



**DEFINITIVE MAP OFFICERS RESEARCH REPORT**

**S140206, Colders Lane, Meltham**

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## CONTENTS

LIST OF FIGURES .....	4
SUMMARY .....	6
CHARACTER OF CLAIMED ROUTE .....	10
STATUTORY PROVISIONS.....	13
DOCUMENTARY EVIDENCE .....	14
1797 PLAN OF MELTHAM .....	14
Background .....	14
Cadastral Maps and Inclosure .....	14
Evidential Weight.....	15
Analysis .....	16
1825 MELTHAM TO WESSENDEN HEAD TURNPIKE ACT .....	19
Background .....	19
The 1824 Turnpike Plan, Book of Reference, and 1825 Meltham Turnpike Act.....	19
Analysis .....	20
.....	23
THE MELTHAM INCLOSURE ACTS OF 1817 & 1830.....	24
Background .....	24
Highways, Private Roads & Maintenance.....	26
Lords of the Manor .....	28
Allotment of Land .....	29
Summary of Meltham Inclosure Acts .....	30
THE MELTHAM INCLOSURE AWARD 1832 .....	32
Background .....	32
Public Roads and Maintenance .....	33
Private Carriage Roads, Public Bridleways, and Maintenance .....	33
Colders Lane Bottom Road & Colders Lane Top Road .....	37
.....	40
.....	40
Colders Lane Ownership .....	41
Evaluation.....	43
1836 COMPLETION OF THE WESSENDEN TURNPIKE ROAD.....	45
LOCAL GOVERNMENT MINUTES (1885 – 1894) .....	50



Background .....	50
Analysis .....	55
Evaluation.....	57
ORDNANCE SURVEY MAPS.....	59
1903 1:50,000 Cassini Revised Series Map.....	60
1923 Half Inch MoT Road Map.....	64
1932 War Office OS One-Inch Popular Series .....	68
.....	69
THE FINANCE (1909-10) ACT, 1910 .....	70
Background .....	70
Valuation Reference Maps .....	75
Evaluation.....	77
THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949 .....	79
Background .....	79
Analysis .....	80
1938-1972 MELTHAM URBAN DISTRICT COUNCIL MINUTES .....	83
Background .....	83
Analysis .....	84
1974-1985 HIGHWAYS REGISTRY & DEFINITIVE MAP AND STATEMENT .....	100
.....	105
DISCUSSION .....	106
NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT, 2006 .....	112
FIRST RECOMMENDATION .....	114
USER EVIDENCE .....	115
Statutory Provision .....	115
Brought into Question.....	115
Evidence of Use .....	116
As of Right.....	119
Lack of Intention to Dedicate .....	119
SECOND RECOMMENDATION .....	122
CONCLUSION.....	123
REFERENCES.....	124
CASES .....	126



## LIST OF FIGURES

Figure 1: Extract of Current Definitive Map and statement covering area of Colders Lane, Meltham.....	7
<i>Figure 2: S140206 Application Map.....</i>	<i>9</i>
Figure 3: Photos taken on 07/12/2022 showing the physical characteristics of the Claimed Route.....	12
Figure 4: Extracts of 'Plans of the Inclosed LANDS within the Township of Meltham in the Parish of Almondsbury' 1797 by John Johnson (Source: West Yorkshire Archive Service, Kirklees: DD/WBE/pl/1).....	18
Figure 5: 1824 Turnpike Plan (Source: West Riding Archives: : West Yorkshire Archives: QE/20/2/100) .....	22
Figure 6: Extract of 1824 Meltham Proposed Turnpike Road & 1892 OS 1:2500 Map (Source: West Yorkshire Archives: QE/20/2/100).....	23
Figure 7: The Six Key Stages directed by the 1817 Meltham Inclosure Act to be followed in the subsequent Inclosure Award.....	31
Figure 8: Extract of The 1832 Meltham Inclosure Map showing the extension of the Colders Lane (Source: West Yorkshire Archive Service, Kirklees: QD5/3/Vol 3/8) .....	40
Figure 9: Extracts of The 1832 Meltham Inclosure Award showing the award of two private carriage and occupation roads: Colders Lane Bottom Road and Colders Lane Top Road (Source: West Yorkshire Archive Service, Kirklees: WYK1978/2/MT1832) ..	40
Figure 10: Greenwoods 1828 Map of the County of York (Source: NLS Maps) .....	49
Figure 11: Newspaper Article from Halifax Express 02/10/1834 showing entire Turnpike Road was not unmade and not complete (Source: British Newspaper Archive).....	49
Figure 12: Chronological List of Council Minutes Relating to Colders Lane between 1885 to 1895 Collated from Meltham Local Urban Sanitary District Board Council Minutes (Source: West Riding Archives: KMT26/1/1/6) and British Newspaper Archive .....	52
Figure 13: Close-up extract of 1903 Cassini Historical Map Revised New Series Sheffield & Huddersfield (Source: Schedule Application).....	63



Figure 14: Revised 1905- 1911. One-Inch England & Wales. Sheet 36 - Manchester, Stockport, and Oldham (Source: NLS Maps).....	67
Figure 15: 1923 Half Inch MoT OS Map (Source: NLS Maps).....	67
Figure 16: 1932 OS One-Inch England and Wales Popular Series (Source: NLS Maps) .....	69
Figure 17: IR 134/6/77 1910 Valuation Reference Map (Source: The National Archives) .....	76
Figure 18: Extract of Provisional Definitive Map & Statement, 1956 Meltham UDC Objection, and Extract of First Definitive Map.....	82
Figure 19: Chronological List of Council Minutes Relating to Colders Lane between 1938 to 1972 Collated from Meltham Urban District Council Minutes (Source: West Riding Archives: KMT26) .....	93
Figure 20: List of Street Handover & Definitive Map Records (Top: 1974 Meltham UDC to WYCC Handover; Middle – 1977 WYCC Definitive Map; Bottom: 1986 WYCC to Kirklees Council Handover .....	105
Table 1: List of Routes Awarded in 1832 Meltham Inclosure Award organised by status and width (see the Story of Meltham by Richard Orton for basic description of routes)	35
Table 2: List of 1832 Meltham Inclosure Award Maintenance Clauses .....	36
Table 3: Schematic Chronological History of Colders Lane.....	110

## SUMMARY

1. In October 2018, the Council received a Schedule 14 application (reference [S14206](#)) under the 1981 Act, to record Colders Lane, Meltham, on the Definitive Map and Statement as a Public Bridleway ('the Claimed Route'). The application provided user and documentary evidence in support of the claim.
2. The 1797 Plan of Meltham shows the Claimed Route as a private occupation way leading through ancient enclosures between two areas of common land, which is confirmed by 1824 Wessenden Head Turnpike Plan and Book of Reference. The private way was extended at either end by two private carriage and occupation roads created in the 1832 Meltham Inclosure Award.
3. However, in 1894, Meltham Urban District Council accepted Counsel advice that Colders Lane was a highway maintainable at public expense, on the basis that it was a thoroughfare used by public carts prior to the 1835 Highways Act. This was repeated in 1960, when the District Council once again accepted legal advice that the section of Colders Lane between Matthew Lane and Leygards Lane was a street maintainable at public expense.
4. In both instances, the highway authority maintained parts of Colders Lane to vehicular standard, without the need for statutory adoption. In the 1960s, the Council metalled the section of the Claimed Route between Colders Drive and Popley Butts to vehicular standard and conducted negotiations with adjacent landowners to widen the route for two cars to pass side by side. Again, in the 1980s, the Council acquired land for highway purposes to widen parts of the Claimed Route.
5. Based on an overall assessment, the Council determine that, on the balance of probabilities, a section of the Claimed Route from Leygards 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, mechanically propelled vehicular rights have been extinguished and this section should be added to the Definitive Map and Statement as a restricted byway and the footpath record should be deleted.

# APPLICATION

6. On 26<sup>th</sup> 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

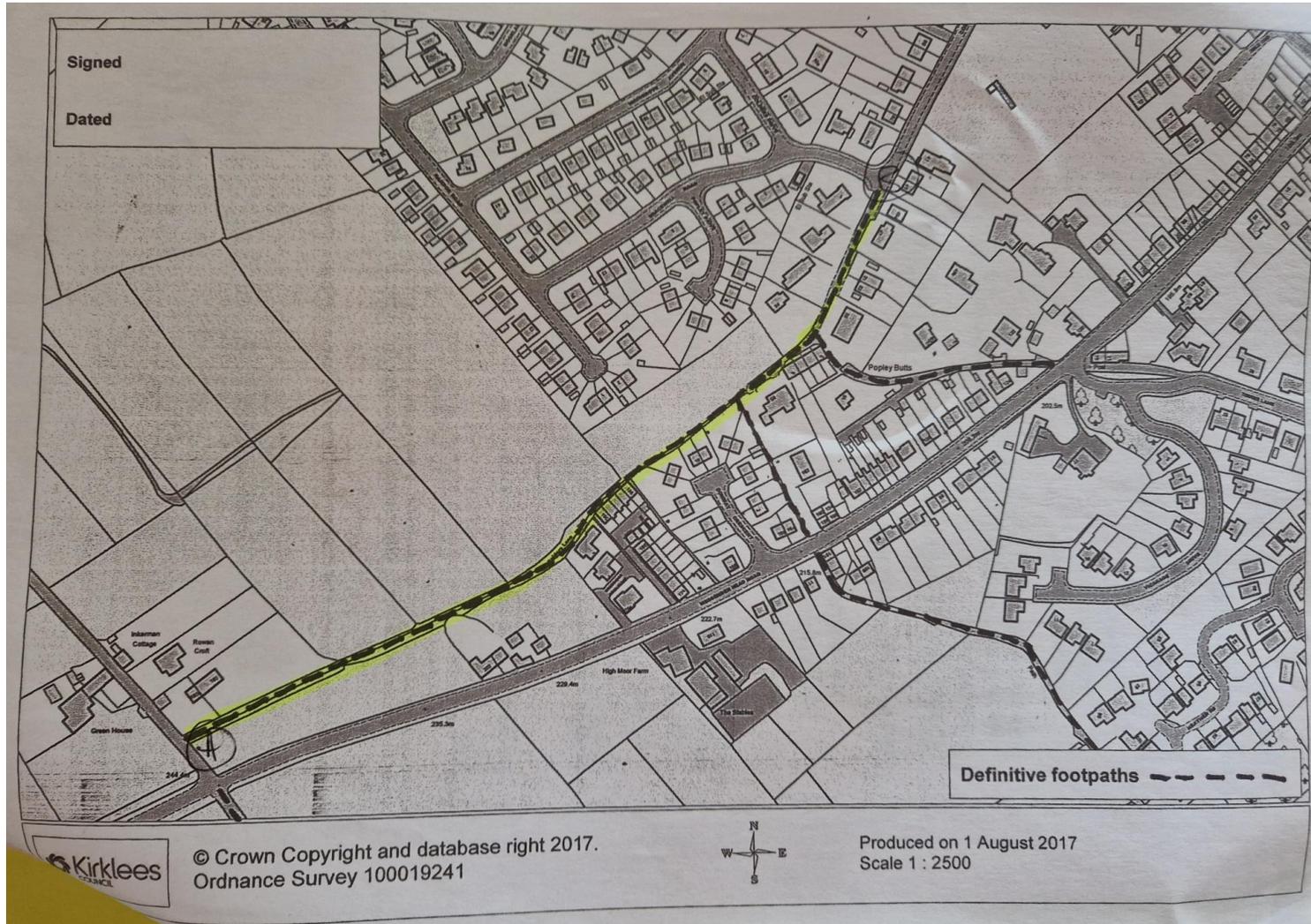
7. The application, as shown highlighted yellow between Points A-B in Figure 2, seeks to upgrade Meltham Footpath No. 75, Colders Lane, Meltham, to a public

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.

8. The application was properly made 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.

**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 CLAIMED ROUTE

9. The Claimed Route is an old historic way known as Colders Lane, which is currently recorded on the Definitive Map and Statement as Meltham Footpath No. 75. It is located in the town and civil parish of Meltham, within the Metropolitan Borough of Kirklees, in West Riding of Yorkshire. It is approximately 4.5 miles southwest of Huddersfield in the Holme Valley below Wessenden Moor, near the Peak District National Park. The Claimed Route connects the countryside to the south-west urban area of Meltham. It leads between two termini: Leygards Lane, which is a rural public carriageway and shown at Point A on the Application Map in Figure 2, and Photo 1 in Figure 3; and the section of Colders Lane that is public carriageway, which is also shown at Point B on the Application Map, and 10 in Figure 3. Point A is approximately 246m above sea level, whereas Point B is about 200m above sea level. The Claimed therefore descends or ascends, depending on the direction of travel, by 46m over a distance of approximately 495m.
10. At its junction with Leygards Lane, there is various street furniture. Firstly, there is a street name plate stating 'Colders Lane', which is accompanied by a metal pole and waymark stating, 'Public Footpath'. Attached to the pole is also a sign stating, 'Horse Riding Prohibited', as shown in Photo 2. It then leads east-north-easterly for some 212m between ancient dry-stone walls enclosures, demarking the adjacent field boundaries of agricultural land. The walls vary between approximately 1 to 2m above the surface of the Claimed Route and are sometimes covered by overgrown vegetation, particularly on the northern side. They enclosed walls have a variable width distance from one another and there is a well-trodden meandering central soil path about 40cm wide.
11. At times the surface of the path is made up of stones and, due to the elevation change, is stepped. The remaining width of Colders Lane is covered by grass, bushes, and some trees. The way then changes direction to north-easterly for some 185m and the southern side of the Claimed Route is then abutted by one property from Wessenden Head Close, directly abutted by five properties from Wessenden Head Road, and then the gardens of five homes at Conway Crescent. At this point the surface of the Claimed Route has utility apparatus belonging to Yorkshire Water.

12. Meltham Footpath No. 45 then joins Claimed Route on its southern side, east of No. 12 Conway Crescent, as shown in Figure 1, and there are two staggered metal structures at that junction and on the opposite side a wooden pole with footpath waymarks, as shown in Photo 5. From this point onwards the surface of the Claimed Route transitions from earth to tarmac and it then passes by a new residential development (Planning Ref: 2022/91423). This denotes the start of the privately maintained carriageway section of Colders Lane that is routinely used by mechanically propelled vehicles to access residential properties but has not been adopted by the Council as a highway maintainable at public expense. The surface is uneven with potholes and several layers inhomogeneous tarmac, as shown in Photos 7, 8, and 9; the product of numerous repair jobs. At this point there are parked cars on Colders Lane fronting the properties of No. 2 to No. 8 Popley Butts; the latter is abutted by Meltham Footpath No. 76 to the east, as shown in Figure 1, which also joins the Claimed Route on its southern side.

13. The Claimed Route then turns north-north-easterly for some 90m between residential properties until it joins public carriageway at the junction with Colders Drive, at which point there is a Public Footpath waymark sign on a metal pole. The Claimed Route therefore has two defined physical characteristics: a residential urban section giving rise to a tarmac surface; and an agricultural countryside environment with a more natural soil-based surface with vegetation.

**Figure 3: Photos taken on 07/12/2022 showing the physical characteristics of the Claimed 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: Surface of Claimed Route is earth and stone with a meandering well-trodden central path. It is enclosed either side by dry-stone walls of the adjacent field enclosures.*



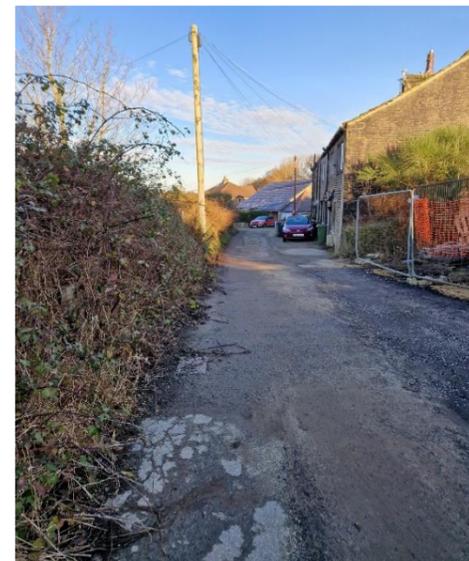
*Photo 4: Claimed Route is directly abutted by the properties of Wessenden Head Road and there is dense vegetation on its northern side. Utility apparatus are also present along the route.*



*Photo 5: Claimed 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 Claimed Route, towards Point B on the Application Map in Figure 2 (Planning Ref: 2022/91423)*



*Photo 7: Surface of Claimed 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: Claimed 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 Claimed Route opposite Colders Drive with the Public Footpath waymark. Note that there is no horse riding prohibited sign.*

## STATUTORY PROVISIONS

14. [Schedule 14, Paragraph 3 of the WCA](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. The need for a Definitive Map Modification Order ('DMMO') to be considered when evidence is submitted in support of a claim that a public right of way which is already shown on the Definitive Map and Statement is submitted to additional public rights is dealt with under section 53(2)(b) and 53(c) of the WCA. Section 53(3)(c)(ii) of the WCA provides that the Council has a duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

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

15. Under the provisions of section 53(3)(c)(ii) there is no 'reasonably alleged to subsist' test, as is found in subsection 53(3)(c)(i). Therefore, the test by which the available evidence is to be considered is the civil standard of proof; that is, the balance of probabilities. The evidence submitted with the Schedule 14 application, and all research conducted by the Council, will therefore be judged to such standard of proof.

## MAIN ISSUES

16. Following a representation by Kirklees Bridleway Group, the Council have been directed by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S140206, no later than 30<sup>th</sup> November 2023. As the evidence submitted with the application is both historical and user to 'upgrade' a public footpath, the application will be determined based on the balance of probabilities, firstly by analysing documentary evidence to assess whether a public bridleway, or higher public rights, subsists along the Claimed Route by presumed dedication at common law. If not, then it will be necessary to consider the user evidence under statute and common law.

## DOCUMENTARY EVIDENCE

### 1797 PLAN OF MELTHAM

#### Background

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

#### Cadastral Maps and Inclosure

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

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

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

### **Evidential Weight**

20. The 1797 Plan of Meltham provides an accurate and impartial pre-Inclosure cadastre of the landscape and road system that existed in 1797; in contrast to the 1832 Inclosure Plan, which depicts the landscape being imposed. The map does not contain a key or annotation to indicate whether a road was considered to have public or private status. Valuably however, the map recorded ancient piecemeal enclosures; probably to determine the commutation of tithe dues based on ownership and acreage (Oliver & Kain, 1998). Piecemeal enclosure was the incremental engrossing of land, generally involving a negotiated agreement involving a single landowner or tenant purchasing or swapping strips in the open fields in order to consolidate their holdings in one place (O'Donnell, 2015). The long process of piecemeal enclosure created a landscape of small, irregularly shaped contiguous fields (Spooner, 2016). Field shapes can provide a vital clue

as to the chronological development of the landscape as, typically, the spatial arrangement of pre-existing roads determined the relative size, shape, arrangement and structure of the later piecemeal enclosures (Chapman & Seeliger, 1997; Forman *et al.* 2003).

## Analysis

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

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

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

23. On the other hand, the Claimed Route is shown with reference to the adjacent enclosures, prior to the Parliamentary Inclosure of the land in the area. The Claimed Route is not annotated with a name or that it leads to a settlement, but it is shown as leading between two commons. In contrast to Marsden Road, there

aren't any parallel dashed lines depicting the continuation of the Claimed Route over the common land. Historically, a common would be the residual land in the ownership of the Lord of the Manor and only specific people, known as commoners, would have a right of common, which is an incorporeal hereditament with an entitlement to use the land or take resources from it for mutual benefit, such as the product of the soil or to graze animals (Woolrych, 1850). Parliamentary Inclosure typically converted that right of common into the equivalent stake of allotted freehold land (i.e. private property) for the improvement of agricultural productivity. The common land would therefore have only been accessible to the commoners by license; they would not have been a destination for the general public.

24. The term 'private' defines a restriction upon who can use the particular way. It can therefore be inferred from the 1797 Plan of Meltham that the primary use of Colders Lane at that time was as a private occupation road for the use of the adjacent owners and occupiers of ancient inclosed land within the township of Meltham with right of common. The plan also shows the properties of Nos. 54, 56, 58, and 60 of Colders Lane at the southeast corner of the ancient enclosure referenced No. 62 and coloured in orange. These still exist to this day and are included on the [National List for England as Grade II listed buildings](#) and have been dated to 1764, indicating that Colders Lane is of great antiquity and will have existed some time before the 1797 Plan of Meltham was produced.

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



## 1825 MELTHAM TO WESSENDEN HEAD TURNPIKE ACT

### Background

25. In 1824, '*A Plan of a proposed Turnpike Road from the Swan Inn, Meltham, in the Parish of Almondbury in the County of York, to a point on the Commons or Moors at or near Wessenden Head, in the Township of Marsden or Austonley, where it joins the Turnpike Road from Shepley Lane Head to Greenfield*' ('the 1824 Turnpike Plan') was made by John Ratcliffe, Land Surveyor, Leeds, which was accompanied by a Book of Reference, as shown in Figure 5 and Figure 6. Subsequently, the Meltham and Wessenden Head Turnpike Trust ('the Turnpike Trust') organisation was created by Act of Parliament in 1825, entitled: "*An Act for making and maintaining a Turnpike Road from Meltham in the Parish of Almonbury, to the Greenfield and Shepley Lane Head Turnpike Road, near Wessenden Head, in the Township of Austonley, in the West Riding of the County of York*" ([the 1825 Meltham Turnpike Act](#)). The Turnpike Trust were empowered to create and finance the new road improvement by levying tolls on road users. The Turnpike Trust were also vested with various powers as a highway authority (Bogart, 2005).

### The 1824 Turnpike Plan, Book of Reference, and 1825 Meltham Turnpike Act

26. The 1824 Turnpike Plan shows the route of the proposed Turnpike Road coloured red, leading from the centre of Meltham, east of Swan Inn, and opposite the Lockwood to Meltham Turnpike Road, which is annotated as leading '*To Huddersfield*' and with residential buildings on either side. The proposed route then leads south-westerly through ancient enclosures and a lane, which are referenced with numbers between 1 to 17 and coloured in several shades: green, blue, light yellow, orange, and peach. Notable properties are shown and annotated, such as '*Colders*' and '*Popley Butts*'. The lane dissected by the proposed Turnpike Road is the Claimed Route; it is uncoloured but has the reference number 12. The proposed route then leads across '*Meltham Common*', which is referenced number 18, and passes '*High Moor End*', '*Fleike Moss*' before crossing the parish boundaries of Marsden and Austonely to join the Greenfield and Shepley Lane Head Turnpike Road at Wessenden Head.

27. The plan is accompanied by a Book of Reference, which details the names of the owners, occupiers, and closes for each parcel of land affected by the proposed Turnpike Road. Reference number 12 is named as '*Colders Lane a Public Occupation Road*'. The Turnpike Road was not built as shown on the 1824 Turnpike Plan. Section 7 of the subsequent 1825 Meltham Turnpike Act included a provision that the Turnpike Trustees could deviate from the proposed plan by up to 100 yards distance. The route is now known as Wessenden Head Road, which is never more than approximately 90 yards from the claimed route, showing that this provision was exercised.

### **Analysis**

28. It is important to note that the principal objective of the 1824 Turnpike Plan and the Book of Reference was to show the line of the proposed new road and identify the owners and occupiers of land to be purchased by the Turnpike Trustees. Firstly, the 1824 Turnpike Plan corroborates with the 1797 Plan of Meltham that the ancient Colders Lane led between ancient enclosures to Meltham Common, which was a vast expanse of unenclosed common and moorland. The term '*occupation road*' in the description of Colders Lane equates to a road serving as a means of access to particular parcels of land for the benefit of adjacent owners and occupiers. The general public do not have any right of way over them (Hunter, 1896).

29. The term 'public' does imply the existence of a public right of way. However, as stated in paragraph 23, it is more than likely that those people situate in Meltham with a right of common, would also have exercised a right of way over the ancient Colders Lane to reach the common land. The termini of the route ends in private land and no one can use it besides the inhabitants of Meltham township with a right of common. Consequently, as it is in essence a right of property owned by many persons in the locality, or classes of persons, it could be appropriate to group the collective right as the 'public' for the purposes of the documents produced by the surveyor for the proposed Turnpike Road, rather than listing every occupier of

the ancient Colders Lane; meaning it is not in any exclusive individual occupation. Alternatively, the term 'Public' could have been used in error. Section 8 of the 1825 Meltham Turnpike Act anticipated errors in the Book of Reference and included a provision that "*Lands marked in the Plan may be used, notwithstanding Errors in the Book of Reference*".

30. Regardless, based on the character of the way and the respective definitions of a highway and a private way at the time the documents were produced, see paragraph 21, the ancient Colders Lane could not be classed as a highway. Certainly, the term 'Public Occupation Road' is not a way, term, or definition, which exists in law. Whilst a highway may co-exist along a private occupation road, it must still have a public destination. The most plausible explanation for the term 'Public Occupation Road' in the 1824 Meltham Turnpike Book of Reference is a private road used by multiple owners and occupiers of adjacent land and those with rights of common, representing the local population, and therefore a singular owner/occupier in possession of the Claimed Route could not be identified for the purposes of purchase and compensation.

31. The anticipation of errors in the Book of Reference by the 1825 Meltham Turnpike Act undermines the credibility of the information shown in the document, as does the fact that the Turnpike Road was not built exactly as shown on the 1824 Turnpike Plan. If it was, the status and ownership of the Claimed Route may have required greater scrutiny. The description of Colders Lane as an occupation road is wholly consistent with the narrative provided by the preceding evidence that the Claimed Route was a private road.

Figure 5: 1824 Turnpike Plan (Source: West Riding Archives: : [West Yorkshire Archives: QE/20/2/100](#))

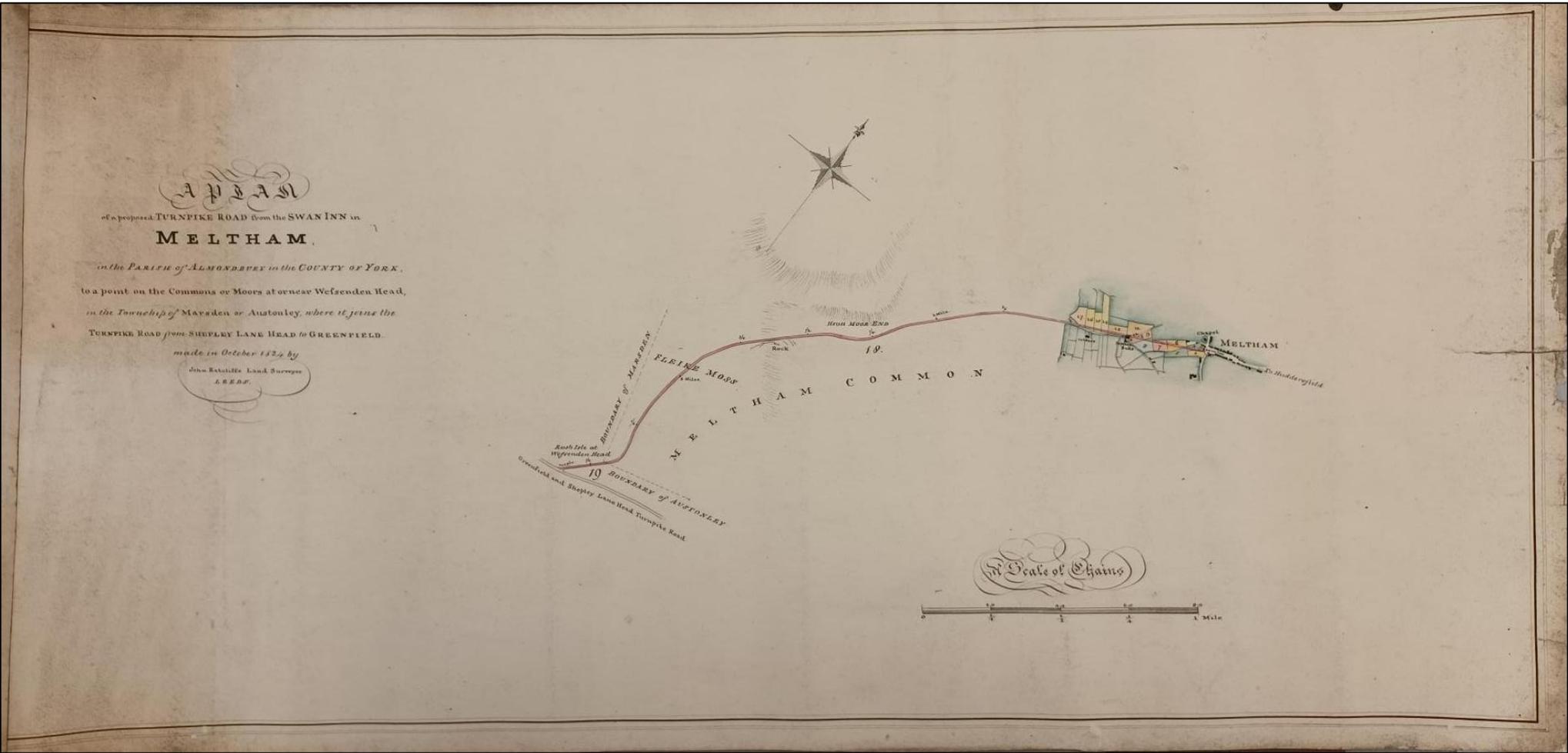
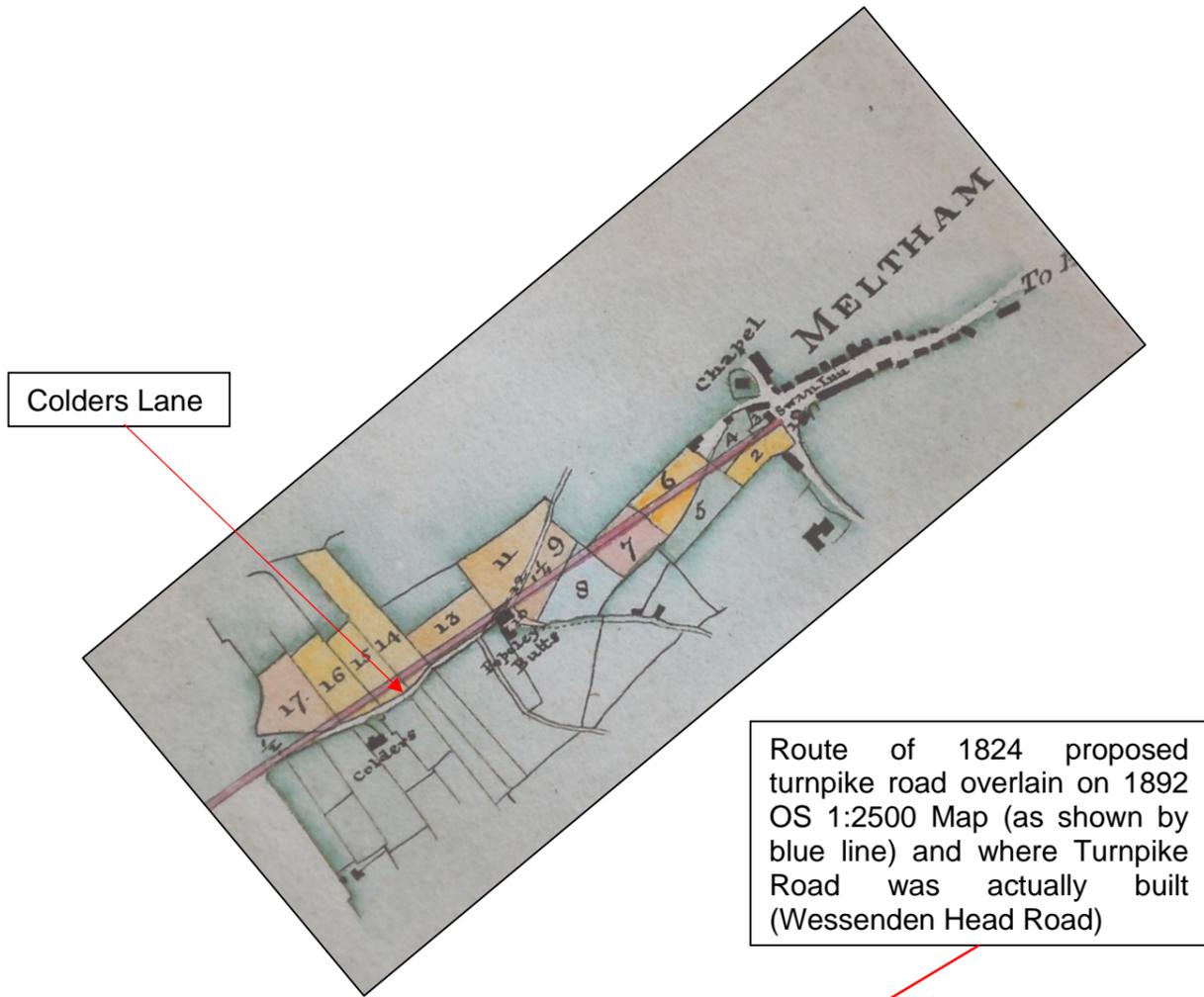
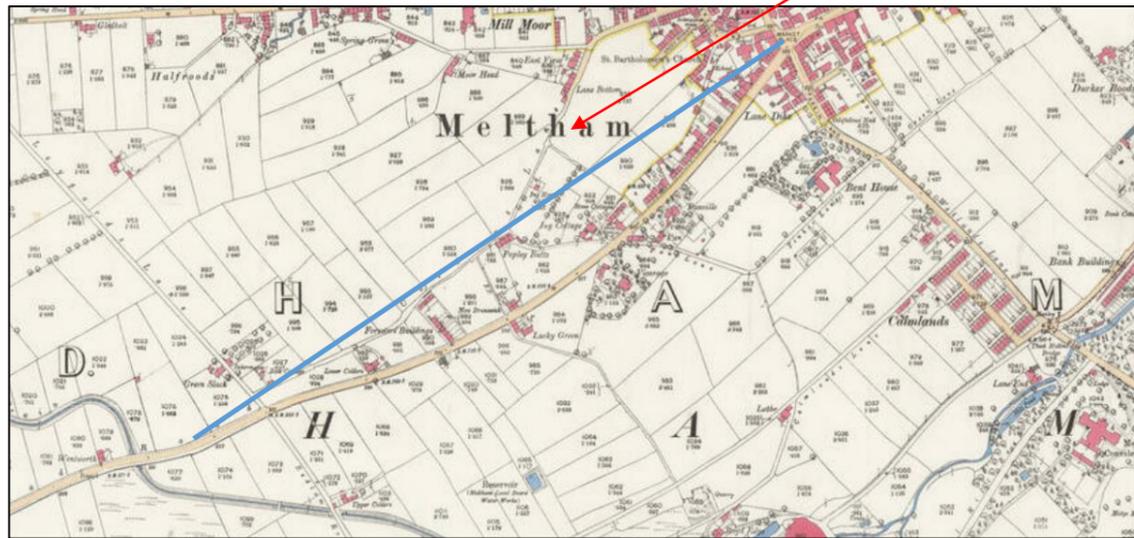


Figure 6: Extract of 1824 Meltham Proposed Turnpike Road & 1892 OS 1:2500 Map  
 (Source: [West Yorkshire Archives: QE/20/2/100](#))



Route of 1824 proposed turnpike road overlain on 1892 OS 1:2500 Map (as shown by blue line) and where Turnpike Road was actually built (Wessenden Head Road)



No on the Plan	Owners Names	Occupiers	Names of Closes
7	Taylor John	Himself	Croft
8	Tykes Adam	John Watson	Ing
9	Taylor Elizabeth & Taylor Aaron, the Widow & Heir at Law of David Taylor deceased	John Booth	P of Ing
10	Matthew and Robert Hirst	Themselves	House Laith Stable Yke
11	John Bower	David Taylor	West Field
12	Colders Lane a Public Occupation Road		
13	John Bower	David Taylor	South Field
14	Thomas Shaw	Wm Woodhead	Field

## THE MELTHAM INCLOSURE ACTS OF 1817 & 1830

### Background

32. It is no coincidence that the historic evidence available to assist determining the status of the Claimed Route at this period of time derive from Inclosure and Turnpike documents, as the two processes were intertwined. Investments in turnpikes enhanced the prospects for subsequent investment in enclosure, and vice versa, by making it more feasible to increase the profitability and modernisation of agricultural land (Albert, 1972). At Meltham, the actual enclosure process was a lengthy, expensive, and bitterly contested affair (Reed, 1984).
33. After ascertaining the ancient enclosures, as shown on the 1796 Plan of Meltham, '*An Act for inclosing Lands in the Manor of Meltham, in the Parish of Almondbury, in the West Riding of the County of York*' was made in 1817 ([the 1817 Meltham Inclosure Act](#)). The preamble to the 1817 Inclosure Act recites: '*An act for consolidating in One Act certain provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*' ('the 1801 General Inclosure Act'). Together, the two Acts of Parliament were the enabling legislation establishing the procedural framework for the appointment of commissioners, surveyors, and provided the commissioners with all necessary powers for setting out, dividing, and allotting the area in question.
34. The preamble lists John Beaumont, Joseph Green Armytage, Thomas Shaw, Joseph Eastwood and Timothy Dyson as the Lords of the Manor of Meltham and owners of the soil of the commons and waste grounds, coal mines, lands, and minerals. As they also owned lands, tenements, and hereditaments within the Manor of Meltham, along with James Miller, Phillip Tinker, James Taylor, and Joseph Brooke, and 'others', they were entitled to Rights of Common. The proprietors sought to increase the economical productivity of these lands by consolidating their rights and interests into allotted freehold land; this was the sole purpose of the parliamentary Inclosure.
35. The 1817 Meltham Inclosure Act appointed William Rayner and John Buckley as commissioners for executing the two Acts, as well an umpire, Thomas Gee, for

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

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

commissioners, Daniel Tuke as umpire, and James Bulmer, William Porter, and John Johnson as surveyors, unless anyone of them should require a replacement within the stated two years.

### **Highways, Private Roads & Maintenance**

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

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

38. The Acts, in effect, define four categories of way, namely public carriage roads, private carriage roads, bridleways and footpaths. The commissioners were clearly vested with extensive powers to substantially improve the highway and private ways network to maximise the productivity of the land, and for the convenience of the public and local proprietors. However, they had no authority over Turnpike Roads and importantly, there was no deeming provision that automatically extinguished pre-Inclosure highways or public ways within ancient inclosures. Therefore, any ancient lanes would continue unless the commissioners actively

sought to modify them. The new route network was to be accurately drawn and described on the accompanying Inclosure Map. Section 9 of the 1801 General Inclosure Act states that once the new public roads were brought up to a standard fit for the travelling public and carriages, they were to be maintained in the same manner as existing public carriage roads were by law to be amended and repaired.

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

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

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

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

### **Lords of the Manor**

43. In lieu of and as full compensation for the rights, shares, and interests in the soil, mines, metals, and minerals (except coal mines) of the land to commons, moors, and waste grounds, the 1817 Meltham Inclosure Act stated that the Lords of the Manor of Meltham were awarded and allotted one-sixteenth part of the remaining land to be inclosed. The allotment was to be divided among the Lords of the Manor

in proportion to their respective shares of the Manor along with all underlying mines, stones, veins, metals, minerals, and beds or seams of coal associated with each division; discharging the other Lords of the Manor from all rights of claims to the land. The same applied to any allotments made by virtue of the 1817 Meltham Inclosure Act they were entitled to as proprietors of messuages, cottages, lands, and grounds, with rights of common.

### **Allotment of Land**

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

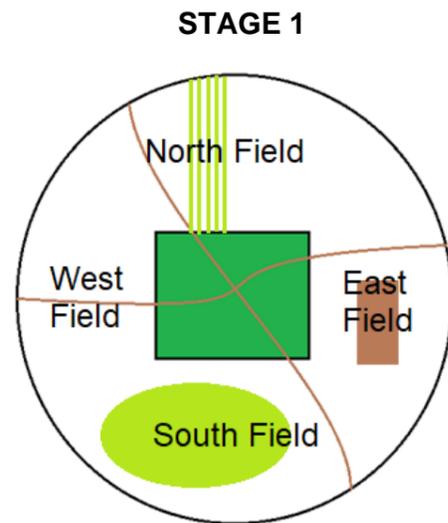
45. Additionally, by virtue of Section 11 of the 1801 General Inclosure Act, the proprietors of lands and grounds adjacent private or public ways were vested with the grass and herbage arising, up to the crown of the road. However, the Lords of the Manor retained the rights, title, and interests to the mines, beds, or seams of coal under the residual land to be allotted and had the power to work mines and extract the coal under the allotments, ways, roads, and passages, provided they pay the respective owners double the annual value of the land, levelled the roads, and returned the land to a proper state of cultivation. The Act included a general saving to the King, his heirs and successors, and all and every other person(s), bodies politic or corporate, of all such rights and interests in respect of the lands

and grounds directed to be inclosed, to which they not been assigned allotments of land or compensated by virtue of the Act.

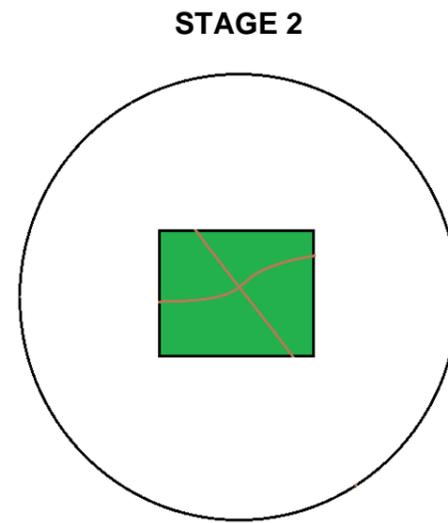
### **Summary of Meltham Inclosure Acts**

46. The wording of the Inclosure Acts is clear that, except the general saving clause and rights reserved to the Lords of the Manor, the objective and intention of the legislation was to extinguish all rights of ownership and rights of common over the lands and grounds to be divided and inclosed, creating a blank canvas in which the equivalent compensatory allotment of property could be provided. The 1817 Meltham Inclosure Act provides a strict order in which the land was to be divided and inclosed. The allotment of land to the Lords of the Manor and the residual land to proprietors is contemplated as distinct from the improvement and provision of public and private ways, watercourses, watering places, and stone quarries, which were to be set out first, as shown in Figure 7.

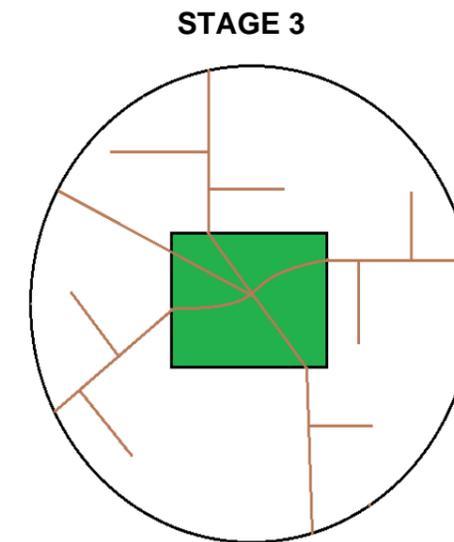
Figure 7: The Six Key Stages directed by the 1817 Meltham Inclosure Act to be followed in the subsequent Inclosure Award



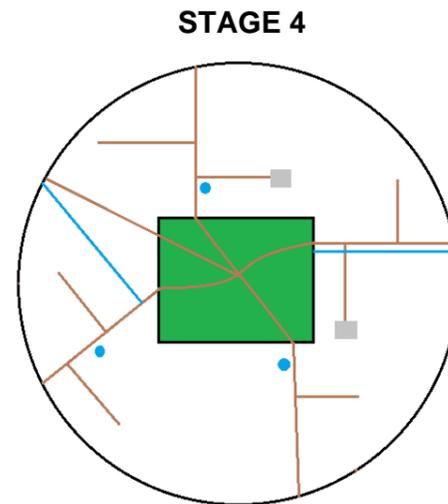
Pre-Inclosure arrangement of common land as open fields used for communal arable and pastoral farming around the ancient enclosed settlement. For centuries it formed the basis of the country's economy, but it was no longer profitable during the agricultural and industrial revolution.



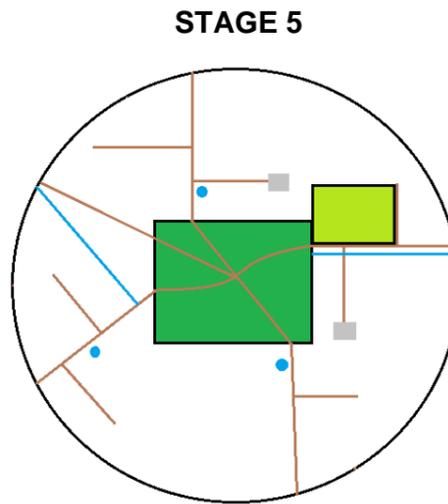
The 1817 Meltham Inclosure Act created a blank canvas by extinguishing all rights, interests, shares, and ownership in the common land in order to improve the land arrangement and yield greater profits from agriculture by intensive farming; leaving the ancient inclosed land (dark green) and existing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



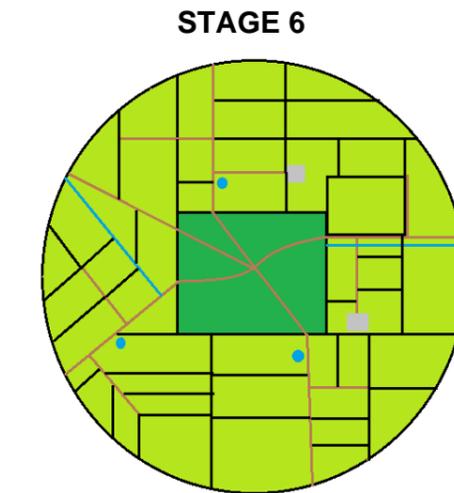
Whilst the existing public and private way network could be preserved, the Act envisages their improvement. This could be to make them more convenient to the travelling public, easier to maintain, and provide greater access to the numerous allotments to be awarded (roads shown by brown lines).



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



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



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

## THE MELTHAM INCLOSURE AWARD 1832

### Background

47. The 1832 Meltham Inclosure Award was signed and sealed by Frederick Robert Jones and James Taylor, the Commissioners, and enrolled at Wakefield Register Officer in 1832. The oaths and affirmations of William Rayner & John Buckley (commissioners), Thomas Gee (previous umpire), Joseph Taylor & Frederick Robert Jones (the commissioners), Daniel Tuke (umpire), and Joseph Hall (surveyor), who replaced John Johnston following his resignation, are affixed to the Inclosure Award, legally verifying the contents therein. Another oath of John Walker for the status of umpire was also included, but he does not appear to have been sworn in. The preamble recites the relevant Acts of Parliament, setting out the statutory purpose of the Award and the powers vested in the commissioners. The Award states that the survey, admeasurement, and plan of the land to be inclosed had been made by the surveyor and reduced into writing, which was made, published and declared by the commissioners as their award, order, and determination.
48. The 1832 Meltham Inclosure Award is a written transcription of the accompanying large-scale cadastre map titled: '*Plan on the Manor of Meltham in the Parish of Almondbury in the County of York*', which was drawn by Joseph Hall ('the 1832 Meltham Inclosure Map') and signed by the two commissioners: James Taylor and Frederick Robert Jones. The 1832 Meltham Inclosure Map shows the ancient enclosures coloured in blue/green and names the respective proprietors. Some buildings are annotated with their names, but all are shown with dashed grey colouring. Watercourses and watering places are coloured in blue. Existing and new roads, whether public or private, are coloured in sienna but only the new routes are named along with their defined width. Finally, all parcels allotted by the award as freehold land are uncoloured, but their extents are defined by black lines, includes the area side in acres, roods, and perches, and provides the name of the new proprietors. Some parcels of land were too small to provide such information and instead include a reference number that corresponds to a list on the map that shows '*allotments sold*' and '*allotments to proprietors*'.

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

### **Public Roads and Maintenance**

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

### **Private Carriage Roads, Public Bridleways, and Maintenance**

51. On the other hand, access to various buildings and new allotments was required. Under the heading 'Private Carriage Roads', the 1832 Meltham Inclosure Award created thirty-eight private carriage roads in through and upon the lands and grounds to be inclosed, with each of varying widths between 10 and 35 feet. Two of the routes were awarded with co-existing public bridleway status. They were named and awarded as shown in Table 1. A declaration at the end of the awarding of private carriage roads states that the routes were for the sole of exclusive use of owners and occupiers of land adjacent each respective route. The maintenance was directed to be at the general expense of the owners or occupiers based on a rate of assessment, as detailed in Table 2.

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

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

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

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

**Table 2: List of 1832 Meltham Inclosure Award Maintenance Clauses**

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

### **Colders Lane Bottom Road & Colders Lane Top Road**

54. The 1832 Meltham Inclosure Award created two private carriage and occupation roads, one called Colders Lane Bottom Road at 30ft wide, the other called Colders Lane Top Road at 18ft wide, as shown in Figure 8 and Figure 9. The two routes extended from either end of a pre-existing ancient route, known as Colders Lane, to join a public carriage road known as Mill Moor Road at the eastern end, and a private carriage road, known as Green Slack Road, at the western end:

*“One other private carriage and occupation road of the width of thirty feet, as and where the same is now staked and set out, branching out of the Mill Moor Road, on the south side thereof, at the east end of a dwellinghouse at Green’s End, the property of Joseph Eastwood, and extending thence in a southward direction for about twenty yards and then in a westward direction to Colders Lane Bottom, and which we call ‘The Colders Lane Bottom Road”*

*“One other private carriage and occupation road of the width of eighteen feet, as and where the same is now staked and set out, commencing at the top of Colders Lane, and extending thence in a westward direction on the north side of old Inclosures to the Green Slack Road, and which we call ‘The Colders Lane Top Road”.*

55. The 1832 Meltham Inclosure Award confirms the analysis of the 1797 Plan of Meltham, which showed Colders Lane as, on the balance of probabilities, a private occupation road bounded by ancient piecemeal enclosures leading between two commons. Colders Lane Bottom Road and Colders Lane Top Road (‘the two routes’) were awarded over part of the land that composed the two commons to create the entirety of claimed route as it is recognised today. The two routes were awarded as private carriage and occupation roads, and it is therefore reasonable to assume that the ancient Colders Lane was analogous to that status, as a private carriage road. Furthermore, the 1832 Meltham Inclosure Award converted all rights of common to freehold allotted land, which would extinguish any right of way for those persons along the ancient Colders Lane to Meltham Common and the

*terminus ad quem* had changed from a communal right to a private carriage and occupation road for the sole use of the adjacent owners and occupiers. Any inference from the term 'public' in the 1824 Turnpike Book of Reference of a public right of way is therefore, on the balance of probabilities, eliminated.

56. The fact that neither a public footpath nor public bridleway was awarded over the two routes to coexist with the private rights, strongly suggests that the ancient Colders Lane was not a public right of way; providing further evidence that the description of a '*Public Occupation Road*' in the 1824 Meltham Turnpike Book of Reference was anomalous. The corroborative evidence shared between the 1797 Plan of Meltham, and the Inclosure documents significantly outweigh any counterarguments, and it is incontrovertible that the status of the Claimed Route was as a private carriage road at the time the 1832 Meltham Inclosure Award was published, declared, and enrolled.

57. The applicant provided an extract of an article from the Rights of Way Law Review written by Colin Seymour and titled: 'The Thoroughfare Principle'. In particular, the applicant quotes the following:

*"Countless law reports, ancient and modern, start from the premise that if the way was a through route, linking two public roads, that was itself a highway. The thoroughfare principle was fully understood at the time and nothing has changed since to alter the law – therefore it still holds good that: 'Every (ancient) thoroughfare is a highway if it connects to another highway or leads to the next town'".*

58. The thoroughfare principle is incompatible with highway law and the creation of public rights of way, especially the proposition that: "*All private roads which were thoroughfares were highways*". The theory would impose any thoroughfare private road created prior to the 1835 Highways Act as automatically becoming a burden on the inhabitants at large to repair as a highway, would remove a landowner's ability to challenge or show a lack of intention to dedicate, would eliminate the need to show sufficient quality and quantity of public user and the tripartite 'as of right' test, and disregard the essential element to an express dedication that the public consent to it via public use.

59. The theory can be disproven using the article cited by the author: [R v Richards \(1800\)](#). The Court held that the non-repair of an awarded private road did not concern the public and was not an indictable offence because it was not of a public nature, even though it communicated at both ends with the 'kings highway'. For a private thoroughfare to become a highway, there must be sufficient public use, without interference, no lack of intention to dedicate, or some acts of repair by the inhabitants at large, to show that a private occupation road created at Inclosure was subsequently dedicated as a highway [R v Horley \(1863\)](#).
60. Following Inclosure, the Claimed Route now formed a potential thoroughfare between highways for the first time in its history. Colders Lane connected to Mill Moor Road, an awarded public carriageway, and Green Slacks Road, an awarded private carriageway. However, the junction with Green Slacks Road was approximately only 15 metres from the Wessenden Head Turnpike Road. Therefore, the Claimed Route could either stay a private carriage and occupation road, or the public may subsequently acquire a coexisting right of way via express or presumed dedication by the owner of the soil at common law, whoever that may be. The West Riding Definitive Map and Statement, which is conclusive evidence of the public rights of way shown on it, reveals that the public did indeed use Colders Lane as a thoroughfare, but on foot only. Nonetheless, the later documentary sources must be consulted and analysed to show that no higher public rights subsist over the Claimed Route. If so, this would mean the Definitive Map and Statement needs to be updated, but more importantly, it would render the user evidence 'by right'.

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

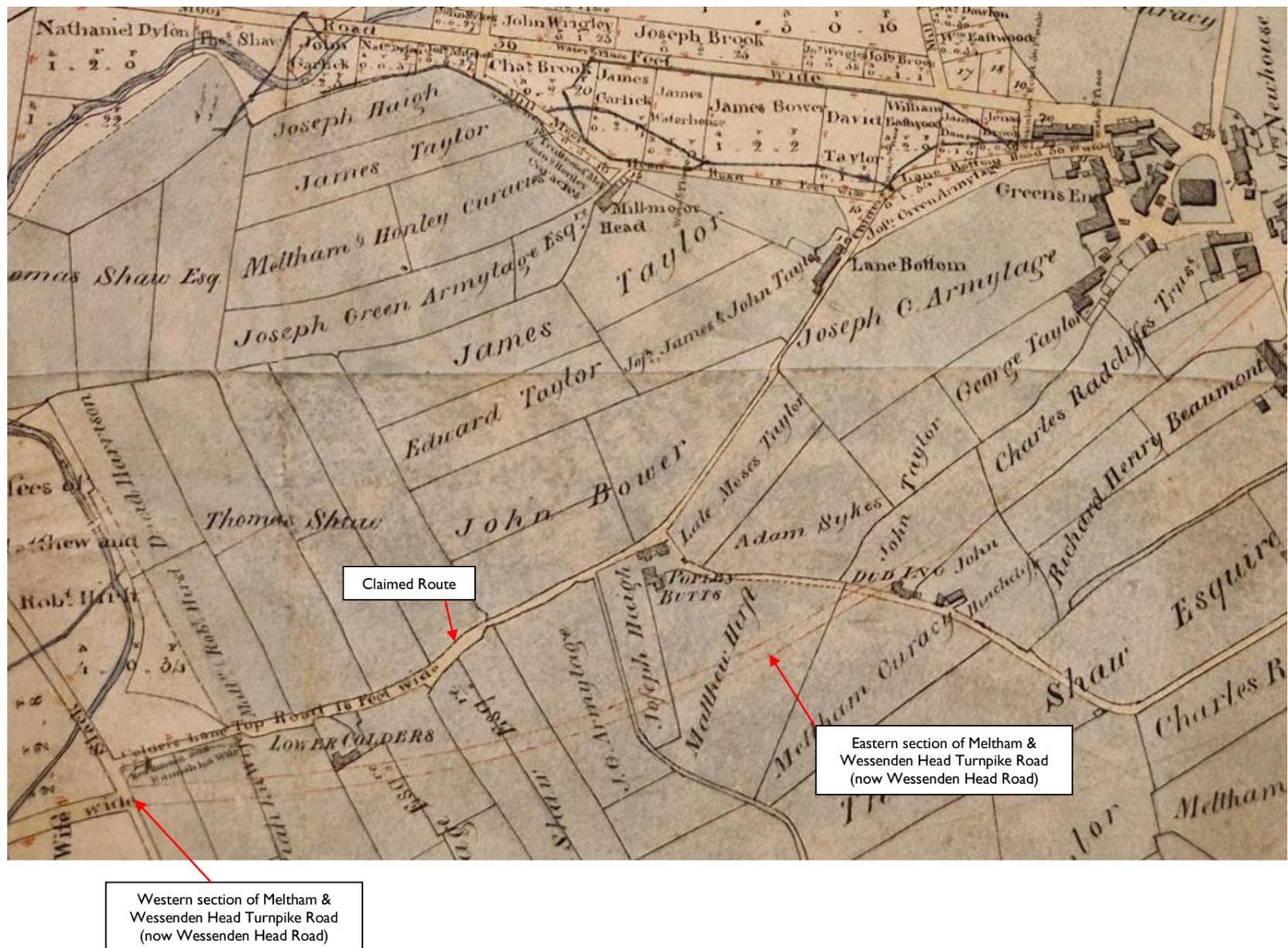


Figure 9: Extracts of The 1832 Meltham Inclosure Award showing the award of two private carriage and occupation roads: Colders Lane Bottom Road and Colders Lane Top Road (Source: [West Yorkshire Archive Service, Kirklees: WYK1978/2/MT1832](#))

...and we will call "The Colders Lane Road" One other private carriage and occupation road of the width of thirty feet as and called Lane the same is now staked and set out beginning out of the mill on the road Bottom on the south side thereof at the east end of a dwellinghouse at Greens End Road the property of Joseph Eastwood and extending thence in a southerly direction for about twenty yards and then in a westerly direction to Colders Lane Bottom and which we call "The Colders Lane Bottom

**Road** One other Private Carriage and occupation road of the width of eighteen feet as and called the same is now staked and set out commencing at the top of Colders Lane and extending thence in a westerly direction on the north side of old furrows to the Greens End Strambles which we call "The Colders Lane Top Road" One

## Colders Lane Ownership

61. After awarding the various roads and ways, the Award subsequently chronicles the allotment of freehold land. Firstly, the Lords of the Manors of Meltham were awarded their share of the ancient freehold of the commons, moors and waste grounds: Joseph Armitage Esquire (110a:2r:21p); Richard Henry Beaumont Esquire (252a:3r:21p), (191a:2r:10p); Timothy Dyson (20a:2r:24p); Joseph Eastwood (80a:2r:34p); The Trustees of the Late Charles Radcliffe Esquire (117a:1r:15p); and Thomas Shaw (156a:0r:0p), (0a:0r:1p), (0a:1:38p). The residual land was then awarded. Colders Lane Bottom Road was bounded by four newly inclosed land parcels allotted to: Jonas Brook (0a:0r:31p); William Eastwood (0a:2r:0p); James Dawson (0a:1r:0p); and James Taylor (0a:0r:6p). Additionally, the land adjacent Colders Lane Top Road was awarded to: The Heirs Devisees or Assigns of the late Matthew Hirst and Robert Hirst (4a:0r:34p); and Benjamin Holyroyd and Hannah (his wife) (0a:0r:9p). Ever adjoining allotment was to be divided from the two private carriage and occupation roads by a fence.
62. What is clear from the above is that ownership of Colders Lane Bottom Road and Colders Lane Top Road was not directly set out in the 1832 Meltham Inclosure Award. This is due to the way the 1801 General Inclosure Act and 1817 Meltham Inclosure Act set out the stages for inclosing the land: highways and private ways were set out first, the Lords of the Manor were then compensated with land, followed by the award of the residual commons, moors, and waste grounds, which were fenced from adjoining private and public roads. The Lords of the Manor of Meltham were fully compensated for their interest in the soil of the two private carriage and occupation roads with the provision of their allotments and therefore the freehold of the soil cannot remain in the former owners. However, the soil was not allotted to new proprietors as each allotment abutted the two routes with a fence.
63. Land ownership therefore relies on the rebuttable *ad medium filum* presumption that the soil of a public or private road belongs to the owners of the adjoining lands (Holmes v Bellingham, 1859; Smith v Howden 1863). However, the ordinary legal presumption that the soil of a public or private road is the property of the adjoining allotments is founded on the supposition that the road originally passed over the

lands of the owners, and therefore still belongs, to the adjacent owners. The presumption is initially rebutted in this case as each allotment was described as adjoining Colders Lane Top Road & Colders Lane Bottom Road, which were to be divided from the adjacent land by fences (*Rex v The Inhabitants of Edmonton*, 1831). The grass and herbage growing, arising and renewing upon all public and private roads in the Manor of Meltham was allotted to the adjacent proprietors of allotments. The vesting did not include actual possession of the ground below the surface, therefore, no initial presumption arises that the soil itself of the two private occupation roads belongs to the adjacent allotments as the proprietor of the profits (*Rex v The Inhabitants of Hatfield*, 1835).

64. In *Poole v Huskinson* (1843), ownership of the soil in a road set out under an Inclosure Act was held to remain in the Lord of the Manor, for that portion of the soil only is taken from him for which he received compensation and which is allotted to others. The decision was supported *obiter dicta* in *R v The Inhabitants of East Mark Tithing* (1848), even though it was argued that the soil of the roads was vested in the Crown by default, as the Lord of the Manor was compensated for their interest. However, the land law issue turns full circle in *Haigh v West* (1893), in which Lindley LJ stated:

*“Having regard to the fact that the allotments to the lord and to the owners of the common field and to the commoners were expressly made in satisfaction of all their respective former rights not expressly reserved to them, the soil in the land set out would not remain in its former owners, but would prima facie pass to the allottees of the land abutting on the lane; the allotments on each side extending to the middle of the land, although described as bounded by the land”.*

65. This principle was applied in *Neaverson v Peterborough Rural District Council* (1901), which similarly held that the soil of land set out as a private road in pursuance of an Inclosure Act was vested in the allottees of the adjacent land *ad medium filum* when the Inclosure Award provided for the allotment of land to the Lord of the Manor in compensation for all rights of soil. Most recently, this dictum in the *Haigh v West* (1893) was applied in [Gott v Lawrence & Ors \[2016\] EWHC](#)

[68 \(Ch\)](#) at paragraph 32. Therefore, in the absence of anyone with a better claim to the title, and as the land ownership issue abhors a vacuum, it would appear that the *ad medium filum* presumption automatically applies to fill the void and the new proprietors of freehold land adjacent Colders Lane Bottom Road and Colders Lane Top Road owned the soil up to the middle of the private carriage and occupation roads.

66. The original Colders Lane was an ancient route that communicated between two commons, as shown on the 1797 Plan of Meltham and now corroborated by the 1832 Meltham Inclosure Award. The *ad medium filum* presumption that the soil of the route belongs to the adjacent ancient enclosures is either considerably narrowed, weakened, or rebutted as the evidence of ownership which applied to the larger common lands, applied to the waste grounds and soil of the private road that communicated with them (Davidson, 1860). Therefore, prior to Inclosure, the property of the road, subject to the easement, continued in the Lords of the Manor as it did not form part of the lands and grounds to be inclosed and they were not compensated for their freehold.

67. Nevertheless, at any time after the 1832 Meltham Inclosure Award, the adjoining landowners could obtain the freehold to the soil by adverse possession or the Lords of the Manor could retain the proprietorship through evidence of acts of ownership. Ownership of the Claimed Route is therefore potentially complex, hence why the *ad medium filum* presumption is relied upon. It is entirely possible that the soil of the ancient Colders Lane remained in the Lords of the Manor whilst the soil of the new private carriage and occupation roads that extended it was owned by the freeholders of adjacent allotments up to its centre.

## Evaluation

68. The 1832 Meltham Inclosure Award created two new private carriage and occupation roads, known as Colders Lane Bottom Road and Colders Lane Top Road, that extended a pre-existing private occupation road. The new private roads were for the sole use of the owners and occupiers of adjacent lands, who had the right of herbage and ownership of the roads up to their centres and were to be

privately maintained by a rate of assessment. The ancient Colders Lane must have had a status analogous to that of the two private roads that extended it, which is supported by the analysis of the 1796 Plan of Meltham, but its ownership may have remained in the Lords of the Manor. There was no public right of way of any kind over the claimed route at this period of time. Nevertheless, this would not preclude the way from becoming a highway through the subsequent acquisition of public rights by dedication.

## 1836 COMPLETION OF THE WESSENDEN TURNPIKE ROAD

69. Section 17 of the 1817 Meltham Inclosure Act did not give the Commissioners vested powers over Turnpike Roads. The 1832 Meltham Inclosure Map, Figure 8, shows the western section of the Wessenden Head Turnpike Road, from the west of ancient inclosures and Green Slack Road to the Greenfield and Shepley Head Turnpike Road, as a 45ft wide road with land awarded either side of it. On the other hand, the 1832 Meltham Inclosure Map shows the section of the new Turnpike Road from Meltham town centre to just south of Colders Lane Top Road, part of the Claimed Route, as not yet constructed. Instead, the projected line is traced onto the Inclosure Map through the ancient inclosures. In a PINs Decision dated 26 May 1999 (Ref: FPS/Z4718/7/13), the Planning Inspectorate similarly noted:

*(20) "The westerly section of the Wessenden Head Road turnpike (from the Meltham boundary to Green Slack Road) had been built under an Act of 1825/26. It is shown on the Inclosure Plan. The easterly section leading to the town centre had not been built at the time of the Award, but its projected line is also shown on the Inclosure Plan. This poses a question. How, at the time of the Award, did the public travelling from Meltham gain access to the turnpike? They must have used part of the linking private carriage road network".*

*(54.4) "The public must have used awarded private carriage roads to reach the western section of the turnpike road. This is factually correct. Whether they would have used a more northerly part of the network which included a section of public carriage road and a private carriage road which is today a public vehicular carriageway (Leygards Lane), or whether the Order footpaths had been used as well or instead, must remain a matter for conjecture..."*

70. The most natural progression to and from the western section of Turnpike Road to Meltham town centre, until the Turnpike Road was complete, was via Colders Lane. The Claimed Route extended in a similar north-easterly/south westerly direction and was approximately only 15m north of the termini of the western section of Turnpike Road. It is therefore possible that Colders Lane was used by the public immediately prior to and after the 1832 Meltham Inclosure Award.

Furthermore, in a Facebook group called 'Meltham History', a member of the public posted on 8<sup>th</sup> July 2020: "*My gran once told me that Colders Lane, which passes the back of what was once her house, was the main route from Meltham to Manchester...*". Additionally, in 1834, it was stated: "*The village of Mossley is a place of considerable manufacturing consequence. The new road between Manchester and Huddersfield, through Meltham and Greenfield, passes through the village*" (Parsons, 1834). However, to infer such presumed dedication at common law over the Claimed Route, the subsequent documentary evidence will need to be analysed for public use and/or expenditure.

71. The 1832 Meltham Inclosure Map contrasts with Greenwoods 'Map of the County of York', which was first published in 1817 based on an actual survey between 1815 and 1817. The map was updated in 1827 and 1828 and published again on 21st April 1828 by Henry Teesdale & Co. The document therefore predates the 1832 Meltham Inclosure Map by 4 years. The purpose of the map was for the benefit of the nobility, gentry, and clergy of Yorkshire. The map included a reference legend for the topography shown on the landscape. 'Turnpike Roads' were shown coloured orange with black shading on their southern side, whereas 'Cross Roads' were shown uncoloured with two parallel solid lines. In contrast to the 1832 Meltham Inclosure Map, the entirety of the new Meltham and Wessenden Head Turnpike Road is shown as a Turnpike Road. Colders Lane is not shown at all, meaning it was not a route for use by the travelling public, which is consistent with all the preceding historical evidence. However, there is an issue with the depiction of the Meltham and Wessenden Turnpike Road on this map; the western end of the route neither matches the 1824 Turnpike Plan or the present layout of Wessenden Head Road as it is shown as terminating at 'Blake Gate'.

72. Whilst Greenwoods 1828 Map of the County of York is schematic due to its scale at one inch to the mile, the original survey was based on published data from the official Ordnance trigonometrical survey. The high degree of accuracy and detail from Greenwoods map therefore largely anticipates the standard of the Ordnance Survey, effectively pushing the date at which map reliability ceases to be a major issue, which in Yorkshire is between 40 and 50 years. However, Meltham was undergoing radical transformation at this period in time due to the Turnpike and

Inclosure processes. For instance, the map shows Mill Moor Road, which was to be awarded in 1832. The landscape in this area was therefore undergoing rapid changes by the Inclosure Commissioners. Given the apparent accuracy of the document, there must be a reason why the Turnpike is shown incorrectly.

73. A newspaper article, provided below, shows that the majority of the Turnpike Road was incomplete in 1834 and had only been marked and staked out. The work for completion was let out by ticket for 3 lots to form, drain, and stone the unmade part of the Turnpike Road commencing at the west or south-west end of the part of the road already made and leading westerly and southerly to join the Greenfield and Shepley Head Turnpike Road. This indicates that the eastern section of the Turnpike Road through the ancient inclosures may have actually been the first section to be completed and possibly up to the new awarded allotments abutting the Turnpike Road. Additionally, the Wessenden Head Turnpike Road was debated in the House of Commons in 1851 to renew the authorising Act of Parliament, and the [parliamentary papers record](#) (Great Britain House of Commons, 1851):

*“The above Act was obtained in 1825, but the funds then raised, amounting to 1,250l. being insufficient to complete the road, the works were suspended, and were not renewed until the year 1834, when further subscriptions were raised, and the road completed. The first toll receipt was in 1836... The plea that the road has only been opened since 1836, and “has not had a fair trial,” does not appear a sufficient reason to continue with this Trust”.*

74. The evidence establishes that the Wessenden Head Turnpike Road was not made and completed until 1836 and the route will have become a public road under section 88 of the General Turnpike Act 1822. The 1832 Meltham Inclosure Map and Greenwoods 1828 Map of the County of York are therefore misleading and anticipate the completion of the Meltham and Wessenden Head Turnpike Road: in the former case, so that the adjacent land can be allotted; and in the latter case, so that the map does not quickly become out of date. At best, the Turnpike Road was marked and staked out on the ground with partial works prior to 1834.

Consequently, there is no substantial evidence to infer, on the balance of probabilities, that the Claimed Route was used by the public to access the Turnpike Road prior to its completion, but it remains a possibility that may be confirmed by subsequent documentary evidence.

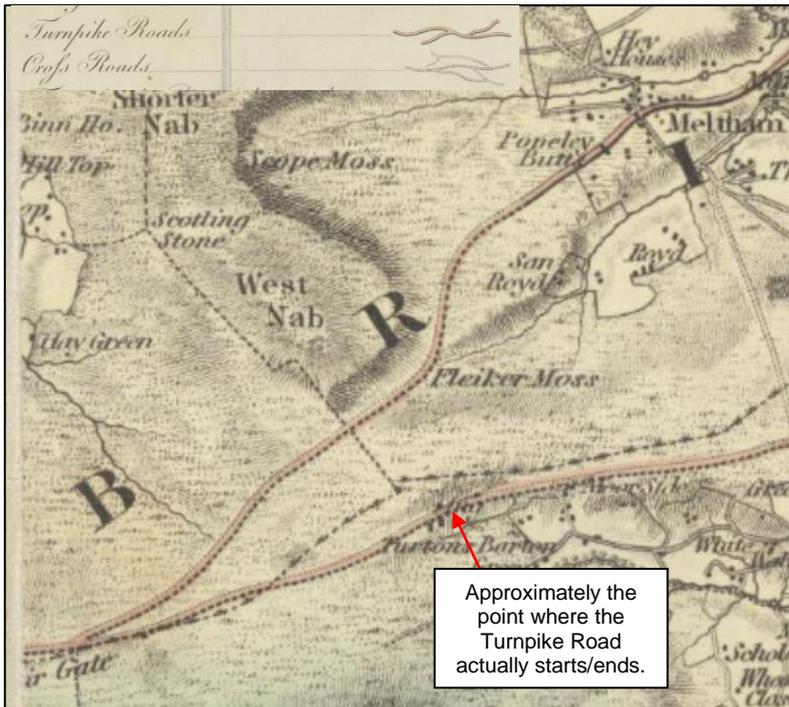


Figure 10: Greenwoods 1828 Map of the County of York (Source: [NLS Maps](#))

Figure 11: Newspaper Article from Halifax Express 02/10/1834 showing entire Turnpike Road was not unmade and not complete (Source: [British Newspaper Archive](#))

**MELTHAM  
AND WESSENDEN-HEAD TURNPIKE ROAD.  
TO ROAD-MAKERS.**

**TO BE LET BY TICKET**, at the House of Mr. Eastwood, the Fleece Inn, in Meltham, in the County of York, on **WEDNESDAY**, the Eighth Day of October next, at Eleven o'Clock in the Forenoon, in Three Lots, the **FORMING, DRAINING, and STONING**, of the **UNMADE PART** of the said new **TURNPIKE ROAD**, commencing at the West or South-West End of that Part of the Road already made, and

**Lot 1.** The First Lot, extending in Length about 97 Roods, in a Southwardly and Westwardly Direction, as marked and staked out.

**Lot 2.** Commencing at the Termination of Lot One, and extending in Length about 134 Roods, in a Westwardly Direction.

**Lot 3.** Commencing at the Termination of Lot 2, and extending in Length about 223 Roods, in a South and Westwardly Direction, as staked or marked out to the Shepley-Lane Head and Greenfield Turnpike-Road, at or near Wessenden-Head.

Plans, Sections, and Specifications of the Work, are already left for Inspection, and may be seen on Application at the Place of Letting.

By Order,  
**JOHN BATTYE,**  
Clerk to the Trustees of the said Road.

N.B. No Allowance will be made to Parties attending as Takers.

: Huddersfield, Sept. 25, 1835.

## LOCAL GOVERNMENT MINUTES (1885 – 1894)

### Background

75. Meltham Local District Board was formed in 1860 following The Public Health Act, 1848, and the Local Government Act, 1858, which permitted ratepayers to create local boards of health in populous areas. The Local Board was responsible for public health, sewerage, street cleaning, highways, water supply, burial grounds and building control. The country was divided systematically into urban and rural sanitary authorities under The Public Health Act, 1872, & The Public Health Act, 1875. The Local Government Board was referred to as an Urban Sanitary District, reflecting the increased powers given to Local Boards to combat threats to public health. The Local Government Act, 1894, ([‘the 1894 Act’](#)), reorganised local administration in England and Wales and followed reforms at council level. A second-tier local government system within the county council areas created a network 535 Urban District Councils and 472 Rural District Councils, based on the earlier classification of sanitary districts. Meltham Local Urban Sanitary District Board was therefore superseded by Meltham Urban District Council in 1894 under section 21(1) of the 1894 Act.

76. Therefore, the township of Meltham was the authority responsible for the maintenance of highways repairable at public expense by the inhabitants at large before 1860. Highway liability was subsequently transferred to Meltham Local District Board in 1860, Meltham Urban Sanitary District Board, and then Meltham Urban District Council in 1895. The Local Government Minutes associated with the relevant Councils, together with newspaper articles documenting those meetings, can provide a record of their conducted duties as highway authority and can potentially yield strong evidence of both status of the claimed route and their responsibility to maintain it, or not.

77. The available evidence of Council Minutes date from 1885 to 1895 and cover the period just before the crossover from Meltham Local Urban Sanitary District Board to Meltham Urban District Council. The newspaper articles were obtained from the [British Newspaper Archive](#) and are of the Huddersfield Chronicle and Huddersfield Examiner. They have been collated chronologically and transcribed so that their

contents can be easily analysed. The documents have to be viewed based on the preceding evidence that Colders Lane was a private carriage and occupation road that was privately maintained. The Council Minutes can either confirm that, in the intervening fifty years or so, nothing changed, or the public acquired a public right of way.

Figure 12: Chronological List of Council Minutes Relating to Colders Lane between 1885 to 1895 Collated from Meltham Local Urban Sanitary District Board Council Minutes (Source: West Riding Archives: [KMT26/1/1/6](#)) and British Newspaper Archive

Meeting Date	Source	Minutes
17/12/85	Local Board Minutes	That Colders Lane be surveyed and the owners noticed to put the same into proper repair in accordance therewith with a view to its adoption as a highway repairable by the inhabitants at large.
10/05/88	Huddersfield Chronicle 12/05/88	Mr J. W. Taylor appeared before the Board with respect to an alleged nuisance he had caused in Colder's Lane, by a deposit of manure on the public highway. He had received notice from the nuisance inspector to remove it, and complained of the summary manner in which he had been dealt with. The Chairman asked him whether he intended removing the nuisance or now, and how soon. His reply was not satisfactory. After some discussion it was resolved to give Mr. Taylor a fortnight to decide upon his course of action.
13/10/90	Huddersfield Daily Examiner 15/10/1890	<p>The report of the nuisance Inspector (Mr. Taylor), for the month of September, stated: "I would like it to be publicly made known from your Board, that after due notice has been served upon parties to abate a nuisance of any kind, and after such notice has expired nothing has been done, that your Board will insist upon such notice being carried out, and that you will do all in your power to assist your public officials- the medical officer and the sanitary inspector-in the discharge of their public duties. I have had several complaints about pigs being kept too near the public road, at such places as Colders Lane, Popley Butts, and the Foresters, and, as the pig season is coming to a close, I should like it to emanate from this Board the distance at which, in future, pigs will be allowed to be kept from the road or footpath, and also the distance from dwelling-houses".</p> <p>The Chairman said in adverting to the sanitary inspector's report that they would have to take up the question of the proximity of pig closes to dwelling-houses, he referred to one case which had been stopped, and it was decidedly wrong to allow the people at Popley and Foresters to keep pigs there; besides that they were in the habit of throwing a lot of rubbish in the road, and he thought the Local Board ought to have more regard for the public health than to allow it.</p>
23/11/93	Local Board Minutes	Resolved that the Clerk (W.Carter) prepare an estimate of the probable cost of repairing Colders Lane as far as Matthew Lane End.
14/12/93	Huddersfield Chronicle 18/12/93	In accordance with the instructions of the Board, the clerk had prepared an estimate of the repair of Colder's Lane. The length was 170 yards [the distance from Matthew Lane End to Mill Moor Road], and the mean width was eight yards. To repair moderately the cost would be £40 12s. 6d., or 4s. 10d. per lineal yard. To make a complete job of the lane, and pitch it with stones one foot thick, and roll it, would cost £85 12s. 6d., or about ten shillings per yard. After some discussion, the clerk said if it could be proved that the lane had been repaired by the public during the time of the Commissioners the Local Board of the present day was liable to continue repairing it. After a heated, and at times very personal discussion, lasting over two hours, Mr. J.H. Preston gave notice that next month he would move a resolution to take into consideration the adoption of the Act of 1892, dealing with the repair of occupation roads out of the public rates.
15/02/94	Local Board Minutes	Moved by Mr J.H.Preston, seconded by Mr.R.Mellor, that the Private Street Works Act, 1892 (55 and 56 Vict., chap. 57), be adopted by the Urban Sanitary Authority for the District of Meltham; and that such adoption shall come into operation on the first day of May next.
16/07/94	Local Board Minutes	That the Colders Lane be repaired as far as Matthew Lane End according to the lower estimate prepared by the Clerk; such cost being apportioned amongst the respective owners; and that afterwards such length of road be adopted by the Board.
09/08/94	Local Board Minutes	<p>That notices be issued upon the respective owners for the repair of Colders Lane Bottom under the Private Street Works Act 1892 (53+56 Vict.) (Ch.57) or any act which empowers the Board to do so.</p> <p>That the advice of Mr Learoyd be got previous to the Notice being issued as to whether the Board can legally charge the respective owners with any cost of repair.</p>
23/08/94	Local Board Minutes	<p>That the Board resolve itself into Committee (re Mr Learoyds opinion as to Colders Lane).</p> <p>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.</p>
	Huddersfield Chronicle 25/08/94	<p>The next business on the agenda was the consideration of Mr Learoyds letter in answer to the deputation which had waited upon his respecting Colders-lane. Mr. Armitage (Mill Moor) moved, and Mr Walker seconded, "That the Board now go into committee," urging that it was undesirable and unwise to publish in the papers the policy the Board were about to adopt with regard to this and similar roads. At the juncture an amendment was moved by Mr J H Preston and seconded by Mr J Durrans "That seeing that the question had previously been discussed in open Board, and everything leading up to the present position had appeared in the papers, the Board proceed with the question openly." For the motion there voted R Mellor, J Moorhouse, Joseph Armitage (M.M.) Joseph Armitage (V.), Walker Wood, and James Sykes. For the amendment J.H. Preston, Joe Durrans, and Joel Pogson.</p> <p>After the reported had withdrawn some discussion ensued as to the rights of members to take down notes for the press. Mr Preston insisted on his right to take down notes for whatever purpose he thought fit. Thereupon Mr Durrans said that if it was the intention of Mr Preston to supply information from this committee for publication he (Mr Durrans) should certainly claim the same right, and he promised to take no further notes if Mr Preston would give his word not to communicate the business of the committee to the press, but this he refused to do. The chairman and Mr J M Moorhouse then proceeded to report upon their interview with Mr Learoyd, and the matter was discussed at considerable length.</p>

03/04/95	Huddersfield Chronicle 06/04/95	<p>Mr Moorhouse raised the question of whose duty it was to repair Clarke-Lane. He observed that he thought he should not have to argue long to convince the Council that this lane was in a sad state of repair. It was in an abominable state, and was a disgrace to the town. The question was, who were responsible for the repair of it? He moved that the land be put in a proper state of repair forthwith. Mr Preston seconded the motion. He reminded the Board that according to the legal advice they received from three independent solicitors when the question of the repair of Colders-lane was dealt with, if the lane was a public road previous to the Act of 1835, and that it had not been systematically repaired by the owners since, then it was the duty of the Council to repair it. He had been informed that Clarke-lane was used as a public road previous to 1835, and that it had not been systematically repaired by the owners since. Mr Haigh said he was in favour of the Council repairing the lane on the same lines as Colders Lane. Mr Wood, while in favour of the lane being repaired took a different view to the previous speaker as to who should do the work. He did not believe it was right that the Council should repair the lane. Mr Durrans remarked that under the Private Street Works Act which the Council adopted in 1892 they could repair Clarke-lane or any other lane they thought proper, and apportion the cost as they might decide. Mr Moorhouse said he had been given to understand that the public had not had an uninterrupted right over the lane since 1835, but that carts had been stopped from going down it at different times. Eventually the motion was amended so as to read "That Clarke-lane be repaired as soon as the Council have ascertained whose duty it is to do so, and that enquiries be made forthwith". This was adopted.</p>
	Huddersfield Examiner 06/04/95	<p>Councillor Earnshaw asked the question of which he had given notice, "Whose duty was it to repair Clark Lane etc?. He described the road has being in a disgraceful state, and altogether unfit to travel, being a road so central it urgently needed repair. The Chairman asked Mr. Earnshaw if he was prepared to make a motion on the question. Mr Earnshaw said he was seeking information first, but to put himself in order he moved "that the road be repaired. Mr Preston seconded, in order that the question might be discussed. The Chairman was proceeding to show the action of the Council some time ago with respect to Calm Lands Lane, when Mr. Preston called him to order. The Chairman (warmly): "What do you mean? I'll tell you who's in order." – Mr. Durrans thought the chairman was quite right in quoting Calm Lands Lane to illustrate his argument, because they were analogous cases. Mr Preston said his reasons for seconding the motion were that if the circumstances were the same in this case that in Colders Lane – viz, a road open for the public previous to 1835, and no systematic repairs had been done by the owners since that date, then, as in the Colders Lane case, it was according to Mr. Learoyd's advice, the duty of the Council to repair it. Mr Haigh through the Council ought to repair it. Mr Wood, while agreeing that the road was sadly in need of repair, strongly objected to the Council taking the same steps as in the Colders Lane case, and threatened that if the Council did so he should test it at the audit. Mr Durrans pointed out that the Council having adopted the Private Streets Act, 1892, could repair any road either partially or wholly, and apportion the cost as they thought proper. The threats of Mr Wood were mere "braggadocio" of which they ought not to take the slightest notice. The case of Golcar Brow Road was mentioned, in which a former chairman has been surcharged, but the Chairman said they were not parallel cases. The Golcar Brow Road was not one which led from one highway to another, as was the case with Colders Lane. Mr Moorhouse thought he had heard of carts been stopped since 1835, but considered the motion ought to be passed, and afterwards they should consider whose duty it was to bear the cost. Eventually it was agreed that Clark Lane be repaired as soon as the Council have ascertained who shall bear the cost.</p>
01/05/95	Huddersfield Chronicle 04/05/95	<p>Mr Preston again opened the question of the repair of Clark Lane, and asked if any members had yet made the enquiries for which the matter had been postponed. He said he had enquired to the best of his ability, and had come to the conclusion that it was clearly the Council's duty to repair, and he moved a resolution to that effect. Mr Earnshaw seconded this. The Chairman, on being pressed to give his opinion, said he felt great reluctance in speaking on the Clark Lane question, because, being a property owner in that lane, it might seem to prejudice his case. He had always been prepared to pay his share of the cost both in Colders Lane and Clark Lane, if the others would do the same. He suggested that the Council (if they could compel payment), should fix a scale of payment in these cases and all others that might follow, say two-third of the cost to be borne by the owners, and one-third by the Council, or any other such sum as the Council might think proper. Mr Moorhouse said he was convinced that the Council could enforce payment, and quoted several cases in point, notably Golcar Brow Road, and the road at Blackmoor. He also said, "If it is out duty to repair these roads, which I hold it is not, then we shall have to face an expenditure which, in a story time, will double the rates. Mr G W Pogson hoped that the Council would take no decisive action that night. He was not prepared upon the question. The statements he heard from both sides of the table were so conflicting that he should like to time to ascertain for himself. Mr Earnshaw complained of the taunts and sneers with which he had been treated whenever he alluded to this question, and said he was tired of being tantalised by outsiders telling he was doing nothing in the matter. Mr J Pogson drew the Council's attention to the advice or Mr Learoyd on the Colders Lane, and by way of comparison he mentioned Binns Road, any Mr Freemans letter in reference thereto. He said what applied to Colders Lane applied to Binns Road. (Mr Wood: "No, no"). He certainly was of opinion formerly that it was the owners' duty, and Mr Learoyds advice had been disappointing to him. Mr Wood said he had got almost tired of discussing these questions. To him it was clearly understood that the £40 estimate for the repair of Colders Lane was to be borne by the owners. The difference between Colders Lane and Binns Lane was that Binns Lane was, according to the award, an ancient bridle path, and therefore repairable by the town, while Colders Lane was not. Mr Durran contended that the case under discussion-namely, Clark Lane, was, in his opinion, a parallel case to Colders Lane, and having been advised (legally) both with regards to these roads and also Qoods footpath from three different sources, that it was the Council's duty to repair, he should vote for the repair. Mr Preston having replied at some length, the vote was taken as follows:- For repair of Clark Lane, Messrs.</p>

		Durrans, Preston, Earnshaw, J. Pogson, Carter, and Preston; against, Messrs. Moorhouse, Wood, Hirst, and G W Pogson. The chairman did not vote. The motion was declared carried.
22/08/02	The Slaithwaite Guardian and Colne Valley News	The meeting of the Highways and Waterworks Committee was held on the same when... It was resolved... that Leygards Lane be tipped up where necessary.

## Analysis

78. The Highways Act, 1835, ([‘the 1835 Act’](#)) abolished a 300 year old system of statute labour imposed on parishes as ‘the inhabitants at large’, which was commuted into a parish highway rate levied on inhabitants. The powers, duties, and liabilities within each parish was vested in a remunerated and annually elected ‘Surveyor of Highways’. The duty of the surveyor was not to the public but to the parish as their employer. Additionally, before 20<sup>th</sup> March 1836, when the 1835 Act came into operation, a landowner could dedicate land as a vehicular highway and it automatically became the liability of the parish to maintain. No distinct act of adoption was necessary, whether the road was of great utility or not. To ensure that the parish became responsible for roads that served a public purpose, section 23 of the 1835 Act established an unequivocal responsibility as to future maintenance and stated that, after the 20<sup>th</sup> March 1836 Act, no private road or occupation road could become a highway maintainable at public expense unless the landowner followed a prescribed adoption procedure.
79. Consequently, public vehicular roads that came into being through express or implied dedication and acceptance by the public after 1835, in respect of which the section 23 procedure had not been observed, were highways not maintainable at public expense (*Cababe v Walton-on-Thames Urban District Council* (1914)). Footpaths, and presumably bridleways, that came into existence through long public use continued to be highways maintainable by the inhabitant’s at large (*Robinson v Richmond (Surrey) Borough Council* (1995)).
80. By the 1880’s, there are three instances of public nuisances on Colders Lane Bottom Road, such as the removal of sand creating holes in the road, and the deposit of manure, which reveal that this section had become a ‘public highway’ following the 1832 Meltham Inclosure Award. At this time, the route was not actively maintained at public expense. In 1885, the proprietors either side of Colders Lane Bottom Road petitioned Meltham Local Urban Sanitary Board (‘the Local Board’) to adopt the route as a highway maintainable at public expense. The route was surveyed, plans prepared, and the costs estimated by the Local Board, however, it appears that the petition was withdrawn. Again, in 1893, two estimates were prepared for the repair of Colders Lane, as far as Matthew Lane End. A

protracted discussion took place regarding whether the public had repaired the land at the time of the 'Commissioners' and, if so, then the Local Board remained liable. The term is likely to refer to the Meltham Inclosure Award Commissioners.

81. In 1894, the Local Board had adopted the Private Street Works Act 1892 due to the liability issues associated with this section of Colders Lane. The Local Board decided that, under this 1892 Act, or any Act which empowered them to do so, Colders Lane Bottom Road would be repaired according to the lower repair estimate, with such cost being apportioned amongst the owners of property adjoining the lane, and then this section was to be adopted. However, before notices were issued, the Local Board first sought the advice of Mr Learoyd, a solicitor, to determine whether they can legally charge the respective owners with any repair costs.
82. The legal advice from Mr Learoyd, and two other independent solicitors, was that if the lane was a public road previous to the 1835 Highways Act, and that it had not been systematically repaired by the owners since, then it was the duty of the Local Board to repair it. The matter was discussed at considerable length, with the Local Board went into committee as it was: "... *undesirable and unwise to publish in the papers the policy the Board were about to adopt with regard to this and similar roads*". The issue was that there were many other private carriage roads that had become highways and were likely to be maintainable at public expense based on the legal advice, drastically increasing the burden on rate payers. However, due to this action, the papers and Council minutes are silent as to the contents of Mr Learoyds report.
83. However, during the very next year, the Colders Lane case was compared to various other routes in Meltham throughout 1895, such as Clark Lane, Calm Lands Lane, Binns Lane, and Golcar Brow. Clark Lane was considered a parallel case to Colders Lane; a public road used by carts prior to the 1835 Highways Act and it was duly repaired by the Local Board. Furthermore, in reference, to Golcar Brow, it was stated that: "*The Golcar Brow Road was not one which led from one highway to another, as was the case with Colders Lane. Mr Moorhouse thought he had heard of carts been stopped since 1835*".

## Evaluation

84. The Local Board were primarily concerned with repairing Colders Lane Bottom Road, the section from Mill Moor Road to Matthew Lane End, as that section of highway needed repair at that period of time. However, the Local Board were directed by three independent solicitors to an earlier timeframe when Colders Lane was used by the public as a thoroughfare public carriageway for carts and repaired by the inhabitants at large, at the time of the Inclosure Commissioners, which was before the 20<sup>th</sup> March 1836, when the 1835 Highways Act came into operation.
85. The Local Board Minutes and Press Articles consistently refer to 'Colders Lane', which tentatively seems to refer to the entirety of the way. However, the purpose of establishing maintenance liability was to improve and repair the Colders Lane Bottom Road section, as this was actively used by the public with carriages at this point in time and needed essential repair. It is also apparent that the highway authority had not conducted maintenance of Colders Lane for the last sixty or so years, otherwise their duty would not be disputed. *Turner v Walsh* (1881) held that the presumption of dedication is of a complete dedication, coeval with the early user. Fictionally, the owners of Colders Lane therefore must have dedicated the route to the public with use via carts in this four-year window between the 1832 Inclosure Award and 1836, such that it remains a public carriageway maintained at public expense to this day. Subsequent corroborative evidence is required to infer that the entirety of Colders Lane, including the Claimed Route, formed part of these discussions.
86. However, if it is the case that the Council Minutes and Press Articles only related to Colders Lane Bottom Road, this section will have diverged from the Claimed Route in one other aspect: landownership. Section 149 of The Public Health Act, 1875, ('the 1875 Act') directed that all streets that were or became highways repairable by the inhabitants at large within any urban sanitary district were vested in and under the control of the urban authority. Section 4 of the 1875 Act defined 'street' as including: "... *any highway (not being a turnpike road), any public bridge (not being a county bridge), and any road land footway square court alley or passage whether a thoroughfare or not*". The term 'street' in the 1875 Public Health

Acts therefore also encompassed all types of highways listed under section 5 of the 1835 Act, including public footpaths.

87. Viewed in the vertical plane, the automatic statutory vesting in urban district councils under the 1875 Act only conferred a fee simple ownership of that slice of the land over which the highway repairable by the inhabitants at large ran as was necessary and co-extensive with its ordinary use, repair, and maintenance, commensurate to the highway status; colloquially referred to as 'two spits' deep (Coverdale v Charlton (1878); Tunbridge Wells Corporation v Baird (1896)). Therefore, leading up to the 1910 Finance Act evidence, landownership of the Colders Lane may have been divided in three ways, as follows: Colders Lane Bottom Road section was vested in the Meltham UDC; ancient Colders Lane remained in private ownership, possibly in the possession of Lord(s) of the Manor, or adverse possession by adjacent landowners; and Colders Lane Top Road section was also privately owned but by adjacent landowners based on the *ad medium filum* presumption, which couldn't actually be rebutted.
88. However, the Definitive Map and Statement shows that the public acquired a right of way on foot over and along Colders Lane and it is entirely possible that this took place at any time after the 1832 Meltham Inclosure Award by long use and dedication. Consequently, it is also possible that Meltham UDC, as stated above under section 149 of 1875 Act and section 5 of the 1835 Act, owned the fee simple of the public footpath, which has a recorded width of 1.2 metres, just like Kirklees Council do today under Section 263 of the Highways Act 1980. As such, the statutory vesting concept would not apply to all the land between the enclosures on either side of the footpath, which would still remain in private ownership.

## ORDNANCE SURVEY MAPS

89. 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).
90. 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).
91. The Ordnance Survey has produced a series of topographic maps at different scales, notably: one inch, six inch, and 1:2500. The detailed, large scale 1:2500 maps from the 1870's onwards provide the best evidence of the position and width of routes and the presence of any structures on them. The Ordnance Survey 1:2,500 scale maps identify each parcel of land by field numbers, which refer to books of reference in which the acreage and, until about 1880, the land use of each parcel were recorded. Field numbers derive from the requirement that was placed on the Ordnance Survey to measure the area of every county, borough, district, ward, and parish in the United Kingdom (Kain, R J P & Baigent, E, 1992). The ownership and occupation is not recorded in these books. Consequently,

Ordnance Survey maps are universal as a secondary source for cadastre maps, such as the 1910 Finance Act.

92. Ordnance Survey maps provide good evidence of the physical existence of routes at the time the map was surveyed (*Attorney General v Antrobus* (1905)). When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways (*Attorney General v Horner* (1913)). However, the disclaimer which has been added to editions since the 2nd edition maps, along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way (*Masters v Secretary of State for the Environment, Transport, and the Regions* (2000) 4 PLR 134). Nevertheless, the available Ordnance Survey maps covering the Meltham area prior to the 1910 Finance Act Valuation Reference Maps may provide evidence to support the Meltham Local Urban Sanitary District Board Minutes.

### **1903 1:50,000 Cassini Revised Series Map**

93. The applicant submitted a copy of the 1903 Cassini Revised Series Map covering the area of Sheffield & Huddersfield, as shown in Figure 13. The maps are based on the Ordnance Survey's Revised New Series (in colour) maps, which were published in 1903. The historical maps have been digitally re-projected, enlarged, and combined to match the current Landranger series and reproduced with the scale changed from one inch to the mile, to 1:50,000 to enable direct comparison. The one-inch scale was a standard topography authority, and the physical and human landscape was considerably generalised.
94. The legend to the map provides eight categories for the depiction and classification of metalled (i.e., using compacted gravel) and unmetalled roads for vehicles: Fenced First Class Metalled Roads were shown coloured orange, or carmine, with wide and bold black parallel lines; Fenced Second Class Metalled Roads were also shown coloured orange but thinner than the previous category and with only one bold black line; Fenced Third Class Metalled Roads were uncoloured with no

bold black lines, but the same width as the previous category. Lastly, all the categories had a corresponding annotation if the roads were unfenced, and this was simply shown with dashed lines. The 1896 Revised Series One Inch Map had a disclaimer stating: "*N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way*", and it was more than likely included on this map too to protect the Ordnance Survey from liability.

95. However, it is possible to apply the preceding documentary evidence to the 1903 Cassini Map to infer the status of Colders Lane. Firstly, Colders Lane Bottom Road and Matthews Lane End are coloured orange in the manner of a Fenced Second Class Metalled Road. In 1884, an instruction to surveyors directed that, "*All metalled public roads for wheeled traffic kept in good repair by the authority will in future be shaded*". In 1905, OS instructions described Second Class Metalled Roads as in good repair, and fit for fast traffic in all seasons and "*it should be possible to drive carriages and light carts over them at a trot*" (Oliver, 1993) (Hodson, 1999). The 1903 Cassini Map therefore corroborates with the Local Board Minutes that in the late 19<sup>th</sup> century they formed a thoroughfare public carriage, were repairable by the inhabitants at large, and was actively maintained by the highway authority in good repair.
96. The physical condition of the northern part Colders Lane is also shown in an aerial image from [1926 of Meltham town centre from Historic England Archive](#) copyrighted images, which is from practically the same time period. Additionally, the junction of Colders Lane with Matthew Lane End is shown in a [photo dated 1930 from 'Meltham in Focus'](#). The section of Colders Lane from Mill Moor Road to Matthew Lane End is metalled, wide, and in good repair, with a footway adjacent the residential properties and various street lighting columns. Similarly, the section of Colders Lane south of Matthew Lane End is also wide and metalled. The image does not show the Claimed Route but it does reveal that Colders Lane was maintained south of Matthew Lane without the need for statutory adoption.
97. The remainder of Colders Lane, including the Claimed Route, is shown on the 1903 Cassini Map as an uncoloured Fenced Third Class Metalled Road. This could potentially indicate that it was just a metalled public road that was not in a good

state of repair or fit for fast wheeled traffic and not wide enough to allow two carts to pass each other (Oliver, 1993) (Hodson, 1999). However, on its own, depicting the route as a Third Class Metalled Road provides no information as to whether the Claimed Route was considered public or private. Based on the 1797 Plan of Meltham, 1824 Turnpike Road and the 1832 Meltham Inclosure Award analysis, it is may have been shows as a Third Class Metalled Road because it was a private carriage road used by owners and occupiers that was also maintained privately, creating a differing standard of repair compared to the public carriageway section of Colders Lane.

98. On other hand, it may simply demonstrate that whilst Meltham Urban District Council accepted their liability to repair Colders Lane, they only metalled the section to just south of Matthews Lane End to a higher standard for carriages and carts, as was necessitated by the public, whilst the rest was maintained in character. For instance, Leygards Lane is also shown as a Third Class Metalled Road, which was a highway maintainable at public expense in 1902 and today is a vehicular highway, even though it was awarded as a private carriageway called Green Slacks Road. This indicates that highways may have been maintained to differing standards due to importance rather than due to status or liability.

Figure 13: Close-up extract of 1903 Cassini Historical Map Revised New Series Sheffield & Huddersfield (Source: Schedule Application).



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

## 1923 Half Inch MoT Road Map

99. [The Ministry of Transport Act, 1919](#), ('the 1919 Act') appointed a Minister of Transport. For the purposes of construction, improvement, and maintenance of roads, section 17(2) of the 1919 Act empowered the Minister to formally classify roads and allocate funding, after consultation with the Roads Committee and local authority. A classification systems was created according to their importance to through traffic, under which important routes connecting large population centres, or for through route traffic, were designated as 'Class I', and lesser important roads were designated as 'Class II'. The purpose of the classification was to provide a basis for the system of grants from the Road Fund to highway authorities. Originally the basis of these contributions was the Fund was 50% for Class I and 25% for Class II roads.
100. Grants were also made towards the upkeep of specified unclassified roads (Savage, 1957). An unclassified road was therefore a public route within the United Kingdom that was not recognised by the Ministry of Transport as a classified road. For instance, [the Agriculture \(Improvement of Roads\) Act, 1955](#), defined an 'unclassified road' as a road which is a maintainable highway but is neither a trunk nor a road classified by the Ministry of Transport Act, 1919, and has lower traffic densities. Municipal Boroughs and Urban Districts were to maintain their own unclassified roads. The classification system corresponds loosely to major trunk roads and through routes, secondary through roads, minor roads, and residential streets respectively, although the distinction between the latter two categories is not always clear (De Borger, 2001). In 1998, the Department of Environment, Transport, and the Regions, published an advice letter on the interpretation of the term 'unclassified county road' ('UCR'), which held that:

"The Local Government Act 1929 made provision for "unclassified roads, "classified county roads" and "county roads". The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense...

*The inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide evidence of vehicular*

*rights. However, this must be considered with all other relevant evidence in order to determine the nature of extent of those rights... Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs.*

*Any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case-by-case basis”.*

101. The advice leaves open the question of whether a route categorised by deduction as an unclassified road was a vehicular highway, or of lower status. Essentially, the designation required the corroboration of the surrounding historical evidence for context. Nevertheless, in 1923, the Ministry of Transport published the ‘Half Inch MoT Road Maps, as a scale of ½ inch to One Mile, which was reduced from the One-Inch OS Map of 1905-08, as shown in Figure 15. The 1923 MoT map included the common disclaimer: “*N.B., The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way*”. The map included three categories of roads: ‘Class I’, which were numbered and highlighted in orange; ‘Class II’, which was also numbered but highlighted in green, and the last category called ‘Other Roads’, which was shown as two uncoloured parallel lines. The Claimed Route is shown on ‘Sheet 13-Sheffield’ as an ‘Other Road’, so too is Mill Moor Road, Leygards Lane, New Bridge Road, part of Red Lane, Wessenden Head Road, Matthew Lane, Greens End Road, Birmingham Lane, and Helme Lane. For the majority of cases, ‘Other Roads’ are shown as thoroughfares are leading to a destination.
102. The 1923 MoT Map is perhaps more notable for what it does not show. There is no category for footpaths, and no distinguishment between first, second, third class metalled roads, or unmetalled roads. However, the 1923 MoT map has purposefully not included routes that were shown on the One-Inch OS Map of 1905-08, as shown in Figure 14, such as cul-de-sac roads or unmetalled roads, such as part of Calm Lands Lane, Brow Grains Road, unadopted section of Red Lane, Harden Hill Road. This may be due to the reduced scale of the map and the need to show important features, although there is an inference that the 1923 MoT

Map predominantly identified the vehicular road network that were highways maintainable at public expense, or at least bridleway status at that time, such as the bridleway to Deer Hill Reservoir is shown (Meltham Bridleway No. 68). The record of a bridleway on the Definitive Map and Statement is without prejudice to the existence of higher public rights of way. It can be deduced from the depiction of the Claimed Route as an 'Other Road' that it was not recognised as a public footpath at this time, and its annotation is synonymous with the 1894 Meltham UDC Minutes that the entirety of Colders Lane was accepted as a vehicular highway repairable by the inhabitants at large prior to section 23 of the Highways Act, 1835, coming into operation and concurs with the 1903 Cassini Revised Series Map that it was a narrow Third Class Metalled Road but was nevertheless public.

Figure 15: 1923 Half Inch MoT OS Map (Source: [NLS Maps](#))

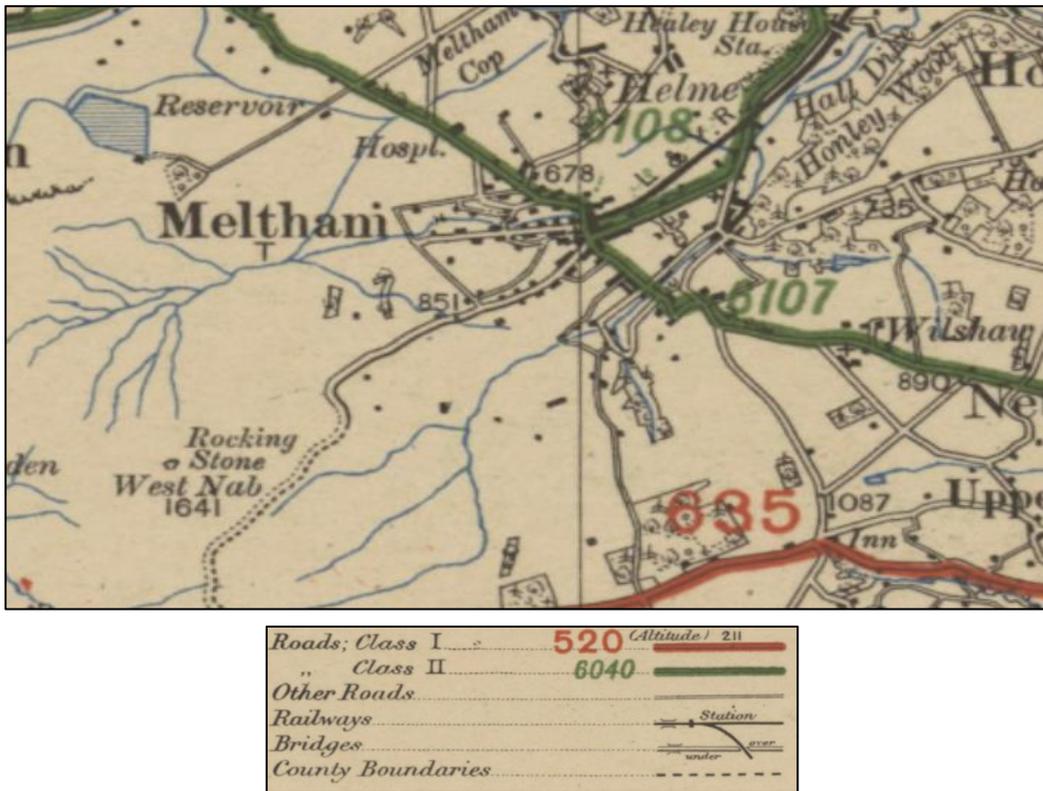


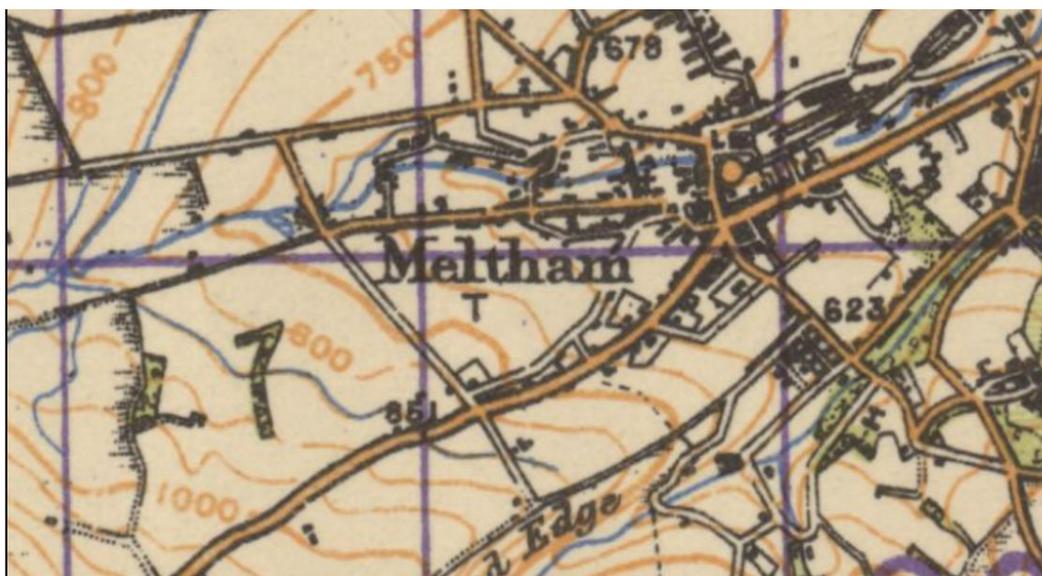
Figure 14: Revised 1905- 1911. One-Inch England & Wales. Sheet 36 - Manchester, Stockport, and Oldham (Source: [NLS Maps](#))



### **1932 War Office OS One-Inch Popular Series**

103. The 1932 Ordnance Survey One-Inch to the Mile Popular Series edition includes in the reference to the map five categories of way: 'Ministry of Transport' A Roads' that were coloured orange and shaded bold back on both sides, or only one side; 'Other Motor Roads' that were not narrow and were also coloured orange; 'Other Motor Roads' that were narrow and coloured orange if they were in good condition, or uncoloured if they were in bad condition; 'Minor Roads', which were narrow and shown by two close parallel lines, and lastly 'Bridle & Footpaths' were shown by a dashed line.
104. The Claimed Route, Leygards Lane, Matthews Lane, Mean Lane, part of Calm Lands Lane, Golcar Brow Road, and Tinker Lane are also shown in the 1932 OS One-Inch Map as a fenced 'Other Motor Road' that were narrow and in bad condition (see Figure 16). With the exception of the Claimed Route, all of these ways are recorded and maintained today as vehicular highways maintainable at public expense. However, Bedlam Road, and part of Red Lane, which today are not recorded as highways maintainable at public expense but are recorded/claimed as public bridleways, as are also shown in the same manner as the Claimed Route. On the other hand, Mill Moor Road, Helme Lane, and New Bridge Road are shown coloured orange in the category of narrow 'Other Motor Roads' in good condition.
105. Together, the 1923 Half Inch Mot OS Map indicates that the Claimed Route formed part of the local road network, whilst the 1932 OS One-Inch Map designates that it was used by mechanically propelled vehicles. In fact, none of the Ordnance Survey Maps record any part of Colders Lane as a footpath until after the First Definitive Map and Statement was published.

Figure 16: 1932 OS One-Inch England and Wales Popular Series (Source: [NLS Maps](#))



Ministry of Transport $\wedge$ Roads		
Other Motor Roads		
" " " narrow		
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shown by dotted lines		
Slopes steeper than $\frac{1}{4}$		
Toll Gates		

## THE FINANCE (1909-10) ACT, 1910

### Background

106. The Finance (1909-10) Act, 1910, ([‘The 1910 Finance Act’](#)) received Royal Assent on 29<sup>th</sup> 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 30<sup>th</sup> 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).
107. 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).
108. 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).

109. 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.

110. 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”.*

111. 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”.*

112. 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 30<sup>th</sup> 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).

113. 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.
114. Case law analysis has revealed a long succession of incorrectly determined judgements with regards to the 1910 Finance Act documents. As of 30<sup>th</sup> 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.
115. 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.

116. 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.
117. [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.
118. 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.

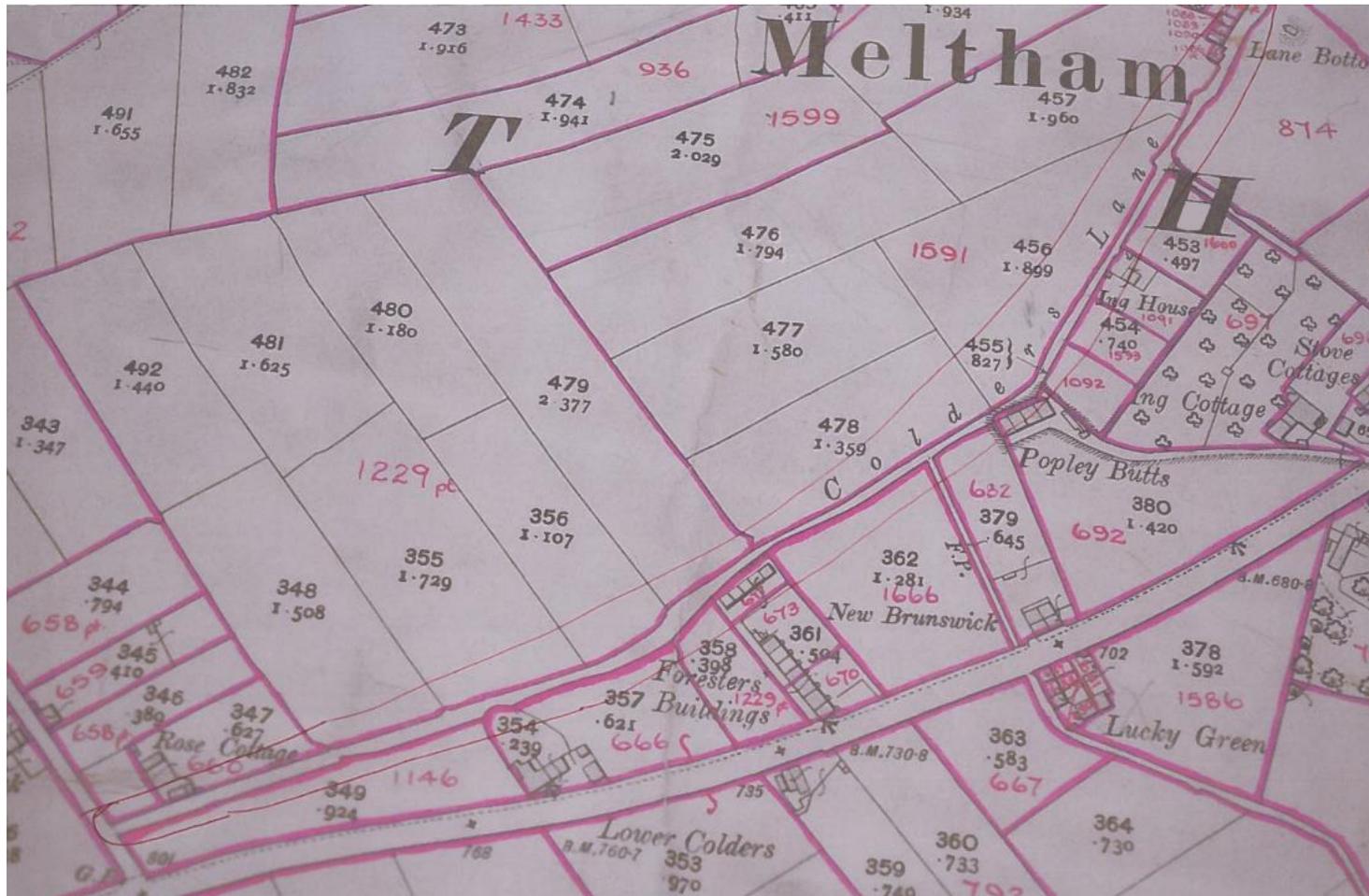
119. The hereditament colour wash adjoining an uncoloured route identifies the net unit of valuation and a physical feature to which the gross unit of valuation and invisible property boundary is related. By contrast, Agombar and Fortune analysed the reference map by assuming the hereditament colour 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.
120. 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**

121. The applicant provided a working copy of the 1910 Valuation Reference Map. The map is held at The National Archives in Kew under catalogue No. IR 134/6/77 at a scale of 1:2500. The Ordnance Survey Yorkshire [West Riding] base map sheet is CCLX.13, which was revised in 1904 and published in 1906. The available map shows the section of Colders Lane south of Matthew Lane End, which covers the Claimed Route as uncoloured and excluded from the adjacent hereditaments of 660, 666, 677, 682, 692, 874, 1091, 1092, 1146, Part 1229, 1591, 1593, 1600, and 1666. The hereditament 'Part 1229' bounds the Claimed Route on either side, but it is not shown with a red brace to link the two land parcels together. This contrasts with hereditament '666', which is on either side of Wessenden Head Road and shown with a red brace.

Figure 17: IR 134/6/77 1910 Valuation Reference Map (Source: [The National Archives](#))



## Evaluation

122. The Claimed Route satisfied Test A, as stated at paragraph 113 above, and was located within the authority of Meltham Urban District Council, creating the potential for it to be in public ownership via statutory vesting. The entirety of Colders Lane is shown excluded from the adjacent hereditaments. Together, with the Local Board Minutes, this may also indicate that Test B is satisfied, and that it was excluded from valuation because it was a highway maintainable at public expense. This was certainly the case for the northern section, from Mill Moor Road to Matthews Lane End, which was incontrovertibly a public carriageway maintained at public expense at this period of time.
123. Equally, a public footpath could have been established over the Claimed Route by the antecedent date, which as stated at paragraph 116 would be a highway at public expense and vested in Meltham Urban District Council. However, this would be limited to the width of the footpath, which is currently recorded at 1.2m on the Definitive Map and Statement, as shown at Figure 1. For instance, it is notable that Meltham Footpath No. 45 is also shown excluded from the enclosed adjacent hereditaments. Given that it also has a width of 1.2m between the walls, there is no reason to suppose that it is a public carriageway, or even that the *ad medium filum* presumption would not apply to it. On the other hand, Meltham Footpath No. 76 is shown within hereditament 692, which means the proprietor could provide to the Valuation Officers evidence of their title to the freehold of the land.
124. Public ownership is therefore one possible theory to explain why all of Colders Lane between the hereditaments, including the Claimed Route, was shown uncoloured and excluded from the adjacent land parcels. 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. It is the surrounding historic evidence pre- and post-dating the record that give it meaning. Additionally, the document does not provide any conclusive evidence as to the status of the way, as footpaths they were separated from adjacent land parcels by physical boundaries were equally shown excluded from valuation. As the Claimed Route is currently recorded on the Definitive Map as a public footpath, it is not sufficient on its own, on the balance of

probabilities, to infer from the 1910 Finance Act documents that it had any higher status; only that it could be a highway maintainable at public expense in public ownership. On the other hand, the width of the route, due to it being at least an ancient private carriageway, that forms the basis for any inference of higher public rights together with the 1894 Meltham UDC Minutes and the 1923 MoT Map.

125. However, if the Claimed Route remained mostly in private ownership, based on the 1832 Meltham Inclosure Award analysis, private ownership of the Colders Lane Top Road was probably based on the rebuttable *ad medium filum* presumption. Half of the Claimed Route up to its centre formed part of the gross unit of valuation of the adjoining hereditaments, whereas the District Valuers only recorded the net area of property that was in sole occupation up the dry-stone wall enclosures, as per section 26(1) of the 1910 Finance Act. Consequently, as at least private status exists along the entirety of the Claimed Route, the Valuation Book should possibly record a deduction for the existence of either a public right of way or easement when calculating the Total Land Value under section 25(3) of the 1910 Finance Act.
126. However, potential ownership of the ancient section of Colders Lane by the Lord of the Manor casts sufficient doubt on the *ad medium filum* presumption, which could one day be rebutted. The hereditaments therefore did not qualify for a discount unless they could prove ownership to the District Valuers, which they can't. Ultimately, Colders Lane was never likely to have been shown as included within the valuation of hereditaments, regardless of its status, because for centuries it was permanently separated from land parcels by physical boundaries of a dry-stone wall. The 1910 Finance Act documents are therefore neutral and do not provide any further evidential weight to determine whether the Claimed Route is a public or private route.

## THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

### Background

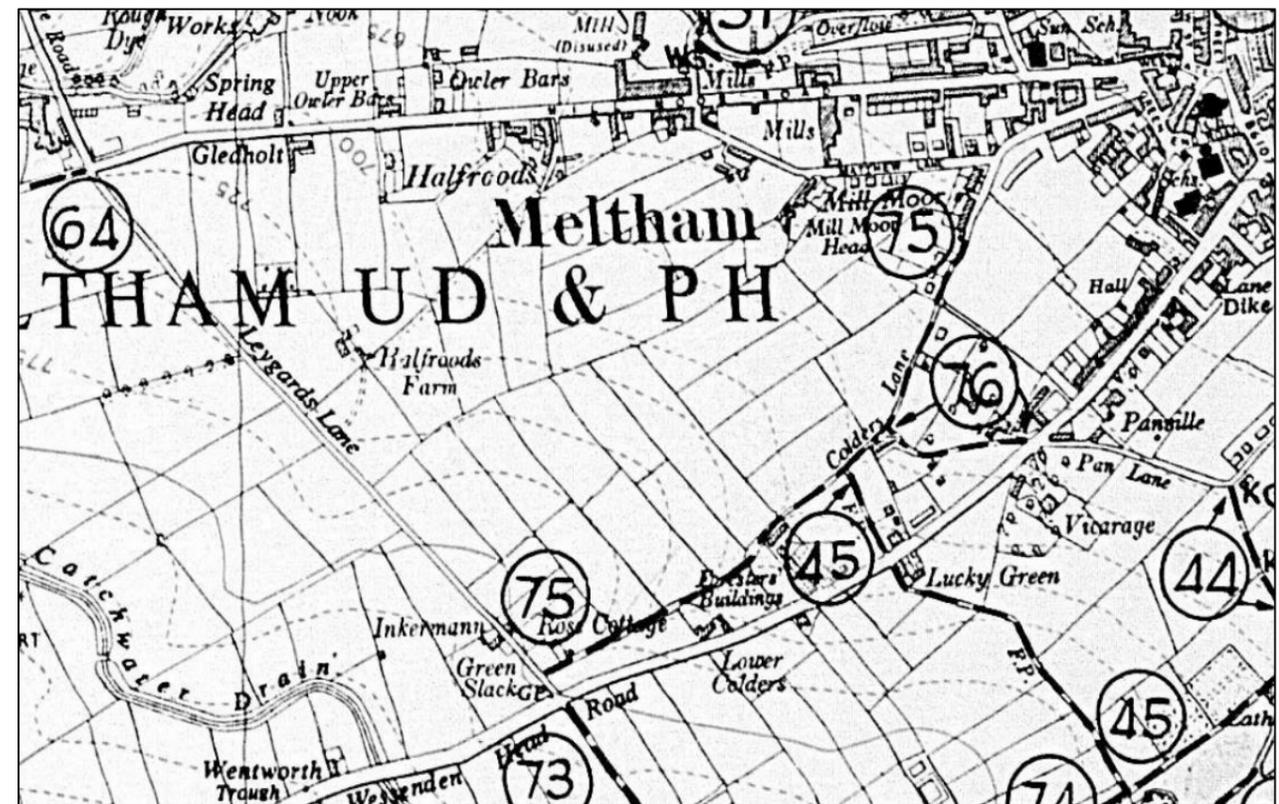
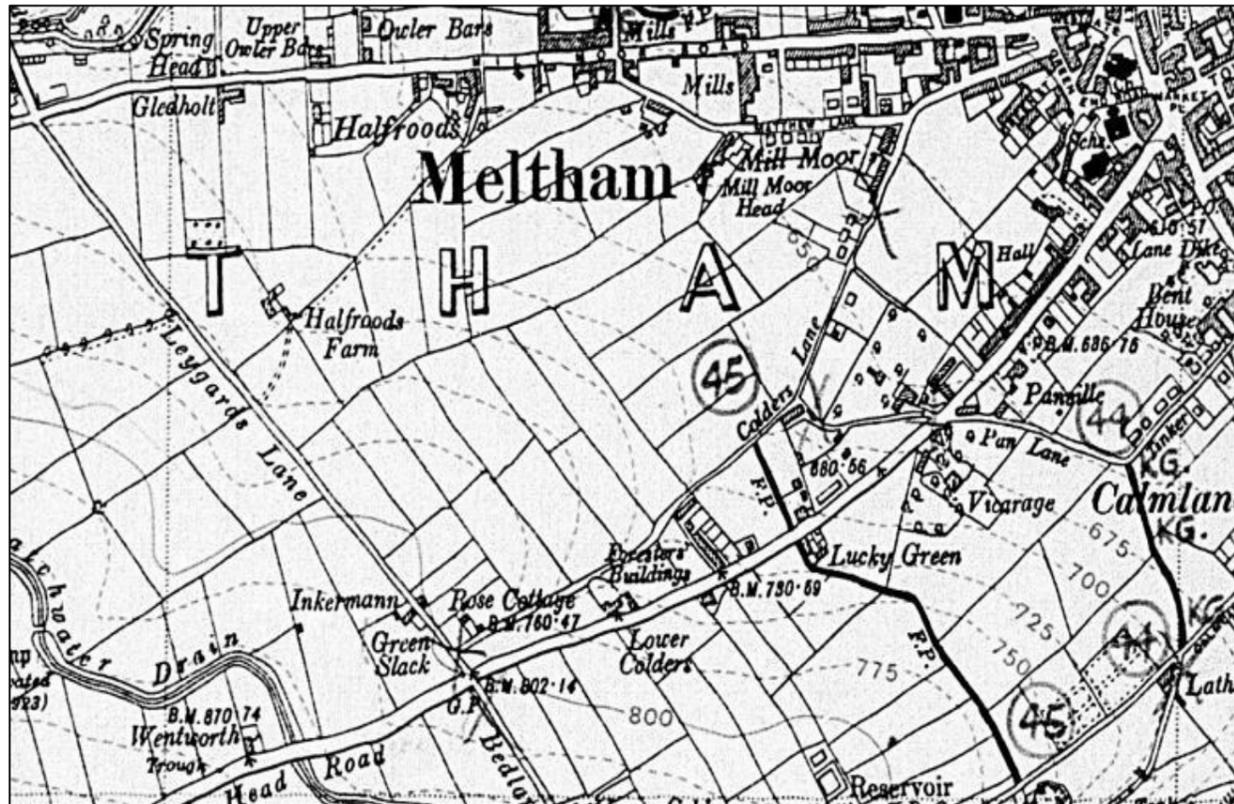
127. In preparation for the first Definitive Maps of Public Rights of Way, parish councils were required, under section 38 Part IV of the National Parks and Access to the Countryside Act, 1949, ([‘the 1949 Act’](#)), to conduct a survey of all footpaths, bridleways, and roads used as public paths in their areas and pass them onto the surveying authority. Section 27(6) of the 1949 Act defined a ‘public path’ as a highway being either a footpath or bridleway; and a ‘road used as a public path’ as a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleway are so used. Public Carriageways, not being a public path or used as a public path, were therefore excluded from the claims. This is indicated in the definition of a road in section 93(8) of the 1949 Act: *“In this section the expression “road” means a highway other than a public path (as defined in Part IV of this Act)”*. Although it should be noted that the meaning is prefaced with ‘in this section’, however, no other definition of ‘road’ is given in the 1949 Act.
128. The Claimed Route was not recorded when surveys for the preparation of the First Definitive Map and Statements were being conducted by the survey for Meltham Urban District Council in 1950. Colders Lane was therefore not shown on the Draft Definitive Map and Statement, whereas Meltham Footpath No. 46 was recorded as joining the Claimed Route, as shown in Figure 18. An explanation is not documented, but this would be consistent with the Claimed Route not been recognised within the remit of the definitions of a ‘public path’ or ‘road used as a public path’ to warrant inclusion on the Definitive Map and Statement. However, on the 7<sup>th</sup> March 1956, the clerk of Meltham Urban District Council made a representation and objected to the published Provisional Definitive Map and Statement, claiming that the section of Colders Lane from Leygards Lane to a point approximately 50 yards south of Matthew Lane, should be recorded on the First Definitive Map and Statement as a public footpath, also shown in Figure 18. Although, it is notable that the footpath was actually recorded on the First Definitive Map commencing 80 yards south of Matthew Lane.

## Analysis

129. By objecting to the Draft Definitive Map and Statement, Meltham District Council demonstrated their view that the section of Colders Lane between Leygard's Lane and Matthews Lane remained a private carriage and occupation Road with a coexisting public footpath. In principle, this is the position that is held to this very day, although there have been subsequent modifications to the record of Colders Lane on both the Definitive Map and Statement and the List of Streets due to development. This was in contrast to the original maps and schedules prepared by Meltham Parish Council, which did not claim Colders Lane as a public right of way because they considered it was not within the remit of the Definitive Map and Statement; presumably because it was viewed as a public carriageway. However, Meltham Urban District Council were the highway authority for District Roads at this time, so their intervention is important evidence.
130. Whilst the preceding documentary records do not provide any evidence of a public footpath, which was probably created via long use by the public and presumed dedication, the Definitive Map and Statement corroborates all the previous records that support private carriageway status for the Claimed Route, specifically the 1797 Plan of Meltham, the 1832 Meltham Inclosure Award, and the 1903 Cassini Historical Map. Furthermore, the 1956 objection shows that at the specific time, Meltham Urban District Council only admitted liability to repair Colders Lane as a public carriageway to just south of Matthew Lane. Based on this perspective, the Meltham Urban District Council Minutes and Press Articles may only relate to the section awarded as Colders Lane Bottom Road.
131. Recording the public footpath as commencing south of Matthew Lane correlates with the [1892 OS 25 Inch Yorkshire CCLX.13 Map](#), which was surveyed between 1888 to 1890 and shows this section coloured sienna. As the map predates the time in 1894 when Meltham Urban District Council accepted their liability for repair, it indicates that this section was formerly a route that was privately maintained but in a good standard of repair. The highway authority may have adopted/accepted their liability to repair the section south of Matthew Lane but there is no record. Additionally, recording the public footpath commencing approximately 50 yards

south of Matthew Lane correlates with the 'New Street' order under Section 30 of the Public Health Act, 1925, as discussed at paragraph 127 below.

Figure 18: Extract of Provisional Definitive Map & Statement, 1956 Meltham UDC Objection, and Extract of First Definitive Map



NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949 - PART IV.						DISTRICT: Meltham Urban
REPRESENTATIONS						PARISH:
Path Ref.	Map Ref. O.S. No.	Description of route.	Nature of representation.	Representation made by	Recommended modification to Draft Map and Statement.	Remarks.
75	260 S.W.	Footpath from its junction with Leygards Lane and proceeding in a north easterly direction along Colders Lane to its junction with the district road at a point approximately 50 yards south west of its junction with Matthew Lane.  Roughly metalled. 0.32 miles 4 ft. wide. No direction signs.	That this is a public footpath.  7.3.56	Meltham Urban District Council per Mr. H. Harris, Clerk.	Add  <i>Harry Cook</i>	

EVIDENCE.

## 1938-1972 MELTHAM URBAN DISTRICT COUNCIL MINUTES

### Background

132. In 1978, the highway authority received a letter a West Riding County Councillor called Julie W Roberts, which is stored in the Councils 'Path Files' records. The letter questioned a report from a solicitor, subsequent to the sale of a neighbour's house, regarding the status of Colders Lane. The report stated:

*"It would appear that whilst Colders Lane is an adopted public highway, the part which Burnt Oaks fronts is not. This section is a public footpath but the Highway Authority is under no obligation to maintain it as a vehicular right of way and the public has no vehicular right of way over it. It may well be that other houses have over a long period of time obtained a private right of way by long user and that being so it seems unlikely that our right of way would be barred but these are the facts".*

133. The property known as Burnt Oaks is now addressed as No. 55 Colders Lane, and is located to the east of Popley Butts, at the junction where Meltham Footpath No. 76 joins the Claimed Route. The letter from Mrs Roberts, provided evidence that the solicitor may not have been aware of. In particular, it states:

*"In the early 1960's the section of Colders Lane from the existing surfaced road [just south of Matthew Lane] to its junction with the new Colders Drive Road was widened to include a full width carriageway and pavements. This section and the original width section to Popley Butts were surfaced by the Meltham UDC at public expense in 1964... From that time the whole of the metalled section of Popley Butts was included in the four year surface dressing cycle maintained by the UDC. This programme continued until the reorganisation of local government [1974]. The narrow portion of Colders Lane from Colders Drive to Popley Butts was also included in the gritting and snow clearing programme from the time it was surfaced... Since the additional section of Colders Lane was surfaced, Sodium Lighting columns have been installed at public expense... Following the re-organisation of Local Government potholes have been repaired, the road has been swept (occasionally) and verges have been sprayed on the section of Colders*

*Lane, between Colders Drive and Popley Butts. This section is gritted and cleared by tractor in snow conditions. All of the above actions indicate that the Highway Authority has for at least 14 years maintained the whole of the surfaced section of Colders Lane as a public highway... I am not aware of the precise basis on which the former UDC carried out improvement works to Colders Lane at public expense, but it surely must have been a) deemed to be a public highway or b) deemed to be a road over which the public had access prior to 1835. In either case a public right of way for vehicles must have been established".*

134. The document provides evidence that Meltham Urban District Council repaired a section of the Claimed Route. However, the evidence is not incontrovertible as it is not unusual for an urban authority to conduct maintenance on private streets and then apportion the costs of the repairs to adjacent landowners, such as under Part IX of [the Highways Act, 1959](#), without adoption and accepting future liability. It is therefore necessary to review the Meltham Urban District Council Minutes prior to the letter, to discover the basis upon which the highway authority maintained the Claimed Route as a vehicular way.

### **Analysis**

135. In 1921, Colders Lane is referred to as a thoroughfare leading from the Cemetery at Greens End Road to the Isle of Skye, which is otherwise known as Wessenden Head at the southern end of Wessenden Head Road on Greenfield Road (A635). The Council Minute refers to the Surveyor making enquiries for the tipping of stones on the route, which may refer to contractors for the maintenance work. In 1928, the District Surveyor agreed to install a sewer as far as Foresters, which is on the Claimed Route near to the junction of Leygards Lane. The flag stones within the footway of a section of Colders Lane was also repaired in 1932, but this most likely refers to the northern section of the route.
136. [Section 30 of the Public Health Act, 1925](#), empowered local authorities to make orders declaring existing highways to be a 'new street' for the purpose of applying their bylaws relating to new streets to them. This legislation comes from Robinson

- v The Local Board for the District of Barton-Eccles, Winton and Monton (1883) where it was held that the words 'new streets' were not confined to streets being built for the first time but also applied to an old highway, formerly a country lane, which had been a 'street' within the meaning of the Public Health Act, 1875, and which by building houses on either side of it had recently become a street in the popular sense of the term.
137. If buildings are erected abutting a highway which is not a street as 'commonly understood', but which as a result of building activity becomes so, then a highway becomes a 'new street' and its construction must comply with the new street byelaw. It also seems to envisage that the construction will be of a road as 'understood in the popular sense' *Devonport Corporation v Tozer* (1902). The term 'new street' was again at the centre of judicial interpretation in *Astor v Fulham* (1963), where the nature of the street was changed making it into a 'new street' even though it must have been a street for some years and had been a highway since 'time immemorial'. Local authorities pass byelaws to regulate the level, width, and construction of new streets in their area including the provision for sewerage.
138. By section 33 of the 1925 Act, local authorities were empowered to prescribe an improvement line, that is, a line beyond which no buildings may be built so that a street or road may be widened. Section 33(8) enables the local authority to purchase any land not occupied by buildings lying between the improvement line and the boundary of the street, or any interest in such land ([Abbots Ride Land Ltd v Surrey County Council & Anor \[2019\] EWHC 3560 \(QB\)](#)). The word 'street' is used generally to indicate access ways to dwelling houses in urban areas, and as their regulation was an important part of public health, the Public Health Acts contained elaborate provisions. Section 30 was directed to ensure that narrow highways which are likely to become streets as a result of building operations on adjoining lands are made up to standards (including width) which satisfy the need to maintain or improve public health and safety ([Hale v Norfolk County Council \[2001\] 2 W.L.R. 1481 \[2001\] Ch. 717](#)).
139. There is no copy of the Order, but the Meltham Urban District Council Minutes from 1938 correlate exactly in length, 50 yards from its junction with Matthew Lane, from

the section of Colders Lane that was claimed as the starting point of the public footpath proposed to be recorded on the First Definitive Map and Statement as a public footpath' commencing approximately 50 yards south of the junction of Matthew Lane (see Figure 18). However, this termini appears to mark the transition point between the narrow ancient Colders Lane, and the section that was awarded as Colders Lane Bottom Road in the 1832 Meltham Inclosure Award at 30ft wide. All that can be gathered from the 'new street' extract, in isolation, is that the section of Colders Lane 50 yards south of Matthew Lane to Leygards Lane was an existing highway at this point in time, which is a term that encompasses both a public footpath or vehicular highway. It does not provide evidence that Meltham UDC accepted that this section was accepted as a highway maintainable at public expense in 1938.

140. In 1945, Meltham UDC actioned that the road surface of part of Colders Lane, above No. 60 be repaired with Bricks Works material, most likely from the factory at Mean Lane, Meltham. It is difficult to be certain, as the numbering system may have been modified, but based on 1950s OS Maps and today's records, No. 60 Colders Lane is the southern most ancient cottage from the 1700's, 80 yards south of Matthew Lane. Due to elevation change in Colders Lane, the northern part is known as the 'bottom', whereas the southern part is known as the 'top', hence the designation in the 1832 Meltham Inclosure Award. The description 'above' Colders Lane could therefore be a reference to the section of Colders Lane leading from that point southerly to Leygards Lane.
141. Take for example the Meltham UDC Minute from the 28<sup>th</sup> September 1964, which states: "... to cover the cost of improving and widening the lower part of Colders Lane, below its junction with Colders Drive". Again on the 4<sup>th</sup> January 1965, the Meltham UDC minute states: "*RECOMMENDED THAT the Surveyor arrange for the whole of Colders Lane, below its junction with Colders Drive, to be lit by sodium lighting instead of mercury vapour lamps*". The Council Minutes describes the section of Colders Lane from Colders Drive to Matthew Lane, Phase 1 of the development, as 'below', rather than 'above', even though it is the northerly most section of Colders Lane.

142. The images of Colders Lane at its junction with Matthew Lane in 1926 and 1930 shows that this section appears to have been repaired with tarmacadam, which was also actioned by Meltham UDC to repair Green Lane corner on the 4<sup>th</sup> April 1938 and Mean Lane on the 8<sup>th</sup> October 1951. The terminus at No. 60 Colders Lane, 80 yards south of Matthew Lane, is also the terminus at which Meltham Footpath No. 75 was first recorded on the Definitive Map and Statement, as shown in Figure 18. Similarly, Tinker Lane, which is now a vehicular highway maintainable at public expense but was a narrow lane, was also actioned to be repaired with stones by Meltham UDC on the 11<sup>th</sup> November 1940. The Brick Works material is likely to be residual clay and bricks sufficient that are not sufficient for everyday use by mechanically propelled vehicles and would explain why the Colders Lane south of Matthew Lane is consistently shown as a Third Class Metalled Road on Ordnance Survey maps and the presence of a deteriorated metalled surface on the Claimed Route today.
143. The evidence adduced from the Meltham Urban District Council Minutes shows that the highway authority sought to repair, make up, improve, and realign Colders Lane in the 1950s. The scheme was potentially in connection with the new residential development at Colders Drive. Previously, only a section of Colders Lane, from Mill Moor Road to 57 yards south of Matthew Lane, was conclusively known to be a highway maintainable at public expense, which was to benefit from upgrading gas lighting to electric lighting in 1954. However, before doing so, in 1959 the Council requested Counsels expert advice regarding maintenance liability, perhaps due to the contradiction that the section of Colders Lane south of Matthew Lane was recorded on the Definitive Map and Statement as a public footpath.
144. The Council would not need to seek to opinion of Counsel to understand that Meltham Footpath No. 75 was a public footpath maintainable at public expense. Section 23 of the Highways Act, 1835 did not apply to public footpaths. Therefore, public footpaths that were dedicated after that date continued to be highways repairable by the inhabitants at large until the Highways Act, 1959, repealed section 23 of the Highways Act, 1835 and created a new procedure under section 39, which was applicable to all forms of highway, including public footpaths, and

prevented a newly dedicated way becoming maintainable at the public expense unless a prescribed procedure was followed. The Council must have been seeking clarification from Counsel regarding their liability to maintain Colders Lane to a standard commensurate with their development plans, which would require higher rights above public footpath status.

145. On the 25<sup>th</sup> January 1960, Counsel advised, and the Council accepted, the position that Colders Lane, from its junction with Matthew Lane to its junction with Leygard's Lane was repairable by the inhabitants at large, which included all of the Claimed Route, not just to Popley Butts, from Matthew Lane to Leygard's Lane. It is perfectly clear the extent of the highway 'adopted', or rather accepted', by Meltham UDC in 1960. On the other hand, an 'unadopted street' would mean a street, as defined by [the Public Health Act, 1936](#), not being a highway repairable by the inhabitants at large, whether it is a highway or not. Records of maintenance liability are not records of the status of highways. On its own, the extract may not be sufficient to directly infer a public carriageway. For instance, the interpretation of the word 'street' in the 1959 Highways Act is defined as including any highway and any road, lane, footpath, square, court, alley or passage, whether a thoroughfare or not, and includes any part of a street. The terms street, road, and highway are therefore used synonymously and can encompass a public footpath. However, the natural interpretation, usage, and ordinary understanding of the word road connotes a vehicular highway. In *Oxford v Austin* [1981] RTR 416, Kilner-Brown J said that the definition of the word road involved two questions:

*"... the first question which has to be asked is whether there is in fact in the ordinary understanding of the word a road, that is to say, whether or not there is a definable way between two points over which vehicles could pass..."*

146. Similarly, in *Lang v Hindaugh* [1986] RTR 271, Croom-Johnson LJ recognised that the ordinary man in the street would not regard a footpath etc. as a road:

*"... I think there can no doubt from the description of the place where the motorcycle was being ridden that the ordinary man in the street looking at it would have done what the Crown Court did and said 'That is not a road',*

*but it was found to be a highway. It was a highway because it was a public footpath”.*

147. More importantly, it is the conduct of Meltham Urban District Council upon receipt of Counsels opinion. This was the founding basis for all future highway maintenance and is consistent with the street name plate at Point B on the Application Map and shown in Photo 3, as required under Section 19 of [the Public Health Act, 1925](#). The Surveyor was instructed to prepare cost estimates to widen and metal various sections of the road, and the Clerk negotiated with adjacent landowners to acquire portions of their land to widen the road. The Council naturally interpreted and used the word road as connotating a vehicular highway.
148. On the 22nd December 1960, the authority temporarily repaired and surfaced a portion of Colders Lane immediately to the south of the proposed new housing site (Colders Drive), which provides direct evidence for the very first time that the highway authority maintained part of the Claimed Route to vehicular standard. Significantly, on the 27<sup>th</sup> July 1964, the Clerk reported that the Council had some time ago resolved to make up this section of road to its present width, which is with reference to the decision on the 24<sup>th</sup> October 1959. The width of this section of Colders Lane is approximately 3.5m wide, which is significantly wider than the 1.2m recorded in the Definitive Map and Statement. This corroborates the letter from Mrs Julie Roberts that a section of the Claimed Route from Colders Drive to Popley Butts was metalled and maintained by Meltham Urban District Council to vehicular standard to accommodate public carriages. The contents of her 1978 letter are therefore substantially true and factual.
149. The improvement scheme was conducted in three phases:
- Phase 1 led from Matthew Lane to the ‘new’ Colders Drive, which was completed and metalled, improved, and widened from approximately 2.5-4m wide to 9.5m wide, as can be seen today
  - Phase 2 led from Colders Drive to Popley Butts, which was metalled and improved for vehicles to its existing width during the 1960s & 70s. However, the Council were not successful in securing the dedication of land to widen

Phase 2 to 30ft, which was the same width as Phase 1 and would permit two vehicles to pass side by side. A similar widening scheme was proposed in the early 1970s but to just 18ft with a 6ft footway on one side.

- Phase 3 continued from Popley Butts to a place known as Forresters, which is close to the junction with Leygards Lane, and was to be widened and an improvement line set out. It was not immediately metalled like Phase 2 as it did not lead to residential properties or serve a public purpose for public vehicles at this time period.

150. The schemes didn't seek to 'upgrade' or change the status of either Phase 1, 2, or 3, from public footpath to vehicular highway. They only improved, metalled, and widened the pre-existing status of Colders Lane to vehicular standard based on Counsel opinion. The basis for establishing that Colders Lane was a vehicular highway maintainable at public expense directly contrasts to the adjoining 'Colders Drive', which was an estate road for residential development and was adopted by agreement under Section 40 of the Highways Act, 1959, and also Hassocks Road, which is recorded as Meltham Bridleway No. 13 but the eastern section was developed for residential houses. Meltham UDC held on the 27<sup>th</sup> March 1972 that it would be necessary to enter into a Section 40 agreement, just like Colders Drive, and that the Council would be in order in asking existing owners now fronting on to Hassocks Road to pay a portion of the cost, under the Private Street Works Act.

151. When a route is only considered to be a public path and a highway authority wants it to be a vehicular highway, there has to be someone with the capacity to dedicate the additional higher rights and enter into an agreement with the highway authority for its creation/adoption. There is no evidence that any highway authority formally adopted the entirety of Colders Lane, from Green Ends Road to Leygards Lane, under any similar provision, such as Section 23 of the Highways Act, 1835, or otherwise. Therefore, Mrs Julie E Roberts was most likely correct to assert that Colders Lane must have been a vehicular highway before 20<sup>th</sup> March 1836, when the Highways Act, 1835, came into operation. This is corroborated by the 1884-1894 Meltham Urban District Council Minutes and Press Articles.

152. Looked at in isolation, it is unclear the extent of Colders Lane that the 1884-1894 documents referred to. This is especially true since only the section between Mill Moor Road and 50-80 yards south Matthew Lane seem to be actively repaired and acknowledged as a vehicular highway in the 1930-50s, however, this is notable in itself as the maintenance terminus is effectively a cul-de-sac but is not a place of popular resort and yet the 1884-1894 Council Minutes stated that Colders Lane was a highway repairable by the inhabitants at large as a thoroughfare between highways. In turn, this is consistent with the designation of Colders Lane between 50 yards south of Matthew Lane and Leygards Lane as a new street under Section 30 of the Public Health Act, 1925, as an existing highway.
153. In particular, when viewed as chain of evidence in conjunction with the 1960-65 Council Minutes, they provide corroborative evidence that Colders Lane was twice accepted by Meltham Urban District Council to be dedicated as a public carriageway before Section 23 of the Highways Act, 1835, took effect and it was therefore a highway maintainable at public expense. History may have repeated itself and by admitting their liability to repair, Meltham Urban District Council were twice able to bring sections of Colders Lane into a standard of repair fit for the passage of vehicles. It is no coincidence that each time, the highway authority only repaired Colders Lane for vehicles as far as residential properties. Had the negotiations to widen Phase 2 of Colders Lane been successful, or even so far as Forresters, it is likely that the Claimed Route would have the same width and character as the section of Colders Lane north of Colders Drive to Greens End Road.
154. It is not critical to the investigation that no public expenditure had been outlaid on the repair of Colders Lane to vehicular standard, from just south of Popley Butts to Leygards Lane. In *Roberts v Webster* [1967] QBD 298 the authority contended that a lane was a public highway, but it had achieved that status after 1835 and no public money had ever been spent on it. There was no evidence of formal dedication or enrolment, but maps showed that it had existed as a road since 1835, and it was shown on the 1859 Inclosure Award. The appeal was dismissed, and quarter sessions were entitled to infer from the evidence that a highway existed

over the road in 1859 and the authority's onus of showing that it was not a highway in 1835 had not been discharged.

155. Furthermore, it is improbable that a continuous thoroughfare highway will change status at some intermediate point between termini and be part footpath and part vehicular highway unless special circumstances exist (A.G. (At Relation of A H Hastie) v Godstone RDC (1912)). The Courts have long recognised that the law presumes a highway is a through-route apart from in certain situations, such as cul-de-sacs in rural areas can be highways leading to a viewpoint or monument (e.g. Eyre v. New Forest Highways Board 1892, Moser v Ambleside 1925, A-G and Newton Abbot v Dyer 1947 and Roberts v Webster 1967). A situation can arise where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have altered what was once a thoroughfare into a cul-de-sac. Before recognising a cul-de-sac as a highway, the investigation needs to be persuaded that the special circumstances exist. The Meltham UDC Minute from the 25<sup>th</sup> January 1960 conclusively encompasses the entirety of the Claimed Route as repairable by the inhabitants at large upon which the Council acted to repair parts of it to vehicular standard as required for residential development.

**Figure 19: Chronological List of Council Minutes Relating to Colders Lane between 1938 to 1972 Collated from Meltham Urban District Council Minutes (Source: West Riding Archives: KMT26)**

Meeting Date	Minutes
5 <sup>th</sup> December 1921	<p>Stone on Colders Lane</p> <p>That the Surveyor make enquiries regarding the tipping of stone etc., on the road leading from the Cemetery to the Isle of Skye.</p>
21 <sup>st</sup> March 1927	<p>The Clerk reads a letter from Messrs Meltham Silica Fire Brick Co. Ltd, with reference to the repair of Colders Lane.</p>
11 <sup>th</sup> June 1928	<p>The Surveyor reports result of interview with Mr Abbey regarding sewer to Foresters and other property, and submits letter agreeing to his carrying out the work.</p>
29 <sup>th</sup> August 1932	<p>Colders Path</p> <p>That the broken flags in Colders Lane be renewed [footway pavement].</p> <p>That Colders be issued for the goods and materials shown in the Requisition Book to be required and the Orders issued since the last meeting approved.</p> <p>That work for the ensuing month be as follows:-                      (a) Repairs to footpaths in Mill Moor and Colders Lane...</p>
4 <sup>th</sup> April 1938	<p>Colders Lane New Street</p> <p>That the Council being of the opinion that Colders Lane from a point approximately 57 yards from its junction with Matthew Lane to its junction with Leygards Lane will be converted into a new street as a consequence of building operations which have been or are likely to be undertaken in the vicinity the Clerk be authorised to take all necessary steps in accordance with subsection 2 of Section 30 of the Public Health Act 1925</p>
30 <sup>th</sup> May 1938	<p>That an Order be made under the provisions of Section 30 of the Public Health Act 1925 declaring as from the 31<sup>st</sup> instant Colders Lane from a point approximately 50 yards from its junction with Matthew Lane to its junction with Leygards Lane to be a new street for the purpose of the application thereto of the Byelaws of the Council with respect to new streets and that the Common Seal of the Council be affixed thereto.</p>
11 <sup>th</sup> November 1940	<p>That Mr Milton Watson be informed that the Council are not prepared to carry out any alterations at Colders Lane at present.</p>
8 <sup>th</sup> October 1945	<p>That the road surface of part of Colders Lane above 60, Colders Lane be repaired with Brick Works material.</p>

25 <sup>th</sup> April 1946	That a roller be hired and the necessary stone purchased for repair of Colders Lane.
10 <sup>th</sup> October 1949	Colders Lane Widening  That the Council take no action with regard Mr Harry Earnshaws application for widening Colders Lane.
1 <sup>st</sup> November 1954	That the Surveyor arrange for four electric street lamps to be erected along that portion of Colders Lane maintainable by the Council to replace existing gas lighting on that street.
22 <sup>nd</sup> June 1959	THAT the Clerk make further enquiries regarding the liability for repair and making up of Colders Lane, Meltham, and that in connexion with such enquiries, he be authorised to obtain Counsel's opinion on the matter.
24 <sup>th</sup> October 1959	That the scheme prepared and submitted by the Surveyor for the improvement and realignment of Colders Lane from the junction of that road with an unnamed street on the west side of the Car Park, to a point beyond Popley Butts, be approved.
25 <sup>th</sup> 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 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 metaling 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.
24 <sup>th</sup> October 1960	The surveyor submitted plans showing details of the proposed widening and repair of Colders Lane from a point near its junction with Shambles Road to the area known as Popley.
22 <sup>nd</sup> December 1960	RESOLVED that the Surveyor be authorised to carry out temporary repairs and surfacing of a portion of Colders Lane immediately to the south of the proposed new housing site adjacent to Colders Lane, at an estimated cost of £30.
27 <sup>th</sup> February 1961	The Surveyor submitted amended plans showing details of the proposed widening and repair of Colders Lane. RESOLVED that the plans, as submitted, be approved, and that the Surveyor proceed to prepare details plans and specifications for the necessary works appertaining to that section of Colders Lane from a point near its junction with Shambles Road, to its junction with Colders Drive, AND FURTHER THAT the Clerk be authorised to enter into negotiations with any owner or owners

	concerned, regarding the dedication or acquisition of necessary land required for the road widening.
26 <sup>th</sup> March 1962	The Clerk reported that the two owners of land on the south west side of Colders Lane had agreed to throw in to the highway the land required by the Council for the widening of this section of Colders Lane between its junction with Colders Drive and the Colders Green Footpath. It had been agreed on behalf of the Council that in return, the Council would in one case build a retaining and fence wall similar to that existing, along the new boundary of the highway, and in the case of the owner of Field No. 452A, erect a concrete post and two bar concrete rail fence along the new boundary of this field, in place of the existing dry stone wall. The Clerk also reported that the Council's Solicitors had been instructed to prepare the requisite Dedication Agreements, at the cost of the Council. RESOLVED THAT the report be received, and that the action taken, be confirmed.
24 <sup>th</sup> February 1964	A letter was submitted from a resident of Colders Lane enquiring when the repair and improvement of this roadway was likely to be carried out. The Surveyor report that plans for this work would be prepared as soon as the requisite survey could be carried out.
21 <sup>st</sup> May 1964	The Clerk reported that in December 1963, the Contractor concerned had been informed that if the street known as Colders Drive was not properly made up, in accordance with the terms of the Agreement made with the Council under the provisions of Section 40, Highways Act, 1959, by the end of April 1964, the Council would consider that there had been a breach of the Agreement. The Contractor was also informed that the Council would take action to make up the street, and reclaim the cost thereof from the Contractor's Bondsmen. The Clerk also submitted and reported on correspondence from the Contractor concerned, stating that, whilst he agreed there had been delay in completing this work, he hoped to make arrangements for a firm to make up the road in about 5/6 weeks time. The Clerk also submitted correspondence from the Owner of 2, Colders Drive, regarding the making up of that street as well as surfacing and widening Colders Lane. RESOLVED THAT the report be received and that, in view of the time allowed to this Contractor for making up this street, and the fact that in December 1963, he was given a further four months in which to carry out this work, the Clerk be instructed to give notice to the Contractor and to the Bondsmen that the Council now hold the Contractor as being in breach of the Agreement made under Section 40, Highways Act, 1959, and that consequently the

	<p>Council intends to proceed to have Colders Drive made up as soon as practicable, AND FURTHER THAT to connection therewith, the Surveyor arrange for selected tenders to be invited for this work to be carried out.</p>
27 <sup>th</sup> July 1964	<p>The Surveyor reported on the progress made in the preparation of plans for the improvement of Colders Lane, and especially on the question of making up that section of Colders Lane between its junction with Colders Drive and Popley Butts. The Clerk reported that the Council had, some time ago, resolved to make up this section of road to its present width. RESOLVED THAT the surveyor arrange for this section of road to be made up to its present width at the same time as the rest of Colders Lane, east of its junction with Colders Drive, is widened and improved, but that the Clerk be instructed to negotiate with the owners concerned for the dedication or acquisition of any land necessary to provide for this section of Colders Lane between Colders Drive and Popley Butts to be made up eventually as a 30 ft. wide roadway.</p>
28 <sup>th</sup> September 1964	<p>The clerk reported that the successful tender accepted by the Highways Committee for widening and improving the lower part of Colders Lane, amounted to £6,301.2s.3d., and that the Surveyor's undertakers works, for which the Council would be responsible under the provisions of the Public Utilities Street Works Act 1950, together with the alterations to existing street lighting, would amount to £254... RESOLVED THAT the report be accepted and that application be made to the Ministry of Housing and Local Government for sanction to borrow the sum of £6,555 from the Public Works Loan Board, to cover the cost of improving and widening the lower part of Colders Lane, below its junction with Colders Drive, and that the Chairman and Clerk of the Council be authorised to affix the Common Seal of the Council to all necessary documents and to supply any further information required.</p>
28 <sup>th</sup> September 1964	<p><b>COLDERS LANE – WIDENING AND IMPROVEMENT (PHASES 1 AND 2)</b></p> <p>The Clerk submitted an interim report on negotiations with some of the owners concerned, regarding the dedication or acquisition of land necessary to widen the upper section of Colders Lane, between Colders Drive and Popley Butts. The Surveyor reported that the estimates cost of removing telegraphic apparatus necessary, due to the widening of the lower section of Colders Lane, was £60 and that under the provisions of the Public Utilities Street Works Act 1950, the Council would be responsible</p>

	<p>for bearing this cost. RESOLVED THAT the report be received and that the Clerk be authorised to negotiate further, along with the Councils Solicitors as necessary, and report thereon in due course.</p> <p>COLDERS LANE – WIDENING AND IMPROVEMENT (PHASE 2)</p> <p>The Surveyor submitted a plan showing a proposed scheme for widening and improving the upper section of Colders Lane, between its junction with Colders Drive and a point known as Forresters (plan reference no. CL.2/8/64). RESOLVED THAT the plan, as submitted, and showing the improvement lines for this section of Colders Lane, be approved.</p> <p>COLDERS LANE – WIDENING AND IMPROVEMENT (PHASE 1)</p> <p>The Clerk submitted five tenders for carrying out works of improvement and widening of the lower part of Colders Lane, below its junction with Colders Drive. The tenders were duly opened and it was RESOLVED THAT the lowest tender received, being that submitted by Crosbie Construction Ltd., and amounting to £6,301.2s3d., be accepted subject to the receipt of any necessary approvals.</p>
23 <sup>rd</sup> November 1964	<p>The surveyor reported that he had now agreed the amended claim for £56 with the Yorkshire Electricity Board for the cost of moving their apparatus, as a result of this proposed road widening. This costs would be borne by the Council under the Public Utilities Street Works Act 1950.</p>
4 <sup>th</sup> January 1965	<p>RECOMMENDED THAT the Surveyor arrange for the whole of Colders Lane, below its junction with Colders Drive, to be lit by sodium lighting instead of mercury vapour lamps.</p>
24 <sup>th</sup> August 1970	<p>COLDERS LANE WIDENING</p> <p>RESOLVED THAT the proposed widening of Colders Lane to Popley Butts be placed on the Agenda for the Annual Highways Inspection.</p>
28 <sup>th</sup> September 1970	<p>COLDERS LANE WIDENING</p> <p>Councillor J.W. Roberts left the meeting whilst this item was being discussed.</p> <p>Discussion took place on the possible widening of Colders Lane, and it was RESOLVED THAT the Engineer</p>

	and Surveyor obtain proper levels regarding the practicality of making up and widening Colders Lane, and report further to the next meeting of this Committee.
26 <sup>th</sup> October 1970	<p><b>COLDERS LANE WIDENING</b></p> <p>The Engineer and Surveyor reported that he had not had the time to prepare a scheme for the widening of Colders Lane, Meltham.</p> <p>After discussion, it was RESOLVED THAT the Engineer and Surveyor look into the possibility of preparing a scheme which would prove adequate but, at the same time, be less costly than the scheme previously envisaged.</p>
23 <sup>rd</sup> September 1970	<p><b>COLDERS LANE WIDENING</b></p> <p>The Engineer and Surveyor reported that it would be possible to carry out the widening of Colders Lane by direct labour if he could be authorised to employ additional labour.</p> <p>RESOLVED THAT the Engineer and Surveyor prepare a scheme, together with costs, for carrying out the widening of Colders Lane by direct labour AND THAT such scheme be considered at Estimate time.</p>
26 <sup>th</sup> April 1971	<p><b>COLDERS LANE WIDENING</b></p> <p>Further discussions took place on the proposed widening of Colders Lane, Meltham, following a resolution made by the Council at its meeting held on Monday, 22<sup>nd</sup> March, 1971.</p> <p>After discussion, it was RESOLVED THAT the Engineer and Surveyor look into the possibility of preparing a road widening scheme and the provision of a footpath on one side only, and that the Engineer and Surveyor report back to the next meeting of this Committee.</p>
17 <sup>th</sup> May 1971	<p><b>COLDERS LANE WIDENING</b></p> <p>The Engineer and Surveyor submitted to the Committee a plan and details which would provide for an 18ft carriageway accompanied by a 6ft footway on the eastern side of Colders Lane, Meltham.</p> <p>RESOLVED THAT this matter be deferred for one month, in order that the Engineer and Surveyor may prepare detailed costs of the proposed scheme.</p>
28 <sup>th</sup> February 1972	<b>STEET LIGHTING AND SURFACING, COLDERS LANE, MELTHAM</b>

	<p>RESOLVED THAT the Engineer and Surveyor report on the possible provision of street lighting and re-surfacing of that part of Colders Lane which had been previously considered for a road widening scheme, at the next meeting of this Committee to be held on Monday, 6<sup>th</sup> March, 1972.</p>
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## 1974-1985 HIGHWAYS REGISTRY & DEFINITIVE MAP AND STATEMENT

156. The Meltham Urban District Council was abolished on the 1<sup>st</sup> April 1974 under the [Local Government Act, 1972](#) and became Meltham Civil Parish within the new Metropolitan Borough of Kirklees within West Yorkshire Metropolitan County Council ('WYCC'), as part of the reform of local government in England. WYCC became responsible for highways and liable to repair highways maintainable at public expense. In 1974, Meltham UDC produced a 'handover' list of streets maintainable at public expense, as required to be produced under section 84 of the Public Health Act, 1925. As previously stated, a street is defined in the Public Health Act, 1875, as including: "... *any highway (not being a turnpike road), any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not*". The handover list of streets could therefore also include public paths. The list is only partially survived but states in the heading "Roads and Footpaths..." and a sub-heading 'Surface' with ticks under each year when the surface was likely maintained, starting in 1950. Colders Lane is listed at number 9 and the termini is originally recorded as leading from Greens End Road to Leygards Lane, which correlates with the 1960 Meltham UDC Minute.
157. However, the record has later been amended and 'Leygards Lane' has been crossed out and replaced with 'Top of Housing Scheme + up to J Steel' to show that Meltham UDC did not accept that the entirety of Colders Lane was a highway maintainable at public expense. The location of 'J Steel' is unknown but it may refer to a person. On the 9<sup>th</sup> March 2022, a person posted in the 'Meltham History' Facebook group regarding old pictures of No. 30 Colders Lane at the first cottage after the flats, to which a response stated:

*"I've looked but I have only a couple of the garden at the back and my mum and John Steel on the front step. Could be anywhere really".*

158. The description 'Top of Housing Scheme' could refer to Colders Drive, however, based on the representation made to the First Definitive Map and Statement from the same time period, it may refer to the terminus 50-80 yards south of Matthew Lane, which is where the residential development leading from Colders Drive actually commences. The fact that the surfacing records start in 1950 indicates

that the list of streets was probably amended prior to the handover in 1974. In fact, the Meltham UDC minute from the 1<sup>st</sup> November 1954, states:

*“That the Surveyor arrange for four electric street lamps to be erected along that portion of Colders Lane maintainable by the Council to replace existing gas lighting on that street”.*

159. This would suggest that Meltham UDC only accepted liability to repair an initial section of Colders Lane and that the list of street would have been amended by 1954 and not modified again following the acceptance of maintenance liability to vehicular standard in 1960. Subsequently, in 1977 and prior to the Definitive Map Modification Order procedure provided in section 53 of the Wildlife & Countryside Act 1981, WYCC state in a record book: *“Path 75 Colders Lane adopted highway from Greens End Road to Colders Drive 1/7/77”*; and that the definitive statement had been retyped. When the Definitive Map and Statement was republished with a relevant date of 30th April 1985, only the section of Meltham Footpath No. 75 from just south of Matthews Lane to Colders Drive was removed from the legal record of public rights of way, presumably because it was considered not within the remit of the Definitive Map and Statement to record ordinary vehicular highways, as shown in Figure 1. Significantly, the section of public footpath removed from the Definitive Map and Statement record was not included in the ‘Omnibus Modification Order 1985 (WEST YORKSHIRE METROPOLITAN COUNTY DEFINITIVE MAP)’, which included in Schedule A the change of status from public path to County Road.

160. WYCC was abolished on the 31<sup>st</sup> March 1986, following the Local Government Act, 1985. Its powers were passed to the five district councils of West Yorkshire, which had shared power with WYCC, including the Metropolitan Borough of Kirklees (‘Kirklees Council’). Therefore, in 1986, Kirklees Council inherited ‘street register cards’ from WYCC. The original street register card relating to Colders Lane stated Colders Lane from Green Ends Road to ‘*Top of Housing Scheme + up to J Steels*’. However, the latter description was crossed out and replaced with ‘Colders Drive’ for a distance of 320m, which was public and had a sealed surface (i.e, a highway maintainable at public expense). The section of Colders Drive from

Colders Drive to Leygards Lane was described as 'private' (i.e., privately maintainable) in and in brackets is annotated as 'Public Footpath Meltham 75'. It is clear that the Definitive Map and Statement was modified in 1977 based on the amended List of Streets.

161. The amended list of streets and 1985 Definitive Map and Statement has been the prevailing record of highway maintenance and public rights ever since. For instance, in July 2008 nine residents of Colders Lane, south of Colders Drive, signed a petition supporting a request to Kirklees Council for improvements to the upper part of Colders Lane from No. 45a to Leygards Lane. The matter was considered by Cabinet for Transportation and Green Services in December 2008, which held that the section of Colders Lane from Nos 45a to 65:

*"... is a Private Street and as such responsibility for maintenance lies with the 'street managers' usually the owners of the properties fronting the street and not the Highway Authority.*

*The private section provides pedestrian and vehicular access to fourteen properties and there is a public footpath running along it's entire length, Footpath Meltham 75. The Council would only undertake maintenance to ensure that the route can be used safely by pedestrians and it would not undertake repairs to facilitate private vehicular use for residents or other authorised users. Should damage to the footpath be cause by vehicle use, the Council can request that landowners or local residents either repair or contribute to any repairs that may be required to be undertaken on the footpath....*

*The adopted section of Colders Lane from Greens End Road to Colders Drive was resurfaced earlier this year with funding from Valley North devolved budget. The consultation letter did state to house number 55 but should have been 45. Expectations of some residents may have been raised when they were involved in the consultation for these works however it was never the intention to resurface the private section of this road".*

162. The Councils position on the petition was that there was little chance of improvements within the Unadopted Roads programme. This position is in conflict, and incompatible, with the documentary evidence from the Meltham UDC Minutes in the 1960/70s, which provides evidence of public expenditure to metal and resurface the section of Colders Lane south of Colders Drive to Popley Butts, and also the original handover list of streets in 1974. *Bourke v Davis* (1890) held that proof public money has been spent on a route is an important criterion for establishing a highway over it. Similarly, in *Attorney General v Antrobus* (1905), the Court held that the evidence of the expenditure of public money was an important consideration. In such cases, neither the landowner who has permitted the expenditure, or the highway authority can be heard to say that the roadway on which they have allowed public money to be spent is a private carriageway.
163. Based on the above evidence, the modification to the First Definitive Map and Statement was an error to only delete the section of public footpath from 50 yards south of Matthew Lane to Colders Drive, and all of Meltham Footpath No. 75 should have been deleted. Recording a section of Colders Lane as a public footpath on the Definitive Map and Statement is, under section 56 of the Wildlife & Countryside Act 1981, conclusive evidence of the existence of a public right to pass and repass on foot. However, it is without prejudice to the question whether the public had at the relevant date any larger right of way, for example a right of way to pass with vehicles.
164. There is little evidence of use of the Claimed Route south of Popley Butts by the public with vehicles in living memory. The only evidence of use by the public in living memory has been use on foot, or horseback, the latter may or may not be 'by right' or as of right'. Maintenance that would be expected on a public vehicular road has not been carried out on the Claimed Route south of Popley Butts for a very long time, and it has been maintained in character commensurate to public status to such an extent that it has not been considered to be a public vehicular road by anyone, other than Meltham UDC in 1894 and 1960-70s (*R v SSE & Somerset CC ex parte Masters* [1999] CO3453/97).
165. Furthermore, the [Definitive Map Consistency Guidelines](#) state at paragraph 6.2.8:

*“It should be noted that it is unsafe to hold that the fact that a road does not appear to have been accepted by a new highway authority at the time of handover necessarily suggests that it can not have been a highway”.*

166. The list of streets should never have been amended in the first place to delete the section of Colders Lane leading from just south of Matthew Lane to Leygards Lane as a highway maintainable at public expense. Even so, the 1974 handover records should have been modified again following the 1960 legal event which accepted that Colders Lane from Matthew Lane to Leygards Lane was a highway maintainable at public expense.

**Figure 20: List of Street Handover & Definitive Map Records (Top: 1974 Meltham UDC to WYCC Handover; Middle – 1977 WYCC Definitive Map; Bottom: 1986 WYCC to Kirklees Council Handover)**

		1950	1951	1952	1953
MELTHAM UDC					
ROADS AND FOOTPATHS					
SURFACE					
	<i>+ Harrison Lane Sec. N<sup>o</sup> 14.</i>				
Arborary Lane.	✓ (Whitehead Lane to Intake Lane).	✓			
Black Lane.	F (Old Travellers to Intake).			✓	
3 Birmingham.	F (Red Lane to Slaithwaite Road).				✓
4 Broadbent	(Broadbent to Red Lane)				✓
5 Broadlands. Rd.	F (Helme Lane to Mean Lane)		✓		
6 Carlile Street.	F (Huddersfield Road to end)				
7 Calm Lands (Part)	(Holmfirth Road to Royd Edge Quarries)				
8 Clarké Lane & Green Lane.	(Holmfirth Rd. to Huddersfield Road)			✓	
9 Colders Lane.	(Greens End Road to <sup>Top of Housing Scheme + up to J Street</sup> Leygards Lane)				✓
10 Crosland Spring Road.	(Huddersfield Road to Church Lane)	✓			
11 Greens End Road.	(Station Street to Mill Moor Road)		✓		
12 Golcar Brow Road.	(Slaithwaite Rd to Golcar Brow Tip)		✓		
13 Hollow, Golcar Brow.	(Golcar Brow Road to Mill Moor Road)				
14 Harrison Lane.	(Helme Lane to <sup>Top of Hill near Top</sup> Cross Roads)				✓
15 Healey House Road.	(Huddersfield Road to Stream Bridge)	✓			✓
16 Hebble Lane.	(Calm Lands Road to Top of Sets)				✓
17 Intake Lane.	(Arborary Lane to Boundary)			✓	
18 Leygards Lane.	(Mill Moor Road to Wessenden Head Rd)		✓		

PART 75  
 SE OF SE  
 0910  
 Part 75 / Colders Lane adopted highway from Greens End Road to Colders Drive. B 11/77.

COLDERS LANE - MELTHAM		O.S. REF X 098106 096104	
Postal Code P.T.O.			
FROM	TO	L/N	
GREENS END ROAD	TOP OF HOUSING SCHEME <del>UP TO 3 STREETS.</del> (COLDERS DRIVE)	320m (REMOVED)	PUBLIC
EXEMPTION PLOT OF LAND BETWEEN HOUSE NOS 45+47 7/9/93			
COLDERS DRIVE	LEYGARDS LANE		PRIVATE
(Public Footpath Meltham 75)			
EXEMPTION	12.11.96 096 104 + 3.12.96		
EXEMPTION	23.6.20 095 103, 65+67 Colders Lane.		

415

## DISCUSSION

167. The chronological formation of the Claimed Route over 200 years has been schematically simplified in Table 1, bringing together the story of Colders Lane, based on the available documentary evidence. The 1797 Plan of Meltham shows that the Claimed Route has an archaic origin and existed as a private occupation road since time immemorial leading through ancient enclosures to common land of Meltham Lordship. The piecemeal enclosures bounding the Claimed Route creating its irregular width. The 1824 Turnpike Plan & Book of Reference present some ambiguity, but it is the similarities it shares with other documents that give it evidential weight. In particular, the Book of Reference describes the route as an occupation road, which is generally defined as a private way to and from freehold land, whilst the plan reaffirms that it joined common land.
168. The 1832 Meltham Inclosure Award is very important and creates the palimpsest to which the modern day urbanisation of Meltham is superimposed. The Commissioners created extensions to the ancient Colders Lane at either end. Firstly, Colders Lane Bottom Road at 30ft wide, which joined the public carriageway network, and secondly, Colders Lane Top Road at 18ft wide, which connected to a private carriageway, close to the new Wessenden Head Turnpike Road. Both sections were to be maintained by the adjacent owners and occupiers. Unquestionably, the Claimed Route was a private carriageway in 1832.
169. By the late 19<sup>th</sup> century, the owners and occupiers of property adjoining Colders Lane petitioned for the route to be adopted as a highway maintainable at public expense by Meltham Urban District Council. The case was debated to such an extent that the District Council eventually ended up enacting the Private Street Works Act, 1892, which would permit the Council to apportion the costs of repair amongst the respective owners. The main cause of concern was the section of Colders Lane between Mill Moor Road to Matthew Lane End. However, the District Council sought the opinion of Messrs. Learoyd, a Solicitor, to determine the party liable to the repair of Colders Lane.
170. This evidence alone reveals that the Claimed Route was not actively maintained at public expense for many decades prior. In 1894, Mr Learoyd confirmed that the Council was liable for the repair Colders Lane, not the respective owners. The

District Council resolved to committee and accepted the counsel. Consequently, it is not readily apparent what was stated in Mr Learoyds advice. However, subsequent press articles of District Council meetings with regard to other private ways shows that the District Council was liable to repair Colders Lane because it was used by carts as a thoroughfare highway before the 1835 Highways Act came into operation, rendering it 'repairable by the inhabitants at large' without the need for a statutory adoption.

171. Unfortunately, the minutes and press articles are silent as to the extent of the thoroughfare. Was it a thoroughfare to Leygards Lane, or just in combination with Matthew Lane End to re-join Mill Moor Road? The 1903 Cassini OS Map certainly hints at the latter, which shows the section of Colders Lane up to Matthew Lane End coloured sienna and in a good standard of repair for wheeled traffic. However, other known routes that were highways maintenance at public expense at this time were similarly shown uncoloured, such as Leygards Lane. Additionally, Meltham UDC are consistently shown to have maintained Colders Lane to a specific cul-de-sac point 50-80 yards south of Matthews Lane, adjacent ancient properties but which was neither a place of popular sort nor a connecting highway but let to residential properties.

172. When considered in context, the purpose of the debate in the 1890s was to improve the standard of repair for that specific section of Colders Lane actively used by public vehicles at that time. This section was newly urbanised with properties aligning the route. If carts no longer used the remaining section towards Leygards Lane, including the Claimed Route, it would not make sense for it to have the equivalent metalled surface, regardless of its status. The Claimed Route would more than likely be maintained in character only to save costs and reduce taxation, meaning it would fall out of repair to such an extent that it would be primarily used by the public on foot. This is strongly suggested by the subsequent Ordnance Survey Maps that Colders Lane was a Third Class Metalled Road but was for use by motor vehicles.

173. The 1910 Finance Act shows the entirety of Colders Lane as excluded from adjacent hereditaments. This could be because it was a highway maintainable at

public expense and vested in the District Council, but this doesn't help decide its status; particularly where adjoining routes, too narrow to be a public carriageway, are depicted in the same manner. There are various other rational explanations to explain why it is shown 'uncoloured'. The landownership analysis consistently shows that ownership of Colders Lane is based on the *ad medium filum* presumption and could be rebutted, such as by the Lord of the Manor. The document is therefore of limited weight and its influence turns on the interpretation of the surrounding documentary evidence.

174. At first, Colders Lane was not claimed for inclusion on the First Definitive Map and Statement. The Clerk to Meltham Urban District Council objected to the Draft Definitive Map and Statement that it should be recorded at a width of 1.2m, leading from Leygards Lane to a point just 50 yards south of Matthew Lane End. This corroborates with the Section 30 of the Public Health Act, 1925, Order for a 'new street', and the 1954 minutes that only a section of Colders Lane to Matthew Lane End had street lighting and was referred to as maintainable at public expense. Towards the late 1950s, after the First Definitive Map and Statement was published in 1954, Meltham Urban District Council sought an improvement scheme along Colders Lane, most likely in connection with new residential estates and the expansion of the urban area. In 1960, the District Council again accepted legal advice that the section of Colders Lane from Leygards Lane to Matthew Lane End was a street repairable by the inhabitants at large.

175. The District Council then set about metalling, improvement, and widening various sections of Colders Lane. The highway authority never formally adopted the section of Colders Lane from Greens End Road to Matthews Lane, the section from Matthew Lane to Colders Drive, the section from Colders Drive to Popley Butts, or the section from Popley Butts to Leygards Lane. This directly contrast to the adoption of Colders Drive and under section 40 of Highways Act, 1959 and Hassocks Road, which was a recorded public bridleway and the costs was apportioned amongst the frontages under the Private Street Works Act. The only accountable explanation is that that the whole of Colders Lane was a public carriageway prior to the 1835 Highways Act coming into operation. Dedication must have occurred following the 1832 Meltham Inclosure Award. At common law,

there is no specific period of time required to infer presumed dedication to the public. All that is required is a landowner, whoever they may be, with the capacity to dedicate the public right of way, and acceptance by the public, of which use is evidence. The Meltham Urban District Council Minutes from 1894 and 1960 are the most powerful proof of the acceptance by the highway authority of their liability to repair Colders Lane as a vehicular highway.

176. The documentary evidence shows that the Claimed Route is, on the balance of probabilities, a vehicular highway. Any subsequent use on horseback would be 'by right' rather than 'as of right', and it is therefore unnecessary to analyse the user evidence. The next stage is to determine the correct status to be recorded on the Definitive Map and Statement by reviewing section 67 of the Natural Environment and Rural Communities Act 2006.

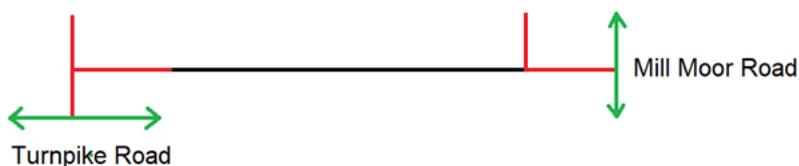
**Table 3: Schematic Chronological History of Colders Lane**

**(1) Before 1832 – Pre-Inclosure**



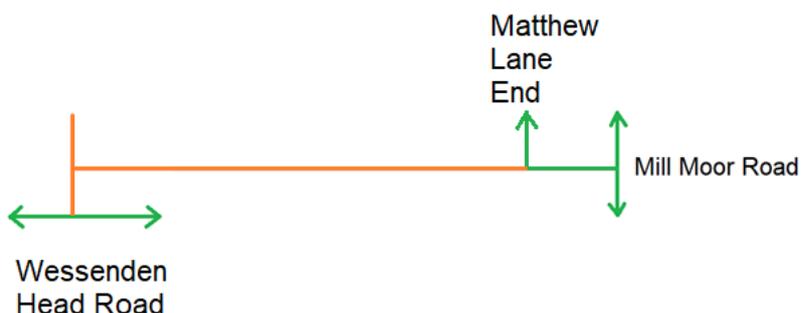
*Before 1832 the Claimed Route was a private carriage road through ancient enclosures between common land.*

**(2) After 1832 – Inclosure**



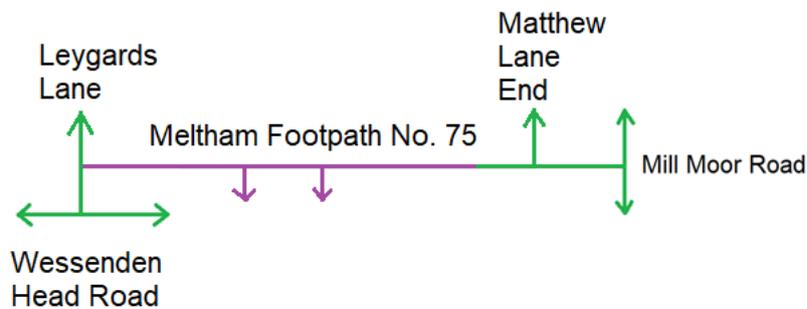
*The 1832 Meltham Inclosure Act extended the Claimed Route with two private carriage and occupation roads at either end (shown in red), creating a potential thoroughfare from Mill Road to the Wessenden Head Turnpike Road (shown in green).*

**(3) After 1832 – Inclosure**



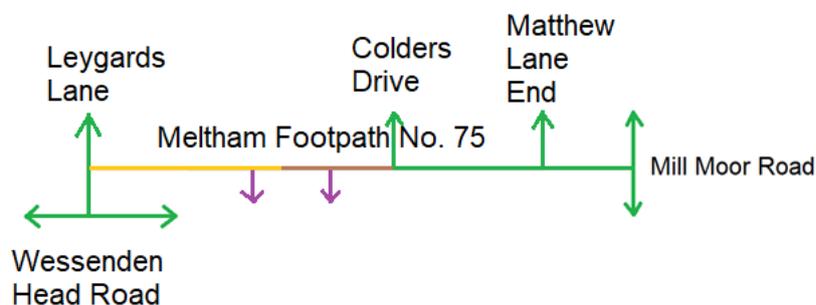
*The northern section of Colders Lane near the town centre was repaired by Meltham Local District Sanitary Board as a public carriageway maintainable at public expense by 1894 up to Matthew Lane End without a statutory adoption (shown by the change from red to green). The District Council Minutes and press articles consistently refer to 'Colders Lane' as a whole and being a thoroughfare highway maintainable at expense as it was used by carts prior to 1835 Highways Act (as shown coloured by the change from red and black to orange)*

#### (4) 1952 First Definitive Map & Statement



Initially, Colders Lane was not included on the Draft Definitive Map and Statement. The Clerk to Meltham Urban District Council objected to the draft map on the basis that it should be recorded as a public footpath. Meltham Footpath No. 75 is recorded leading from Leygard's Lane to just south of Matthew Lane End (shown by purple). The section of Colders Lane coloured green had street lighting and was the only part referred to as 'maintainable at public expense'.

#### (5) From 1960s Highway 'Adoption' and 1985 Definitive Map & Statement



Soon after the First Definitive Map and Statement is published, Meltham Urban District Council again accept Counsels advice that the section of Colders Lane from Matthew Lane End to Leygard's Lane is a street maintainable at public expense (shown by green, brown, and orange lines). The new estate road of Colders Drive is adopted under statute whilst the northern section of Colders Lane up to Matthew Lane is improved, widened, and metalled for MPVs (shown by the extension of the green line). At the same time, a southern section of Colders Lane from Colders Drive to Popley Butts is improved and metalled for MPVs to its existing width (shown coloured brown), with schemes to widen the carriageway as far as 'Forresters' near Leygard's Lane. The Definitive Map and Statement is modified in error to only remove the section of footpath up to Colders Drive. Only the orange and brown lines are recorded on the Definitive Map and Statement.

## NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT, 2006

177. The documentary evidence shows that the Claimed Route is, on the balance of probabilities, a vehicular highway. The next stage is to determine the correct status to be recorded on the Definitive Map and Statement. Section 67(1) of Natural Environment and Rural Communities Act, 2006, ('NERC') extinguished, as of 2<sup>nd</sup> May 2006, any right the public had to use mechanically propelled vehicles over a route that was not shown on the Definitive Map and Statement. The general provision of Section 67(1) is however subject to a number of exceptions which are set out in Section 67(2) to (8). Subsection (2)(b) preserves mechanically propelled vehicular rights ('MPVs') over a route which, immediately before 2 May 2006, "*was not shown in the definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense)*".
178. On the 15<sup>th</sup> January 2023, Highways Registry Officers at the Council accepted that the List of Streets required amending to record the section of the Claimed Route south of Colders Drive to No. 65 Colders Lane as part of the ordinary vehicular highway to access the residential properties, owing to the exception found in section 67(2)(a) of NERC: "*it is a way whose main lawful use by the public during the 5 years ending with commencement was use for mechanically propelled vehicles*", rather than private MPV use. This was based on the above documentary evidence that former highway authorities previously accepted that the entirety of Colders Lane was a vehicular highway maintainable at public expense. The available evidence confirmed their records that the Council have highway drainage assets along the Claimed Route and with the longstanding highway improvement schemes.
179. The section of the Claimed Route west of No. 65 Colders Lane was not used by the public with mechanically propelled vehicles prior to the commencement of NERC, is recorded on the Definitive Map and Statement as a public footpath, not recorded on the List of Streets, not created expressly for MPV's, not built for use by MPVs, not created by MPV use pre 1930, and there is no section 53(5) of the 1981 Act application outstanding at the 2<sup>nd</sup> Map 2006. Accordingly, public MPV

rights have been extinguished under section 67(1) of NERC and this section of the Claimed Route should be recorded as a restricted byway.

[Section 48 of the Countryside and Rights of Way Act 2000](#) defines a restricted byway as 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. 'Restricted byway rights' means a public right of way on foot, horseback or leading a horse, and for vehicles other than MPVs.

## FIRST RECOMMENDATION

180. The documentary evidence as a whole shows that the civil burden of proof test is met, and it is the Definitive Map Officers view that the evidence shows on the balance of probabilities that a section of the Claimed Route subsists as a restricted byway. The Schedule 14 application was made for a public bridleway to upgrade the whole length of Meltham Footpath No. 75 between Leygards Lane and its junction with Colders Drive. Accordingly, as the documentary evidence shows that only a section of the Claimed Route should be recorded as a restricted byway.

181. As required under [Schedule 14\(3\)\(3\) of the WCA](#), the Council shall formally consult with local authorities, including Meltham Parish Council and Holme Valley North Ward Members, and informally consult with interested user groups. As soon as practicable after determining the S140206 Schedule 14 Application, the Council shall give notice of their decision by serving a copy on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1). However, following the discovery by the authority of evidence which when considered with all relevant evidence available to them, the Council determine that the 1985 West Riding Definitive Map and Statement of Public Rights of Way should be modified under sections 53(3)(c)(ii) & (iii) of the WCA, namely, that a highway shown in the map and statement of a particular description ought to be there shown as a highway of a different description, and that there is no public right of way over land shown in the map and statement as a highway of any description within the remit of the Definitive Map and Statement:

To delete:

The whole length and width of Meltham Footpath No. 75.

To add:

A restricted byway some 360m in length commencing at the junction of Leygards Lane, approximately 20m northwest of Wessenden Head Road (B6108) and leading north-easterly to join the public carriageway section of Colders Lane, approximately 25m southwest of No. 8 Popley Butts.

The restricted byway will have a variable width between 9m and 2.5m.

# USER EVIDENCE

## Statutory Provision

182. 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.
183. 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.

## Brought into Question

184. The Schedule 14 Application was made on 26<sup>th</sup> October 2018 in anticipation of the 1<sup>st</sup> January 2026 cut-off date for the recording of historic public rights of way, as introduced by Section 56 of the Countryside and Rights of Way Act 2000. The application sought to preserve an unrecorded public bridleway that is alleged to subsist over the Claimed Route. The Department for Environment, Food, and Rural Affairs ('DEFRA') have since announced an intention to repeal the deadline.

185. In the absence of any evidence of another event which may have brought public use of the routes into question, [subsections 7\(A\) and B of the 1980 Act](#) allow the date of the application to be used to calculate the retrospective period of use. In this case, it follows that the relevant twenty-year period to be considered for the purpose of statutory dedication is 26th October 1998- 26th October 2018 ('the relevant period').

### **Evidence of Use**

186. 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. Nine User Evidence Forms ('UEFs') were submitted in support of the Schedule 14 application, using Kirklees Council template information sheet, known as a 'WCA8'. Some UEFs provided notes on the historic basis for unrecorded higher rights, such as it was thought to be old road before Wessenden Head Road, whilst others cited the Ordnance Survey First Edition and the Meltham Local Urban Sanitary Board minutes. However, these have all been thoroughly investigated and the conclusion remains that the Claimed Route is a private occupation road with a co-existing public footpath.

187. Each of the UEFs was accompanied by a plan, pre-prepared by Kirklees Council showing the existing public footpaths recorded on the Definitive Map and Statement, over which the respondents highlighted the routes they had used. The WCA8 form states in bold capital letters that the map should be signed and dated, and the respondents should mark any notices, gates, stiles, or fences on the Claimed Route. All but one respondent signed and dated the map, and no annotations were recorded on any map for structures, although two users noted the footpath waymark signs at either end of the way. The termini of the Claimed Route are consistent on all the maps and, as it is a linear route between enclosures, there is no need for further investigation to determine its position/line. All respondents used the Claimed Route via horse; five people used the route solely on horseback, whilst the remaining four also used the Claimed Route on

foot. Every UEF was duly signed and dated by the respondents to certify the stated facts were true.

188. Six UEFs claimed to use throughout the relevant period. A further three claimed to use the route for parts of the relevant period. It is not necessary that each respondent has themselves used the Claimed Route for all of the relevant period; it is their collective use during that period which is relevant (*Davis v Whitby* 1974). The earliest use of the Claimed Route was in during the 1980's and early 1990's, demonstrating long standing use. Owing to the procedure for submitted a Schedule 14 application, there is an apparent evidential hiatus between the date when three UEFs were completed by the respondents and when the application was submitted. As there is no overt act which brought public use of the way into question, the Council propose to take a common-sense approach to plug the gap and conclude that public use actually continued until at least the date the Claimed Route was brought into question.

189. The Claimed Route does not have to be used on horseback every single day of the relevant period in order to claim a public right of way. Frequency of use varied with three respondents using the Claimed Route weekly, four monthly, one bi-annually, and one annually. Consequently, the evidence of use is mainly based upon seven UEFs over the relevant period. Based on this frequency, the Claimed 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. Additionally, one respondent submitted two photographs showing three people riding horses along the Claimed Route on the 23<sup>rd</sup> and 24<sup>th</sup> August 2017 and all respondents saw other people riding the Claimed Route.

Figure 21: 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



190. There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from case to case (Definitive Map Consistency Guidelines 2022). Overall, the nine UEFs are a sufficient representative sample of the local horse-riding public to initially satisfy the preliminary quantity and quality threshold. The weekly/monthly frequency of use is also sufficient, over a 20 year period, to alert an observant landowner(s) to the fact that, during the whole of the relevant period, a public bridleway right was been asserted over the Claimed 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**

191. 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 UEFs indicate that they used force to secure passage along the Claimed Route. All of the users rode 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, there is no indication that any landowner gave permission to the respondents to use the Claimed Route, either expressly, for example with signage, or impliedly.

### **Lack of Intention to Dedicate**

192. One adjacent landowner submitted an objection to the application to record a public bridleway along the Claimed Route on 30<sup>th</sup> November 2018, in response to being notified by the applicant that the Schedule 14 application had been made and submitted to the Council. The letter listed five grounds of objection: trespassing across private land and causing damage, safety, loss of public amenity and wildlife habitat, horses on public rights of way, maintenance issues on Colders

Lane. Whilst the Council acknowledge and understand the concerns with regards to loss of public amenity/wildlife habitat, these are not factors that can be taken into consideration when determining a Schedule 14 application. The other grounds of objections raise the concerns of public nuisance of horse riding along the Claimed Route, and these will be considered below. This section will focus on the alleged challenges to public use by the objector by trespassers on their private land. As stated in paragraph 65, the landowners either side of the sections of Colders Lane awarded in the 1832 Meltham Inclosure Award own up to centre of the way under the *ad medium filum* presumption, which can't be rebutted in this instance. Trespassing is the act of a person passing over the private land of another without permission, easement, or public right of way. The landowner can acquiesce/tolerate the use or challenge it. This is how public rights of way are presumed to be dedicated.

193. The landowner has lived at the property since 2015 and states that in the latter year of the relevant period they witnessed one horse-rider occasionally using the Claimed Route, which they challenged with verbal warnings to stop trespassing on their land. The occasional use is consistent with the submitted user evidence. The objector presumes the horse-rider was the applicant, and it is notable that they have not submitted a UEF themselves. In turn, this claim of challenge has to be weighted against the nine respondents' recollections that they were never confronted when using the Claimed Route. The objector also sent a separate request (ROSS Request Ref: 465507) to the Council on 22<sup>nd</sup> August 2017 stating, seeking to discuss the following: "*The problem relates to a new group of local horse riders who have decided to use the public footpath as a bridleway*". The Council replied that the recording of Meltham Footpath No. 75 on the Definitive Map and Statement is without prejudice to the existence of higher rights, which are unrecorded.
194. The request indicates that the landowner was aware of the public use been asserted and tolerated it for the mean time whilst seeking advice from the Council, otherwise they would have stated in their objection that they challenged multiple users of the Claimed Route. Furthermore, the Council has on record a complaint from another adjacent landowner, dated 2005, regarding the illegal use by motorbikes and the request for erecting barriers, which stated: "*It is a FOOTPATH intended for use by PEDESTRIANS. In places it is very narrow, and not at all*

*suitable for simultaneous use by Pedestrians (legally) and Motor Bikes or Horses (illegally)*". Another letter regarding the same matter, stated: "*During the day, there are motorbikes and occasionally horses using this footpath (see plan 1). He is mainly concerned about the bikes...*". The complaint acknowledges that the public rode horses along the Claimed Route, consistent with the frequency stated by the respondents, during the relevant period but there is no evidence that such use was directly challenged.

195. In order to engage the proviso in section 31 of the 1980 Act of a lack of intention to dedicate a public right of way, there must be sufficient evidence of an overt act by the landowner to show relevant audience, the people who use the path, that they had no intention to dedicate ([R \(on the application of Godmanchester and Drain\) v SSEFRA \[2007\]](#)). The objector also only owns one half of a section of the Claimed Route, and it would still be possible that a public bridleway had been acquired over sections of the way in other ownership. Consequently, there appears to be sufficient evidence of use to raise a presumption of dedication, and insufficient evidence of actions by the landowners to indicate their lack of intention to dedicate the Claimed Route as a public bridleway during the relevant period and rebut the initial presumption. Testing the available evidence from the parties at a public local inquiry may confirm or refute this initial consultation.

## SECOND RECOMMENDATION

1. If members do not agree with the first recommendation to record a restricted byway, which would render the user evidence by right, then members should find that the user evidence as a whole shows that the civil burden of proof test is met, and it is the Definitive Map Officers view that the evidence shows on the balance of probabilities that the Claimed Route subsists as a public bridleway.
2. As required under [Schedule 14\(3\)\(3\) of the WCA](#), the Council shall formally consult with local authorities, including Meltham Parish Council and Holme Valley North Ward Members, and informally consult with interested user groups. As soon as practicable after determining the S140206 Schedule 14 Application, the Council shall give notice of their decision by serving a copy on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1). However, following the discovery by the authority of evidence which when considered with all relevant evidence available to them, the Council determine that the 1985 West Riding Definitive Map and Statement of Public Rights of Way should be modified under sections 53(3)(c)(ii) & (iii) of the WCA, namely, that a highway shown in the map and statement of a particular description ought to be there shown as a highway of a different description, and that there is no public right of way over land shown in the map and statement as a highway of any description within the remit of the Definitive Map and Statement:

To delete:

The whole length and width of Meltham Footpath No. 75.

To add:

A public bridleway some 495m in length commencing at the junction of Leygards Lane, approximately 20m northwest of Wessenden Head Road (B6108) and leading north-easterly to join the public carriageway section of Colders Lane, at the junction of Colders Drive.

The public bridleway will have a variable width between 2.5m and 6m based on evidence of use, the available width, pinch points, and multi-users.

## CONCLUSION

3. On the balance of probabilities, the majority of the Claimed Route is a restricted byway, based on the first recommendation. Unless further evidence comes to light during informal and formal consultations, a Definitive Map Modification Order will be made based on the discovery of evidence to record the restricted byway, which will also modify the Definitive Map and Statement by deleting Meltham Footpath No. 75 from the legal record of public rights of way. However, if members decide do not agree with the first recommendation, then a DMMO should be made to record the full length of the Claimed Route as a public bridleway based on presumed dedication under section 31 of the 1980 Act.

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## CASES

A.G. (At Relation of A H Hastie) v Godstone RDC (1912) .....	92
Abbots Ride Land Ltd v Surrey County Council & Anor [2019] EWHC 3560 (QB) .....	85
Astor v Fulham (1963) .....	85

Coverdale v Charlton (1878).....	72
Devonport Corporation v Tozer (1902) .....	85
Fortune & Others v Wiltshire County Council & Another [2010] EWHC B33 (Ch) .....	71
Fortune & Others v Wiltshire County Council & Another [2012] EWCA Civ 334.....	71
Hale v Norfolk County Council [2001] 2 W.L.R. 1481 [2001] Ch. 717.....	85
Lang v Hindaugh [1986] RTR 271 .....	88
Masters v Secretary of State for the Environment, Transport, and the Regions (2000) 4 PLR 134.....	60
Oxford v Austin [1981] RTR 416.....	88
R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs [2009] EWHC 171 .....	71
R v SSE & Somerset CC ex parte Masters [1999] CO3453/97 .....	103
Roberts v Webster [1967] QBD 298 .....	91
Robinson v The Local Board for the District of Barton-Eccles, Winton and Monton (1883).....	85
Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (Ch).....	71
Todd & Anor v Secretary of State for Environment Food and Rural Affairs [2004] EWCA 1450.....	71
Willsher v Scott (2007) EWCA Civ 195.....	59