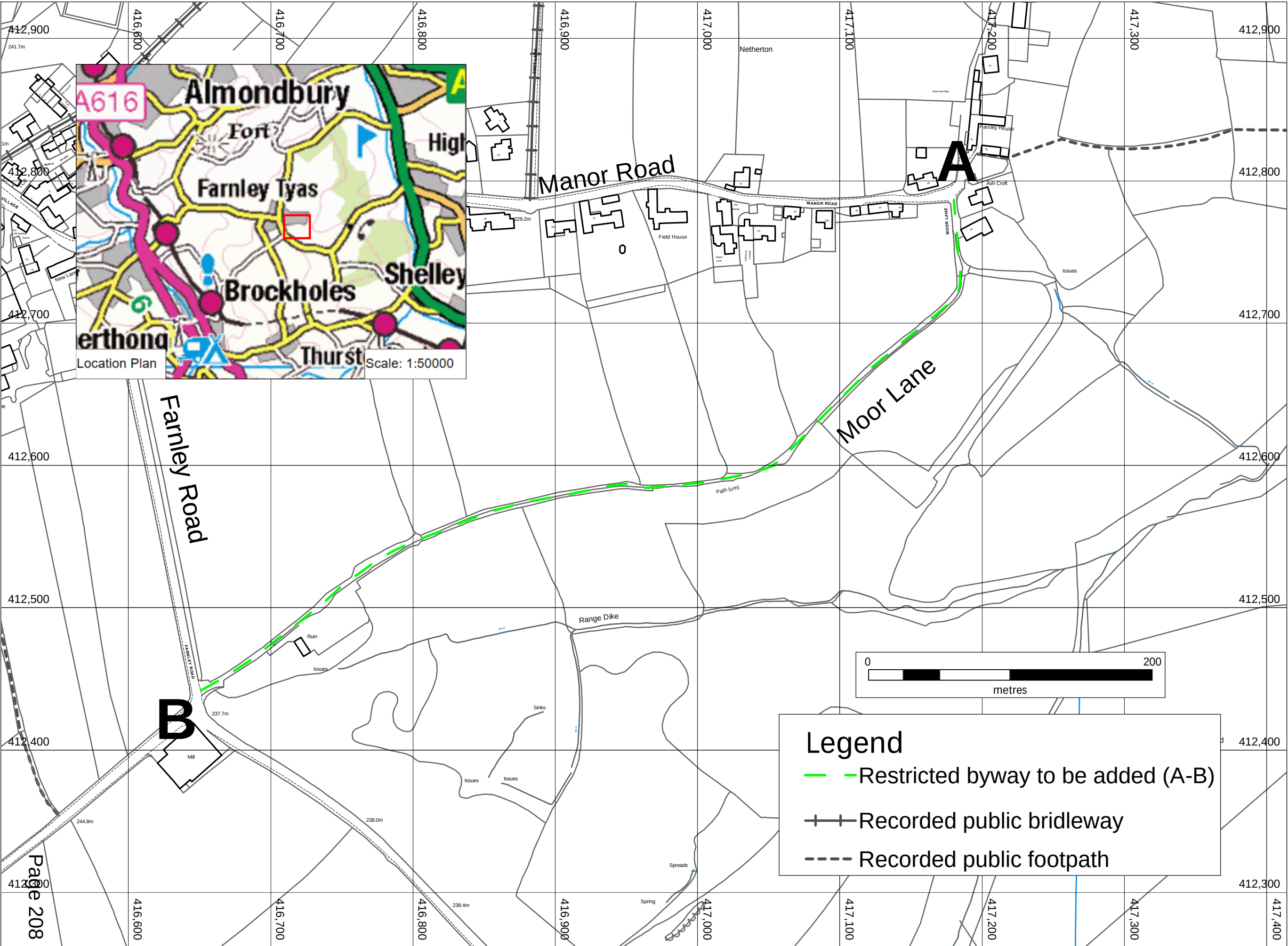
MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

In respect of the area of Kirkburton the following statement shall be added:

Path No.	Map Reference	Description of Route	Nature of Surface	Approximate Length (M)	Width (M)	General
256	SE 11 SE	Restricted byway known as Moor Lane at Farnley Tyas some 685 metres in length commencing at the eastern end of Manor Road west of Ash Croft and leading southerly for some 60 metres then southwesterly for some 625 metres to join Farnley Road opposite Farnley Mill.	Tarmac Pasture Earth/Stone Roughly metalled	25 470 130 60	Varying width as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72).	

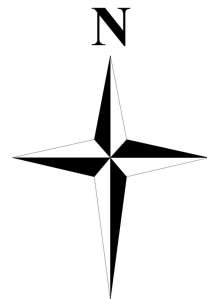
Map - Kirklees Council (Kirkburton 256 - Moor Lane) Definitive Map Modification Order 2024



Map prepared on:
02/01/2024

Scale:
1:2500 @A3

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2024.
Ordnance Survey
AC0000851069



Legend

- Restricted byway to be added (A-B)
- + + Recorded public bridleway
- Recorded public footpath

Dated 19th January 2024

**WILDLIFE AND COUNTRYSIDE ACT 1981
KIRKLEES COUNCIL
(KIRKBURTON 256 – MOOR LANE)
DEFINITIVE MAP MODIFICATION ORDER 2024**

**Kirklees Council
Legal Services
PO Box 1720
Huddersfield
HD1 9EL**

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Appendix B – Photos of Order Route

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

Photos (1-25) dated 22.07.23



Photo 1: Point B on the Order Map. Start of Order route at its junction with Farnley Bank Road and Moor Lane



Photo 2: Point B on the Order Map. Start of the Order route leading through recently erected field gate (Grid Reference: SE 1667 1245).



Photo 3: Sign on the field gate states, 'Permissible right of way on foot PLEASE CLOSE THE GATE'. Sign recently erected in approximately 2020.



Photo 4: Order route leads along wide maintained track approximately 3.5 metres wide.



Photo 5: Shipping container obstructs the Order route and was placed on the way recently in approximately 2021



Photo 6: Order route leads to second wooden field gate recently erected in approximately 2020 (Grid Reference SE 1676 1252).



Photo 7: Sign on field gate states, 'Permissive Footpath CAUTION Livestock grazing'.



Photo 8: Order route continues easterly. Trodden width of Order route narrows due to vegetation.



Photo 9: Order route leads to wooden squeeze stile with a gap available on the northern side (Grid Reference SE 1680 1255).



Photo 10: Trees and vegetation grow from within the Order route narrowing the available width.



Photo 11: Order route continues easterly as a grassy track.



Photo 12: Second wooden stile structure limits the available width of the Order route at a point where the drystone wall on the southern side has collapsed (Grid Reference SE 1697 1258).



Photo 13: Close-up of second wooden stile structure.



Photo 14: Order route continues easterly with no drystone wall on its southern side and a relatively steep drop into the adjacent field.



Photo 15: Order route obstructed by a large overgrown tree.



Photo 16: Order route widens and leads across a field to a third wooden stile structure (Grid Reference SE 1708 1273).



Photo 17: Close-up of third wooden stile structure.

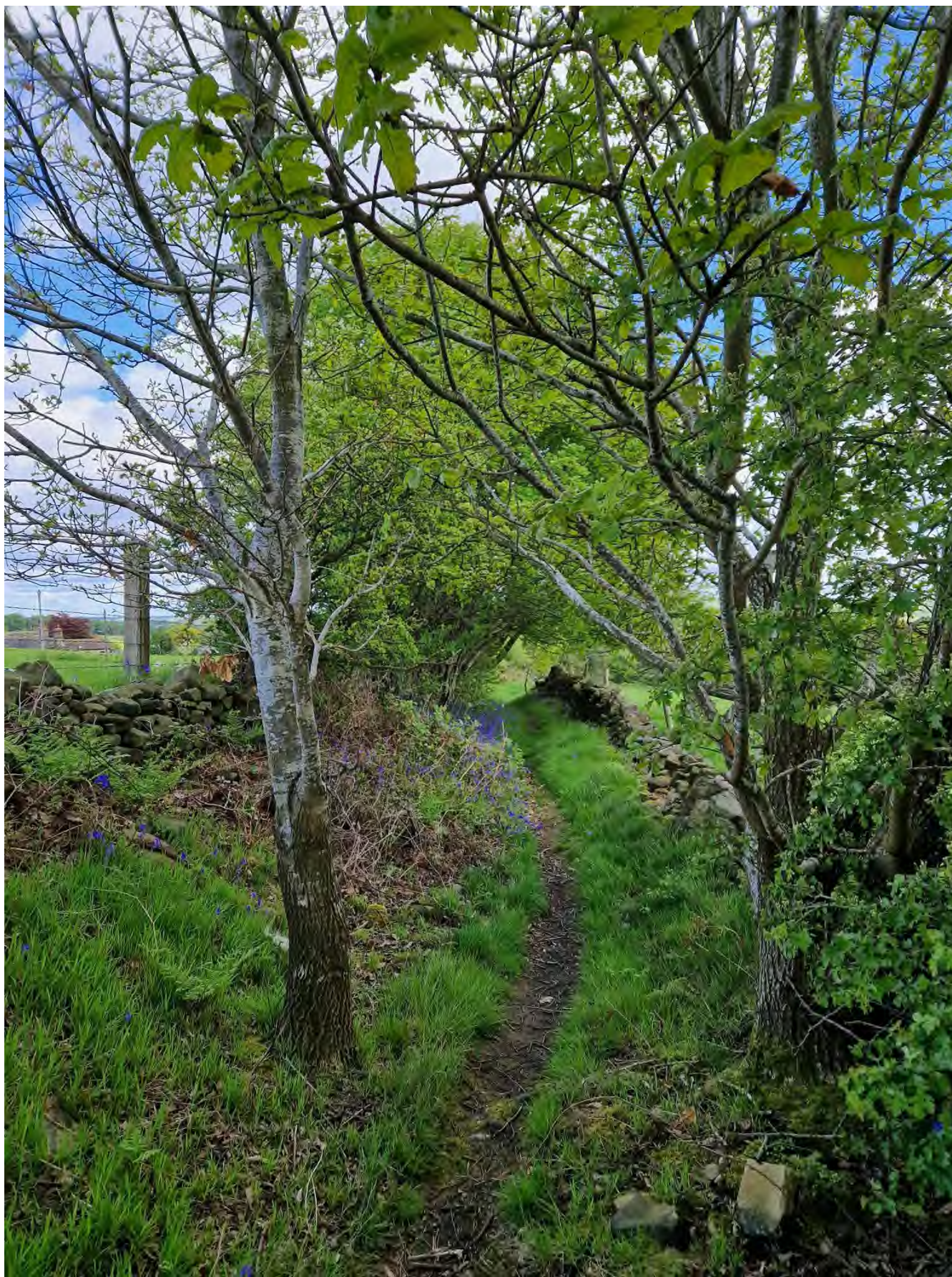


Photo 18: Order route continues easterly between drystone walls. Trees grow within the Order route, creating pinch points.



Photo 19: Order route begins to turn northerly at a bend.



Photo 20: The width of the Order is severely limited by overgrown hedge near its junction with Crab Lane.



Photo 21: At its junction with Crab Lane, the Order route is limited by a wooden fence/squeeze stile structure lined with barbed wire, with a gap on its western side (Grid Reference SE 1718 1273).



Photo 22: Sign on fourth wooden stile structure states, "Permissive Footpath CAUTION Livestock grazing", and was recently erected in approximately 2020.



Photo 23: Order route continues northerly from its junction with Crab Lane as a wide grassy route towards its junction with Manor Road.



Photo 24: Order route continues northerly along tarmac driveway leading to No. 40 Manor Road, recently laid in approximately 2015.



Photo 25: Order route joins Manor Road (Point A on the Order Map).

Photos (26-27) dated 17.02.21



Photo 26: Leading southerly along Order route passed No. 40 Manor Road



Photo 27: At the Order routes junction with Crab Lane. 'Fourth wooden stile' structure and first documentary image of sign stating, "Permissive Footpath CAUTION Livestock grazing".

Photos (28-41) dated 14/08/13



Photo 28: Point A on the Order Map at its junction with Manor Road before part of the surface of the Order route was tarmacked.



Photo 29: Point A on the Order Map at the Order routes junction with Manor Road.



Photo 30: Order route leads southerly to wooden stile structure.



*Photo 31: 'Fourth wooden stile' structure across the Order route at its junction with Crab Lane
(Grid Reference SE 1718 1273)*



Photo 32: Order route leads westerly. Livestock present in adjacent southern field.



Photo 33: Order route continues westerly towards wooden stile structure and is limited by trees and overgrown vegetation.



Photo 34: Close-up of 'third wooden stile' structure and overgrown tree in the background (Grid Reference SE 1708 1273).



Photo 35: Photo taken looking easterly along Order route showing overgrown tree obstructing use of the Order route.



Photo 36: Order route continues westerly bounded by a drystone wall on its northern side and unenclosed on its southern side with a relatively steep decline into the adjacent field.



Photo 37: Photo taken looking easterly showing overgrown vegetation and second wooden stile structure (Grid Reference SE 1697 1258).



Photo 38: Order route continues westerly between drystone walls. Trees growing within the way.



Photo 39: Close-up of 'first wooden stile' structure and also a metal field gate is shown across the Order route (Grid Reference SE 1697 1258).



Photo 40: Order route leads westerly towards its junction with Farnley Road and a metal field gate across the way.



Photo 41: Point B on the Order Map at its junction with Farnley Road. Metal field gate is shown at Grid Reference SE 1667 1245.

Photos (42-44) submitted with 2007 definitive map modification order application (Ref: 197)



Photo 42: 'First wooden stile' structure at Grid Reference SE 1680 1255. Note in comparison to photo 9, the tree is a sapling.



Photo 43: Structures present across the Order route at location of overgrown tree. Structures no longer present in 2013 or 2023 (see photos 15, 32 & 33) (Grid Reference SE 1706 1261).



Photo 44: 'Fourth wooden stile' structure at Order routes junction with Crab Lane (Grid Reference SE 1718 1273))

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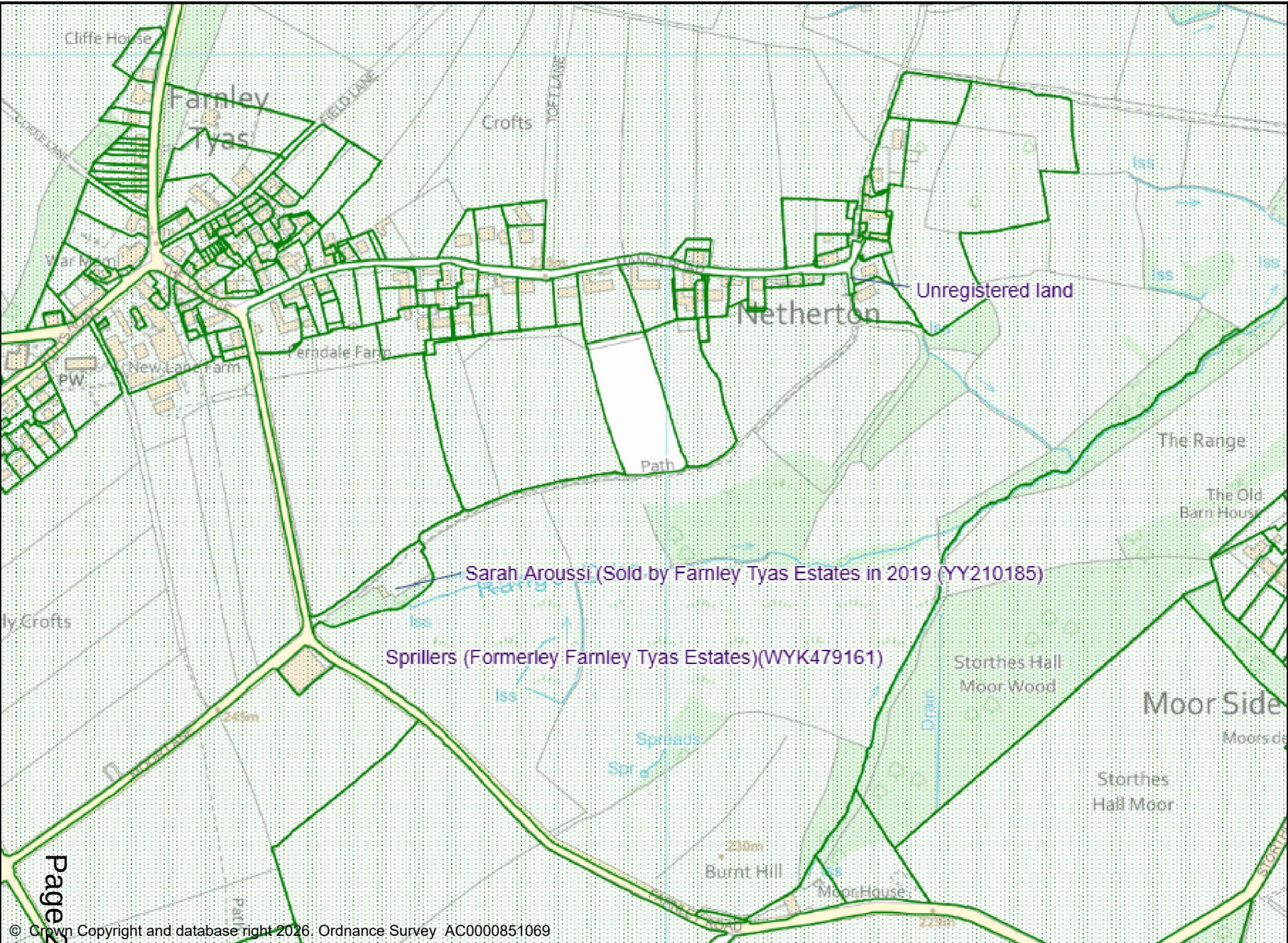
Appendix C – Land Ownership Boundaries

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

Appendix C - Land Ownership Boundaries



Scale = 1:5280.660

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maps@kirklees.gov.uk

Appendix D – 1719 Warburtons Survey of the Road between Huddersfield & Penistone & 1720 Warburtons Map of Yorkshire

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

1719 Warburtons Survey of the Road between Huddersfield & Penistone

(c) THE PENISTONE ROADS

The modern routes from Huddersfield to Penistone both keep to the valleys. The one goes by way of Moldgreen, Waterloo, Fenay Bridge and along the Thunder Bridge valley to Shelley Bank Bottom and Shepley; the other follows the Woodhead Turnpike, constructed in 1768, to Honley from where it becomes the Wadsley and Langsett Turnpike through New Mill and Jackson Bridge. The old road, like the ancient highways to Wakefield and Barnsley, was a hill road going through Almondbury.

It is shown on Warburton's map of 1720 and was surveyed for that purpose on 'May ye 12th, 1719.' Warburton's surveyor, on his way from Halifax, had stayed the previous night at Elland. The next morning he set out for Wakefield; ascending by Elland Upper Edge he passed Round Hill and following Hey Lane came down by Ochre Hole to Clough House. The first section out of Huddersfield was, of course, the ascent to Almondbury by Almondbury Bank.

The surveyor, with some assistance, used two instruments, first, a simple pattern of compass on a pole (a theodolite), to determine the direction of the road, and at every sharp change in direction he observed and recorded the reading of the compass, i.e. the angle between the road direction and the magnetic north. His second instrument was a large wheel, sometimes called a way-wiser which recorded the furlongs and miles from one station to the next. The surveyor also marked in his notebook the point where any crossroad occurred, and he noted down landmarks and points of interest en route, sometimes reading their direction with his compass. For the names of villages or detached houses he obviously had to depend upon the people he met.

Quite obviously he interrogated the natives as he journeyed along and recorded the names in the vernacular as he heard them from their lips. So 'Phinney' is written for 'Fenay,' 'Shipley' for

Station	Bearing	Distances				
		Pro- gressive m. f. p.		Point to Point m. f. p.		
11	SW 25	3 1 0	0 1 00	Ascend Leasurly Rheidus (Royd House) Wood on ye Rt.		
12	SW 9	3 2 30	0 1 30	Top of ye Hill (Farnley Bank)		
13	SW 33	3 3 5	0 0 15			
14	SW 65	3 3 15	0 0 10	Enter Farnley town end. A house on ye Rt. & Scattering houses on ye Lt. ye main body of ye Town on ye Lt. A way on ye Lt. to it.		
		3 4 0		Leave Farnley. Open Rt.		
		3 ? ?		A Rd. on ye Rt. to Honley (Farnley Lane)		
15	SE 13	3 5 25	0 2 10	Close		
16	SE 19	3 7 10	0 1 25	Enter Farnley Moor. Open.		
		4 1 0		A Road + ye Rt. to Honley ye Lt. High Burton + (Moor Lane)		
17	SE 2	4 1 15	0 2 5	Close on ye Lt.		
		4 3 0		Descend (Farnley Moor End)		
18	SE 58	4 3 10	0 1 35	Blackhouse H. Resd. Mr. Lockwood. B. South at 30 poles Dist. Thurslaland (Thurstonland) T.B. SW 22° Descend Leasurely. Leave ye Moor & Close on both sides.		
19	SE 4	4 4 25	0 1 15	Descends again A Rd. on ye Lt. to high Burton		
20	SE 51	4 5 20	0 0 35	At ye Bottom		
21	SE 5	4 5 30	0 0 10	cross a Rill (Clough Dike) wch. runs into Phinny Beck at about 1 mile downwd. Ascend A Hill open on ye Lt.		
22	SE 18	4 6 15	0 0 25	At ye top & Descends. Thurslaland T.B. SW 57° Shelay T.B. Se 76°		
		4 7 5		At ye Bottom & Ascends. Cross A Rill wch. meets ye last at 3 fur. Down & both in one. Runs into Phinny Beck. Open on ye Rt.		
23	NE 85	5 0 20	0 2 5	at ye Top. Close.		
24	SE 84	5 1 25	0 1 5			
		5 2 15		A house on ye Rt. open to ye Lt.		
		5 3 0		ye 2 Rills Lt. Mentioned Joined Runs down on my Lt. at 2 fur.		
25	SE 38	5 3 10	0 1 25	Grange wood on ye Lt. 2 fur.		
26	SE 68	5 3 25	0 1 15	Open on both sides		
		5 5 25		Cross a Rill		
27	SW 22	5 5 30	0 2 5	Descend a Hill		
28	NE 89	5 7 5	0 1 15	At ye Bottom & Cross a Rill which Runs into Phinny B. at About 2 fur. above where ye 2 Rills Aforesaid meets it & then they all Runs together to Phiny Bridge (Carr Dike). A Spring of young wood on each side (Upper and Lower Stone Woods) & Ascends.		
29	SE 18	6 0 15	0 1 10	At ye Top. Leave ye Spring.		
30	SE 25	6 1 15	0 1 0	Shelay T.B. NE 80°		

'Shepley,' and 'Commerworth' for 'Cumberworth.' Many of Warburton's words were abbreviated, e.g. 'Upper Cumberworth T.B. SE 85°,' where 'T' stands for 'town' and 'B' for 'bearing.' 'Hall' is usually indicated by 'H' whilst 'Rd' (road), 'Rt' (right), 'Lt' (left) and 'Res.' (resident) need no comment.

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

Here, then, is the route from Huddersfield to Penistone as followed by Warburton:—

THE ROAD BETWEEN HUTHERSFIELD AND PEN-
NISTON. May ye 12th (1719).

Station	Bearing	Distances		
		Pro- gressive	Point to Point	
		m. f. p.	m. f. p.	
1	SW 76	1 7 15	1 7 15	From ye Cross to Almondbury ye same way I came yesterday till 85 and then Leave Wakefield Road thus to Peniston. ye Church on my Rt. at 1 mile 7 fur. 20 poles.
2	SE 16	2 0 11	0 0 36	A rd. Strait forwd. to Honley on ye Town a furlong further.
		2 0 18		Leave Almondbury Close.
3	SW 63	2 1 20	0 1 09	& Descend a hill 10°
4	SW 10	2 2 20	0 1 00	
		2 2 35		A Rd. on ye Lt. to Lepton (Arkenley Lane)
5	SW 41	2 2 35	0 0 15	
		2 3 20		A Rd. on ye Rt. to Honley (Lumb Lane)
5	SW 10	2 3 30	0 0 35	
		2 3 35		A Rill & at ye Bottom
6	SW 57	2 4 35	0 1 05	
		2 5 30		Descend Again
7	SW 2	2 5 35	0 1 00	
		2 6 0		A Small Brook (Lumb Dike) wch. runs into Phinee Beck at about 2 furlongs Downwards.
				At ye Bottom & Ascend. A hill 11°.
		2 6 5		A house on ye Lt. (Bank Foot)
8	SE 64	2 6 15	0 0 20	
9	SW 9	2 6 20	0 0 05	A hill on my Lt. & Vale on ye Rt.
		2 7 0		At ye top & Ascend Leasurly.
10	SW 23	3 0 0	0 1 20	Ascend steep Again

1720 Warburtons Map of Yorkshire Extract



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Appendix E – 1827 Quarter Sessions Footpath Stopping-Up Order

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer



Pontefract Sepions 23rd April 1827

of Upper Aybrigg in the said Riding on the first Day of March one thousand eight hundred and twenty seven, having upon review found that a certain part of a certain public footway within the several Townships of Almondbury, Farnley Tyas, Thurstontland and Kirk Burton all in the Riding aforesaid lying between the Town or Village of Almondbury in the said Township of Almondbury and the Town or Village of Kirk Burton in the said Township of Kirk Burton for the length of two thousand seven hundred and twenty six yards or thereabouts and in breadth three feet or thereabouts commencing at a certain public Highway at or near to Birks Mill in the said Township of Almondbury in the Riding aforesaid and leading from thence in a South Easterly direction over a certain Brook dividing the respective Townships of Almondbury aforesaid and Farnley Tyas aforesaid in the Riding aforesaid and from thence over a certain Field of William Earl of Dartmouth called the Wood close otherwise known as lately in the occupation of Messieurs Howell, Cockell and Bennett and through a certain Wood of the said William Earl of Dartmouth called Birks Wood and over and across certain closes of Land of the said William Earl of Dartmouth called the Lower Seal Road and the Low pasture in the occupation of Jonathan Senior the younger all in the Townships of Farnley Tyas aforesaid in the Riding aforesaid and over and across a certain Highway leading from Farnley Tyas aforesaid to the Turnpike Road leading from Riddersfield to Lenistone at or near to Woodsome Mill in the Township of Farnley Tyas aforesaid all in the Riding aforesaid and thence along certain other Fields of the said William Earl of Dartmouth in the Townships of Farnley Tyas aforesaid called The Mill Croft, The Warren Brow, The Warren Throg, The Warren, The Hall Platts, The Braury Road, The Bole Long, The Redhot Lee, The two Holms, now or lately in the several Occupations of Jonathan Senior the younger, the said William Earl of Dartmouth, Benjamin Stocks, Mark Toberson, and Joseph Toth and thence over and across a certain occupation Road in the Township of Farnley Tyas aforesaid called The Lane and over a certain Close of Land of Charles Horsfall Esquire in the Township of Thurstontland in the Parish of

Pontefract Sepions 23rd April 1827 ¹³

Kirk Burton aforesaid in the Riding aforesaid called the Lym the Occupation of the said Charles Horsfall Esq down a Lane called Smiths Place Lane and across a certain Highway in the Townships of Thurstontland aforesaid leading from Farnley Tyas aforesaid to Kirk Burton in the Riding aforesaid called Storhs Hall Lane and also across two Allotments of the said Charles Horsfall Esq in the Township of Thurstontland and both in the occupation of Henry Copley and crossing a certain Brook dividing the several Townships of Thurstontland aforesaid and Kirk Burton aforesaid all in the Riding aforesaid and over a certain Field of one Joseph Copley in the Township of Kirk Burton aforesaid in the Riding aforesaid called the Bottomley Green or Dean Bottom in the Occupation of the said Joseph Copley and terminating at the said Turnpike Road leading from Riddersfield to Lenistone in the Township of Kirk Burton aforesaid in the Riding aforesaid near to the Highway branching therefrom which leads to the Town or Village of Kirk Burton aforesaid particularly described in the Plan herunto annexed and described therein as commencing at the point or letter A in the said plan and running along a line on the said Plan dotted red to the point or letter B in the said Plan may be diverted and turned so as to make the same more commodious to the Public and having viewed a course proposed for the new foot way in lieu thereof through the Lands and grounds of the said William Earl of Dartmouth for the length of one thousand one hundred and seventy yards or thereabouts and of the breadth of four feet or thereabouts particularly described in the Plan herunto annexed and which said last mentioned or substituted public foot way commences at the said Highway at or near to Birks Mill aforesaid and leads from thence in a South Easterly direction across a certain Field of the said William Earl of Dartmouth in the Townships of Almondbury aforesaid in the Riding aforesaid called the Ridings in the occupation of Joseph Fisher across the said Brook in dividing the said several Townships of Almondbury and Farnley Tyas in the Riding aforesaid and thence across several other closes of the said William Earl of Dartmouth in the Townships of Farnley Tyas in the Riding aforesaid called the Coach Close The Lower Seal Road The

Pontefract Sessions 23rd April 1827

Post close, The Cow Pasture the Low Honey Hill, The round stony Hells a certain Throgs called the Millers Throgs and across a certain Close of Land called Millers Hill all in the Township of Farnley Tyas aforesaid in the Riding aforesaid in the several Occupiers of the said William Earl of Dartmouth Joseph Fisher, Thomas Nowell Cockell and Bennett, Jonathan Senior the Spenger and one Sarah Kidgarn and terminates forty yards from the North West Corner of a certain Building called Woodsome Mill in the Township of Farnley Tyas aforesaid, in the occupation of the said Sarah Kidgarn and having received evidence of the consent of the said William Earl of Dartmouth to the said new footway being made through his lands lastly before described by writing under his Hand and Seal we do hereby order that the said Footway be diverted and turned through the Lands lastly aforesaid And we do order an equal apportionment not exceeding the rate of six pence in the pound to be made levied and collected upon all and every the Occupiers of Lands tenements Woods Lishes and hereditaments in the said several Townships of Almondbury, Farnley Tyas, Thurstonland and Kirk Burton respectively in the Riding aforesaid, in the proportions between the said several Townships according to the respective lengths of the said Old and New or Substituted footways respectively and that the money arising thereupon be paid and applied according to the directions of the Statute made in the thirteenth Year of the Reign of His late Majesty King George the Third, for the Amendment and preservation of the Highways

Given under our Hands and Seals the day and Year first above Written

To. Haigh *TS*
B. Haigh Allen *TS*

S. William Earl of Dartmouth being owner of certain ^{divided} lands in the Plan herewith annexed through which part of a certain public footway within the several Townships of Almondbury Farnley Tyas Thurstonland and Kirk Burton all in the West Riding of the County of York lying between the town or village of Almondbury in the said Township of Almondbury and the Town or village of

Pontefract Sessions 23rd April 1827 *LS*

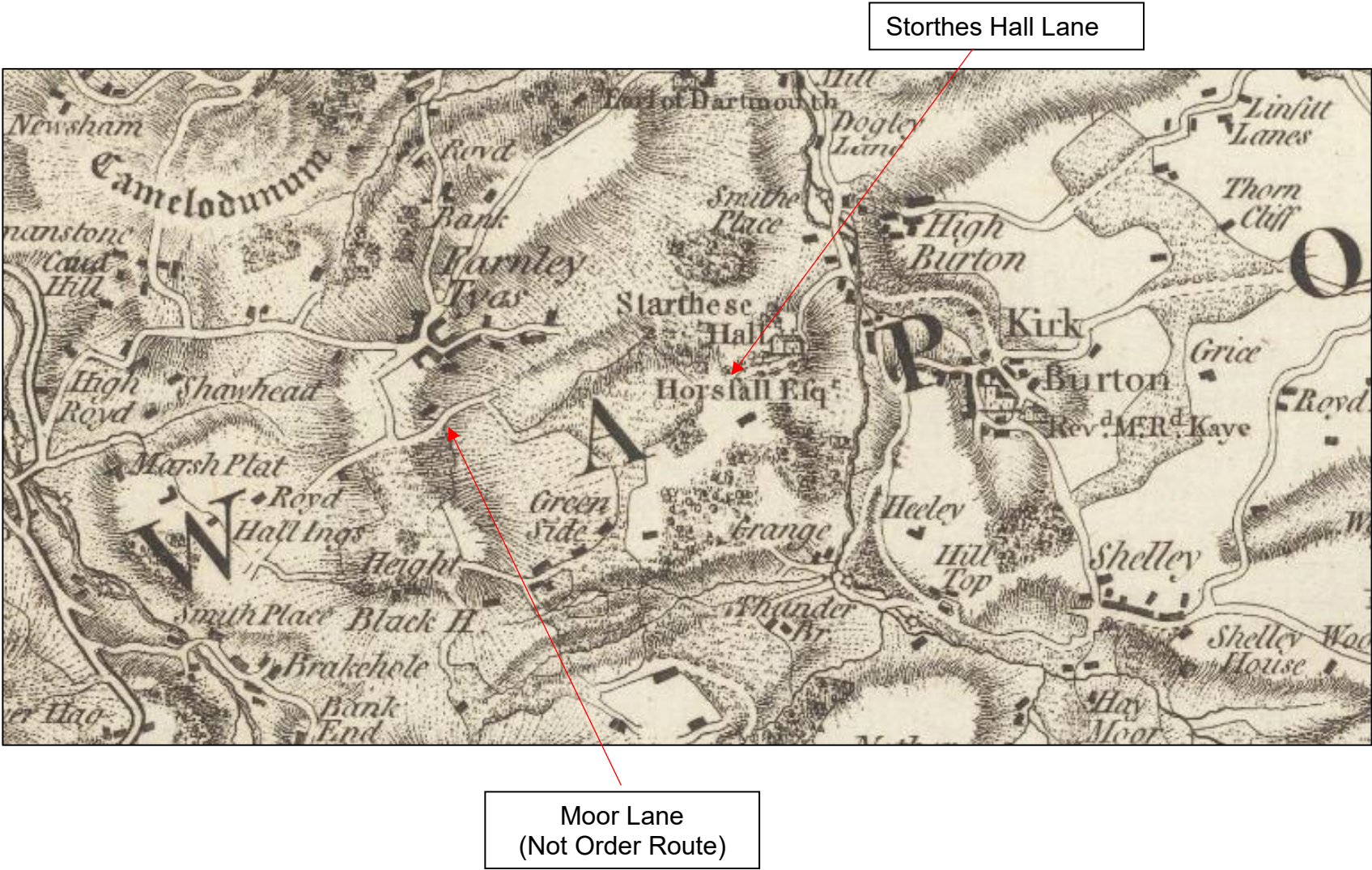
Kirkburton in the said Township of Kirk Burton for the length of two thousand seven hundred and twenty six yards and in breadth three three feet commencing at a certain public Highway at or near to Birks Mill in the said Township of Almondbury in the Riding aforesaid and leading from thence in a South Eastwardly direction over a certain Brook dividing the respective Townships of Almondbury aforesaid and Farnley Tyas aforesaid in the Riding aforesaid and from thence over a certain Field of me the said William Earl of Dartmouth called the Wood Close otherwise Coach Close now or lately in the occupation of Messieurs Nowell Cockell and Bennett and through a certain Wood of me the said William Earl of Dartmouth called Birks Wood and over and across certain closes of land of me the said William Earl of Dartmouth called the Bone Seal Hoys and the Cow pasture in the occupation of Jonathan Senior the Spenger all in the Township of Farnley Tyas aforesaid in the Riding aforesaid and over and across a certain highway leading from Farnley Tyas aforesaid to the Turnpike road leading from Huddersfield to Thirston at or near to Woodsome Mill in the Township of Farnley Tyas aforesaid all in the Riding aforesaid and thence along certain other fields of me the said William Earl of Dartmouth in the Township of Farnley Tyas aforesaid called the Mill Croft The Warren Brow, The Warren Throgs, The Warren, The Hall Meads, The Brewery Hoys, The Cote Hoys, The Hallot Lee, and the Two Holmes now or lately in the several occupations of Jonathan Senior the Spenger, me the said William Earl of Dartmouth Benjamin Hicks, Mark Alderson, and Joseph Scott and thence over and across a certain occupation road in the Township of Farnley Tyas aforesaid called Lees Lane and over a certain Close of land of Charles Horsfall Esq. in the Township of Thurstonland in the Parish of Kirkburton aforesaid in the Riding aforesaid called the Sug in the occupation of the said Charles Horsfall Esq. down a lane called Luntley Place Lane and across a certain Highway in the Township of Thurstonland aforesaid leading from Farnley Tyas aforesaid to Kirkburton in the Riding aforesaid called North Hall Lane and also across two allotments of the said Charles Horsfall Esq. in the Township of Thurstonland aforesaid both in the occupation of Henry Lopley and across a certain Brook dividing the several Townships of Thurstonland aforesaid and Kirk Burton aforesaid

Appendix F – 1772 Jefferys Map of the County of York (Extract of Plate 17)

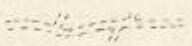
**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer



REFERENCES.

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

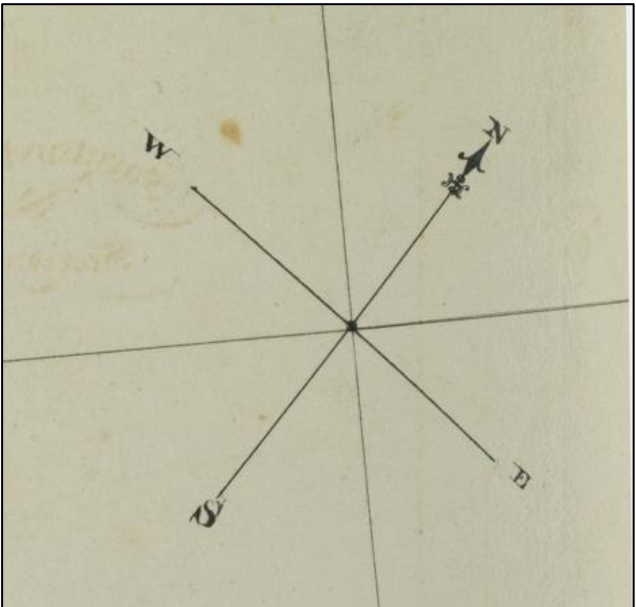
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Appendix G – 1805 Extract of Farnley Estate Terrier Map

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer



Appendix H – 1817 Greenwoods Map of Yorkshire

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer



Explanation

Churches & Chapels	+	+
Castles & Priories	■	+
Houses	—	—
Water Mills	—	—
Wind Mills	—	—
Woods & Plantations	—	—
Heaths & Commons	—	—
Rivers & Brooks	—	—
Navigable Canals	—	—
Turnpike Roads	—	—
Cross Roads	—	—
Towns & other Places that send	—	—

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Appendix I – 1815 Greenwoods Proposal for Publishing Newspaper Notice (Transcription)

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

The newspaper text went out of copyright 70 years after publication in 1885.

Transcribed from [The British Newspaper Archive](#) of an extract of 'Wrights & Leeds Intelligencer' dated 1815.

PROPOSALS FOR PUBLISHING,

BY SUBSCRIPTION,

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

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

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

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

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

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

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Appendix J – 1893, 1896, 1906, 1924, 1932, 1964, and 1994 Ordnance Survey Maps

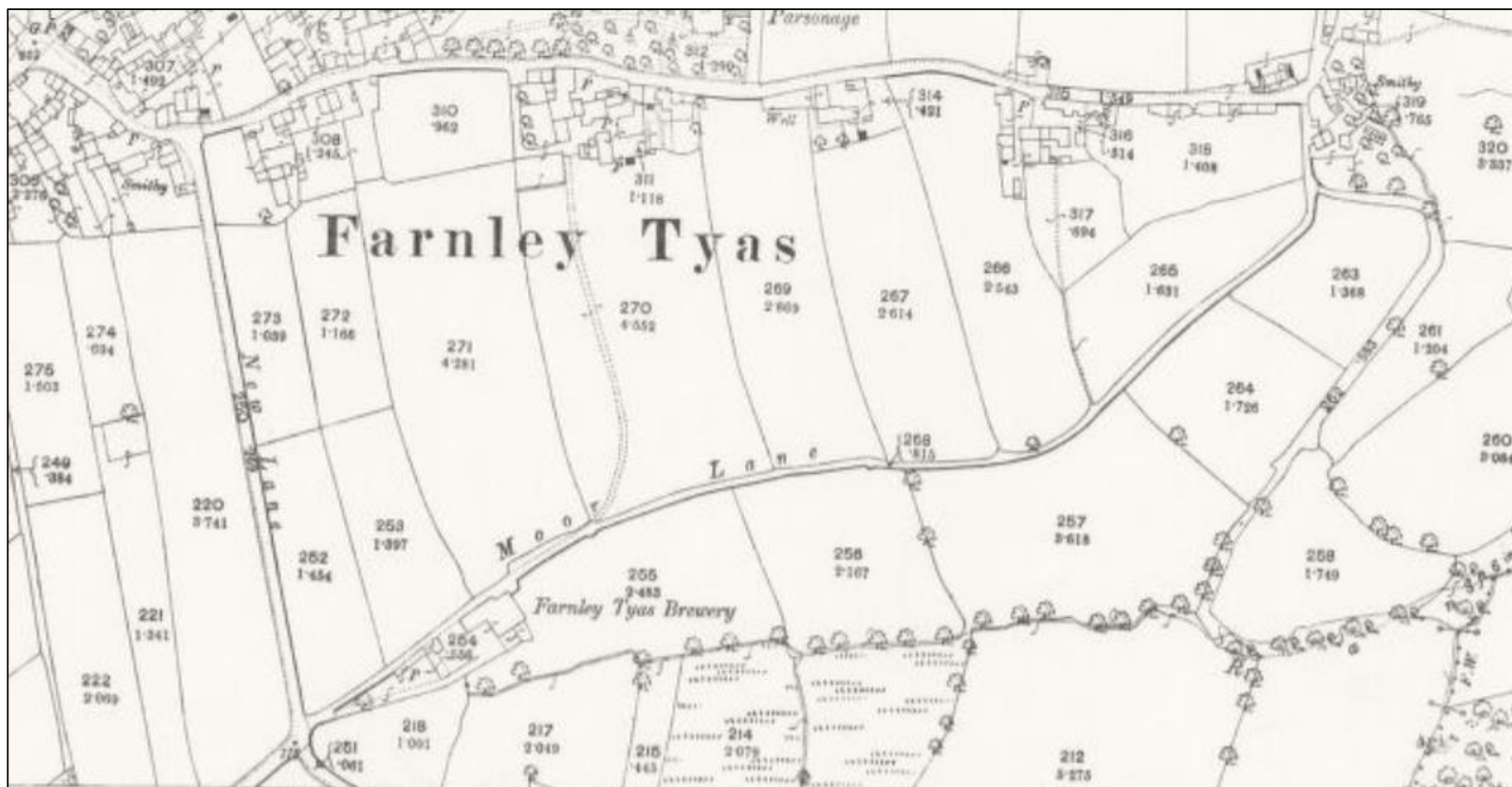
**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

1893 Ordnance Survey 1:2,500 Map Extract (Yorkshire [West Riding] Sheet CCLX.8 First Edition)

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1896 Ordnance Survey One-Inch Map Extract (Sheet 86 – Glossop)

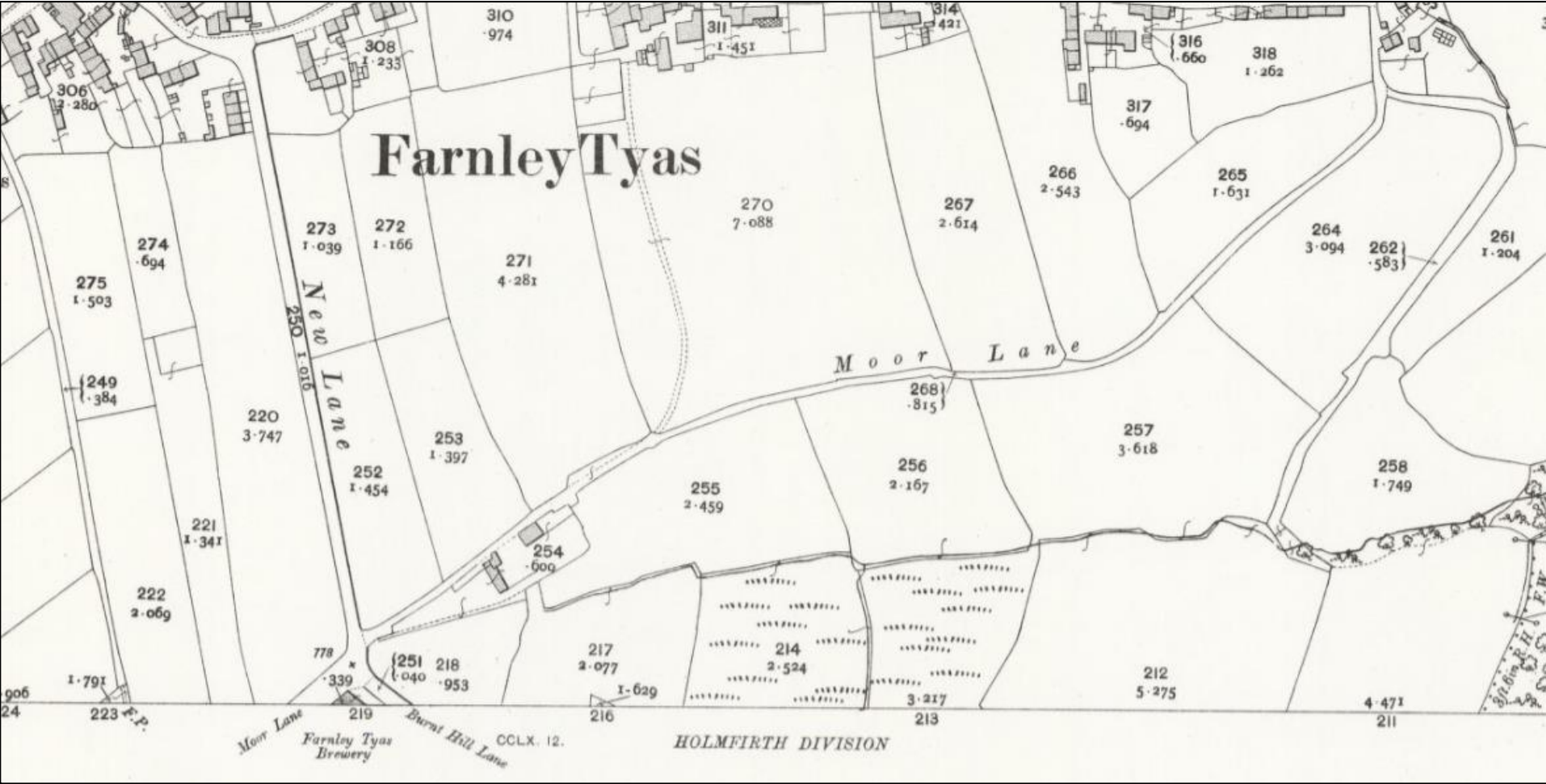
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Metalled Roads; First Class.....	5 (Mile distance)		Church or Chapel with Tower.....	⚓
" " Second Class.....	(Altitude) 211		" " " Spire.....	⚓
" " Third Class.....	.....	.....	" without Tower or Spire.....	+
Unmetalled Roads.....	.....	.....	Windmill.....	⚓
Footpaths.....	.....	.....	Letter Box.....	L.B.
Railways, Single Line.....	Level Crossing	.....	Contours.....	300 200
" Two or more Lines.....	Cutting Embankment Bridge Over Bridge Under	.....	Boundaries, County.....	-----
Mineral Lines and Tramways.....	.....	.....	" Parish.....	-----
Rivers and Streams when exceeding 15 feet in width are shewn with two lines.			At Villages { Post Office.....P.	
For other information see Characteristic sheet.			{ Post & Telegraph Office.....T.	

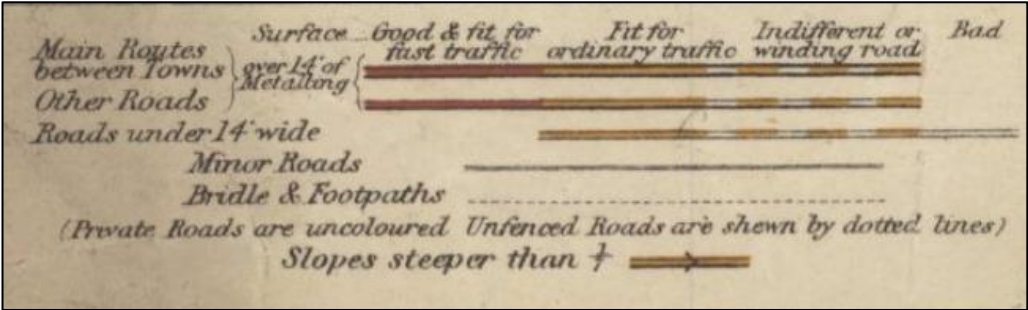
1906 Ordnance Survey 1:2,500 Map Extract (Yorkshire [West Riding] Sheet CCLX.8 Second Edition)

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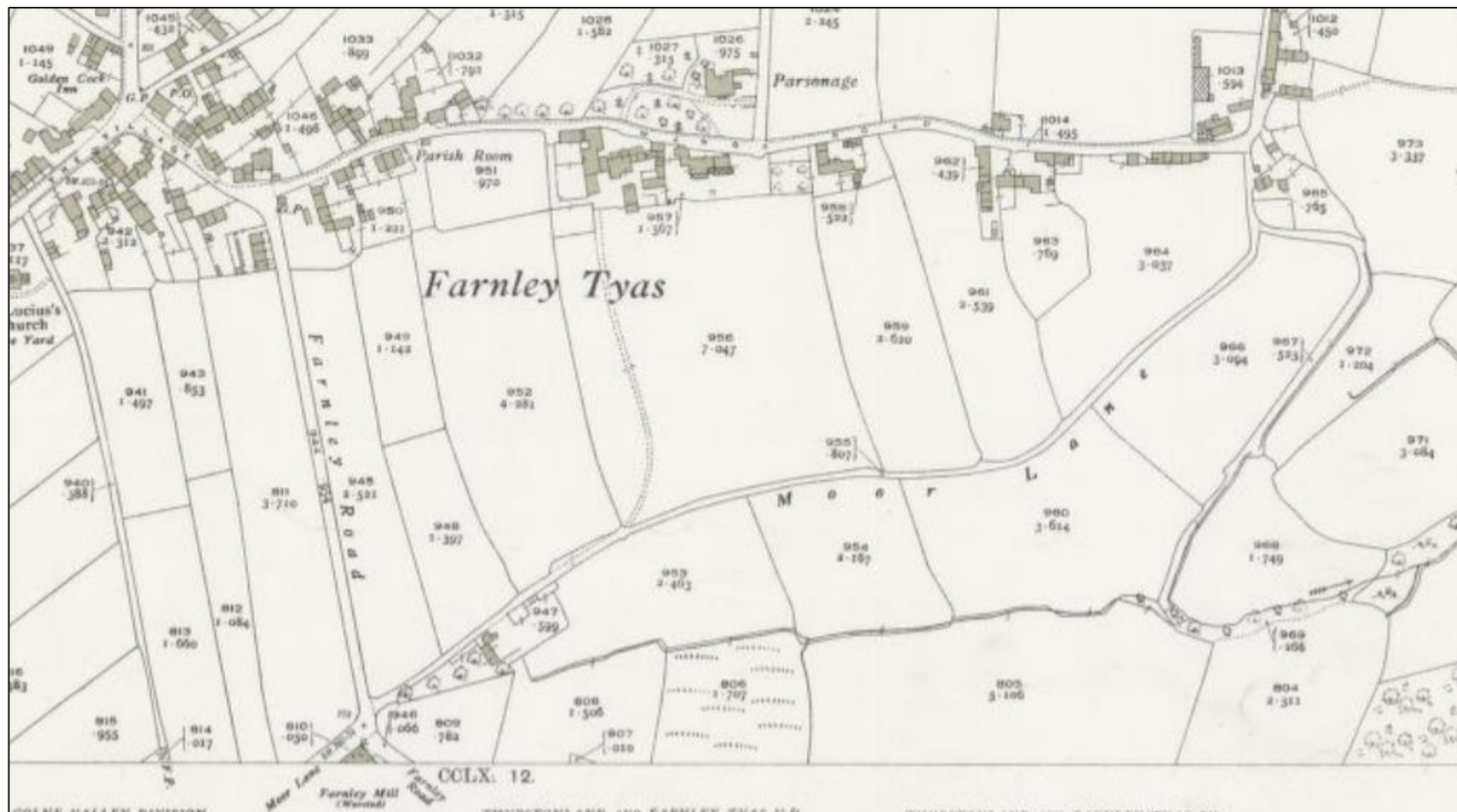
1924 Ordnance Survey 'Manchester District (Special Sheet)' One Inch Popular Edition

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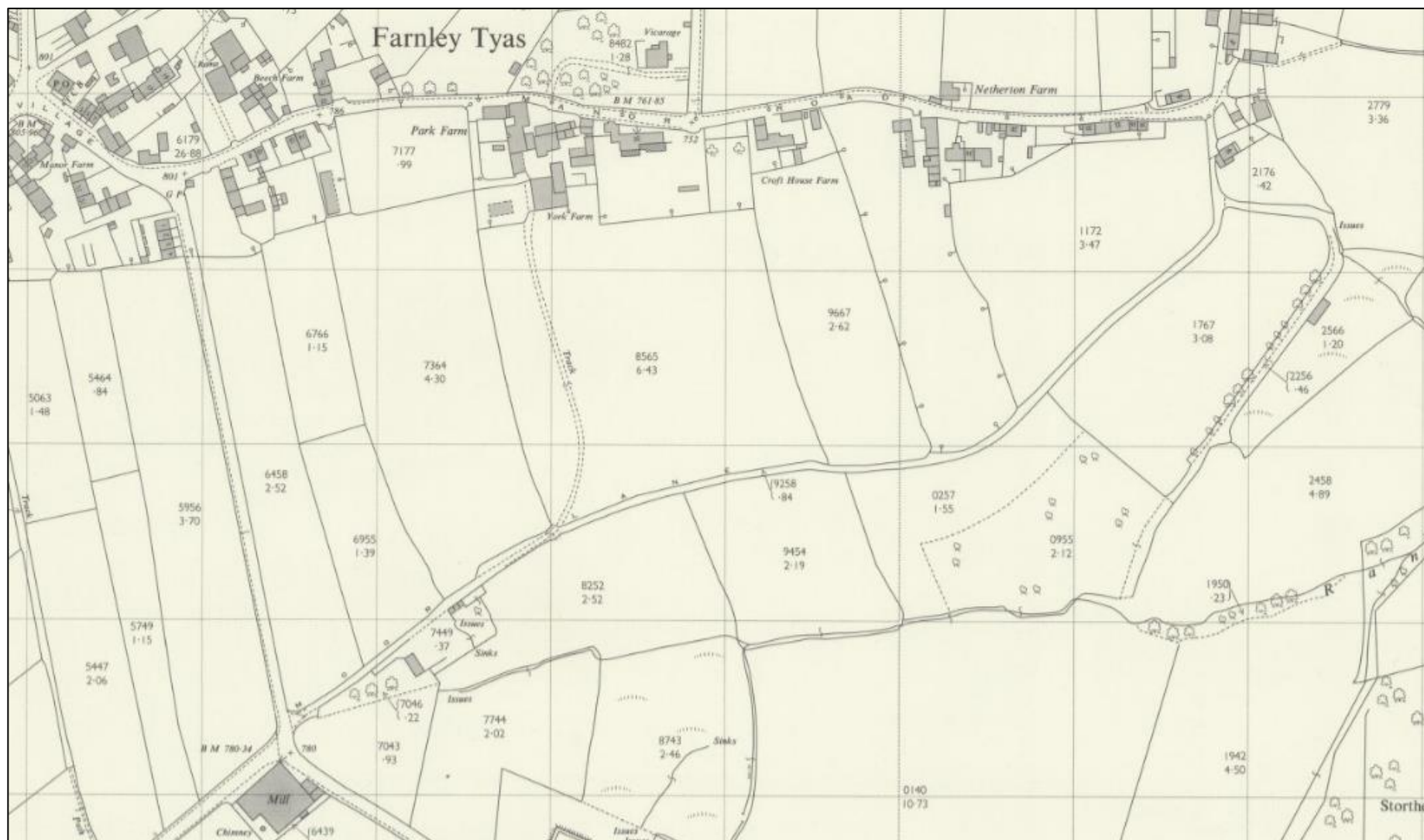
1932 Ordnance Survey 1:2,500 Map Extract (Yorkshire [West Riding] Sheet CCLX.8 Revised Edition of 1932)

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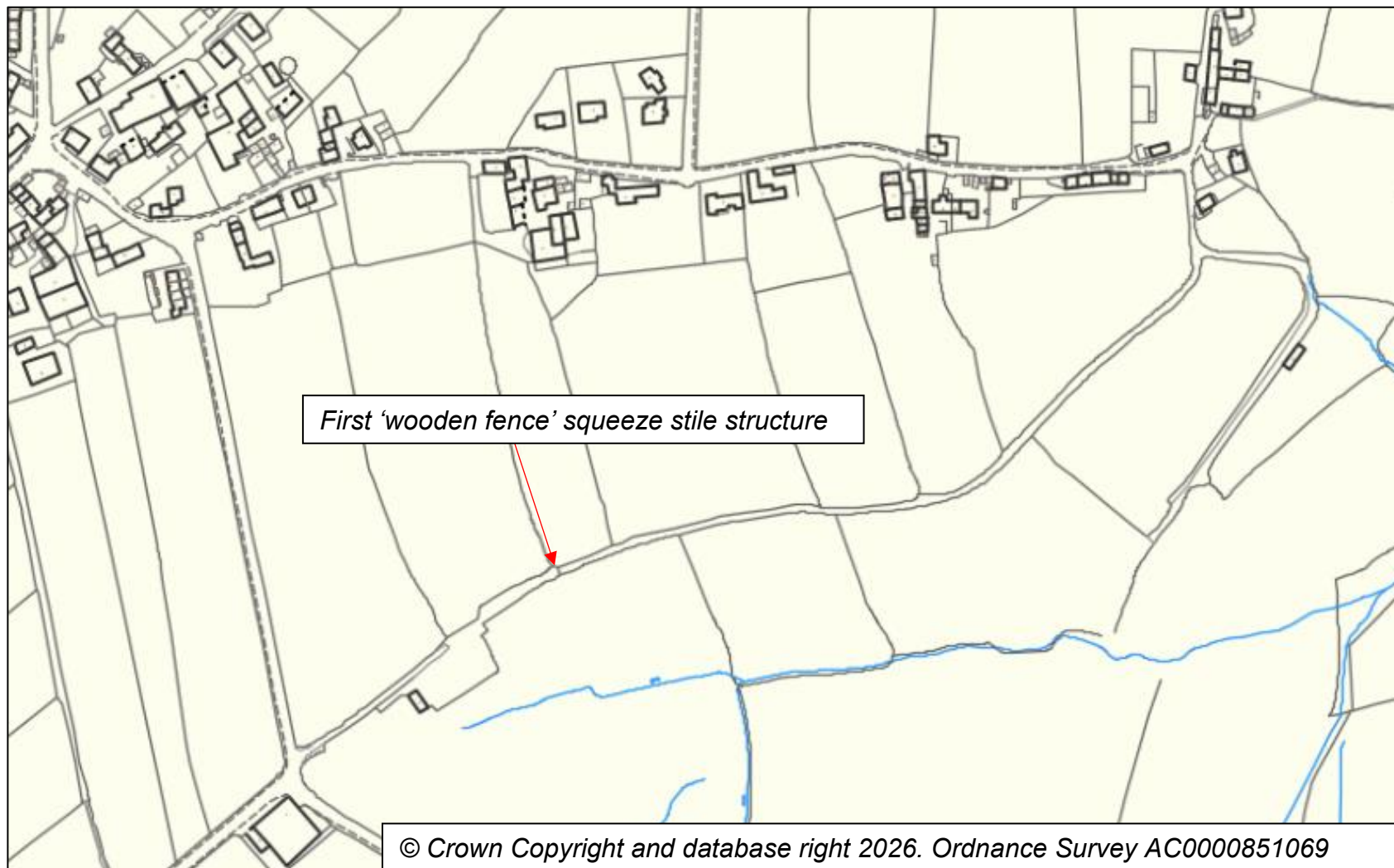


1964 Ordnance Survey 1:2,500 Map Extract (Plan SE1612 & Plan SE 1712)

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1994 Ordnance Survey 1:2,500 Map Extract (Plan SE1612 & Plan SE 1712)



Appendix K – 1910 Finance Act Map and Field Books

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

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3

20.....Reference No.

Situation *Farmley, Nags*

Description *House & Bldgs & ag Land*

Extent

Gross Value {Land, £
Buildings, £42/1/-} Rateable Value {Land, £
Buildings, £37/14/-}

Gross Annual Value, Schedule A, £

Occupier *Herbert Tinker*

Owner *Earl of Dartmouth*

Interest of Owner

Superior interests

Subordinate interests

Occupier's tenancy, Term *y* from

How determinable

Actual (or Estimated) Rent, £ *40*

Any other Consideration paid

Outgoings—Land Tax, £ paid by

Tithe, £ paid by

Other Outgoings

Who pays (a) Rates and Taxes (b) Insurance *(a) T. W. C.*

Who is liable for repairs *C*

Fixed Charges, Easements, Common Rights and Restrictions

Former Sales. Dates

Interest

Consideration

Subsequent Expenditure

Owner's Estimate. Gross Value

Full Site Value

Total Value

Assessable Site Value

Site Value Deductions claimed *yes*

Roads and Sewers. Dates of Expenditure

Amounts

260 JK 9 V 2
8

Map. No.

Reference No.

Particulars, description, and notes made on inspection

*Hall, C. Living R., Wash-k., room,
black R. Barn. Bow metal - 8 stands Hay
chamber over " "*

*" blue slate. Cart shed 2 pig
sty, 1 stall stable loose box. 5 cars mable
land, rest grass. Stone & grey slate fair*

Charges, Easements, and Restrictions affecting market value of Fee Simple

Valuation.—Market Value of Fee Simple in possession of whole property
in its present condition *August ded reb.* £ *40*

*36
25
900
£ 908*

Deduct Market Value of Site under similar circumstances, £ *860*
but if divested of structures, timber, fruit trees, and
other things growing on the land

£ *540*

Difference Balance, being portion of market value attribut-
able to structures, timber, &c. £ *320*

Divided as follows:—

Buildings and Structures £ *320*

Machinery £

Timber £

Fruit Trees £

Other things growing on land £

Market Value of Fee Simple of Whole in its present condition
(as before) £ *860*

Add for Additional Value represented by any of the following
for which any deduction may have been made when
arriving at Market Value:—

Charges (excluding Land Tax) £

Restrictions £

GROSS VALUE... £ *860*

△

	Reference No.	
	GROSS VALUE.....£	860
Less Value attributable to Structures, timber, &c. (as before) £		320
	FULL SITE VALUE.....£	540
Gross Value (as before).....£		860
Less deductions in respect of—		
Fixed Charges, including—		
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£	
Any other perpetual rent or Annuity.....£		
Tithe or Tithe Rent Charge	£	
Other Burden or Charge arising by operation of law or under any Act of Parliament £		
If Copyhold, Estimated Cost of Enfranchisement.....£		
Public Rights of Way or User	£	10
Rights of Common.....£		
Easements	£	
Restrictions	£	
		10
	TOTAL VALUE.....£	850
Less Value attributable to Structures, timber, &c. (as before)	£	320
Value directly attributable to—		
Works executed	£	
Capital Expenditure	£	
Appropriation of Land.....£		
Redemption of Land Tax.....£		
Redemption of Other Charges.....£		
Enfranchisement of Copyhold, if enfranchised	£	
Release of Restrictions.....£		
Goodwill or personal element.....£		
Expense of Clearing Site.....£		320
	ASSESSABLE SITE VALUE	530
If Agricultural land, the value for Agricultural purposes including		850
Sporting Rights	£	
Value of Sporting Rights.....£		
If Licensed Property, the annual license value.....£		
Liable to Undeveloped Land Duty as from		
For further reference as to Apportionments &c., see		

Crown Copyright (free to use under the Open Government License)

..... 30 Reference No.	Map. No. 260 JK 97
Situation <u>Farnley Tyas</u>	
Description <u>Box Bldg & Ag. land</u>	
Extent <u>3 3 rods</u>	
Gross Value { Land, £	{ Buildings, £ } 48/19/- Rateable Value { Land, £
	{ Buildings, £ } 44/4/-
Gross Annual Value, Schedule A, £	
Occupier <u>W W Taylor</u>	
Owner <u>Coloff Dartmouth</u>	
Interest of Owner <u>J</u>	
Superior interests	
Subordinate interests	
Occupier's tenancy, Term <u>J</u> from	
How determinable	
Actual (or Estimated) Rent, £ <u>41/6/- includes 3/-</u>	
Any other Consideration paid	
Outgoings—Land Tax, £	paid by
Tithe, £	paid by
Other Outgoings	
Who pays (a) Rates and Taxes (b) Insurance <u>a, T. & B. I.</u>	
Who is liable for repairs <u>0</u>	
Fixed Charges, Easements, Common Rights and Restrictions	
Former Sales. Dates	
Interest	
Consideration	
Subsequent Expenditure	
Owner's Estimate. Gross Value	
Full Site Value	
Total Value	
Assessable Site Value	
Site Value Deductions claimed	
<u>Yes.</u>	
Roads and Sewers. Dates of Expenditure	
Amounts	

Reference No. 118
Particulars, description, and notes made on inspection
<u>House. 6. work. 2. Kitchen, room & scullery, 1 bed R</u>
<u>baggage. Pantry, 1 do & 2 up Bldg 2 stall stable</u>
<u>big sty, cart shed, small barn, Abstal. 10 cow</u>
<u>stands, Mazing room. Hay chamber over.</u>
<u>Stone & grey slate Fair repair Grass land</u>
Charges, Easements and Restrictions affecting market value of Fee Simple
Valuation.—Market Value of Fee Simple in possession of whole property
in its present condition <u>Ann. grt. £41-6-0</u>
<u>ded. rehs</u> <u>4-6-0</u>
<u>Net</u> <u>37</u>
<u>Footpaths</u> <u>25</u>
<u>Includes 3/-</u> <u>15</u>
<u>Deduct Market Value of Site under similar circumstances,</u>
<u>but if divested of structures, timber, fruit trees, and</u>
<u>other things growing on the land</u> <u>865</u>
<u>£ 565</u>
Difference Balance, being portion of market value attribut-
able to structures, timber, &c. £ <u>300</u>
Divided as follows:—
Buildings and Structures..... £ <u>300</u>
Machinery £
Timber..... £
Fruit Trees £
Other things growing on land £
Market Value of Fee Simple of Whole in its present condition
(as before) £ <u>865</u>
Add for Additional Value represented by any of the following
for which any deduction may have been made when
arriving at Market Value:—
Charges (excluding Land Tax)..... £
Restrictions..... £
GROSS VALUE... £ <u>865</u>

e

	Reference No.	
	GROSS VALUE.....£	865
Less Value attributable to Structures, timber, &c. (as before)	£	300
	FULL SITE VALUE.....£	565
Gross Value (as before).....	£	865
Less deductions in respect of—		
Fixed Charges, including—		
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£	
Any other perpetual rent or Annuity.....	£	
Tithe or Tithe Rent Charge	£	
Other Burden or Charge arising by operation of law or under any Act of Parliament	£	
If Copyhold, Estimated Cost of Enfranchisement.....	£	
Public Rights of Way or User	£	15
Rights of Common.....	£	
Easements	£	
Restrictions	£	
	£	
	TOTAL VALUE.....£	850
Less Value attributable to Structures, timber, &c. (as before)	£	300
Value directly attributable to—		
Works executed	£	
Capital Expenditure	£	
Appropriation of Land.....	£	
Redemption of Land Tax.....	£	
Redemption of Other Charges.....	£	
Enfranchisement of Copyhold, if enfranchised	£	
Release of Restrictions.....	£	
Goodwill or personal element.....	£	
Expense of Clearing Site.....	£	300
	ASSESSABLE SITE VALUE.....£	550
If Agricultural land, the value for Agricultural purposes including Sporting Rights	£	850
excluding	£	
Value of Sporting Rights.....	£	
If Licensed Property, the annual license value.....	£	
Liable to Undeveloped Land Duty as from		
For further reference as to Apportionments &c., see		

Crown Copyright (free to use under the Open Government License)

26° SHJREK 49 Reference No. 1 Situation <u>Farnley Tyas</u> Description <u>House</u> Extent <u>1/2 acre</u> Gross Value { Land, £ Buildings, £ 5 Rateable Value { Land, £ Buildings, £ 4/16 Gross Annual Value, Schedule A, £ Occupier <u>E. Brown</u> Owner <u>Earl of Dartmouth</u> Interest of Owner <u>F</u> Superior interests Subordinate interests Occupier's tenancy, Term <u>Y</u> from How determinable Actual (or Estimated) Rent, £ <u>see 50</u> Any other Consideration paid Outgoings—Land Tax, £ paid by Tithe, £ paid by Other Outgoings Who pays (a) Rates and Taxes (b) Insurance <u>as 50</u> Who is liable for repairs <u>C</u> Fixed Charges, Easements, Common Rights and Restrictions Former Sales. Dates Interest Consideration Subsequent Expenditure Owner's Estimate. Gross Value Full Site Value Total Value Assessable Site Value Site Value Deductions claimed Roads and Sewers. Dates of Expenditure Amounts	Reference No. 1 Particulars, description, and notes made on inspection <u>House, 8. Kitchen living R., 1 bed R. Bath</u> <u>1 bh 1 do Bldg Bdg, mustel, mowing</u> <u>room, 2-2 stall stables with hay chamber</u> <u>over. 2 pig sty & farm repair</u> <u>grass land</u> Charges, Easements, and Restrictions affecting market value of Fee Simple Valuation.—Market Value of Fee Simple in possession of whole property in its present condition <u>August £ 16 5 0</u> <u>Bldg 125. ded. rep</u> <u>1 15 0</u> <u>YP</u> <u>14 10 0</u> <u>25</u> <u>362 10 0</u> <u>Included 50 x 169 Say 375 amended £ 403</u> Deduct Market Value of Site under similar circumstances, but if divested of structures, timber, fruit trees, and other things growing on the land £ 213 Difference Balance, being portion of market value attribut- able to structures, timber, &c. £ 190 Divided as follows:— Buildings and Structures.....£ 190 Machinery£ Timber£ Fruit Trees£ Other things growing on land£ Market Value of Fee Simple of Whole in its present condition (as before)£ 403 Add for Additional Value represented by any of the following for which any deduction may have been made when arriving at Market Value:— Charges (excluding Land Tax).....£ Restrictions.....£ GROSS VALUE...£ 403
--	--

10 acres, 2 woods 14 fields

	TOTAL VALUE.....£	400
Less Value attributable to Structures, timber, &c. (as before)	£	190
Value directly attributable to—		
Works executed	£	
Capital Expenditure	£	
	£	
Appropriation of Land.....	£	
Redemption of Land Tax.....	£	
Redemption of Other Charges.....	£	
Enfranchisement of Copyhold, if en- franchised	£	
Release of Restrictions.....	£	
Goodwill or personal element.....	£	
Expense of Clearing Site.....	£	190
	ASSESSABLE SITE VALUE ...£	<u>210</u>
If Agricultural land, the value for Agricultural purposes including Sporting Rights	£	400
Value of Sporting Rights.....	£	
If Licensed Property, the annual license value.....	£	
Liable to Undeveloped Land Duty as from		
For further reference as to Apportionments &c., see		

Appendix L – 1925-1931 Thurstonland & Farnley Tyas Urban District Council Minutes

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

[West Yorkshire Archives Service](#) (Catalogue Finding Reference Number: [KMT43/1/1](#) – Thurstonland & Farnley Tyas UDC Minute Book (1925-1928) & [KMT43/1/2](#) Thurstonland & Farnley Tyas UDC Minute Book (1928-1931))

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List of Highways - Dated 8th April 1925

Collector. H. H. C. / Dist. Officer

THURSTONLAND/URBAN DISTRICT COUNCIL

CLERK'S OFFICE, HONLEY, N.B. HUDDERSFIELD.

THOMAS H. SMITH, CLERK.

Telephone—HONLEY, No. 185.

CLERK'S OFFICE, HONLEY, N.B. HUDDERSFIELD.

EXCHANGE.

HIGHWAYS

EMPLOYEES

April 8th. 1925.

No.1. District

Oakes Lane & Brookholes

New Mill Main Road

Thurstonland Bank Road through to Thunder Bridge

{ including :- Hollowgate, The Village, Town Moor }

{ Whistones Lane, Stockmoor Lane, Cross Lane and Birks Lane. }

Occupation Lane

Hawcliffe " Foreman, @ 12/- per day

Ingham " "

Halstead " "

Stooks " "

Flask " "

Sunside " "

Crangle " @ 1/- per hour

Marsh Hall Lane

Brownknowle "

No.2. District

Longley Lane from Hall Ing & Brookholes Lane through to Thunder Bridge

{ including :- Height Green Lane, Yards, Greenside, }

{ Green Lane and Wood Lane. }

Farnley Moor Lane from Yards to junction with Moor Lane

Storches Hall Lane and Moor to the Brewery

No.3. District

Assistant Surveyor, @ £3. 10. 0. per week

Farnley Lane from High Royd through the Village & New Line to Woodsome Mill Bridge. (including :- Bankfoot, Farnley Bank, Rushfield)

{ and Birkenillgate. }

Hey Lane

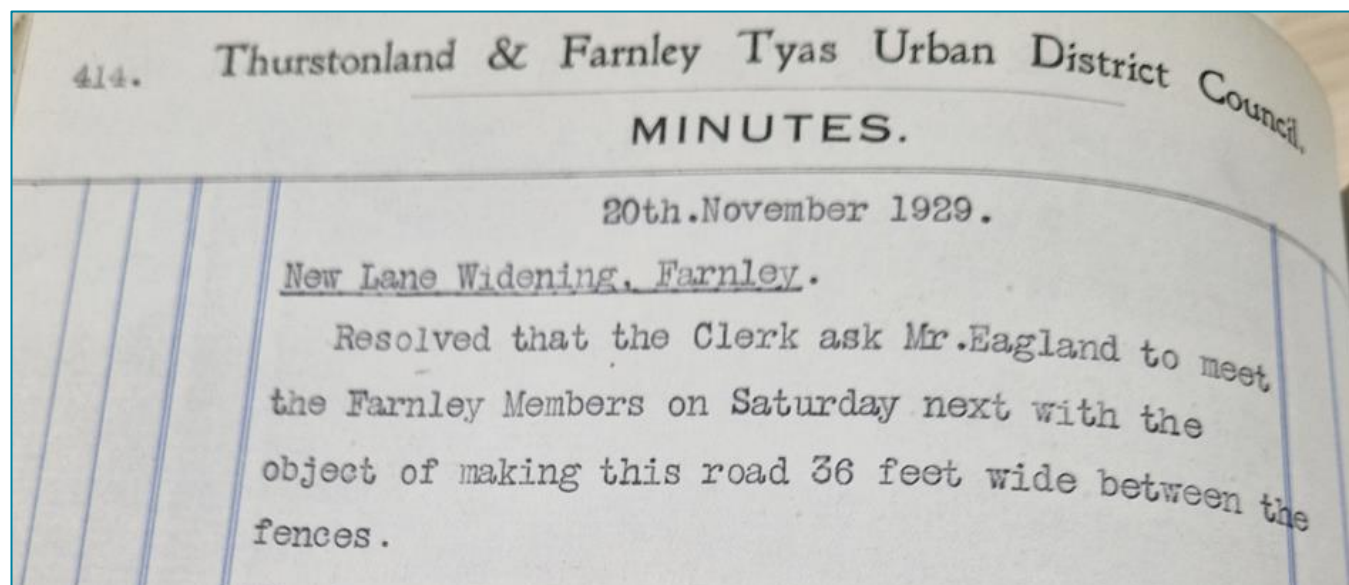
Moor Lane from Longley Lane to the Brewery & to the Village

Butts Lane to the Village

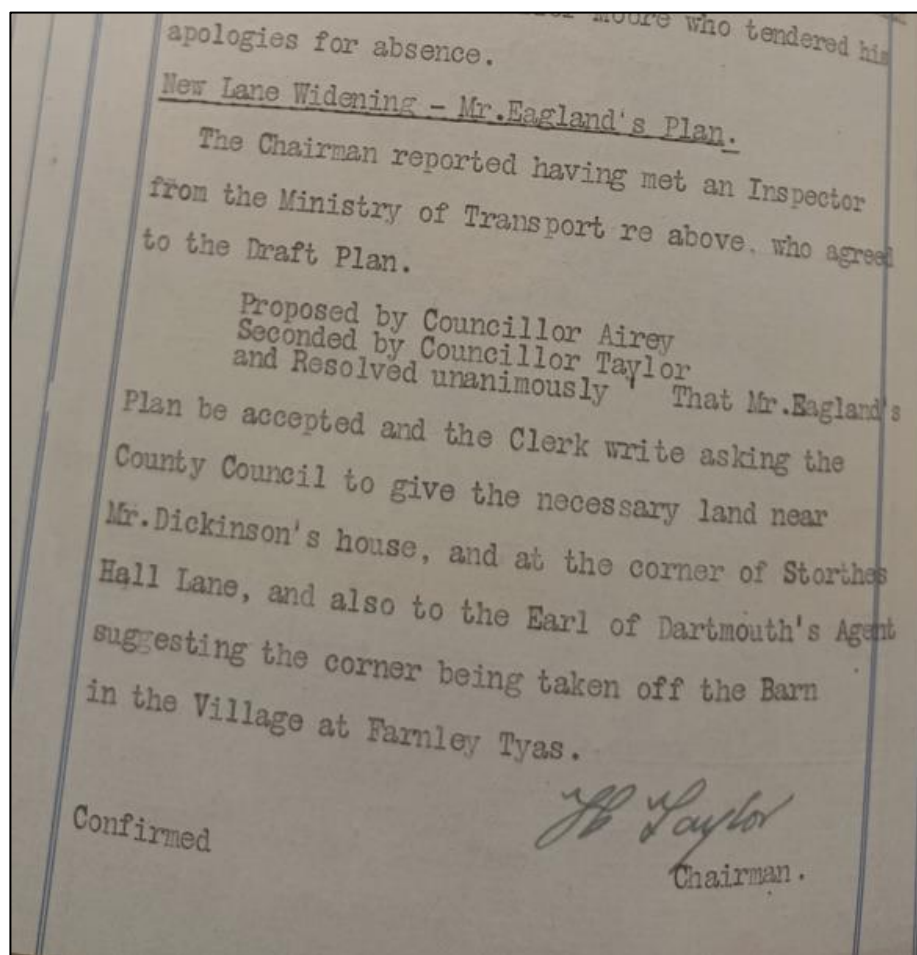
The Village 2 horses 18/- per day

1 do 15/- do

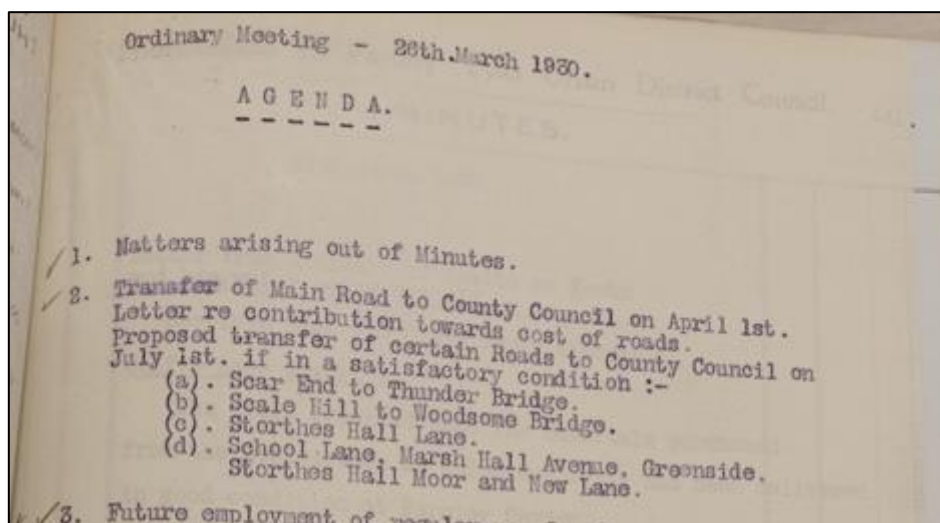
New Lane Widening (between Storthes Hall Lane and The Village) – Dated 20th November 1929



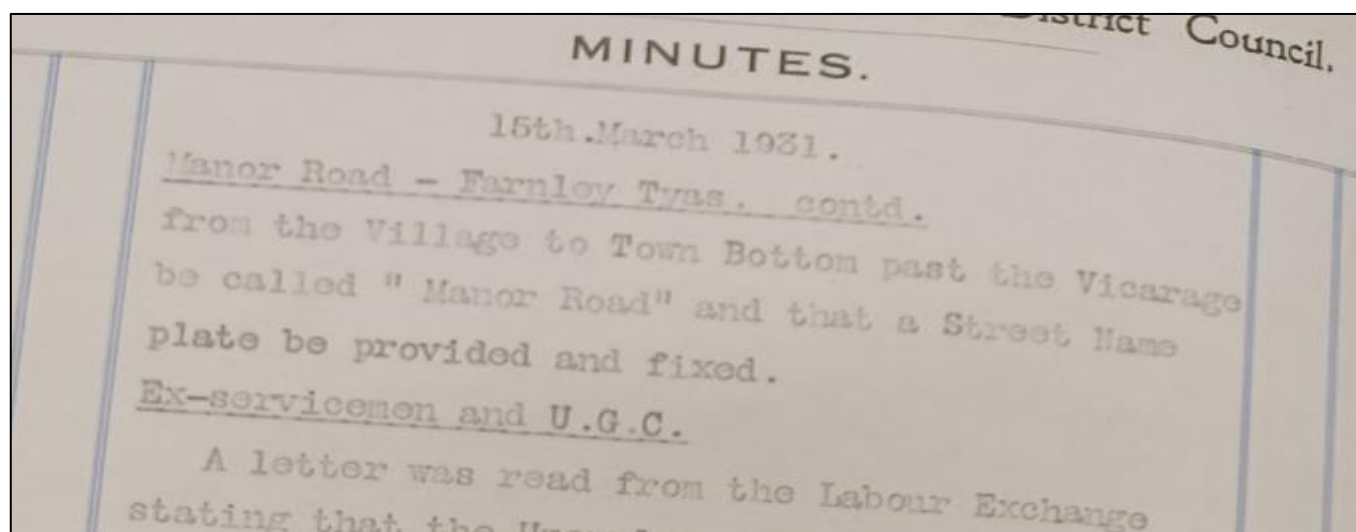
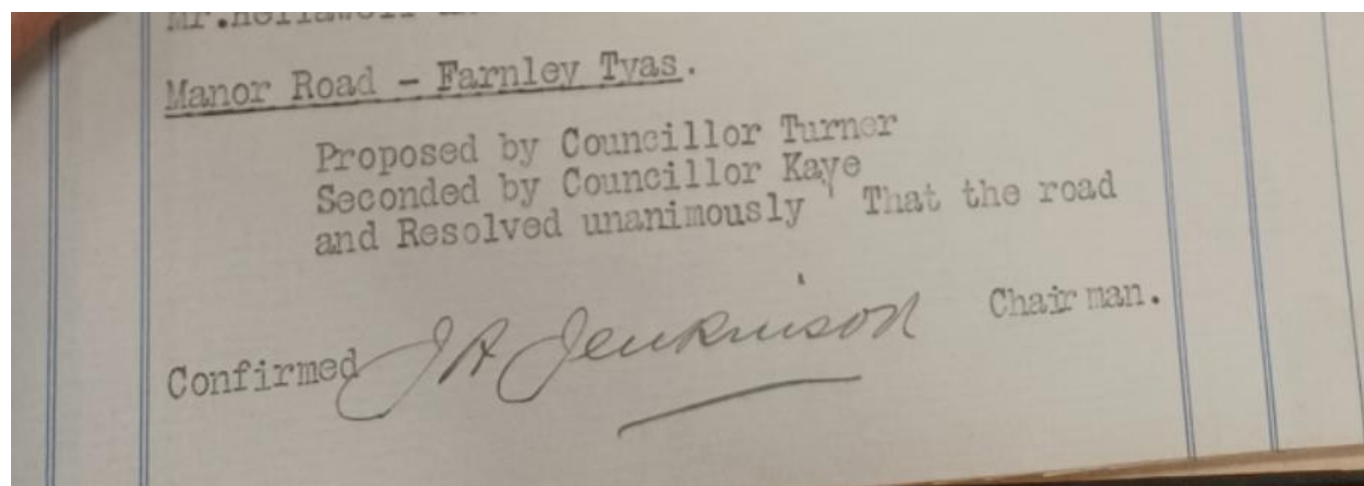
New Lane Widening (between Storthes Hall Lane and The Village) – Dated 29th January 1930



Transfer of Main Roads to West Riding County Council – Dated 26th March 1930



Renaming of Road between The Village and Town Bottom – Dated 15th March 1931



Appendix M – 1928 The London Gazette Omnibus Services Order Public Notice

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

THE LONDON GAZETTE, 1 MAY, 1928.

3061

by registered letter addressed to the Secretary, Electricity Commissioners, Savoy Court, Strand, London, W.C.2, and despatched on or before the 31st day of May, one thousand nine hundred and twenty-eight, and a copy of such objection must also be forwarded to the undermentioned Solicitor.

10. Copies of the draft Order as applied for and of the Order as made may be obtained at the price of two shillings each at the office of the undermentioned Solicitor and at the shop of Miss E. M. Green, Stationer and Bookseller, 1, New Buildings, Lingfield, Surrey.

Dated this 26th day of April, one thousand nine hundred and twenty-eight.

V. B. BATESON, County House, 46-47,
(052) New Broad Street, E.C. 2, Solicitor.

HUDDERSFIELD CORPORATION
(GENERAL POWERS) ACT 1920.

OMNIBUS SERVICES.

Between Huddersfield and Farnley Tyas.

Between Huddersfield and Farnley Tyas and
Thurstonland.

Between Huddersfield and Grange Moor.

WHEREAS by Sub-Section 2 of Section 27 of the Huddersfield Corporation (General Powers) Act 1920, it is provided that the Corporation of Huddersfield (hereinafter referred to as "the Corporation") may with the consent of the Minister of Transport and of the Road Authority run omnibuses along any road.

Notice is hereby given that in pursuance of the said Sub-Section the Corporation have made application to the Minister of Transport

for his consent to the running by them of motor omnibuses on the roads comprised in the following routes that is to say:—

No. 1. Commencing at the Borough boundary at Hey Lane near Stirley Hill, Almondbury thence proceeding along the said Hey Lane, Farnley Lane and Rawgate to Farnley Tyas thence along New Lane, Burnt Hill Lane, Storthes Hall Lane, Storthes Hall Moor Lane, Green Lane, Greenside Lane, Marsh Hall Lane and School Lane to the Rose and Crown Inn, Thurstonland.

No. 2. Commencing at the Borough boundary in Penistone Road thence proceeding along the said Penistone Road, Storthes Hall Lane, Burnt Hill Lane, New Lane and Farnley Lane to the Golden Cock Inn, Farnley Tyas.

No. 3. Commencing at the present omnibus terminus at the Red Lion Inn, Lepton thence proceeding along the Wakefield and Austerlands Road to Shuttle Eye Collieries and thence along Liley Lane to the New Inn, Grange Moor.

And notice is hereby further given that objection to the giving of such consent may be sent in writing to the Assistant Secretary, Roads Department, Ministry of Transport, 7, Whitehall Gardens, London, S.W. 1, on or before the 16th day of May, 1928.

A copy of any objection should at the same time be sent by the objector to the Town Clerk, Town Hall, Huddersfield.

Dated this 1st day of May, 1928.

J. HENRY FIELD,

Town Clerk

Town Hall,
(016) Huddersfield.

Appendix N – 1968 Farnley Tyas Estate Sale Catalogue

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

West Yorkshire Archives Service (Catalogue Finding Reference Number: WYL219 – Earl of Dartmouth (West Riding) Family and Estate Records)

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FARNLEY TYAS ESTATE

Nr. HUDDERSFIELD

YORKSHIRE

WOODLANDS (Continued)

LEPTON

Pt.	742a	Copse adjoining Whitegates	Area
Pt.	751	Jumble Wood	0.040
			1.100

HOLMFIRTH

Pt.	143	Hagg Wood	14.860
Pt.	144	Hagg Wood	3.406

HONLEY

Pt.	360	Cliff Wood	16.068
	555	Little Hagg Wood	4.865
Pt.	569	Great Hagg Wood	16.385
Pt.	571	Hagg Wood	10.433
Pt.	1018	Hagg Wood Quarry	0.129

423.918

LANDS IN HAND

			Acres
<u>Parish of Famley Tyas</u>			
Pt.	807	Reservoir	0.095
Pt.	895	Gun Site	0.557
Pt.	896	Gun Site	0.376
Pt.	898	Gun Site	0.216
Pt.	942	Estate Room and land	0.100
Pt.	947	Old Brewery	0.399
Pt.	950	Stags Head Well	0.011
Pt.	965	Pump House	0.050
	989	Ponds at Famley Mill	0.301
	990	Ponds at Famley Mill	0.239
	991	Site of Famley Mill	3.424
Pt.	1044	Old Substation Site	0.054
Pt.	1047	Land at rear of Church Terrace	0.130
Pt.	1046	Storeshed and Barn	0.020
Pt.	1183	Famley Bank Quarry	0.150
Pt.	1188	2 Famley Bank	0.200
	1287	Reservoir	0.163
	1320	Reservoir	0.119
<u>Parish of Honley</u>			
	35	Old Gannister Quarry	1.486
Pt.	91	Old Gannister Quarry	1.692
Pt.	171	Rocks at rear of Dyson Hill	0.200
Pt.	402	Land adj. Brockholes Vicarage	0.009
Pt.	413	Site of old cottages	0.400
Pt.	405	Land reserved for roadway	0.050
Pt.	412	Tor Rocks	0.400

10.841

ROADS IN HAND

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

46.

10.485

UNEXPENDED DEVELOPMENT VALUES

Certain claims were made under the Town and Country Planning Act 1947 and where applicable the benefit of these claims will be included in the sale.

CAPITAL EXPENDITURE CLAIMS

There are agreed claims as follows:	1968/69	£3,145
	1969/70	3,090
	1970/71	3,041
	1971/72	2,382
	1972/73	2,262
	1973/74	1,513
	1974/75	726
	1975/76	408

GRANTS

A number of the cottages have been improved with grants under the Housing Acts and are sold subject to the conditions of such grants. Copies of these conditions will be available for inspection.

HOUSES & COTTAGES

No representation is made that the rents payable are those properly chargeable under the Increase of Rent and Mortgage Interest (Restrictions) Acts 1920-1939 as amended or the Rent Act 1965. The only representation made or intended to be implied by or from the particulars is that the amounts so stated are the rents actually payable or being paid by the tenants to the Vendor and no requisition or objection shall be made or taken as to any matters arising under the said Acts. A purchaser shall not be entitled to require particulars of the standard rents nor to the production of copies of statutory notices of increase of rent (if any) which have been served.

PARISHES

The schedules have been prepared from the 1932 Edition of the Ordnance Survey Sheets and in these particulars the description Farnley Tyas refers to the Parish of Farnley Tyas and Thurstonland as shown on those sheets.

ELECTRICITY WAYLEAVES

A number of electricity lines cross the estate for which there are the normal wayleave consents. In one case a permanent easement has been granted by a deed dated 5th December 1963 and this is for an overhead line and two poles across O.S.No. 155, 151 and 143 in the Parish of Holmfirth and O.S. Pt. 10 in the Parish of Farnley Tyas.

EASEMENTS

The Estate is sold subject to the following easements:

1. A permanent right of way across O.S. 152 in the Parish of Holmfirth for the benefit of Hagg House by a deed dated 29th December 1958.
2. A right for Holmfirth U.D.C. to lay and maintain a 9" sewer in O.S.152 in Parish of Holmfirth by a deed dated 10th February 1913.
3. The right to lay and maintain a drain across O.S.155 and a right of way along part of the South West boundary of O.S.143 in the Parish of Holmfirth granted in a conveyance dated 5th July 1960 (E. Holdroyd & Sons).
4. A permanent right of way across O.S.31 in the Parish of Honley for the benefit of High Royd by a deed dated the 20th October 1964.
5. A right for Holmfirth U.D.C. to lay and maintain an 18" sewer in OS.360 in the Parish of Honley by a deed dated 31st May 1904.
6. A right for the Midcalder Water Board to maintain a water main across O.S.569 in the Parish of Honley.
7. A 9" sewer belonging to Kirkburton U.D.C. from Farnley Tyas village across Sycamore Farm, Royd House Farm and Low Common and from Hunters Nab to Farnley Bank by a deed dated 30th October 1929.
8. A right for Kirkburton U.D.C. to lay and maintain a 6" sewer from Farnley Tyas to Woodsome Lees across Woodview Farm, Carr Wood and Woodsome Lees Farm by a deed dated 30th October 1929.
9. A right of way 18' wide to Kirkburton U.D.C. across O.S.1269 and O.S.1268 in the Parish of Farnley Tyas for access to sewage works granted in a conveyance dated the 31st December 1904.
10. A right for the North Eastern Gas Board to lay and maintain a 6" gas main in O.S.1364 in the Parish of Farnley Tyas by a deed dated 1st October 1951.
11. A right of way over Pt. 884 and 886 in the Parish of Farnley Tyas granted in a conveyance dated 8th June 1966 (B. E. Mannion).
12. The following rights granted in a conveyance to J.E. Taylor dated 26th November 1889 -
 - (a) The right to use and maintain a water pipe from Anchor Wood to a reservoir on O.S.1362 in the Parish of Farnley Tyas.
 - (b) A right of way 8' wide on North East and South East sides of O.S.1049 and along the South East side of O.S.1048 in the Parish of Huddersfield.
 - (c) A right of way over O.S.1364 in the Parish of Farnley Tyas.
13. The following rights granted in a conveyance to W.A. Scholes dated 12th August 1957 -
 - (a) A right of way over Part O.S.1280 and Part 1266 in the Parish of Farnley Tyas

- (b) A right to lay and maintain water and gas supplies in the above right of way.
- (c) A right of drainage through O.S. 1268 in the Parish of Famley Tyas.
- 14. Similar rights to the last granted to Blackwell in a conveyance dated 30th October 1957.
- 15. A right under the Public Health Act 1936 for the West Riding County Council to lay and maintain a 9" storm water drain across O.S. 744 and 599 in the Parish of Lepton.
- 16. A right under the Public Health Act for Kirkburton U.D.C. to lay and maintain a storm water drain across O.S. 595 in the Parish of Lepton.
- 17. A right of way over the road Pt. 738a in the Parish of Lepton granted by conveyances dated 15th July 1954 (Miss O. Whittaker), 16th October 1958 (I. Kaye) and 7th December 1960 (J. Brook).
- 18. A right of way over Pt. 593 in Parish of Lepton granted in a conveyance dated 16th December 1964 (D.M. Bottomley).
- 19. A right of way over O.S. 751 and 752 in the Parish of Lepton granted in a conveyance dated 1st July 1927 (Miss E. E. Camelley).
- 20. A right for Kirkburton U.D.C. to lay and maintain a sewer across land O.S. 587, 588 and 590 in the Parish of Kirkburton.
- 21. A right for Huddersfield Corporation to lay and maintain a 12" sewer across O.S. 1048, 1049 and 1055 in the Parish of Huddersfield.
- 22. A right in favour of Bentley & Shaws Breweries to maintain and use a drain from the Golden Cock Inn across O.S. Pt. 1048 and Pt. 1049 in the Parish of Famley Tyas granted in a conveyance of 10th August 1945 (Bentley & Shaw).

The Estate is sold with the benefit of the following rights -

- 1. A right of way for timber cartage from O.S. 360 in the Parish of Honley across O.S. 358a reserved in the sale to Holmfirth U.D.C. in 1906.
- 2. A right to maintain a line of pipes across O.S. 818 in the Parish of Famley Tyas reserved in the deed of gift to Thurstonland and Famley Tyas U.D.C. dated 27th December 1927.
- 3. A right of way across O.S. 748 for access to O.S. 746 in Parish of Lepton reserved in the sale of Fenay Mills 1918.
- 4. A right of way across O.S. 754 and 756 for access to O.S. 752 in the Parish of Lepton reserved in a conveyance dated 25th May 1959 (Denton).
- 5. A right to lay pipes in the road O.S. 591a in the Parish of Kirkburton reserved in the sale to Kirkburton U.D.C. 1907.
- 6. A right of access to the buildings on Dogley Farm across O.S. 672 and 675 granted in conveyance from Kenyon, 1st May 1930.
- 7. A right to use and maintain a water pipe and meter in O.S. 593 in the Parish of Lepton reserved in the conveyance dated 16th December 1964 (Bottomley).
- 8. The right of drainage through O.S. 1266 in the Parish of Famley Tyas and the right of access to the back of Woodsome Lees Farmhouse reserved in the sale to W.A. Scholes dated 12th August 1957.
- 9. Various rights of way, water and drainage over land in the Parish of Famley Tyas reserved out of the sale of Woodsome Hall to the Woodsome Hall Golf Club Limited in 1939.
- 10. A right of way over Part O.S. 738a and Part 736 in the Parish of Lepton reserved in the sale to I. Kaye dated 16th October 1958.
- 11. A right of way over Part O.S. 898a in the Parish of Lepton reserved in the sale to Elliotts Bricks Ltd., dated 22nd June 1959.
- 12. A licence dated March 1940 from British Railways to maintain a 2" pipe under the railway at Brockholes for the use of Wood Farm for which a rent of 5s. per year is paid.
- 13. A licence dated 3rd October 1930 from British Railways for the use of a footpath and to maintain and use a gate and gas main at Wood Farm, Brockholes, for which a rent of £1. 10s. 0d. per year is paid.
- 14. A licence dated 10th November 1966 from George Beaumont & Sons (Fenay Bridge) Ltd., to maintain a window at Dogley Farm for which a rent of 1s. per year is payable.
- 15. A right of way 15' wide over O.S. 413 & 415 in the Parish of Honley reserved in the conveyance to H.H. Morley (Holmfirth) Ltd. in 1968.

NOTICE

Messrs. J. Carter Jonas & Sons for themselves and for the Vendor of this property whose agents they are, give notice that:

- (1) These particulars do not constitute, nor constitute any part of, an offer or a contract.
- (2) All statements contained in these particulars as to this property are made without responsibility on the part of Messrs. J. Carter Jonas & Sons or the vendor.
- (3) None of the statements contained in these particulars as to this property are to be relied on as statements or representations of fact.
- (4) Any intending purchaser must satisfy himself by inspection or otherwise as to the correctness of each of the statements contained in these particulars.
- (5) The vendor does not make or give, and neither Messrs. J. Carter Jonas & Sons nor any person in their employment has any authority to make or give, any representation or warranty whatever in relation to this property.

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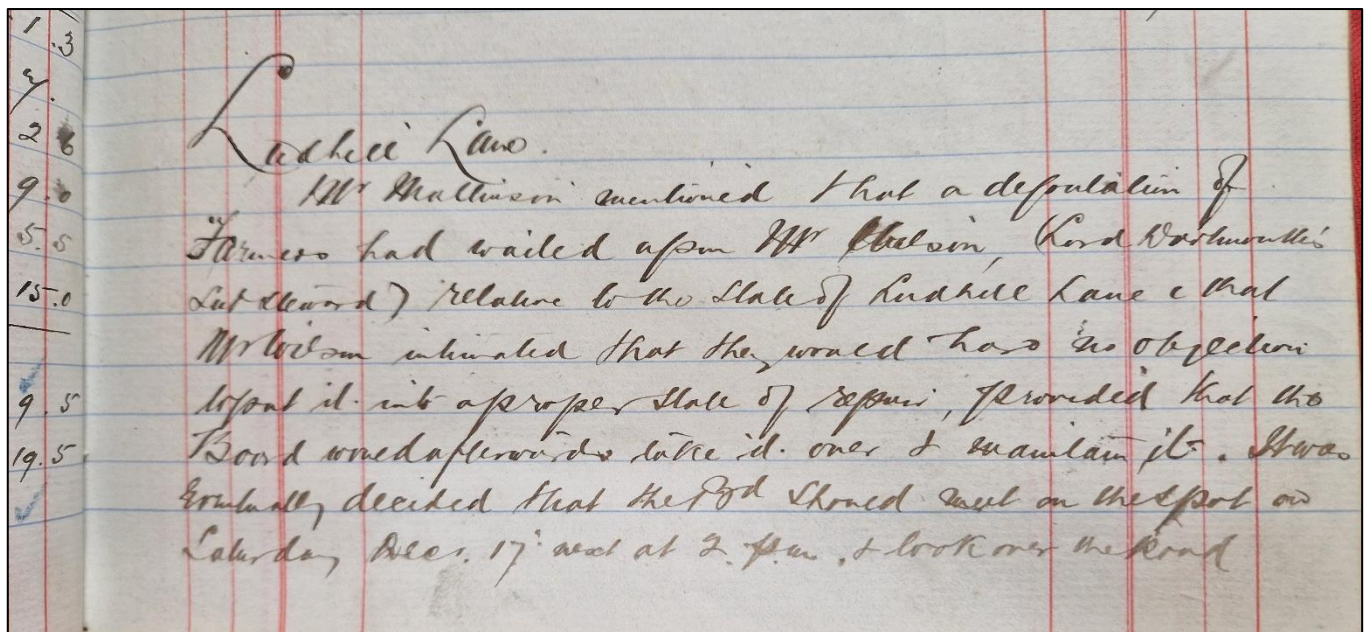
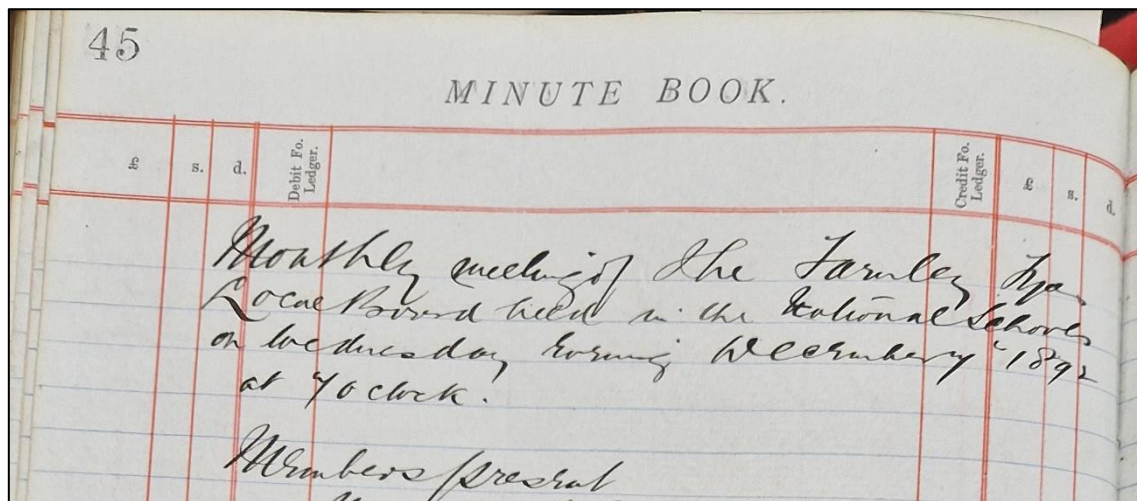
Appendix O – 1892-1907 Farnley Tyas Urban District Council Minutes (Farnley Hey & Ludhill Lane)

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

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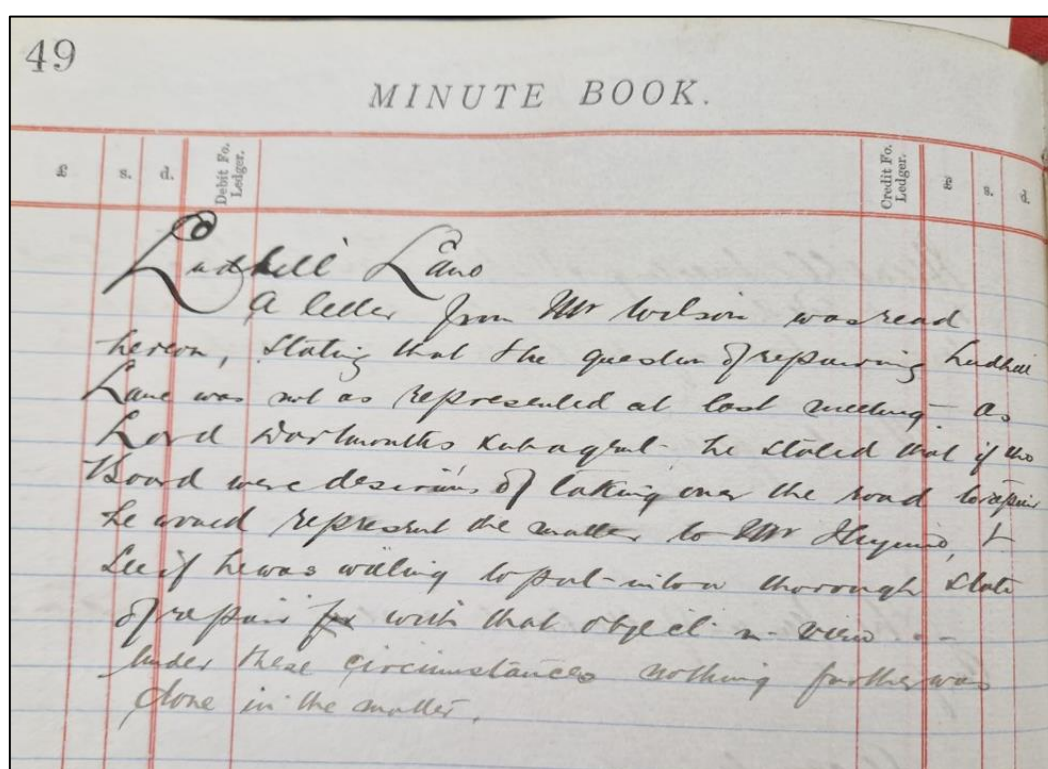
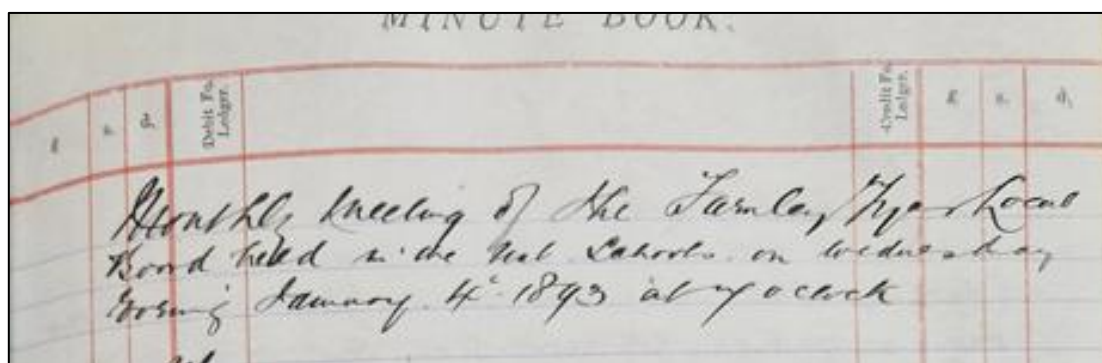


Transcription:

Ludhill Lane

Mr Mallinson mentioned that a deputation of Farmers had waited upon Mr Wilson, Lord Dartmouth's lab steward relative to the state of Ludhill Lane, that Mr Wilson indicated that they

would have no objection to put it into a proper state of repair provided that the Board would afterwards take it over & maintain it. It was formally decided that the Board should meet on the spot on Saturday 17th [**] next at 2pm & look over the Road.



Transcription:

Ludhill Lane

A letter from Mr Wilson was read herein, stating that the question of repairing Ludhill Lane was not as represented at last meeting – as Lord Dartmouths lab agent he stated that if the Board were desirous of taking over the road to repair he would represent the matter to Mr Heymund, & see if he was willing to put in to a thorough state of repair with that object in view. Under these circumstances nothing further was done in the matter.

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Monthly Meeting of the Urban District Council
of Farnley Tins held June 5th 1907.
Members present. Messrs. J. Roberts (Chairman), E. Rothery, T. E. Dickinson
W. H. Shaw, John Eastwood and J. E. Kaye.
Minutes The Minutes of the last meeting were read, and on the motion

Road leading to Farnley Hey
The Chairman brought before the Council the subject of the repair, by the owner, of the private road leading from the Council's Highway to Farnley Hey Fold. In view of the Council having made use of the road for a long number of years in the cartage of stone from Hey Quarry, it was resolved on the motion of Councillor Dickinson seconded by Councillor Rothery
"That this Council, in consideration of having made much use of the private road in question in past years agrees to help in its repair, out of the Council's funds, to the extent of the cost of two men's labour for two or three days, at the same time disclaiming any further responsibility in the maintenance of such road."
C. H.

Transcription:

Road leading to Farnley Hey

The Chairman brought before the Council the subject of the repair, by the owner of the private road leading from the Councils Highway to Farnley Hey Fold. In view of the Council having made use of the road for a long number of years in the carriage of stone from Hey Quarry it was resolved on the motion of Councillor Dickinson seconded by Councillor Rothery

“That this Council in consideration of having made much use of the private road in question in past years agrees to help in its repair, out of the Councils funds, to the extent of the cost of two men’s labour for two or three days, at the same time disclaiming any further responsibility in the maintenance of such road”. C.H.

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Appendix P – 1980 Definitive Map Claim & Survey

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

WEST YORKSHIRE METROPOLITAN COUNTY COUNCIL

W.Y. FORM R2.

REVIEW OF DEFINITIVE MAP - DRAFT STAGE
REPRESENTATION/OBJECTIONNO. TN/437/R/³⁴/₂₅/K

DATE OF LETTER:

PERIOD OF DEPOSIT: 29/2 - 1/7/80

REVIEW DATE: 1 OCT. 79

13 April 1980. NAME

ADDRESS

HOME TEL

MR/MRS/MISS

BUSINESS TEL

PATH LOCATION: Farnley Tyas

PARISH KIRK BURTON

PATH NO

GRID REF

MAP SHEET

SE 11 SE

1612

1712

REPRESENTATION/OBJECTION ~~SHOWN~~/NOT SHOWN/~~WRONGLY SHOWN~~/~~WRONGLY CLAIMED~~

GROUNDS FOR ABOVE.

Path exists on the ground and should be shown.

INVESTIGATION: Path commences off Farnley Road at Farnley Tyas at grid ref: 166124. Known as Moor Lane it proceeds north east to Manor Road at grid ref: 171127. The land is owned by a Company known as William Shaw & Sons, Huddersfield and the land agent is Carter Jonas, Manor House, Slaithwaite, Huddersfield, West Yorkshire. HD7 5AU.

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

ROUTE SHOWN ON:	SHEET NO	SHOWN AS:
1850 MAP	260	YES/NO Moor Lane
1895 "	30	YES/NO Moor Lane
DRAFT "		YES/NO
DEFINITIVE "		YES/NO
REVIEW "		YES/NO
1/500/1/250 "		YES Moor Lane *

REMARKS ON CLAIM AND INVESTIGATION:

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

OBJECTOR SEEN/WRITTEN TO DATERESULT:

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

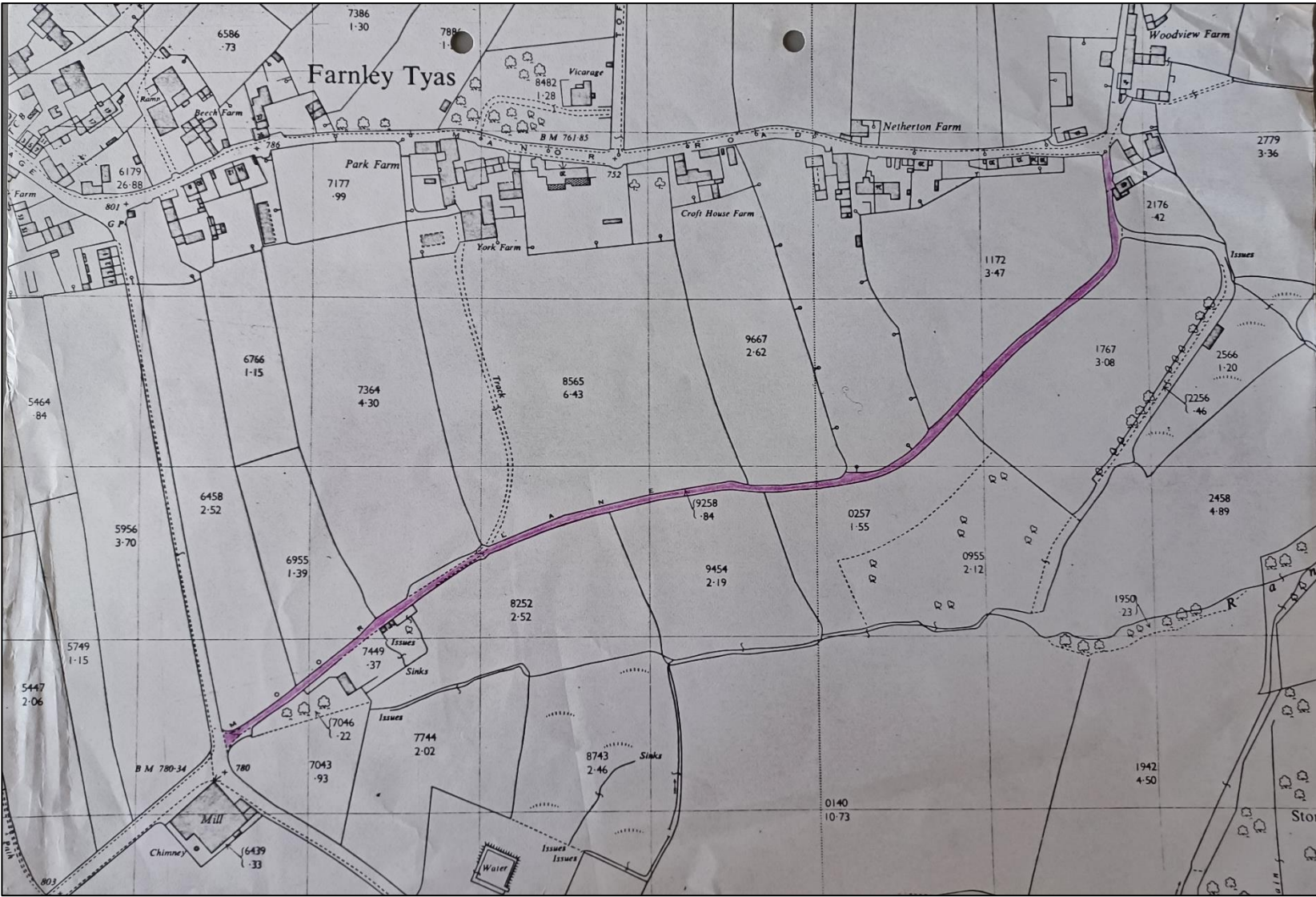
COPY OF THIS SHEET To:

DA.	DATE
DOE.	DATE

DATE:

ATTACH & MARK * EXTRACTS WHERE APPROPRIATE.

W.Y. FORM R2.



WEST YORKSHIRE METROPOLITAN COUNTY COUNCIL			
REVIEW OF DEFINITIVE MAP - DRAFT STAGE			
REPRESENTATION/OBJECTOR			
		NO: TN/437/R/24/M	
DATE OF LETTER	13 APRIL 1980	PERIOD OF DEPOSIT	29/2 - 1/7/80
		REVIEW DATE: 1st OCT. 1979	
NAME	ADDRESS	HOME TEL:	
	5 SIDDON DRIVE, ALMONDBURY,		
MR/MRS/MISS/MS/RE	HUDDERSFIELD, HD5 8UG	BUSINESS TEL:	
D. W. ALDRIDGE			
PATH LOCATION: MOOR LANE, FARNLEY TYAS		Parish	KIRKBRURTON
		Path No.	Grid Ref:
		Map Sheet SE 11 SE.	1112 - 1712
REPRESENTATION/OBJECTOR SHOWN /NOT SHOWN/ WRONGLY SHOWN/ WRONGLY CLASSIFIED			
REASONS FOR ABOVE: PATH EXISTS ON THE GROUND AND SHOULD BE SHOWN ON THE MAP			
INVESTIGATION:			
PREVIOUS REPRESENTATION REGARDING THIS PATH- YES /NO		ROUTE SHOWN ON: SHEET NO. SHOWN AS:	
		1850 Map	Yes/No.
		1895 Map	Yes/No.
		Draft Map	Yes/No.
		Definitive Map	Yes/No.
		Review Map	Yes/No.
		1/2500/1/1250 Map	Yes/No.
REMARKS ON CLAIM AND INVESTIGATION:			
OBJECTOR SEEN/WRITTEN TO	DATE	RESULT	
E.D.T.T. RECOMMENDATION: NO PREVIOUS REPRESENTATION HAS BEEN RECEIVED TO SHOW THIS PATH ON THE MAP. THE APPLICATION CAN BE CONSIDERED FOR INCLUSION AT THE NEXT REVIEW			
		COPY OF THIS SHEET TO:	
		D.A.	DATE: 7/4/81.
		D.O.E.	DATE:
		DATE 7.1.81. JS.	
ATTACH & MARK * EXTRACTS WHERE APPROPRIATE		W.Y FORM R2	

The Dept of the Environment
Ref. YH 5040/166/2p.

5, Siddon Drive,
Almendbury,
Huddersfield, HD5 8UG
13th April 1980.

DOE
YH 5040/166/2p

Dear Sirs

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

Path by Langcock Wood

Ref 186116 to path 210. This path exists please consider it as an addition.

Path through Hey Wood

This is used but is not marked. It follows an old track. From MR 154 southwards past the pond to path 18. - Please consider this as an addition.

Farnley Tyas

Following the track from Nettleton MR. 172122 to Mill at MR. 166125. - consider as an addition.

Woodsome Hall Lane and path past Woodsome Hall.

MR. 185135 to MR 181147.

I and others I know have on occasion used this path. ~~but~~ The golf club have made efforts to discourage its use which is a pity as its use would enable a walk from Almendbury around Farnley Tyas almost totally on footpaths. Please consider this as an addition.

Thurstonland

From Top of the Hill MR. 162105 past pond to Thurstonland MR. 164104. - The styles for this path exist - please consider this as an addition.

Kirkstall

Path 24 is now blocked by Whitley Willows mill - can it be diverted? A stile near the old pit would be necessary.

Houses Hill

From stile by Whitley Willows mill MR. 196167 to
Houses Hill MR. 196170. This path exists please
consider it as an addition.

Lilley Lane to Lower Stone Road

MR. 199175 to MR. 199177. This path exists please
consider it as an addition.

Yours faithfully,

D.W. Aldridge.

P.S.

Lepton

From Wakefield Road MR. 189155 past Ingle Court
to Thurgary Lane MR. 189159. This path exists please
consider its addition.

Appendix Q – 2000 Survey of Order Route

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

DATE OF INITIAL SITE VISIT	27/11/2020	
DATE APPLICATION SENT / WCA 5 RECEIVED		
APPLICANTS DETAILS		
REVIEW		
NUMBER OF EVIDENCE FORMS SENT		
NUMBER OF EVIDENCE FORMS RECEIVED		
DATE WCA 7 RECEIVED		
DATE & NO. OF EVIDENCE FORMS SENT TO LANDOWNERS		
NO. OF LANDOWNERS EVIDENCE FORMS RETURNED		
DATE WAY SURVEYED		
DATE SENT TO LEGAL		
DATE OF EXECUTIVE BOARD AND DECISION		
DATE ORDER MADE		
DATE NOTICES POSTED / EXPIRE		
OBJECTIONS	Y / N	
OTHER INFORMATION :		
WELL USED BY PEDESTRIANS - STILE PREVENTING HORSES AT THE MANOR ROAD END.		



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Based upon the Ordnance Survey 1:1250 mapping with the permission of the Controller of Her Majesty's Stationary Office.
© Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.
Kirklees Metropolitan Council. Licence Number - LA 078198

 Kirklees METROPOLITAN COUNCIL	Project 437/34/K	Scale 1:5000	
HIGHWAYS SERVICE R.G. OTTER B.ENG., M.Sc., D.M.S., C.ENG., MICE. Head of Service Flint Street, Fartown, Huddersfield, HD1 6LG	Title	Drawn	Checked
		Section PROW	Date 27th November 2000
		Dwg/Ref.No.	

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Appendix R – Highways Registry Card (List of Streets)

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

MOOR LANE (FARNLEY TYAS) KIRKBURTON

O.S. REF

X

163121

FROM:

TO:

L/N

PUBLIC

~~KIRKBURTON~~

~~BARBIC ROAD~~

~~1235 yds~~

FARNLEY ROAD

THURSTONLAND ROAD

397 yds

363 m

MOOR LANE EAST OF FARNLEY ROAD.

PRIVATE ROAD
UNMADE
8 W
4.1.90

Appendix S – Telephone Conversation Record (Bridleway Status)

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
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**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

15/10/88.

A

of

Came into reception with some queries re
Moor Lane & track past woodview farm at
Netterton / Farley Tye

He had a letter from Landowner Agent (Carter Jones)
saying that they believed Moor Lane to
be a bridlepath if this is useful evidence for you

Carter Jones

Chartered Surveyors

Manor House

Nabbs Lane

Starthwaite

Hudds HD7 5AW

Appendix T – Section 31(6) Documents

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

Mark Drydale, Definitive Map Officer

Farnley Estates Ltd

Farnley House

Manor Road

Farnley Tyas

HD4 6UL

Tel: 01484 667744

21st November 2012

[REDACTED]
Public Rights of Way Officer
Kirklees Council
BO Box B93
Civic Centre 3
Off Market Street
Huddersfield
HD1 2JR

Dear [REDACTED]

Re: Public Rights of Way

I have finally got around to producing the plan and statement for the Highways Act 1980 section 31(6). When this has been acknowledged I will have the Statutory Declaration sworn and signed.

If anything else is required can you let me know, e mail is best and can you please copy e mails to [REDACTED].

[REDACTED]

[REDACTED]

Deposit of Statement and Plan

Highways Act 1980 Section 31(6)

Notice of Intention not to Dedicate Public Rights of Way

To Kirklees Council
Public rights of way section
PO Box B93
Civic Centre 3
Off Market Street
Huddersfield
HD1 2JR

We have been since 1968 the owner, within the meaning of the above section of the Act, of the land known as the Farnley Estate and as more particularly as edged in red on the plan as attached to this statement.

The aforementioned land lies in the parishes of Kirkburton and Holmevalley

The ways coloured brown on the attached plan have been dedicated as highways with vehicular status.

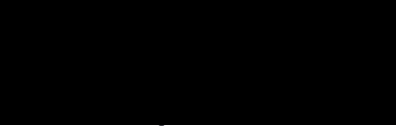
The ways coloured green on the attached plan have been dedicated as bridleways.

The ways as coloured purple on the attached plan have been dedicated as footpaths.

No other rights of way over the land have been dedicated as highways.

This deposit shall comprise this statement and the attached plan.

Signed


 for Farnley Estates Ltd of Farnley House, Manor Road, Farnley Tyas,
HD4 6UL

Date ^{21st}.....November 2012.

Witness Signature

Name of Witness.

Address.....

Occupation..

Date ^{21st}.....November 2012



Farnley Estates Ltd

Farnley House
Manor Road
Farnley Tyas
HD4 6UL

15th January 2013

[REDACTED]
Public rights of Way Officer
Kirklees Council
PO Box B93
Civic Centre 3
Huddersfield
HD1 2JR

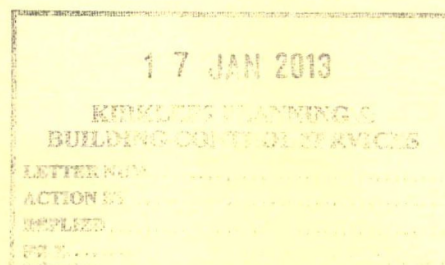
Dear [REDACTED]

Statutory Declaration, Highways Act 1980 s.31 (6)

Enclosed is the Statutory Declaration as regards to the Estate. I also enclose a plan at a scale of 1:7500 which should be considerably more user friendly than that as previously submitted.

When you require the services of a solicitor you can never seem to find one, hence the delay in submitting the documentation.

Regards
[REDACTED]



Statutory Declaration, Highways Act 1980 s.31(6)

I [REDACTED]DO SOLEMNLY AND SINCERELY DECLARE as follows:

i) That Farnley Estates Ltd have been since October 1968 the owner of the land known as Farnley Estate more particularly delineated on the plan accompanying this declaration and thereon edged red.

ii) On the 21st day of November 2012 I deposited with Kirklees. Council, being the appropriate council, a statement accompanied by a plan delineating the property by a red edging which stated that;

- a. The ways coloured brown on the said plan and on the plan accompanying this declaration had been dedicated as highways with vehicular status.
- b. The ways coloured green on the said plan and on the plan accompanying this declaration had been dedicated as bridleways.
- c. The ways as coloured purple on the said plan and on the plan accompanying this declaration had been dedicated as footpaths.
- d. No other rights had been dedicated as highways over the property.

iii) On the date of signature of this Statutory Declaration no additional ways had been dedicated

- a. Highways with Vehicular Status
- b. As Bridleways.
- c. As Footpaths

Since the deposit of the statement as referred to in ii) above.

iv) No additional ways have been dedicated over the land edged red on the plan accompanying this declaration since the statement referred to in ii) above and at the present time I have no intention of dedicating any more public rights of way over the property.

AND I MAKE this solemn declaration on the 21st day of December 2012 conscientiously believing it to be true and by virtue of the Statutory Declarations Act 1835

Address: Farnley House, Manor Road, Farnley Tyas, HD4 6UL

Signature.. [REDACTED] ..

[REDACTED] as Authorised by Farnley Estates Ltd as the [REDACTED]

Before me: ~~Commissioner for Oaths/Justice of the Peace/Solicitor~~

17 JAN 2013
KIRKLEES PLANNING & BUILDING CONTROL SERVICES
LETTER NUM
ACTION BY
REPLIED
F.T.E.