



KIRKLEES COUNCIL INVESTIGATION REPORT

S14026 & 197 MOOR LANE, FARNLEY TYAS

Mark Drydale, Definitive Map Officer

22/09/2023



CONTENTS

LIST OF FIGURES	4
SUMMARY	5
APPLICATION.....	7
.....	10
CHARACTER OF CLAIMED ROUTE	11
STATUTORY PROVISIONS.....	15
Wildlife & Countryside Act, 1981	15
Highways Act, 1980.....	16
DOCUMENTARY EVIDENCE	18
WARBURTON: THE ROAD BETWEEN HUTHERSFIELD AND PENISTONE 1719 & 1720 MAP OF YORKSHIRE	18
Background	18
Analysis.....	19
1772 JEFFERYS COUNTY OF YORK MAP	23
Background	23
Evidential Weight.....	25
Analysis	26
.....	29
FARNLEY TYAS ESTATE TERRIER MAP.....	30
Background	30
Analysis.....	31
.....	33
.....	34
GREENWOODS 1817 MAP OF THE COUNTY OF YORK	35
Background	35
Analysis.....	41
ORDNANCE SURVEY.....	44
Background	44
1893 OS 1:2,500 Map	50
.....	52
1896 OS One-Inch Map.....	53
1906 OS One-Inch Map.....	56
.....	57



THE FINANCE (1909-10) ACT, 1910	58
Background	58
Valuation Reference Maps	63
.....	64
Evaluation.....	65
.....	70
.....	71
DEFINITIVE MAP RECORDS	72
.....	74
DISCUSSION	75
USER EVIDENCE	78
Brought into Question.....	78
Evidence of Use	79
As of Right.....	81
Lack of Intention to Dedicate	81
Consultee Ref 1	82
Consultee Ref 2.....	82
Consultee Ref 4.....	83
Consultee Ref 5.....	83
Consultee Ref 7	84
Landowner Evidence Evaluation	84
Width	84
Limitations	85
User Evidence Evaluation	86
RECOMMENDATION.....	89
CONCLUSION.....	89
REFERENCES	90
CASES	94



LIST OF FIGURES

Figure 1: Extract of Current Definitive Map and statement covering area of Moor Lane, Farnley Tyas.....	7
Figure 2: S14027 Application Map.....	9
Figure 3: S140126 Application Map.....	10
Figure 4: Photos taken on 15/05/2023 showing the physical characteristics of the Claimed Route.....	13
Figure 5: 1719 from Huddersfield to Penistone as followed by Warburton (Source: Huddersfield Highways Down the Ages)	22
Figure 6: Extract of 1720 Warburton's Map of Yorkshire (Source: Kirklees Image Archive)	22
Figure 7: Warburton's Route transposed on 1896 One-Inch OS Map (Source: NLS Maps)	22
Figure 8: Extract of Plate 7 of Jefferys 1772 County of York Map (Source: Huddersfield Exposed)	29
Figure 9: 1826 Map of Farnley Tyas (Source: West Riding Archive Service: WYL219)	33
Figure 10: 1827 Diversion of Highways at Farnley Tyas (Source: West Riding Archive Service: QS1/166/4)	34
Figure 11: 1828 Greenwoods Map of the County of York (Source: NLS Maps)	43
Figure 12: 1893 OS 1:2,500 Yorkshire [West Riding] CCLX.8: NLS Maps).....	52
Figure 13: 1906 OS 1:2,500 Yorkshire [West Riding] CCLX.8 (Source: NLS Maps)	57
Figure 14: 1896 OS One-Inch Sheet 68 Glossop (Source: NLS Maps).....	55
Figure 15: IR 260/8 Valuation Reference Map (Source: Kirklees Bridleway Group/West Riding Archive Service)	64
Figure 16: Extract from Thurstonland & Farnley Tyas Urban District Council 1925 Minute Book (Source: West Riding Archive Service: KMT43/1/1)	69
Figure 17: Extract of Particulars from Farnley Tyas Estate Sale 1968 (Source: West Riding Archive Service: WYL219).....	71
Table 1: User Evidence Summary	88

SUMMARY

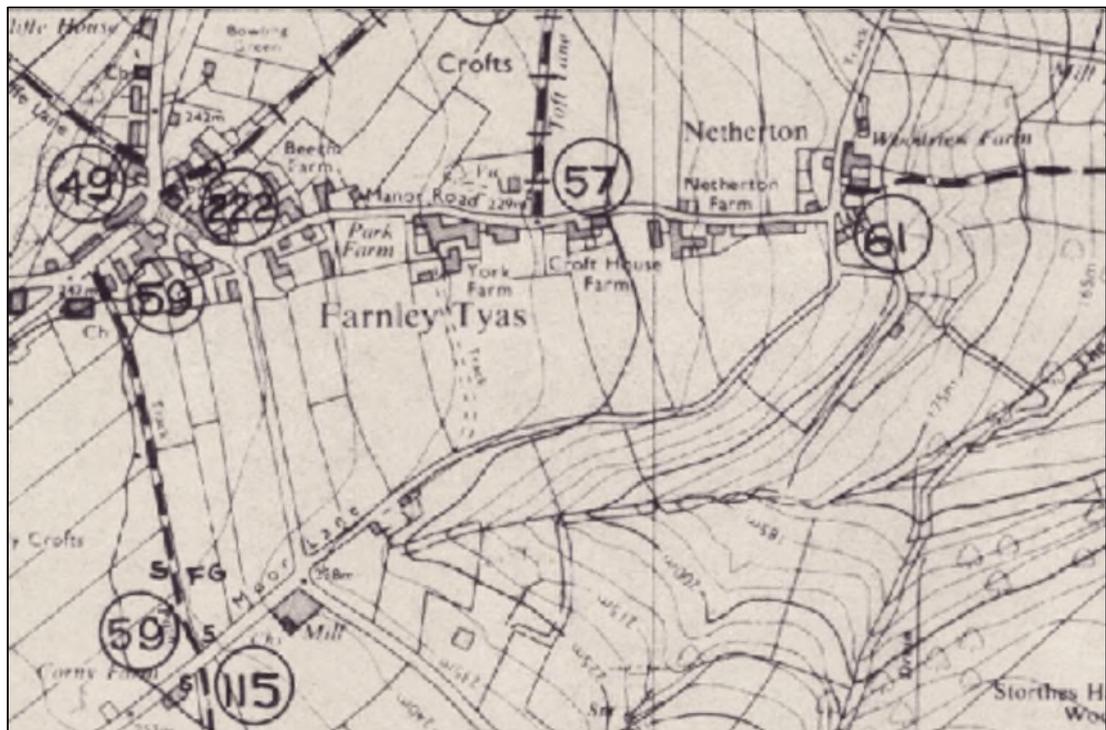
1. In February 1996, and October 2007, Kirklees Council received a Schedule 14 application (reference [S14026 & 197](#)) under the 1981 Act, to record Moor Lane, Farnley Tyas, on the Definitive Map and Statement as a public footpath/public bridleway ('the application route'). The applications provided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

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

APPLICATION

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

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



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

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

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

Figure 2: S14026 Application Map

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

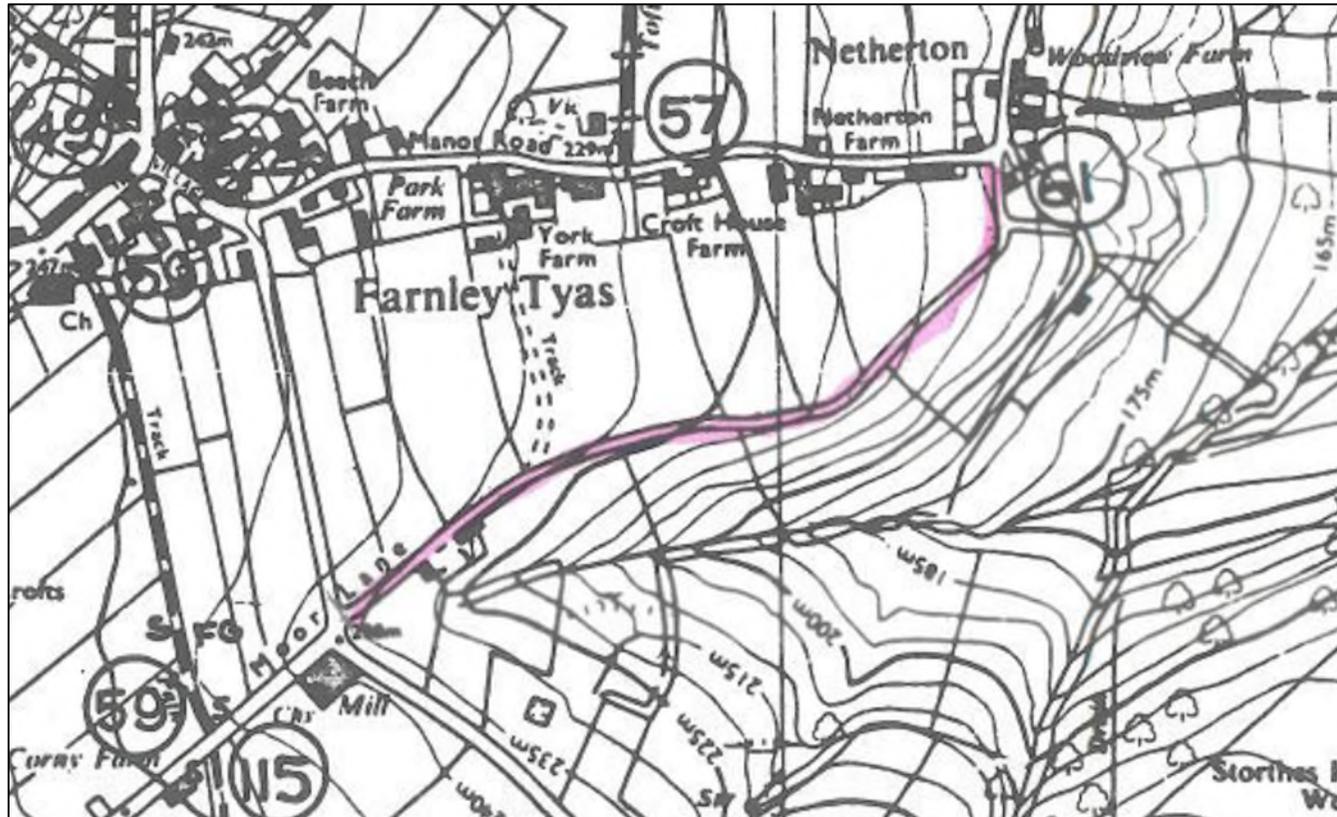
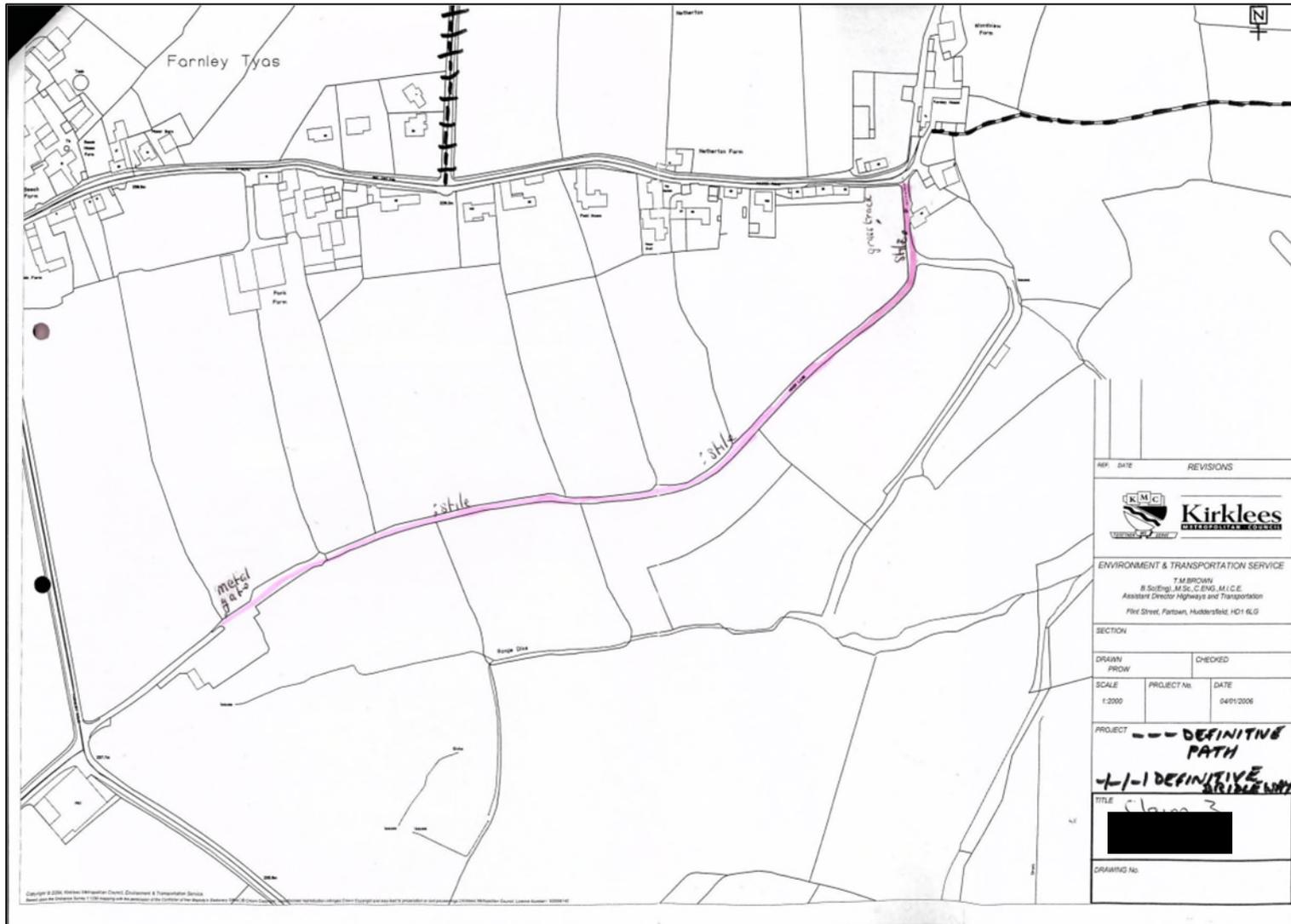


Figure 3: S140127 Application Map



REV.	DATE	REVISIONS
 Kirklees <small>METROPOLITAN COUNCIL</small>		
ENVIRONMENT & TRANSPORTATION SERVICE T.M. BROWN B.Sc.(Eng), M.Sc., C.Eng., M.C.E. Assistant Director Highways and Transportation First Street, Fartown, Huddersfield, HD1 6LG		
SECTION		
DRAWN PROW		CHECKED
SCALE 1:2000	PROJECT No.	DATE 04/01/2006
PROJECT --- DEFINITIVE PATH		
+1-1 DEFINITIVE DRIVEWAY		
TITLE [REDACTED]		
DRAWING No.		

CHARACTER OF CLAIMED ROUTE

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

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

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

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



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



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



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



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

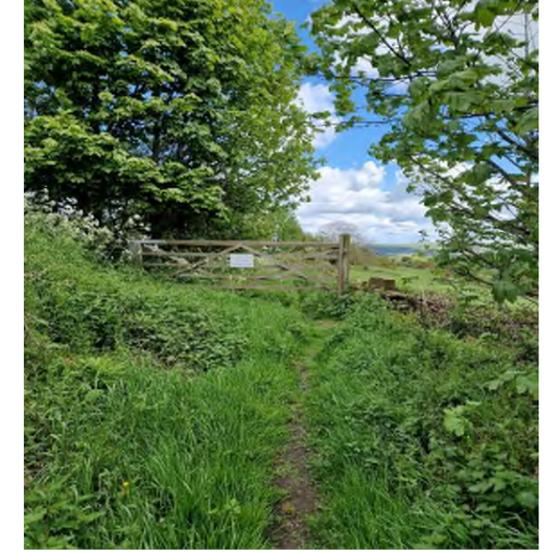


Photo 5: Another field gate is located approximately 170m north-east of the first field gate. The surface is vegetated, and the width begins to narrow.

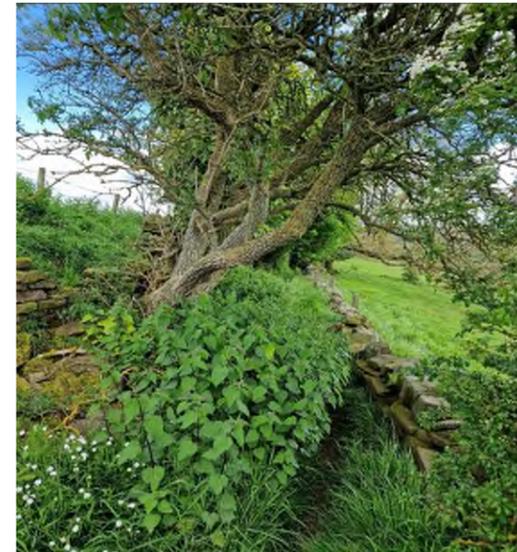


Photo 9: The drystone wall on the southern side of the claimed route is replaced by barbed wire. A well-worn trodden line can be seen in the centre of the claimed route.

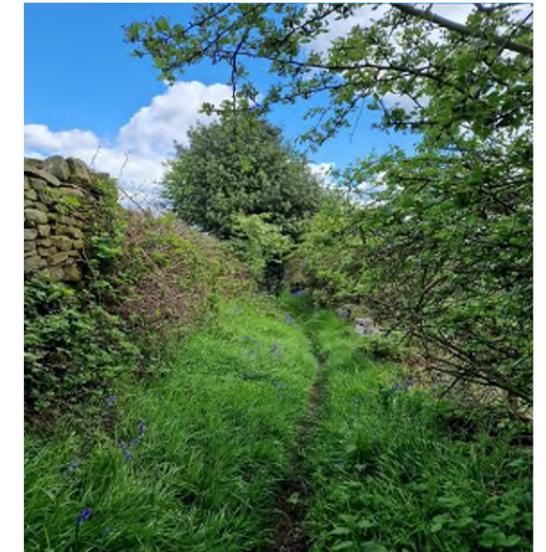


Photo 10: The claimed route momentarily widens to its full width of 2.5m. It has a grass surface and is tree-lined with a high drystone wall on its northern side.



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



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



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

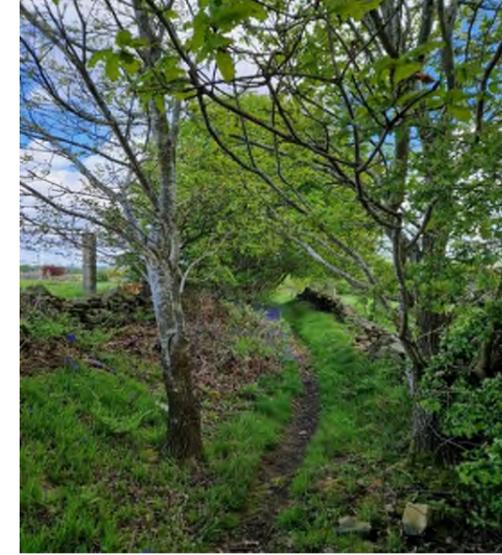


Photo 19: The claimed route leads along a tarmac surface, which is used to access 40 Manor Road and Ash Croft.

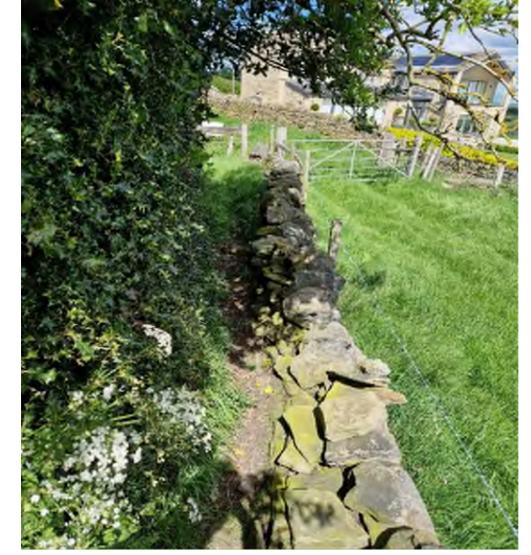


Photo 20: The claimed route joins Manor Road west of Ash Croft and opposite 49 Manor Road. The available width is approximately 4m.



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



STATUTORY PROVISIONS

Wildlife & Countryside Act, 1981

19. [Schedule 14, Paragraph 3 of the WCA](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. 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

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

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

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

Highways Act, 1980

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

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

MAIN ISSUE

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

DOCUMENTARY EVIDENCE

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

Background

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

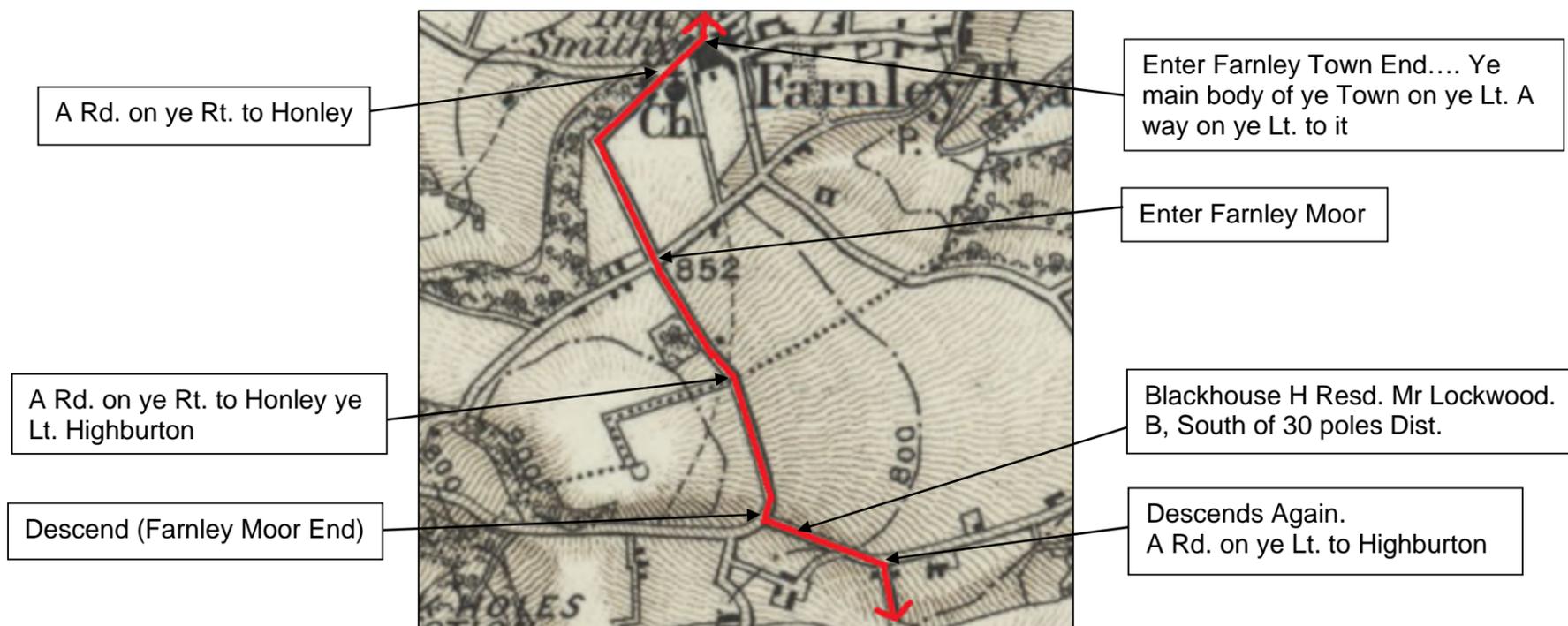
Figure 5: 1719 from Huddersfield to Penistone as followed by Warburton (Source: [Huddersfield Highways Down the Ages](#))

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

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



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



1772 JEFFERYS COUNTY OF YORK MAP

Background

34. Thomas Jefferys ('Jefferys') was one of the most significant and prolific London map publishers of the 1750's; success growing out of a double professional identity as geographer and engraver. Jefferys considered himself to be primarily an engraver despite his designation as Geographer to King George III, an official title which gave him semi-official access to government intelligence and an aura of authority (Anderson, 2018); (Winearls, 1996). Today, it is as geographer that Jefferys is best known and he profited considerably from demands for maps during the Seven Years War and made a speciality of producing maps of North America, which were largely based on inexpensive secondary sources (Ristow, 1976)). In the early 1760's, Jefferys occupied an influential position in the renaissance of English cartographical science, carefully surveying and producing maps of English counties, and was associated with, both as organiser of survey and engraver, at least ten original county maps (Harley J. B., 1966); (Whitaker H. , 2013).
35. The impetus for accurate county surveys was inspired by an advert from the Society for the Encouragement of Arts, Manufacturers, and Commerce ('Society of Arts'), one of the major 'improving' bodies of the period, envisioning that the resulting maps might produce a unified national atlas; the precursor to the Ordnance Survey (Henry, C.J. & Hose, T.A., 2016). The initial 1759 advert was amended over several years and offered awards up to £100 for county maps based on original surveys, triangulation, accurate measurements for latitude and longitude, a two year time scale for completion, and at a scale of one inch to a mile or larger (Arts, 1762); (Macnair, Rowe, & Williamson, 2016)). The county maps required sufficient advanced funds to meet the cost of actual surveying and expensive engraving (Fordham, 1923). The overly-ambitious projects ultimately led to Jefferys bankruptcy in 1766. Jefferys was only able to continue in business through the intervention of William Faden ('Faden') and Robert Sayer, fellow leading map publishers, who acquired substantial shares of his enterprises (Harley J. B., 1966).

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

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

Evidential Weight

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

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

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

Analysis

42. The relevant sheet in the County of York Map for this investigation is plate seven, as shown in **Figure 8**. The map does not show the application route in its entirety, only the initial western section at the present day junction of Farnley Road is shown as an inclosed road. The section of Farnley Road between The Village and the junction with Moor Lane/application route is not yet shown as it wasn't constructed; hence why historically it is referred to as 'New Lane'. One other notable omission is the route now known as Thurstonland Road, and was formerly called Farnley Moor Lane, even though it was described and shown in the 1720 Warburton's Map of Yorkshire and is also shown on ['An Accurate Map of the County of York'](#) by Bowen & Kitchin in 1760. The latter map also shows a route leading from Thurstonland Road leading to Storthes Hall at the point the 1719 surveyor records a road leading to Highburton at the ancient parish boundary. Rather than doubting the existence of Thurstonland Road or the application route at the time of Jefferys survey, their omission may be due to cartographic practice. The section of land where Thurstonland Road should be annotated is similarly shown as common land.
43. The cartographic convention described above was proposed by Dr Hodson and accepted as correct by Neuberger MJ in *Commission for New Towns and Another v JJ Gallagher Ltd* [2002] EWHC 2668 (Ch) (['Gallagher'](#)):

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

Although initially inclined to dismiss this suggestion as heretical, Professor

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

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

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

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

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



REFERENCES.

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

FARNLEY TYAS ESTATE TERRIER MAP

Background

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

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

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

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

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

Analysis

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

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

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

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



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



GREENWOODS 1817 MAP OF THE COUNTY OF YORK

Background

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

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

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

"PROPOSALS FOR PUBLISHING, by subscription,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

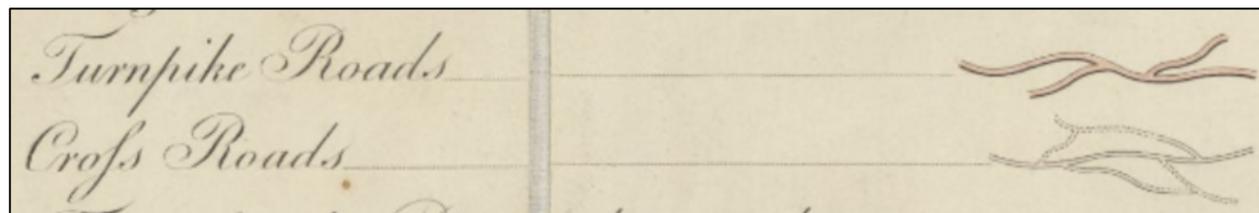
Analysis

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

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

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

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



ORDNANCE SURVEY

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Occupation Roads, Metalled.

Public Roads, Mud.

Occupation Roads, Mud.

Cart Tracks.

Bridle Roads.

Footpaths.

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

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

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

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

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

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

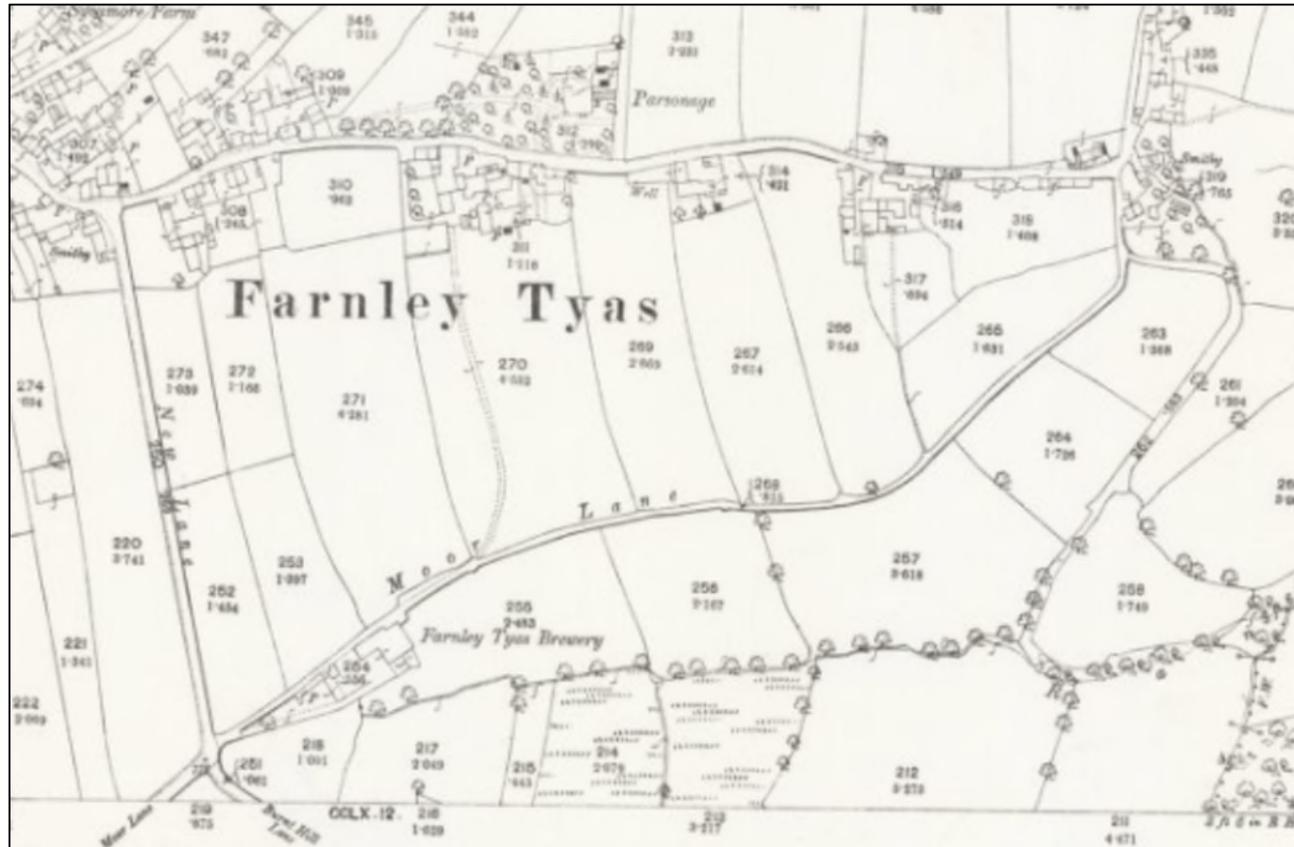
1893 OS 1:2,500 Map

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

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

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

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



1896 OS One-Inch Map

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

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

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

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

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

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



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

1906 OS One-Inch Map

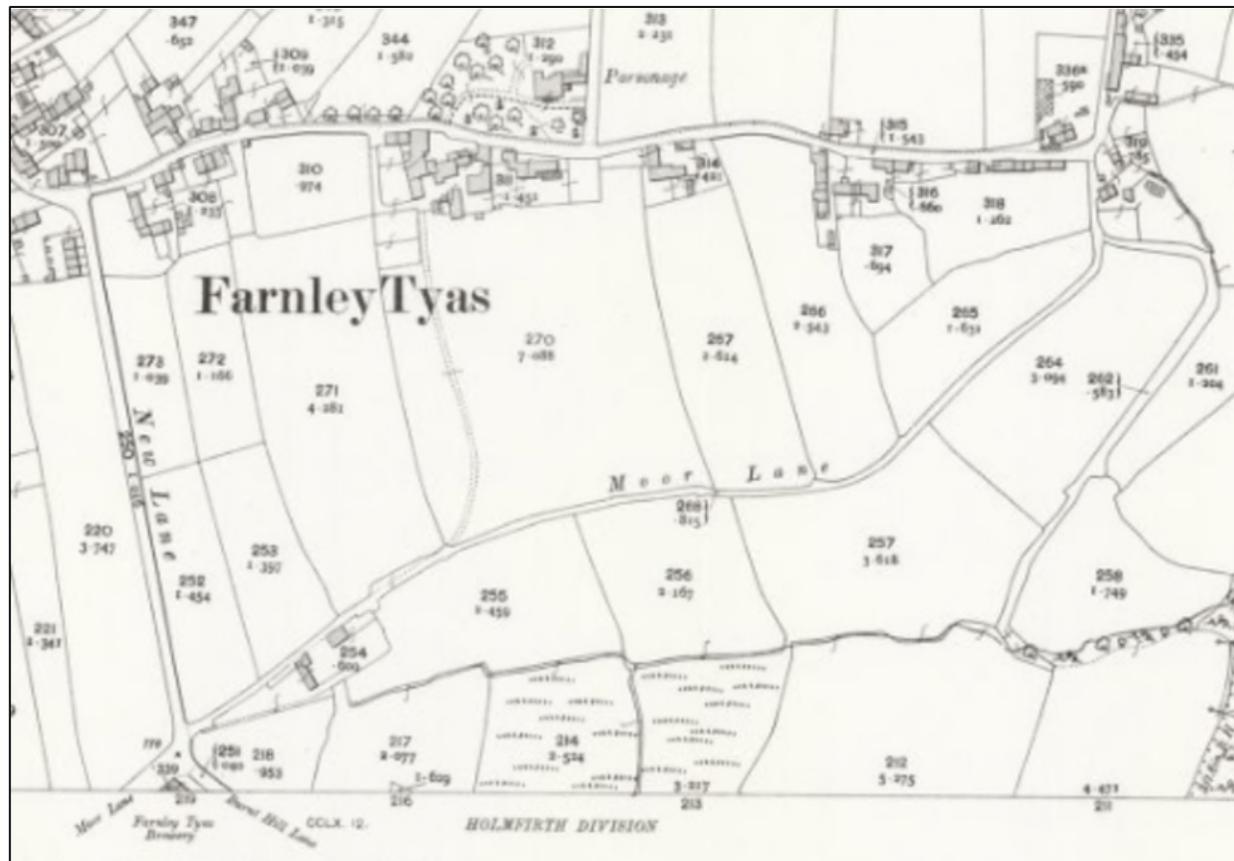
83. The 1905 Instruction to Field Examiners also stated:

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

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

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

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



THE FINANCE (1909-10) ACT, 1910

Background

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

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

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

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

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

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

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

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

93. Two criteria therefore have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan at the antecedent date:
- a) the route is within the jurisdiction of an Urban District Council or is a Main Road.
 - b) the route is a highway maintainable at public expense.
94. Case law analysis has revealed a long succession of incorrectly determined judgements with regards to the 1910 Finance Act documents. As of 30th April 1909, Mill Lane in Maltbridge was within Sawbridgeworth Urban District Council jurisdiction but private conveyance documents demonstrated it was not maintained at public expense. In Agombar, Gallagher (part of the route), Todd, Ridley, and Fortune, all the relevant highway authorities were Rural District Councils. The uncoloured routes in all the judgements could not have been in public ownership as the statutory vesting concept criteria was not satisfied; the fee simple of the uncoloured routes remained in private ownership.
95. In particular, Fortune 2010 & 2012 reviewed the 1910 Finance Act evidence based on the supposition that Rowden Lane was within the jurisdiction of Chippenham Borough Council. However, the [Wiltshire XXVI. 2 OS 25-Inch 1900 Map](#), which formed the base map for the 1910 Chippenham Valuation and was analysed in Fortune 2010, clearly shows that the western bank of the River Avon formed the historical boundary between Chippenham Rural District and Chippenham Borough Council. Highway responsibility did not transfer from Chippenham Rural District Council until the borough was expanded to incorporate Rowden Lane by [Act of Parliament in 1914](#); 5 years after the antecedent date.
96. The '[Instruction to Valuers \(No.560\)](#)' detailed that based on the *ad medium filum* presumption, the owner of land generally owns half of the adjoining street; collectively forming the gross unit of valuation area (Q. C. Braham, D, 2002). [Section 4 of the 1875 Public Health Act](#) provides the most credible definition of

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

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

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

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

Valuation Reference Maps

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

Evaluation

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

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

No. 2-

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

No. 3-

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

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

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

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

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

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

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

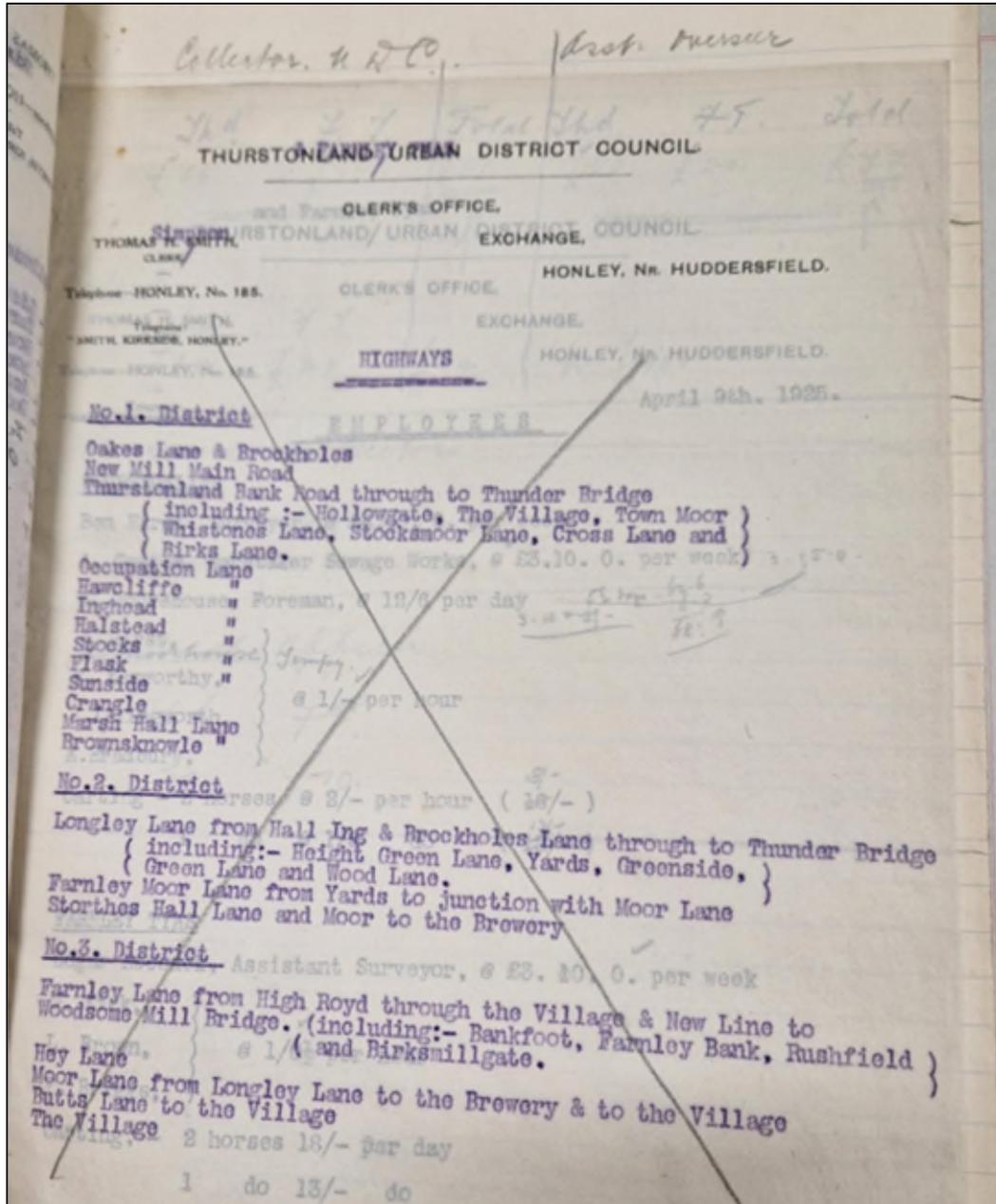


Figure 17: 1928 Omnibus Services between Huddersfield & Farnley Tyas
(Source: London Gazette)

THE LONDON GAZETTE, 1 MAY, 1928.	3061
<p>by registered letter addressed to the Secretary, Electricity Commissioners, Savoy Court, Strand, London, W.C.2, and despatched on or before the 31st day of May, one thousand nine hundred and twenty-eight, and a copy of such objection must also be forwarded to the undermentioned Solicitor.</p>	<p>for his consent to the running by them of motor omnibuses on the roads comprised in the following routes that is to say:—</p>
<p>10. Copies of the draft Order as applied for and of the Order as made may be obtained at the price of two shillings each at the office of the undermentioned Solicitor and at the shop of Miss E. M. Green, Stationer and Bookseller, 1, New Buildings, Lingfield, Surrey.</p>	<p>No. 1. Commencing at the Borough boundary at Hey Lane near Stirley Hill, Almondbury thence proceeding along the said Hey Lane, Farnley Lane and Rawgate to Farnley Tyas thence along New Lane, Burnt Hill Lane, Storthes Hall Lane, Storthes Hall Moor Lane, Green Lane, Greenside Lane, Marsh Hall Lane and School Lane to the Rose and Crown Inn, Thurstonland.</p>
<p>Dated this 26th day of April, one thousand nine hundred and twenty-eight.</p>	<p>No. 2. Commencing at the Borough boundary in Penistone Road thence proceeding along the said Penistone Road, Storthes Hall Lane, Burnt Hill Lane, New Lane and Farnley Lane to the Golden Cock Inn, Farnley Tyas.</p>
<p>V. B. BATESON, County House, 46-47, (052) New Broad Street, E.C. 2, Solicitor.</p>	<p>No. 3. Commencing at the present omnibus terminus at the Red Lion Inn, Lepton thence proceeding along the Wakefield and Austerlands Road to Shuttle Eye Collieries and thence along Liley Lane to the New Inn, Grange Moor.</p>
<p>HUDDERSFIELD CORPORATION (GENERAL POWERS) ACT 1920.</p>	<p>And notice is hereby further given that objection to the giving of such consent may be sent in writing to the Assistant Secretary, Roads Department, Ministry of Transport, 7, Whitehall Gardens, London, S.W. 1, on or before the 16th day of May, 1928.</p>
<p>OMNIBUS SERVICES.</p>	<p>A copy of any objection should at the same time be sent by the objector to the Town Clerk, Town Hall, Huddersfield.</p>
<p>Between Huddersfield and Farnley Tyas.</p>	<p>Dated this 1st day of May, 1928.</p>
<p>Between Huddersfield and Farnley Tyas and Thurstonland.</p>	<p>J. HENRY FIELD, Town Clerk</p>
<p>Between Huddersfield and Grange Moor.</p>	<p>Town Hall, (016) Huddersfield.</p>
<p>WHEREAS by Sub-Section 2 of Section 27 of the Huddersfield Corporation (General Powers) Act 1920, it is provided that the Corporation of Huddersfield (hereinafter referred to as "the Corporation") may with the consent of the Minister of Transport and of the Road Authority run omnibuses along any road.</p>	
<p>Notice is hereby given that in pursuance of the said Sub-Section the Corporation have made application to the Minister of Transport</p>	

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

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

DEFINITIVE MAP RECORDS

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

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

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

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

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

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

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

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

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

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

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

W.Y. FORM R2.

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

NO. TN/437/R/25/K

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

NAME	ADDRESS	HOME TEL
MR/MRS/MISS/MS	5 Siddon Drive, Almondbury, Huddersfield. HD5 8UG.	BUSINESS TEL
D.W. Aldridge.		

PARISH KIRKBURTON

PATH LOCATION: Farnley Tyas

PATH NO	GRID REF
MAP SHEET SE 11 SE	T6T2 1712

REPRESENTATION/OBJECTION ~~SHOWN~~ / NOT SHOWN / ~~INCORRECTLY SHOWN~~ / ~~INCORRECTLY CLASSIFIED~~

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

INVESTIGATION: Path commences off Farnley Road at Farnley Tyas at grid ref: 166124. Known as Moor Lane it proceeds north east to Manor Road at grid ref: 171127. The land is owned by a Company known as William Shaw & Sons, Huddersfield and the land agent is Carter Jonas, Manor House, Slaithwaite, Huddersfield, West Yorkshire. HD7 5AU.	DATE SHOWN SHEET NO SHOWN AS
NO PREVIOUS REPRESENTATION HAS BEEN RECEIVED TO INCLUDE THIS PATH ON THE MAP.	1850 MAP 260 YES/NO Moor Lane
	1895 " 30 YES/NO Moor Lane
	DRAFT " YES/NO
	DEFINITE " YES/NO
	REVIEW " YES/NO
	1/2500/1/2500 " YES Moor Lane.*

REMARKS ON CLAIM AND INVESTIGATION:

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

OBJECTOR SEEN / WRITTEN TO	DATE	RESULT:

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

DATE:	COPIES OF THIS SHEET TO:
	DA. DATE
	DOE. DATE

ATTACH & MARK EXTRACTS WHERE APPROPRIATE. W.Y. FORM R2.

DISCUSSION

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

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

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

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

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

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

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

USER EVIDENCE

Brought into Question

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

Evidence of Use

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

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

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

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

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

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

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

As of Right

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

Lack of Intention to Dedicate

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

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

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

Consultee Ref 1

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

Consultee Ref 2

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

Consultee Ref 4

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

Consultee Ref 5

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

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

Consultee Ref 7

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

Landowner Evidence Evaluation

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

Width

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

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

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

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

Limitations

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

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

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

Table 1: Limitations to be recorded

Structure	Grid Reference
<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

User Evidence Evaluation

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

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

RECOMMENDATION

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

CONCLUSION

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

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CASES

Coverdale v Charlton (1878).....	53
Davis v Whitby 1974.....	68
Fortune & Others v Wiltshire County Council & Another [2010] EWHC B33 (Ch)	52
Fortune & Others v Wiltshire County Council & Another [2012] EWCA Civ 334.....	38, 52
Hollins v Oldham (Ch) [1995] C94/0206	37
Masters v Secretary of State for the Environment, Transport, and the Regions (2000) 4 PLR 134.....	44
Powell & Anor v Secretary of State for Environment, Food, and Rural Affairs [2014] EWHC 4009 (Admin)	68
R (Lewis) v Redcar and Cleveland Borough Council UKSC 11 (03 March 2010).....	70
R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs [2009] EWHC 171	52
R v Secretary of State for the Environment ex parte Bagshaw and Norton (1994).....	15
R v Secretary of State for Wales ex parte Emery (1998).....	15
Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (Ch).....	52
Todd & Anor v Secretary of State for Environment Food and Rural Affairs [2004] EWCA 1450.....	52
Willsher v Scott (2007) EWCA Civ 195.....	43