

Name of Meeting: Planning Sub-Committee (Heavy Woollen Area)

Date: 09/11/2023

Title of Report: Application for a Definitive Map Modification Order (DMMO) to record Moor Lane, Farnley Tyas, as a public footpath/bridleway on the Definitive Map and Statement

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

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	David Shepherd – 28/09/23
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 28/09/23
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Sandra Haigh on behalf of Julie Muscroft – 28/09/23
Cabinet member portfolio	Not applicable

Electoral wards affected: Kirkburton

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

Public or private: Public

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

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Summary

1. In 1996 and 2007, Kirklees Council received applications (Reference 26 & 197) under Section 53 of the Wildlife & Countryside Act, 1981, ('WCA') to record Moor Lane, Farnley Tyas, on the Definitive Map and Statement as either a public footpath or public bridleway. The applications provided user evidence, which was later supplemented by documentary evidence, in support of the claims. The Secretary of State has directed that Kirklees Council must determine the application by 30th November 2022.
2. Based on an overall analysis of the available documentary evidence, the Definitive Map Officer does not consider that it is reasonable to allege the existence of a public bridleway, or public carriageway. However, the user evidence is of sufficient quantity and quality to demonstrate use and enjoyment of Moor Lane by the public on foot, and such use was 'as of right'. There is no available evidence of a lack of intention to dedicate a public footpath during the relevant period of 1976 to 1996.
3. Accordingly, the Definitive Map Officer recommends that it is reasonable to allege the existence of a public footpath, subject to limitation of gates and stiles. It is recommended that a Definitive Map Modification Order is made under section 53(3)(c)(i) of the WCA to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a public footpath. Members are also recommended to support confirmation of the Definitive Map Modification Order to meet the statement action plan of Kirklees Councils Rights of Way Improvement Plan.

Information Required to Take a Decision

Applications

4. On 22nd February 1996, Kirklees Council received an application (Ref: 26), on behalf of the Huddersfield Ramblers, under section 53(5) of the Wildlife & Countryside Act, 1981 ('WCA'), to modify the West Yorkshire County Council Definitive Map and Statement for the Kirklees Area ('DMS'). The application seeks to record a route known as Moor Lane, Farnley Tyas, leading between Farnley Road and Manor Road, as a public bridleway on the Definitive Map and Statement, which is a public right of way on foot, horseback, leading a horse, bicycle, and with or without a right to drive animals. The application was properly made under the requirements of Schedule 14 of the WCA and the submission have as evidence 13 User Evidence Forms ('UEFs') and was supplemented by a UEF in 1997.
5. Subsequently, on the 11th October 2007, another application was submitted to Kirklees Council (Ref: 197), on behalf of the Huddersfield Rucksack Club, under the WCA and sought to record a section of Moor Lane as a public footpath on the Definitive Map and Statement, which is a public right of way on foot only. The application was properly made and gave as evidence 5 UEFs and an additional UEF was submitted in 2015. Together, both applications have provided evidence of use by 20 people. A further 21 members of public responded to an informal consultation conducted in August/September 2023, providing evidence of use along the application route, and fourteen of these completed a UEF; one of which had already completed a UEF in 2007. The user evidence has therefore been considered collectively.
6. Furthermore, in 2020, a member of the Kirklees Bridleways Group provided documentary evidence in support of at least bridleway status, including: extracts from 'Huddersfield Highways Down the Ages'; the 1910 Finance Act Valuation Maps, Ordnance Survey Maps from 1841 and 1893. The claim is not an official Schedule 14 application and Kirklees Bridleways Groups do not have a right to appeal the Councils determination of the applications referenced 26 & 197. On the other hand, they may object to the potential Definitive Map Modification Order and present their evidence to the Planning Inspectorate.

Character of Application Route

7. The character of the application route is described in detail in **Appendix B** with photos. In summary, the Claimed Route is an old historic way known as Moor Lane. It is located in the town of Farnley Tyas, in the civil parish of Kirkburton, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. Farnley Tyas is a small rural village located 3 miles southeast of Huddersfield and is situated on a hilltop approximately 900ft above sea level between Almondbury, Castle Hill, Thurstonland, and Honley. The village is surrounded by green belt and is designated as a conservation area with a number of listed buildings. The application route leads generally north-easterly between Farnley Road and Manor Road, over a distance of approximately 690m. There are two gates along the route, and three stiles. In 2020, signs were erected at either of the application route, which state: "*Permissible right of way on foot. PLEASE CLOSE THE GATE*"; and: "*Permissive Footpath CAUTION Livestock grazing*".

Planning Inspectorate Direction

8. Following a representation by both applicants, the Council were directed on 20th May 2021 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: [FPS/Z4718/14D/19](#)) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S14026, no later than 20th November 2022.

Statutory Provisions

Wildlife & Countryside Act, 1981

9. [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. Section 53(3)(c)(i) of the WCA provides that the Council has a statutory duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

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

10. Section 53(3)(c)(i) involves two tests at the Schedule 14 stage:

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

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

Highways Act, 1980

11. The relevant provision, in relation to the dedication of a public right of way based on user evidence is found in [section 31 of the 1980 Act](#) ('the 1980 Act'). The legislation sets out there where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate. The period of twenty years is to be calculated retrospectively from the date when the public right to use the way was brought into question.
12. There is no statutory minimum level of use required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from cases to case ([Definitive Map Consistency Guidelines 2022](#)). Alternatively, user evidence can be considered at common law, which requires evidence of public use over a period of time to contribute to a justifiable conclusion of implied dedication by the landowner(s) based on their actions.
13. [Section 32 of the 1980 Act](#) required a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

14. General guidance for members is provided in **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of the research report and available evidence, which is discussed in detail in **Appendix B**, the documentary and user evidence made available below, the consultation, and also the Officer recommendations and reasons.
15. As stated in paragraph 9, it is the Councils statutory duty to keep the Definitive Map and Statement up to date and make any requisite DMMOs where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- I. The first option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on the Definitive Map Officers recommendation (see paragraphs 48 for next step and timeline).
 - II. The second option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on members interpretation of the evidence (see paragraph 48 for next step and timeline).
 - III. The third option is for members to turn down the applications (see paragraph 47 for next step and timeline).
16. The likelihood or otherwise of a DMMO attracting opposition should form no part of the decision. Please note that matters such as safety, suitability, security, or privacy cannot be taken into consideration. Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

Documentary Evidence Evaluation

17. The Definitive Map Officer has conducted a thorough investigation of the available documentary evidence and the investigation report is available in **Appendix B**. This section will focus on the primary documentary evidence required for the purpose of making an informed decision. In summary, Kirklees Bridleway Group rely on three source of documentary evidence to support the claim that the application route is reasonably alleged to subsist as a public bridleway: W.B. Crumps analysis of 1719 Warburtons Survey of the Route from Huddersfield to Penistone, which describes a route leading from Farnley Tyas to Highburton as 'Moor Lane'; 1893 OS 25 Inch Map, which shows the application route as a second class metalled road; and the 1910 Finance Act Map, which shows the application as a 'white road' and can be supportive of public ownership based on case law.
18. Each of these documents have been subject to critical analysis to determine their credibility. Firstly, the investigation has demonstrated that the 1719 survey did not relate to the application route and W.B. Crump made an error. Secondly, carriage drives were also shown on the 1893 OS 25 Inch Maps as a second class metalled road; and notably the application route was the site of a former brewery and tannery. Thirdly, public ownership does not explain why the application route was shown as a 'white road' on the 1910 Finance Act Map, as documents from 1925-28 show that the application route was not a highway maintained at public expense by Thurstonland & Farnley Tyas Urban District Council. Therefore, it would not have been vested in the former highway authority. A 1968 Estate Sale Catalogue also shows that the Earl of Dartmouth claimed private ownership of the application route. This analysis is consistent with today's List of Streets.
19. The investigation has also researched Jefferys 1772 Map of the County of York, which doesn't show the application route; Greenwoods 1817 Map of Yorkshire, which shows the application route as a cross road, but this document is of low evidential value and the surveyor recorded both public and private roads. Accordingly, the Definitive Map Officer considers that there is no credible evidence to reasonably allege the existence of a public bridleway.

User Evidence Evaluation

20. The Definitive Map Officer has conducted a thorough investigation of the available user evidence and the investigation report with a summary table is available in **Appendix B**. The application route was first brought into question by the initial Schedule 14 application in 1996. The relevant twenty-year period is therefore 22nd February 1976 – 22nd February 1996 ('the relevant period'). The application route, between Farnley Road and Manor Road, was used by thirty people during the relevant period: twenty throughout, and ten for parts of the relevant period. It is their collective use that is important.
21. Frequency of use varied and was used by two people daily; four weekly; five monthly; five every few months; and four once a year. Others refer to using the application route 'regularly', 'frequently', 'occasionally', 'quite often', or 'once or twice a year'. One person did not provide an answer for their frequency of use. The quantity and frequency of use are sufficient to represent use and enjoyment by the public without interruption. All users saw others using the application route.
22. The width of the application route used by the public varied due to overgrown vegetation, and estimates ranged between vehicular width that narrows to 2ft in places. The evidence is consistent and shows that the public have not walked over the entire width of the application route. Eighteen respondents acknowledge the presence of gates, whilst twenty-two state that there were several stiles to prevent cattle straying but to continue to allow access for pedestrians.
23. None of the users indicate that they used the application route by force, secrecy, or permission, and there is no evidence that their use was challenged or that the landowner(s) demonstrated a lack of intention to dedicate a public footpath during the relevant period. Consequently, it is reasonable to allege that a public footpath subsists along the application route, such that a Definitive Map Modification Order is recommended.

Implications for the Council

Working with People

24. Not applicable.

Working with Partners

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

Placed based Working

26. Not applicable.

Climate Change and Air Quality

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

Improving Outcomes for Children

28. Not applicable.

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

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

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

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

Consultation

35. On 13th August 2023, the Definitive Map Officer conducted an informal consultation with the public, landowners/occupiers, user groups, Kirkburton Ward Members, and Kirkburton Parish Council. The consultation provided an opportunity to provide further documentary or user evidence relating the application route via email, letter, or telephone. Public notice of the consultation was provided on the Councils website under '[Changes to the Definitive Map and Statement](#)' and titled '*Investigation into the status of a route known as Moor Lane, leading between Farnley Road and Manor Road, Farnley Tyas*'. Notices were displayed at either end of the way. The preliminary consultation elicited 23 responses from members of the public and those consultees that provided evidence of use were subsequently offered the opportunity to complete an [online user evidence form](#). Consequently, the evidence of public use has been collated together with the original UEFs and considered under the heading 'User Evidence Evaluation'.

Kirkburton Parish Council

36. Kirkburton Parish Council support the applications and highlighted the need to safeguard the continued use of the route by including it on the Definitive Map and Statement, and also stated: "*One Councillor has confirmed that the path has been in regular, unobstructed use during the relevant period, and has been used for leisure and recreation purposes*".

Kirkburton Ward Members

37. Kirkburton Ward Members were consulted but did not respond.

Applicant & User Groups

38. Huddersfield Ramblers and the Huddersfield Rucksack Club are the applicants and provided further user evidence in support of the applications. Kirklees Bridleways Group did not directly respond to the consultation but provided

further documentary evidence, which was considered during the investigation. No other user group responded to the consultation.

Adjacent Landowners/Occupiers

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

Consultee Ref 1

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

Consultee Ref 2

41. Consultee Ref 2 has lived adjacent the application route after the relevant period and after both applications were submitted but comments: "*I have never seen a horse use the proposed route, due mainly to it being totally unsuitable for equestrian users and in places impassable for horses. I lived [in the area] from 1986 until moving to [adjacent application route] and both properties have*

clear views to the proposed route". Consultee Ref 2 is also not aware that a right of way exists but also witnessed people using the application route on foot during lockdown, and occasionally at other times.

Consultee Ref 4

42. Consultee Ref 4 has owned part of the application route relatively recently and is not aware of any public right of way along the application route but was made aware of the pending applications by the previous landowner. The consultee has not witnessed any person using the application route but erected the permissive access sign on the gate at the entrance to the application route from Farnley Road in 2019 and stated: "*I believe there was always a notice up from the estate and they advised me to put one up when I purchased the land in 2019, sorry I can't remember specific day...*". It is worth noting that Consultee Ref 1 states that the signs were erected in 2020, which is consistent with correspondence between Consultee Ref 4 and Kirklees Council in 2020. Either way, the sign was not in place during the relevant period.

Consultee Ref 5

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

44. Furthermore, the consultee states that gates have always remained shut to keep livestock in, and gates and fencing have been in place for hundreds of years, which is consistent with the user evidence. The consultee also answered that they erected permissive access signs that have been replaced due to been torn down and vandalised over the years and could not recall a time when the signs weren't in

place. However, none of the UEFs mention any signage prior to 2020 and Kirklees Council took photos of the claimed route in 2013 and there were no signs at all. Lastly, Consultee Ref 5 refers to a deposit/declaration made under section 31(6) to the effect that the landowner demonstrated a lack of intention to dedicate any public right of way over the land on the 21st November 2012, which is not during the relevant period of 1976 to 1996.

Consultee Ref 7

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

Consultation Evaluation

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

Next Steps & Timelines

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

Officer Recommendations & Reasons

Make a DMMO

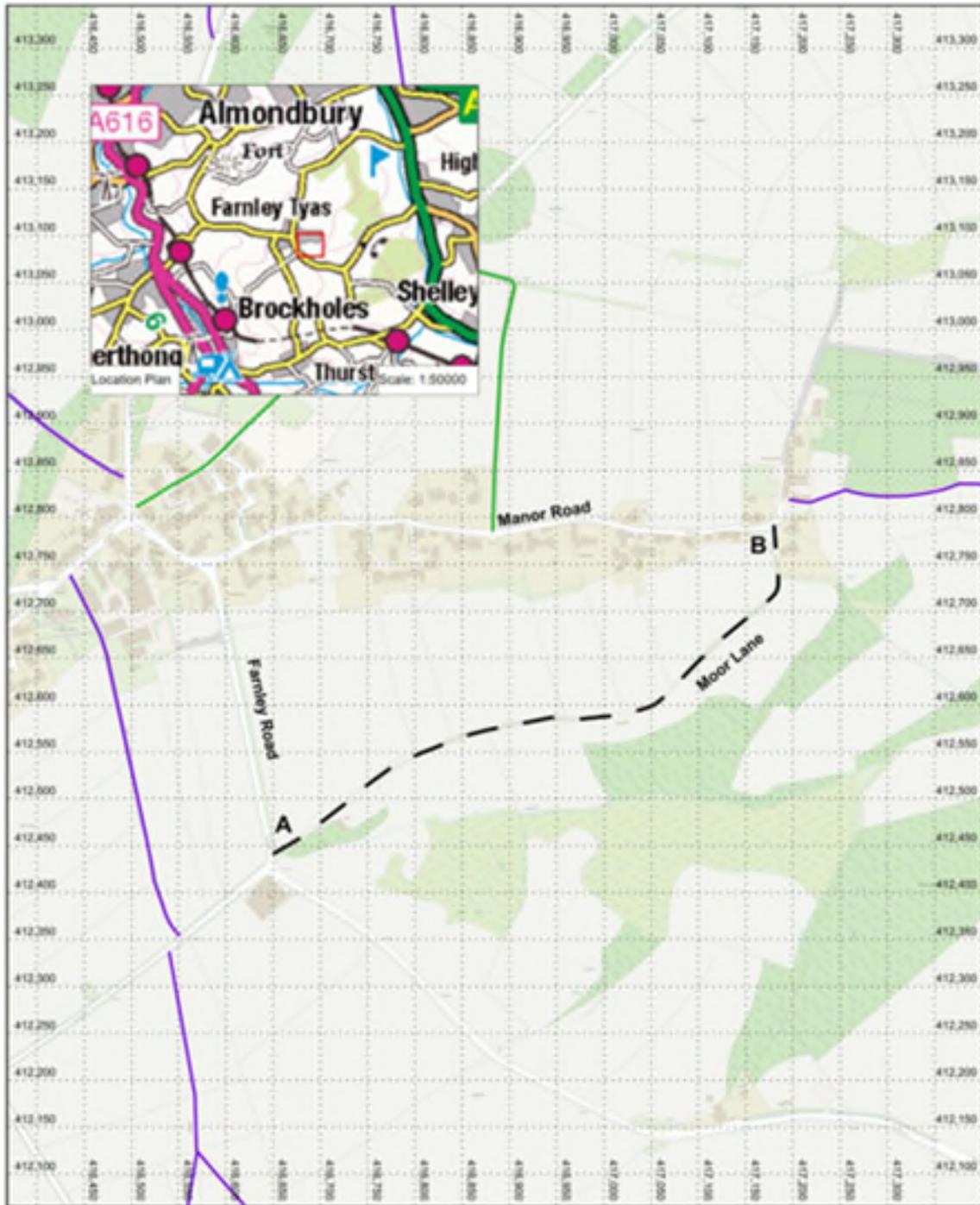
51. Based on an overall assessment of the user evidence, as discussed above under 'User Evidence Evaluation', and in Appendix A, the Definitive Map Officer determines that it is reasonably alleged that Moor Lane, Farnley Tyas, leading between Farnley Road and Manor Road is a public footpath.
52. The Definitive Map Officer therefore recommends that a Definitive Map Modification Order is made under section 53(3)(c)(i) of the WCA, as set out in paragraph 9, to record the public footpath leading from Farnley Road (Point A on the Draft Map in **Figure 1**) to Manor Road (Point B on the Draft Map in **Figure 1**) with a width of 2m. The width takes into account the available user evidence, location and character of the application route, potential use with vehicles, and the necessity to infer the least burdensome form of dedication by the landowners, subject to the limitation of gates and stiles as detailed in the table below:

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

DMMO Confirmation

53. Kirklees Councils [‘Rights of Way Improvement Plan \(2010 – 2020\)’](#) (‘ROWIP’) statement action plan states (ID: DMS 9 at page 73) that Kirklees Council will carry out research to identify “White Roads”, which should be classed as a public footpath and recorded on the Definitive Map and Statement. To meet the action plan of the ROWIP, the Definitive Map Officer therefore also recommends that, should the DMMO be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should actively support the confirmation of the DMMO by either written representations, public hearing, or public inquiry.

Figure 1: Draft Map 1 – Public Footpath Recommended to be Added (A-B)



Draft Map 1 - Definitive Map Modification Order Application (26 & 197) - Moor Lane, Farnley Tyas			
Legend Public Footpath to be Added (A-B) Public Footpath Public Bridleway		Date: 25/10/2023	
		Scale: 1:2500	
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Contact Officer

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

Background Papers and History of Decisions

55. This report is accompanied by the following appendices:

- Appendix A (Guidance to Members)
- Appendix B (Definitive Map Officers Investigation Report)

Service Director Responsible

56. Highways and Streetscene; Environment & Climate Change Directorate