

**Name of Meeting:** Strategic Planning Committee

**Date:** 25/01/2024

**Title of Report:** Applications for a Definitive Map Modification Order (DMMO) to record a public right of way at Carr Mount, Kirkheaton, Kirkburton, on the Definitive Map and Statement (DMS)

**Purpose of Report:** Members are asked to consider the relevant available evidence and determine the applications for a DMMO made under section 53(5) of the Wildlife & Countryside Act 1981 to record a public right of way at Carr Mount, Kirkheaton, Kirkburton on the DMS.

Members are asked to take a decision on making a DMMO and its confirmation and give full reasons for the decision made.

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 – 16 January 2024
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Isabel Brittain – 16 January 2024
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 16 January 2024
Cabinet member <a href="#">portfolio</a>	Not applicable

**Electoral wards affected:** Kirkburton and Dalton

**Ward councillors consulted:** Kirkburton Cllrs: Bill Armer, Richard Smith, John Taylor  
 Dalton Cllrs: Musarrat Khan, Naheed Mather, Tyler Hawkins

**Public or private:** Public

**Has GDPR been considered?** Yes. Personal data and biographical information that could identify a person has been removed.

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## Summary

1. In September 2017 and August 2021, Kirklees Council received two Definitive Map Modification Order (DMMO) applications (References [DMMO S14201](#) and [DMMO S14306](#)) under [Section 53 of the Wildlife & Countryside Act 1981](#) (the 1981 Act) to record public rights of way on land at Carr Mount, Kirkheaton, Kirkburton on the Definitive Map and Statement (DMS), as follows.
2. **DMMO S14201** claims the existence of a **public footpath** commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**). The applicant provided 29 User Evidence Forms, various OS maps, and extracts from locally published walking booklets in support of the application.
3. **DMMO S14306** claims the existence of a **public bridleway** commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**), and continuing over both public footpath Kirkburton 20 and public footpath Kirkburton169 to its junction with public bridleway Kirkburton 220 (**Part B**) at Long Tongue Scrog Lane. The applicant provided documentary and historic evidence including various OS maps and 1910 Finance Act records in support of their view that the application route is an ancient public vehicular highway which legally exists today.
4. The Secretary of State has directed that Kirklees Council must determine DMMO S14201 by 14 January 2020. The two applications are therefore being processed simultaneously.
5. The available documentary or historic evidence has been investigated under [Section 32 of the Highways Act 1980](#) (the 1980 Act).
6. In summary, the documentary or historic evidence shows that Part A of the application route originated as a private cul-de-sac route leading to agricultural fields in 1793, until approximately 1855 when the route extended over Part B to abut Long Tongue Scrog Lane. By 1893, there may have been a through route to Long Tongue Scrog Lane.

7. However, the presence of gates and/or fences which may have enclosed Carr Mount farm and vicinity shown on maps from 1893, corroborated by landowner conveyances and deeds dated 1920 to 1936, may have affected ease of use as a through route. In addition, certain maps dated 1904, 1938 and 1943 do not feature the route as a passable through route for carriage or vehicular use.
8. Furthermore, under the 1910 Finance Act the route was largely recorded within hereditaments with no corresponding deductions for 'public rights of way or use'. The same landowner conveyances and deeds in para 7., appear to show a private right of way over Part A, and a public footpath over Part B. Locally published walking routes provide some evidence of reputation that Part A was in public use as a footpath in the 1970s/80s.
9. Officers therefore consider that the available documentary or historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
- 10. There is therefore no evidence to 'reasonably allege' or determine on the 'balance of probabilities', that Part A or B subsists as a public bridleway or vehicular highway.**
11. The available user evidence for Part A of the application route has been investigated under [section 31\(1\) of the Highways Act 1980](#) (the 1980 Act) for the presumed dedication of a public right of way.
12. In summary, the user evidence shows public use on foot from the 1940s. Public rights to use Part A of the application route was first brought into question in 2014 by the erection of a landowner notice or sign, followed by several other notices or signs since then. The relevant twenty-year period for analysing the user evidence is therefore 1994 to 2014. An alternative relevant period of 1977 to 1997 associated with a section 31(6) landowner deposit which may affect part of Part A and also part of Part B of the application route has also been analysed.
13. The quantity and quality of the user evidence is sufficient to demonstrate public use and enjoyment of Part A of the application route on foot, as of right, and

without interruption during the relevant period 1994 to 2014 and also during the alternative relevant period 1977 to 1997.

14. Furthermore, no sufficient evidence of a lack of intention to dedicate a public right of way during the relevant periods has been submitted. Officers therefore consider that the user and landowner evidence indicates that a public footpath is presumed to have been dedicated over Part A of the application route.
15. **It is therefore, 'reasonable to allege' that a public footpath subsists along Part A, and should be recorded on the DMS.**
16. Accordingly, Members are asked to consider the documentary, landowner, and user evidence presented, consultation responses, and the Officers recommendations and reasons, and decide whether to make a DMMO and the Councils stance on its confirmation. Factors such as suitability or desirability, safety or maintenance, privacy, or landownership, are 'other matters' that cannot be considered under s53 of the 1981 Act.

## **Recommendation**

17. Officers recommend that a DMMO (an Order) is duly made under [section 53\(3\)\(c\)\(i\) of the 1981 Act](#) in relation to the application DMMO S14201 to record a public footpath commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public footpath Kirkburton 20 (**Part A**) on the DMS.
18. Officers also recommend that, should any Order be opposed, and the matter referred to the Planning Inspectorate for determination by either written representations, public hearing, or public inquiry, the Council should support confirmation of any Order.
19. Officers recommend that no Order is made in relation to the application DMMO S14306 to record a public bridleway commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to its junction with public bridleway Kirkburton 220 (**Part B**) at Long Tongue Scrog Lane.

## Information Required to Take a Decision

### Applications

20. Kirklees Council (the Council) has received two applications, one in September 2017 submitted by Mr John Dunwell (DMMO S14201), and the other in August 2021 (DMMO S14306) on behalf of The British Horse Society, both under section [s53\(5\) of the Wildlife and Countryside Act 1981](#) (the 1981 Act) to modify [West Yorkshire County Council Definitive Map and Statement for the Kirklees Area](#) (DMS), as shown in **Figure 1 in Appendix C**. 1985 DMS, and previously 1952 DMS (**Figure 2 in Appendix C**). Please note that references to '**Figures**' are provided in Appendix C.

### DMMO S14201

21. DMMO S14201, as shown highlighted blue between points A to B in **Figure 3**, seeks to record a public footpath commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane and adjacent to the former Freemasons Arms through Carr Mount to its junction with public footpath Kirkburton 20. This section will be referred to as **Part A**.
22. A public footpath is defined in [section 66 of the 1981 Act](#) as:  
  
*"... a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road".*
23. The application was properly made and certified in early 2018 under the requirements of [Schedule 14 of the WCA](#). The submission gave as evidence twenty-nine (29) user evidence forms ('UEFs'). The Council received in total sixty-one (61) UEFs including several received during a public consultation in 2021. Additionally, the applicant submitted Ordnance Survey Maps from 1850 to 1960 and extracts from walking booklets titled: 'Discovering Old Lepton (c1978)' and, 'Discovering Old Lepton, and Kirkheaton, 2<sup>nd</sup> Edition' (no published date).
24. The requisite certificate of service of notice was submitted in September 2017 confirming that notice of the application had been served on two (2)

landowners, and in March 2018 confirming that notice had been served on the unregistered land.

25. Officers considered other evidence including non-OS maps, OS maps, aerial photos, officer photos, KC records, Email correspondence, deed conveyances and a s31(6) landowner deposit.
26. A consultation was carried out in July 2021 in relation to Part A, inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

### **DMMO S14306**

27. On the other hand, DMMO S14306 seeks to record Part A as a bridleway commencing at its junction with Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane and adjacent to the former Freemasons Arms through Carr Mount to its junction with public footpath Kirkburton 20 thereby incorporating S14201 (Part A). Additionally, DMMO S14306 also seeks to upgrade part of public footpath Kirkburton 20 and also the whole of public footpath Kirkburton169 to public bridleway status to its junction with public bridleway Kirkburton 220 at Long Tongue Scrog Lane as shown in **Figure 4**. This section will be referred to as **Part B**.
28. A public bridleway is defined in [section 66 of the 1981 Act](#) 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 way on horseback or leading a horse, with or without a right to drive animals of any description along the highway”.*
29. [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.
30. The application was properly made and certified in August 2021. The submission gave as evidence documentary and historical evidence, as follows: 1843 OS First



Series, Sheet 88, NL Australia Appendix C1; 1855 OS Six inch Sheet 247 Yorkshire; 1893 OS 25 inch Sheet 267 Huddersfield, Kirkburton, Mirfield; 1896 OS 1 inch Sheet 77 - Huddersfield (Hills) NLS; 1903 Cassini Historical Series Sheet 110 Sheffield and Huddersfield; 1938 The Authentic Map Directory of South West Yorkshire; 1947 OS 1 to 25000 Administrative Boundaries, Kirkheaton Ward; Inland Revenue Sheet 247-9 WYA Ref C243 and 2021 INSPIRE Land Registry.

31. The applicant also provided a discussion of the documentary evidence to support the claim that Part A and Part B of the application route is an ancient public vehicular highway. This is of relevance because there is a legal maxim "*Once a highway, always a highway*", which means that if there is evidence that a public right of way existed in the past, and if that right of way has not been legally extinguished or diverted, then it still exists today. No user evidence forms were submitted to the Council for the DMMO S14306 application.
32. The requisite certificate of service of notice was submitted in October 2021 confirming that notice of the application had been served on landowners and in November 2021 confirming that notice had been served on the unregistered land.
33. Officers considered other evidence including non-OS maps, OS maps, aerial photos, officer photos, KC records, Email correspondence, deed conveyances and a s31(6) landowner deposit.
34. A consultation relating to the DMMO S14306 to record a bridleway over Part A and Part B was carried out in November 2021, inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

### **Planning Inspectorate Direction & Application Priority**

35. Following a representation by Mr John Dunwell, the Council were directed on 15 July 2019 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (Decision Reference: FPS/Z4718/14D/13) pursuant to paragraph 3(2) of Schedule 14 of WCA, to determine the Schedule 14 application referenced DMMO S14201, no later than 14 January 2020.

36. [DMMO S14306](#) is currently prioritised as number 103 of 251 (at the time of writing) pending DMMO applications and a score of 7 out of a maximum of 20 points based on the priority matrix. DMMO applications would usually be investigated in the order in which the duly made applications are prioritised, subject to the availability of suitably experienced Definitive Map Officers, except where the investigation of a case would involve substantially the same evidence and forms part of, or joins, the route currently under investigation, which will provide costs of efficiency savings.
37. As DMMO S14306 is significantly linked to, and encompasses, the public footpath claimed in DMMO S14201, both are being determined simultaneously.

## **Character of Application routes**

### **Part A DMMO S14201**

38. Both application routes are located in the Parish of Kirkburton and commence at the junction of Liley Lane/ Bellstring Lane public carriageway B6118 opposite Hopton Hall Lane, opposite the former Freemasons Arms public house at Grid Reference SE 1954 1780, as shown in **Figure 5**. There are two street name plates stating: 'Carr Mount' and on one of these there is a no-through road sign, as shown in **photo 2**. There is also bus stop 262 immediately nearby on the B6118.
39. The application route leads southwest from this junction for some 55m then generally meanders south-southwest for approximately 375m past a former sandstone quarry to Carr Mount hamlet.
40. The northern section of the application route is a lane surfaced with tarmac and has a varying approximate width of between 2.5m and 5.5m (measured using the Councils Kompass mapping system). The lane has a limited number of passing places and no street lighting. It is variously bordered by dry-stone walls, hedges, and gates to adjacent fields. The lane provides access to dwellings at Carr Mount Hamlet, and it can be known as Carr Mount Lane. See **photos 2 to 11 in Figure 5**.

41. At approximately Grid Reference SE 1939 1743, DMMO S14201 joins with public footpath Kirkburton 10 crossing east to west and also joins with public footpath Kirkburton 20 leading south along Part B, as shown in **photos 11 and 12 in Figure 5**. Both public footpaths are coextensive with the lane.

#### **Part B DMMO S14306**

42. Only DMMO S14306 continues along Part B (the southern section), which is approximately 360m in length with a varying approximate width between 1.5 to 2.5m. Therefore, in total, DMMO S140306 is approximately 790m in length from Liley Lane/ Bellstring Lane public carriageway B6118, over part of public footpath Kirkburton 20 and public footpath Kirkburton 169 to its junction with public bridleway Kirkburton 220 at Long Tongue Scrog Lane.
43. As shown in **Figure 6**, the application route photos are shown in reverse order starting from the most southerly of Part B at Long Tongue Scrog Lane and approximately Grid Reference SE 1917 1720. The application route continues north-northeast up the surfaced lane, as shown in **photos 17 to 22**, which is recorded on the DMS as public footpath Kirkburton169.
44. At the junction with public footpath Kirkburton 169 and public footpath Kirkburton 20, the application route continues through a gated gap (**photo 23**) and continues east along the field edge (**photos 24 to 26 in Figure 6**).
45. The application route then turns sharply north through another gated gap (**photos 27 and 28 in Figure 6**) and over a grass verge onto a branch of public footpath Kirkburton 20 and continues over the surfaced road at the bottom of Carr Mount hamlet (nearest No's. 8-11 Carr Mount).
46. The application route then continues north up Carr Mount lane over public footpath Kirkburton 20 crossing public footpath Kirburton10 where it joins Part A of the application route.

#### **Aerial photos of Part A and Part B**

47. **Figure 7** shows an aerial view of the application route over Part A and Part B in 2012.

## Statutory Provisions

### Wildlife & Countryside Act 1981

48. [Schedule 14, Paragraph 3 of the 1981 Act](#) 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.
49. The need for a DMMO (an Order) 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 dealt with under section [53\(2\)\(b\) and 53\(c\)\(ii\) of the 1981 Act](#).
50. [Sections 53\(3\)\(c\)\(i\) and 53\(3\)\(c\)\(ii\) of the 1981 Act](#) provides that the Council has a statutory duty to make an Order 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*
  - *that a highway of a particular description ought to be there shown as a highway of a different description.*
51. As has been made clear by case law, section 53(3)(c)(i) involves two tests at the Schedule 14 stage:
- Test A: Does a right of way subsist? This requires clear evidence in favour of the appellant and no credible evidence to the contrary.
  - Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.

52. The available evidence submitted in support of DMMO S14201 (Part A) will therefore be determined according to Test B: Is it reasonable to allege that the right of way subsists?, under section 53(3)(c)(i). If so the Council has a duty to make an Order.
53. Confirmation of an Order is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A.
54. Arguably, Part A of DMMO S14306 should also be determined according to Test B: Is it reasonable to allege that the right of way subsists? However, under the provision of section 53(3)(c)(ii), there is no 'reasonably alleged to subsist' test for Part B because it is already recorded on the Definitive Map and Statement as public footpath. Therefore, the test by which the available evidence for DMMO S14306 is to be considered is the civil burden of proof; that is, 'the balance of probabilities' or Test A: Does a right of way subsist? This requires that the Council be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.
55. Furthermore, if the available evidence for Part B of DMMO S14306 does not meet the civil burden of proof to make a DMMO to record a public bridleway, it would not make sense for the Council to make a DMMO to record Part A of DMMO S14306 based on Test B as it would be a cul-de-sac public bridleway. Whilst there is no rule of law that at a cul-de-sac cannot become a highway by dedication at common law or under the provisions of section 31 of the Highways Act, 1980, a cul-de-sac highway must have a defined end point, such as the seashore or a viewpoint, which are known as a 'place of popular resort'. As Part A does not terminate at a place of popular resort, it cannot exist as a public bridleway. The Officers therefore recommend that the available evidence for all of DMMO S14306 is determined according to the 'balance of probabilities' or Test A: Does the right of way subsist?, under section 53(3)(c)(ii).
56. Also note that, if a right of way is shown on the DMS, that is conclusive evidence in law that there is a public right of way as shown and that it has at least the status indicated, but without prejudice as to any question of additional public rights which

may exist along it, for example in relation to a footpath, higher rights such as use on horse, cycle or motor vehicle.

## Highways Act 1980

57. The relevant provision, in relation to the dedication of a public right of way based on user evidence is found in [section 31\(1\) of 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.
58. Under section 31(2) of the 1980 Act, the period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. There is no legal interpretation of the term 'the public' as used in section 31(1). It is not taken to mean the public in its widest sense. Use wholly or largely by local people may be use by the public.
59. 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 case to case as guided by the Government's [Definitive Map Consistency Guidelines](#).
60. The terms 'as of right', means the use must have been 'without force, without secrecy and without permission'. Force might include breaking locks, cutting wire, passing over through or around a blockage. The use must have been open and in a manner that a person rightfully entitled would have used it that is not with secrecy. If there is express (e.g., clear, and specific) permission, then use is not 'as of right'. The issue of toleration or acquiescence and doing nothing about it, is consistent with use being 'as of right'.
61. The presumed dedication under s31(1) of the 1980 Act is rebuttable, by proof that the landowner had a lack of intention to dedicate. The burden of proof rests with the landowner to show that there is sufficient evidence to

demonstrate there was no intention to dedicate. In relation to signage, proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication is required under [s31\(3\) of the 1980 Act](#).

62. The test is whether a reasonable user of the path would understand that the landowner was not intending to dedicate a public right of way. There must have been some overt acts by the landowner to show the public at large that the landowner had no intention to dedicate whether by notice or otherwise (e.g., notices, signs, barriers, obstructions, charging, closing, indicating use by permission only).
63. Private land signage can imply that the public are being discouraged from using a route, but technically such a landowner's sign would be correct as there is 'private land'. In itself, such a sign is not considered to go far enough to communicate a lack of intention to dedication. A public right of way can be defined as the public's right to pass and repass over a strip of land, more often than not, land in private ownership. Also, a private land or private road sign may be held to permit foot or horse use as it is common for a public footpath or public bridleway to be coextensive with a road which has only private foot or private vehicular rights. Furthermore, caselaw dictates that private land signage in itself, is not 'documentary evidence that would inevitably defeat the claim'.
64. In cases where there is no identified owner (e.g., unregistered land) available to produce evidence to demonstrate a lack of intention to dedicate the land for public use, s31(1) presumed dedication, would not be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that they had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.
65. 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.

66. [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**

67. General guidance for Council members is provided at **Appendix A**. In summary, Members are asked to decide if a DMMO (an Order) should be made. This requires consideration of all available evidence (user, landowner, documentary/historic, other) including the consultation and the Officer recommendations.
68. It is the Councils statutory duty to keep the Definitive Map and Statement (DMS) up to date and make any requisite Orders 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 an Order to modify the DMS based on the Officers recommendation
  - ii. The second option for members is for the Council to make an Order to modify the DMS based on members interpretation of the evidence
  - iii. The third option is for members to turn down the applications.
69. The likelihood or otherwise of any Order attracting opposition should form no part of the decision. In addition, factors such as suitability or desirability, safety or maintenance, privacy, or landownership, are 'other matters' that cannot be considered or taken into account under s53 of the 1981 Act.



70. 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 own Order, or alternatively take a neutral stance.

## Investigation of Evidence

71. Officers have conducted an investigation of the relevant available documentary or historic evidence, user evidence, landowner evidence and other evidence. The Officer Investigation Report is available at **Appendix B**, with the Figures and Photos at **Appendix C**.

## Documentary Evidence Evaluation

72. The available documentary or historic evidence has been investigated under [Section 32 of the Highways Act 1980](#) (the 1980 Act), as described at **Appendix B** with accompanying **Figures and Photos** at **Appendix C**. The section below will focus on the analysis of the evidence required for the purpose of making an informed decision.
73. In summary, the applicant for DMMO S14306 has relied upon several OS maps to support a claim that Part A and Part B of the application route was an ancient public vehicular highway or part of the historic ordinary road network. This includes the applicants assertion that the application route is depicted as a through route with no boundaries or gates, and it being represented as a metalled road.
74. The 1910 Finance Act map was provided as primary evidence showing that the northern-most section of Part A and the southern-most section of Part B of the application route were shown as a 'white road' (uncoloured). The applicant proposes that the exclusion of these sections from adjacent hereditaments suggests that the land belonged to the rating authority and was therefore a public vehicular highway. Reference is also to part of the route being unregistered land which the applicant considers supports the case that the route is a public vehicular highway of ancient origin.
75. Officers investigated further historic and documentary evidence and found that the 1793 Map of Lands in Kirkheaton is a cadastral survey map produced for the Lord of the Manor of Kirkheaton shows conclusively that Part A originated as a private cul-de-sac road commencing from a public road (coloured sienna) and leading to agricultural fields, as shown in **Figure 8** and **Figure 9**.

76. The 1812 Map of Estate in Kirkheaton, also produced for the Lord of the Manor, shows an extended cul-de-sac route one field past Carr Mount farm, but does not distinguish between private and public roads, as shown in **Figure 10**. An undated cadastral survey map produced for the Beaumont Estate after 1857 (**Figure 11**) shows a cul-de-sac route to the same position as the 1812 map (**Figure 10**). The 1843 Old OS Huddersfield Sheet 88 NE one-inch map (**Figure 12**), shows a route over Part B to the same position as in Figures 10 and 11 but broken in two halves which does not indicate a through route.
77. The 1846 Tithe plan showing woods in the township of Kirkheaton does not show the application route (**Figure 13**) but it does depict three routes (**Figure 14**) annotated as an occupation road, a turnpike road, and a public road in the 1799 Kirkheaton Moor draft Enclosure Map as shown in **Figure 15**. This suggests that that in 1846 the application route was of a lesser significance than the occupation road, the turnpike road, or the public road.
78. The 1855 OS six-inch map (**Figure 16**) shows an extension of the route over Part B leading to a woodland at the southwest, and abutting Long Tongue Scrog Lane but not joining into it. The map does not show any bold black lines across the route at Carr Mount hamlet. It carries a disclaimer that '*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way*', meaning public or private.
79. The larger scale 1893 OS twenty five-inch map (**Figure 17**) shows a possible through route to Long Tongue Scrog Lane at its most southerly point and on to Lane Side. However, there are solid black lines to the north and south of Carr Mount farm which appear to indicate its enclosed with barriers, either a fence or a gate (or a change of surface). There are also solid black lines over Part B indicating possible barriers such as fences or gates (or a change in surface). The 1894 OS six-inch is similar (**Figure 18**). Barriers such as fences or gates are likely to affect the ease of use of any through route, but do not indicate in themselves that it was not passable. A timeline for the development of a possible through-route (regardless of gates or fences) is shown in **Figure 19** to illustrate the points being made.

80. On the 1896 one-inch map (**Figure 20**) and the 1903 Cassini map (**Figure 21**) the route is consistently shown as an '*unmetalled road*' a category which includes occupation roads, and is normally used to describe a road laid out for the benefit of the occupiers of adjoining land or property and in themselves therefore carry private rights rather than public rights. Being unmetalled implies it would be one that was not in good repair and not repairable by a public authority. The route is shown abutting Long Tongue Scrog Lane rather than joining into, suggesting no through route. These maps carry the right of way disclaimer.
81. In 1905 OS instructed surveyors to record permanent gates and fences as solid black lines. The 1907 OS twenty-five inch map (**Figure 22**) and the 1908 OS six-inch (**Figure 23**) also shows an additional internal barrier at Carr Mount farm, which may have affected use as a through route. This map also indicates that a through route may have been possible at its most southerly point where it joins with Long Tongue Scrog Lane. The 1919 OS twenty-five inch (**Figure 24**) and the 1932 OS twenty-five inch (**Figure 25**) does not show one of the internal barriers present in 1907/1908, but other barriers such as fences or gates still appear to be present. These maps carry the right of way disclaimer.
82. The 1938 Authentic map Directory of Southwest Yorkshire provided by the applicant which was intended to '*name all but the small less-important thoroughfares*' shows a cul-de-sac route over Part A to Carr Mount and then leading east or west, but no route leading south over Part B is shown in **Figure 26**.
83. The 1904 Bartholomew Revised Half-inch map (**Figure 27**) which according to the key showed '*first class roads*', '*second class roads*', '*passable roads*' and '*footpaths and bridlepaths*', does not show the application route at all, neither Part A nor Part B. Similarly, the 1943 Bartholomew Revised Half-inch map (**Figure 28**) which according to the key showed '*through routes*', '*other good roads, serviceable motoring roads*' and '*other road and tracks*' again does not show the application route at all, neither Part A nor Part B. These maps carry the right of way disclaimer.
84. The 1947 twenty-five inch Administrative Map showing the Kirkheaton Ward boundary is shown in **Figure 29**. The applicant states that the map shows the

route is 'a fenced Road, Ministry of Transport Class B', but the key is difficult to read, and Officers consider that the route is shown as a narrower 'fenced or unfenced other road, not classified by the Ministry of Transport'.

85. The 1961 OS 1 to 25000 map shows the private road providing access to No's 8/9 Carr Mount, deviates from the application route (**Figure 30**). And it is this route that features on the Highways Authorities 'List of Streets'.
86. The 1910 Finance Act valuation documents shows an uncoloured (white) route was excluded from hereditaments at the very south and possibly at the very north, as shown in **Figure 31** and **Figure 32**. Exclusion of a route may suggest that it was in public ownership and vested in the highway authority or for some other reason. However, in the absence of any other evidence, this does not indicate that the route was unrated and belonged to the highway authority. At the time of the 1910 land valuation, the route may have been excluded, as with other private routes, because it was in multiple occupation of adjacent tenanted fields. It can be noted that part of the route is recorded on the List of Streets (1974) as not maintained at public expense by the Council and is therefore not vested with it.
87. Furthermore, the majority of the application route lies within the hereditaments (parcels 3, 69 and 53pt) as shown in **Figure 31** and **Figure 32**. The accompanying Valuation Book for the Parish of Kirkheaton does not record deductions for '*Public rights of way or use*' for these hereditaments (parcels 3, 69 and 53pt) over Part A or over part B, as shown in **Figure 33**.
88. Conveyances, and deeds in 1920 annotate a 'right of road' most likely a private right, leading to Liley Lane or the Freemasons Arms (Part A) as shown in **Figure 34**. A public footpath is also annotated over part of Part B on conveyances and deeds dated 1923 and 1936 as shown in **Figures 35, 36** and **37**.
89. Conveyances and deeds from 1923 (**Figure 36**) and 1936 (**Figure 37**) conclusively also depict gates at Carr Mount over Part A and also depict gates and gated gaps over Part B, possibly preventing use as through route.
90. Gated gaps are currently present on Part B of the route, specifically on public footpath Kirkburton 20 (**photos 23 and 28, Figure 6**), which other

landowner/resident evidence suggests have been variously locked since the 1999 and 1980s, and one resident suggests these were locked since the 1940s.

91. Part A of the application route to Carr Mount hamlet was not recorded on the 1952 DMS nor is it recorded on the 1985 DMS as shown in **Figures 2** and **Figure 1** respectively. Part B was recorded as a public footpath on the 1952 DMS and the 1985 modified DMS as shown in the same figures. There is no walking schedule on record for Part A of the application route, and route was not claimed in 1950s and not included on draft and subsequent definitive maps. There are no records of any objection or representation to the non-recording of Part A of the route.
92. The Definitive Statement for public footpath Kirkburton 20 and the corresponding walking schedule dated 14 May 1952 (part of Part B) is shown in **Figure 38** describing the route as a footpath from The Hagg to Long Tongue Scrog Lane with stiles, one at each end of the footpath. The surface is described as '*ploughed*' on the 1952 DMS (**Figure 2**) and '*arable*' on the 1985 DMS (**Figure 1**). The reason for believing the path to be public was given as '*open for years*'.
93. Whilst the 1952 DMS and the 1985 DMS shows structures (stiles, field gates) on Part B of the application route it does not necessarily follow that the route was impassable by horse, cart, or cycle here at that time. For example, some of the OS maps above appear to show a gap next to a solid line which could indicate a fence and gap or a gated gap.
94. For the southerly part of Part B, there is no walking schedule for what is now public footpath Kirkburton 169, but there is a representation made by Kirkburton Urban District Council to add it to the Draft Definitive Map as shown in **Figure 39**. The record says "*Footpath commencing at its junction with Long Tongue Scrog Lane and proceeding in a north easterly direction to its junction with path no..20'...' This is a public footpath and should be added to the draft map*". The surface is '*part ashed, part earth*' at '*3ft wide*'.
95. **Figure 40** shows the majority of Part A of the application route is unregistered land, meaning that the owner has not registered it with HM Land Registry, but it does not necessarily follow that it was a public vehicular highway of ancient

origin as suggested by the applicant. Conveyances and deeds 1920, 1923 and 1936 (**Figures 34 to 37**) appear to show Part A of the application route leading north from Carr Mount belonged to an '*other part of the Whitley Beaumont Estate*' at that time. In the absence of a registered owner, the unregistered land abutting a way may be considered to be owned *ad medium filum* meaning to the mid-point by the two adjacent landowners – this assumption is rebuttable. Indeed, one of the current adjacent landowners who has owned the land since the 1976 believes that Part A is '*only to access Carr Mount and land owned by Upper Stone Royd*', and '*only used for private purposes*' (**Figure 47**).

96. Whilst there are two 'no-through road' street name plates at the entrance to Carr Mount lane where it leaves the B6118 at Liley Lane, these should not be taken as indicate that Carr Mount lane is a public vehicular highway nor a road to which the public has vehicular access (**Figure 5, photo 2**). The Council's building control street naming team have the authority to name private roads as well as public roads.
97. In addition, Highways Registry records show that Part A or part of Part B of the application route was not recorded as vehicular highway or otherwise on the List of Streets held under s36(6) Highways Act 1980 as a highway maintainable at public expense when the former Council took over the highways function from Kirkburton Urban District Council in 1974. See **Figure 41** and **Figure 42**.
98. Again, although Part A and part of Part B of the application route has a sealed surface and a limited number of passing places, the sealed surface was provided by the residents around 2004 or 2007 (**Figure 47**). The sealed surface was not provided by the Council, nor the were passing places created by the Council and the land is not owned nor vested with the Council.
99. The reputation of Part A of the application route as a public footpath is supported by extracts from the locally published walking routes 'Discovering Old Lepton (c1978)' & 'Discovering Old Lepton & Kirkheaton 2nd Edition (no

published date)', which shows it formed part of a circular walk, see **Figures 43** and **Figure 44**.

100. The reputation of Part A of the application route being a public right of way appears to be contained within a report associated with an application to the Countryside Stewardship Scheme relating to Upper Stoneroyd, see **Figure 45**.
101. Given all of the above, Officers therefore consider that the available documentary or historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
102. Overall, the available documentary or historic evidence is insufficient to show, on the balance of probabilities, that a public bridleway or vehicular highway subsists, or is reasonably alleged to subsist, over Part A or Part B of the application route. The investigation will therefore turn next to the available user evidence.



## User Evidence Evaluation

103. The available use and landowner evidence has been analysed under [s31\(1\) of the 1980 Act](#) for presumed dedication of a public right of way as described in detail in **Appendix B with Figures and Photos in Appendix C**. The section below will focus on the analysis of the evidence required for the purpose of making an informed decision. A summary of the user evidence is provided in **Figure 46**.
104. Sixty one (61) user evidence forms were submitted to the Council in support of the application DMMO S14201 which is Part A of the application route only. This shows that, public use of Part A of the application route on foot has continued through the 1940s, 50s, 60s, 70s and onwards. The earliest use started in 1935.
105. The user evidence has been evaluated on the submissions from fifty-five (55) members of the public who are collectively wholly or largely local people. This is because five (5) users (UEFs 28, 48, 51, 13/58, 60) were considered to have a type of private right and as such their evidence cannot be included as evidence for public use. One (1) user (UEF 13/58) submitted two (2) UEFs and only one of these has been counted.
106. There are four (4) landowners and one (1) tenant associated with Part A of the application route. From Liley Lane/ Bellstring Lane public carriageway B6118 through to Carr Mount hamlet, the application route is unregistered with HM Land Registry meaning there is no registered owner. Landowner 1 (land to west) and landowner 2 and a tenant (land to east) have landholdings to each side of the unregistered land which abuts a way. Under the rebuttable *ad medium filum* legal presumption they can be considered to own the track up to the centre line (meaning half the roadway each).
107. At Carr Mount hamlet landowner 3 and landowner 4 own sections of the application route. In addition, several other residents take access to their dwellings over Part A of the application route including vehicular access. The available landowner evidence is summarised in **Figure 47**.

## Bringing into Question

### 2016 Challenge

108. Evidence from two (2) landowners at Carr Mount hamlet indicates that public use of the application route over Part A was variously challenged either by telling people it was private or that they were trespassing, since first residing at Carr Mount (1999 and 2009) (**Figure 47**). However, the burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate, and no evidence of these earlier events has been submitted by the relevant landowners.
109. The Council has a record from 1985 which suggest that access up Carr Mount lane was denied to one individual by residents in the houses (**Figure 48**). However, the user evidence indicates that it was the challenges taking place from approximately 2016 onwards that prevented many people from using the route and that directly brought use of the route into question, as shown in **Figure 49**. These later challenges resulted in the submission of the DMMO application S14201 to have the route recorded on the DMS and creates a relevant period 1996 to 2016 which Officers consider is not rebutted by previous challenges to public use (e.g., 1985). For example, UEF 61 said '*No knowledge of the owners and never confronted from 1965-2019*' and went onto state that around 2018/2019 they were told they could not use the road...outside the houses at Carr Mount.

### 2014 Signs and Notices

110. The user evidence indicates that notices and signs were erected 'recently' or in the 'last year' meaning around 2017 (**Figure 49**). A previous landowner (UEF 28) stated '*we used to get lots of walkers, walking to Houses Hill. There was never any issues whatsoever*'...and "*No signs when I lived there*".
111. Evidence from two landowners at Carr Mount hamlet, indicates that notices and signs had been erected which variously said '*private road*' or indicate '*no public right of way*' over Part A of the application route. **Figure 50** shows photographs of such notices and signs dated August 2014, May 2016, July 2017, and July 2021 at several locations on Part A of the application route.

112. In 2014, the Council received enquiries from members of the public complaining about notices at Carr Mount hamlet which was prior to receiving the first DMMO application. A photo was provided of a notice at the junction of definitive public footpaths Kirkburton 20 and Kirkburton 10 at Carr Mount hamlet. The notice stated '*PRIVATE ROAD Public right of way up Carr Mount ENDS HERE*' meaning that public footpath Kirkburton 20 does not continue along Part A to the Liley Lane/Bellstring Lane public carriageway B6118, as shown in photo 1 dated 14 August 2014 in **Figure 51**. Whilst the notice erected in August 2014 appears not to have prevented public use of the route the wording of the sign and subsequent signage/notices can be considered to be overt acts of a lack of intention to dedicate and brings public use of the route into question, but has no retrospective effect.
113. As such, Officers consider the date the public use was first 'brought into question' is the date of the first complaints and photo evidence in August 2014, this creates an alternative relevant period of August 1994 to August 2014 which rebuts the relevant period 1996 to 2016 created by the submission of the DMMO application.

### **1997 Section 31(6) Landowner Deposits**

114. As shown in **Figure 52**, Landowner 1 submitted two (2) s31(6) landowner deposits in 1997 and again in 2003, which include land to the west of the application route abutting Part A and Part B. The deposits acknowledge any existing public rights of way across land at the same time as declaring that they as landowner they had no intention to dedicate any further routes to the public. Such deposits may also bring public use of the way into question, but have no retrospective effect. Therefore, there may be an earlier bringing into question date of May 1997 creating an alternative relevant period of May 1977 to May 1997.
115. However, whilst Landowner 1 owns Part A of the application route to the mid-point under the rebuttable *ad medium filum* legal presumption, they have not included any part of the application route within the s31(6) deposit. As such, Landowner 1 cannot demonstrate a lack of intention to dedicate a public right

of way over the application route. Therefore, an alternative relevant period of May 1977 to May 1997 has not been created and the relevant period August 1994 to 2014 is not considered to be rebutted.

116. However, should there be an opposing opinion that the s31(6) deposit in 1997 does apply to half the roadway (from the west to the centre-line) in relation to the unregistered land on Part A and Part B, then this would demonstrate a lack of intention to dedicate a public right of way during the 1994 to 2014 relevant period and throw the inquiry back to an earlier alternative relevant period of 1977 to 1997, which for completeness has also been briefly analysed in relation to s31(1) presumed dedication.

### **Relevant Periods**

117. In summary, the relevant period 1996 to 2016 created by verbal challenges is considered to be rebutted, and any relevant period associated with the s31(6) deposit is not considered to have been created. Therefore, public use of Part A of the application route was first brought into question by the erection of a notice/sign in 2014. The relevant 20 year period for user evidence is therefore between August 1994 to August 2014.
118. The alternative relevant period of 1977 to 1997 associated with the section 31(6) landowner deposit which possibly affects part of Part A of the application route have also been analysed for completeness.

### **Evidence of Use during Relevant Period 1994 to 2014**

119. The user evidence has been evaluated on the submissions from forty-eight (48) members of the public who are collectively wholly or largely local people presently or in the past.
120. Public use during the relevant period 1994 to 2014 is shown in **Figure 53**. Part A of the application route between Liley Lane and Kirkburton public footpath 20 at Carr Mount, was used by forty-eight (48) people on foot during the relevant period: thirty-five (35) throughout, and thirteen (13) for parts of the relevant period. At the start of the relevant period 1994 to 2014, thirty seven

(37) users stated they were using the route on foot. At the end of the same relevant period forty-eight (48) users stated they were using the route on foot. It is their collective use that is important.

121. Frequency of use varied and was used by one person daily; four (4) twice weekly; eight (8) weekly; two (2) more than monthly; sixteen (16) monthly; four (4) less than monthly, one (1) yearly. In addition, twelve (12) users state their use was variable and refer to using the route 'regularly, frequently, occasionally, or quite often'. It is collective use during the relevant period that is important.
122. The quantity and frequency of use are sufficient to represent use and enjoyment by the public on foot without interruption. All users saw others using the application route.
123. Several users within the relevant period indicated they believed Part A of the route to be a byway open to all traffic, a restricted byway or a bridleway with reference made to seeing motor vehicles horses and bicycles pointing to a reputation of the route beyond footpath. However, only two (2) of these users (UEF 16, 36) indicated they had used Part A on horse and this use appears to be historic and therefore likely to fall outside the relevant twenty year period under analysis, and in any case, in terms of quantity is not sufficient to demonstrate public use and enjoyment. Furthermore, the landowner and resident evidence indicated private use by horse including in groups as well as private use by motor vehicle and bicycle. Additionally, any public use by horse over Part A only would indicate a cul-de-sac bridleway which according to caselaw could not subsist at this location, as it is not a place of popular resort or destination, such as a mountain top, beach, or viewpoint.
124. Where specified, users commonly referred to Part A of the application route as 'Carr Mount'. They variously described it as either starting at Liley Lane and ending at Carr Mount or as part of a longer linear or circular route including walking to or from named local places (including Houses Hill, Hopton, Kirkheaton, Kirkheaton Cemetery, Lascelles Hall, Lane Side Lane,

Long Tongue Scrog Lane, Mirfield, Stafford Hill Lane, Upper Hopton, Whitely Willow).

125. Users describe using the way for walking/dog walking; for leisure/pleasure/recreation, for school/ work to catch the bus, to visit the [former] Freemason's Arms or visiting beyond Carr Mount (for example visiting Houses Hill).
126. Users described the width of the Part A of the application route as between 2m and 5m, over a car width, the full width of the metalled track/road.
127. Users describe the surface of Part A of the application route as a previously unmade track/ rough track/ metalled (gravel, stone, hardcore compacted) which, was later sealed with tarmac.
128. All other users describe no barriers, fences, impassable stiles, locked gates, building materials or other obstructions had ever been present on Part A of the application route in question, causing users to turn back. As such, use of the way is considered to have been un-interrupted during the relevant period.
129. None of the users indicate that they used Part A of the application route on foot by force, secrecy, or permission (as of right).
130. There is no evidence that public use was challenged or that the landowner(s) demonstrated a lack of intention to dedicate a public footpath.
131. It can be noted that post August 2014, especially since 2016/7 and to date, many users have reported being variously verbally challenged to stop trespassing over Part A of the application route at Carr Mount hamlet. Specific landowners and users report these verbal challenges at this time, but this is after the relevant date and therefore has no effect in the context of the statutory provisions of s31(1) presumed dedication of a public right of way under the 1980 Act.
132. **Consequently, it is therefore 'reasonable to allege' that a public footpath subsists along Part A of the application route, such that a DMMO is recommended, which if confirmed would add the route as a public right of way on foot to the DMS.**

133. It can be noted that if members decide that a DMMO should be made based on the documentary or historic evidence or other evidence relating to DMMO S14306, then the user evidence submitted with DMMO S14201 would actually be 'by right', not 'as of right'.

#### **Evidence of use during alternative relevant period (1977 to 1997)**

134. The same evaluation applies to the public use during the alternative relevant periods 1977 to 1997 (**Figure 54**) which may be associated with the s31(6) landowner 1 deposit. Part A of the application route between Liley Lane and Kirkburton public footpath 20 at Carr Mount, was used by forty-four (44) people on foot during the relevant period: twenty-nine (29) throughout, and fifteen (15) for parts of the relevant period. At the start of the relevant period 1977 to 1997, thirty-three (33) users reported they were using the route on foot. At the end of the same relevant period forty four (44) users reported they were using the route on foot. In relation to the frequency of the public's use was: One (1) daily, three (3) twice weekly, six (6) weekly, four (4) more than monthly, thirteen (13) monthly, four (4) every few months, one (1) yearly and fourteen (14) said their use varied. It is collective use during the relevant period that is important. All users saw others using the application route. The quantity and frequency of use are sufficient to represent use and enjoyment by the public on foot without interruption. All users saw others using the application route.
135. The Council has a record dated 1985 which would be during the relevant period 1977 to 1997. This record appears to describe the refusal of access for one individual along Part A of the application route. However, Officers does not consider this is an overt act that demonstrates a lack of intention to dedicate to the public at large.
136. Therefore, the statutory test for presumed dedication is satisfied during the relevant period and the alternative relevant period, and not rebutted. It is therefore 'reasonable to allege' that a public footpath subsists along Part A of the application route, such that a Definitive Map Modification Order is

recommended, which if confirmed would add the route as a public right of way on foot to the DMS.

## **Implications for the Council**

### **Working with People**

137. Not applicable.

### **Working with Partners**

138. The Officer has engaged with the public, Councillors, the Parish Council, landowners, residents occupiers and user groups when gathering and investigating the evidence connected with these applications.

### **Placed based Working**

139. Not applicable.

### **Climate Change and Air Quality**

140. 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**

141. Not applicable.

### **Financial Implications for the People Living or Working in Kirklees**

142. Not applicable.



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

143. 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.
144. The Council must make a decision regarding the DMMO applications and make an Order if required further to section 53 of the Wildlife and Countryside Act 1981.
145. Any person may make a duly made objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order 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.
146. The financial costs associated with the making or confirmation of an Order or associated with referral of an opposed Order to 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.
147. If an Order is made and that order is confirmed on the basis of presumed dedication under section 31 of the 1980 Act, as recommended by Officers, the public footpath will not be a highway maintenance at public expense as it came into existence through public use after [section 38 of the Highways Act 1959](#), came into operation.
148. However, if an Order is made and confirmed on the basis that a public footpath or public bridleway came into existence before 1959 based on documentary or historic evidence under [section 32 of the Highways Act 1980](#), the highway would automatically be maintainable at public expense.
149. Members should be aware that the presence of speed humps without a suitable method of crossing a recorded public right of way may be considered to be an unlawful obstruction for certain users and this may lead to appropriate enforcement action.

## Consultation

### DMMO S14201

150. On 27 July 2021, Officers conducted a twenty-eight (28) day consultation with the public, landowners/occupiers, those with private rights of access over the application routes, user groups, Kirkburton and Dalton Ward Members, and Kirkburton Parish Council. The consultees were invited to provide any comments and/or evidence by 29 August 2021. Consultees were also asked to provide responses to a specific set of questions.
151. Public notice of the consultation was provided on the Councils website under [‘Changes to the Definitive Map and Statement’](#) and titled ‘Carr Mount 201, Kirkheaton’. Notices were displayed at either end of the way (**Figure 56**), and consultees were given the option to respond via email, letter, or telephone.

### Consultation responses

152. Responses were received from seventeen (17) individuals most who did not also complete a UEF, one (1) user group, four (4) residents with private rights of access, three (3) landowners, Kirkburton Parish Council, and two (2) Ward Members. The Council also had records on file from Ward Members commenting on Part A in 2014 which have also been included below. See **Figure 58** for a summary of those consulted and any responses.

### Kirkburton Parish Council

153. Kirkburton Parish Council responded on the 25 August 2021, as follows:

*“The Parish Council fully supports the modification to the Definitive Map and Statement, as this is an important route for the people who live in Kirkheaton and surrounding areas. It has been used for many years as a route to the Freemasons Arms, and also forms part of circular walks around Kirkheaton and Upper Hopton. I trust that following the investigation, Kirklees Council will be able to confirm the importance of the route over many years, and add it to the Definitive Map and Statement. I look forward of hearing the outcome of the investigation.”*

## **Kirkburton and Dalton Ward Members**

154. Councillor McBride responded on 27 July 2021, as follows:

*"Please keep me informed of the outcome."*

155. Councillor Khan responded on 28 July 2021 that:

*"Residents tell me that the path was used historically for access to Little Mill on Houses Hill and was used by the Parish Church congregation to meet in the fields. In recent years usage has declined due to walkers being challenged by residents living in the area".*

156. Officers understand that whilst walking between places is considered use by the public, walking to attend a church service may be considered a type of private right.

157. Previously, Councillor Hardcastle had commented on 11 August 2014, as follows:

*"To the best of my knowledge this section is an unadopted road which has always been used by walkers and has at least four intersecting footpaths along its length to enable walkers the advantage of shortest routes to various destinations. At a local level it is within the Kirkburton Parish Council boundary and the Councillors for Kirkheaton and Grange Moor may be able to comment".*

158. Previously, Councillor Armer had commented on 6 August 2014 that:

*"... this appears to be a road and is marked by what appears to be a standard Kirklees nameplate and cul-de-sac sign. I had always assumed it to be 'a road to which the public has access', if not a public road as such."*

## **Further Evidence from Landowners, Public, & User Groups**

159. Landowner 1 provided a completed landowner evidence statement and stated that they had never seen any public use of the application route and not ever put-up notices or signs.

160. Landowner 3 opposes the application due to the suitability of the route for walkers, as it already had quite an increase in vehicular traffic, has blind corners and high hedges. Landowner 3 provided a link to a planning application and the Highways consultation response (see **Appendix B**, Planning Applications). Landowner 3 also raised again concerns about anti-social behaviour from the public in cars and on foot, as well as fly tipping.

Member of the public 5 (former landowner), said that the track had not always been within the title of one of the dwellings at Carr Mount, that they often saw walkers using the lane and did not object to it at any time. They stated that “...*the track from the bottom of Carr Mount to Liley Lane has been in constant use by walkers and as vehicular access to the properties at the bottom for at least 40 years*”

161. Resident 1 stated that a resident used to:

*“...sell home grown fruit and veg ...in the forties and fifties, they had a sign at the end of the road...and hundreds of people came down the lane to buy their produce”* and that ‘*permission to others to use the lane*’ for that purpose had been given.

162. Resident 2 strongly opposes the application due to it being private land and also anti-social behaviour and the cost of maintaining the route.
163. Resident 3 strongly opposes the application due to it being a private road.
164. Residents 1, 4 and 5 support the application.
165. A member of the public 10 commented they had often talked to former owners of the house adjoining the lane when walking the route.
166. A member of the public 6, referred to the application route linking into a 6-mile circular Kirkburton Parish walk called Lizzie's Lollop.
167. A member of the public 13 submitted images extracted from [www.ramblersroutes.org](http://www.ramblersroutes.org) showing the application route is considered part of a Historical walk around Lepton and Kirkheaton No3.

168. In relation to signs or waymarks, three (3) members of the public (2,4,9) described the presence of a *'footpath sign'* in the past at the Liley Lane end of way pointing towards Carr Mount which has been long since removed. Respondents were asked to clarify whether they saw this sign and when and whether it was indicating a route from Liley Lane to Carr Mount. All three (3) respondents confirmed seeing the sign for example in 1980, 1997, about twelve (12) years ago, up to eight (8) years ago. However, no photo evidence was provided.
169. The British Horse Society (BHS) stated that they believed that higher rights exist and that the DMS should record a bridleway from Liley Lane and Bellstring Lane to public bridleway KIR/220. This is over a longer route than the claimed footpath application route. The BHS reported they would object should the Council decided to make a DMMO for a footpath only.
170. Subsequently, on the 28 August 2021 BHS submitted a new DMMO application (S14306) to record a bridleway between Liley Lane to KIR/220. This comprises a bridleway addition from Liley Lane to Carr Mount, and an upgrade of KIR20 and KIR169 to a bridleway. BHS served notice on the owners and the land in October and November 2021.

### **Consultation Evaluation DMMO S14201**

171. In summary, all user responses and some current and previous residents support the grounds on which the application is based, and some further evidence was presented. Current landowners who responded reiterated their previous and ongoing concerns and/or objections, whilst some further landowner evidence was presented. However, the landowner and residents evidence does not provide any substantial evidence of challenge to public use of a lack of intention to dedicate during the relevant period 1992 to 2014 or the alternative relevant period of 1977 to 1997.
172. Of note is the historical use of Part A of the route to *'sell home grown fruit and veg ...in the forties and fifties, they had a sign at the end of the road'* from a residency at Carr Mount hamlet. This indicates use by permission or a type of

private use but, is outside the relevant period under analysis and in any case no public user has mentioned using the route to purchase fruit and veg.

## **DMMO S14306**

173. On 24 November 2021, the Officer conducted a 28-day consultation with the public, landowners/occupiers, those with private rights of access over the application route, user groups, Kirkburton and Dalton Ward Members, and Kirkburton Parish Council to add/upgrade the claimed public bridleway. The consultees were invited to provide any comments and/or evidence by 24 December 2021. Consultees were also asked to provide responses to a specific set of questions.
174. Public notice of the consultation was provided on the Councils website under [Changes to the Definitive Map and Statement](#) and titled 'Carr Mount 306, Kirkheaton'. Notices were displayed at either end of the way **Figure 57**, and consultees were given the option to respond via email, letter, or telephone.

### **Consultation responses**

175. Consultation responses were received from four (4) landowners, four (4) residents, and one (1) member of the public. See **Figure 58** for a summary of those consulted and any responses.

### **Kirkburton Parish Council**

176. Kirkburton Parish Council were consulted. No response was received.

### **Kirkburton and Dalton Ward Members**

177. Kirkburton and Dalton Ward Members were consulted. No Councillor responded to this consultation.

## Further Evidence from Landowners, Residents, & Public

178. Landowner 1 does not support the application. Landowner 1 commented that the route has never, in their knowledge been used a bridleway and has always been inaccessible, with 2 padlocked gates and signs on part of the route indicating it is not a bridleway (see **Figure 55**). Landowner 1 also had concerns about the suitability of the route as its very narrow with insufficient passing places which is used by cars and also agricultural vehicles making it unsafe for the public on foot, horseback or cycling.
179. Landowner 3 does not support the application. As part of the landowner consultation, Landowner 3 commented on the historical presence of a gate barrier (a gate or fence) at the point where public footpath Kirkburton 20/40 ends and the footpaths to each side across the fields begin (just below the farm/ cottages) at Carr Mount, which was removed around 1935 - they had heard about a fence or gate, from a neighbour. Landowner 3 also reiterated concerns about suitability of the route in terms of safety, adaptations for protection of cattle and horses in the fields.
180. Landowner 4 does not support the application. Landowner 4 commented permission had never been given to horse ride of cycle on their property and that the gates had been replaced on public footpath Kirkburton 20/30 and they had been chained and padlocked all that time [likely meaning from 1999]. Landowner 4 also expressed concerns about anti-social behaviour, costs of maintaining the route, damage to gate/post and walls and the suitability of the route for horse due to the limited number of passing places and blind bends, especially since farm vehicles use the lane. The access out of Carr Mount onto Liley Lane was also a safety concern for any horses or indeed vehicles.
181. Landowner 5 objects to the application and commented that there are locked gates at both ends of the footpath with stiles for pedestrians [Kirkburton 20]. In the past, they challenged people riding horses along this footpath.
182. Resident 1 commented that there were two locked gates on Part B of the route which had been there for a very long time since before 1983 and the route was therefore impassable to horses. A group of people associated with

one of the landowners used to have permission from other landowners to ride horses along the access route to 8/9 Carr Mount and through go through Hagg Farm's land and onto Long Tongue Scrog Lane a very long time ago, but it was stopped due to safety concerns and gates sometimes left open and the cows walked up and down the lane lost.

183. Resident 2 objects to the application. Resident 2 commented that the route is too narrow for horses and even their own traffic, and expressed concerns about costs of maintaining the route.
184. Resident 4 commented that there had always been a gate at the end of the track where public footpath Kirkburton 20 (going south) meets with Kirkburton public footpath 20 (going east and west). There has also always been a stile-type barrier at the end of the last properties (8/9 Carr Mount) which leads onto public footpath Kirkburton 169. They are padlocked for use by the farmer.
185. Resident 5 commented that the gates had been locked as long as they can remember as the farmer had cows in the field. And horses did come down in a very long time ago, but not for long as the road was not suitable, and gates had been left open and the cattle got out.
186. Officer considers that the gates referred to in paras 177 to 184 are the ones on public footpath Kirkburton footpath 20/30 below 8/9 Carr Mount and public footpath Kirkburton 169 beside 9 Carr Mount, as shown in **Figure 6 and Figure 55**, which are also referred to in the conveyances and deeds 1923 and 1936 (**Figure 36 and Figure 37**).
187. A member of the public 18 stated that it was possible to drive from Liley Lane downhill through the hamlet of Carr Mount and continued down the hill coming out into Lane Side along Long Tongue Scrog Lane. However, Officers consider that the route driven is along the access road to 8/9 Carr Mount and therefore deviates from the application route at that point.



## Consultation Evaluation DMMO S14306

188. In summary, some further evidence was presented. Current landowners who responded reiterated their previous and ongoing concerns and/or objections, whilst some further landowner evidence was presented. Most of responses refer to the locked gates on public footpath Kirkburton 20/40 at the junction of public footpath Kirkburton 20/30 and public footpath Kirkburton 169/10 at the junction of public footpath Kirkburton 20/30. These are gated gaps, currently passable on foot but not on horse or cycle due to them being padlocked.
189. In relation to Part A of the application route, the consultation responses do not provide any substantial evidence of challenge to public use of a lack of intention to dedicate during the relevant period 1994 to 2014 or the alternative relevant period 1977 to 1997.
190. Of note is confirmation of the historical presence of a gate at the point where public footpath Kirkburton 20/40 ends and the footpaths to each side across the fields begin (just below the farm/ cottages) at the junction of public footpath Kirkburton 10/10 and public footpath Kirkburton 10/20 at Carr Mount, which was removed around 1935. This corresponds to the location of the oblique solid black line shown in the documentary evidence section on the 1893 OS map (**Figure 17**) and subsequent maps including the 1932 OS map (**Figure 25**), which is not shown on the 1961 OS map (**Figure 30**), which may affect ease of use as a through route.
191. Landowner 5 mentioned challenging horse riders using the public footpath on their land in the past, but it is not known whether it was private use or public use or what route they were taking beyond landowner 5s landholding. Resident 1 mentioned past use by horse with permission and Resident 5 mentioned past use by horse, but again it is not known if this was public use, private use or with landowner permission.

## Next Steps & Timelines

192. As soon as reasonably practicable after determining the application, Schedule 14(3)(3) requires the Council to give notice of their decision by serving a copy

of it on the applicant and any landowner/occupier. If the Council decide not to make an Order, the applicant may appeal the decision to the Secretary of State within 28 days after service of notice under Schedule 14(4) of the 1981 Act. The process is usually delegated to a Planning Inspectorate who will consider the appeal and may direct the Council to make an Order.

193. If an Order is made, it will be processed under [Schedule 15 of the 1981 Act](#). This schedule provides that before making an Order, the Council shall formally consult with every local authority whose area includes the area in which the Order relates. The Order 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 an Order, the Council shall give public notice in the prescribed form for a forty-two (42 day) period during which representations or objections may be duly made.
194. The public notice is published in a local newspaper, displayed at both ends of the way affected by the Order, at Council offices, and served on every relevant owner/occupier, local authority affected by the Order, and user groups and statutory consultees.
195. If the Order is unopposed, the Council may confirm it. On the other hand, an opposed Order must be submitted to the Planning Inspectorate who may determine the Order via written representations, public hearing, or public inquiry. The Order may be modified, unconfirmed, or confirmed as made. A final decision is similarly given public notice for a 28-day period.
196. 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

### DMMO S14201

197. Based on an overall assessment of the user evidence, landowner evidence and other evidence, Officers consider that it is reasonably alleged that Part A of the application route leading from the Liley Lane/ Bellstring Lane public carriageway B6118 through Carr Mount to public footpath Kirkburton 20 subsists as a public footpath based on presumed dedication under section 31 of the 1980 Act, which is not rebutted by sufficient evidence of a lack of intention to dedicate.
198. Officers therefore recommend that a Definitive Map Modification Order (an Order) is made under section 53(3)(c)(i) of the 1981 Act, to record a public footpath on the Definitive Map and Statement (DMS) leading from Liley Lane/ Bellstring Lane public carriageway B6118 (point A on the indicative map in **Figure 1, page 45 below**) through Carr Mount to public footpath Kirkburton 20 (point B on the indicative map in **Figure 1, page 45 below**).
199. The indicative map in **Figure 1** shows the well-defined line of Part A of the route. The width of the route to be recorded would have a variable width along the metalled track, ranging between 3 to 5 metres, as shown by the shading on the indicative plan in **Figure 1, page 45 below**.
200. The Council can confirm the Order providing it does not elicit any objections during the formal public notice period. Confirmation of an Order is based on the civil standard burden of proof which is the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A in relation to 53(3)(c)(i) of the 1981 Act.

### DMMO S14306

201. Based on an overall assessment of the documentary, user evidence and landowner evidence, Officers determine that the available evidence is not sufficient to either reasonably allege or demonstrate, on the balance of probabilities, that both Part A and Part B of the application route subsists as a

public bridleway or vehicular highway. It is recommended that a DMMO is not made on the basis of this application.

## **DMMO Confirmation**

### **DMMO S14201**

202. Officers also recommend that, should the Order relating to DMMO S14201 to record a public footpath over Part A of the application route be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should support confirmation of the Order by either written representations, public hearing, or public inquiry. Confirmation of the Order would record Part A of the application route on the DMS, for use by the public on foot.

## **Contact Officer**

203. Deborah Stephenson, Assistant Definitive Map Officer, 01482 221000,  
[deborah.stephenson@kirklees.gov.uk](mailto:deborah.stephenson@kirklees.gov.uk)

## **Background Papers and History of Decisions**

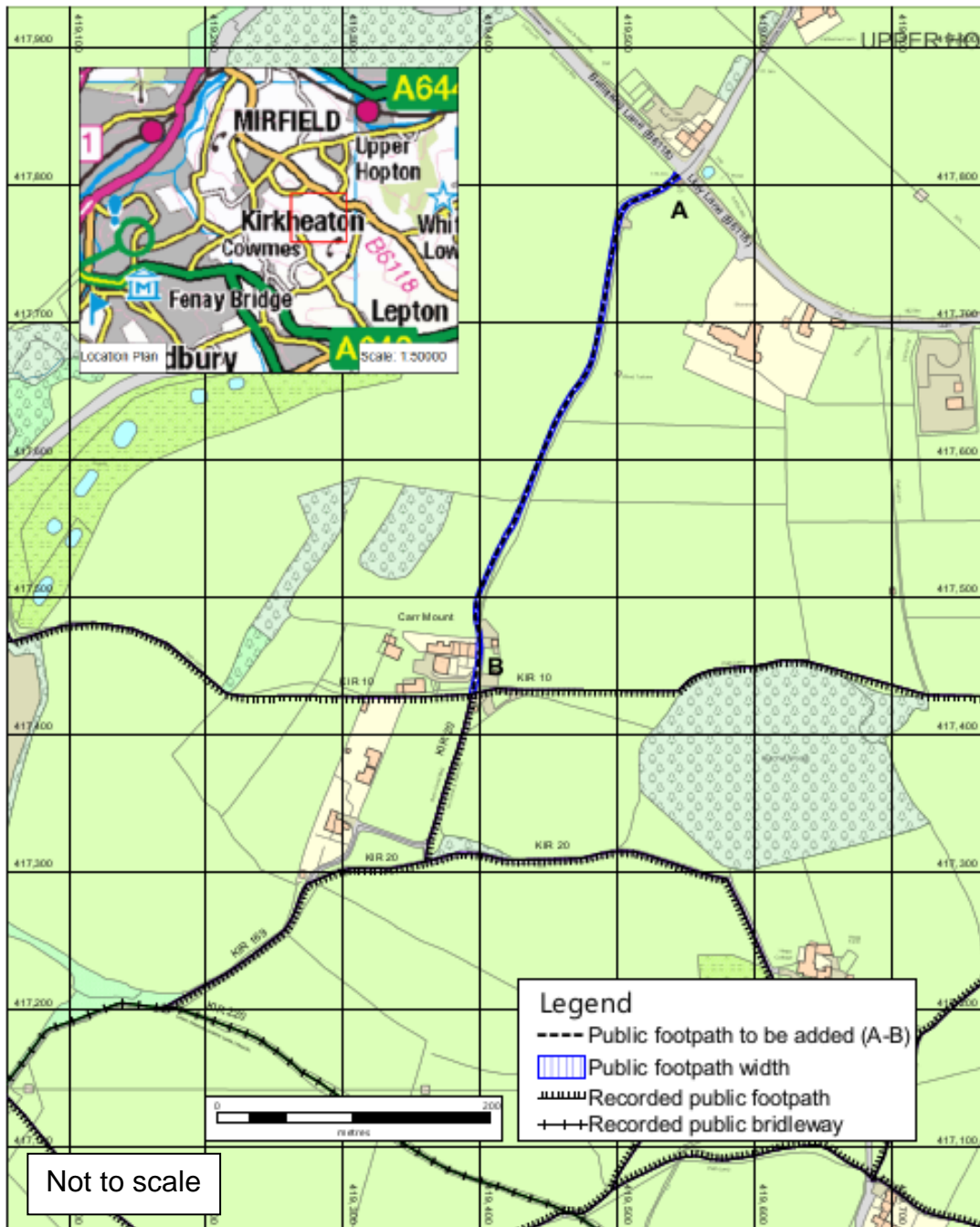
204. This report is accompanied by the following appendices:

- **Appendix A Guidance to Members**
- **Appendix B Officer Investigation Report**
- **Appendix C Figures and Photos**

## **Service Director Responsible**

205. Highways and Streetscene; Environment & Climate Change Directorate

Figure 1: Indicative map - Public footpath recommended to be added (A - B)



	<p><b>Indicative Map - Public Footpath recommended to be added (A-B)</b></p>	
	<p>Date Map Prepared: 12/01/2024</p>	
	<p>Scale: 1:2,500 @A3</p>	
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