

Name of Meeting: Strategic Planning Committee

Date: 25/01/2024

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

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

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	David Shepherd – 08/01/2024
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 08/01/2024
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 05/01/2024
Cabinet member portfolio	Not applicable

Electoral wards affected: Holme Valley North

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

Public or private: Public

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

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Summary

1. In 2017, Kirklees Council received an application (Reference 199) under Section 53 of the Wildlife & Countryside Act, 1981, ('WCA') to record Mean Lane, Meltham, on the Definitive Map and Statement as a public bridleway. The application provided supporting user and documentary evidence. The Secretary of State has directed that Kirklees Council must determine the application by 22nd May 2022.
2. Based on an overall analysis of the available documentary evidence, the Definitive Map Officer does not consider, on the balance of probabilities, that the application route subsists as a historic public bridleway, or public carriageway. An 1861 Railway Plan and Book of Reference, and 1895 Meltham Urban District Council Minutes provide credible contrary evidence that the application route was a private road with a co-existing public footpath. Additionally, only a section of Mean Lane was adopted as a vehicular highway maintainable at public expense, in 1892 and 1895, up to the southwest corner of Meltham Cricket Ground.
3. However, the user evidence is of sufficient quantity and quality by ten (10) people to demonstrate use and enjoyment of Mean Lane by the public on horse without interruption, and such use was 'as of right'. There is some evidence of challenges to use and occasional locking of a gate by an adjacent landowner with a private right of way along the application route. However, there is no available evidence that these actions significantly interrupted public use and were not conducted by, or on behalf, of the freehold owner(s) of the application route. Accordingly, there is no available evidence of a lack of intention to dedicate a public bridleway by the landowner(s) during the relevant period of 1997 to 2017.
4. Accordingly, the Definitive Map Officer recommends that, on the balance of probabilities, a public bridleway subsists along the application route. It is recommended that a Definitive Map Modification Order is made under section 53(3)(c)(ii) of the WCA to record Mean Lane, Meltham, between the eastern section of Mean Lane that is a public carriageway maintainable at public expense and Huddersfield Road (B6108), as a public bridleway. Members are also recommended to seek confirmation of the Definitive Map Modification Order.

Information Required to Take a Decision

Application

5. On 28th June 2017, Kirklees Council received an application (Reference: 199), on behalf of the Kirklees Bridleways Group and The British Horse Society, under section 53(5) of the Wildlife & Countryside Act, 1981 ('WCA'), to modify the West Yorkshire County Council Definitive Map and Statement for the Kirklees Area ('DMS'). The application seeks to record a route known as Mean Lane, Meltham, leading between Meltham Cricket Ground and Huddersfield Road (B6108), as a public bridleway on the Definitive Map and Statement, which is a public right of way on foot, horseback, leading a horse, bicycle, and with or without a right to drive animals. The application was properly made and certified under the requirements of Schedule 14 of the WCA and the submission gave as evidence 11 User Evidence Forms ('UEF') and various documents of historic evidence.

Character of Application Route

6. The character of the application route is described in detail in Appendix B with photos. In summary, it is located in the town of Meltham and is approximately 900 metres in length commencing at the southwest corner of Meltham Cricket Ground, at the eastern end of the section of Mean Lane that is a vehicular highway maintainable at public expense. The application route then leads east-north-easterly and north-easterly and is crossed by Meltham Footpath 23/50 and Meltham Footpath 22/10. The application route turns east-south-easterly and leads under the disused railway line, now known as the Meltham Greenway, and continues over Meltham Dike and passed property 223 Huddersfield Road, and joins Huddersfield Road (B6108) opposite the old Bent Ley Mill.

Planning Inspectorate Direction

7. Following a representation by the Applicants, the Council have been directed by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food,

and Rural Affairs, pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced S140119, no later than 22nd May 2022.

Statutory Provisions

Wildlife & Countryside Act, 1981

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

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

9. Under the provisions of section 53(3)(c)(ii) there is no 'reasonably alleged to subsist' test, as is found in subsection 53(3)(c)(i). Therefore, the test by which the available evidence is to be considered is the civil standard of proof; that is, the balance of probabilities: does the claimed public right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary. The evidence submitted with the Schedule 14 application, and all research conducted by the Council, will therefore be judged to such standard of proof.

Highways Act, 1980

10. The relevant provision, in relation to the dedication of a public right of way based on user evidence is found in [section 31 of the 1980 Act](#) ('the 1980 Act'). The legislation sets out there where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of

intention to dedicate. The period of twenty years is to be calculated retrospectively from the date when the public right to use the way was brought into question.

11. 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.
12. [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, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

13. General guidance for members is provided in **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of the research report and available evidence, which is discussed in detail in **Appendix B**, the documentary and user evidence made available below, the consultation, and also the Officer recommendations and reasons.
14. It is the Councils statutory duty to keep the Definitive Map and Statement up to date and make any requisite DMMOs where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- I. The first option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on the Definitive Map Officers recommendation (see paragraphs 47 for next step and timeline).
 - II. The second option for members is for the Council to make a DMMO to modify the Definitive Map and Statement based on members interpretation of the evidence (see paragraph 47 for next step and timeline).
 - III. The third option is for members to turn down the application (see paragraph 46 for next step and timeline).
15. The likelihood or otherwise of a DMMO attracting opposition should form no part of the decision. Please note that matters such as safety, suitability, security, or privacy cannot be taken into consideration. Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

Documentary Evidence Evaluation

16. The Definitive Map Officer has conducted a thorough investigation of the available documentary evidence and the 'Investigation Report' is available in **Appendix B**. This section will focus on the primary documentary evidence required for the purpose of making an informed decision. In summary, documentary evidence in support of a historic public bridleway/vehicular highway is principally based on two documents: the 1861 Lancashire & Yorkshire Railway Meltham Branch Railway Plan, and an extract from 'The Story of Meltham' by Richard Orton, which states that Mean Lane was adopted as a vehicular highway maintainable at public expense in 1892
17. The plan and book of reference to the 1861 Lancashire & Yorkshire Railway Meltham Branch Railway Plan records the eastern section of the application route as a footpath in the ownership of the Surveyors of the Highways of the Township of Meltham. Similarly, a newspaper article of Meltham Urban District Council ('Meltham UDC') Minutes from 1895 describe the application route as a "... *private road for carts to get to the land, and also for foot passengers...*".
18. Furthermore, the newspaper articles and Council Minutes show that in 1892, Meltham UDC adopted a section of Mean Lane up the newly created Jubilee Recreation Ground, which was extended and widened in 1895 up the southwest corner of the Cricket Ground, which is at the start of the application route. This section is recorded on the Councils List of Streets. No part of the application route was adopted as a highway maintainable at expense. The documentary evidence therefore corroborates the Definitive Map & Statement and List of Streets.
19. Accordingly, the Definitive Map Officer considers that there is no clear evidence in favour of a public bridleway or vehicular highway based on the available documentary evidence. On the other hand, there are credible documents that provide sufficient evidence to the contrary and demonstrate that the application route is historically a private road with a co-existing public footpath.

User Evidence Evaluation

20. The Definitive Map Officer has conducted a thorough investigation of the available user evidence and the investigation report with a summary table, which is available in **Appendix B**. Where there is no identifiable event which has brought into question the use of a path or way, the date of the application for a modification order can be used as the date the route was brought into question by the initial Schedule 14 application. However, there is a photograph of a locked gate taken by a Definitive Map Officer in February 2017, before the application was submitted in June 2017. Nothing significantly turns on this point, as the relevant period to consider the user evidence is still 1997 to 2017.
21. The use by five (5) people has been discounted because three (3) used the application route with a bicycle, which is not consonant with the dedication of a public bridleway and is also insufficient to presume dedication of a restricted byway. One (1) person used the application route 'by right' to access stables and ride the route with the tenant. Lastly, one (1) other person only used Mean Lane as far as the 'Meltham Greenway', which is a permissive bridleway; such use does not have the necessary characteristic of a highway. The evidence from remaining users was tested in a 'Witness Questionnaire' in 2023, regarding gates, the Meltham Greenway, signs, and the stables.
22. Following these deductions, the application route was used by ten (10) members of the public with overlapping evidence of use during the relevant period over the full width of the application route for the purpose of recreation. Several riders used the application route to access the Meltham Greenway, however, in addition they also continued to use the full length of the application route to reach Honley Woods via Huddersfield Road and Bent Ley Mills. Frequency of use was predominantly weekly or monthly. The use by these ten (10) members of the public was without force, secrecy, or permission ('as of right'), and without interruption.
23. Public use along the eastern section of the application route, from Meltham Dike to Huddersfield Road, is where the presumption of dedication has been contentious. During the relevant period, this section of the application route was owned by Quarmbly & Sykes (Holdings) Limited, who sold the land in 2018 to SDC Enterprises

Limited. Only the owner(s) of the fee simple of the application route can demonstrate a lack of intention to dedicate a public right of way. Adjacent landowners have provided a statement that since 2011 they have challenged horse riders and cyclists that have passed by their property and have locked a field gate to prevent use as a public bridleway.

24. Evidence from users suggests that some people were intimidated by the situation developing at the eastern end of the application route from 2011 onwards. Two (2) users state that their use at this section of the application route was challenged in 2011, whilst two (2) users encountered a locked gate in 2015/2016. Some of these users subsequently stopped riding the application route. Additionally, adjacent landowners have stated that signs have been in place over the last ten (10) years (2013-2023), stating that the application route was only a public footpath, but the signs were vandalised. However, there is no documentary evidence of the notices. Users were therefore asked whether they witnessed signs during the relevant period. Two (2) users answered that they did see notices but, when questioned further, were unable to confirm what the signs stated, where they were located, the date they were erected, or the duration that they were maintained for.
25. As the adjacent landowners do not own this section of the application route, the only legal interest they have is for private access. There is no evidence that such actions by the adjacent landowners were undertaken by, or on behalf, of the owner of the fee simple of this section of the application route. In [Applegarth v Secretary of State for the Environment, Transport and the Regions \[2001\] EWHC Admin 48](#) ('Applegarth') the Court decided that actions by the person who had a private right of access over a route were not actions of the owner of the fee simple for the purposes of a lack of intention to dedicate to rebut the presumption of dedication.
26. On the other hand, any action which challenges the status of a way may be a 'bringing into question' event, and it does not have to arise from the action of the owner(s) of the land or on their behalf. Nevertheless, whatever means are employed to bring the public's right to use a way into question must be sufficiently communicated to the users, so that at least some of the users are aware of the challenge. Therefore, subsequent evidence may show that the status of the application route was also brought into question in 2011 due to challenges, and

again in 2015/16 by occasional locked gates, creating relevant periods of 1991-2011 and 1995/6-2015/16.

27. However, these events do not currently rebut the 1997 to 2017 relevant period. Also, the available user evidence is only marginally affected by these earlier relevant periods, as one (1) user (199/3) rode the application route between 2013-15, therefore their use would be discounted if the 1991-2011 relevant period was considered. Whilst another user (199/8) rode the application route between 2002-2017, thereby reducing their contribution to the total evidence of use if the earlier relevant periods were analysed, compared to the 1997-2017 relevant period. However, all of the remaining users commenced using the application route at, or prior to, 1991.
28. Overall, it is considered that a public bridleway subsists on the balance of probabilities, over the full length and width of the application route, such that a Definitive Map Modification Order is recommended.

Implications for the Council

Working with People

29. Not applicable.

Working with Partners

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

Placed based Working

31. Not applicable.

Climate Change and Air Quality

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

Improving Outcomes for Children

33. Not applicable.

Financial Implications for the People Living or Working in Kirklees

34. Not applicable.

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

35. The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded public rights of way and any other modifications that should be made to the legal record.
36. The Council must make a decision regarding the DMMO Application and the legal status of Mean Lane, Meltham, and make a DMMO that is requisite further to section 53 of the Wildlife and Countryside Act 1981.
37. Any person may make a duly made objection or representation to a DMMO modifying the Definitive Map and Statement. If objections are made and not withdrawn, any DMMO made must be forwarded to the Secretary of State and most likely be considered by an appointed Planning Inspector, who may or may not confirm the DMMO.
38. The financial costs associated with the making or confirmation of an DMMO or associated with referral of an opposed DMMO the Secretary of State would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.
39. If a DMMO is made based on the Definitive Map Officers recommendation to record a public footpath, it will not be a highway maintainable at public expense as, based on the available evidence, it came into existence after section 38 of the Highways Act, 1959, came into operation.
40. Any financial implications incurred associated with public right of way maintenance due to the change in the recorded status of the application route should not be taken into account when considering the evidence regarding this status of the paths in question.

Consultation

41. On 10th August 2023, the Definitive Map Officer conducted an informal consultation with the public, landowners/occupiers, user groups, Holme Valley North Ward Members, and Meltham Town Council. The consultation provided an opportunity to provide further documentary or user evidence relating the application route via email, letter, or telephone. Public notice of the consultation was provided on the Councils website under '[Changes to the Definitive Map and Statement](#)' and titled '*Consultation – Definitive Map Modification Order Application (199)*'. Notices were displayed at either end of the way. The preliminary consultation elicited zero responses from members of the public. However, this may be due, in part, to a locked gate at the Huddersfield Road end of the application route, which restricts use by cyclists and horse riders.

Meltham Town Council

42. Meltham Town Council were consulted but did not respond.

Holme Valley North Ward Members

43. Holme Valley North Ward Members were consulted. Cllr Greaves had no comments to make. Cllr Bellamy and Cllr McGrath did not respond.

Applicant & User Groups

44. The applicant & user groups were consulted but did not respond.

Adjacent Landowners/Occupiers

45. Landowners, adjacent landowners, and occupiers were included in the consultation and were provided with Kirklees Councils 'WCA10 Landowner & Occupier' template form to complete and provide evidence. Their evidence is presented and discussed within the context of the user evidence at paragraphs 145, 168, and 169 of the Investigation Report in Appendix B.

Next Steps & Timelines

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

Officer Recommendations & Reasons

Make a DMMO

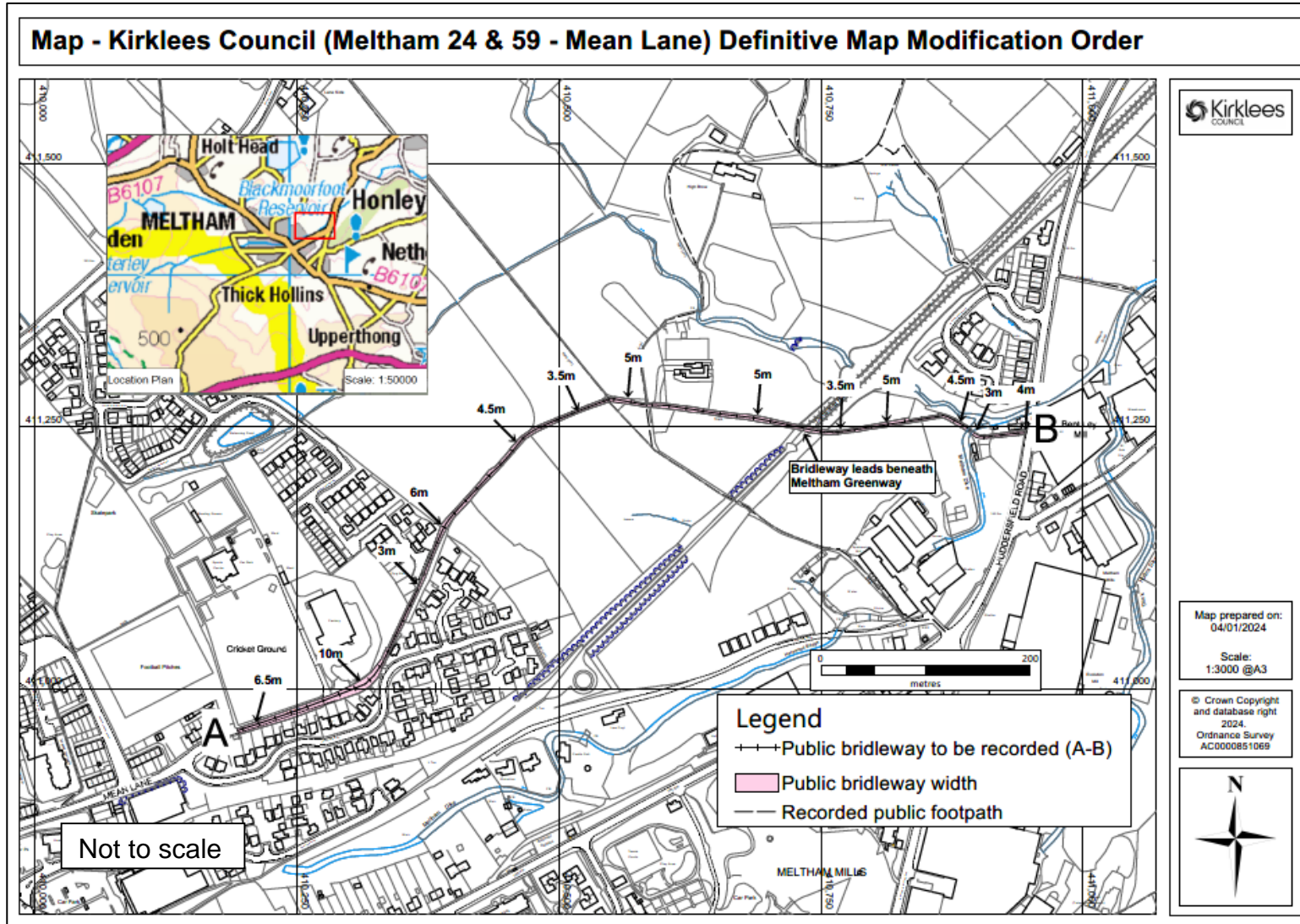
50. Based on an overall assessment of the user evidence, as discussed above under 'User Evidence Evaluation', and in Appendix B, the Definitive Map Officer recommends that, on the balance of probabilities, the application route subsists as a public bridleway.
51. The Definitive Map Officer therefore recommends that a Definitive Map Modification Order ('Order') is made under section 53(3)(c)(ii) of the WCA. The Order would upgrade Meltham 24 and 59 from public footpath to public bridleway status, leading from the eastern end of Mean Lane that is a public carriageway maintained at public expense, at the southwest corner of Meltham Cricket Ground (Point A on the Indicative Map in **Figure 1**), and leading north-easterly then easterly under the dismantled railway and across Meltham Dike to join Huddersfield Road (B6108) opposite Bent Ley Mill (Point B on the Indicative Map in **Figure 1**).
52. It is recommended that the public bridleway is recorded with a variable width over the full width of the track based on the user evidence between 3 metres and 10 metres as shown on the Indicative Map in **Figure 1**.

DMMO Confirmation

53. The Definitive Map Officer also recommends that if the recommended Order is made, members authorise confirmation of the Order as made if no duly made objections are received, or are subsequently withdrawn, such that the Order is unopposed. Or if a modification to the Order is required, to submit the unopposed Order to the Planning Inspectorate for confirmation. On the other hand, if duly made objections are received, and not withdrawn, members authorise the Order be forward to the Secretary of State for confirmation.
54. The Definitive Map Officer also recommends that, should the Order be opposed, and the matter referred to the Secretary of State, Kirklees Council should actively

support the confirmation of the Order via either written representations, public hearing, or public inquiry

Figure 1: Indicative Map 1 – Public Bridleway Recommended to be Added (A-B)



Cabinet Portfolio Holder's Recommendations

55. Not applicable.

Contact Officer

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

Background Papers and History of Decisions

57. This report is accompanied by the following appendices:

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

Service Director Responsible

58. Graeme West, Highways and Streetscene; Environment & Climate Change Directorate