

Name of Meeting: Planning Sub-Committee (Huddersfield Area)

Date: 07/09/2023

Title of Report: Application for a Definitive Map Modification Order (DMMO) to record Colders Lane, Meltham, as a Public Bridleway on the Definitive Map and Statement

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

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	David Shepherd – 03 August 2023
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Dean Langton – 12 July 2023
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 11 July 2023
Cabinet member portfolio	Not applicable

Electoral wards affected: Holme Valley North

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

Public or private: Public

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

Contents

List of Figures.....	3
Summary.....	4
Information Required to Take a Decision	5
Application	5
Planning Inspectorate Direction	6
Character of Application Route	8
Statutory Provisions.....	10
Wildlife & Countryside Act, 1981	10
Highways Act, 1980	11
Guidance for Members	12
Documentary Evidence Evaluation.....	13
Natural Environment & Rural Communities Act, 2006	15
Highways Registry	15
User Evidence Evaluation.....	16
Implications for the Council	18
Working with People	18
Working with Partners.....	18
Placed based Working.....	18
Climate Change and Air Quality	18
Improving Outcomes for Children	18
Other (e.g. Legal/Financial or Human Resources)	18
Consultation	20
Meltham Town Council	22
Holme Valley North Ward Members	22
Applicant & User Groups	22
Adjacent Landowners/Occupiers	22
Consultee Ref: 2	22
Consultee Ref: 8	28
Consultee Ref: 10	29
Consultee Ref: 25	30
Members of Public.....	33
Consultee Ref: 39	33
Consultee Ref: 40	33
Consultee Ref: 41	34

Consultee Ref: 42	35
Width & Safety	36
Consultee Ref: 43	37
Consultation Evaluation	39
Next Steps & Timelines	40
Officer Recommendations & Reasons	41
Make a DMMO (Restricted Byway).....	41
Make a DMMO (Bridleway).....	41
DMMO Confirmation	42
Contact Officer	45
Background Papers and History of Decisions	Error! Bookmark not defined.
Service Director Responsible	45

List of Figures

Figure 1: Extract of Current Definitive Map and statement covering area of Colders Lane, Meltham	5
Figure 2: S140206 Application Map	7
Figure 3: Photos taken on 07/12/2022 showing the physical characteristics of the Application Route	9
Figure 4: Extract of 1894 Meltham UDC Minutes	14
Figure 5: Extract of 1960 Meltham UDC Minutes	14
Figure 6: User Evidence Summary.....	17
Figure 7: Photos of Site Consultation Notices	20
Figure 8: Map 1 - Meltham Footpath No. 75 Recommended to be Deleted (A-B)....	43
Figure 9: Map 2 - Restricted Byway Recommended to be Added (A-C)	44

Summary

1. In October 2018, Kirklees Council received an application (Reference S14206) under Section 53 of the Wildlife & Countryside Act, 1981, ('the 1981 Act') to record Colders Lane, Meltham, on the Definitive Map and Statement as a Public Bridleway. The application provided user and documentary evidence in support of the claim. The Secretary of State has directed that Kirklees Council must determine the application by 30th November 2023.
2. Documentary evidence shows that Colders Lane was a private carriageway in 1832. However, corroborative Meltham Urban District Council Minutes from 1894 and 1960 show that predecessor authorities accepted that the application route was a highway maintainable at public expense and maintained parts of Colders Lane to vehicular standard, without the need for statutory adoption. This interpretation is supported by Highways Registry.
3. The Definitive Map Officer recommends, on the balance of probabilities, a section of the application route from Leygards Lane to just south of Popley Butts, is a vehicular highway. As none of the exemptions in section 67 of the Natural Environment and Rural Communities Act, 2006, apply, mechanically propelled vehicular rights have been extinguished. It is recommended that a Definitive Map Modification Order ('DMMO') is made under section 53 of the 1981 Act to add the full width of this section as a restricted byway and the public footpath record should be deleted. Alternatively, if members disagree with that recommendation, a DMMO should be made to record the full length of Meltham Footpath No. 75 as a public bridleway based on user evidence and presumed dedication.
4. The consultation elicited responses on the grounds of status, width, maintenance, safety, suitability, and wildlife, which object to modifying the status of the application route. Any potential DMMO will probably be determined by the Planning Inspectorate. Members should consider the documentary and user evidence presented, officer recommendations, consultation responses, and then decide whether or not a DMMO should be made. Factors such as future maintenance, safety, wildlife, and suitability are other matters that cannot be considered under section 53 of the 1981 Act.

Information Required to Take a Decision

Application

5. On 26th October 2018 Mr Corrigan ('the Applicant') submitted an application ([S14206](#)), on behalf of Kirklees Bridleway Group and The British Horse Society, 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 Colders Lane, Meltham



Path Number	Map Reference	Description of Route	Nature of Surface	Length (m)	Width (m)
075	SE01SE 0910	Footpath from its junction with Leygards Lane and proceeding in a north-easterly direction along Colders Lane to its junction with the eastern end of Colders Drive.	Roughly Metalled	580	1.2

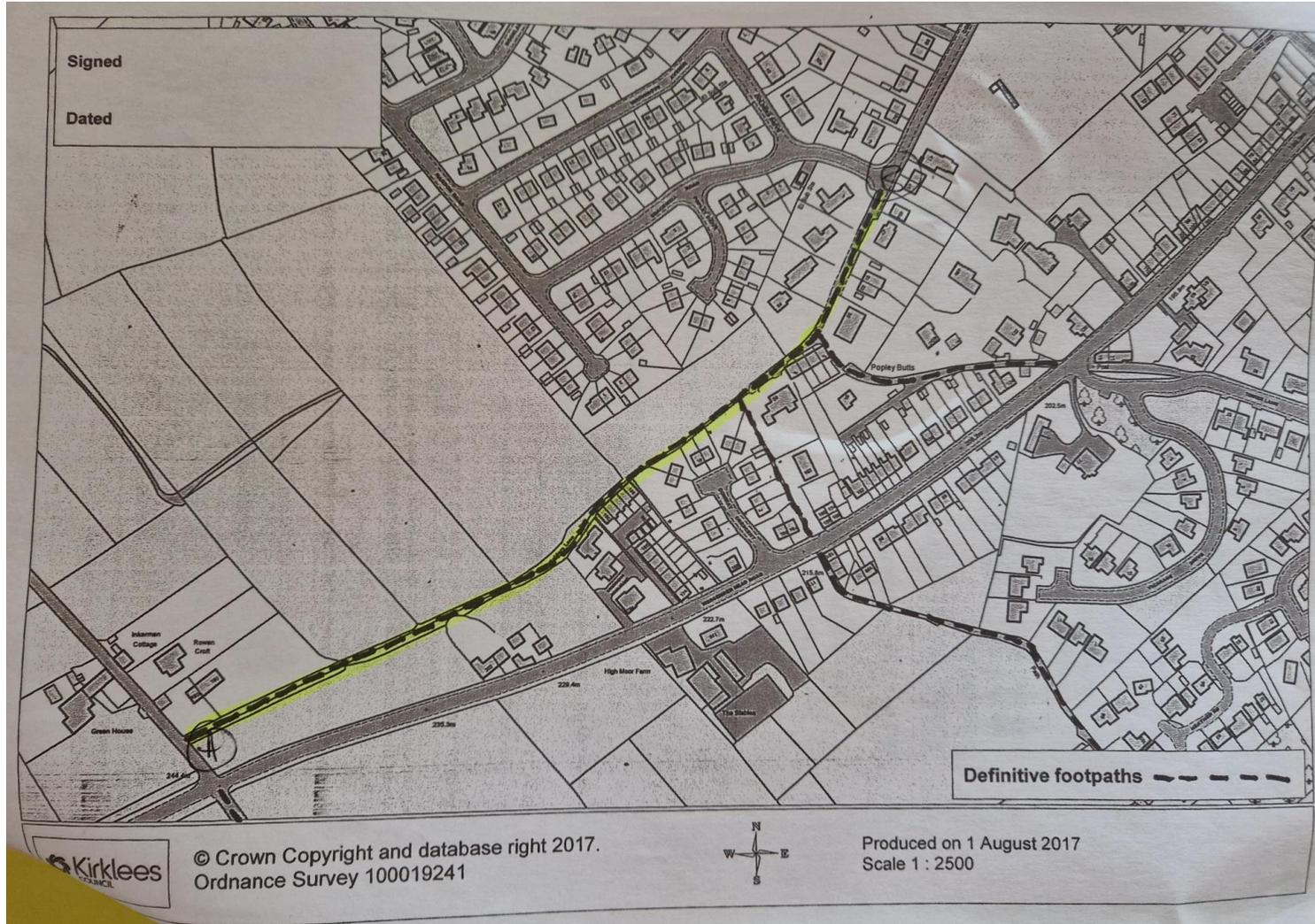
7. The application, as shown highlighted yellow between Points A-B in Figure 2, seeks to upgrade Meltham Footpath No. 75, Colders Lane, Meltham, to a public bridleway, which is defined in [section 329\(1\) of the Highway Act 1980](#) as a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of on horseback or leading a horse, with or without a right to drive animals of any description along the highway. [Section 30 of the Countryside Act 1968](#) states that any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback. Meltham Footpath No. 75 leads between Leygards Lane and Colders Drive. The section of Colders Lane from Colders Drive to Mill Moor Road was previously the only section that was recorded as an ordinary vehicular highway by Highways Registry on the List of Streets.
8. The application was properly made and certified under the requirements of [Schedule 14 of the WCA](#) and the submission gave as evidence: 9 User Evidence Forms, Rights of Way Law Review Extract of 'The Thoroughfare Principle', 1824 Turnpike Road Plan & Book of Reference, 1832 Meltham Enclosure Award, 1847 Meltham Tithe Award, 1894 Meltham Urban District Council Minutes, 1910 Finance Act Map, along with various Ordnance Survey and Commercial Maps. The Definitive Map Officer has also considered further documentary evidence available to them, including: 1797 Plan of Meltham, 1960s Meltham Urban District Council Minutes, historic newspaper articles, public rights of way path files, and documents relating to the development and review of the First Definitive Map and Statement. A consultation exercise was also conducted in May 2023 inviting any evidence from the public, town council, ward members, user groups, and adjacent landowners.

Planning Inspectorate Direction

9. Following a representation by Kirklees Bridleway Group, the Council were directed on 31st May 2022 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: [FPS/Z4718/14D/21](#)) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S140206, no later than **30th November 2023**.

Figure 2: S140206 Application Map

(Point A: Leygard's Lane (Public Carriageway): [Google Street View](#); Point B: Colders Lane (Public Carriageway): [Google Street View](#))



Character of Application Route

10. The Application Route is a historic way known as Colders Lane located in the town of Meltham and connects the countryside to the south-west urban area of Meltham. It leads between two termini: Leygard's Lane, which is a rural public carriageway shown in **Error! Reference source not found.** in **Error! Reference source not found.**; and the junction of Colders Drive, shown at photo 10. The elevation difference between the two termini is 46m over a distance of approximately 495m, descending from Point A to Point B on the Application Map. There is a street name plate at Leygard's Lane stating 'Colders Lane' and a metal pole public footpath waymark. Attached to the pole is a sign stating, 'Horse Riding Prohibited', as shown in **Error! Reference source not found.**. The Application Route then leads east-north-easterly for some 212m between 1-2m high ancient dry-stone walls.
11. The width varies between 2.5-9m between the walls, but the usable width is narrowed by dense vegetation. There is a sunken meandering central path about 40cm wide leading over a partly metalled earth surface of stones and a step at Popley Butts. The Application Route then changes direction to north-easterly for some 185m and the southern side is abutted by several properties. At this point, the Application Route has utility apparatus belonging to Yorkshire Water. Meltham Footpath No. 45 then joins the Application Route on its southern side, and there are two staggered metal structures at the junction and on the opposite side a wooden pole with a footpath waymark, as shown in **Error! Reference source not found.**.
12. The route then passes by a new residential development (Planning Ref: [2022/91423](#)) and the surface changes to uneven potholed tarmac, shown in Photos 7, 8, and 9. There are parked cars fronting the properties of No. 2-8 Popley Butts, and Meltham Footpath No. 76 joins the Application Route on its eastern side. Colders Lane then turns north-north-easterly for some 90m between residential properties until it joins publicly maintained carriageway at the junction with Colders Drive, at which point there is a public footpath metal waymark sign, shown in Photo 10 and a street name plate.

Figure 3: Photos taken on 07/12/2022 showing the physical characteristics of the Application Route



Photo 1: Junction of Colders Lane and Leygards Lane showing street name plate (Point A on the Application Map in Figure 2).



Photo 2: Public Footpath waymark and 'Horse Riding Prohibited' sign at the entrance from Leygards Lane.



Photo 3: Public Footpath waymark and 'Horse Riding Prohibited' sign at the entrance from Leygards Lane.



Photo 4: Application Route is directly abutted by the properties of Wessenden Head Road and there is dense vegetation on its northern side. Utility apparatus are also present along the route.

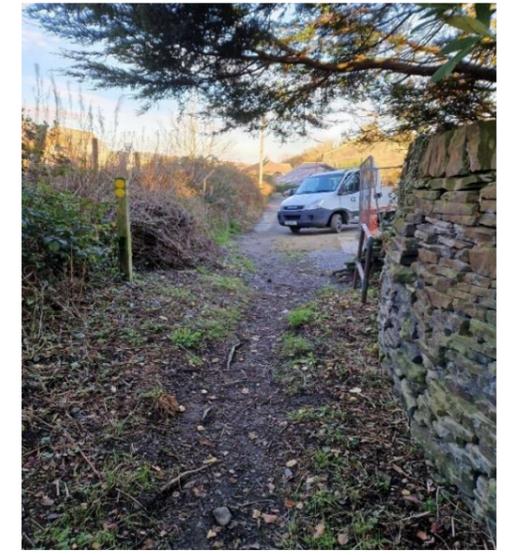


Photo 5: Application Route is joined by Meltham Footpath No. 45 on its southern side and there is a wooden post with footpath waymarks.



Photo 6: Development currently in progress to the south of the Application Route, towards Point B on the Application Map in Figure 2 (Planning Ref: 2022/91423).

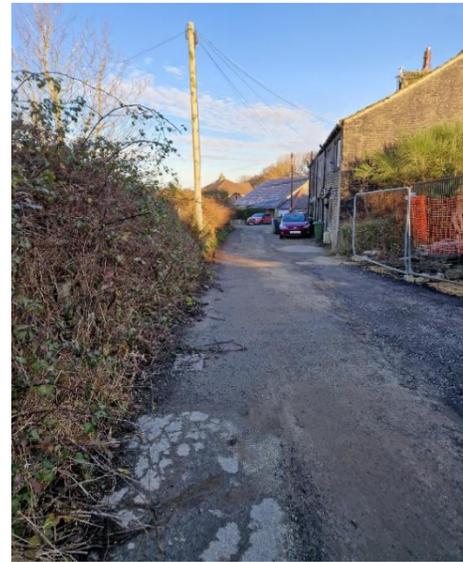


Photo 7: Surface of Application Route fully transitions from earth to tarmac, leading passed residential properties.



Photo 8: Privately maintained section of Colders Lane for private carriage access to residential properties. Uneven surface with several layers of tarmac.



Photo 9: Application Route continues to join the public maintained carriageway of Colders Lane at Point B on the Application Map in Figure 2.



Photo 10: Termini of Application Route opposite Colders Drive with the Public Footpath waymark. Note that there is no horse riding prohibited sign.

Statutory Provisions

Wildlife & Countryside Act, 1981

13. [Schedule 14, Paragraph 3 of the WCA](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. The need for a Definitive Map Modification Order ('DMMO') to be considered when evidence is submitted in support of a claim that a public right of way which is already shown on the Definitive Map and Statement is submitted to additional public rights is dealt with under [section 53\(2\)\(b\) and 53\(c\) of the WCA](#). Sections 53(3)(c)(ii) and 53(3)(c)(iii) 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 highway of a particular description ought to be there shown as a highway of a different description.*
- *that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification*

14. Under these provisions, there is no 'reasonably alleged to subsist' test, as is found in subsection 53(3)(c)(i). Therefore, the test by which the available evidence is to be considered is the civil standard of proof; that is, the balance of probabilities. This requires that the Council is satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

15. The [Rights of Way Circular 1/09](#) states that the evidence that is needed to justify a deletion must satisfy certain requirements must be: new, cogent, and of sufficient substance to displace the presumption that the Definitive Map and Statement is correct. The term 'right of way' is defined in [section 66 of the 1981 Act](#) as: "...a right of way such that the land subsists is a public path or a byway open to all traffic". An ordinary vehicular highway is therefore not within the remit to be recorded on the Definitive Map and Statement.

Highways Act, 1980

16. The relevant provision, in relation to the dedication of a public right of way based on user evidence is found in [section 31 of the 1980 Act](#) ('the 1980 Act'). The legislation sets out there where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate. The period of twenty years is to be calculated retrospectively from the date when the public right to use the way was brought into question.
17. 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.
18. [Section 32 of the 1980 Act](#) required a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

19. General guidance for members is provided in **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of the research report and available evidence, which is discussed in detail in **Appendix B**, the primary documentary evidence made available below in the section titled 'Research Evaluation' at paragraph 22, the consultation, and also the Definitive Map Officer recommendations.
20. As stated in paragraph 13, it is the Council's statutory duty to keep the Definitive Map and Statement up to date and make any requisite DMMOs where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- I. The first option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on the Definitive Map Officers two recommendations (see paragraphs 87 and 87 for next step and timeline).
 - II. The second option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on members interpretation of the evidence (see paragraphs 87 and 87 for next step and timeline).
 - III. The third option is for members to turn down the application (see paragraph 86 for next step and timeline).
21. The likelihood or otherwise of a DMMO attracting opposition should form no part of the decision. Please note that matters such as safety, suitability, security, or privacy cannot be taken into consideration. Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

Documentary Evidence Evaluation

22. The Definitive Map Officer has conducted a thorough investigation of the available documentary evidence and the research report is available in **Appendix B**. This section will focus on the primary documentary evidence required for the purpose of making an informed decision. In summary, a 1797 Plan of Meltham shows that Colders Lane was an ancient, most likely private, route leading to and from common land, between ancient enclosures. The 1832 Meltham Inclosure Award extended Colders Lane at either end with two private carriage and occupation roads: Colders Lane Bottom 30ft wide and Colders Lane Top Road 18ft wide. The latter road forms part of the Application Route, whilst the former is now a public carriageway maintained at public expense.
23. The investigation discovered two significant historic events in Meltham Urban District Council Minutes and press articles from the Huddersfield Chronicle and Huddersfield Examiner. The documents reveal that in 1894, and again in 1960, the predecessor highway authority accepted legal counsel that all of Colders Lane, Meltham, was a street maintainable at public expense. The transcriptions are provided below and are also discussed in greater depth at subheadings titles ‘*Local Government Minutes 1885 – 1894*’ and ‘*1950-60s Meltham Urban District Council Minutes*’ in Appendix A.

[23 August 1894] “*The Report received from Messrs. Learoyd as to the repair of Colders Lane was now read; the effect of it being that the Board was liable for the repair of the same, not the respective owners*”. (Shown in

Meltham Town Council		✓			Duly noted with no comments/
Cllr C Greaves	✓				Accepted consultation report and
Cllr T McGrath				✓	
Cllr D Bellamy		✓			No comment as member of Plann
British Horse Society				✓	
Kirklees Bridleway Group	✓				“Excellent news”
Huddersfield Ramblers				✓	
Peak & Northern Footpaths Society				✓	
Byways & Bridleways Trust				✓	
Open Spaces Society				✓	

Huddersfield Rucksack Club			✓	
British Driving Society			✓	
Auto Cycling Union - Bikesport GB			✓	
West Yorkshire Trail Riders Fellowship			✓	
The Motoring Organisations' Land Access			✓	
Green Lane Association			✓	
Ramblers Association (National)			✓	
Cycling UK			✓	
Ride Kirklees			✓	
Informal Consultee			✓	
Consultee Ref: 1			✓	
Consultee Ref: 2		✓*		Contests status, width, safety, liability. *Also sent a pre-consultation objection
Consultee Ref: 3			✓	
Consultee Ref: 4			✓	
Consultee Ref: 5			✓	
Consultee Ref: 6			✓	
Consultee Ref: 7			✓	
Consultee Ref: 8		✓*		Safety. Width of Claimed Route to be used
Consultee Ref: 9			✓	
Consultee Ref: 10		✓*		Safety. Width of Claimed Route to be used
Consultee Ref: 11			✓	
Consultee Ref: 12			✓	
Consultee Ref: 13			✓	
Consultee Ref: 14			✓	
Consultee Ref: 15			✓	
Consultee Ref: 16			✓	
Consultee Ref: 17			✓	
Consultee Ref: 18			✓	
Consultee Ref: 19			✓	
Consultee Ref: 20			✓	
Consultee Ref: 21			✓	
Consultee Ref: 22			✓	
Consultee Ref: 23			✓	
Consultee Ref: 24			✓	
Consultee Ref: 25		✓		Accepts historical evidence. Safety of route
Consultee Ref: 26			✓	
Consultee Ref: 27			✓	
Consultee Ref: 28			✓	
Consultee Ref: 29			✓	
Consultee Ref: 30			✓	
Consultee Ref: 31			✓	
Consultee Ref: 32			✓	
Consultee Ref: 33			✓	
Consultee Ref: 34			✓	
Consultee Ref: 35			✓	
Consultee Ref: 36			✓	

Consultee Ref: 37			✓	
Consultee Ref: 38			✓	
Consultee Ref: 39		✓		Safety. Width of Claimed Route to
Consultee Ref: 40		✓		Safety. Width of Claimed Route to
Consultee Ref: 41		✓		Safety. Width of Claimed Route to
Consultee Ref: 42		✓		Safety. Width of Claimed Route to
Consultee Ref: 43		✓		Safety, suitability, width, liability, a

).

[25 January 1960] “*The Clerk submitted Case for the Opinion of Counsel and also Counsel’s Opinion on the question of the liability for the repair of the various sections of the street known as Colders Lane, from its junction with Matthew Lane to its junction with Leygard’s Lane. RESOLVED THAT the Council accept the position that the street known as Colders Lane is repairable by the inhabitants at large, that the Surveyor prepare estimates of cost of widening and metalling various sections of the road, and the Clerk approach any owners concerned regarding their throwing into the highway any strips of land required for the proposed widening of the road in question*”. (Shown in **Figure 5**)

24. Based on surrounding evidence, the 1894 decision seems to have been made on the basis that Colders Lane was dedicated at common law and used as a thoroughfare by carts prior to section 23 of the 1835 Highways Act coming into operation. As no statutory adoption was necessary, the relevant highway authorities improved, widened, and metalled various sections of Colders Lane to vehicular standard, including to Popley Butts in the 1960s.

Figure 4: Extract of 1894 Meltham UDC Minutes

261

MINUTE BOOK.

e	s.	d.	Debit To Lodger.	Credit To Lodger.	e	s.	d.
(Colders Lane.)							
The Report received from Messrs. Leygards							
Has as to the repair of Colders Lane was							
now read; the effect of it being that the							
Board was liable for the repair of the							
same, not the respective owners.							
R. Mellor Chairman							

Figure 5: Extract of 1960 Meltham UDC Minutes

207.

25th January, 1960.

u/b (582)	COLDERS	LANE.	Text
			The Clerk submitted Case for the Opinion of Counsel and also Counsel's Opinion on the question of the liability for the repair of the various sections of the street known as Colders Lane, from its junction with Matthew Lane to its junction with Leygards Lane.
			RESOLVED THAT the Council accept the position that the street known as Colders Lane is repairable by the inhabitants at large, that the Surveyor prepare estimates of cost of widening and metalling various sections of the road, and that the Clerk approach any owners concerned regarding their throwing into the highway any strips of land required for the proposed widening of the road in question.

Natural Environment & Rural Communities Act, 2006

25. The Definitive Map Officer considers that, on the balance of probabilities, the majority of Meltham Footpath No. 75 subsists as a vehicular highway. As none of the relevant exemptions apply, [Section 67 of the Natural Environment and Rural Communities Act 2006](#) extinguished any right the public had to use mechanically propelled vehicles ('MPVs') over the section of Colders Lane from Leygards Lane to No. 67 Colders Lane, Meltham, HD9 5JL. This section therefore subsists as a restricted byway, which is defined as a public right of way on foot, cycle, horseback, or leading a horse, and for vehicles other than MPVs.

Highways Registry

26. Highways Registry have amended the List of Streets to record the section of Colders Lane north of No. 67 Colders Lane to Colders Drive (Point B-C on the map) as a highway maintainable at public expense, which will be repaired as an ordinary vehicular highway. This section of Meltham Footpath No. 75 therefore requires to be deleted from the legal record of public rights of way as it is no longer within the remit of the Definitive Map and Statement.

27. Members should be aware that the maintenance of this section was considered by local councillors and the Cabinet Member for Transportation and Green Services in 2008 and decided that this section of Colders Lane should not be improved within the Unadopted Roads programme (see **Appendix C**). However, this decision was made before the discovery of evidence of historic maintenance by a highway authority at public expense.

User Evidence Evaluation

28. The Application Route was brought into question by the Schedule 14 application. The relevant twenty-year period is therefore the 26th October 1998 to 26th October 2018. The user evidence is summarised in **Figure 6**. The Application Route was used on horseback by six users throughout, and three users for part of, the relevant period without interruption. The evidence of use is sufficient to represent the public and it is their collective use that is important.
29. Frequency of use varied with three respondents using the Application Route weekly, four monthly, one bi-annually, and one annually. Consequently, the evidence of use is mainly based upon seven users over the relevant period. Based on this frequency, the Application Route was used via horseback on average 167 days in any given year of the relevant period, which equates to 14 days on average per month, and approximately 9 years of use within the relevant period.
30. All respondents saw others riding the Application Route. One respondent submitted two photographs showing three people riding along the Application Route in August 2017. Kirklees Bridleways Group also undertook clearance of vegetation in the Application Route in July 2017. There is no evidence that the public use was by force, secrecy, or permission. The claimed width of the claimed use varies between 1.5m to 6m.
31. One landowner submitted an objection to the application on the 18th November 2018, which stated they witnessed one horse-rider using the Application Route, which they verbally challenged to stop trespassing. None of the user's state they were challenged during the relevant period. There is no available evidence sufficient to engage the proviso of a lack of intention to dedicate a public bridleway. The 'Horse Riding Prohibited' notice shown in Photo 2 in **Figure 3** was erected by the Council following this objection.
32. However, as stated below under 'Officers Recommendations & Reasons', if members agree with the Definitive Map Officers conclusion that the Application Route is a vehicular highway, the user evidence would actually be 'by right', not 'as of right'.

Figure 6: User Evidence Summary

USER EVIDENCE				RELEVANT PERIOD (YEARS 1998-2018)																		Width (m)				
REF	YEARS USED	FREQUENCY OF USE	TRAVEL MODE	98	99	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18		
206/1	1980-2018	Monthly	Foot/Horse	[Foot/Horse]																		3 to 6				
206/6	1995-2018	Monthly (Riding)	Foot/Horse	[Foot/Horse]																		1.5 to 6				
206/7	1991-Present	Monthly	Horse	[Horse]																		3				
206/8	1982-2018	Weekly	Foot/Horse	[Foot/Horse]																		3 to 6				
206/4	1988-2017	Monthly	Horse	[Horse]																		3				
206/5	1985-2017	Weekly	Horse	[Horse]																		1.8				
206/3	2010-2017	Twice a year	Horse																						[Horse]	2.7
206/2	2014-2017	Once a year	Foot/Horse																						[Foot/Horse]	3
206/9	2018-2018	Weekly	Horse																						[Horse]	Car Width

 Horse
  Foot/Horse

Implications for the Council

Working with People

33. Not applicable.

Working with Partners

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

Placed based Working

35. Not applicable.

Climate Change and Air Quality

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

Improving Outcomes for Children

37. Not applicable.

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

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

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

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

Consultation

45. On 15th May 2023, the Definitive Map Officer conducted an informal consultation with the public, landowners/occupiers, user groups, Holme Valley North Ward Members, and Meltham Town Council. The consultation provided a summary of the Definitive Map Officers research and detailed the officer's recommendation that a significant portion of the Application Route should be recorded as a restricted byway on the Definitive Map and Statement. Public notice of the consultation was provided on the Councils website under '[Changes to the Definitive Map and Statement](#)' and titled 'Consultation – Definitive Map Modification Order Application (206)'. Notices were displayed at either end of the way, as shown in **Figure 7**, and consultees were given the option to respond via an [online form](#), as well as email, letter, or telephone. The preliminary consultation elicited 10 responses.

Figure 7: Photos of Site Consultation Notices



Photo 12: Informal Consultation Notice opposite Colders Drive (Point B on the Application Map in Figure 2)



Photo 11: Informal Consultation Notice at Leygards Lane (Point A on the Application Map in Figure 2)

Consultee	Support	Neutral	Do Not Support	No Reply	Notes
Meltham Town Council		✓			Duly noted with no comments/objections.
Cllr C Greaves	✓				Accepted consultation report and copied in Meltham Town Council.
Cllr T McGrath				✓	
Cllr D Bellamy		✓			No comment as member of Planning Sub-Committee (Huddersfield Area).
British Horse Society				✓	
Kirklees Bridleway Group	✓				"Excellent news"
Huddersfield Ramblers				✓	
Peak & Northern Footpaths Society				✓	
Byways & Bridleways Trust				✓	
Open Spaces Society				✓	
Huddersfield Rucksack Club				✓	
British Driving Society				✓	
Auto Cycling Union - Bikesport GB				✓	
West Yorkshire Trail Riders Fellowship				✓	
The Motoring Organisations' Land Access				✓	
Green Lane Association				✓	
Ramblers Association (National)				✓	
Cycling UK				✓	
Ride Kirklees				✓	
Informal Consultee				✓	
Consultee Ref: 1				✓	
Consultee Ref: 2			✓*		Contests status, width, safety, liability, and evidence of historic maintenance. *Also sent a pre-consultation objection.
Consultee Ref: 3				✓	
Consultee Ref: 4				✓	
Consultee Ref: 5				✓	
Consultee Ref: 6				✓	
Consultee Ref: 7				✓	
Consultee Ref: 8			✓*		Safety. Width of Claimed Route too narrow for multi-use. *Sent pre-consultation.
Consultee Ref: 9				✓	
Consultee Ref: 10			✓*		Safety. Width of Claimed Route too narrow for multi-use. *Sent pre-consultation.
Consultee Ref: 11				✓	
Consultee Ref: 12				✓	
Consultee Ref: 13				✓	
Consultee Ref: 14				✓	
Consultee Ref: 15				✓	
Consultee Ref: 16				✓	
Consultee Ref: 17				✓	
Consultee Ref: 18				✓	
Consultee Ref: 19				✓	
Consultee Ref: 20				✓	
Consultee Ref: 21				✓	
Consultee Ref: 22				✓	
Consultee Ref: 23				✓	
Consultee Ref: 24				✓	
Consultee Ref: 25			✓		Accepts historical evidence. Safety/Maintenance concerns.
Consultee Ref: 26				✓	
Consultee Ref: 27				✓	
Consultee Ref: 28				✓	
Consultee Ref: 29				✓	
Consultee Ref: 30				✓	
Consultee Ref: 31				✓	
Consultee Ref: 32				✓	
Consultee Ref: 33				✓	
Consultee Ref: 34				✓	
Consultee Ref: 35				✓	
Consultee Ref: 36				✓	
Consultee Ref: 37				✓	
Consultee Ref: 38				✓	
Consultee Ref: 39			✓		Safety. Width of Claimed Route too narrow for multi-use.
Consultee Ref: 40			✓		Safety. Width of Claimed Route too narrow for multi-use.
Consultee Ref: 41			✓		Safety. Width of Claimed Route too narrow for multi-use.
Consultee Ref: 42			✓		Safety. Width of Claimed Route too narrow for multi-use.
Consultee Ref: 43			✓		Safety, suitability, width, liability, and contests evidence of historic maintenance.

Meltham Town Council

46. Meltham Town Council considered the preliminary consultation at a meeting of the Planning, Environmental, and General Purposes Committee held on the 15th May 2023. The consultation documents were circulated prior to the meeting and Meltham Town Council duly noted the consultation and made no comments or objections. The minutes of the meeting can be viewed on the [Meltham Town Council website](#).

Holme Valley North Ward Members

47. Holme Valley North Ward Members were consulted. Councillor Charles Greaves commented on the 11th May 2023: "*I'm fine with the officers report, but I have replied copying in Meltham Town Council*". Councillor Donna Bellamy did not make a comment to the preliminary consultation due to being a member of the Planning Sub-Committee (Huddersfield Area). Councillor Tony McGrath did not respond.

Applicant & User Groups

48. Kirklees Bridleways Group, the applicant, was notified of the preliminary consultation and the officer's recommendation via email on the 9th May 2023 and commented that the contents of the email were: "... *excellent news*". No other user groups responded to the consultation.

Adjacent Landowners/Occupiers

Consultee Ref: 2

49. Consultee Ref: 2 submitted an in depth research report, with documentary extracts and annotated historical maps, which was received by the Definitive Map Officer on the 7th June 2023. The Definitive Map Officer responded to each of the points raised by the consultee on the 9th June 2023. There is common ground between their research report and that produced by the Definitive Map

Officer, namely that the Application Route was incontrovertibly a private way in 1832.

50. However, the consultee disputes the recommended status of the Application Route and the relevance of the 1960 Meltham Urban District Council Minute, shown in **Figure 5**, and states:

“With reference to the evidence submitted containing extract of the brief Meltham Council meeting 25th of January 1960 and page 261 of the Minute Book.

The January 1960 entry refers to ‘various sections of the street known as Colders Lane’ and not its entirety. Presumably it was recorded in this way to reflect the various sections of Colders Lane that were recorded and known to the Counsel at the time as Private Carriageways as listed in the Meltham Enclosure Act of 1830. Namely Colders Hill Bottom Road and Colders Lane Top Road.

The minute goes on to say that ‘Colders Lane is repairable by the inhabitants at large’ and ‘that the surveyor prepares estimates of the costs of widening and metalling various sections of the road, and that the clerk approaches any owners concerned regarding their throwing into the highway and strips of land required for the proposed widening of the road in Question’

This clearly relates to the Colders Hill Bottom Road area of Colders Lane from Matthew Lane leading up to the junction of Colders Drive where the Highway has been Publicly funded and maintained and the results are clearly visible today. Beyond that point and moving westwards up Colders Lane, this stretch has been fully maintained by the inhabitants fronting onto the Colders Lane footpath. Again this is clearly visible in the road surface condition and street detailing. My neighbour lived in... Popley Butts for 40 years and can verify this statement if required.

There appears to be no records and zero maintenance of the section of Private Carriageway listed in the 1830 Inclosure act as Colders Lane

Top Road. This has been maintained by the local inhabitants since records began. There are no available Council records of repairs or maintenance to this area. I have personally cut the grass to Colders Lane Top Road and repaired surrounding walls along with my neighbour for the last 9 years”

51. The Definitive Map Officer does not agree with the consultees analysis of the 1960 Meltham Urban District Council Minute. Importantly, the extract specifically refers to the entirety of the Application Route:

“... the liability for the repair of the various sections of the street known as Colders Lane, from its junction with Matthew Lane to its junction with Leygards Lane”.

52. This important information has been omitted from the consultees analysis. The ‘various sections’ refers to a scheme that was to be conducted in three phases: Phase 1 from Matthew Lane to Colders Drive, which was completed by widening the roadway from approximately 2.5-4m wide to 9.5m and metalling the highway to vehicular standard; Phase 2 from Colders Drive to Popley Butts, which was partially completed by metalling the existing width of the highway to vehicular standard but it was proposed to be widened to a 9.5m wide roadway in 1964, and 5.4m wide with a 1.8m wide footway in 1971; and Phase 3 from Popley Butts to a place known as the ‘Forresters’ near Leygards Lane, which was proposed to be widened with an ‘improvement line’.

53. The consultee states that the section of the Application Route from Colders Drive to Popley Butts has not been maintained at public expense in living memory and refers to a neighbour who lived at Popley Butts for over 40 years. However, their neighbour’s recollection is countered by a letter dated 1978 from a West Riding County Councillor living at Popley Butts, which provides corroborative evidence with the Council Minutes of vehicular highway maintenance over a 14 year period. Further information can be found under the heading ‘1938 – 1972 Meltham Urban District Council Minutes’ in the Definitive Map Officers Research Report, which provides a transcription and analysis of the letter and council minutes.

54. Additionally, as stated at paragraph 137 of the Research Report, it is not critical to the determination of status that there is no direct evidence of public expenditure to making Colders Lane from just south of Popley Butts to Leygards Lane, all that is required is evidence and acceptance of the liability, which is provided in the 1960 Meltham Urban District Council Minute in **Figure 5**. A significant evidential hiatus of maintenance by a highway authority is to be expected because the 1960 Council Minute has been lost from public knowledge.

55. Consultee Ref: 2 also disputes the relevance of the 1894 Urban District Council Minute provided in

Meltham Town Council	✓				Duly noted with no comments/
Cllr C Greaves	✓				Accepted consultation report and
Cllr T McGrath				✓	
Cllr D Bellamy		✓			No comment as member of Plann
British Horse Society				✓	
Kirklees Bridleway Group	✓				"Excellent news"
Huddersfield Ramblers				✓	
Peak & Northern Footpaths Society				✓	
Byways & Bridleways Trust				✓	
Open Spaces Society				✓	
Huddersfield Rucksack Club				✓	
British Driving Society				✓	
Auto Cycling Union - Bikesport GB				✓	
West Yorkshire Trail Riders Fellowship				✓	
The Motoring Organisations' Land Access				✓	
Green Lane Association				✓	
Ramblers Association (National)				✓	
Cycling UK				✓	
Ride Kirklees				✓	
Informal Consultee				✓	
Consultee Ref: 1				✓	
Consultee Ref: 2			✓*		Contests status, width, safety, liab *Also sent a pre-consultation obje
Consultee Ref: 3				✓	
Consultee Ref: 4				✓	
Consultee Ref: 5				✓	
Consultee Ref: 6				✓	
Consultee Ref: 7				✓	
Consultee Ref: 8			✓*		Safety. Width of Claimed Route to
Consultee Ref: 9				✓	

Consultee Ref: 10		✓*		Safety. Width of Claimed Route to
Consultee Ref: 11			✓	
Consultee Ref: 12			✓	
Consultee Ref: 13			✓	
Consultee Ref: 14			✓	
Consultee Ref: 15			✓	
Consultee Ref: 16			✓	
Consultee Ref: 17			✓	
Consultee Ref: 18			✓	
Consultee Ref: 19			✓	
Consultee Ref: 20			✓	
Consultee Ref: 21			✓	
Consultee Ref: 22			✓	
Consultee Ref: 23			✓	
Consultee Ref: 24			✓	
Consultee Ref: 25		✓		Accepts historical evidence. Safety
Consultee Ref: 26			✓	
Consultee Ref: 27			✓	
Consultee Ref: 28			✓	
Consultee Ref: 29			✓	
Consultee Ref: 30			✓	
Consultee Ref: 31			✓	
Consultee Ref: 32			✓	
Consultee Ref: 33			✓	
Consultee Ref: 34			✓	
Consultee Ref: 35			✓	
Consultee Ref: 36			✓	
Consultee Ref: 37			✓	
Consultee Ref: 38			✓	
Consultee Ref: 39		✓		Safety. Width of Claimed Route to
Consultee Ref: 40		✓		Safety. Width of Claimed Route to
Consultee Ref: 41		✓		Safety. Width of Claimed Route to
Consultee Ref: 42		✓		Safety. Width of Claimed Route to
Consultee Ref: 43		✓		Safety, suitability, width, liability, a

56., and states:

“With reference to the Meltham Urban District Council Minutes in 1894, page 261 states:

‘The Report received from Messrs. Learoyd as to the repair of Colders Lane was now read; the effect of it being that the Board was liable for the repair of the same, not the respective owners’

We do not have a copy of the report from Messrs Learoyd to verify the location or extent of the repairs to Colders Lane. It is pure speculation

that this refers to the complete length of Colders Lane. The Council at the time would not be spending public funds maintaining Roads and Private carriageways outside their defined areas of Liability. The areas of Liability at the time of this Council Minutes would have been easily identifiable and defined from the Meltham Urban District Council records of the Inclosure act as detailed earlier in this statement. It is most probable that the report from Messrs Leoroyd refers to the private carriageway of Colders Lane Bottom Road where the Historical maps clearly illustrate the widening over the years and the clearly visible and physical evidence of the maintained Highway to date”.

57. As detailed in the Research Report at paragraphs 84, 85 and 94-96, the Definitive Map Officer has taken a balanced approach to the historical evidence and also analysed whether, based on historic evidence like Ordnance Survey Mapping, the 1894 Meltham UDC minute referred to the entirety of Colders Lane or just to the thoroughfare with Matthew Lane. However, the consultee has analysed each piece of evidence in isolation, whereas documentary evidence must be viewed as a chain of evidence. The 1894 and 1960 Meltham Urban District Council Minutes corroborate one another. The contents of Messrs Learoyds report have been inferred from newspaper articles that cite Colders Lane in 1895, as transcribed in Appendix B at Figure 12.

58. Specifically, the extracts state that Meltham UDC was given legal advice that as Colders Lane was a thoroughfare that led from one highway to another and was a road open to the public before section 23 of the Highways Act, 1835, came into operation, then it was the duty of the Council to repair it. This is explained in further detail at paragraphs 77 and 134 of the Research Report, but section 23 essentially stopped vehicular highways dedicated at common law automatically becoming a burden on inhabitants at large to maintain without statutory adoption. There is no evidence that any part of Colders Lane has been formally adopted under statute. A vehicular highway along the entire length of Colders Lane must therefore have existed in the period of time between the 1832 Meltham Inclosure Award and the Highways Act, 1835.

59. Furthermore, Meltham Urban District Council actively maintained a section of Colders Lane from Mill Moor Road to, specifically, 80 yards south of Matthew Lane until the 1950s. This terminus is neither a place of popular resort nor a connecting highway. In 1938, Meltham UDC made an Order under Section 30 of the Public Health Act, 1925, that a section of Colders Lane commencing 57 yards south of Matthew Lane to Leygards Lane is an existing highway and should be classed as a 'New Street', so that the byelaws relating to new streets will apply to it in consequence of any development. This is discussed in detail at paragraph 127 of the Research Report.
60. The consultee also resubmitted a letter dated 30th November 2018, which objected to the application submitted to Kirklees Council to change the recorded public status of Colders Lane from a public footpath to a public bridleway based on the following: trespass by horse riders without permission; safety; loss of amenity & wildlife; problems caused by horse riders; and maintenance issues. This letter pre-dates the investigation into the status of Colders Lane and the discovery of the 1894 & 1960 Council Minutes. Issues regarding safety, biodiversity, potential conflict between users, and maintenance are not factors that can be taken into consideration. Also, there is no requirement for the public to seek express permission from a landowner to use a way. Toleration of public use by acquiescence does not constitute use by express or implied permission.
61. Lastly, the consultee has cited guidance for changes to public rights of way, in particular a public path creation order for a bridleway or restricted byway under section 26 of the Highways Act, 1980, and section 257 of the Town & Country Planning Act, 1990, which only relates to changes to public rights of way due to development. There is no intention to create a new public right of way along the Application Route. Kirklees Council is determining the application to modify the Definitive Map and Statement to record any existing public rights of way.
62. The consultee has also provided an extract from a document published by the British Horse Society on their advice on width, area, and height that states that new routes should be a minimum of 3m, which is not applicable to the investigation as the Application Route is not a new route. The extract actually states, under the heading 'In Modification Orders':

“The Society will object if the width stated is less than that for which there is substantive evidence, or if a single whole route width is stated where there is evidence that the path is wider in places”.

63. As detailed below, the Definitive Map Officer recommends that the variable full width of the Application Route is recorded on the Definitive Map and Statement, between 2.5m to 9m wide for a restricted byway. Alternatively, based on evidence of use, a width between 2.5m to 6m should be recorded for a public bridleway. The widths comply with the BHS advice.

64. Consultee Ref: 2 provided further detailed correspondence to their objection. Due to timescales with preparing the Committee Report and the Planning Inspectorate direction, the consultee was offered guidance to attend the Planning Sub-Committee (Huddersfield Area) and advised of the formal public notice period to submit an objection if a DMMO is made.

Consultee Ref: 8

65. Consultee Ref: 8 did not respond to the consultation but did send a letter of objection to Kirklees Council, which was received by Kirklees Council on the 26th June 2019 when they received notice of the application to modify the Definitive Map and Statement from the applicant under paragraph 2(1) Schedule 14 of the Wildlife & Countryside Act 1981. The letter states:

"I am writing to object to the proposed change of use of Colders Lane Meltham, to a public bridleway. There are many objections I could write about. Here are just a few.

The lane is far too narrow to be safe, for anyone, barring pedestrians.... the sewerage drains and water pipes etc. are just under the surface for every house...

The visibility of the adjoining pathways is, would be a danger. Familys with young children; walker, access users, people with small dog, people garden, properties.

Please will you consider my very, very strong objection to the proposed change of use"

[Another objection from a person at the same residence] P.S. Sections of the path are too narrow to pass a horse coming in opposite direction. Suggest you ask Ramblers or better to walk it yourself and you would understand".

Consultee Ref: 10

66. Similarly, Consultee Ref: 10 also did not respond to the consultation but did submit an objection to Kirklees Council, which was received on the 25th June 2019 when they also received notice of the application to modify the Definitive Map and Statement from the applicant. The objection stated:

“I am writing to object to the plan to change Colders Lane into a public bridleway.

My objection is the lane is so narrow, if a horse was to ‘bolt’ and someone was walking on the lane, they would have nowhere to go and it would result in a nasty accident.

... Colders Lane... have services at the back which would be damaged by horses. The lane is well used by local people and is popular with walkers, with the narrowness of the lane it would be effectively closed to walkers if horses were allowed to use it.

So I would ask you to consider my objection to changing from a footpath to a public bridleway.

P.S I’m curious as to why I, or my neighbours have not received notification regarding this proposed change of use”.

67. Both Consultee Refs: 8 & 10 have raised objections regarding the narrow width of the Application Route and the safety of users, which is considered further under ‘Width & Safety’ below. A Definitive Map Officer responded to the consultees in June 2019 and stated that the letter would be kept on record when the application is investigated and explained the processes under Schedule 14 & 15 of the Wildlife & Countryside Act 1981 and provided links to helpful guidance.

Consultee Ref: 25

68. Consultee Ref: 25 responded to the preliminary consultation on the 17th May 2023 via the online form, and explained why they did not support the consultation proposal:

“... at the junction of Colders Lane and Colders Drive, which is where the lane ceased to be a maintained road and becomes a very bumpy track. I accept that on the face of the facts in relation to the road’s history it may be legally possible to amend the map. Although I do wonder how any horse would be able to use the path safely as it is too narrow in some places on the route to Leygards Lane. I imagined that amending the footpath will increase traffic and this causes concern. The track is that part of the map between point where Colders Lane becomes unmade which is at the lower edge of the garden of 47 and the track becomes rough and narrows and has poor visibility. Nevertheless when a vehicular leaves the road to join the track called Colders Lane it often seems that the drivers speed up. Many go far too fast.

I am concerned for the safety of residents and all children both any who live and play here and the many more who use this track every day as a footpath to get to the local primary school. Dog walkers and their pets, visitors and those in the vehicular will be at risk.

At present there are 2 new 5 bedroomed houses being built that means huge vehicles squeeze past and pedestrians seek refuge in our garden and those of other residents. It is a tricky road and some times we watch a queue waiting for a vehicular to leave. There are some careful drivers but there are also aggressive drivers and there is no visible guidance reminding them that there are risks. Additionally at number 80 I believe vulnerable adults and young children are cared for. Each day a minibus collects a young man and another younger child and takes them to their daily activities. The bus reverses at this point where guidance disappears. Safety is prejudiced by the poor visibility and apparent lack

of speed limits. When I asked a young delivery driver to slow down he told me he could drive at any speed.

I was pleased therefore to read in the papers which support the application that historically the local authorities accepted a duty to maintain ALL of Colders Lane but they have simply never done so. The same applies to the linked footpath on Popley Butts which is so rough that I fell yesterday morning when walking my dog. I have the marks on my face to show it is risky even to walk on. I don't plan to take issue with Kirklees about that but it could have been much worse. U suggest that if usage is to be further increased consideration of safety requires that all of Colders Lane be maintained as metalled highway and it should be done before any amendment is put in place.

There is already need for a low speed limit and some traffic calming measures including humps or something that prevents the crazy speeds we see regularly. Please confirm that the council will finally accept responsibility for safety of the residents at last maintained the whole of the track and providing safety guidance. I would then feel able to support the application”.

69. The consultee has not provided any evidence to counter the Definitive Map Officers research evaluation states. To the contrary, the consultee accepts the historical evidence and states: *“I accept that on the face of the facts in relation to the road’s history it may be legally possible to amend the map” and “I was pleased therefore to read in the papers which support the application that historically the local authorities accepted a duty to maintain ALL of Colders Lane...”.*

70. The consultee has therefore withheld their support to the preliminary consultation proposal, not on the facts of the case, but primarily focused on safety and maintenance, which are not matters that can be taken into consideration when deciding to make a Definitive Map Modification Order. Nevertheless, the Definitive Map Officer contacted colleagues at Highways Registry, Highways Maintenance, and Highways Safety regarding the future

maintenance of the metalled section of Colders Lane from Colders Drive to No. 67 Colders Lane.

71. The section was inspected on 2nd June 2023 and patching order (Reference: 00250334) has now been raised for maintenance repairs to be undertaken in the future to bring this section in line, or as best as possible within a limited budget, to the rest of Colders Lane that is a vehicular highway maintained at public expense. The order has been added to a programme of works to be delivered by colleagues in Highways Operations within a six-month timeframe, weather permitting. However, Highways Operations have been informed to hold this repair order until the completion of the two exclusive new build properties (see Planning Application Ref: [2022/91423](#)) has been confirmed to ensure that the maintenance work is long-lasting and not damaged by HGVs leading to and from the development. Additionally, Highway Maintenance records have been updated to ensure that this section of Colders Lane is subject to a scheduled highway safety inspection at a suitable frequency and that any routine maintenance repairs requiring in accordance with the Councils risk based approach is delivered. The consultee has been informed of these decisions.

Members of Public

72. Four members of the public did not support the proposal within the preliminary consultation to change the recorded status of Colders Lane from Colders Drive to Popley Butts to anything higher than footpath status. Notably, the consultees predominantly comment on the bridleway application, rather than the officer's recommendation for a restricted byway, which indicates that they may have only read the public site notices and not read the accompanying consultation report provided online. Consequently, they may not be aware of the relevant historical evidence for vehicular highway status. The factors listed in these responses are very similar, on the basis of width and safety, and have therefore been grouped together.

Consultee Ref: 39

73. Consultee Ref: 39 responded to the consultation on the 6th June 2023 and stated:

"I wish to object to the proposal to change the section A to B on the map from a footpath to bridleway at Colders Lane, Meltham HD9 5NJ on safety grounds.

The width of the path at present will not allow people to pass without giving way in places. I am a regular user of the path and can assure you if you were going uphill towards Leygards Lane it would be intimidating to meet a horse or cycle coming down.

This is one of the few paths remaining out of Meltham, there are plenty of routes out of Meltham, there are plenty of routes out of Meltham for horses or cyclists to use".

Consultee Ref: 40

74. Consultee Ref: 40 responded on the 11th June 2023 and commented:

"I object to the above being a bridleway. The lane is not suitable, as a dog walker if I was to meet a horse and rider coming the other way I

would think this would be very dangerous. Not all horses are good around dogs and vice versa. This could result in the horse throwing the rider off. The lane is not wide enough in parts to get past a horse and rider safely. The lane is overgrown with brambles, it has trees along the route and has lots of rocks and tree routes, this would be a hazard for the horse. A lot of taxpayers money would need to be spent to make it more suitable and I feel this money would be better spent on other things. I have spoken with a local horse rider about this and she says there are only 3 or 4 horse riders in Meltham and she personally also feels the land is not suitable and she wouldn't take her horse up it".

Consultee Ref: 41

75. Consultee Ref: 41 also responded on the 11th June 2023, stating:

"I am writing to object to the proposal to change Colders Lane, Meltham from a footpath to a bridleway from A on the Map to B. Although it is a Lane it is in fact very narrow due to the growth of vegetation and particularly where the houses accessed from Wessenden Head Road back on to Colders Lane. It will be very dangerous for walkers using the Lane... as there would be little room for horses and walkers to pass safely

Similarly, there is no room for cyclists to safely pass walkers unless they throw themselves into the vegetation. This is particularly so as my experience of cyclists is they rarely give warning when coming from behind

In carrying out their investigations did the Public Rights of Way Dept. actually inspect Colders Lane?

For once give pedestrians preference over other possible users of the Lane".

76. In response to the Definitive Map Officers email regarding cutting back vegetation, described further below at paragraph 36, Consultee Ref: 41 further stated on the 13th June 2023:

“I have to say that I do not think that simply cutting back the vegetation to within the wall boundaries will be sufficient to enable safe passage for walkers. It will regrow and I doubt if Kirklees will keep the vegetation down on what would need to be, at a minimum, on a weekly basis during the Summer. To have a remote change of making the Lane safe as a bridleway all the vegetation between the walls will need to be removed and a new hard surface laid and maintained. Will Kirklees do this and if not why not? However the solution to this problem is most easily resolved by keeping Colders Lane as a footpath and as I said before putting the safety of walkers well ahead of the demands of equestrians and especially cyclists”.

77. The Definitive Map Officer confirmed that it is open to Kirklees Council to improve the surface of the Application Route under [section 99 of the Highways Act, 1980](#), but that would be a decision for the Highways Maintenance Team and Public Rights of Way Project Officers. The current surface condition is not a factor that can be taken into consideration when determining the historic public status of the Application Route.

Consultee Ref: 42

78. Consultee Ref: 42 provided an email on the 12th June 2023 with two photo attachments and a video of a bee in vegetation on the Application Route, which states:

“I am writing to object to the proposal to change Colders Lane, Meltham from a footpath to a bridleway from A on the Map to B.

... I can confirm that there would simply not be enough room to allow pedestrians, horse riders and cyclists to pass safely. In such circumstances I imagine that the pedestrian would feel obliged to move

into the undergrowth and we must consider those who are not steady on their feet, with small children etc; it would not be possible for two horses in opposing directions to pass at all in certain sections.

If there plans to widen the footpath, this would result in the removal of precious plan life where there is wonderful array of wild, native plant species encouraging birds and insects such as bumblebees. I can't see how this would be proportionate particularly at a time when conservation should be key and paramount. It may only be a tiny corner but it is nevertheless an important one as an ecosystem.

Ultimately, the footpath as it stands can't accommodate two pedestrians comfortably abreast therefore the addition of horses and bikes is not feasible. I have attached photos for your information".

Width & Safety

79. The five responses for Consultee Refs: 10, 39, 40, 41, and 42, are primarily focussed on safety and the available width of the Application Route. Consultee Ref: 2 also focuses on the narrowness of Colders Lane. As shown in photos 1-4 of **Figure 3**, there is overgrown vegetation along Colders Lane that narrows the available width and creates pinch points. However, as stated below at paragraph 92, the available width between the drystone walls varies between 2.5m and 9m. The Definitive Map Officer therefore contacted Public Rights of Way Project Officer colleagues on the 7th June 2023 regarding highway maintenance and clearing the vegetation. The Project Officers confirmed that they can conduct the initial cutback/clearing to the available required width along with the Environmental Rangers. In the long term, the Environmental Rangers don't have a specific list of annually planned preventative maintenance, but the Application Route could be added to the Area Rangers list of reactive vegetation cutbacks in the summer months.

80. The scheduled highway maintenance would improve the availability of the Application Route and reduce potential conflict between multiusers of a bridleway or restricted byway. Nevertheless, the Definitive Map Officer and

Planning Sub-Committee (Huddersfield Area) can only consider the documentary or user evidence to determine as to whether the Application Route already subsists as a highway of a status higher than public footpath to amend the Definitive Map and Statement. If so, then public use by cyclists and horse riders is 'by right'. Temporary circumstances such as overgrown vegetation cannot be taken into consideration.

81. The above consultees were each notified that the overgrown vegetation along the Application Route could be cut back to the required available width to improve accessibility for multiusers, if required. Additionally, they were made aware that biodiversity, safety, and suitability are not factors that can be taken into consideration when determining the status of the Application Route, as the Council is not creating a new public right of way. Rather, the Council is investigating and determining whether existing public rights of way already subsist but are not recorded. Consultee Refs: 40, 41, and 42 maintain their objection to any proposal to change the status of the Application Route. No follow up response has yet been received from the other consultees.

Consultee Ref: 43

82. Lastly, Consultee Ref: 43 submitted a letter on the 5th June 2023, which was received by the Definitive Map Officer on the 12th June 2023, and commented on historic and future maintenance, as well as safety. The letter states:

“Before any public meeting is arranged I sincerely hope a site meeting with relevant officers (Road Safety; Highways; Environment’ Legal) will take place.

A. As a resident at Popley Butts from 1964-2004 before moving up the old lane to Green House, during that time the lane was not maintained by Meltham Council and Kirklees never accepted liability work to the lane was left to householders, builders, utility companies and we paid our share to the upkeep when necessary. It remained much the same as today a pleasant footpath and haven for wildlife.

So which authority is actually responsible? For Colders Lane what proof of ownership do you have?

- B. Alterations will be costly, who will be responsible for future maintenance? Are the British Horse Society involved or is that hearsay? Are they prepared to meet all costs? The lane does not and will not meet bridleway requirements. Who will pay for re-routing the rain water flow which pours off Wessenden Head Road to follow its natural course down Colders Lane at times like a river. There are sewer + drainage systems essential to properties has anyone considered that?*
- C. Most important if this proposal is granted it will create a very unsafe environment for everyone. There are hidden dangers in the lane and obvious ones at the exit onto Leygards. This is a 60mph zone, no footpaths on a narrow road with blind spots from the brow of the hill approaching Wessenden Head Rd. Within yards of the exist from Colders Lane onto Leygards Lane there is a junction onto Wessenden Head Road, which is really not well marked and far too fast, Colders is a blind spot.*
- D. Unfortunately horses are unpredictable; not only are they put into a dangerous situation they would be part of a problem to public in general who would and have every right to enjoy the old lane. It is part of a system of old footpaths and not a public carriageway”.*

83. The Definitive Map Officer responded to Consultee Ref: 43 on the 12th June 2023 and addressed each of their points in turn. With regards to the site meeting between teams within Kirklees Council, the consultee was notified of the correspondence between Highways Registry, Highways Operations, Highways Safety, and Highway Maintenance Technicians, as discussed at paragraph 70. The consultee called the Definitive Map Officer on the 15th June 2023 and asserted that their objection at Point A is solely focused on the part of Colders Lane south of Popley Butts to Leygards Lane, the untarmacked section, which they knew as ‘the old lane’. The consultees recollection is consistent with the

List of Streets records from 1986 to 2023 that this was considered a public footpath but privately maintainable. However, it is not consistent with the 1960 Meltham UDC Minute, which accepted that the whole of Colders Lane, between Leygards Lane and Matthew Lane, was a road maintainable at public expense.

84. To answer Point B, the Definitive Map Officer confirmed that Kirklees Council will be responsible for maintaining Colders Lane, which will be addressed from either the Highways or Public Rights of Way teams and their respective budgets. Additionally, it was confirmed that the Schedule 14 Application made to the Council to record Colders Lane as a public bridleway on the Definitive Map and Statement was submitted on behalf of the Kirklees Bridleways Group and the British Horse Society. Consultee Ref: 43 was also notified that the relevant legislation, under section 53 of the Wildlife and Countryside Act 1981, does not permit suitability or safety to be taken into consideration when determining the status a route. Nevertheless, there may be scope in the future to improve signage in the area if necessary. Lastly, the consultee was informed of potential vegetation clearance to improve multiuser accessibility if required.

Consultation Evaluation

85. If a DMMO is made to record either a bridleway or restricted byway, it is likely to be objected to due to safety, suitability, and wildlife. The Planning Inspectorate would likely consider these factors to be 'other matters' and dismiss these objections as they cannot be taken into consideration when determining the status of the Application Route. None of the consultees dispute that Meltham UDC conducted vehicular highway maintenance to just south of Popley Butts.

86. However, the objections regarding status and evidence of past maintenance by a highway authority from Consultee Refs: 2 & 25 have merit and are applicable to the determination of the Application Route. Whilst the Definitive Map Officer has provided documentary evidence to counter their grounds of objection, if a DMMO is made, these objections will likely result in the DMMO being submitted to the Planning Inspectorate for determination via either written representations, public hearing, or public inquiry.

Next Steps & Timelines

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

Officer Recommendations & Reasons

Make a DMMO (Restricted Byway)

91. Based on an overall assessment of the documentary evidence, as discussed above under 'Research Evaluation', and in Appendix A, the Definitive Map Officer determines that, on the balance of probabilities, a section of the Application Route from Leygard's Lane to just south of Popley Butts, is a vehicular highway. As none of the exemptions found in section 67 of the Natural Environment and Rural Communities Act 2006 apply, the public right to use the way with mechanically propelled vehicular rights byway from Leygard's Lane to No. 67 Colders Lane has been extinguished. No evidence was presented during the informal consultation to rebut this conclusion.
92. The Definitive Map Officer therefore recommends that a Definitive Map Modification Order is made under sections 53(3)(c)(ii) and 53(3)(c)(iii) of the WCA, as set out in paragraph 13, which would delete the whole of Meltham Footpath No. 75 (as shown between Points A-B on Draft Map 1 in **Figure 8**) from Leygard's Lane to Colders Drive and add a restricted byway from Leygard's Lane to No. 67 Colders Lane (as shown between Points A-C on Draft Map 2 in **Figure 9**). The restricted byway would have a variable width between 2.5m and 9m, as shown shaded pink on Map 2. A restricted byway is defined by [Section 48 of the Countryside and Rights of Way Act, 2000](#), as a public right of way on foot, cycle, horseback, or leading a horse, and for vehicles other than MPVs.

Make a DMMO (Bridleway)

93. Only if members disagree with the recommendation to make a DMMO to record a restricted byway, which would essentially also determine that public use on horseback is 'as of right' rather than 'by right', the Definitive Map Officer determines that, on the balance of probabilities, a public bridleway subsists based on presumed dedication under section 31 of the 1980 Act. A DMMO should therefore be made under section 53(3)(c)(ii) of the WCA to delete the whole of Meltham Footpath No. 75 and record a public bridleway leading from Leygard's Lane to just south of Popley Butts (similarly between Points A-C in **Figure 8**) with a variable width between 2.5m

and 6m based on an average claimed width and taking into account vegetation, pinch points, and multi-users. If this recommendation is chosen, the Application Route will be re-surveyed and a DMMO map will be annotated to precisely show the location of specific widths.

DMMO Confirmation

94. As stated in the Councils [‘Rights of Way Improvement Plan \(2010 – 2020\)’](#) (‘ROWIP’), the public right of way network for cyclists and horse riders is poor and fragmented. Whilst specifically directed at bridleways, the ROWIP provides that a strategy is required to: “... *identify routes that should have been recorded as bridleways on the original Definitive Map and effect a programme to deal with this issue*”. A restricted byway is as accessible for cyclists and horse riders as a bridleway and correctly recording the public right of way on the Definitive Map and Statement would promote accessibility and connectivity. The action plan of the ROWIP also states (ID: DMS 9 at Page 74) that public rights of way that have been identified as been fully adopted as all-purpose carriage roads should be removed from the Definitive Map and Statement.

95. To meet the action plans of the ROWIP, the Definitive Map Officer therefore also recommends that, should the DMMO be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should actively support the confirmation of the DMMO by either written representations, public hearing, or public inquiry. Supporting confirmation of the DMMO would correctly record the restricted byway for use by the public on foot, horse, and cycle, and also delete the section of public footpath that is classed as an ordinary vehicular highway.

Figure 8: Draft Map 1 - Meltham Footpath No. 75 Recommended to be Deleted (A-B)

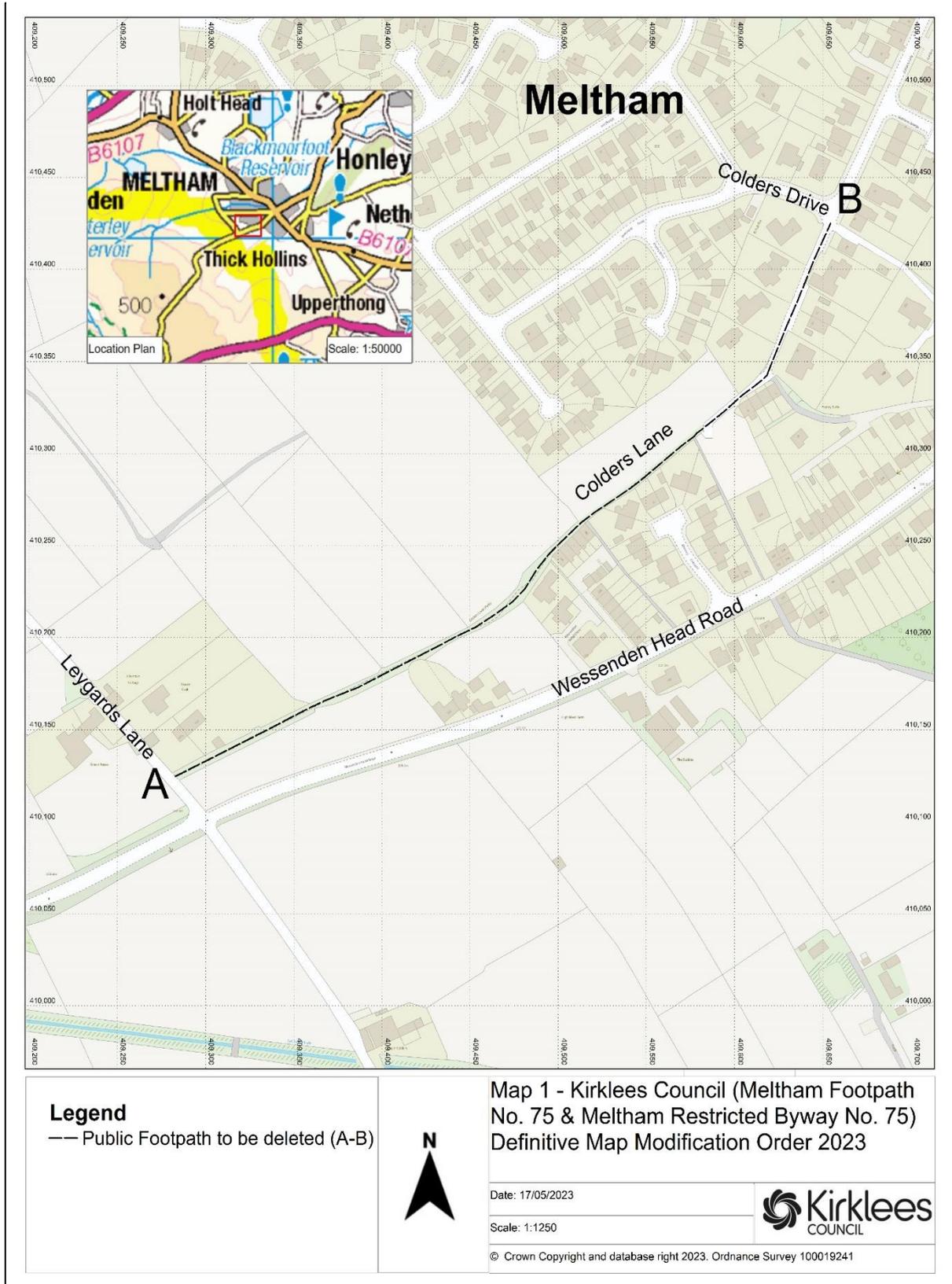
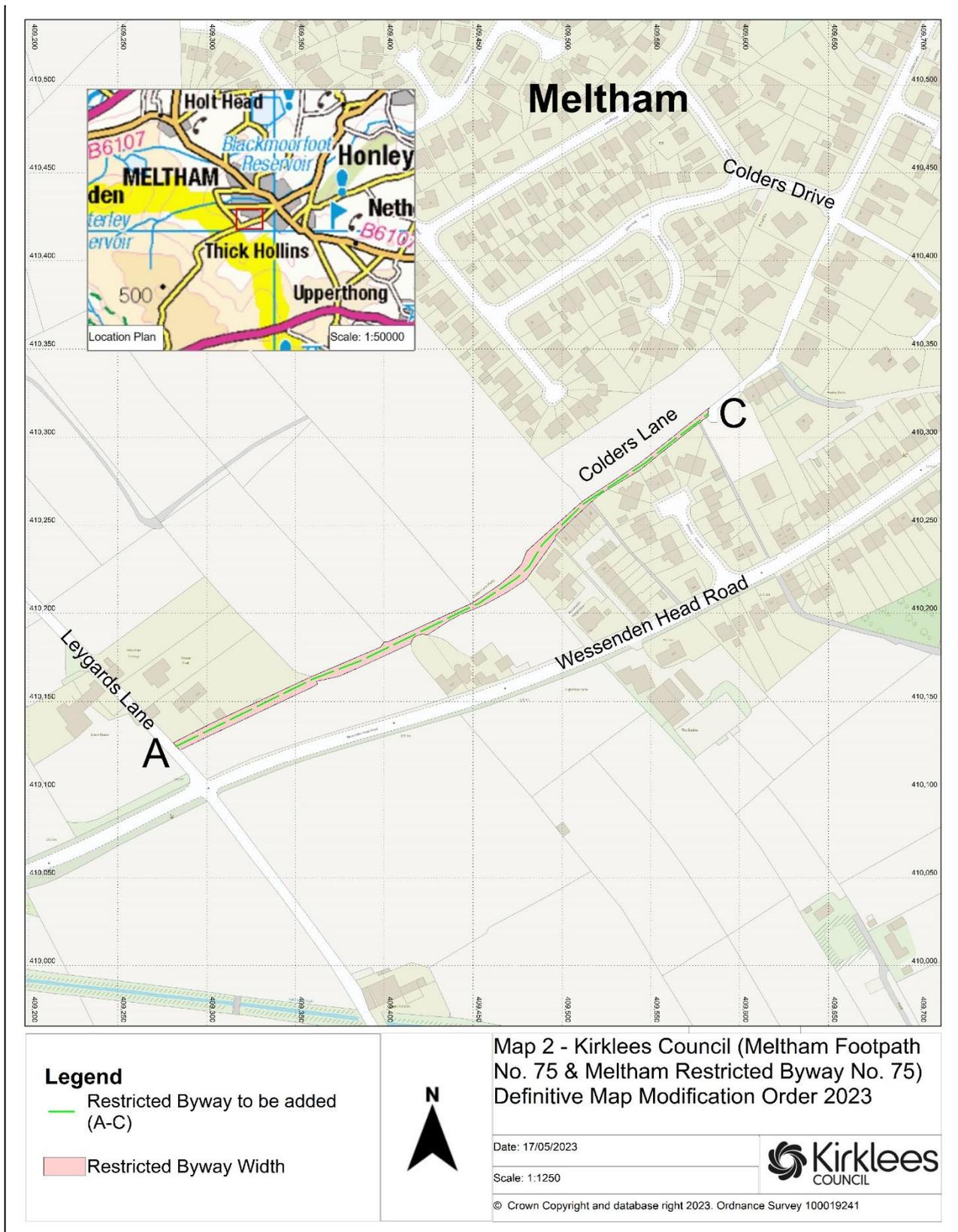


Figure 9: Draft Map 2 - Restricted Byway Recommended to be Added (A-C)



Contact Officer

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

Background Papers and History of Decisions

97. This report is accompanied by the following appendices:

- Appendix A (Guidance to Members)
- Appendix B (Definitive Map Officers Research Report)
- Appendix C (Petition Cabinet Report)

Service Director Responsible

98. Highways and Streetscene; Environment & Climate Change Directorate