

Appendix B

Officer Investigation Report

DMMOs S14201 and S14306

Carr Mount

25/01/2024

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DOCUMENTARY EVIDENCE

NON-ORDNANCE SURVEY MAPS

1793 Map of Lands at Kirkheaton

Background

1. A cadastral survey of Kirkheaton by a John Johnson, Land Surveyor was made in 1793 entitled 'Map of Lands in Kirkheaton' (the 1793 Map of Kirkheaton), as shown in **Figure 8**. It is available at Kirklees Archives ([DD/WBE/pe2](#)). The map was produced on behalf of Richard Henry Beaumont, Esquire, of Whitley Hall, (1749-1810) who was the principal owner of the soil, and Lord of the Manor of Kirkheaton.
2. A 'cadastral' of a map or survey shows the extent, value, and ownership of land, especially for taxation. The 1793 Map of Kirkheaton is a comprehensive survey of land within the manor and provides an accurate portrayal of public and private roads, public rights of way, buildings, watercourses, common land, and inclosed land.
3. The map was supplemented by a book of reference available at Kirklees Archives ([DD/WBE/150](#)), which states that the purpose of the map and reference book was to provide a valuation of all 'demesne lands', which is all the land retained and managed by the Lord of the Manor for their own use, occupation, or support. These lands were let to farms in the manor of Kirkheaton.

Evidential Weight

4. The 1793 Map of Kirkheaton provides an accurate cadastre of the physical landscape and road system that existed in 1793. The map has a key that is difficult to read due to fading and historic water damage, but it states that public roads were coloured sienna (as shown in **Figure 9** by 'The Explanation'). The document therefore provides a distinction between roads that were considered to have a public or private status.

Analysis

5. The 1793 Map of Kirkheaton is the first cartographical map available which shows the physical existence of the application route and its character in 1793. As noted above, the primary purpose of the map was to record the valuation of lands owned and let by the Lord of the Manor, and this valuation would be affected by the existence of public or private ways.
6. In 1793, the distinction between highways and private ways was defined as

“... that every way from town to town may be called a highway, because it is common to all the king’s subjects;... but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of particular inhabitants of such parish, may be called a private way, but not a highway, because it belongeth not to all the king’s subjects, but only to some particular persons...”
7. As shown in **Figure 8**, the application route is not annotated as a public road on the 1793 Map of Kirkheaton. It is featured as a cul-de-sac route which starts on a yellow shaded road (Liley Lane) continues across a number of fields and terminates at a field in the vicinity of what is now Carr Mount, (some faint marks possibly indication a structure at Carr Mount is visible on this map).
8. To the north, the application route is enclosed for a short section by what is likely to be fences or hedges or a drystone wall. There is a faint line across the end of the enclosed section indicating it is possibly separated from the land holdings on either side by a fence, hedge, wall or gate or it may indicate this short route is in different ownership.
9. Then leading southerly across two fields to the termination point, a single boundary such as a fence, hedge, or wall on the east side of the application route is shown.

10. As the application route is neither shown as a through route or nor coloured yellow as a public road, it is most likely to be a private road providing access for owners and occupiers to the surrounding fields.

1812 Map of Estate in Kirkheaton

Background

11. This map covers a similar area and serves a similar purpose to the 1793 Map of Kirkheaton. The document titled a 'Plan of an estate situate in the township and parish of Kirkheaton in the West Riding of the County of York belonging to John Beaumont, esquire', who inherited the Beaumont Estate in 1810 and lived from 1752 to 1820. The map shown in **Figure 10** is available at Kirklees Archives [DD/WBE/pe/5](#). The map was surveyed by a Samuel Gawthorpe at a scale of three chains to one inch (1:2376).
12. The purpose of the document was most likely to provide an update of the value of lands within the manor of Kirkheaton for the new Lord of the Manor. The map is coloured with key showing buildings owned by J Beaumont and also includes field and owners/tenants' names. As with the 1793 Map of Kirkheaton, the 1812 Plan of Estate in Kirkheaton is a comprehensive survey of land and provides an accurate portrayal of roads, buildings, watercourses, common land, and inclosed land.

Evidential Weight

13. Unlike the previous document, the 1812 Plan of Estate in Kirkheaton does not provide a direct distinction between public or private roads. The evidential weight of the document is therefore based on the depiction of the application route within the physical landscape. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential through route.

Analysis

14. The 1812 Plan of Estate in Kirkheaton shows the application route leading to and passed a property named Carr Mount, probably a farm, at the centre of the image.
15. As with the 1793 Map of Kirkheaton, the very north part of the application route is enclosed on both sides as it continues to fields referenced '301' and '305'. There is a faint line across the end of the enclosed section indicating it is separated from the land holdings on either side.
16. The application route then continues southerly along the field edges numbered '304', '303', and '280', with a pecked line to the west and a boundary on one side only and to the east.
17. At Carr Mount, the route continues south across land named as 'Joseph Ramsdens Estate'. The route terminates at the boundary of Joseph Ramsdens Estate abutting field '264', as a cul-de-sac.
18. At this period of time thoroughfares from town to town (as per para 6.) on this map are annotated as leading to their destination, such as 'To Hopton'.
19. Additionally, paths on this map are recorded as dashed lines, such as a path to the east at Carr Mount which is currently Kirkburton recorded public footpath No. 10 on the DMS.
20. The 1812 Plan of Estate in Kirkheaton shows that the application route was, a cul-de-sac private road leading to Carr Mount and agricultural land. The only significant change compared to the 1793 Map of Kirkheaton is the extension of the track across land named as 'Joseph Ramsdens Estate' which terminates as a cul-de-sac to the boundary of field number '264'.
21. The application route does not form a through route and there is no indication of any public rights of way at this period of time over the application route.

1799 Kirkheaton Moor Draft Enclosure Map

Background

22. A 'Kirkheaton Moor draft enclosure map' dated 1799 as shown in **Figure 15** is available to Kirklees Archives ([WYK1978/KH1799](#)). It relates to an Enclosure Act of 1799 which confirmed an earlier agreement. An amending Act was passed in 1804, but no enclosure award was ever made. A copy of the enclosure act 1799-1804 can be found at DD/WBE/II/3, 5 & 18 and DD/WBE/112, but is not referred to further here.

Evidential Weight

23. This map shows field boundaries with names and roads such as turnpikes, occupations roads and thoroughfares. The map does not cover the location of the application route at Carr Mount, however there are such roads on this map in the vicinity of Heaton Moor worthy of note.
24. Simply put, a 'turnpike' is a road with a toll gate for the purpose of collecting road tolls for maintaining the road – the road may or may not have public rights. The term 'occupation road' is (and was) normally used to describe roads laid out for the benefit of the occupiers of adjoining properties and not a public highway. A thoroughfare from town to town would usually be a king's highway and therefore a public highway (as per para 6.)

Analysis

25. The extract in **Figure 15** shows a turnpike road from Cooper Bridge to Wakefield (present day public highway Moor Top Road B6118), an occupation road (present day public highway Moorside Road) and a road from Heaton to Mirfield (present day public highway Heaton Moor Road).
26. This map can be considered together with the '1846 Tithe Plan showing woods in the township of Kirkheaton' (**Figure 14**), which also features these three roads, supporting the inference that the route at Carr Mount was an unimportant route not worthy of featuring on the 1846 map.

1843 OS First Series NLS Australia

Analysis

27. The applicant provided a map [Huddersfield Sheet 88 NE](#) engraved and printed by Ramshaw, which is available online at the [National Library of Australia \(nla.gov.au\)](#), as shown in **Figure 12**.
28. The map shows the application route over Part A leading down from Liley lane, and a Part B leading from up from Long Tong Scrog, but Part B is two halves, one from Long Tongue Scrog, then what looks like a gap, and the one leading to Carr Mount farm, as shown in the close up image. The routes does not appear to connect to create a through route from Part A to Part B.
29. Although the applicant believes the date of the map is 1813, Officers consider the date of this map is very unlikely to be 1813. The key at the edge of the Sheet 88 says it was published on 20 February 1943, which is closer in time period to the other OS maps.

1846 Tithe Plan Showing Woods in the Township of Kirkheaton

Background

30. A tithe plan showing woods in the township of Kirkheaton by a W. Wordsworth, Black Gates made in 1846 as shown in **Figure 13** is available at Kirklees Archives ([B/AHR/p2](#)). It is part of the larger area covered by the Kirkheaton tithe map held at the National Archives (same date, also by W Wordsworth). 'The Explanation' on the map states it forms the accompanying map or plan referred to in the apportionment of the rent charge in lieu of tithes in the township of Kirkheaton. Tithes were originally a tax which required one tenth of all agricultural produce to be paid annually to support the local church and clergy.

Evidential Weight

31. This map only refers to areas of woodland with a number of connected roads some leading to settlements off map, probably to provide a spatial context to assist with the locating the woods. No distinction has been made on this map

between public and private roads. Roads on this map which are thoroughfares are annotated to say they lead to settlements e.g., 'from Dalton'.

32. The evidential weight of the document is therefore based on the depiction of the application route within the physical landscape and its significance relative to other routes and roads depicted. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential thoroughfare.

Analysis

33. Note the location of Hutchin Wood and the rectangular woodland to the north-west, as shown in **Figure 13**. The application route would have been located between these two woods, but no route is shown.
34. Note that the road indicated on the 1799 Kirkheaton Moor draft Enclosure Map (**Figure 15**) as an occupation road which later became a public highway and which in modern times is called Moorside Road, is also depicted on this 1846 map (**Figure 13**). Shown also on the 1846 map are a turnpike road (now Moor Top Road B6118), and a road from Heaton to Mirfield (now Heaton Moor Road).
35. This map infers therefore that in 1846 the application route were considered to be an unimportant private route.

1857-1913 Plan of HF Beaumont's Estate in Kirkheaton

Background

36. A map included within the Sale of Whitley Beaumont general estate papers 1857 -1913 surveyed by a WJ Dunderdal is available at Kirklees Archives ([DD/WBE/pl/10](#)), as shown in **Figure 11**. The map is titled 'Plan of the Estate situae in the township and parish of Kirkheaton in the County of York belonging to H.F.Beaumont Esquire' (Plan of H F Beaumont's Estate in Kirkheaton).
37. Kirklees Archives date this record in their collection between 1857 and 1913. The first date of 1857 refers to the date H F Beaumont inherited the estate

from his god father Richard H Beaumont (1805-1857). The last date, of '1913', is the date of H F Beaumont's death. However, the actual map is undated.

Evidential Weight

38. The plan shows field numbers, tenants' names, and names of other landowners. The purpose of the document was most likely to provide a further update of the value of lands within the manor of Kirkheaton for the new Lord of the Manor. As with the 1793 Map of Kirkheaton, the 1812 Plan of Estate in Kirkheaton is a comprehensive survey of land and provides an accurate portrayal of roads, buildings, watercourses, common land, and inclosed land.
39. The evidential weight of the document is therefore again based on the depiction of the application route within the physical landscape. This includes any changes since the previous document, such as whether it remained a cul-de-sac or formed a potential thoroughfare.
40. Because the purpose of the survey related to landownership and tenanted lands rather than a survey of physical features only, the surveyor of this map may have had their own cartographic symbology in relation to how to depict land holdings, tenanted land, boundaries, and physical features and these would not necessarily follow any Ordnance Survey topographic or cartographic symbology at the time – particularly in relation to any structures across the application route.

Analysis

41. The application route leads off what is now Liley Lane and is enclosed between fields 305 Scotland and 301 Little Ing and to the same extent as it was in 1793 and 1812. The route is shown as separated from those two fields.
42. As with the 1793 and 1812 and 1846 maps, the solid line across the south of the enclosed section here is not thought to represent a fence or gate, it is thought to represent the area of land that makes up field number 304 Great Carr. The same annotation, a solid black line leading across the route, is used for field numbers 303 Upper Carr and 280 Upper Shrogg Close, again thought

to represent the area of land making up those fields rather than any structure across the route.

43. From the enclosed section, the route is then shown as a singled pecked line with one boundary to the east. The depiction of the route along this section contrasts with the 1855 Ordnance Survey map (**Figure 16**) which shows the route enclosed over a much longer length.
44. The route continues through a land holding at Carr Mount named Duke Oldroyd and terminates at the boundary with field 264 Four Days Work. This is the same termination point as the 1812 Map of Estate in Kirkheaton. And again, the application route is not shown as a through route.
45. At Carr Mount farm itself, there are several solid black lines across the route. These probably depict land holding boundaries, expect for the southern line leading to a building which may or may not be a structure such as a fence, wall, or gate.
46. Similar to the other preceding maps there are some roads on this map shown leading to settlements as through routes, e.g., 'to Hopton'. All roads and routes are coloured the same therefore nothing can be inferred from this map about their private or public status in relation to colouring.
47. In conclusion, the application route at this time is mostly likely to be a private route providing access to fields for owners or occupiers and for access to Carr Mount farm. There is uncertainty about whether Carr Mount farm was fenced, walled, or gated at its southern end.

ORDNANCE SURVEY MAPS

Background

48. The Ordnance Survey (OS) are the official mapping agency in the United Kingdom. The organisation collects and maintains uniform datasets with national coverage, containing detailed mapping of the built and natural physical topography of the landscape; transport networks including road, rail,

waterways, tracks, and paths; terrain and height data; administrative and electoral boundaries information; and geographical names.

49. The Ordnance Survey originated for military purposes, however, rapid urbanisation and new transport networks required accurate large-scale maps and in 1841 an Act of Parliament granted the Ordnance Survey was granted the right to enter land and map physical and administrative boundaries.
50. Section 12 of the 1841 Act specifically states that the Ordnance Survey does not provide, and has no remit to ascertain and record, any map with property boundaries, or information about ownership of physical features.
51. Ordnance Survey maps are therefore topographical and do not fix or record the invisible line of a legal property boundary. The invisible property boundary may run parallel to but a few metres distance from the visible boundary of a fence or hedge in the middle of a highway or private road, based on the *ad medium filum* legal presumption. Property boundaries may depend on or be coincident with surveyed map features, such as: fences, walls, hedges, similar visible objects and naturally occurring divisions.
52. The Ordnance Survey produced a series of topographic maps at different scales, as follows:
 - The OS 1-inch maps (1:63360) due to their scale are schematic showing the character of routes and their standard of repair, rather than accurately depicting physical features, such as gates.
 - The Ordnance Survey 6-inch maps (scale 1:10560) record most man-made and natural features in the landscape. Every road, railway, field, fence, wall, stream, and building is shown, and even smaller features such as letter boxes, bollards on quaysides, mile posts, and flagstaffs.
 - Ordnance Survey 25-inch maps (scale 1:2500) County Series (1841-1952) are a standard topographic authority, depicting practically all human and natural features in the landscape with great accuracy – ‘...every road, railway, field, fence, wall, stream, and building is shown.

In relation to gates it also states that “the recording of bay windows, garden paths, gates (except across roads), and hedgerow timber was discontinued after 1892”.

53. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways. However, the disclaimer which has been added to editions since the 2nd edition maps (1888-1913), along with official guidance to the surveyors of the maps at the time, states that ‘*the representation of any track or way is no evidence of a public right of way*’.
54. [Ordnance Survey Instruction to Field Examiners 1905](#) by Colonel Duncan A Johnston, CB., Director General of Ordnance Survey defines Occupation Roads, refers to fences and gates. Para 34 states that ‘*.. gates are to be shown as fences*’, meaning as a black solid line.
55. [OS Master Map real world object catalogue](#) dated 2001 states that fence, wall, or gate are shown as a topographic line barrier.

Evidential Weight

56. The Ordnance Survey maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes.
57. The detailed, large scale 1:25000 maps from the 1870’s onwards provide the best evidence of the position and width of routes and the presence of any structures on them. This may assist with consideration of any barriers affecting ease of access in relation to the existence of through routes.

1855 OS 6-inch England and Wales Yorkshire Sheet 247

Analysis

58. An extract from the 1855 published OS 6-inch England and Wales map – Yorkshire Sheet 247 surveyed between 1850 and 1855 as shown in **Figure 16** is available online at the [National Library of Scotland \(NLS\)](#).
59. The application route is generally shown leading off Liley Lane, continuing southwards to Carr Mount and beyond and terminating westwards to a strip of woodland beside present day Long Tongue Scrog. Although the route continues to Long Tongue Scrog, there are two routes abutting each other here and it does not appear to join into Long Tongue Scrog.
60. Relative to preceding maps above, the application route is enclosed over a much longer stretch from Liley Lane to the location of the sandstone quarry. Beyond the quarry, the application route is shown variously as a double pecked line with a boundary on one side possibly indicating a ‘track’ which continues over a much wider route.
61. Should fences have been present on the application route, it can be assumed that they would have been shown on this map as a solid black bar across the road. It can also be assumed that gates were usually shown as fences. However, there are no lines shown across the application route on this 6-inch map, except where it terminates near Long Tongue Scrog.
62. In conclusion, whilst there is a much longer route shown without barriers it appears likely that at this time it is likely to be a private route providing access to fields for owners or occupiers and for access to the sandstone quarry, to Carr Mount farm and the woodlands beyond.

1893 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLVLL.13**Analysis**

63. The 1893 OS 25-inch England and Wales – Yorkshire CCXLVLL.9 and CCXLVLL.13 published in 1893 and surveyed in 1888 as shown in **Figure 17** are both available online at the [CCXLVLL.9, NLS](#) and [CCXLVLL.13, NLS](#).
64. The application route is generally shown leading off Liley Lane, with a faint line across after a short section, and then continuing south-west to Carr Mount and beyond and terminating westwards to a strip of woodland beside Houses Lane (present day Long Tongue Scrog). However, dashes are shown between the two abutting routes indicating a change of topographical unit and there is the possibility of a through route as it appears to join into Long Tongue Scrog.
65. The route from Liley Lane is enclosed by fences, walls, or hedges to the location of the sandstone quarry which is the same point as the 1855 map.
66. What is different from the 1855 map is that the route from Liley Lane to Carr Mount is now shown as a separate topographical feature with its own object number (183) and area size (.513). Bearing in mind that the OS did not record landownership or property boundaries, only physical features, this may indicate that the route was indeed bounded on both sides by a fence, hedge, or wall and/or that the route had a different topographical surface from the surrounding agricultural fields.
67. This in turn, differs to Part B of the application route leading southerly from Carr Mount, which is shown with a dotted line, with an 'S' symbol and a solid line. The 'S' symbol is an areas brace symbol or 'field tie' and joins areas of land together to give a single parcel number and may indicate that the route did not have a different surface from the surrounding fields.
68. What is also different from the 1855 map, is that Carr Mount farm is shown as enclosed. In contrast to the 1855 map, several solid black lines are shown to the north and to the south of Carr Mount farm and south of Carr Mount, possibly indicating a change of surface, fence, or a gate in each position,

particularly the oblique line immediately to the south of Carr Mount farm which may indicated a gate.

69. What is most different is that although barriers are shown south of Carr Mount, the route appears to now join into Long Tongue Scrog Lane. This is the first indication that the route may be a through route.

1894 OS 6-inch England and Wales Yorkshire CCXLVLL.9

Analysis

70. The 1894 OS six-inch England and Wales, Yorkshire Sheet CCXLVII.SW published in 1894 and surveyed in 1888 as shown in **Figure 18** is available online at the [NLS](#).
71. The application route is shown in the same manner as the 1893 OS 25-inch map expect for the lack of a line across the enclosed section as it leaves Liley Lane.

1896 OS 1-inch England and Wales Sheet 77 Huddersfield (Hills)

Analysis

72. The applicant submitted a copy of an extract from the 1896 One-Inch, England and Wales, Revised New Series 1892-1908, Sheet 77 – Huddersfield (Hills), and a corresponding map key, as shown in **Figure 20**. It's available online at [NLS](#).
73. Whilst the application route is shown an unmetalled road from Liley Lane to a similar termination point as with previous maps where it is shown abutting but not joining into Long Tongue Scrog.
74. The applicant indicated that the route was shown as a '*Third class fenced metalled road*', but Officers advise that the route is much narrower that, and whilst the unmetalled road looks like it is shaded on the key, looking more closely it is not shaded. Officers therefore consider the route is shown as an unmetalled road, abutting Long Tongue Scrog, and therefore does not indicated a through route.

75. Due to their scale, these documents are schematic, showing the character of routes and standard of repair, rather than accurately depicting physical features, such as gates.

1903 OS 1-inch Cassini Sheet 110 Sheffield and Huddersfield

Analysis

76. The applicant submitted a copy of an extract from the 1903 Cassini Revised Series Map One-Inch, England and Wales, Revised New Series 1892-1908, Sheet 77 – Huddersfield (Hills), and a corresponding map key, as shown in **Figure 21**. It is available at [NLS](#).
77. The maps are based on the Ordnance Survey's Revised New Series (in colour) maps, which were published in 1903. The historical maps have been digitally re-projected, enlarged, and combined to match the current Landranger series and reproduced with the scale changed from one inch to the mile, to 1:50000 to enable direct comparison. The 1-inch scale was a standard topography, and the physical and human landscape was considerably generalised.
78. The legend to the map provides eight categories for the depiction and classification of metalled (i.e., using compacted gravel) and unmetalled roads for vehicles:
- Fenced First Class Metalled Roads were shown coloured orange, or carmine, with wide and bold black parallel lines.
 - Fenced Second Class Metalled Roads were also shown coloured orange but thinner than the previous category and with only one bold black line.
 - Fenced Third Class Metalled Roads were uncoloured with no bold black lines, but the same width as the previous category.
 - Unmetalled Roads were thinner and coloured grey.

- All the categories had a corresponding annotation if the roads were unfenced, and this was simply shown with dashed lines.
79. In 1884, an instruction to OS surveyors directed that, “*All metalled public roads for wheeled traffic kept in good repair by the authority will in future be shaded*” meaning ‘coloured’. In the [Ordnance Survey Instruction to Field Examiners 1905](#) Second Class Metalled Roads are described as ‘*in good repair*’, and ‘*fit for fast traffic in all seasons*’ and *it should be possible to drive carriages and light carts over them at a trot*’.
80. The 1903 Cassini map shows the application route as an unmetalled fenced road which would be one that was not in good repair and not repairable by a public authority.
81. Furthermore, whilst the unfenced metalled road continues from Liley Lane to south of Carr Mount is again does not appear to join into Long Tong Scrog as shown at the red circle annotation in **Figure 21**. It is therefore not considered to be a through route at this time.

1907 OS 25-inch England and Wales Yorkshire CCXLVLL.9 and CCXLV11.13

Analysis

82. An extract from the 1907 25-inch England and Wales, Yorkshire CCXLV11.9 and CCXLV11.13 (Huddersfield, Kirkburton and Mirfield) map shown in **Figure 22** is available online at the [CCXLV11.9, NLS](#) and [CCXLV11.13, NLS](#). It was revised in 1904 and published in 1907.
83. As with the previous maps and since 1893, Carr Mount farm is shown as enclosed. Two internal barriers appear to be depicted, which could be gates or fences, as indicated by the two red circles.

1908 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW

Analysis

84. An extract from the 1908 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW including Dewsbury, Kirkburton Mirfield surveyed between 1904 and 1905 shown in **Figure 23** is available online at the [CCXLVII.SW, NLS](#).
85. As with the previous maps and since 1893, Carr Mount farm is shown as enclosed. Internal barriers may also be depicted, which could be gates or fences. Gates or fences are also shown on Part B.

1919 OS 25-inch England and Wales Yorkshire CCXLVII.9 and CCXLVII.13

Analysis

86. An extract from the 1919 25-inch England and Wales, Yorkshire CCXLVII.9 and CCXLVII.13 maps surveyed 1914 shown in **Figure 24** are available online at the [CCXLVII.9, NLS](#) and [CCXLVII.13, NLS](#).
87. The route is shown in largely the same manner as previous maps. At Carr Mount farm it is shown as enclosed, and south of Carr Mount farm there are solid lines across the route in the same positions as previous. However, there an internal barrier is not shown as it was in the 1907 25 inch or the 1908 6-inch maps.

1930 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW

Analysis

88. The 1930 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1930 is available online at the [CCXLVII.SW, NLS](#).
89. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908 OS 6-inch map.

1932 OS 25-inch England and Wales Yorkshire CCXLVII.9

Analysis

90. An extract from the 1932 25-inch England and Wales, Yorkshire CCXLV11.9 and CCXLV11.13 map surveyed 1930 shown in **Figure 25** is available online at the [CCXLV11.9, NLS](#) and [CCXLV11.13, NLS](#).
91. The route is shown in a similar way to previous maps, and Carr Mount farm is shown as enclosed and there are lines across the route to the south of Carr Mount. A building which is now No. 8/9 Carr Mount is shown south of Carr Mount.

1938 The Authentic Map Directory of Southwest Yorkshire

Analysis

92. The applicant submitted a copy of an extract from The Authentic Map Directory of Southwest Yorkshire dated 1938, as shown in **Figure 26**.
93. The 'Introduction' says the purpose of the map was to '*name all but the small less-important thoroughfares*' shows a cul-de-sac route over Part A, but no route at all over Part B, as shown in **Figure 26**.

1904 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9

Analysis

86. 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.

1943 Bartholomew Revised Half-inch Map, Sheet 29 England and Wales No.9 (Peak District).

Analysis

94. As shown in **Figure 28**, the purpose of this map was to show '*through routes*', '*other good roads*, serviceable motoring roads and '*other road and tracks*'. However, again the map does not show the application route at all, neither Part A nor Part B.

1947 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW

Analysis

95. The 1947 6-inch England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1938 is available online at the [CCXLVII.SW, NLS](#).
96. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908 and 1930 OS 6-inch maps.

1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series

Analysis

97. The applicant submitted a copy of an extract from the 1947 OS 1 to 25,000 Provisional (Outline Edition), Administrative Area Series as shown in **Figure 29**.
98. The purpose of the map is to show ward boundaries. The applicant considers that according to the key, the route is shown as a '*fenced B class of Road*'. The key is difficult to read but that would make it a relatively significant road, which it is not, and Officers advise that the route is shown as a fenced or unfenced '*Other road*' not classified by the Ministry of Transport.
99. Again, looking more closely there are solid black lines to the north and south of Carr Mount, indicating it is enclosed, possibly preventing use as a through route.

1949 OS 6-inch England and Wales Yorkshire Sheet CCXLVII.SW

Analysis

100. The 1949 6-inch map England and Wales, Yorkshire Sheet CCXLVII.SW revised in 1948 is available online at the [NLS](#).
101. No extract is shown in this report, but there has been no change in the way the route is shown on the 1908, 1930 and 1947 OS 6-inch maps.

1961 OS 1 to 25000 1st Edition

Analysis

102. The 1961 map is available on Kirklees Council's Kompass mapping system, as shown in **Figure 30**. This map shows that the private road providing access to No's 8 and 9 Carr Mount, deviates from the application route, as indicated by the red circle. And it is this route that features on the Council's List of Streets, as shown in **Figures 41** and **42**.

THE FINANCE ACT 1910

Background

103. A land valuation survey was carried out in the UK between 1910 and 1915, organised according to income tax parish, provided for by The Finance Act 1910. This created a baseline survey for the levy and collection of duty on the incremental value of land between its valuation as at 30 April 1910 and its subsequent sale or other transfer.
104. There was a complex system for calculating the 'assessable site value' of land which allowed for deductions for the amount the gross value would be diminished if the land were sold subject to, for example, any fixed charges or public rights of way or any public rights of user or to the right of common or to any easements affecting the land. As the presence of a right of way would reduce the land value, owners were able to claim relief from tax between 1910 and 1920, when the Act was repealed.
105. The valuation survey record plans are printed OS map sheets, annotated by hand with plot numbers which act as an index for field books containing assessments of individual property or parcels of land (hereditaments) which are usually marked in red ink.
106. Valuation Books were the first major record created by the Valuation Office at the start of the survey. They are distinct from field books, which were the final record compiled after the survey was completed, and which usually contain more information.

107. As the existence of a public right of way could be off set against the increment value duty and therefore many 'ways' are recorded in Valuation Officer Field Books.

Evidential Weight

108. As indicated by caselaw, the significance of the exclusion of a route from assessable land requires careful consideration which concludes that the Finance Act records are not definitive and are simply one part of the jigsaw puzzle to be considered along with other relevant evidence. Therefore the 1910 Finance Act documents provide no evidential weight in isolation.

109. Evidence of the possible existence of a public right of way in the Finance Act documentation usually arises, as follows:

- reference to it in one or more of the various documents forming part of the valuation process (landowner forms, field books, valuation books)
- exclusion of a route from the assessable parcel of land shown on the map record

110. As part of the 1910 valuation of land, landowners were asked whether the relevant unit of land ownership (known as hereditaments) were subject to any public rights of way or any public rights of user. Valuers produced coloured plans based on Ordnance Survey 1:2500 maps and recorded details of the hereditaments and various deductions into Field Books used for inspections and the information then transferred into Valuation Books. All land was required to be valued. Any excluded land might be for three reasons, as follows:

- routes which corresponded to known public highways, usually vehicular were not normally shown in hereditaments – this land would be shown 'uncoloured' and 'unnumbered' and separated from numbered land parcels by 'broken braces' or 'brackets. Whereas footpaths and bridleways were usually dealt with by recorded deductions in Field Books and Valuation Books.

- there are some cases of private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments
 - instructions issued by Inland Revenue to valuers in the field deal with exclusions of roadways from plans, but do not explicitly spell out all the circumstances in which such an exclusion would apply
111. Landowners did not have to claim the deduction in valuation for public rights of way. The interpretation of uncoloured or excluded roads is controversial. The primary purpose of the compilation of the record plan and field book was not to determine public rights or the status of highways, but to value land in connection with the increment value duty and inheritance tax.
112. Caselaw dictates that two criteria have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan 1) the route is within the jurisdiction of an Urban District Council, or it is a Main Road 2) the route is a highway maintainable at public expense.

Analysis

113. The applicant provided working copies of the 1910 Valuation Reference Map available at Wakefield Archives References C243 247/9 & C243 247/13 as shown in **Figures 31 and 32**.
114. The applicant reports that the extracts are from records that were passed from the IR Valuation Offices to The National Archives at Kew. The National Archives document reference is IR 134/6/47 & IR 134/6/51.
115. Generally, it can be noted that there are no broken braces across any part of the application route to confirm it was separated from the surrounding hereditaments.
116. The first section of the application route at Part A has bold red line boundaries down each side to the point where it joins the northern boundary of with field number 182, suggesting it is separated from the hereditaments. However, as there is not a red line across the route at either end, it is 'open' at both ends.

To the north it is open to Liley Lane and to the south it is open to assessable parcel 3 which stretches from Liley Lane to Upper Stone Royd to north of Carr Mount and includes the former sandstone quarry. It is therefore inconclusive as to whether the route was or was not separated from the surrounding hereditaments, but for the sake of an analysis only, it is assumed that it is separated.

117. At Carr Mount hamlet part of Part A and part of Part B is not separated from hereditaments and it lies entirely within assessable parcel 69.
118. Below Carr Mount hamlet, part of Part B is not separated from hereditaments and lies within assessable parcel 53pt (meaning part of hereditament 53).
119. The very southerly end of Part B is separated from the adjacent hereditaments.
120. Extracts from the Valuation Book for the Parish of Kirkheaton Inland Revenue 1910 Valuation Book Ref 234-236 associated with the Valuation Office survey: Record Plan IR 247/1243 above, can be found at **Figure 33**.
121. Parcel 3 is named '*Upper Stoneroyd*', owned by '*Ralph Beaumont*' and occupied by '*James ...*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 3. This means the landowner has not recorded any deductions for public rights of way or use on this land.
122. Parcel 53 is named '*Houses Hill*', owned by '*Henry Lodge*', and occupied '*Henry Fisher*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 53. This means the landowner has not recorded any deductions for public rights of way or use on this land.
123. Parcel 69 is named '*Carr Mount*', owned by '*Ralph Beaumont*', and occupied by '*Sarah Oldroyd*'. There are no corresponding deductions for '*Public Rights of Way or Use*' in column 25 relating to parcel 69. This means the landowner has not recorded any deductions for public rights of way or use on this land.

124. The only deductions for '*Public rights of way or use*', related to land/houses in the vicinity are at '*South Royd*' (parcel 73) and also '*Lane Side*' (parcel 83).
125. In conclusion, the map is inconclusive as to whether the route to the north is part of parcel 3 or whether it joins with Liley Lane and is part of the highway network. As such, this may or may not indicate it was excluded from any valuation. A non-valuation might be because it had several private easements, it was fenced or walled, it had no owner, it belonged to the rating authority, or for other unknown reasons. There are examples of where private roads with no owner have been left uncoloured and excluded but there does not appear to be a consistent approach.
126. However, the very south of the route is excluded from the hereditaments. 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. The route may have been excluded, as with other private routes, because it was in multiple occupation of adjacent tenanted fields.
127. In relation to caselaw at para 112 indicating the two criteria that have to be satisfied to infer public ownership of an uncoloured route on a 1910 Valuation Reference Plan as follows: 1) the route was within the jurisdiction of Kirkburton Urban District Council, but was not a main road and 2) there is no evidence available to show that the route was a highway maintainable at public expense.
128. The records originating from Kirkburton Urban District Council in 1974 and now held by Kirklees Council Highways Registry show that Carr Mount was on the List of Streets as a street not maintained at public expense and is therefore not vested with it. Furthermore, the 'unadopted' route, deviates from the application route in the vicinity of No's 8/9 Carr Mount as shown in **Figure 41**. There is no evidence available that shows the route was maintainable to public expense.

CONVEYANCES AND DEEDS

Background

129. Landowner 3 and Resident 1 both provided copies of some Conveyances and Title Deeds.

Evidential Weight

130. With reference to para 6.2.17 of the Government's [Definitive map orders: consistency guidelines](#) published in 2003 and last updated in April 2016, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights.

131. Similarly, the inclusion of a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is or is not a public right of way over it. This evidence needs to be considered along with all other relevant evidence.

Analysis

132. An official copy of the conveyance plan dated 23 September 1920 relating to the sale of The Whitley Beaumont Estate and title number WK203013 is shown in **Figure 34**. This plan shows a '*Right Of Road*' over Part A of the application route from Carr Mount farm to Liley Lane. Whilst it does not say whether it's a public or a private route, it is more likely than not a 'private right'.

133. What are now public footpaths Kirkburton 10 and Kirkburton 20 are depicted as variously double and single dashed lines and annotated '*footpath*' on the same plan. However, whilst there is a dashed line over Part B through Carr Mount, it is not annotated with the words 'footpath'.

134. An official copy of the conveyance plan dated 18 August 1923 relating to title number WK203013 is shown in **Figure 35**. This plan shows a '*Road to Liley Lane*' over Part A of the application route from Carr Mount farm to Liley Lane. It also shows a '*Road Way*' at the farm itself and a '*Public Footpath*' leading

south from Carr Mount farm over what is now public footpath Kirkburton 20 and also east over what is now public footpath Kirkburton 10. At the very south of this plan over what is now public footpath Kirkburton 20 going east to west, there are the words '*Public Footpath to Carr Mount and Hagg Farm*'. It does not say public footpath to Liley Lane. Again, whilst it does not say whether the '*Road Way*' or '*Road to Liley Lane*' is public or a private route, it is more likely than not a 'private right'.

135. An official copy of the conveyance plan dated 17 August 1923 relating to title number WYK294213 is shown in **Figure 36**. The plan shows a '*Public Footpath*' coloured brown over Part B of the application route, and over what is now public footpath Kirkburton 20 – the colour brown leads past Carr Mount farm and is annotated with the words '*To Freemasons Arms*'. A 5 bar gate is depicted at the north of Carr Mount farm, and another 5 bar gate is depicted to the south in the vicinity of 8 Carr Mount. At the very south of this plan what is now public footpath Kirkburton 20 is annotated with the words '*Public Footpath to Carr Mount and Hagg Farm*'. It does not say where there is a public footpath to Liley Lane or To the Freemasons Arms. Therefore, whilst the brown colouring relating to the public footpath depiction /annotations does extend north past Carr Mount farm and therefore slightly over Part A of the application route, the evidence is inconclusive as to whether it indicates that the route to Liley Lane is a public footpath.
136. An official copy of the conveyance plan dated 9 September 1936 relating to title number WYK294213 is shown in **Figure 37**. The plan shows a '*Public Footpath*' coloured brown over Part B of the application route which says '*To Houses Hill*' leading south. Over the most southerly part of Part A of the application route are the words '*To Freemasons Arms*' leading north and '*To Liley Lane*' and the colour brown leads past Carr Mount farm. However, the plan at the very southerly edge is annotated with a track and the words '*Public F.P to Carr Mount & Houses Hill*'. It does not say public footpath to Liley Lane or public footpath to the Freemasons Arms. So again, the evidence is inconclusive as whether a public footpath is shown leading north from Carr Mount farm to Liley Lane.

137. On **Figure 37**, a 5 bar gate is depicted at the north of Carr Mount farm, and another 5 bar gate is depicted to the south in the vicinity of 8/9 Carr Mount. Two other 5 bar gates are annotated, one south of 8/9 Carr Mount and the other at the junction of what is now public footpath Kirkburton 20 and public footpath Kirkburton 169 which is annotated with the words '*Long Tongue Scrog*' on this plan. Also annotated on the map is the '*Roadway Private*' and '*Roadway*' to access No. 8/9 Carr Mount.

Unregistered Land

138. The applicant for DMMO S14306 provided a map from [HM Land Registry](#) as shown in **Figure 40** which shows the majority of Part A of the application route is unregistered land, meaning that it is the owner has not registered it with HM Land Registry. However, it does not necessarily follow that this indicates it was a public vehicular highway of ancient origin, as proposed by the applicant.
139. Also note that the **Figure 34** dated 1920, **Figure 35** dated 1923, **Figure 36** dated 1923 and **Figure 37** dated 1936 all show the application route leading north from Carr Mount belonging or appearing to belong to an '*other part of the Whitley Beaumont Estate*', suggesting that the route which is now unregistered belong to them at that time.
140. 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. 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**).

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

Background

141. In preparation for the first Definitive Maps of Public Rights of Way, parish councils were required, under section 38 Part IV of the National Parks and Access to the Countryside Act, 1949, ([the 1949 Act](#)), to conduct a survey of all footpaths, bridleways, and roads used as public paths in their areas and pass them onto West Riding County Council (WRCC) - the surveying authority.
142. Section 27(6) of the 1949 Act defined a 'public path' as a highway being either a footpath or bridleway; and a 'road used as a public path' as a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleway are so used.
143. Public carriageways, not being a public path or used as a public path, were therefore excluded from the claims. This is indicated in the definition of a road in section 93(8) of the 1949 Act: "In this section the expression "road" means a highway other than a public path (as defined in Part IV of this Act)". Although it should be noted that the meaning is prefaced with 'in this section', however, no other definition of 'road' is given in the 1949 Act.
144. WRCC prepared the first Definitive Map and Statement which showed all the public footpaths, bridleways and 'roads used as public paths' that subsisted or were reasonably alleged to subsist at the 'relevant date' being 22 September 1952. In short, objections or representations could be made in relation to a Draft Map, leading to the preparation of a Provisional Map and then via a similar process finally a published DMS, otherwise referred to as the 1952 Definitive Map and Statement.
145. A review of the 1952 Definitive Map and Statement started in the 1970s with a Draft Revision Map being produced in 1979 and put on public inspection in 1980. The review was formally abandoned following new legislative provisions within the Wildlife and Countryside Act 1981 to keep the DMS under continuous review and the making of individual DMMOs. The Modified

Definitive Map and Statement was published in 1985 to be kept under continuous review since that time.

Evidential Weight

146. The definitive map and statement are conclusive as to the status of the highways described generally without prejudice to the possible existence of higher rights, also meaning that the DMS is conclusive evidence of what is shown on it, but not evidence that what is not shown, does not exist.

Analysis

147. Part A of the application route to Carr Mount hamlet was not recorded on the DMS 1952 nor is it recorded on the DMS 1985 as shown in **Figures 2** and **Figure 1** respectively.
148. 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.
149. The walking schedule dated 2 July 1952 relating to Part B of the application route and corresponding with the path later recorded as public footpath Kirkburton 20 is shown in **Figure 38**, describing the route as a footpath from The Hagg to Long Tongue Scrog Lane with '*stiles, at beginning and end of path*'. The surface is described as '*ploughed*' with an average width of '*3ft*'. The reason for believing the path to be public was given as '*open for years*'.
150. Again, relating to Part B of the application route, there is no walking schedule for Kirkburton footpath 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*'. The reason for believing the path to be public is given as '*This is a public footpath and should be added to the Draft map.*'

151. In relation to any structures or limitations on Part B of the route, the DMS 1952 shows a 'S' for stile where public footpath Kirkburton 20 meets public footpath Kirkburton 169 south of what is now No.9 Carr Mount and also a 'S' for stile at the junction of public footpath 169 and public footpath Kirkburton 220 – this 2nd stile is not shown on the 1985 Definitive Map. There is also 'FG' for field gate at the junction of public footpath Kirkburton 10 and public footpath Kirkburton 20 at Carr Mount hamlet, but it is not clear on which path is it recorded.
152. Whilst this shows there is evidence of two structures on the route at the time of survey in the 1950s and one structure on the route in 1985, it does not necessarily follow that the route was impassable by horse, cart, or cycle here at that time. The OS maps appear to show a gap next to a solid line which could indicate a fence and gap or a gate and gap.

HIGHWAYS REGISTRY AND THE LIST OF STREETS

Background

153. Kirkheaton Local Board was the local authority body primarily responsible for issues relating to public health in the township of Kirkheaton and was formed on 15 March 1860. Typically elected by local rate payers and property owners. Local Boards were formed following the Public Health Act 1848 and the subsequent Local Government Act 1858, and had responsibility for the oversight of sewers, water supplies, public toilets, street cleaning, slaughterhouses, pavements, and burial grounds within their district.
154. Elected urban districts councils replaced Local Boards following the Local Government Act of 1894 and were given increased powers and responsibilities under the Act. The Kirkheaton Urban District Council was formed at the end of 1894, replacing the Kirkheaton Local Board. On 1 April 1938 the urban district was abolished and merged with Kirkburton.

155. On 1 April 1974 and under the Local Government Act 1972 Kirkburton Urban District Council was abolished and became Kirkburton Civil Parish within West Yorkshire Metropolitan County Council (WYCC).

Evidential Weight

156. The Highways function moved to Kirklees Council in 1986. The Council holds a 'List of Streets' which are maintainable at public expense. This list includes the ordinary 'adopted' roads and also some 'adopted' footpaths. The List of Streets record cards were inherited and transferred from Kirkburton Urban District Council and date as 1974.

Analysis

157. **Figure 41** shows that all of Part A and part of Part B of the application route is recorded in the Highways Register as not maintainable at public expense ('unadopted'). The 'unadopted' road extends from Liley Lane to Carr Mount then to Long Tongue Scrog Lane via No. 8/9 Carr Mount where it joins Lane Side.
158. The local Highway Authority records inherited from 1974 are shown in **Figure 42**. Carr Mount off Long Tongue Scrog Lane is recorded as '*PRIVATE*' and also feature on the list of '*unadopted*' streets.
159. **Photo 2 in Figure 5** shows there are two 'Carr Mount' street name plates at Liley Lane, one of which shows symbology for a no-through road, but these do not indicate highway status. The Council's building control street naming team have the authority to name private roads as well as public roads.

EVIDENCE OF REPUTATION

Background and Evidential Weight

160. Other documents have been sourced or provided which can provide evidence of the reputation of a way as a public right of way. Such evidence is not conclusive in itself; it is to be considered in combination with all the other available evidence to add to the emergent picture about the status of the application route or part of it.

Locally Published Walking Route

161. The applicant for DMMO S14201 submitted extracts from 'Discovering Old Lepton', possibly published in approximately 1978. Walk 3 on page.53 describes a walk over Part A of the application route leading into Kirkburton footpath 10 at Carr Mount, as shown in **Figure 43**, as follows:

"At the Freemasons Arms find the path on the opposite side of the road leading down to Carr Mount. Our route follows this path to a stile just past the houses.... After Carr Mount the route follows a lengthy section of footpath... immediately after Carr Mount take the brick stile through the wall on the right..."

162. The applicant for DMMO S14201 also submitted extracts from the Second Edition Discovering Old Lepton and Kirkheaton, Gordon and Enid Minger (no published date), A walk is described on page.44 over Part A of the application route leading into Kirkburton footpath 10 at Carr Mount, as shown in **Figure 44**, as follows:

"At the Freemasons find the path on the opposite side of the road leading down to Carr Mount. One route follows this path to a stile just past the houses on the right".

163. These extracts are considered to be 'documentary evidence of 'reputation' and support the user evidence of a route used by the public on foot for their leisure enjoyment on the date the routes were published.

Countryside Stewardship Scheme

164. On 22 August 2001, Defra consulted Kirklees Council's PROW team about an application to the Countryside Steward Scheme for land at Upper Stoneroyd. It refers to an open access payment for accessible land. The report includes a section on 'public access/benefit' stating that '*Public access to and across the farm is extremely good, including no fewer than 5 public rights of way. All of these are well used....*' See **Figure 45**.

165. The accompanying map shows Part A of the application route from Liley Lane to Carr Mount hamlet is coloured yellow and according to the key it is defined as a '*right of way*' but does not distinguish these are 'public' however the corresponding text also shown in **Figure 45** indicates that it what was meant.
166. Also coloured yellow are parts of public footpath Kirkburton 10, and public footpath Kirkburton 20 and another path from the old wooden kissing gate at Liley Lane to a stile at Lower Stone Royd which is not currently recorded as a definitive footpath, but it was to be added at the last review of the DMS.
167. This suggests that the previous owner of Upper Stoneroyd considered the application route from Liley Lane to Carr Mount hamlet was in use by the public and, this suggests that public rights may have been acquired over it.

PLANNING APPLICATIONS

Background

168. There have been a number of relevant planning applications for developments at Carr Mount which involved the application route, some of which have been mentioned by landowners at Carr Mount hamlet in their evidence.

Evidential Weight

169. Details of these planning application are provided below to demonstrate the characteristics of Part A of the application route and also show the private maintenance responsibility for Carr Mount Lane.

Analysis

170. [Planning application 2002/62/94145/W2](#) for the erection of a hay barn at Upper Stoneroyd required details of the surfacing of the access track and hardstanding area at the farm itself to be submitted and agreed.
171. [Planning application 2007/62/94825/W2](#) related to the dwelling 6/7 Carr Mount included the provision of two passing places along the access road [the DMMO application route] and the four additional parking spaces which were to

be surfaced, sealed, and drained prior to the first occupation (adjacent to the application route).

172. Planning application 2014/92181 [Planning application details | Kirklees Council](#) 2013/60/92927/W [Planning application details | Kirklees Council](#) which states [the planning application](#) relates to the erection of 2 dwellings adjacent to 8 Carr Mount.
173. Highways were consulted at the outline stage, and a Highways Development Control consultation letter dated 29 October 2013 describes the application route as *"a narrow un-adopted lane which goes due east from the site before bending sharply due north until it joins the B6118 Bellstring Lane / Liley Lane at a priority junction. This lane is described as narrow and whilst it is surfaced there is only a limited number of passing places available. Sight lines at the junction of Carr Mount and B6118 Bellstring Lane / Liley Lane appear sub-standard particularly in the critical direction to the southeast or right when exiting the junction."* Highways Development Control advised the council that the applicant would need to show there's no further intensification of the lane's use relative to their existing business work.
174. In summary, the planning applications provide further details on the characteristics and use of the application route, but they do not provide any evidence relevant to any public rights over it.

DOCUMENTAY EVIDENCE EVALUATION

175. In summary, the 1793 non-OS Estate map provides conclusive evidence that Part A of the application route originated as a private cul-de-sac route leading from a public road to agricultural fields. Later OS maps at various scales (1855, 1893, 1896, 1903 Cassini) all show the route had variously extended over several fields leading to a wooded area abutting Long Tongue Scrog Lane (Part B). Only the 1893 OS map at a larger scale indicates a possible through route to Long Tongue Scrog where the two routes abut.
176. However, larger scale OS maps (1893, 1907, 1919) also depict gates or fences across the route at several other locations, particularly at Carr Mount

farm on both Part A and Part B. Furthermore, conveyances and deeds (1920, 1923, 1936) for Carr Mount farm and cottages provide conclusive evidence of gates on Part A and Part B. The presence of gates or fences are likely to affect ease of use of a route as a through route, but does not in itself indicate it was not passable for carriages or vehicles.

177. Bartholomew maps (1904 and 1943) which surveyed for 'passable roads' and 'through routes' (respectively) do not show the application route over Part A or Part B. Similarly, the 1938 The Authentic Map Directory of Southwest Yorkshire which depicts 'thoroughfares' shows a route to Carr Mount over Part A which then leads east or west, but it does not show any route south over Part B.
178. It seems likely that historically Part A and Part B had different surfaces which may have affected use by carriages or vehicles. Part A provided access to the adjacent sandstone quarry. The smaller scale OS 1896 and 1903 Cassini maps, both show the application route as an unmetalled fenced road (and do not depict it as a through route), and this implies it would be one that was not in good repair and not repairable by a public authority. The 1952 Definitive Statement for public footpath Kirkburton 20 and corresponding earlier walking schedule conclusively describes the surface as 'ploughed', indicating it may not have been suitable for carriages or vehicles over part of Part B.
179. Whilst various OS maps depict the existence of a route as described in para 6, they generally carry a disclaimer that means that a route shown on these maps does not indicate a right of way, meaning public or private. In addition, whilst the 1910 Finance Act map records short sections at the most northerly and most southerly as 'uncoloured' routes separated from adjacent hereditaments (numbered parcels of land), the route in between (which is the majority) over Part A and Part B was recorded within hereditaments. This means that the majority of the application route was valued for incremental tax. However, the accompanying Valuation Books show no corresponding deductions for public rights of way or use. Furthermore, the same conveyances and deeds at para 6., annotate a (private) 'right of road' over Part A, and a 'public footpath' over part of Part B. In addition, locally published

walking routes from the late 70s/early 80s demonstrate the reputation of Part A as a footpath in public use.

180. Officers therefore consider that the available documentary and historical evidence does not indicate public bridleway rights or public vehicular rights over Part A or Part B.
181. 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

183. Officers have conducted an investigation of the available documentary or historic evidence, user evidence and landowner evidence. The investigation report is available at **Appendix B**, with the Figures and Photos in **Appendix C**. The user has been analysed under section 31(1) of the 1980 Act, as described in detail in **Appendix B**.
184. Applications for DMMOs for dedication under s31 of the 1980 Act are usually supported by the completion of evidence questionnaires by users of the route otherwise generally known as User Evidence Forms (UEFs).
185. Each of the UEFs should be dated and signed. Each UEF is accompanied by a plan and in this case pre-prepared by Kirklees Council showing the existing public footpaths recorded on the DMS over which the users highlighted the routes they had used, again to be signed or initialled and dated. With reference to para 5.2.7 of the Government's [Definitive map orders: consistency guidelines](#) published in 2003 and last updated in April 2016, analysis allows the rejection of invalid UEFs (e.g. no signature, no clear description of the way or of how it was being used). A similar analysis should be made of other types of user evidence, such as sworn statements, letters, and the landowner's evidence.
186. When assessing the level of public use, it is necessary to discount all lawful private use. Every way is either a private way or a highway (a public passage). A private right is a right enjoyed by a particular person or group of people to pass over the land which belongs to another. This could include resident's access to their dwellings and visitor access to the resident's dwellings (for example, family & friends, mail & parcels, deliveries, buying produce, for employment/work etc).
187. 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. A summary of the user evidence is provided in **Figure 46**. No UEFs were submitted

in support of the S14306 DMMO application to record a bridleway over Part A and Part B of the route.

188. The user evidence for Part A of the application route has been evaluated on the submissions from 54 (fifty-four) members of the public as shown in **Figure 46**. This is because 5 (five) 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 user (UEF 13/58) submitted two UEFs and only one of these has been counted.
189. There are four landowners and one tenant associated with Part A of the application route.
 - From the B6118 at Liley Lane/ Bellstring Lane 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 tenant (land to east) have landholdings to each side of the unregistered land. 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).
 - At Carr Mount hamlet landowner 3 and landowner 4 own sections of the application route. In addition, several other residents at Carr Mount hamlet and beyond take access including vehicular access over Part A to the B6118 at Liley Lane/ Bellstring Lane.
190. Three of the four landowners submitted Landowner/Occupier Statement forms which was also variously supplemented by email correspondence. A summary of the available landowner evidence is shown in **Figure 47**.

Bringing into Question

2016 - Challenge

191. Landowner 1 indicated in their Landowner/Occupier Statement form that they had not stopped or turned people back because they had '*not seen anyone*', *were not aware of a public right of way; only access to houses at Carr Mount*

and land owned by Upper Stoneroyd only and that they have *'only seen used for private purposes'*.

192. Landowner 3 indicated in their Landowner/Occupier Statement form that they had *'challenged users since moving to the property (in April 2009), turned people back every time see a trespasser'*.
193. Landowner 4 indicated in their Landowner/Occupier Statement form that they challenged users by *'telling people that the road is private'*, but did not indicate a time period, however, it could not have been before 1999.
194. Whilst challenging use in the manner described *'every time see a trespasser'* and stating this was since April 2009 might be an over act by landowner 3 which brought use of the route into question, 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**.
195. 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.
196. However, it can be noted that the Council's path file for public footpath Kirkburton 20 has one record relating to a refusal of access for an individual in September 1985 entitled 'Public rights of way, Houses Hill, Kirkburton (**Figure 48**). The record shows only the Council's response which states that *'the residents of the houses were in their rights to refuse you access'* and goes onto say that *'part of the route you wished to use is a bridleway, part is a right of way for pedestrians only and the remainder from Carr Mount to Bellstring Lane near the Freemason's Arms is a private occupation road over which there are no public rights'*. Whilst this indicates a challenge to use over Part A of the application route, it is only for one person and therefore not considered to sufficiently represent a lack of intention to dedicate. In any case many users stated in their evidence that they had walked this route for many years and never had a problem. The relevant period 1994 to 2014 is therefore not considered rebutted by previous challenges.

2014 – Signs and Notices

197. Evidence (UEF28) from a previous landowner 1997 to 2000 '*When I lived there, we used to get lots of walkers, walking to Houses Hill. There was never any issues what so ever*'...and "*No signs when I lived there*".
198. The user evidence indicates that notices and signs were erected 'recently' or in the 'last year' meaning around 2017 as shown in **Figure 49**. However, **Figure 50** shows photographs dated August 2014, May 2016, July 2017, and July 2021 of various notices at several locations on Part A of the application route. The notices variously say '*private road*' or indicate '*no public right of way*' over Part A of the application route.
199. However, the Council received enquiries in 2014 from members of the public complaining about notices at Carr Mount hamlet and 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 Kirkburton 20 does not continue along Part A to the B1168 Liley Lane/Bellstring Lane, as shown in photo 1 dated 14 August 2014 in **Figure 51**.
200. Simply put, a public right of way can be defined as the public's right to pass and repass over a strip of land and that land is more often than not, land in private ownership. Whilst case law dictates that 'private' or 'private land' signage in itself, is not documentary evidence that would inevitably defeat the 'claim', because it does not go far enough in itself to demonstrate or communicate a lack of intention to dedicate a sign saying that the '*public right of way ends here*' would be considered to be more effective.
201. Whilst the notice erected in August 2014 appears not to have prevented public use of the route, it can be considered to be an overt act of a lack of intention to dedicate and brings public use of the route into question, but has no retrospective effect. As such, Officers consider the date the public use was 'brought into question' is the date of the first complaints and photo evidence in

August 2014. The relevant twenty-year period is therefore considered to be August 1994 to August 2014.

202. Therefore, the relevant period 1996 to 2016 created by the verbal challenges above is rebutted and the alternative relevant period to be considered is August 1994 to August 2014 created by the landowner notice.

1997, 2003, 2013 – Section 31(6) Landowner Deposit

203. In their Landowner/ Occupier Statement Form dated 30 July 2021 landowner 1 referred to their submission of a [s31\(6\) landowner deposit/ declaration](#) in 1997, 2003 and 2013 as shown in **Figure 52**. The purpose of a s31(6) landowner deposit/declaration is to 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 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 which would create a relevant period May 1977 to May 1997.
204. However, as shown in **Figure 52**, the s31(6) deposit plan received 9 May 1997 includes land to the west of the application route which abuts Part A and part of Part B but does not include the application route. The subsequent s31(6) deposit plan dated 7 April 2003, similarly, abuts Part A and part of Part B of the application route but does not include it. A further s31(6) deposit plan dated 18 April 2013 does not include land at Carr Mount. As such, Landowner 1 cannot demonstrate a lack of intention to dedicate a public right of way over the application route.
205. Furthermore, Landowner 1 indicated in their landowner/occupier statement form that they do not own any part of the application route and provided a map excluding Carr Mount lane, indicating that it is a *'roadway which we use to access our fields'*.
206. As such Officers do not consider the submission of the three s31(6) deposits bring into question public use of Part A of the application route and any further

alternative relevant periods are not created and the lack of intention to dedicate by the s31(6) deposits is rebutted.

207. However, as the land in question is unregistered with HM Land Registry, Landowner 1 can be considered to own the track up to the centre line (meaning half the roadway each) under the rebuttable *ad medium filum* legal presumption. There may well be an opposing opinion that the s31(6) deposit abutting the unregistered Part A or Part B, applies to half of the roadway. Should this be the case, it 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.

Relevant Periods

208. The relevant period 1996 to 2016 created by verbal challenge is considered to be rebutted, and any relevant periods associated with the s31(6) deposit have not been created. The relevant 20 year period to consider user evidence is therefore between August 1994 to August 2014 when it was first brought into question by the posting of the landowner notice/sign, and subsequent notices/signs. Also see the 'Evidence of a Lack of Intention to Dedicate a Public Right of Way' below.
209. However, if there should be an opposing opinion that the s31(6) deposit in 1997 applies to half the roadway where the land is unregistered over Part A and Part B, then this would create further alternative relevant period 1977 to 1997 which for completeness has also been briefly analysed in relation to s31(1) presumed dedication.
210. Under [s31\(1\) of the 1980 Act](#) dedication of way as highway presumed after public use for 20 years as follows:

"Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been

dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

A Way

211. The user evidence indicates a delineated way running from highway (the public carriage way Liley Lane/Bellstring Lane B6118) to highway (public footpath Kirkburton 20) that has not altered its alignment.
212. Users described the width of the application route as between 2m and 5m, over a car width, the full width of the track/road. Users describe the surface of the application route as a previously unmade track/ rough track/ metalled (gravel, stone, hardcore compacted) which was later sealed with tarmac.
213. If a route runs between fences, hedges, or ditches the presumption is that the whole area between these has to be dedicated to the public provided one is satisfied that the enclosing features were laid out by reference to the way. That is irrespective of the fact that the public’s use will generally be limited to the surfaced portion of the way.
214. Part A of the application route is therefore considered to be a nature that it could be of dedicated as a public right of way.

Evidence of Use during Relevant Period 1994 to 2014

215. Public use during the relevant period 1994 to 2014 is shown in **Figure 53**. Part A of the application route between Liley Lane and public footpath Kirkburton 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.
216. Frequency of use varied and was used by one person daily; 8 weekly; 4 twice weekly; 2 more than monthly; 16 monthly; 4 less than monthly, 1 yearly. In addition, 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.

217. 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.

Actually enjoyed

218. 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).
219. 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).
220. Here are some of the user's comments: *'always been access to and from Houses Hill'* and *'the route has historically been used by generations'* and *'to my knowledge families from Houses Hill have been using this track since 1925'* and *'people have been walking along this route for many years. I started in 1998 when I got a dog'* and *'local residents have used route for walking/dog walking for at least 60 years'* and *'the children and parents living in Houses Hill attended Upper Hopton school in the past and used the route every day'* and *'I walked from home through Dodgsons Farm past Carr Mount to the Free Masons pub to catch a daily bus'* and *'to walk to school and back'* and *'I have used this public right of way as a child, teenager, man, plus my 2 sons, girlfriend and daughter'* " *Everyone has regarded this as a public footpath as long as we have lived here. We were lead along this path on an official parish boundary walk'* and *'I have been brought up in Upper Hopton and as a child used the route to go to my friends in Houses Hill. This route has been used all*

my life as access and thoroughfare' and 'Also people use it to get to the bus stop opposite where the Freemasons pub was'.

By the public

221. All other users who completed user evidence statements, indicated they used the routes as the members of the public and were wholly or largely local people presently or in the past and were not exercising private rights or visiting residents at Carr Mount only, when they used the route.

Without interruption

222. Three users described barriers or obstructions encountered on the application route. One user commented on '*...fence or gate/ tape across the path*' and one user commented that '*...someone has put two humps to go over and left large potholes.*' However, these events do not relate to the application route, nor have they affected its use.

223. Some users referred to metal gates, but these are considered to be the metal farm gates providing access to the fields off the application route or the gates on public footpath Kirkburton 20 just beyond Carr Mount hamlet

224. Several users referred to stiles, but these are considered to be the stiles for public footpath Kirkburton 10 at Carr Mount itself and at the lower end of public footpath Kirkburton 20 and therefore not stiles across Part A of the application route.

225. A number of users indicated they have been dissuaded from using the way from 2016/7 onwards, following challenge by landowners at Carr Mount hamlet or by the posting of signs/notices on the application route. However, these events are after the brought into question date and therefore are not relevant.

226. All other uses 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, to forced open and causing users to turn back.

227. In summary, the user evidence shows the public's use of the route on foot has not been interrupted by obstructions, barriers or otherwise during the relevant period 1994 to 2014 or before the public's use of the route was brought into question. As such, use of the way is considered to have been un-interrupted.

As of right

228. Any use 'as of right' that might give rise to a presumption of dedication must have been *nec vi* (without force), *nec clam* (without secrecy) and *nec precario* (without permission).

As of right – without force

229. Users note no structures, barriers, or obstructions on the way, other than the two speed humps installed in 2017. In any case, these humps can be stepped over on foot or driven over by vehicle. Many users have used the route on foot regular for all kinds of purposes individually or in small groups and do not report any barriers forced open or obstructions they removed. As such, public use of the way is considered to have been 'without force'.

As of right – without secrecy

230. Part A of the application route is accessed at the north directly from the B6118. The route provides access to the dwellings at Carr Mount hamlet and to the fields and farms adjacent. The way passes immediately adjacent to the Carr Mount cottages. For use to be as of right it must be open and of such a nature that it any landowner would have been aware that the way was being used had they chosen to look, and so had been in a position to object. As such, public use of the way is not considered to have been in secret.

As of right – without permission

231. Other than some Carr Mount residents who also provided user evidence, no users have described asking for, or being given permission to use the way.

Highway status

232. All users described their use on foot and also saw others walking the route.

233. Several users within the relevant period indicated they believed Part A of the route to be a byway, restricted byway or a bridleway with reference made to seeing motor vehicles, horses and bicycles pointing to a reputation of the route beyond footpath.
234. However, only two of these users indicated they had used Part A on horse and this use appears to be historic stating that use over Part A by horse which *'had not been available for some time'* or use was *'as a child'* which is therefore likely to fall outside the relevant 20 year period under analysis and in any case in terms of quantity is not sufficient to demonstrate public use and enjoyment. Furthermore, the landowner evidence indicated private use by horse including in groups as well as private use on bicycle.
235. Additionally, 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 public resort or destination such as a mountain top, beach, or viewpoint.
236. Furthermore, Officers contacted 8 (eight) users who had mentioned seeing horses or cyclists Two of these included users seeing cyclists outwith the end of the relevant period (more recently than 2014). Officers spoke to one of the users (UEF 21) on 29 April 2022 who indicated that in the past horses had been ridden from Houses Hill along Long Tongue Scrog and up through Carr Mount hamlet (and over Part A). However, the route taken was along the driveway at 8/9 Carr Mount rather than along longer route that is currently public footpath Kirkburton 20 where there is a squeeze past the 2 locked field gates - the latter route had they said *'never been passable to horse riding'*.
237. This evidence concurs with evidence from a resident at the DMMO S14306 (Part B) at the consultation stage where there was private use in groups on horseback along the access driveway to 8/9 Carr Mount to access public footpath Kirkburton 169 and beyond.

Evidence of a Lack of intention to dedicate a Public Right of Way

238. All landowners over Part A and Part B (1 to 5) and an occupier were provided with a WCA 10 Landowner/Occupier Statement form to complete and provide evidence. Three Landowner/Occupier Statements were submitted (Landowners 1, 3 and 4), and a letter was received from landowner 5. In addition, landowner 3 corresponded via email over a number of years with further evidence or comments.
239. Whilst land ownership is not in itself generally relevant to dedication of a public right of way, it is relevant in relation to any actions landowners may have taken to demonstrate their lack of intention to dedicate. Ownership of the land crossed by the application route has changed over the 20-year statutory relevant period. However, this lack of consistency is not considered to unduly affect the lack of any owners' intention to dedicate.
240. 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. These steps must make the public at large aware that the landowner has no intention to dedicate the way for public use, for example, by placing notices on site stating that the route is 'not a public right of way' or use 'is by express permission', gates can be erected and locked or by verbally telling users that it is not a public right of way. The test is whether a reasonable user of the route would understand that the landowner was intending to disabuse the users of the notion that the way was a public highway. A presumed dedication will also be rebutted if the use constituted a public nuisance.

Landowner 1

241. In a Landowner/Occupier Statement form dated 31 July 2021, landowner 1 stated they owned the adjacent land to the east of Part A since 1976 and stated they were '*not aware of any public right of way only access to the houses at Carr Mount and land owned by Stoneroyd only. Only see used for private purposes*'. Landowner 1 stated had not turned anyone back because

they had not seen anyone, they had not given permission for anyone to use the route and not erected any barriers etc, nor erected any notices/signs.

242. Landowner 1 also has concerns that the application route is a '*narrow single track road with overgrown, uneven verges. Regular use of motor and agricultural vehicles along this route for access to private property and it is not suitable for public access or security for houses at Carr Mount.*'
243. However, landowner 1 indicated they had submitted three section 31(6) deposits dated 6 May 1997, 7 April 2003, and 19 April 2013, see **Figure 52**.
244. [Section 31\(6\) of the 1980 Act](#) provides for landowners to deposit a map & statement (and declaration) with Councils to formally to acknowledge the rights of way across their land and, in doing so, create a presumption that they have no intention to dedicate any further routes across their land going forward. However, it would not affect any unrecorded public rights that may already exist and therefore has no retrospective effect.
245. The deposit in 1997 expired in 2003, the deposit in 2003 expired in 2013 and the deposit 2013 is effective for 20 years to 2023. However, none of the 3 deposits actually include Part A of the application route as the red line boundary abuts rather than includes this route, and indeed the most recent deposit in 2013 does not include any land in the vicinity of Carr Mount.
246. Part A of the application route comprises the unregistered land from Liley Lane to Carr Mount hamlet, and Officers have considered whether the rebuttable *ad medium filum* legal presumption that Landowner 1 owns the unregistered land up to the centre line (meaning half the roadway each) applies to the s31(6) deposit in the sense that it may or may not bring public use of the way into question but has no retrospective effect.
247. Officers consider that as Landowner 1 does not own Part A of the application route as is indicated by the ownership plan submitted with the Landowner/Occupier Statement form, the s31(6) deposit does not necessarily apply to half the roadway to the centre line and therefore does not bring public

use of the way into question. As such, the alternative relevant period August 1994 to 2014 is not considered to be rebutted.

248. However, should there be an opposing opinion that the s31(6) deposit in 1997 applies to half the roadway over the unregistered land and also brings public use of the way into question, then this would create further alternative relevant periods 1977 to 1997. This alternative relevant period has been briefly considered for presumed dedication.

Landowner 3

249. In a Landowner/Occupier Statement form dated 10 March 2018, landowner 3 who owns a relatively short section of Part A of the application route stated that they had not shut off the way because it was inconvenient for residents, but they had put up notices saying '*Private Road – No public right of way*', '*Private Property – no trespassing on this part of the Lane*' and that there was a sign on the neighbouring land on the KMC waymarking post that says '*Public footpath up Carr Mount ends here – it does not continue to Liley Lane*'. They also stated that they had turned people back '*every time I see a trespasser*'.
250. In a letter received over email dated 12 March 2018, landowner 3 states that '*Since moving into my property I have challenged anyone as to why they were walking on my property*'. And that '*I have been told by a friend that they [users] were asked to complete the form even after they said they don't walk on Carr Mount*'.
251. A landowner 3 also commented that the purpose of the 2 speed humps as shown in **photo 13 and photo 14, Figure 5** was to slow down passing motor vehicles on that part of the route. The speed humps can be walked over or driven over, but may present difficulties for horses or mobility vehicles.
252. Thirty-one users described notices encountered on the application route (**Figure 49**). Whilst some users reported seeing notices and signs, none report any dates before the relevant 20-year period August 1994 to 2014. Where specified, fifteen users described seeing notices very recently or in the

last year or so (the earliest date of the UEF's is 17 July 2017). Of those fifteen and where specified, six users described the following wording of notices on the surface of the road ('*private road*' or '*not a public footpath*' or '*no public access*') and signs on posts ('*no footpath*' or '*private property - no trespassing on this part of the lane*' or '*no right of way*' or '*this is not a footpath*' or '*footpath ends*').

253. Landowner 3 stated that '*even after being repeatedly told the lane is a dead end, private cars, horses and bicycles try to use the lane*' and walkers go off route to continue to Liley Lane when they are told they cannot cross the boundary of landowner 3. No permission had every been given to cross the boundary '*though some have tried to claim my neighbours have; my neighbours know they cannot give permission to trespassers to cross my boundary*'.
254. Landowner 3 has raised ongoing concerns that Part A of the route is unsuitable as a public right of way due to safety concerns because it is single track, narrow and has blind bends. There are also ongoing concerns relating to privacy, anti-social behaviour, and fly tipping. Indeed, this was acknowledged by a user (UEF43) who said '*It seems that the issue is coming to a head because of certain peoples anti-social use of the road. The owner (...) is rightly aggrieved by this. However the road has been in common usage for over 70 years.*
255. In relation to landowners challenging or turning back users, 21 (twenty-one) users described being challenged face to face when using the application route. All 21 users described that face-to-face challenge had taken place very recently or in the last year or so (meaning 2016/17). Where specified, this face-to-face challenge was described as taking place at Carr Mount hamlet.
256. The issue is that landowner 3 has not submitted any further evidence (e.g., no further photographs of notices/signs, or evidence of verbal challenges) including none before the start of the relevant period 1994 to 2014. Indeed landowner 3's ownership started in 2009, and over the last 5 years of the relevant period. Being mindful that the burden of proof rests with the

landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. Consequently, there is no evidence indicating a lack of intention to dedicate Part A of the application route as a public right of way over the relevant period 1994 to 2014 to rebut the presumption that it has been so dedicated.

Landowner 4

257. In a Landowner/Occupier Statement form dated 10 March 2018, landowner 4 stated that *'as far as we know it's always been a private lane as far as the cottages'*. In relation to erecting any notices/signs landowner 4 stated that yes they had put up notices which say *'Yes we have, telling people that the road is private'* and that they had seen other notices go up *'and are all pulled down'*.
258. Landowner 4 also states that they had turned people back telling people *'it's private'* and some are abusive and some *'just go on the proper pathway and say nothing'*. Landowner 4 also stated that *'people did not use the route'* until it was surfaced by the neighbours *'never any cyclists until then'*. Whilst landowner 4 does not provide a date for surfacing of the land, landowner 3 indicated it was in 2007. Landowner 4 stated that no permission had ever been given to use the way.
259. The issue is that landowner 4 has not submitted any further evidence (e.g. no further photographs of notices/signs, or evidence of verbal challenges) including none before the start of the relevant period 1994 to 2014. Indeed landowner 4's ownership started in 1999. The burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. Consequently, there is no evidence indicating a lack of intention to dedicate Part A of the application route as a public right of way over the relevant period 1994 to 2014 to rebut the presumption that it has been so dedicated.

USER EVIDENCE EVALUATION

Conclusion (1994 to 2014 relevant period)

260. The evidence of public use considered above is sufficient to raise the presumption that Part A of the application route has been dedicated as a public footpath under section 31(1) of the 1980 Act during the relevant period 1994 to 2014. Officers consider that the presumption is not rebutted by the opposing evidence of a lack of intention to dedicate and an Order should be made based on a reasonable allegation that the way subsists.

Alternative Relevant Period (1977 to 1997)

261. On the other hand, if Landowner l's s31(6) deposit is considered sufficient to demonstrate a lack of intention to dedicate half the roadway where the land is unregistered, then the test for presumed dedication would revert to the earlier relevant period 1977 to 1997.

262. The user evidence has therefore been briefly evaluated for the relevant period of use 1977 to 1997 under the provisions of s31(1) for presumed dedication for completeness, as follows.

263. As shown in **Figure 54**, 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.

264. 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, 13 (thirteen) monthly, 4 (four) every few months, 1 (one) yearly and 14 (fourteen) said their use varied. It is collective use during the relevant period that is important.

Conclusion (alternative relevant period 1977 to 1997)

265. This level and frequency of use demonstrates that the application route is reasonably alleged to have subsisted for 20 years or more before the submission the s31(6) landowner deposit in 1997. Use was 'as of right', without

force, without secrecy and without permission and without interruption. No evidence has been provided about a lack of intention to dedicate prior to 1977 to 1997, except for one record of denial of access in 1985 at para 195.

266. Therefore, the statutory test for presumed dedication of a public footpath is satisfied and not rebutted. It is therefore, 'reasonable to allege' that a public footpath subsists along Part A. An Order should be duly made based on a reasonable allegation that the way subsists, and a footpath should be recorded on the Definitive Map and Statement.

Width

267. Based on the judgements in [Hale v Norfolk County Council \(2000\)](#), the fact that a public path leads between hedges, fences, or any other type of boundary does not give rise to any presumption that a highway extends to those boundary features. It is necessary to decide, as a question of fact, if possible, whether any boundary feature was erected in order to separate the land enjoyed by the landowner from land over which the public had rights of way. Whether it may be inferred that a landowner has fenced against the highway depends on the nature of the land through which the highway passes, the width of the margins, the regularity of the boundary lines, and anything else known about the circumstances in which the boundary features were erected.
268. In this case, Part A of the application route is shown as an identifiable feature of a certain width in the 1793 Map of Lands in Kirkheaton, in **Figure 8**. The eastern boundary is shown enclosed on this document and so too is the northern section of Part A, adjacent Liley Lane. A further section of the western side of Part A is shown enclosed as a boundary feature on the 1855 OS 6-Inch Map in **Figure 16**. The remaining western boundary of the lane near Carr Mount has never been physically enclosed as it is consistently shown as 'unfenced' on the documentary evidence (see **Figures: 17, 18, 21, 22, 24, 25, 26, 29, 30, 31, 34, 35, 36, and 37**). There is no evidence at all of public rights existing in 1793, 1855, or the early 20th century. The boundary to boundary presumption therefore does not apply in this case.

269. The boundaries of the route leading to Carr Mount were most likely set out in relation to a private track, which existed in 1793. The boundaries were not, erected in order to separate land enjoyed by the landowner from land over which the public had rights of way. There can be no presumption, therefore, that the boundaries of the Carr Mount track, as they were between 1994 to 2014, define the extent of the public rights which exist over it. Public rights are likely to extend to the width over which it can be shown that there has been sufficient public use of the appropriate quality to satisfy the test for deemed dedication in section 31 of the Highways Act, 1980.
270. It has already been established that the evidence of use is sufficient to reasonably allege that a public footpath subsists along Part A of the application route. The next stage is to consider whether, the width of the public footpath. It is clear that the metalled track to Carr Mount has been used for many years by members of the public other than those resident at the Carr Mount properties. Users described the surface of Part A of the application route as a previously unmade/rough track/metalled (gravel, stone, hardcore compacted), which was later sealed with tarmac. During the relevant period of 1994 to 2014, the width of the track estimated by users ranged between 3-4 metres, which is consistent with the metalled portion of the track leading to Carr Mount.
271. Whilst it may be the case that members of the public used the grass verge either side of the metalled track to avoid passing vehicles, there is currently insufficient user evidence to conclude that public footpath rights subsist, or are reasonably alleged to subsist, over a greater width than the metalled track. This does not preclude the possibility that public rights have been established over a wider width than the metalled track.
272. It is therefore recommended that a Definitive Map Modification Order is made to record a public footpath leading from Liley Lane to Kirkburton 10, as shown by the black dashed line leading between Points A and B on the indicative map (**Figure 59**). It is also recommended that the public footpath is recorded with a variable width between 3 to 5 metres based on the user evidence and measurements of the metalled track leading to Carr Mount using Ordnance

Survey Master Map and aerial images, as shown by the shading on the indicative plan (**Figure 59**).