

**REPORT TITLE: Applications for Definitive Map Modification Orders (DMMOs) to (1) upgrade the recorded status of FPs MEL/70 and MEL/38 to bridleway and (2) vary the particulars of FP MEL/70 to record limitations of a locked gate and squeeze stile**

<b>Name of meeting</b>	<b>Strategic Planning Committee</b>
<b>Date of meeting</b>	<b>22 February 2024</b>
<b>Key Decision Eligible for Call In</b>	<b>Not applicable No</b>

**Purpose of Report**

**Members are asked to consider the** evidence and determine two applications for Definitive Map Modification Orders under section 53 of the **Wildlife and Countryside Act 1981**.

- Application 1 is to upgrade the recorded status of paths Meltham 70 and Meltham 38 (part), between Wilshaw Road, Wilshaw and Wood Nook Lane at Wood Nook, from footpath to bridleway.
- Application 2 is for an Order to vary the particulars contained in the Statement for part of footpath Meltham 70 to record as limitations a squeeze stile 45cm wide next to a locked gate.

**Members are asked to make decisions on making an Order in respect of one or both of these applications and seeking confirmation of any Order made.**

**Officer recommendations and reasons**

**Officers recommend that** members choose the options described at paragraphs 2.34 and 2.36. The Council should make a Definitive Map Modification Order under s53(2) of the Wildlife and Countryside Act 1981 to upgrade the recorded status of Meltham 70 (A-B on the plan at item 1 in Appendix B to the report) and part of Meltham 38 (B to C on the plan) from footpath to bridleway and add to the Definitive Map a public bridleway between the currently recorded termination point of Meltham 38 and Wood Nook Lane (C and D on the plan). The application to record limitations on Meltham 70 should be refused. An Order should not vary the particulars recorded in the Map and Statement to record a limitation of any structures at point A1 on Meltham 70 (as had been requested in Application 2), nor elsewhere on the route that is the main subject of this report.

**Officers also recommend that,** should an Order to upgrade to / add a bridleway be made and opposed, and the matter referred to the Secretary of State, the Council should actively support the confirmation of the Order at any public inquiry or hearing.

**Reasons**

- In light of the requirements described in paragraphs 2.23 to 2.32 in this report and in accordance with the conclusions in the ‘Discussion of Evidence’ appended at item 1 in Appendix A to this report, it considered that there is sufficient evidence to show that a public bridleway actually subsists over the whole route from point A at Wilshaw Road to Wood Nook Lane at point D, via Meltham 70 and part of Meltham 38. A Definitive Map Modification Order must be made.
- Further, that there is insufficient evidence show that a public right of way over Meltham 70 is subject to any limitations or conditions, including a locked gate and adjacent squeeze stile point A1 as per Application 2, or the limitations of any other structures. It has not been shown that such structures existed on the route at or prior to the ‘relevant date’ of the first definitive map and statement (1952) on which the way was recorded as a public footpath. Nor does the evidence show that any such structures have been subsequently authorised by the highway authority under any powers. Evidence also suggests that such structures were not in place throughout the 20-year period to be considered in connection with the application to upgrade to bridleway.

**Resource Implications:** The Council has a statutory duty under s53 Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement of Public Rights of way under continuous review, investigate and determine any applications for Orders to modify the Definitive Map and Statement, and make any Orders that appear to it requisite in consequence of the discovery of evidence that the DMS requires modification. Therefore, any resource implications, financial or otherwise, associated with this the carrying out of this statutory duty cannot be taken into consideration when making a decision.

**Date signed off by Strategic Director**

**Graham West on behalf of David Shepherd 13/02/2024**

**Is it also signed off by the Service Director for Finance?**

**James Anderson on behalf of Isabel Brittain 12/02/2024**

**Is it also signed off by the Service Director for Legal Governance and Commissioning?**

**Julie Muscroft 13/02/2024**

**Electoral wards affected: Holme Valley North**

**Ward councillors consulted: Cllrs Bellamy, Greaves and McGrath**

**Public or private: Public**

**Has GDPR been considered?**

**Yes.** Evidence considered contains various personal data, included within witness evidence and other documents. Personal data has been redacted in documents contained within appendices to this report.

## Executive Summary

- 1.1 The Council has a statutory duty under s53 Wildlife and Countryside Act 1981 to maintain a legal record of public rights of way - the Definitive Map and Statement of Public Rights of Way.
- 1.2 Anyone may make an application, supported by evidence, for an order to modify the Definitive Map and Statement. The Council must investigate and determine any applications and by order make such modifications to the map and statement as appear to them to be requisite.
- 1.3 In 2016 an application was received for an Order to upgrade the recorded status of footpath Meltham 70 and part of footpath Meltham 38 to bridleway. (Application 1). The route runs between Wilshaw Road at Wilshaw, and Wood Nook Lane at Wood Nook.
- 1.4 Application 1 was supported by documentary evidence and evidence of equestrian and other use which may support a presumption of dedication of a public bridleway under section 31 Highway Act 1980 (following use by the public, 'as of right' for a full period of 20 years) or dedication of additional public rights under common law. The application was preceded by horse riders being challenged by a landowner near Wood Nook House in August 2015. The making of the application was followed by the installation and locking of a gate on Meltham 70 early in 2016.
- 1.5 In 2019 a separate (application 2) was made by one of the landowners to vary the recorded particulars for path Meltham 70 in the Definitive Map and Statement to record as a limitation a locked gate alongside a 45cm wide squeeze stile at the location of the recently installed gate. Currently no limitation such as gates or stiles are recorded in the Statement. It is claimed that these structures already existed at the time a PROW was dedicated or before the 'relevant date' of the first Definitive Map (22 September 1952) and that dedication of a PROW was subject to existence of those structures.
- 1.6 The Council has considered the evidence submitted with both applications, along with other evidence available to it and discovered in the course of the investigation.
- 1.7 It is considered that there is ample evidence of use by equestrians, 'as of right' - i.e. without force, secrecy or permission, during the 20-year period 1995 to 2015 to raise a presumption of dedication of a public bridleway over the route from Wilshaw Road to Wood Nook Lane and no clear evidence that in that period any landowner

demonstrated a lack of intention to dedicate a public bridleway. There is also ample evidence of pedestrian use, including of the part of the route claimed that is not currently shown on the Definitive Map, and of a greater width than the currently recorded width of footpaths Meltham 70 and 38. There is also evidence of public use, 'as of right', over a longer period, from which dedication under common law may be inferred. It is considered that the evidence shows that a public bridleway actually subsists on balance of probabilities, along the whole route between Wilshaw Road and Wood Nook Lane.

1.8 There is evidence to show the physical existence of gates and other structures in place on Meltham 70 at various times since the 1950s, including limited evidence of a gate having been locked in the past. However, the evidence is not sufficient to show that any limitations existed when the public right of way was first recorded. Further, the user evidence indicates the absence of a locked gate during the 20 year period to be considered under s31 Highways Act 1980.

1.9 It is considered that an Order should be made to upgrade the recorded status of Meltham 70 and part of Meltham 38 from footpath to bridleway and add a bridleway connecting Meltham 38 to Wood Nook Wood Lane. The Council should also support the confirmation an Order. Any Order made should not vary the recorded particulars of Meltham 70 to include any limitations.

## **2. Information required to take a decision**

### **Background**

2.1 In January 2016 the Council received an application made on behalf of Kirklees Bridleways Group and the British Horse Society for a Definitive Map Modification Order (DMMO) to modify the Definitive Map and Statement of public rights of way ('the DMS') by upgrading the recorded status of path Meltham 70 and part of Meltham 38 from footpath to bridleway ('the application to upgrade' or 'Application 1'). The route to which the application relates runs from Wilshaw Road at Wilshaw (point A as shown on the plan at item 1 in appendix B) to Wood Nook Lane at Wood Nook (point D). The application was supported by completed 'user evidence forms', mainly describing equestrian use over an extended period, and by documentary evidence. Additional user and documentary evidence was subsequently received. The evidence may support a presumption of dedication of a public bridleway under section 31 Highway Act 1980 (following 20 years use), or that there has been dedication of a bridleway at common

law. The making of Application 1 was prompted by a resident at Wood Nook House on Wood Nook Lane challenging various equestrians in August 2015. Application 1 is included at item 1 in Appendix C.

- 2.2 Following the making of the DMMO application to upgrade the recorded status, the owners of land crossed by path Meltham 70 erected and locked a gate on Meltham 70 at point A1. This prevented further equestrian use of the way. In 2019 an application was received for a DMMO to vary the recorded particulars of footpath Meltham 70 to record as limitations “the restriction close to point A of a squeeze stile 45cm wide next to a locked gate”. (The ‘application to vary particulars’ or ‘Application 2’). Point A is at / near the junction of Meltham 70 with Wilshaw Road and the position of the claimed limitations is shown as point A1 on the plan at item1 in Appendix B. Application 2, supported by various documentary evidence, was submitted following the commencement of enforcement action in respect of unauthorised structures obstructing the public right of way. Solicitors acting for a limited company <sup>1</sup> (‘the Company’) in connection with that action had earlier also submitted evidence about structures and made further assertions that align with Application 2.
- 2.3 As the matter of the status of paths Meltham 70 and 38, and the recording of limitations on Meltham 70, are closely connected, this report considers both applications. The applications, accompanying plans and cover letter for both applications are included in Appendix C (Application 1) and Appendix D (Application 2). The two applications both make reference to points A and B, but for the upgrade application ‘point B’ is the junction of the route with Wood Nook Lane, whereas in the application to vary particulars point B is the junction of footpath Meltham 70 with Meltham 38. For the purpose of this report into both applications, point B is identified as the junction of Meltham 70 and 38 and the junction of the route with Wood Nook Lane is point D. During the investigation of the applications officers have identified various intermediate points of significance. These points are shown by letters and numbers on the plan of the route at item 1 in appendix B.
- 2.4 Extracts from the Definitive Map and Statement are at item 5 and 6 in appendix B. Currently the Statement accompanying the Definitive Map does not record any limitations on footpath Meltham 70. This is without prejudice to the existence of any other limitations which are not currently recorded.

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<sup>1</sup> The registered address of the limited company is Wood Nook House.

## **Duty to investigate the evidence and determine the applications**

- 2.5 The Council has a duty to consider the evidence submitted with an application and determine an application as soon as reasonably practicable after receipt of a certificate confirming notice of the making of an application has been correctly served on all owners and occupiers of land. It also has a standalone duty to keep the DMS under continuous review and may make any Order as appears to it to be requisite following the discovery of evidence that the Map or Statement require modification. Officers have taken into consideration a range of additional evidence available to it in addition to that submitted with the applications. The evidence is described in detail in the 'Discussion of Evidence' at item 1 in appendix A.
- 2.6 The Council, at the request of Applicant 1, was directed by the Secretary of State to determine application 1 by 30 June 2018. Officers regret that it has not been possible to do so. No direction has been made in respect of Application 2. Due to there being a considerable backlog of applications awaiting investigation and Application 2 being considered a low priority for investigation / determination, there would normally be a significant delay before that application would be considered. However, it is appropriate in this case to also consider and determine Application 2 at the same time as Application 1. Enforcement action regarding unauthorised structures has been delayed as a result of the making of Application 2.

## **Descriptions of routes and current depiction in the Definitive Map and Statement**

- 2.7 The principal route that is the subject of this report (Route 1) is shown in the set of photographs at item 2 in appendix B. Briefly, footpath Meltham 70 commences at Wilshaw Road, Wilshaw at point A and follows an enclosed track in a generally northerly direction for approximately 1km to its junction with footpath Meltham 38 at point B, near the ruins of a house known as Lower Cote (previously known as Cote), passing on the way, at point A3, the junction with a track towards Manor Farm / Manor House at Lower Greave, and crossing a watercourse known as Bank Dike (the former Netherthong / Honley township boundary) at point A9. From point B Meltham 38 follows an enclosed track in a generally north easterly then south easterly direction to point C near Wood Nook House. The route under investigation then continues through a lawned garden area and along a driveway adjacent to Wood Nook to its junction with Wood Nook Lane at point D.

- 2.8 During the course of investigation, it was identified that footpath Meltham 38 is only shown on the Definitive Map as far as point C, although the accompanying Statement describes the termination point as Wood Nook Lane (i.e. point D) and there is a public footpath signpost on Wood Nook Lane near point D. Application 1 has thus been interpreted as an application to upgrade to bridleway footpath Meltham 38 from A-C and add a bridleway over C-D. If a DMMO is made it would be phrased in that way.
- 2.9 Although not subject to a formal application for a DMMO some evidence has been provided that relates to claimed equestrian use of other routes leading off Meltham 70 and passing near Manor Farm and Manor House at the hamlet of Lower Greave. These routes connect with FP Meltham 63 (Lower Greave Road) which runs in a generally southerly direction to Wilshaw Road. These routes are referred to in the detailed 'Discussion of Evidence' as Routes 2 and 3 and are shown in photographs at item 3 in appendix B. Officers have considered the available evidence and consider it insufficient for the Definitive Map and Statement to be modified to record any additional public rights of way over Routes 2 or 3.

### **Ownership of Land**

- 2.10 The current ownership of the land registered land crossed by Route 1 is described at item 1 in appendix F and the boundaries of registered titles are shown on the plan at item 2 in appendix F. The majority of the land is within the control of the Company or land associated with Wood Nook House itself. There are several other parties who own land to the centre line of the way, or who have leased land crossed by the way. Evidence was sought from those parties during the course of the investigation.

## Summary of evidence considered

- 2.11 Application 1 is principally supported by completed ‘user evidence statement forms’ (‘UEFs’, otherwise ‘WCA8 forms’) or letters / emails from 64 individuals who claimed to have personally used the route from A-D over various periods up to 2016. The claimed frequency of use varies from very occasional through to daily use. 61 people claimed equestrian use. 29 people indicated use of a way on foot, 6 with bicycle. One person described use with a vehicle in the early 1950s. The earliest claimed use was 1942 (on foot). Claimed equestrian use increased from the early 1980s. In summary the user evidence, when considered alongside all other available evidence, is sufficient to demonstrate that a public bridleway subsists along the whole of route 1.
- 2.12 Application.1 was also accompanied by various documentary evidence principally historical map evidence, documents relating to valuation of land under the Finance Act 1910, certain documents relating to the development of the Definitive Map and Statement in the 1950s, an extract from a published history of the Wilshaw area, and some photographic evidence. This evidence is found in appendix E along with other documentary evidence considered by officers. The documentary and user evidence is considered in detail in the comprehensive ‘Discussion of Evidence’ at item 1 in appendix A. Appendix A also includes summaries of the various aspects of the evidence.
- 2.13 Application 2 was supported by various items of documentary evidence, along with a summary of that evidence prepared by Applicant 2’s lay advisor. The evidence provided is included in appendix I. Solicitors acting for the Company (‘the solicitors’) also submitted several letters from people claiming knowledge of the way from the 1930s onwards and describing gates or other structures. The solicitors also made assertions about the evidence of others about gates on Meltham 70.
- 2.14 The Council has also considered further documentary evidence available to it. Including other historic map evidence, other documents relating the development and review of the Definitive Map and Statement and other documents contained in its own files that refers to the routes in question. All available photographs have also been taken into consideration.
- 2.15 Additional evidence was received in response to informal ‘consultation’ or evidence gathering exercises carried out in 2018 (for application 1) and 2020 (for application 2). Details of these ‘consultations’ are included in appendices G and H. In relation to

Application 2 consultees and the public were asked specifically about the presence or absence of structures at point A1. This resulted in the receipt of additional evidence in support of Application 1 and little to support application 2.

- 2.16 Any particulars contained in the statement accompanying the definitive as to limitations or conditions affecting a public right of way would be conclusive evidence that said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions. Application 2 seeks to add to the record such limitations or condition.
- 2.17 In the case of Meltham 70 no limitations are currently recorded. For the particulars to be modified to record additional limitations as per Application 2 it would be necessary to show that a public right of way had been dedicated subject to limitations or conditions and there had not been subsequent re-dedication without such conditions. Essentially it would be necessary to show unrecorded limitations or conditions existed at the relevant date of the first definitive map and statement (Sep 1952). Meltham 70 was recorded without limitations in 1952, and, although limited statements and assertions have been made regarding the existence of structures at point A1 at various times, there is insufficient evidence to show, on balance of probability, that limitations existed in 1952. Any structures erected subsequently would not be limitations or conditions on the public right of way and there is no evidence of formal authorisation of any structures. There is limited evidence of a gate or gates having once existed at point A in the form of a surviving gatepost and a solid line shown on various Ordnance Survey maps, although any gates in that location are likely to have been removed well before 1952.
- 2.18 Evidence also suggests that whilst there is some evidence of a gate or gates at point A1 as late as the 1990s, the preponderance of the user evidence submitted in connection application 1 indicates there was no gate at point A1 during the relevant 20 year period to be considered under s.31 Highways Act 1980, or if a gate had been present during part of that period it had not been locked. Even if it could be shown that there had been an unrecorded limitation of a gate or gates on Meltham 70, as per Application 2, the user evidence suggests that there would have subsequently been dedication of a bridleway absent of any limitation. Nor does the evidence suggest that gates or other structures should be recorded as limitations elsewhere on the route in question.

2.19 The twenty-year period to be considered under s31 Highways Act 1980 is August 1995 to August 2015. Rights were brought into question by challenges to equestrians by a resident at Wood Nook House. There is ample evidence of use by equestrians, during the 20-year period to raise a presumption of dedication of a public right of way and no clear evidence that in that period any landowner demonstrated a lack of intention to dedicate a public bridleway. There is also ample evidence of pedestrian use, including part of the route near Wood Nook House that is not currently shown on the Definitive Map, and of a greater width than the currently recorded width of footpaths Meltham 70 and 38 (currently recorded at approximately 1.2m). There is also evidence of public use, 'as of right' over a longer period, from which dedication under common law may be inferred.

### **The decisions to be made by Members**

2.20 It is the Council's statutory duty to maintain the Definitive Map and Statement and make any requisite Orders.

2.21 General guidance for members is included at Appendix 1.

2.22 The applications were made under the Wildlife & Countryside Act 1981 ('the 1981 Act').

2.23 Members are asked to consider the available evidence for and against the application to upgrade / add a bridleway, the evidence for and against the application to vary the particulars recorded in the Statement, and the detailed discussion of evidence found at item 1 in appendix A, and decide what Order, if any, to make. Members should also make a decision on the stance to be taken regarding confirmation if an Order is opposed.

2.24 The Council should consider the available evidence and, by Order make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the occurrence of any of several events described in section 53(3) of the 1981 Act.

2.25 The events described in section 53 (3) of the 1981 Act include (but are not limited to) the following:

*(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period*

*raises a presumption that the way has been dedicated as a public path or restricted byway*

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -

(i) *that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or...a byway open to all traffic*

(ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or*

(iii) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows “that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

2.26 Members must consider whether or not the evidence shows, on balance of probabilities that a public bridleway has come into existence over a route between Wilshaw Road (point A) and Wood Nook Lane (point D), including Meltham 70 and part of Meltham 38 and any part of that route not currently shown on the Definitive Map (e.g. C-D). This may be through presumed dedication under section 31 of the Highways Act 1980 or dedication of a public right of way at common law, along with acceptance by the public.

2.27 If members find the evidence insufficient to show that the way has been dedicated as a public bridleway, they must also consider whether there is a reasonable allegation that public footpath has come into existence over the route between C and D that is not currently recorded on the Definitive Map.

2.28 Members must also consider whether or not the particulars for path Meltham 70 in the statement accompanying the definitive map should be varied to include as limitations a squeeze stile 45cm wide next to a locked gate at point A1, or, if not, whether any other limitations or conditions should be recorded.

2.29 The evidence summarised above is considered in detail in the ‘Discussion of Evidence’ at item 1 in appendix A.

2.30 Section 31 of the Highways Act 1980 provides that:

*“where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”.*

2.31 The twenty-year period for the purposes of section 31 would be calculated retrospectively from the date that any public right of way was brought into question. This is considered to be August 2015, making the 20-year period August 1995 to August 2015. Where there is deemed dedication under section 31 of the 1980 Act, an Order could be made under section 53 (2) (b) of the 1981 Act.

2.32 Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, then the Council would not be able to formally confirm its own Order but would be obliged to forward it to the Secretary of State for determination. However, the likelihood or otherwise of an Order attracting opposition should form no part of the decision.

2.33 After considering the evidence and the relevant criteria members have a number of options. The Council is required to determine both applications 1 and application 2 and the suggested options reflect this.

2.34 In relation to application 1, the first option for members is to authorise the making of an Order to modify the Definitive Map and Statement to upgrade the recorded status of Meltham 70 and part of Meltham 38, between point A and C from footpath to bridleway and add a bridleway from point C to Wood Nook Lane at point D.

2.35 In relation to application 1, the second option for members is to refuse the application and to decide that the Council should not make any Order.

2.36 In relation to application 2, the first option for members is to refuse the application and to decide that the Council should not make any Order.

2.37 In relation to application 2, the second option for members is to approve the application to vary the particulars and make an Order to record as limitations of Meltham 70 a locked gate alongside a squeeze stile.

2.38 A further option in relation to either or both applications would be for Council to make another Order to modify the Definitive Map and Statement in line with members interpretation of the evidence.

2.39 Should the committee authorise the making of an Order it is requested that members also consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

## **Recommendations**

2.40 **Officers recommend that** members choose the options described at paragraphs 2.34 and 2.36 above. The Council should make a Definitive Map Modification Order under s53(2) of the Wildlife and Countryside Act 1981 to upgrade the recorded status of Meltham 70 (A-B on the plan at item 1 in Appendix B to the report) and part of Meltham 38 (B to C on the plan) from footpath to bridleway and add to the Definitive Map a public bridleway between the currently recorded termination point of Meltham 38 and Wood Nook Lane (C and D on the plan). The application to record limitations on Meltham 70 should be refused. An Order should NOT vary the particulars recorded in the Map and Statement to record a limitation of any structures at point A1 on Meltham 70 (as had been requested in Application 2), nor elsewhere on the route that is the main subject of this report.

2.41 **Officers also recommend** should an Order to upgrade to / add a bridleway be made and opposed, and the matter referred to the Secretary of State, the Council should actively support the confirmation of the Order at any public inquiry or hearing.

## **Reasons**

2.42 In light of the requirements described in paragraphs 2.23 to 2.32 in this report and in accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in Appendix A to this report, it considered that there is sufficient evidence to show that a public bridleway actually subsists over the whole route from point A at Wilshaw Road to Wood Nook Lane at point D, via Meltham 70 and part of Meltham 38. A Definitive Map Modification Order must be made.

2.43 Further, that there is insufficient evidence to show that a public right of way over Meltham 70 is subject to any limitations or conditions, including a locked gate and adjacent squeeze stile point A1 as per Application 2, or the limitations of any other structures. It has not been shown that such structures existed on the route at or prior to

the 'relevant date' of the first definitive map and statement (1952) on which the way was recorded as a public footpath. Nor does the evidence show that any such structures been subsequently authorised by the highway authority under any powers. Evidence also suggests that such structures were not in place throughout the 20-year period to be considered in connection with the application to upgrade to bridleway.

### **3. Implications for the Council**

#### **3.1 Working with People**

3.1.1 Not applicable

#### **3.2 Working with Partners**

3.2.1 Officers have engaged with landowners and user groups when gathering and investigating the evidence connected with this application.

#### **3.3 Place Based Working**

3.3.1 Not applicable

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

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

#### **3.5 Improving outcomes for children**

3.5.1 There will be no impact.

#### **3.6 Financial Implications**

3.6.1 The financial costs associated with the making or confirmation of an Order or associated with referral of an opposed Order the Secretary of State, would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.

### **3.7 Legal Implications**

- 3.7.1 The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and the discovery of evidence of unrecorded public rights of way and any other modifications that should be made to the legal record.
- 3.7.2 The Council must make decisions regarding the applications, making any Order that is requisite further to section 53 of the Wildlife and Countryside Act 1981. The Council is acting in a quasi-judicial capacity. In accordance with the Council's delegation scheme, these are matter for the relevant planning committee unless the chair of the relevant planning committee considers that the matters do not require determination by the planning committee and can remain delegated to the Strategic Director Growth and Regeneration.
- 3.7.3 Any person may make an objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order made would be forwarded to the Secretary of State and most likely be considered by an Inspector appointed by the Secretary of State, who may or may not confirm the Order.

## **4. Consultation**

- 4.1 In February 2018 various user groups, town and parish councils, and ward members were advised of the making of application 1 and invited to submit any additional evidence regarding the status of the route. Owners and occupiers of land crossed by or adjacent to the way were also invited to complete 'Landowner Evidence Forms'. Responses were not received from all parties contacted, however any evidence received has been taken into consideration.
- 4.2 In November 2020 a similar exercise was carried out in relation to application 2. A notice was also place on the gate at point A1 inviting people to submit any evidence about gates, stiles or other structures on Meltham 70. Notices were also placed at other locations on Meltham 70 and replaced when necessary during the following month.
- 4.3 Responses were received from 13 individuals and several user groups. Although asked specifically about gates or other structures on Meltham 70, responses received included further evidence of equestrian use of the route in application 1 and in general described a

lack of any structures or obstructions at point A1 or elsewhere on Meltham 70 that would have prevented equestrian use of the route during claimed periods of use. Some people indicated that there were no structures until relatively recently.

- 4.4 In September 2023 the farming tenant of land crossed by the route was invited to submit any evidence in connection with the two applications. No response was received.
- 4.5 Collectively, the responses received in response to these evidence gathering exercises support application 1 and are negative to application 2. Comments and evidence received have been taken into consideration alongside all other evidence discovered.
- 4.6 Current ward members have been informed of this report being taken to the Planning Committee.
- 4.7 Any decisions should be based on all the available evidence and not the level of support or opposition to proposed modifications of the Definitive Map and Statement.

## **5. Engagement**

- 5.1 Not applicable

## **6. Next steps and timelines**

- 6.1 If an Order is made, it will be advertised in the local newspaper and notices placed on site. Copies of the notice and Order would be sent to landowners and various statutory and non-statutory consultees. Anyone may submit a written objection to the Order during the relevant notice period (minimum 42 days).
- 6.2 If no duly made objections are received, or if any objections made are withdrawn, the Council could confirm its own Order.
- 6.3 If objections to an Order are received and not withdrawn an Order must be referred to the Secretary of State for Environment, Food and Rural Affairs who will make a decision as to whether or not an Order should be confirmed. That would normally involve the appointing of an Inspector and the holding of a public local inquiry to hear the evidence. Alternatively, a case may be considered through an exchange of written representations or at an informal public hearing.
- 6.4 Should the Council not make an Order, an applicant may, within 28 days of service of notice by the Council of the decision, serve notice of appeal against that decision on the

Secretary of State and the authority. On considering that appeal, the Secretary of State may direct the Council to make an Order. (Wildlife and Countryside Act 1981, Schedule 14).

## **7. Contact officer**

Phil Champion, Definitive Map Officer  
01484 221000  
phil.champion@kirklees.gov.uk

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

8.1 There are no previous decisions connected with this matter.

## **9. Appendices**

9.1 This report is accompanied by the appendices set out below, all of which can be viewed via the following link:

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13845&path=0>

Certain key documents are also attached to this report, as indicated in the list below:

Appendix 1 – Guidance to Members (attached)

Appendix A – Discussion and Summaries of Evidence, including:

A1 Discussion of Evidence (attached)

A2 User Evidence Summaries (attached)

Appendix B – Plans, Photographs and Definitive Map and Statement, including:

B1 Plan of Routes (attached)

B2 Photos of Route 1 MEL70 and 38(pt) (attached)

Appendix C – Application for DMMO to upgrade (Application 1)

Appendix D – Application for DMMO to vary particulars (Application 2)

Appendix E – Documentary Evidence

Appendix F – Land Ownership

Appendix G – Informal Consultation (upgrade)

Appendix H – Informal Consultation (vary particulars)

Appendix I – Documentary evidence submitted in support of Application 2

**Service Director responsible**



**KIRKLEES METROPOLITAN COUNCIL (Appendix 1)**  
**AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP**  
**GUIDANCE NOTES FOR MEMBERS**

## **Introduction**

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

## **The Legal Tests**

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

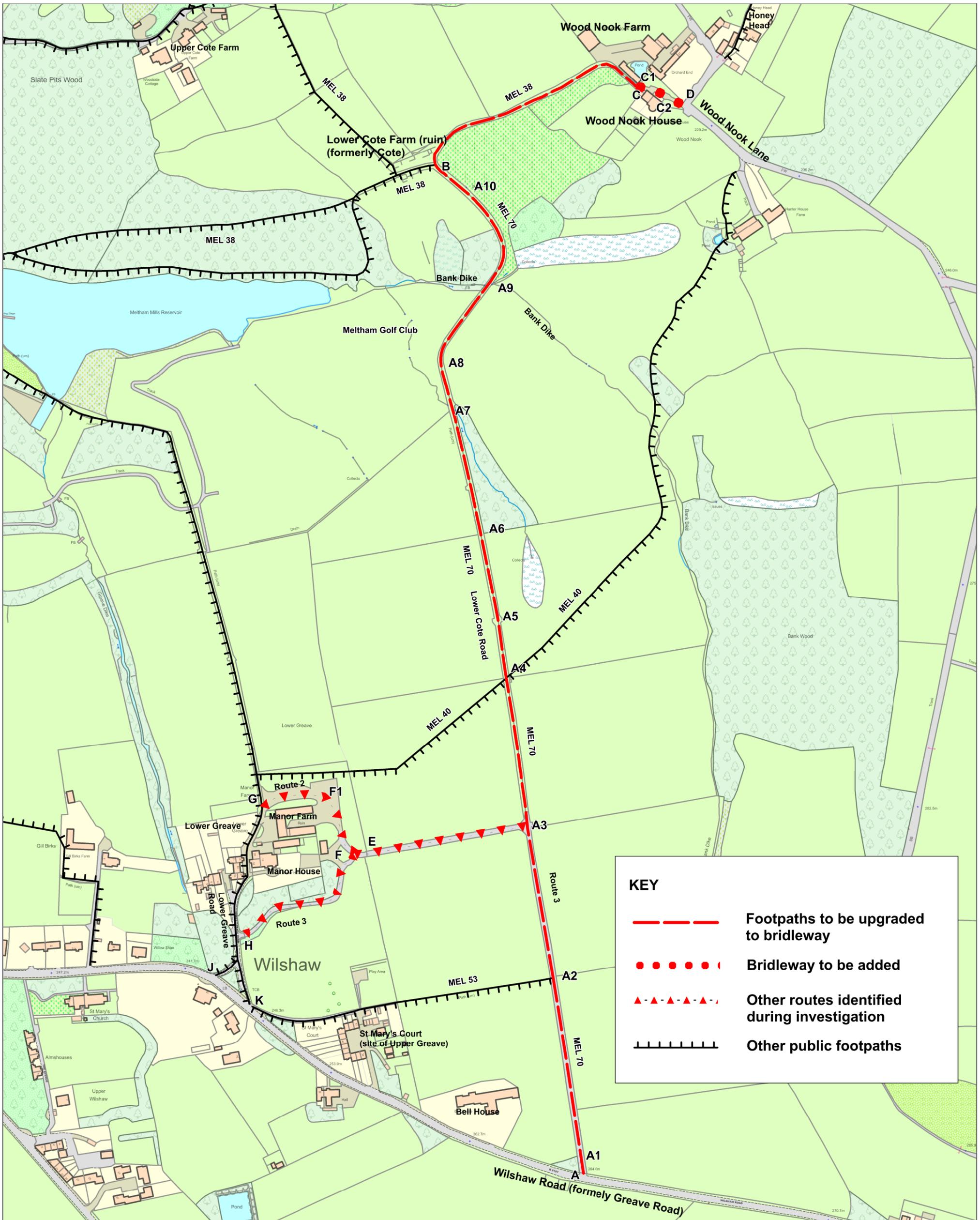
The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

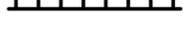
## **Making the Order**

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.



**KEY**

-  Footpaths to be upgraded to bridleway
-  Bridleway to be added
-  Other routes identified during investigation
-  Other public footpaths



# Public Rights of Way

## DMMO applications - Wilshaw Road to Wood Nook

Date: 01/02/2024

Scale: 1:3250 @A3

Filename:



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## 1. Documentary evidence

The application to modify the Definitive Map and Statement (DMS) to upgrade to bridleway ("Application 1") was accompanied by various documentary evidence in addition to user evidence, generally in the form of completed User Evidence Statement Forms ("UEFs" or "WCA8" forms). The documentary evidence will be considered first, followed by the user evidence.

1.1. The application to vary the recorded particulars in respect of limitations on Meltham 70 (MEL/70) ("Application 2" made by "Applicant 2") was supported by various documentary evidence and a short report prepared by Applicant 2's lay advisor ("Lay Advisor" or "Agent"). The Council had also received other evidence from solicitors ("Solicitors") acting for a limited company <sup>1</sup> ("the Company") which owns land crossed by Meltham 70, in the form of letters provided by witnesses, along with various assertions made about the evidence of those witnesses.

1.2. Section 32 of the Highways Act 1980 states that:

"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced."

1.3. Other documentary evidence available to officers has also been taken into consideration, along with additional user evidence received during the course of the investigation. Documentary evidence submitted by Applicant 1 or discovered by officers is included in appendix E. Additional documentary evidence submitted in support of Application 2 is included in Appendix I.

1.4. This discussion of the evidence refers to specific lettered points along the routes in questions, as per the plan and photographs at items 1 to 3 in appendix B.

### **Honley Inclosure Award and Map (1788, copies published in 1867) (E1a, E1b)**

1.5. A copy of the Honley Inclosure Map of 1788, provided by the Applicant 1, is found at item 1a in appendix E. <sup>2</sup> Further extracts from the award and map, with

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<sup>1</sup> The registered address of the limited company is Wood Nook House.

<sup>2</sup> Contemporary documents used the spelling 'inclosure' rather than modern 'enclosure' in reference to the process. This report also uses the spelling 'inclosure' except when referring to parcels of land themselves, or routes 'enclosed' by solid boundaries.

officer comments, are found at item 1b in appendix E. The map includes the area around Wood Nook, abutting the township of Thong (i.e. Netherthong). The map and award indicate that no part of the claimed route was included in the award. However, these documents indicate that an enclosed lane physically existed from Wood Nook Road (now Wood Nook Lane) at point D, towards a building near Point B<sup>3</sup> and for some distance towards the township boundary but stopping short of it. This way passed through old enclosures. It was abutted at the Wood Nook end by a 'watering place' included in the Award (described as abutting an 'occupation road').

- 1.6. Wood Nook Road, now an all-purpose adopted vehicular road, was included in the award as a bridle road 21ft wide.
- 1.7. The award and map, whilst confirming the existence of an 'occupation road' towards Cote, give no indication that any part of the claimed route was a public highway and gives no indication of a route crossing the boundary into Thong (Netherthong) Township.

### **Greenwoods Map of Yorkshire (1817) (E2a, E2b)**

- 1.8. Greenwood's Map (extract at item 2a in appendix E) depicts in the notation for a 'cross road' a road from Wood Nook (D) towards point B at Cote (not named on the map). The map does not show a route continuing south towards 'Greaves'.<sup>4</sup> The advertisement of the proposal to publish this map (item 2b in appendix E) indicates an intention to record 'public and private roads'. The depiction is consistent with a private / occupation road serving the farm at Cote. This is as suggested by the Honley inclosure records.
- 1.9. Greenwood's use of the use of the term 'cross road' may mean that the map maker considered, rightly or wrongly, that the way was a bridle way or a highway for vehicles. However, Greenwood also depicted as 'cross roads' numerous cul-de-sacs roads and known awarded private carriage or occupation roads. Although the map provides evidence of the physical existence of a road between Cote and Wood Nook, it does not provide strong evidence of public highway status for that route; particularly as it does not show a continuous 'cross road' towards Greave / Wilshaw. It is necessary to consider this map with the totality of all other relevant evidence.

### **Netherthong Township Map of 1831 (E3)**

- 1.10. Officers have obtained photographs of a privately held map of Netherthong Township, dated 1831 ("the 1831 Map") (Item 3 in appendix E). Various land in

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<sup>3</sup> This is consistent with the house named 'Cote' on various maps, later 'Lower Cote'.

<sup>4</sup> The farms / hamlets of Upper Greave and Lower Greave in modern Wilshaw. Upper Greave was demolished in the 1870s and replaced by houses at St Mary's Court; the farm at Lower Greave is now called Manor Farm.

the township of Netherthong was inclosed in the period from 1826 under the Netherthong Inclosure Act and Award. The 1831 Map shows the landscape of enclosed fields between the township boundary along Bank Dike, and the hamlets of Upper and Lower Greave and modern Wilshaw Road. The map shows the new enclosures under the Award in pink and old enclosed land in green. The map indicates the land in Netherthong now crossed by footpath Meltham 70 to have been old enclosures owned by Henry Shaw rather than being land newly enclosed under the Inclosure Award.

- 1.11. The arrangement of fields and tracks shown on the 1831 Map is different to that currently found. The current route of Meltham 70 between points A and approximately point A10 is not shown, although there is a short length of enclosed route on a different alignment running in a generally south-westerly direction near Bank Dike. The map suggests a continuation of a route, of unknown status, into Honley Township, but on a different alignment to Meltham 70. The map indicates that in 1831 the enclosed route now followed by Meltham 70 was not a feature in the landscape. The map provides no positive evidence of the existence of a public right of way of any type along the route of modern Meltham 70.

### **1838 Honey Township Plan and survey (the “1838 Plan”)**

**“Plan of the Township of Honley... from an actual survey in...1838 by Samuel Wormald” (E4a)**

### **Book of Reference to a plan of the Township of Honley (1838) (E4b)**

- 1.12. The 1838 Plan (item 4a in Appendix E) depicts an enclosed road from the township boundary to buildings at B (i.e. Lower Cote, not named on the plan), thence continuing to C and D at Wood Nook. The map shows land in different ownership shaded in different colours. The road from C to D is shown uncoloured in the same manner as modern Wood Nook Lane and various other roads. The book of reference shows the land to the north and east of this road in the ownership of John Dyson. Land and premises to south of this road, including modern Wood Nook House and Lower Cote is shown in the ownership of Henry Shaw.<sup>5</sup>
- 1.13. An enclosed route continues from point B to the township boundary, only partially on the line of modern footpath Meltham 70. Sepia colouring indicating Henry Shaw’s land extends across this road. The area shown uncoloured at Wood Nook includes the whole of what is now the garden area between C and D and not just the currently surfaced route through that area. It is possible that this includes the area awarded as a ‘watering place’ in the 1788 Honley Award.

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<sup>5</sup> The 1831 Netherthong township map shows Upper Greave and all the land in Netherthong now crossed by Meltham 70 as also being owned by Henry Shaw.

- 1.14. That the road from C-D is not included with the adjacent coloured parcels suggests a way that is of more significance than the way from the township boundary to point C although that does not itself confirm public status.
- 1.15. The accompanying book of reference (item 4b in appendix E) includes a list of roads and their areas but does not specify whether such roads are public or private.<sup>6</sup> This includes 'Cot Lane' which is likely to be reference to the road from C-D. The Inclosure Award of 1788 referred to this road being an existing occupation road. The map also shows a number of other uncoloured roads, generally cul-de-sacs, some of which were awarded as 'private occupation roads' in the Honley Award and/or had land to either side is in different ownership. That C-D is uncoloured does not conclusively show that the way is a public highway of any type, although the depiction is not inconsistent with a private vehicular road along which there was or is now a public footpath or bridleway.

### **Netherthong Tithe Map (1850) (E5a, E5b)**

- 1.16. The applicant supplied an extract from the Netherthong Tithe Map of 1850 (item 5a in Appendix E) held by WYAS. Officers have obtained further photographs of copy held by the National Archives (item 5b in Appendix E). A copy of the apportionment was not provided. The tithe map was not directly concerned with public rights of way and the depiction of highways or private / occupation roads is incidental to the tithe information recorded in these documents. The map shows a similar layout of fields and tracks to the 1831 Township map and the field numbering is the same. The road or track near Bank Dike is shown is coloured sepia, i.e., following cartographic conventions for roads.<sup>7</sup> This is unnumbered. Its depiction would be more consistent with an occupation road leading to fields than a public vehicular road and there is no clear indication this was a through route. The map also shows a pecked line, passing through various fields, linking to the lane described above and annotated 'foot road'. Part of that path is on an alignment similar to Meltham 40. The map does not provide direct evidence of public status. Part of this route appears to have been replaced by the route now recorded as footpath Meltham 70.
- 1.17. The Netherthong Tithe Map does not support the early existence of a public bridleway or public vehicular rights along the current line of Meltham 70, although it provides some evidence of the physical existence of a footpath on a different alignment.

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<sup>6</sup> Excepting some roads that are clearly named as turnpike roads which by definition must be public highways.

<sup>7</sup> The available photographs of the copy held by The National Archives are in black and white.

## **Conclusions regarding Inclosure / Township / Tithe and early commercial maps**

- 1.18. The Netherthong tithe map confirms the existence by 1788 of an 'occupation road' at Wood Nook between points B at Cote and D at Wood Nook Road / Lane. There is no clear evidence of a road extending into Netherthong Township at that time. The 1838 Honley Township shows a road extending from the township boundary to Cote (although on a different alignment to Meltham 70) and a road (Cot Lane) along B-D, although the depiction is consistent with an occupation road. Maps of the Netherthong area do not show a road or track existing on the line of Meltham 70 by 1850, with the field layout in the area being different to present.
- 1.19. In conclusion, these documents provide no evidence of higher rights existing over the route that is the subject of application 1, but there is evidence from various maps of the physical existence of a road between at least Cote (B) and Wood Nook Lane (D). Whilst these do not provide evidence that supports the early existence of higher public rights over route 1, the depiction of the road from B to D is not inconsistent with route also being a public right of way of some description.

### **Ordnance Survey Maps and related documents (E6 to E13):**

**1:10560 1<sup>st</sup> Edition six-inch. Yorkshire Sheet 260. Surveyed 1848-51, published 1854. (The '1854 map') (E6, E6a).**

**Yorkshire CCLX. Boundary remark book containing strip maps showing boundaries of: Almondbury; Farnley Tyas; Fulstone; Golcar; Honley; Linthwaite; Meltham; Nether Thong; Slaithwaite; South Crosland; Thurstonland; Wooldale. (TNA Ref OS/26/11816). Dated 1889. (E7)**

**1:2500 County Series 1st Edition Yorkshire [West Riding] Sheet CCLX.14. Surveyed 1888, Published: 1892. (The '1892 map') (E8a)**

**1:2500 County Series. 1st Revision Yorkshire [West Riding] Sheet CCLX.14 Revised 1904, Published: 1906. (The '1906 map')(E8b)**

**1:2500 County Series. 2<sup>nd</sup> Revision Yorkshire [West Riding] Sheet CCLX.14 Revised 1914, Published: 1917. (The '1917 map') (E8c)**

**1:2500 County Series. 3<sup>rd</sup> Revision Yorkshire [West Riding] Sheet CCLX.14 Revised 1929, Published: 1932. (The '1932 map') (E8d)**

**1:10560 (6 inch). Yorkshire [West Riding] Sheet CCLX SW. Re-surveyed 1888-91, published 1894. (E6b)**

**Meltham UDC – map on OS base showing proposed alteration of boundaries (1896). (E9)**

**OS Boundary Map sheet No. 260. Dated 23 Dec 1904. TNA Ref 05/31/1707. (E10)**

**1:10560 (6 inch). Second edition. Yorkshire [West Riding] Sheet CCLX SW. Revised 1904, published 1908. (E6c)**

**1:2500 National Grid series 1st Edition SE1110 and SE1210 (Published 1965), SE1109 and SE1209 (Published 1964). (E11)**

**1:2500 National Grid series 1st Revision SE1110 (Published 1976). (E12)**

**OS Landline mapping (1994). (E13)**

**Wilshaw Conservation Area Appraisal –Townscape Appraisal Map (E22)**

- 1.20. The 1854 6-inch Ordnance Survey Map shows the landscape between Wood Nook and Wilshaw in a similar manner to earlier maps. The map does not show as a feature in the landscape the road of track followed by Meltham 70. The road between Wood Nook and Cote (D-B) is shown, continuing past a ‘trough’ (at point A10) but taking a different route across Bank Dike.
- 1.21. An extract from the Boundary Remark Book includes an extract from the 1854 6-inch map on which the boundary between Honley and Netherthong Local Board Districts had been highlighted (i.e., following Bank Dike). The document has no additional evidential value over the 1854 map.
- 1.22. The 1892 map shows different arrangement of fields between point A and Bank Dike from the 1854 map. The map shows an enclosed road or track between point A and Lower Cote on the current alignment, continuing to Wood Nook.<sup>8</sup> There is a solid line at the junction with the road at point A, suggestive of (but not conclusive evidence of) there having been a gate or structure at point A. There is nothing to suggest structures across the way at any other points, including at A1.
- 1.23. Large scale OS maps are evidence of the physical existence, at the time of survey, of the features shown thereon. They do not record public rights of way. Nonetheless, they may provide useful supportive evidence of the physical existence of any ways depicted, or of their absence. The 1892 map also carries a standard disclaimer which reads: “*The representation on this map of a Road, Track of Footpath, is no evidence of the existence of a right of way*”. The depiction is consistent with a vehicular road or track. However, whilst the 1892 OS map provides strong evidence of the physical existence of the route in

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<sup>8</sup> It appears likely that the re-ordering of fields and creation of the track between Wilshaw and Lower Cote in its modern form took place after the purchase at auction of the ‘Upper Greave’ estate by Joseph Hirst in 1871. Joseph Hirst, a local woollen cloth manufacturer, had been amalgamating estates in the area and was responsible for the development of much of the infrastructure in Wilshaw. Various user witnesses have referred to the route being developed by Mr Hirst in order to take cloth to market in Huddersfield, although this is speculation. Development of the route by the landowner for his own purposes or vehicular use, does not support the suggestion that the way would have carried higher public rights. Application 1 was supported by extracts from ‘The History of Wilshaw’, by Alfred Taylor, published in 1961.

question at the date of survey (1888), it does not provide evidence that the way shown carried public rights.

- 1.24. Six-inch to the mile maps from the 1890s onwards show the way in a similar manner to the 25-inch maps. A map showing the proposed alterations to the Meltham UD boundaries (item 9) was based on the 1894 6-inch map, as was a map of 1904 (item 10) annotated by OS with the urban district boundaries, along with the former Netherthong / Honley boundary along Bank Dike. These maps have no additional evidential value over the base mapping.
- 1.25. Subsequent large scale OS maps up to the 1964/1965s show the route in question in the same manner as the 1892 map. This includes a solid line across the route at point A.
- 1.26. The 1<sup>st</sup> revision of the National Grid series sheet SE1110 published in 1976 shows an additional solid line across Meltham 70 mid-way between points A6 and A7. This is not a point where it has been suggested that historically there had been any kind of structure. If that does represent a gate or similar in existence when surveyed, it is likely that such a structure would post date the relevant date of the first definitive map (1952).<sup>9</sup>
- 1.27. OS Landline digital data (snapshot from 1994) (item E13) does not show the line across the way between A6 and A7 or suggest any feature at point A1. The solid line at point A is shown, although photographic and other evidence suggests there would have been no structure at A at that time. The continuing existence of this feature on mapping is not a reliable indicator that a structure was present at the dates of publication of particular maps or production of map data.
- 1.28. A map of the Wilshaw Conservation Area, supplied by Applicant 1, shows the boundary of the area and features within it. However, it provides no additional evidence over the OS base mapping used and does not describe the status of the route.

### **Small scale maps**

#### **1 inch Ordnance Survey Map (Revised New Series, dated 1903) (facsimile edition published by Cassini, extract supplied with application 1) (E14)**

- 1.29. Due to the scale, the 1-inch OS map of 1903 provides limited information. The route in question is shown as a fenced 'Third Class' metalled road. Although not found on the extract provided, this map will have carried a similar disclaimer to large scale OS maps from the 1890s onwards. While the depiction is consistent with a route likely to have been capable of carrying vehicular or

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<sup>9</sup> The Council only hold National Grid series 1<sup>st</sup> revision digital data for SE1110 and not adjacent 10x10km squares (hectads) crossed by other parts of the route in question.

equestrian traffic, the map provides no evidence that the way shown was public highway.

### **Bartholomew's Half inch maps**

#### **Sheet 9 (Sheffield). Published 1903 (E15).**

- 1.30. Bartholomew's maps were based on Ordnance Survey mapping and carry a similar disclaimer: *"The representation of a road or footpath is no evidence of the existence of a right of way"*.
- 1.31. The route between Wilshaw and Wood Nook is depicted in the map of 1903 as an 'uncoloured' as opposed to a 'first class road, 'secondary (good) road', or 'indifferent' or 'passable' road which would be shown coloured. The key also includes 'Footpaths & Bridlepaths', shown by means of black pecked lines. The key indicates "The uncoloured roads are inferior and not to be recommended to cyclists".
- 1.32. Applicant 1 provided a commentary on the significance of this map, which they note was made for sale to the public, and so unlikely to show routes that the public could not use. Applicant 1 noted that that the roads were advised by the Cyclists Touring Club and that, despite the disclaimer, the map makers true beliefs come from the fact the CTC assesses the roads as 'suitable' or 'inferior' rather than footpath or bridleway. It was argued that as cyclists at the time had no right to use bridleways, the map carries 'at least a little weight' as evidence of vehicular use. Nonetheless, the map contains the standard disclaimer, as per other OS and OS-derived maps, and the map does not provide positive evidence that the way shown was public highway. It also appears that whether or not a way was depicted as a 'road' was based on its physical character.

#### **Conclusions regarding Ordnance Survey (OS) and OS derived maps.**

- 1.33. The depiction of the route in question on successive large-scale Ordnance Survey maps published since the 1890s is consistent with the physical existence of a road or track, that may have been capable of use with vehicles, but does not provide evidence of public highway status. An earlier map shows no through route physically existed on the current alignment of Meltham 70. The one inch OS and half inch Bartholomew's maps provide no positive evidence of highway status, and maps providing boundary or similar information have no evidential value above the OS base maps used.
- 1.34. The OS Maps provide little evidence of the continued existence of structures on the way, and in particular structures predating relevant date of the first definitive map. The maps provide no evidence of structures having been in place at point A1 at any dates of survey or revision and do not support the claims made in application 2.

## **Other map evidence**

### **Google Maps (E16)**

- 1.35. Google Maps gives the name of part of the route as 'Old Pauls Road'. 'Old Pauls Road' is shown from point A to point A3 the continuing west towards Manor Farm, then via Route 3 (E-F-H) to the south of Manor House, to join 'Lower Greave Road'. The applicant provided a screenshot showing this (item E16) and a number of user witnesses also refer to the route being named on maps. However, the source of this name is not known and the route's depiction on Google Maps in this manner has negligible evidential value.

### **Screenshot showing INSPIRE Index Polygons spatial data from Land Registry (E17)**

- 1.36. Applicant 1 provided a screenshot of a map preview appearing to show polygons for registered freehold land. The applicant identified part of MEL/70 (described by points A and B) as being separate from registered land holdings. The applicant suggested that this characteristic is typically found for vehicular highways of ancient origin. However, the majority of the route in question does cross registered land, only a short length (point A6-A9) is not within registered titles and other evidence suggests the route is not ancient in origin. This document has limited evidential value. The boundaries of the registered titles are shown in more detail in on a plan at item 2 in appendix F.

### **Finance Act 1910 (Increment Value Duty):**

**Extract from Valuation Book for Meltham - hereditament 1451 (WYAS ref C243/246 (E18a)**

**Extract from Valuation Book for Meltham - hereditament 1538 (WYAS ref C243/246 (E18b)**

**Extract from working copy plan (WYAS Ref C43/260/14) E19)**

**Extracts from record plan – OS Sheet CCLX.14 (TNA Ref IR 134/6/78) (E20)**

**Extract from Valuer's Field Book for Meltham – Hereditament 1451 (TNA Ref IR 58/41006) (E21a)**

**Extract from Valuer's Field Book for Meltham – Hereditament 1538 (TNA Ref IR 58/41007) (E21b)**

- 1.37. Various documents were supplied which relate to the valuation of land and premises under the Finance Act 1910, preparatory to the introduction of a tax on increases in value of land (Increment Value Duty). Documents include extracts from 'working copy' valuation books and associated plans (held by West Yorkshire Archive Service (WYAS)), and field books and record plans (held at The National Archives (TNA)). The records identify taxable

hereditaments and include valuations of those parcels. There was provision to reduce the recorded value of land due to the existence of public rights of way. In some cases, routes are also excluded from taxable hereditaments – one explanation is that excluded routes are public roads, although there may be other reasons for ways being excluded.

- 1.38. Working copy and record plans show route A-B within hereditaments 1538 and 1451 in the Meltham 'Income Tax Parish'. The track from B-D *may* be excluded from taxable hereditaments although another interpretation may be that the lane from B-D was intended to be part of 1451 as it is open to that parcel near B but closed from the public road by a solid line near D.
- 1.39. Hereditament 1451 includes land crossed by Meltham 70 from A6 to B and also a field to the west of the building at Lower Cote. This includes land crossed by other parts of what is now FP Meltham 38. The map extracts provided do not show the whole of 1451.
- 1.40. The Valuation Book entry for hereditament 1451 (property named "Cote", now "Lower Cote") (item 18a in appendix E) does not record a deduction in valuation for 'public right of way or user'. However, the Field Book entry for 1451 records a deduction of £6. This may relate to Meltham 70 or Meltham 38. The reduction in the valuation represents an acknowledgement by the landowner of one more PROW within the hereditament and gives no indication as to status. However, a reduction in the valuation is more likely to suggest a public footpath or bridleway that a public carriageway - which might be expected to be excluded from taxable hereditaments. The reduction in the valuation is consistent with the public footpaths which are currently recorded.
- 1.41. The majority length of Meltham 70 (A to A6) is within hereditament 1538. A deduction of £45 was recorded in respect of public rights of way or user. This hereditament also includes parts of several other ways now recorded as public footpaths including Meltham 39, 40, 53, 63 and the reduction in the valuation may relate to Meltham 70 any of the other paths. The deduction is consistent with the existence of the public footpaths currently recorded over this land.
- 1.42. Applicant 1 also provided an extract from another field book (TNA ref IR58/37477). It was stated by applicant 1 that this related to 'Coles Track' and makes reference to a public right of way along a track. However, the entry supplied relates to property at Eavestone, near Harrogate, North Yorkshire, and appears to have been submitted in error.

### **Conclusions regarding the Finance Act evidence**

- 1.43. The 1910 Finance Act evidence is consistent with the existence of public footpaths or bridleways along the route in question. The depiction of the route between Cote (B) and Wood Nook Lane (D) is ambiguous and does not clearly suggest that the route had higher rights. The reductions in valuation for PROW within hereditaments 1538 and 1451 are consistent with existence of various public footpaths later recorded in the DMS.

- 1.44. The Finance Act evidence does not suggest that Route 1 was a vehicular carriageway and does not clearly show that a bridleway existed around 1910.

**Records relating to the development of the first Definitive Map and Statement under Part IV of the National Parks and Access to the Countryside Act 1949:**

**Survey Schedules ('Walking Schedules') (Items E23a to d)**

- 1.45. The development of the first DMS under the 1949 Act commenced with a survey by the West Riding County Council (WRCC) of paths over which public rights of way were alleged to subsist. Information about paths in Meltham was furnished by Meltham Urban District Council ('the UDC'). A map would have been submitted to the County Council, accompanied by schedules describing the various paths, dated December 1951. The map for the Meltham district appears not to have survived. The survey schedule (otherwise the "walking schedule") corresponding with the path later recorded as footpath Meltham 38 (MEL/38) is found at item 23a in appendix E. Schedules describing other paths which cross or terminate on Meltham 70 have also been examined.
- 1.46. The schedule for path 60 (later numbered as part of Meltham 38) described the way as a footpath. The starting point was given as 'Knowle Lane'. The 'ultimate destination of path' was stated to be 'Wood Nook'. A detailed description was given of this path. The description includes part of Meltham 38 to the west of Lower Cote, the status of which is not in question. The schedule states the path was surveyed by Mr Edward Waller and Mr Edward Taylor. The date of survey is not stated, however the walking schedules for paths now recorded as Meltham 39, 40 and 53 indicate they were surveyed by the same people in April 1951. The reason for believing the path to be public was recorded as 'Uninterrupted user by public for fifty years or more'.
- 1.47. The schedule records concise information about various features found along the path including gates, stiles, steps and general surface condition. The description given was:
- "Windy Bank Road through wood SE of cottages passing other paths and along South side of wall to weir and North of Boathouse to Meltham Mills Reservoir. (a) path along North Bank of Reservoir with occasional step-up bank to pass water level and North to join (b). (b) rough path further north through wood. Both paths meet a stile with 4 stone steps over wall. Grass track across field to a wicket gate and a second wicket gate through Lower Cote [?????]y and to cart road for Wood Nook."
- 1.48. It is the last part of this description – "cart road for Wood Nook" - that describes the part of modern Meltham 38 under investigation. The physical description in the schedule includes detailed descriptions of gates and stiles on part of the path west of Lower Cote. The same surveyors also gave detailed descriptions of other paths in the area, including gates and stiles. Had there been any gate or other structures on the 'cart road for Wood Nook' at the time of survey it is likely that such structures would have been recorded.

- 1.49. The schedule does not suggest any width in feet. But regarding the ‘average width and general condition’ it states, “Beginning and towards the end a good wide track but somewhat rough through the wood and narrow”. It is likely that the part Meltham 38 that is the subject of application 1 (link MEL/38/100) is the part described as a ‘good wide track’, and some weight should be given to this description of the width, notwithstanding that the whole of FP MEL/38 was later recorded as having a lesser width.
- 1.50. The survey schedule only gives the destination of the path as the general locality of ‘Wood Nook’ and the route between points C and D would subsequently not be shown on the definitive map. A plan would have been submitted to the County Council showing the ways being claimed. This has not been located, so the intended termination points of the path described in the schedule remains unclear. However, it is considered unlikely that public rights of way would not in fact have extended all the way to Wood Nook Lane at point D.
- 1.51. The survey failed to include A-B (now Meltham 70), or what is now FP Meltham 63 (otherwise known as ‘Lower Greave Road’). This is despite other claimed footpaths terminating on those routes. It is possible that, along with Lower Cote Road and Lower Greave Road, the surveyor, *rightly or wrongly*, considered the way between C and D to be an all-purpose vehicular highway and thus not a type of highway to be recorded in the definitive map and statement. However, it is considered more likely that the intention had been to describe a footpath from Knowl Lane to Wood Nook Lane, and the failure in the survey schedule to describe a specific termination point on another highway at Wood Nook rather than a general locality, led to misinterpretation of the termination point on the first and current definitive maps. The manner in which C-D is depicted on the OS base mapping used may also give the impression that the way was an ‘all purpose’ highway.<sup>10</sup>
- 1.52. The survey schedule for modern footpath Meltham 40 (surveyed as path 57) also gives the same ultimate destination of ‘Wood Nook’, although the detailed description more helpfully describes it as leading “to metalled road (Wood Nook Lane). The termination point of that path is approximately 75m SW along Wood Nook Lane from point D, So it is clear that the ‘ultimate destination’ on both walking schedules was describing the generally locality only.
- 1.53. The same survey schedule gives a detailed description of the features found on Meltham 40. It also describes the footpath crossing what is now Meltham 40, naming the route crossed as ‘Lower Cote Road’ and describing the surface at that point (‘rough stones’).

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<sup>10</sup> Another possibility for the exclusion of C-D is that it was understood by Meltham Council or its surveyors that the area was the awarded ‘watering place’ in the Honley Inclosure Award and deliberately not claimed, although this is speculation.

- 1.54. The schedule for path 58 (modern footpath Meltham 53) describes the 'ultimate destination' as Lower Cote Road. This footpath terminates on Meltham 70 at point A2. 'Lower Cote Road' was not included in the survey. The most likely explanation would be that the surveyor, rightly or wrongly, considered it to be a public vehicular highway.

#### **Draft Map (Relevant Date 22 September 1952) (E24)**

- 1.55. The Draft Map and Statement was prepared by West Riding County Council and shows those public footpaths, bridleways and 'roads used as public paths', surveyed and 'claimed' by the district councils, that subsisted, or were reasonably alleged to subsist, at the 'relevant date' of 22<sup>nd</sup> September 1952. The Draft Statement would have contained details such as the approximate width of the paths shown on the map and any limitations such as gates or stiles, the location of such limitations also being indicated on the Draft Map. The draft map included footpaths Meltham 38, 39, 40 and 53 but did not include public rights of way over 'Lower Cote Road' or the nearby 'Lower Greave Road'. MEL/38 was only shown to point C west of Wood Nook and not through to Wood Nook Lane at point D.

#### **Extract from Meltham UDC Minutes (18<sup>th</sup> May 1953) (E25)**

- 1.56. Minutes of a Meltham UDC meeting of 18 May 1953 refers to a recommendation of the Public Health and Plans committee in respect of the omission of various footpaths from the Draft Map:

- 1.57. The resolution reads:

"(315) that the Plans Officer be authorised to make representation to the west Riding County Council to amend Draft Maps prepared under National Parks and Access to the Countryside Act 1949, so as to include footpaths and parts of footpaths, on the map, which were omitted when the map was prepared, and are as detailed in the Plans Officers Report."

- 1.58. The Meltham UDC minutes make no further reference to this, and the report referred to has not been found. However, it is likely that Lower Cote Road would have been one of the omitted footpaths referred to. There is no indication that Meltham UDC considered higher public rights to exist.

#### **Objections / Representations to the Draft Map and Statement:**

##### **Report Form – addition of footpath (E26a)**

##### **Representation Schedule – addition of footpath Meltham 70 (E26b)**

- 1.59. It is unclear if there was contact in 1953 between the 'Plans Officer' at Meltham UDC and the WRCC about 'omitted footpaths', as authorised. However, on 7th March 1956 the clerk to Meltham UDC did submit 12 objections and 31 representations regarding paths shown on the draft map, or paths that had not been included on it. This includes, inter alia, a representation requesting the

addition of the footpath now recorded as Meltham 70. No representation was made in respect of Meltham 38 or regarding the way from C-D.

- 1.60. Files held by Kirklees Council do not include a copy of Meltham UDC's actual submission. Nor do they include any additional survey schedules which would have generally been completed by a district council when submitting representations for the addition of paths not shown in the Draft Map and Statement.
- 1.61. The Council's files do include 'Report Forms'. These describe the objections / representations and the date made, list standard documentary sources which had been checked, and give recommendations as to the required modification of the draft map and statement.
- 1.62. The Council also holds typed schedules for each of the objections and representations. The Objection schedules include the name of the objector, the nature of the objection, and the recommended modifications to the draft map and statement. The Representation schedules include under 'Description of route' the entry recommended by officers to be added to the Statement. This includes the contents to be included under the 'Description of Route', 'Nature of Surface', 'Approximate Length', 'Approximate Width' and 'General' columns.<sup>11</sup> The Schedules also include 'Nature of Representation', 'Representation made by' and 'Recommended modification to Draft Map and Statement'.
- 1.63. For each 'representation', including that to add as a footpath Meltham 70, the 'nature of representation' was stated to be 'That this is a public footpath'. The date of 7.3.56 was also recorded. In all cases the recommendation of County Council officers was to 'Add', although in some cases the description was of 'bridleway' rather than the footpath suggested in the representation.
- 1.64. For all the representations (for the inclusion of additional PROW), including Meltham 70, where the recommendation was to add a footpath, the approximate width recommended by officers to be recorded in the statement was 4 feet. Where the recommendation was to add a bridleway the width to be recorded in the statement was 8 feet. These are understood to be 'standard' widths for footpaths and bridleways that were considered by County Council officers to be sufficient and are unlikely to reflect the actual lateral extent of public rights then in existence. No width was recorded under 'nature of representation' for any such routes, including Meltham 70, suggesting the widths to be recorded had not been provided by Meltham UDC. For Meltham 70 the full width between walls would have been, and remains, significantly greater than 4 feet. It is considered that the recommended width cannot be relied upon as representing the full lateral extent of the public footpath that subsisted at that time.

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<sup>11</sup> The 'General' column in the West Riding Statements includes limitations and conditions such as gates or stiles, and also features such as bridges and steps.

- 1.65. The Representation schedule for the path to be added as Meltham 70 (E26b) states:

“Footpath commencing at its junction with Greave Road, Wilshaw and proceeding in a northerly direction to its junction with Path No. 38 at Lower Cote.

Ashed and roughly metalled.

0.55 miles

4 ft. wide.

No direction signs.”

- 1.66. The 'Description of route' for Meltham 70 makes no mention of any structures, or other limitations / conditions. Had there been recordable limitations on Meltham 70 it is expected they would have been described.

### **Provisional and Definitive Maps and Statements and associated documents:**

#### **West Riding of Yorkshire Definitive Map (Relevant Date 22 September 1952) (E27a)**

#### **Statement accompanying the 1952 Definitive Map (E27b)**

- 1.67. There is no record of any objection or representation having been made relating to the depiction of Meltham 38 in the Draft Map and Statement. As a result, the route was included in the same manner in a Provisional and finally Definitive Map and Statement. Footpath Meltham 70 was also included. Extracts from the first Definitive Map and Statement (Relevant Date 22 September 1952), otherwise referred to as the '1952 Definitive Map and Statement', are included at items 27a and b in appendix E.
- 1.68. The 1952 Definitive Map shows footpath Meltham 38 stopping short of Wood Nook Lane (i.e., at or near Point C). However, the accompanying Statement describes the way as proceeding "...to its junction with Wood Nook Lane at Wood Nook". This suggests that intention had been to record a footpath to Wood Nook Lane at point D. The 1952 Statement gives the width for all parts of Meltham 38 as approximately 4ft. Wicket gates and stiles are mentioned in the Statement and indicated on the map on other parts of Meltham 38. There are no indications of any gates or other structures on this part of Meltham 38.
- 1.69. The 1952 Definitive Map shows Meltham 70 as a footpath. There are no annotations to any indicate gates, stiles or other limitations, and the entry in the accompany Statement is as per the Representation schedule described above.

## **Review of the Definitive Map:**

### **Draft Revision Map (E28a)**

### **Draft Revision Statement (E28b)**

- 1.70. A review of the Definitive Map commenced in the late 1970s, with a Draft Revision Map being produced late in 1979 and placed on deposit for public inspection in 1980. Meltham 38 and Meltham 70 are recorded in the Draft Revision Map and Statement in a similar way to the 1952 DMS, with a reduction in the number of stiles on Meltham 38 recorded in the Statement from 3 to 1, and removal from the entry for Meltham, 70 of the words “No direction signs”.
- 1.71. There had been some communication with local residents in 1973, followed up by a resident in 1978, regarding the status of Route 1. (This is described and discussed in more detail below). This resulted in advice to submit evidence forms, describing equestrian user, for consideration as part of the review. However, there is no evidence of such submissions having been made. There is no record of any objection of representation being made in respect of the continued depiction of Meltham 38 and Meltham 70 as footpaths on the draft revision map.
- 1.72. The review was formally abandoned following the introduction of new procedures under the Wildlife and Countryside Act 1981 (“the 1981 Act”) for keeping the DMS under continuous review and the making of individual DMMOs. A modified Definitive Map was published in 1985 footpaths Meltham 38 and 70 as per the Draft Review map and statement.

### **Correspondence between Wood Nook residents and the County Council in the 1970s:**

**Letter to County Council Clerk from Mr Kenneth England and Mr Austin Holroyd. Dated 5<sup>th</sup> March 1973. (E29)**

**Letter to WYMCC from Mr Austin Holroyd. Dated 25 April 1978. (E30)**

**Letter to Mr Austin Holroyd from WYMCC. Dated 28th April 1978. (E31)**

**Letter to WYMCC from Mr Austin Holroyd. Dated 24 June 1978 (E32)**

**Letter from Mr Austin Holroyd to WYMCC. Dated 27 June 1978. (E33)**

- 1.73. The Council’s files on paths Meltham 38 and Meltham 70 contain a number of items of correspondence from the 1970s which are of relevance to the status of the routes in question or the question of structures on Meltham 70.
- 1.74. By 1973 the West Riding County Council had commenced the process of reviewing the Definitive map and Statement for this part of the county.

- 1.75. A copy of a letter (“the 1973 letter”) from Kenneth A England of Wood Nook Farm <sup>12</sup> and Austin F Holroyd (both since deceased) described having evidence of over 20 years use “and due to their nature and width” they wished to ‘register’ various footpaths as bridleways. This included Meltham 70, and Meltham 38 from ‘east end to Lower Cote’. Messrs England and Holroyd stated that they would be “glad to bring forward at least 10 reputable persons to any enquiry as and when required’. They went on to request that they be advised when the “documentary evidence, which is available any time, is needed to substantiate our claim.”
- 1.76. The review of the definitive map was delayed due to local government re-organisation and would not recommence until 1978. It appears that the evidence referred to in the 1973 letter was not submitted to the County Council.
- 1.77. The letter provides some evidence that there had been equestrian use of the route of the route by 1973, but as the evidence of use that was referred to has not been found, whilst being evidence of reputation and supporting later user evidence, the letter itself carries only limited weight.
- 1.78. The copy of the 1973 letter found on file had been sent to WYMCC on 25<sup>th</sup> April 1978, accompanying a further letter from Mr Holroyd <sup>13</sup> seeking clarification of the status of various ways. The letter indicated Mr Holroyd was under the impression that all the paths mentioned in the 1973 letter had been upgraded to bridleways “because of their width, condition, and long usage as such”. He wished to enquire whether the ways were bridleways, and if so, what steps would be taken to upgrade them.
- 1.79. Mr Holroyd described a recent obstruction of and a challenge to equestrian use of paths Meltham 38 and 70. He stated:
- “However, Manor Farm at Wilshaw has recently changed hands, and the new manager has wired off paths 38 and 70, leaving only access for walkers, and incidentally, been very abusive to a middle-aged lady who rode down there in all innocence, as she has done for many years, the other day.”
- 1.80. Following a further exchange of correspondence, on 27<sup>th</sup> June 1978 Mr Holroyd was supplied with blank ‘Information Sheets’ (i.e., ‘user evidence forms’) to be completed by users and returned to the County Council in connection with the review.
- 1.81. The description of the ‘wiring off’ of the route leaving only an access for walkers is consistent with later evidence submitted on behalf of the applicant for

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<sup>12</sup> Wood Nook Farm is the property to the north and east of Meltham 38, near Wood Nook House. It does not include land crossed by the order route, at least at present, but Mr England would have been well placed to know of the use of the route.

<sup>13</sup> The address given by Mr Holroyd was Honey Head, Wood Nook.

application 2 that at gate on Meltham 70 (i.e., at A1) was locked when the Manor Farm property was purchased in 1977.<sup>14</sup> However, only one instance of challenge was described. This *may* have been sufficient to bring a public right of way for equestrians into question, although there is no indication the issue was raised by other people. The reference to 'wiring off' also supports an assertion made that there had been structures or obstructions on Meltham 70 around 1977. The significance of this will be considered in more detail below, when considering the user evidence and evidence for limitations at point A1.

### **Conclusions regarding the preparation and review of the Definitive Map and Statement, including correspondence in the 1970s**

- 1.82. The depiction of the survey schedule of the route between B (Lower Cote) and the general locality of 'Wood Nook' is consistent with a public footpath along a cart road. The description of a 'good wide track' is consistent with a public footpath subsisting over the whole available width between boundaries and some weight should be attached to this. The lack of description of the termination point may have contributed to the part from C-D near Wood House having not been shown in the draft map and later first definitive maps as a footpath. It is likely that the intention was to record a public footpath to Wood Nook Lane.
- 1.83. The route later recorded as Meltham 70 ('Lower Cote Road') was not originally claimed, likely because it was considered rightly or wrongly as a public vehicular road but was added as a footpath following a representation from Meltham UDC. No limitations were described. A width of 4ft was subsequently recorded in the first DMS for Meltham 70 but cannot be wholly relied upon as this is likely to have been a 'standard' width for a footpath as per County Council practice and is unlikely have reflected the full lateral extent of the public right of way. No limitations were recorded in spite of an opportunity to do so and absent clear evidence to the contrary it must be assumed no limitations existed.
- 1.84. A review of the Map and Statement took place in the late 1970s. Despite earlier correspondence from residents in the Wood Nook area in 1973, repeated in 1978 no additional evidence of equestrian use was submitted. The correspondence provides some evidence of reputation only.
- 1.85. Analysis of the documents as a whole suggests the width of Meltham 70 and Meltham 38 may have been under recorded, but there is only limited evidence to suggest the early existence of higher rights over Route 1. The correspondence from the 1970s does provide evidence of reputation that the way was a bridleway, and is generally consistent with the user evidence,

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<sup>14</sup> The Manor Farm property is understood to have been purchased by a predecessor of the current Company.

although there is some evidence obstruction of the route and challenge to one equestrian user around 1978 by a person associated with Manor Farm

### **Extracts from 'The History of Wilshaw' (E34)**

- 1.86. Applicant 1 provided several extracts from 'The History of Wilshaw', written and published by Alfred Taylor in 1961. A full copy of this book has been obtained. Pages 51, 56 and 60-62 are included at item 34 in appendix E.
- 1.87. 'The History of Wilshaw' is mainly concerned with the development of the village of Wilshaw in the mid-19<sup>th</sup> century and is focussed principally on the life of Joseph Hirst, a woollen manufacturer and merchant, originally from Lower Greave, who consolidated estates in the area and was responsible for the development of Wilshaw in the mid-19<sup>th</sup> century. The book does not contain references but acknowledged the assistance of Mrs J R Kirby for the use of private Hirst family papers.
- 1.88. An extract provided the applicant described the purchase at auction in 1871 of the 'Upper Greave' estate, including 'Cote Farm and part of Wood Nook' (page 51) <sup>15</sup> Reference was also made refers to the demolition of Upper Greave in 1873 and replacement with 12 cottages known as St Mary's Court.<sup>16</sup> Joseph Hirst died 11 December 1874 and was buried on 16 December. <sup>17</sup> It appears likely that construction of 'Lower Cote Road' and the rearrangement of fields as seen on the first edition 25-inch map would also have taken place between 1871 and 1874. This does not provide evidence of public use of the road, or of dedication of public highway, but establishes a timeframe for the likely construction of a road from Wilshaw Road to Lower Cote.
- 1.89. The land later passed through the ownership of two of Joseph Hirst's nephews and into the hands of Henry James Hirst sometime after 1914. <sup>18</sup> The book includes part of the later history of the estate and describes various other parcels of land held by the Eleanor Hirst trustees <sup>19</sup>, this did not include the

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<sup>15</sup> 'The 'History of Wilshaw' also refers to a map of the land for auction which c.1961 was in the possession of Joseph Hirst's great grandniece Mrs J R Kirby, at the 'Manor House', Wilshaw. Mrs Kirby died in 1996 and the current whereabouts of this map is not known. The purchase of land and buildings including Upper Greave, Cote and Wood Nook, from the executors of Henry Shaw's nephew James Shaw is also rereferred to in a more recent book. Pp 165-166 of 'From Cottage to Mill', Bob Hirst, 2022. Available at [https://huddersfield.exposed/wiki/From\\_Cottage\\_to\\_Mill\\_\(2022\)\\_by\\_Bob\\_Hirst](https://huddersfield.exposed/wiki/From_Cottage_to_Mill_(2022)_by_Bob_Hirst)

<sup>16</sup> Page 51.

<sup>17</sup> Page 56.

<sup>18</sup> Page 60.

<sup>19</sup> Described on Page 62 The Eleanor Hirst Trust was established under terms in the will of Joseph Hirst's widow Eleanor Hirst for maintenance of almshouses provided during her lifetime. The charity still manages almshouses in Wilshaw to this day.

land over which the route in question runs. The description given of the history of ownership of land does not suggest any indication of any lack of capacity to dedicate a public right of way in the period in which the land was owned by the Hirst family.<sup>20</sup>

### **Conclusions on ‘The History of Wilshaw’**

- 1.90. Overall, the material in the ‘History of Wilshaw’ is helpful in understanding the history of the development of the village of Wilshaw, and regarding land purchase and ownership from the 19<sup>th</sup> century. It establishes a likely timeframe for the construction the road since recorded as Meltham 70. However, it provides no evidence of any higher rights or of early origins as a public bridleway or vehicular road.

### **Planning application documents (Application ref 89/62/02151/C2):**

#### **Observations of Kirklees Council Technical Services. With annotated site plan showing public footpaths Meltham 38 and Holmfirth 70) (E35)**

- 1.91. In 1989 officers were consulted on a planning application for an extension and other work at Wood Nook Farm. The red line boundary abutted the route near point D.
- 1.92. An officer in Kirklees Council Technical Services observed that:
- “Meltham public footpath no. 38 abuts the southern side of the side of the site. This should not be obstructed in any way during or after development.”
- 1.93. The response was also accompanied by an annotated plan showing in purple the public footpaths at Wood Nook. FP Meltham 38 was drawn extending all the way to point D.
- 1.94. The plan and comments clearly indicate that at that time officers considered that footpath Meltham 38 extended all the way to Wood Nook Lane at point D and did not in fact terminate at point C. While there is no suggestion that the route was considered to carry higher rights, these documents do provide evidence that C-D was a public footpath.

### **Diversion of FP Meltham 40 near Manor House Farm, and related documents:**

#### **Kirklees Metropolitan Council (Public Footpath No. 40 (part) Meltham Manor Farm Lower Greave Wilshaw Huddersfield) Public Path Diversion Order 1991) (E36)**

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<sup>20</sup> Reference was made to the sale of Manor Farm on 31 December 1943. Deeds submitted by solicitors acting for the Company do refer to a mortgage in 1943 which may have affected the capacity to dedicated PROW in that brief period. See abstract of title at item 13 in appendix I.

**Letter from The Ramblers to Kirklees Council re FP.40 (Meltham/ Holmfirth) – Obstructions etc. Dated 10 May 1995 (E37)**

**Letter from Kirklees Council to Architecture & Design Partnership. Dated 21 Feb 1997. (E38)**

1.95. Footpath Meltham 40 previously ran immediately north of buildings at Manor Farm. This in the same general vicinity, though possibly not the exact position, as part of 'Route 2' identified on plans accompanying seven user evidence forms.

1.96. FP Meltham 40 was diverted by an Order made in 1991 and confirmed as an un-opposed Order in 1998.

1.97. In 1995, prior to confirmation of the Order, the Ramblers complained of the unavailability of any route to the north of Manor Farm:

"At Grid Ref. 11730997 Manor House there was no way through the farmyard and no signing.... There is no trace of the path on the ground".

The grid reference given is at the junction of Meltham 40 with Meltham 63, north west of farm buildings at Manor Farm

1.98. In February 1997 a letter was sent to Architecture & Design Partnership (as agent for 'P & D Coles') regarding the obstruction of path Meltham 40 at Manor Farm. There was also reference to 'Keep Out' notices. The 1997 letter also advised that the 1991 diversion order could be confirmed on satisfactory provision of the new footpath.

1.99. Photographic evidence also suggests that any way available since the early 2000s to 2015 curved northwards up to around 8 metres from the northern side of the farm buildings and was not the original or formally diverted routes of FP Meltham 40.

1.100. In conclusion, this evidence points to the physical unavailability for a period in the 1990s of Route 2 north of Manor Farm. Also, to the legal stopping up of a public footpath in that vicinity. Both would have been within the relevant 20-year period for the purposes of s31 Highways Act 1980. This will be considered in further detail below when considering the user evidence.

**Other documentary evidence**

**Photographs**

1.101. Various photographs taken between c1994 and 2020 are included at items 2 and 3 in appendix B. These have been annotated to indicate locations and key features. Google Street View photos of points A and D (various dates between 2009 and 2015) are included at item 4 in appendix B.

- 1.102. Photographs show a well-defined enclosed route extending all the way from A-D.
- 1.103. The earliest photographs date from c1994/1995 and show the start Meltham 70 at point A looking towards A2 and from Wood Nook Lane (point D) towards point C. An additional photograph of part of Meltham 70 was taken in the late 1990s. The photos of A-A1 in 1994/1995 show wooden gateposts at A1 and the metal pole on the west side of the route, although no gate was in situ across the track. Early photographs from point D show a white metal gate at point C2, in open position. Photographs from 2015 show a metal T bar structure at point A1.
- 1.104. No photographs of the route show any signs, except public footpath signposts, except for those taken in 2016 or later which show 'public footpath only' signs at A1 and C2.
- 1.105. Photographs also show the concrete surface of Meltham 70, from point A to point A5, including the former position of gateposts at A1.
- 1.106. The photographs do not suggest any structures, obstructions that would have been incompatible with use of the way on horseback or by pedal cycle, excepting the installation and subsequent locking of gate (with adjacent barriers) at A1 in 2016.
- 1.107. Photographs do show wooden barriers across part of the width of MEL 70 at point A8 and at point C on MEL/38. These appear to have been installed by Kirklees Council following a complaint of 'unsafe' Pedal cycle and quad bike use' in 2010, to act as a visual deterrent / to reduce speed.<sup>21</sup> They would not have prevented equestrian use.

### **Photographs supplied with application 1 (E39)**

- 1.108. Applicant 1 supplied nine photographs taken in winter (prior to 6 January 2016) with various features along the route annotated, including the water trough at point A10, 'vehicle bridge' at Bank Dike at point A9 and a 'mounting block' near Wood Nook House. Eight of these photographs are of route A-D. A photograph showing gates across a track was taken at point E on the additional route from A3 towards Manor Farm and Manor House. (Routes 2 / 3). The photos show the physical condition of the routes immediately prior to submission of the DMMO application and include a photo of a metal 'T bar' in the centre of the track at point A1 and an open gateway at point C2. Several of these photographs have been included at item 2 in appendix B with other photographs of Route 1.

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<sup>21</sup> See summary of relevant requests to Kirklees Council at item 42 in appendix E

### **Photo taken at Lower Cote Farm 1958/9. (E40)**

1.109. A photograph was also subsequently provided by applicant 1 that shows a car somewhere in the vicinity of Lower Cote Farm (or between points B and C). The photograph appears to show in the background the route of Lower Cote Road (MEL/70). It was stated that this dated from the 1958/59. Accepting this at face value, the photograph does no more than suggest that of the route from Wood Nook to Lower Cote could be used with motor vehicles in that period but provides little or no evidence to support public vehicular status.

### **Kirklees Bridleways Group Facebook post regarding fallen tree (E41)**

1.110. Applicant 1 provided a screenshot of a Kirklees Bridleway Group Facebook post from 28 December 2014. A photograph shows a fallen tree across Meltham 70, just north of the wooden barrier at point A8. The post stated 'Coles track' at the side of Meltham Golf Club is closed to horse rides [sic] due to a fallen tree.". Further comments name a person who had been contacted about the tree. That may be person associated with Wood Nook House or the Company, although it appears that the tree may have fallen from land not in their ownership. The post and comments suggest contact between members of KBG and one of the landowners and awareness that equestrian use was taking place in 2014 although very little weight can be attached.

### **Conclusions regarding photographs**

1.111. Photographs of Route 1 from 1994 show a well-defined route from Wilshaw Road to Wood Nook Lane. No photographs prior to 2016 show any signs or notices, save public footpath signposts at A and D various photographs show the area around point A1. Photographs from the mid-1990s onwards, while showing various gateposts and locations of former structures at or near points A and A1, but do not show any structures incompatible with use by equestrians, such as locked gates. Photographs generally suggest a route was open and available for use by riders, and do not support the case of applicant 2.

1.112. A photograph from the 1950s showing a car near Lower Cote does not assist with whether public rights existed.

1.113. Several photographs supplied by the applicant show the physical condition of Route 1 and Route 2 around 2015 but do not assist with status. A photograph of a fallen tree on Meltham 70 posted on Kirklees Bridleway Group's Facebook page, along with accompanying comments, shows familiarity with the route by riders and possibly awareness of the route by a landowner, but has limited evidential value.

### **Overall conclusions re documentary evidence**

1.114. Various maps and related documents from the late 18th century onwards show or make reference to parts of Route 1 and a physical road between (Lower) Cote and Wood Nook lane (B-C). There are documentary references to an

'occupation road' and the depiction on an early commercial map as a 'cross road' (although this is only weakly supportive of higher public rights). The depiction in various maps is consistent with a private or occupation road, although this does not preclude it also having been a public footpath. This includes that part from C-D not currently recorded. The evidence does not show the way was a public bridleway. It is apparent from various maps that the track followed by Meltham 70 did not exist in its current form until the second half of the 19th century. It was likely to have been built in the early 1870s, following purchase of land by Joseph Hirst, as described in the published history. There is no indication this new road was intended to be a public highway, although public rights of way have become established, at least footpath. Successive OS and OS derived maps depict the whole of Route 1 and provide of its physical existence but not of highway status.

- 1.115. The 1910 Finance Act evidence is consistent with the existence of public footpaths or bridleways along the route in question but and does not assist further. Other documentary evidence submitted with application 1 is also of limited value in showing that higher rights than footpath exist.
- 1.116. Documents relating to the preparation and later review of the Definitive Map and Statement do not suggest higher rights than footpath (apart from various assertion from members of the public regarding equestrian use in the 1970s). They do suggest that widths of Meltham 70 and part of Meltham 38 may have been under-recorded. There is no clear explanation for C-D not being shown on the Definitive Map but, simple error appears likely, and there is other evidence. Documents relating to the diversion of Meltham 40 cast doubt on suggestions of availability and use by equestrians of a way near Manor Farm as suggested by some people.
- 1.117. Available photographs showing Route 1 are not inconsistent with the way being having been used by equestrians or being a public bridleway and show nothing incompatible with this. No photos, including those of the area at A1, show any structure from the mid-1990s onwards that would have prevented such use. While suggesting various structures in the past, they do not support Applicant 2's application to record a locked gate at that location.

## **2. User evidence**

- 2.1. User evidence forms (UEFs) have been completed by 64 individuals who claimed to have used the whole route from Wilshaw Road at Wilshaw (point A) to Wood Nook Lane at Wood Nook (point D) for various periods up to 2016, with claimed frequency of use ranging from very occasional through to daily. 61 people claimed equestrian use. 29 people indicated use of a way on foot, 6 with bicycle. One person described use with a vehicle in the early 1950s. The earliest claimed use was 1942 (on foot). Claimed equestrian use increased from the early 1980s.

- 2.2. The existence of a public footpath along Meltham 78 and Meltham 38, as currently recorded on the Definitive Map, is not in doubt. There is doubt, however, as to whether the currently recorded widths of approximately 1.2m / 4ft accurately reflected the actual lateral extent of the public rights of way that existed at the relevant dates of the first or current Definitive Maps (1952 or 1985). If the widths were correctly recorded, it is nonetheless also possible that public rights of way, e.g., footpath or bridleway to have since come into existence over a greater width.
- 2.3. The user evidence may also assist with the question of whether limitations should be recorded on Meltham 70 at point A, as asserted in application 2.
- 2.4. The user evidence has been analysed in the context of the tests under section 31 of the Highways Act 1980 and in respect of dedication at common law.
- 2.5. The frequency, types and periods of use claimed use, along with descriptions of the width used, are indicated the chart at item 2 in appendix A. A summary of comments and descriptions of gates and other obstructions is at item 3 in appendix A. A summary of comments about use of the way by other people, witnessed by those who completed UEFs, is at item 4 in appendix A.

### **Section 31 Highways Act 1980**

- 2.6. Section 31 provides for a presumption of dedication as a highway after public use for 20 years. Subsection 1 reads:
- 2.7. “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 twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”
- 2.8. The key elements required by this section are considered in turn below.

### **Date of Bringing into Question**

- 2.9. The period of 20 years referred to in subsection (1) is calculated retrospectively from the date when the right of the public to use the way is brought into question.
- 2.10. In order for the right of the public to have been brought into question the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged.
- 2.11. In absence of an earlier action, the making of an application to modify the Definitive Map and Statement would have brought any unrecorded public rights into question. The DMMO application is dated 6 January 2016.

- 2.12. Various equestrians who completed user evidence forms refer to being challenged by a person near Wood Nook House on 24 August 2015 – and on further occasions over the following 2 months. A gate at point A2 was also found closed but not locked, with a car parked in front of the gate. Users also reported being asked or told not to ride the route as walkers had complained of the way becoming muddy. This is likely to refer to the condition of part of Meltham 38 between points B and C. Users also reported that around the same time a gate at point C2, previously generally unlocked and frequently open, was found closed and possibly blocked by a parked vehicle, thus affecting use by equestrians. These actions suggest the public right to use the way with horses was brought into question in August 2015.
- 2.13. Council records also include various request / enquiries from with the residents at Wood Nook House, between 2010 and 2016, and also other requests about the route in question. These are summarised at item 42 in appendix E. The nature of these contacts have been considered when assessing the likely date of bringing into question of any unrecorded rights.
- 2.14. A person associated with Wood Nook House had also contacted the Council on 26 August 2015 to report the confrontation with one of the horse riders referred to above and to seek advice. This supports the position that the right of way was brought into question in August 2015.
- 2.15. Earlier, in 2010, the same person had reported issues of increased equestrian use and of near accidents with pedal cycles and quad bikes. Notes of a subsequent meeting on site indicate that a council officer agreed to put up signs and make ‘pinch points’ to slow down traffic.<sup>22</sup> It is possible that Council signs were supplied, which stated ‘No horses, no cycles, footpath only’ (or similar wording). However, there is no further evidence that these signs were put up. There is no indication that any users of the way had been directly challenged in 2010. Pinch points / constructed gaps were installed, in the form of wooden barriers to either side of the route at points C and point A8. These would not have prevented use of the way by equestrians, walkers or cyclists and it is unlikely that rights were brought into question at that time.
- 2.16. Reports were also received from members of the public in 2012 and 2013 of the dumping of garden waste on Meltham 38 near Wood Nook House. When inspected in 2012 this was considered not to have obstructed the public right of way.
- 2.17. The agent stated that equestrians who did not have ‘express permission’ had been turned back. This included including one named rider in 2002 and another in 2006, as well as the documented challenge to use from August 2015.<sup>23</sup>

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<sup>22</sup> See summary of requests to the Council at item 42 in appendix E.

<sup>23</sup> Claims contained in a response to the informal evidence gathering / consultation exercise in February 2018. The response from the agent dated 09 April 2018, along with a later exchange of emails providing clarification of various assertions, is found at item 2 in Appendix G.

However no further details were provided of the earlier alleged challenges to users. The evidence is not sufficient to show that equestrian rights were brought into question prior to August 2015.

- 2.18. Council files contain a report of a challenge to equestrians and the ‘wiring off’ of Meltham 38 / Meltham 70 by the new manager of Manor Farm in 1978. There was also a claim on behalf of the landowners that a gate was found locked at point A1 when the land was purchased in 1977. A single equestrian who completed a UEF also reported a locked gate in the period 1970 to 1980 and “barbed wire 1970 to 1975”. While it is possible that there was an earlier bringing into question of higher rights in the 1970s, the evidence is limited, and any action took place well before the commencement of a 20-year period ending in 2015.
- 2.19. Officers consider that the challenges to equestrians in August 2015 brought public rights of way into question, particularly equestrian rights. The 20-year period is August 1995 to August 2015.<sup>24</sup>

### **‘A Way’**

- 2.20. All witnesses who completed UEFs described use of a consistent route between Wilshaw Road (point A) and Wood Nook Lane (point D) (“Route 1”). This route was indicated on maps accompanying the evidence forms. The descriptions given clearly described the whole route between the public roads.
- 2.21. For the majority of its length this route is bounded to both sides by dry stone walls.<sup>25</sup> The width between walls varying between approximately 5 to 6 metres This is consistent with the widths described by users – see summary at item 2 in appendix A. The route is shown in a consistent manner on all OS maps published since the 1890s.
- 2.22. Plans accompanying eight UEFs were highlighted to show additional routes between Meltham 70 and Wilshaw Road via Manor Farm and footpath Meltham 63 (Lower Greave Road). These routes were not included in the formal DMMO application. Seven people highlighted a route passing north of buildings at Manor Farm (“Route 2”) and two showed a route to the south of Manor House (“Route 3”). These additional routes were not otherwise mentioned in the UEFs. Other evidence suggests a way north of Manor Farm

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<sup>24</sup> A gate was installed in January 2016 at point A on Meltham 70, shortly after the making of application 1. The gate was subsequently locked. That action was later followed by the making of a DMMO application (application 2) to record limitations at that point, including a locked gate. It has been asserted on behalf of a landowner that there was an earlier locked gate in place until 2002. That would be within the identified 20-year period. However, the evidence for a gate, locked or not, being in place across Meltham 70 in that period is very limited and is contradicted by photographs and the overwhelming majority of the user evidence.

<sup>25</sup> Except for an area near the ruins of Lower Cote Farm (point B) and possibly C-D where the surfaced route passes through a wider garden area.

was not physically available in the period 1995-1997, i.e., within the first three years of the relevant 20-year period. Footpath Meltham 40 which ran immediately north of a farm building, was diverted in 1998.<sup>26</sup> The evidence is insufficient to show consistent use of a single way near Manor Farm or Manor House throughout the relevant period. It is also possible that Route 3, south of Manor Farm, was not constructed until c1999-2000.

### **‘...Actually enjoyed’**

- 2.23. All those who completed UEFs describes their own use of the whole of Route 1, including C-D which is not currently recorded on the Definitive Map. All but three users claimed use on horseback, half of those who completed UEFs also described use of the route on foot. Six people also mentioned cycle use over various periods but provided little further detail. Many also described equestrian use of the route in the company of others or described seeing other horse riders, cyclists and walkers.<sup>27</sup>
- 2.24. There is insufficient evidence of actual enjoyment of routes 2 and 3 in the vicinity of Manor Farm and Manor House.
- 2.25. Many of the equestrians referred to keeping their horses in livery at stables in the area or attending nearby riding schools. Or described use of the route in connection with nearby riding schools or stables. In particular Westfield Farm<sup>28</sup> which is located approx. 500m along Wood Nook Lane from point D in a north westerly direction.<sup>29</sup>

### **‘...by the public’**

- 2.26. The overwhelming majority of those who provided user evidence appear to be members of the public and use was not in exercise of private rights.
- 2.27. Two people indicated that they or their families owned or rented land crossed by or adjacent to the way and thus some of their use may be characterised as in exercise of private rights.
- 2.28. No users indicated that had been employed by any of the landowners.

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<sup>26</sup> See Confirmed Order at item 36 in Appendix E.

<sup>27</sup> A single person referred to vehicular use in the 1950s, although this use appears to have been private in nature when collecting parcel from Lower Cote, and outside the relevant 20-year period.

<sup>28</sup> Westfield Farm is referred to by some users as Wood Nook Stables or Honley Livery Stables. It is also home to Woodnook Arena.

<sup>29</sup> A second riding school – Bradshaw Road Stables - is located about 1500m by road from point D in a generally easterly direction.

2.29. The number of people who used Route 1 (A-D) are sufficient for use to be considered to be ‘the public’.

**‘... without interruption’**

2.30. Interruption means actual and physical stopping of the enjoyment of the public use of the way by the landowner or someone acting lawfully on his behalf. Use of the way does not need to have been constant. Any interruption must have been with the intention of preventing public use of a way, and not for some other purpose such as the parking of vehicles or the carrying out of building work.

2.31. There is no clear evidence that enjoyment of the way A-D by equestrians had been interrupted during the relevant 20-year period. The landowner’s agent has asserted <sup>30</sup> that “expression permission” had been withdrawn on a number of occasions, including to “prevent intrusion during building work or family events family events... including express closures for all except footpath users, for a three-day period for a wedding in 2006”. It is assumed that this related to use of C-D near Wood Nook House. However, there is no further evidence that there had been actual and physical stopping of the use of the way with the intention of preventing public use.

2.32. Some users referred to garden waste, roof tiles and other things being found – likely on Meltham 38 west of point C near Wood Nook House. There had also been complaints made to the Council about garden waste. However, there is no indication this actually interrupted enjoyment of the way. <sup>31</sup>

2.33. It is possible that there may have been obstructions in the vicinity of Manor Farm in the period 1995 to 1997 that would have led to interruption of enjoyment of a way (north of Manor Farm).

2.34. There is no indication that the enjoyment of Route 1 by pedestrians, including the part C-D not currently recorded on the Definitive Map, had been interrupted.

**‘... as of right’**

2.35. User ‘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).

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<sup>30</sup> See emails at item 2 in Appendix G.

<sup>31</sup> Recent site visits have confirmed that grass clippings and garden waste are still being dumped within the boundaries of the way near Wood Nook House, but passage over the majority of the width between walls is not prevented by this.

**‘...without force’**

2.36. There is no suggestion in the available evidence of any use of force to secure passage.

**‘... without secrecy’**

2.37. 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.

2.38. Again, there is no indication that any use been with secrecy. Route 1 passes close to / or through a garden at Wood Nook House. Use of the route would have been clearly visible to the owners of the property. A number of riders clearly indicated the residents were aware of walkers and riders passing Wood Nook House. Contact with the Council at various times clearly demonstrates an awareness of use by the public, including with horses, some years before any user was challenged.

2.39. A number of other owners / occupiers of land crossed by or alongside Route 1, who were contacted as part of the investigation, also appear to have been aware that equestrian use had taken place.

**‘...Without permission’**

2.40. Users, on foot or with horses, did not indicate, in general, that they had either sought or had been granted permission. The exception is one equestrian who, on their UEF, did indicate that they had been given permission to use Route 1 by a landowner, but did not elaborate.

2.41. The agent for applicant 2 asserted that:

“Since the ...occupation of the land there has been some limited use of the route by friends and neighbours with ...express permission. Users with permission have included family, their friends...”as well as the naming the operator of a nearby stables and their “... livery users and their guests”. The agent was invited to provide further information about the people named but was unable to provide anything further. It was also stated by the agent that “express permission had been withdrawn on a number of occasions.” No further information was provided as to how this ‘express permission’ was granted to users, or when, or how withdrawal of express permission was communicated.

2.42. There is no evidence of any signs or notices having been erected to indicate that equestrian use of Route 1, or any use of C-D, was with the permission of the landowner.

2.43. It can be concluded that use, including equestrian use of A-D, and pedestrian use of C-D was, in general, without permission.

### **'... Full period of 20 years'**

- 2.44. There is evidence of equestrian use of the whole route A-D (Route 1), for the full period of 20 years up until the date of bring into question in August 2015. There is also evidence of pedestrian use, including of C-D for the full period of 20 years.
- 2.45. On a generous reading of the evidence there is claimed use of Route 2 north of Manor Farm by seven equestrians, collectively spanning the relevant 20-year period. However, there is doubt as to the actual availability of that route for the early part of the period 1995-2015. Of those who described use of any routes after 2004 and before 2001 there are only 6 users who marked Route 2 on plans accompanying their UEFs. For route 3 the evidence of use for the full period of 20 years is weaker still. The evidence is insufficient to show that either Route 2 (north of Manor Farm) or Route 3 (south of Manor House) had been used for the full period of 20 years.

### **Widths described by users**

- 2.46. The widths described by users are included in the summary chart at item 2 in appendix A. The suggested widths vary considerably but a number of people indicated the way was 'two cars width' or tractor width. The general sense is that the way available / used was not narrow. This is consistent with map and photograph evidence. It is likely that public use extended over the whole available width between boundaries. This is less certain in the area between C-D where the route passes through a more open area, now with lawns to the side of a surfaced track.

### **Descriptions by users of gates etc.**

- 2.47. A significant number of people who completed UEFs described the white metal gate at C2 near Wood Nook House, many people refer to this being always or normally found open, although some equestrians referred to this gate being difficult to open, and if found closed, needing to dismount. The general impression is this gate was more frequently found closed around 2015/2016. A number of users refer to the gate as never being locked. It is evident from the user and photographic evidence that the gate at C2 has been in place for at least several decades. Whether it may be recorded as a limitation may depend on whether it was in situ when the way was dedicated as a highway of any type.
- 2.48. Users also referred to the recent installation and locking of gate at the 'Wilshaw Road end'. i.e. at point A1 on Meltham 70. Unlike the gate near Wood Nook House, which was described by a significant number of users and appears to have been notable feature, there is little sense of users encountering a gate or gates at point A1 prior to 2015/2016. Had there been a closed but unlocked gate it is likely that people would have referred to this.
- 2.49. One equestrian also referred to the recent installation of a removable metal bollard – likely the T shaped post at A1 seen in various photographs. Another

rider also mentioned a barrier 'half way down by the golf course.'. This will be the wooden fence across part of the track at point A8.

- 2.50. In general, the comments made regarding gates and other structures is consistent with photographic evidence and observations of officers.
- 2.51. A single user referred to a "wooden five bar gate at Wilshaw Road" and wooden small gate at Wilshaw Road" and also "large gate locked 1970-1980". This suggests there may have been gates at A1 in the 1970s, but that was well before any more recent 20-year period.
- 2.52. The user evidence suggests there had not been any operable gates or other structures in place at point A1 throughout the recent 20-year period. Even if it could be demonstrated that structures existed at point A1 prior to the relevant date of the first definitive map, or had been previously authorised, and thus recordable as limitations, the evidence from users that gates had been absent suggest that there would have been re-dedication of public rights without any such limitations.
- 2.53. Other evidence regarding gates or structures on Meltham 70 including evidence provided in support of Application 2, is considered in more detail below.

### **Contrary intention**

- 2.54. The presumption described above may be rebutted where there is sufficient evidence that the landowner did not intend to dedicate a public right of way. There must have been some overt acts on the part of the landowner to show the public at large that the landowner had no intention to dedicate. The test is whether a reasonable user of the path would understand that the landowner was intending to disabuse the users of the notion that the way was a public highway.
- 2.55. There is no clear indication from the user evidence that anyone was challenged when using any part of route A-D or the other two routes considered, within the relevant 20 year period.
- 2.56. The agent for applicant 2 has indicated <sup>32</sup> that his client had 'turned back' equestrians who did not have 'express permission'. Including one named rider in 2002 and another in 2006. There is no evidence of pedestrians being challenged (C-D being not currently recorded as a PROW on the Definitive Map). No further information was provided about these alleged challenges and the evidence of challenge is insufficient for to show that that any landowner did not intend to dedicate.
- 2.57. Section 31(3) of the Highway Act 1980 provides that

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<sup>32</sup> Email of 9 April 2016 in emails at item 2 in Appendix G.

“Where the owner of the land over which any such way as aforesaid passes—

(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.”

2.58. There is no evidence of signs or notices inconsistent with the dedication of a way as a highway having being erected on route A-D until after the date of making of application 1.<sup>33</sup> Signs reading ‘No horses’, ‘no cycling’ and ‘public footpath only’ or similar wording, *may* have been supplied by the Council to the owners of Wood Nook House in 2010 but do not appear to have been installed. No users mentioned the presence of such signs or notices.

2.59. A sign near the gate at C2 reading PUBLIC FOOTPATH ONLY NO HORSES NO CYCLES”– was observed in 2020. The sign was not in place when the route was visited on 25 November 2015. An identically worded sign was installed on the new gate at point A1 at some point in 2016.

#### **Deposits under Section 31(6) Highways Act 1980.**

2.60. Section 31(6) of the Highways Act 1980 provides further means by which an owner of land may demonstrate a lack of intention to dedicate additional ways as highways. An owner of land may deposit with the Council a map of the land and a statement indicating what ways (if any) any they admit have been dedicated as highways. The deposit of map and statement must be followed within a certain number of years<sup>34</sup> by the lodging of a declaration made by them or their successor in title to the effect that no additional way over the land delineated on the map has been dedicated as a highway since the date of the last deposit or declaration. In the absence of proof of a contrary intention, that would be sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

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<sup>33</sup> The agent has asserted that a sign reading “No access for horses or bikes without permission from the farm manager” was in place on the corner of a building a Manor Farm in 1977, i.e. at the west end of Route 2. No further information was provided. If in place as claimed, it is not known for how long such a notice was maintained, and there is no indication it survived into the later relevant 20-year period ending in 2015. From the position described, it would not be visible to persons using Meltham 70 and it is unlikely that they would understand a sign or notice so positioned or worded to relate to equestrian or cycle use of Meltham 70. Further, no person who indicated use of a route near Manor Farm mentioned seeing such a sign.

<sup>34</sup> Currently 20 years, but previous 6, then 10. The number of years depends on the date of the original deposit, or any previous declaration lodged.

- 2.61. No owners of land crossed by Route 1 or the other routes identified have deposited a map and statement or made a declaration under s31(6) Highways Act 1980.
- 2.62. The owners of Meltham Golf Club deposited such a map and statement in 2001. The land identified on the map includes land abutting the west side of Meltham 70, between points A7 and A9. As the land crossed by the way is not within registered titles where it abuts the way, there is a rebuttable presumption that ownership of the sub soil extends to the centre line of the way. However, ownership to the centre of the way was not indicated on the deposited map itself. Further, the deposit of a map and statement was not followed within 6 years by a declaration to the effect that no additional public rights had been dedicated, so the initial deposit would have had no effect under s31(6), even if it had included land crossed by MEL/70.
- 2.63. In conclusion, there is insufficient evidence to demonstrate that, during the relevant 20-year period, any landowner did not intend to dedicate additional public rights of way. Although there is an assertion that some equestrians (but not pedestrians) were challenged in 2002 and 2006, the evidence is insufficient to demonstrate to the public at large that use was being challenged. There is little evidence to show that notices demonstrating a contrary intention were in place, and no relevant deposits under s31(6).

### **Conclusions regarding presumed dedication under s.31 Highways Act 1980**

- 2.64. There is ample evidence of equestrian use of the route between points A and D (Route 1), by the public, as of right, for a full period of 20 years to August 2015 when equestrian rights were brought into question, to raise a presumption that a public bridleway has been dedicated. This includes use of the full length of Meltham 70 between Wilshaw Road and Lower Cote, the part of Meltham 38 from Lower Cote to point C near Wood Nook House, and the currently unrecorded part from point C to point D at Wood Nook Lane. There is insufficient evidence that there was no intention to dedicate. The requirements of section 31 Highways Act 1980 are satisfied, and a public bridleway subsists.
- 2.65. There is also ample evidence of use by the public on foot of the same route, including use of a greater width of Meltham 70 and part of Meltham 38 than the approximately 1.2m currently recorded. Also, of pedestrian use of C-D. Leaving aside the evidence of equestrian use of the same route, the evidence of use on foot, over the 20-year period to August 2015 would be sufficient on its own to satisfy the requirement of section 31 Highways Act 1980 and raise a presumption of dedication of a public footpath. Notwithstanding that a 1.2m wide public footpath is currently recorded over A-C and some pedestrian use must have been 'by right' not 'as of right'. A public right of way on foot would be deemed to have been dedicated over the whole available width of route A-D (including over the width of the surfaced driveway near Wood Nook House).

2.66. The evidence is insufficient to show that any public rights of way subsist, or are reasonably alleged to subsist, over routes 2 and 3 near Manor Farm and Manor House.

### **Dedication under Common Law**

- 2.67. A public right of way may come into existence at common law through dedication by the landowner and acceptance by the public. There may be express dedication (rarely) or implied. Dedication may be inferred from public use, as of right, over an undefined period of time, or through overt acts on the part of the landowner that demonstrate an intention to dedicate. There is no presumption of dedication, and the burden of proof is on the person asserting there has been such dedication.
- 2.68. Under common law, a landowner must have capacity to dedicate a public right of way. There is evidence from deeds that there was a mortgage in place between December 1942 and December 1943 although not previously.<sup>35</sup> It is arguable that dedication may not have been possible during that period without the consent of the mortgagee. It is also known that more recently Manor Farm including the land between point A and point A6 has been leased, with a lease for 10 years from 2009 to 2019 having been registered. This may also be of relevance to the question of whether the holder of land had capacity to dedicate. However as there is strong evidence that shows a presumption of dedication under s31 Highways Act 1980, the case does not stand or fall on the question of capacity to dedicate under common law.
- 2.69. There is no evidence that that there was express dedication of a public footpath or bridleway. However, there is evidence of equestrian use of the route from A-D, commencing well before the relevant 20-year period considered under s31, from which dedication may be inferred. Some claimed public use goes back to at least the early 1950s. Aside from a possible challenge to equestrian use of Meltham 70 in the 1970s<sup>36</sup> and claims of limited challenges in 2002 and 2006 the evidence generally indicates tolerance of / and acquiescence to equestrian use of the whole of Route 1 prior to 2015 by the owners the land crossed by the majority of the route, albeit with some complaint in more recent years of the impact of equestrian use on the surface condition of part of the route.
- 2.70. Another owner of some of the land crossed by Route 1 has also indicated an awareness of equestrian use and appear to have acquiesced to that use.
- 2.71. It is also likely that there had been dedication of a footpath over the whole of route to Wood Nook Lane by 1952. It is quite possible that dedication took place beyond living memory. A failure to formally record a public footpath over

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<sup>35</sup> Reference to a mortgage is found in the abstract of title at item 13 in appendix I.

<sup>36</sup> There is limited evidence of a horse rider being challenged somewhere in the vicinity of Manor Farm in the 1970s, possibly on Meltham 70.

C-D on the Definitive Map (but include it in the statement) may have been an oversight. There is significant evidence of pedestrian use of C-D in more recent decades. It is likely that the owners of Wood Nook House would have been fully aware of use taking place throughout their period of ownership. Use of the route from points A-C would likely have been over a greater width than the 4ft or 1.2m currently recorded. Notwithstanding any pre-existing public rights, the evidence of use on foot is sufficient to raise an inference of dedication of public right of way on foot over the whole width between boundaries.

### **Application to Vary recorded particulars (Application 2)**

- 2.72. Application 2 is for an Order to vary the recorded particulars of footpath Meltham 70 to record “the restriction close to point A of a squeeze style 45cm wide next to a locked gate’. Point A is at / near the junction of Meltham 70 with Wilshaw Road. The officer report describes position as point A1. The claimed arrangement would consist of a gap on the west side of Meltham 70, partially blocked by a vertical metal pole, with a single wide gate to the east of the gap.
- 2.73. The application was accompanied by various numbered documents. Some of these relate to the application process, enforcement action, or to path Meltham 38 (subject of the separate bridleway claim) rather than containing evidence relating structures or limitations on Meltham 70 itself). The documents which are of evidential nature are included in Appendix I. This also includes a report (“document 6”) <sup>37</sup> prepared by the applicant’s lay advisor / agent. That report comments on various items of documentary evidence submitted and describes the situation found on the ground at points A and A1.
- 2.74. The relevant items of evidence submitted with the application are considered in turn below and officers have also taken into consideration all other available evidence.
- 2.75. Application 2 was submitted after the commencement of enforcement action against the Company in respect of unauthorised structures obstructing the public right of way. In response to that action solicitors acting for the Company had also submitted various evidence and made a number of assertions about structures on Meltham 70. The material has been analysed in detail.
- 2.76. The report prepared by the applicants lay advisor / agent is ‘Document 6’, at item 4 in appendix I. The specific evidential documents supplied are analysed below. A number of these items have already been considered in detail in the analysis of documentary evidence above.

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<sup>37</sup> The report is at item 4 in appendix I. The copy of the report supplied with application 2 was incomplete, However the Council had previously been supplied with a full copy.

## **Documents submitted with Application 2:**

### **Document 7: Extract from 1985 Definitive Map - from Council's GIS system (Item 5 in appendix I) <sup>38</sup>**

2.77. The current Definitive Map has no annotations to indicate any limitations on footpath Meltham 70. In contrast the map is annotated to show the existence of recorded limitations on other PROW in the area, such as stiles (S) wicket gates (WG) etc. The agent has asserted that the 1985 Definitive Map shows a gate at point A. This is incorrect.

### **Document 8: Extract from 1952 Definitive Map (I6)**

### **Document 9: 'Walking schedule' from survey under NPACA 1949 <sup>39</sup> (I7)**

### **Document 10: Extract from the Statement accompanying the first (1952) Definitive Map (I)**

2.78. The first Definitive Map and Statement and documents relating to its development are discussed in detail above. Footpath Meltham 70 had not been included on the draft map and was added at the further request of Meltham UDC. No structures were recorded as limitations. Had such structures existed there was opportunity for those to be recorded as limitations. That did not happen. It is possible that limitations did exist which were not described when a footpath was 'claimed'; however, on balance, the evidence does not support that.

### **Document 11: Letter dated 10 October 1985 (I9)**

2.79. This document is the first page of a letter describing the formal abandonment of a review of the Definitive Map and Statement following the introduction of different procedures for the making of DMMOs under the Wildlife and Countryside Act 1981 and the publication of a modified definitive map. The letter described the removal from the published review map of all 'contentious matters', i.e., those changes about which been objections had been submitted. and the publication of a modified definitive map and statement. There is no mention of Meltham 70. Additionally, officers are not aware of any representation / objection in relation to footpath Meltham 70. This continued to be shown as a footpath in the modified map and statement without recorded limitations.

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<sup>38</sup> A further extract from the same map was also supplied with the application, with FP Meltham 38 highlighted. ("Document 14" at item 12 in appendix I. See also extract from the Definitive map included in appendix B).

<sup>39</sup> The survey schedule supplied with the application related to modern footpath Meltham 38 and not Meltham 70 and is of no relevance regarding the question of limitations on Meltham 70.

**Document 12: Letter from Huddersfield Borough Engineer & Surveyor to Huddersfield CBC Town Clerk, dated 28 July 1965. (I10)**

2.80. This letter relates to the preparation of a draft map and statement by Huddersfield County Borough Council, for its area. This is of no relevance to development of the definitive map in Meltham Urban District. The West Riding County Council were responsible for the preparation Definitive Map covering Meltham.

**Document 13: West Yorkshire Metropolitan County Council memo dated 5 June 1974 (I11)**

2.81. This memorandum relates to the preparation of a Provisional Map for the former Huddersfield County Borough area and has no relevance to this case.

**Material submitted by solicitors for the Company**

2.82. Solicitors for the Company made submissions in February and April 2019 regarding gates and other structures on Meltham 70. These submissions included analysis of various documentary evidence as well as including a number of assertions regarding the evidence of four named witnesses who, it was claimed, had knowledge of Manor Farm and Meltham 70 over various periods between the 1940s and 2015. Letters from two of these witnesses were supplied but an address was provided for one witness only, and no other contact details provided. It has not been possible to investigate the witness evidence further. Some analysis of this evidence and the assertions made is included below.

2.83. The general thrust of the case presented is that the Council's predecessors erred in failing to record various limitations in the first Definitive Map and Statement, in particular a locked gate squeeze alongside, and that the 1985 DMS is also deficient in this regard.

2.84. The solicitors helpfully provided an abstract of title and a conveyance of 1956. These document the sale of Manor Farm and Wilshaw Farm to Meltham and Meltham Mills Co-operative Society Ltd. ("Co-op") on 31 December 1943, and the sale in 1956 by the Co-op of Manor Farm and other property to David Brown Estates Ltd. documents are included at items 13 and 14 in appendix I.

**Evidence of Witness A**

2.85. Reference was made in a letter of 4 Feb 2019 to the directors of the Company ("the Directors") having been in contact with a named witness ("Witness A") who had knowledge of the Wilshaw area between the mid-1930s and the mid-1950s. It was asserted that that the Directors had been advised by that witness that the concrete surface had been laid by the Co-op in 1947/48 and that "a farm gate was installed by the Co-op in 1948/1949 across the full width of the track in the same position as the [current] Gate ("Original Gate") "The description given was of a large farm gate starting from the left (west) side of

the track adjacent to the wall, with a smaller gate on the right hand (east side) of the track.

- 2.86. If accurate, this description indicates that the gates described would only have been in place for a short period prior to the relevant date of the first Definitive Map. Nor does the description match the arrangement of a gate with gap to left (west) side claimed as limitations in the application. No mention was made of On 1 April 2019 the solicitors supplied a copy of a letter sent by Witness A. This stated:

“...there was always a large gate and a smaller gate for pedestrians at the top of the lane off Wilshaw Road... and that there were “...two large gates spanning the lane about halfway down... to control the milk cows crossing the lane”

- 2.87. Witness A's letter did not state the exact positions of the large gate and smaller gate or make references to the installation of these gates in 1948/1949, as previously stated on behalf of the Directors. Although previously stated by the solicitors to be in the same place as the current gate, the April 2019 solicitors letter stated that “large gate and a smaller gate for pedestrians” was a reference to Witness A's recollection of the gate denoted by the black line (at point A) on the 1892 OS map.
- 2.88. It was also asserted by the solicitors that Witness A's recollection of ‘two large gates about halfway down the track to assist with cattle movement’ was a reference to the Original Gate installed around 1948/1949, referred to by the solicitors in a letter of 1 Feb 2019. However, the location described would be likely be near point A3 at the junction with the track towards Manor Farm, and not at point A or A1.
- 2.89. It is evident that Witness A was referring to gates in two locations, with one set at or near points A or A1 and additional gates in place at some time nearer point A3. However, there is doubt as to which gates were claimed to have been installed in 1948/49 and whether there were earlier gates at the same location. If the claim is that that there were originally a gate or gates at point A and, for sake of argument, dedication had been subject to the existence of those gates, the absence of gates for many decades means it is likely that there will have been dedication or re-dedication of public rights without that limitation.
- 2.90. On the other hand, if the gates stated to have been installed in 1948/9 were at or near point A1 although slightly pre-dating the relevant date of the first Definitive Map, it is entirely plausible that dedication of a public footpath had taken place prior long before 1948 and no limitations at A1 would be recordable. There is also little other evidence to show the continued existence of any gates at point A.

## **Evidence of Witness B**

- 2.91. The solicitors supplied a copy of a letter from a second named witness (“Witness B”) which included observations and recollections about structures on Meltham 70. No address was provided. In addition to the comments in the letter, the solicitors asserted that Witness B had had confirmed separately that he recalled that the ‘Original Gate’ was in the same position as the ‘New Gate’ in the 1950s, This is consistent with assertions made by the solicitors in February 2019 regarding Witness A’s recollection of the location of the ‘original gate’, being a large and small gate.
- 2.92. Witness B’s family had lived at Manor Farm between 1944 and 1949 (during the Co-op’s ownership) and they or their family continued to live in the Wilshaw area for several decades. However, the letter did not clearly describe gates at point A or A1, although the witness noted the current evidence for a gate positioned directly adjacent main road (point A) and suggested it had probably removed to allow easier access for delivery vehicles to Manor Farm. Witness B also speculated was also made about a possible ‘cattle grid’ (at point A1) but did not clearly describe personal knowledge of this feature.
- 2.93. Witness B also indicated that the present concrete surface was laid at the later date - when the farm was owned by David Brown Estates Ltd (who purchased Manor Farm from the Co-op in 1956) or a subsequent owner. This is not consistent with the solicitors claim in the letter of February 2019 that that Witness A had advised the Directors that the concrete was laid by the Co-op in 1947/8.
- 2.94. Witness B also described the management of dairy cattle and the positioning of gate” on the top side of the short lane from the farm to the lane in question”. This was similar to Witness A’s description of two large gates to control milk cows crossing the lane. However, neither witness clearly indicates when these gates were installed or in use, whether they were permanent structures or temporary in nature and only in use when stock were being moved. Other evidence does not support the existence of gates for that purpose in more recent decades.
- 2.95. Witness B also indicated that public use in the 1940s and 1950s had been on foot only.

## **Evidence of Witnesses C and D**

- 2.96. The solicitors also named two other witnesses (“Witness C” and “Witness D”). No statements were provided from these witnesses.
- 2.97. Witness C was stated to have lived at Manor Farm and that they believe that they “helped to install the Pole in its current position around 1965”. This is reference to the metal pole in the middle of the gap that is claimed to form the limitation of a squeeze stile. While there is clearly doubt as to the accuracy of the evidence provided by and assertions made by the solicitors, if Witness C’s

evidence is accurate, the pole would clearly be a later feature and not have been in place prior to dedication or prior to the relevant date of the first definitive map.

2.98. Witness D was stated to have worked at Manor Farm between 1980 and 2015. Various assertions were made about their recollection of structures at point A1, including a 'swing metal arm'. There was no reference to any gates at or near point A3 as had been suggested by Witness A and Witness B. As there is no suggestion Witness D had knowledge of structures prior to 1980 their evidence provides no support for the claim that limitations should be recorded. The evidence may have some relevance to Application 1; however, it should be noted that the existence of a swing barrier is not reflected in any other evidence, and there no suggestion that any gate or barrier was locked.<sup>40</sup>

### **Other claims made on behalf of the Company**

2.99. The solicitors also supplied a photograph of a gatepost at point A.<sup>41</sup> They also claimed that a locked gate was present (at A1) when their clients purchased their property. It was also claimed that the locked gate in that position was removed in 2002. These points may be of relevance to the bridleway application.

2.100. There were also a number of claims about the position and size of any gap that may have existed alongside a gate. The applicants lay advisor also presented detailed analysis of various features found on the ground, such as within the concrete surfacing, suggesting the presence historically of various posts etc. As these features all post-date the dedication of public rights, this material is likely to be little relevance.

### **Informal consultation regarding application 2**

2.101. An informal evidence-gathering exercise was carried out in November / December 2020. User groups, ward members, and other standard consultees were contacted. Notices were also placed on site seeking further information about gates or other structures. A copy of the notice is found in Appendix H. Various owners and occupiers of land were also contacted. Representations were received from 14 individuals, along with Meltham Town Council and the British Horse Society. The focus of this consultation was the application to vary the recorded particulars. However, the majority of those who responded commented on use of the way in general, including use with horses. This evidence is relevant to the question of status application 1 and is generally supportive of the claim to record a bridleway.

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<sup>40</sup> The 'T bar' found in the centre of the track at A1 - seen in photographs from 2015 - was locked in place but would not have prevented equestrian use.

<sup>41</sup> Item 15 in appendix I)

- 2.102. Frequent reference was made to the recent structures that have existed at point A1 since 2015. No support was provided for the claim that structures on Meltham 70 would have been in place prior to the relevant date of the first definitive map (29 September 1952). There is no suggestion of any other structures that would have prevented equestrian use. Some people stated there had been no structures. One response did state that “Over the years, particularly when the land was used for dairy cattle, temporary barriers were in place here and there to facilitate the safe movement of the cattle” but also indicated there had been no permanent structure that had blocked most of the width of the track.
- 2.103. Meltham Town Council stated they had no evidence regarding gates / stiles.
- 2.104. Overall, the exercise revealed further evidence of equestrian use of Route 1 with respondents asserting that equestrian use had not been prevented by structures until recently, and provided no evidence to support the applicants claim that there are unrecorded limitations on Meltham 70

### **Conclusions regarding the evidence submitted for and on behalf of the applicant for application 2 and the Company**

- 2.105. In summary, officers do not find the claims and findings presented by the lay advisor and the solicitors persuasive. It is not disputed that structures have been installed in the vicinity of point A1 at various times. However, the evidence for gates and / or a gap at point A1, including the limited witness evidence relied upon, is inconsistent and contradictory. Further there is little evidence for gates having been in place for any great period prior to the relevant date of the Definitive Map (September 1952) and it is plausible that a public right of way may have come into existence many decades earlier.<sup>42</sup> There is also no evidence of any earlier gate having been locked, and the evidence does not suggest a gap or stile having existed in the location suggested prior to the 1950s or 1960s.
- 2.106. Whilst it is possible that there were extant limitations in 1952 that went unrecorded, there is very little positive evidence to suggest that was the case, or that any structures that might have been present would be recordable as limitations on any public right of way. There is also only very limited evidence of gates having existed at point A (a solid line on various OS maps and a single remaining gatepost). It appears any such gate would have been removed long prior to the 1950s and its continued absence would suggest that even if once

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<sup>42</sup> The date of dedication of a public footpath over Meltham 70 is uncertain. The solicitors for the Company stated that their client’s position on “... the date when it is said or deemed to have been dedicated for public use is entirely reserved”. However, it logically follows that a public right of way must have come into existence prior to the Relevant Date of the first Definitive Map (29 September 1952) and may be as early as the 1870s. Apart from a brief period in 1942-43 when a mortgage was in place, there is no suggestion that any landowner lacked capacity to dedicate a public right of way.

recordable as a limitation, there would by now have been re-dedication of a public right of way absent of any such limitation.

- 2.107. It has not been demonstrated that, on balance, there are unrecorded limitations. The application to vary the recorded particulars for Meltham 70 to add a locked gate and a squeeze stile is not supported by the evidence.
- 2.108. An assertion that a locked gate was in place in 1977 is of some relevance to the separate bridleway application and has been considered above when assessing the evidence for Application 1.

### **Overall conclusions**

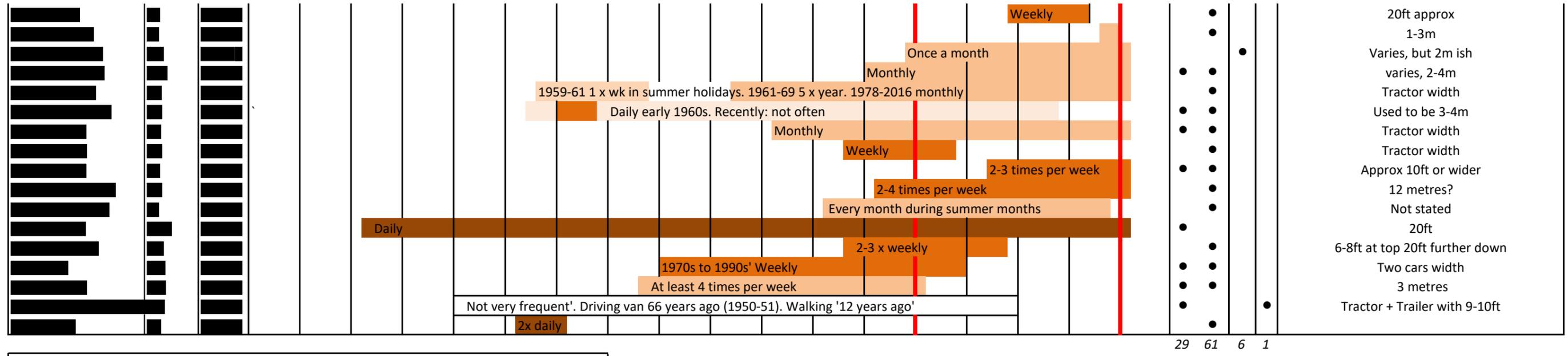
- 2.109. The application to modify the Definitive Map and Statement to record a bridleway was principally supported by evidence of use by equestrians of the whole of Route 1 from Wilshaw Road to Wood Nook Lane.
- 2.110. There is ample evidence of equestrian use of the route between points A-D, by the public, as of right, for a full period of 20 years to August 2015 when equestrian rights were brought into question in 2015 for the purposes of s31 Highways Act 1980. The evidence is sufficient to raise a presumption that a public bridleway subsists. This includes use of the full length of Meltham 70 between Wilshaw Road and Lower Cote, the part of Meltham 38 from Lower Cote to point C near Wood Nook House, and the currently unrecorded part from point C to point D at Wood Nook Lane. The evidence was insufficient to show any public right of way are reasonably alleged to exist over any other routes.
- 2.111. There is also ample evidence of use by the public on foot of the same route, including use of a greater width of Meltham 70 part of Meltham 38 than the approximately 1.2m currently recorded.
- 2.112. The evidence of use over the 20 year period to August 2015 is sufficient to satisfy the requirement of section 31 Highways Act 1980 and there insufficient evidence that there was no intention to dedicate. A claim that there was a locked gate at point A1 on Meltham 70 within the relevant 20 year period are not substantiated by other evidence and claims of challenges to use, granting of permission and other interruption is not supported by the evidence as a whole. A public right of way on foot is deemed to have been dedicated over the whole available width of route A-D (including over the width of the surfaced driveway near Wood Nook House).
- 2.113. The evidence would also be sufficient to show dedication of a public bridleway under common law.
- 2.114. Although a considerable quantity of documentary evidence has been considered, much of which is helpful in understanding the origins and history of the route, the evidence as a whole does not support the case that the route was historically a public bridleway. Various maps and other documents suggest the existence by the late 18<sup>th</sup> century of an occupation road between points C and

D, with an enclosed track having been constructed towards Wilshaw Road in the 1870s. But there is no evidence this was a public bridleway, although public footpath will have come into existence by 1952.

- 2.115. Analysis of documents relation to the development of the definitive map and its later review provide little support for the case to record a bridleway, although they do suggest an under recorded width for the recorded a public footpath.
- 2.116. Application 2 to vary the recorded particulars for Meltham 70 to include as limitations a locked gate and squeeze stile 45cm wide is based principally on the notion that such structures already existed when a public right of way was dedicated , or at least at the relevant date of the first Definitive Map and Statement (September 1952). However, most of the documents submitted in support of this position are of little or no relevance. Various statement and letters submitted describing the existence of structures at various times are inconsistent and contradictory not persuasive.
- 2.117. It has not been demonstrated that on balance, there are unrecorded limitations. The application to vary the recorded particulars for Meltham 70 to add a locked gate and squeeze stile is not supported by the evidence.



Summary of periods, frequency and types of use



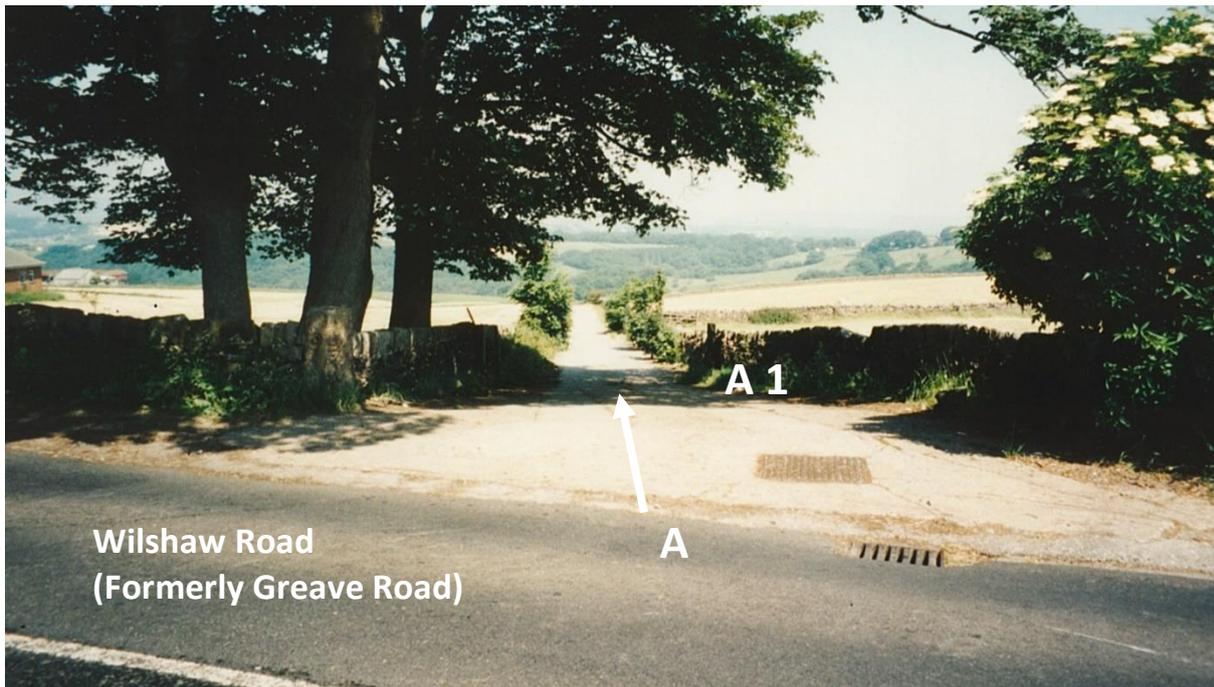
**KEY**

	Witness used the path on a daily basis
	Witness used the daily to weekly
	Witness used the path weekly to monthly
	Witness used the path less monthly to annually
	Witness used path less than once per year
	Frequency of use unclear or not stated

Mode of use

F = Foot  
H = Horse  
B = Bicycle  
V = Vehicle

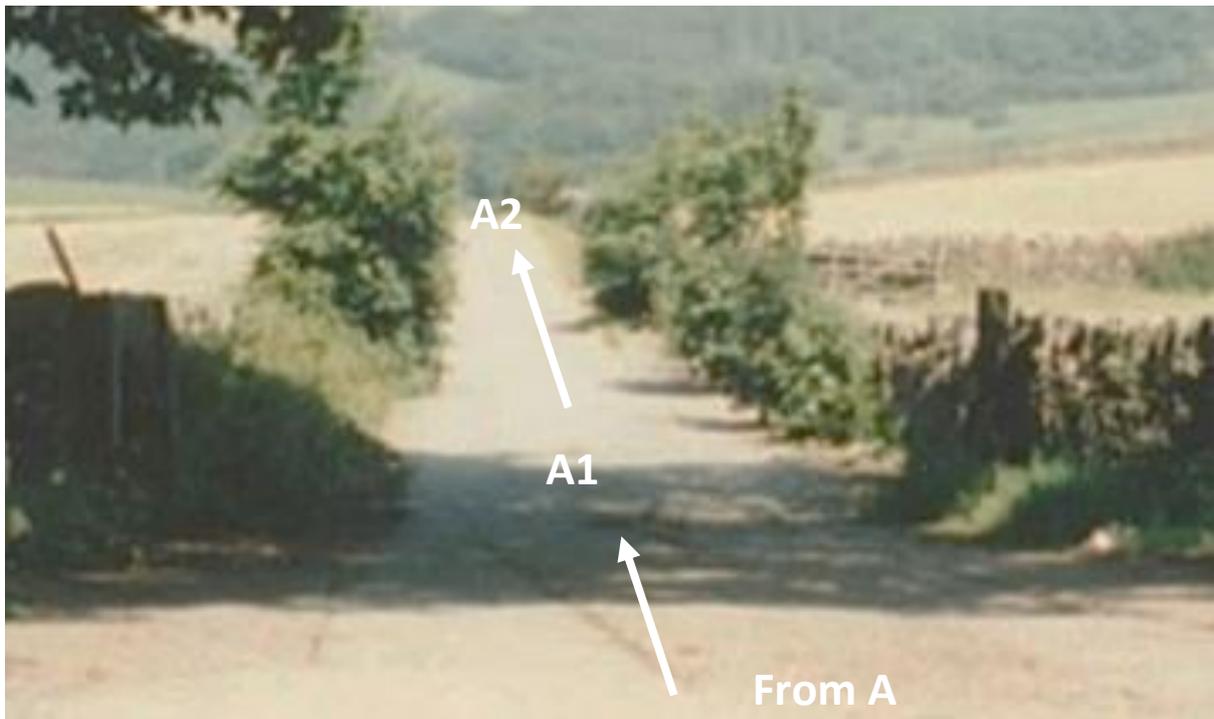
**B2 Photographs of route from Wilshaw Road (Point A) to Wood Nook Lane (point D) via Meltham 70 and Meltham 38 (part). ("Route 1").**



1. Meltham 70 at point A at junction with Wilshaw Road (formerly Greave Road). Photo also shows wooden gateposts and metal pole at point A1. See enlargement at photo 3. Taken by Kirklees Council staff in 1994 or 1995.



2. Stone gatepost on west side of track at point A. 25 Nov 2015.



3. Enlargement of part of photo 1 showing gateposts and vertical pole but no gates in place across the track. There is suggestion in the photograph of what may be the remains of a gate positioned against the wall on the right, however the resolution is insufficient to be certain. Photo taken by Kirklees Council staff in 1994 or 1995.



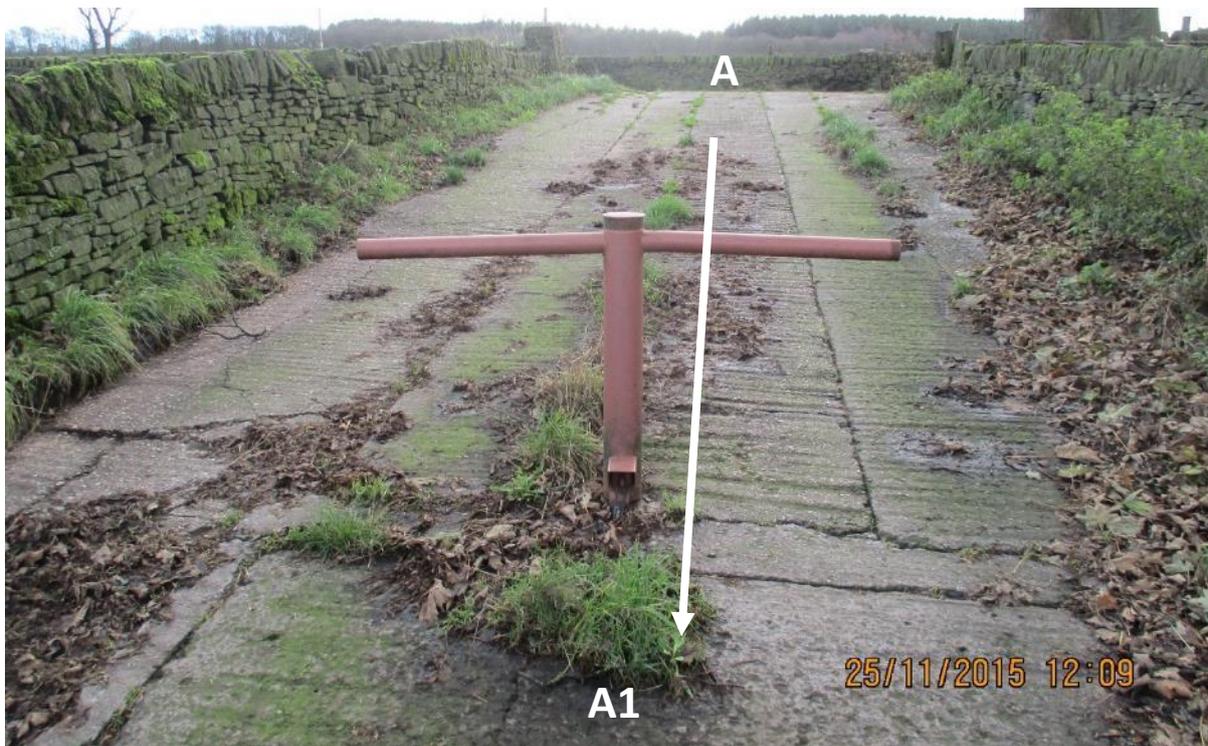
4. Stone pillar on east side of Meltham 70 at junction with Wilshaw Road at point A. 25 Nov 2015.



5. Remains of dilapidated metal gates in the corner of a field adjacent to point A. These include a single metal gate with a lock and chain still attached, tied to the remain of part of a second gate. 24 Nov 2020.



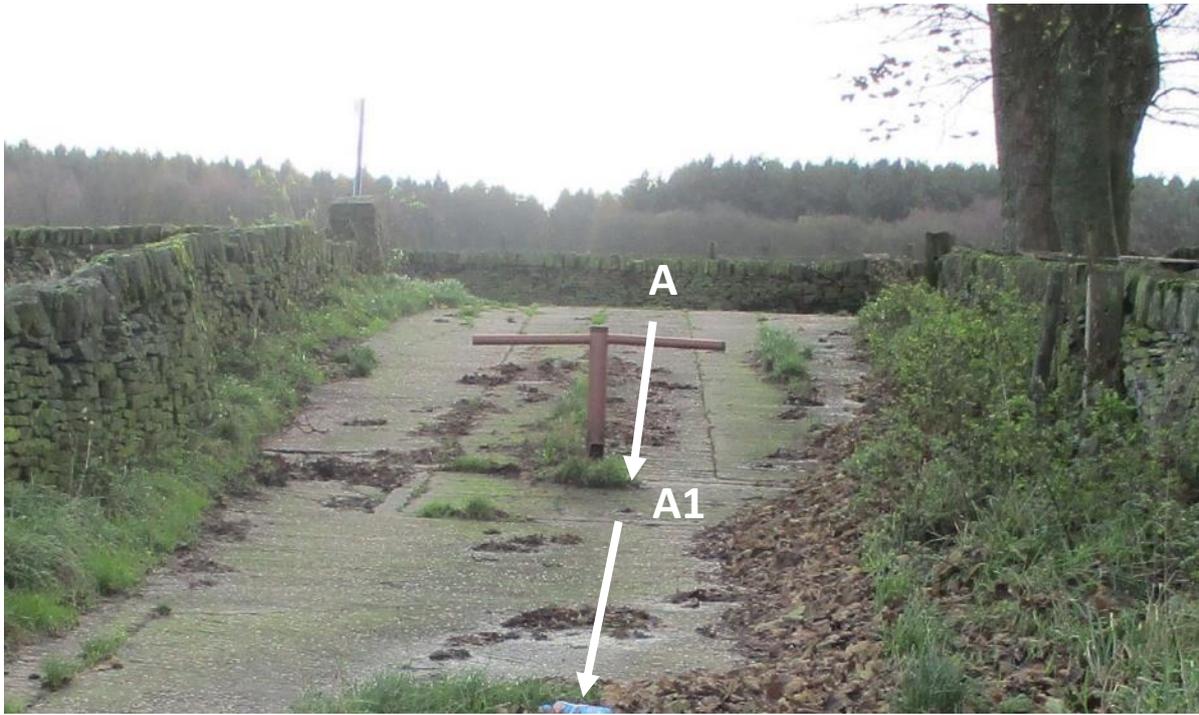
6. Close up of dilapidated gates in field near point A, showing lock and chain. 24 Nov 2020.



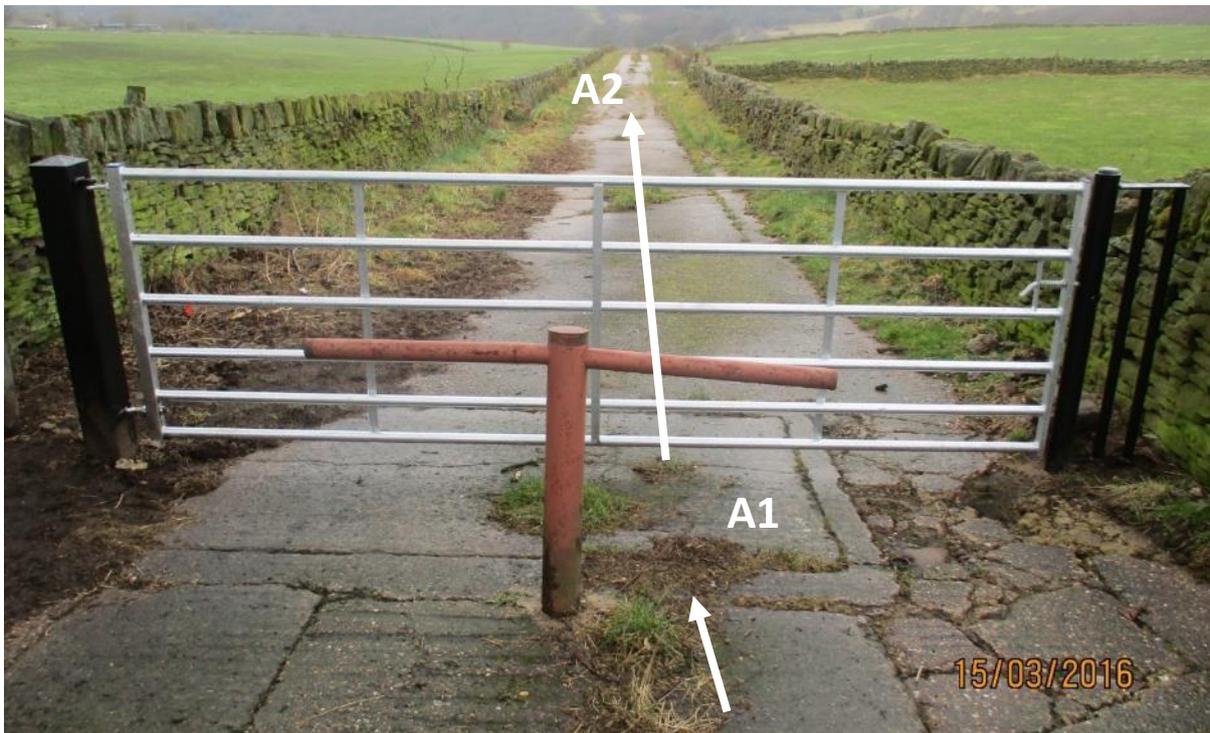
7. Metal T bar near point A1. Secured by a lock. Note the concrete 'frame' with gap to the east side. 25 Nov 2015.



8. Wooden gatepost and metal pole on west side of Meltham 70 at point A1. 25 Nov 2015.



9. View back towards A1 and A1. Shows various features at A1: Metal T bar, vertical pole, wooden gatepost to west side of track. Concrete frame, with gap to east side. 25 Nov 2015.



10. New metal gate, gateposts and other structures at point A1. The gate was not locked when inspected. 15 Mar 2016.



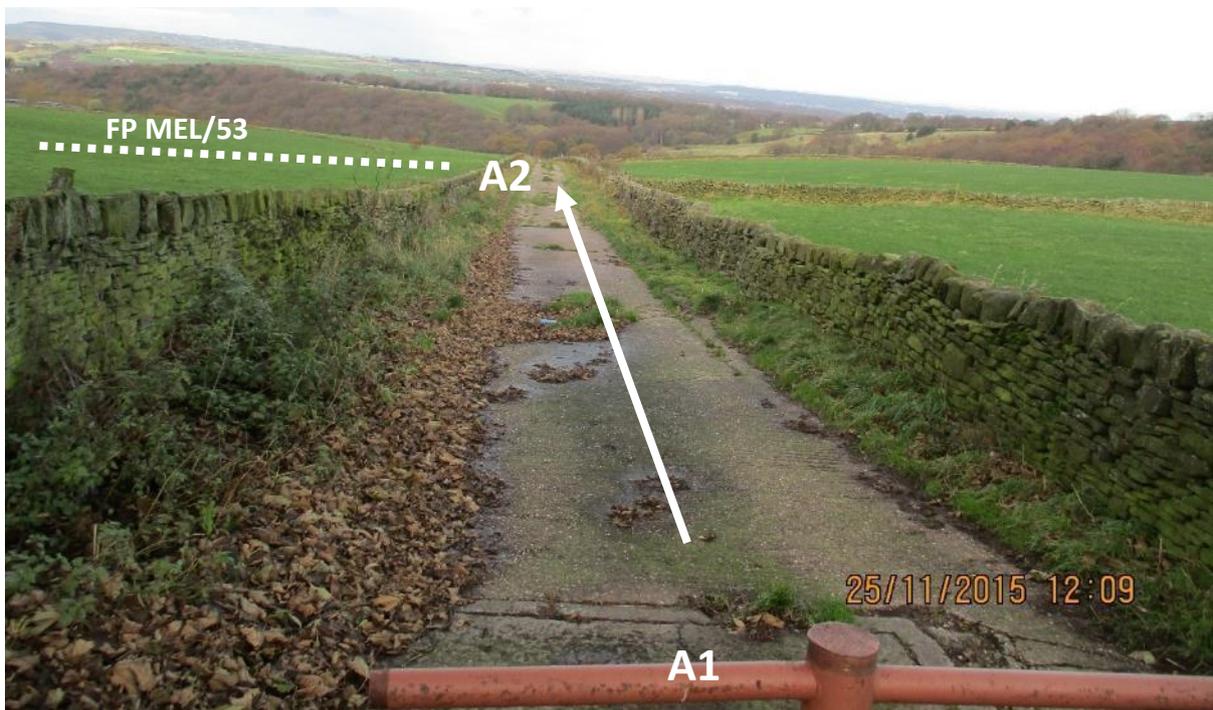
11. New gatepost and older vertical pole on west side of Meltham 70 at point A1. 15 Mar 2016.



12. Padlock and chain on new gate at A1. 23 May 2016.



13. Locked gate, vertical pole and sign at point A1. The recently added sign reads 'PUBLIC FOOTPATH ONLY NO HORSES NO CYCLES'. 23 May 2016.



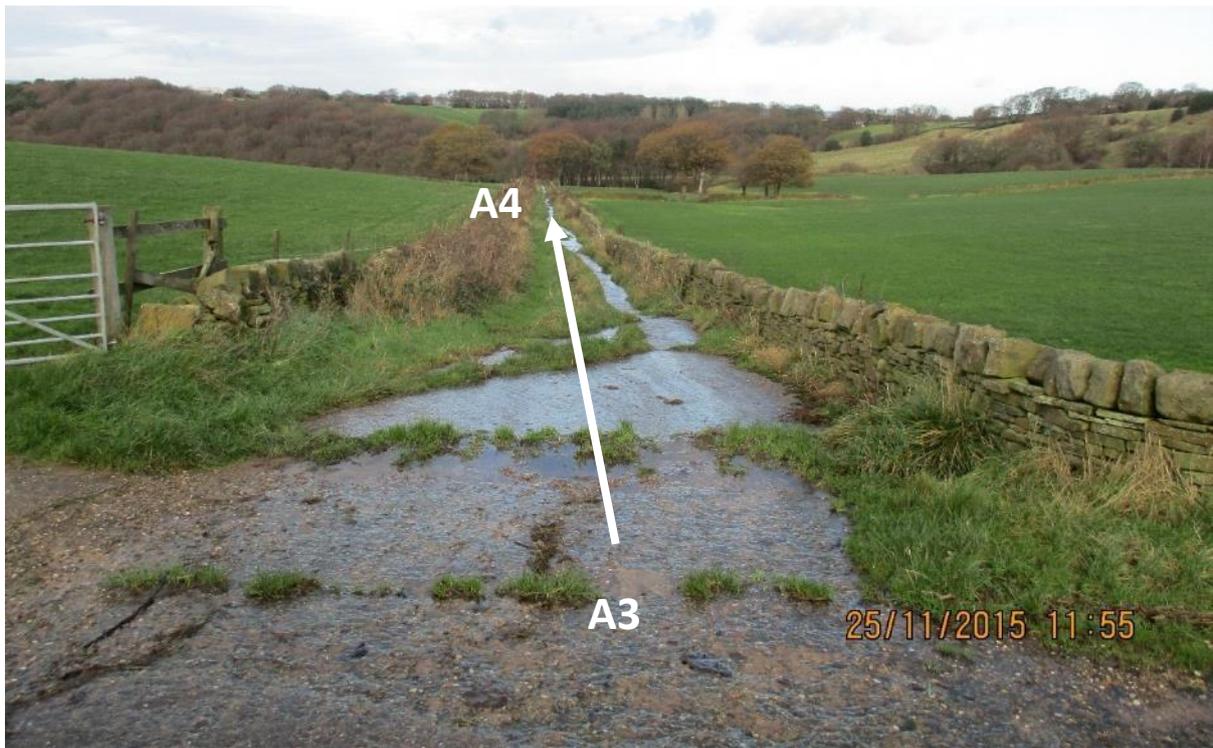
14. View north along Meltham 70 from point A1 towards A2, prior to installation of new gate at A1 early in 2016. 25 Nov 2015.



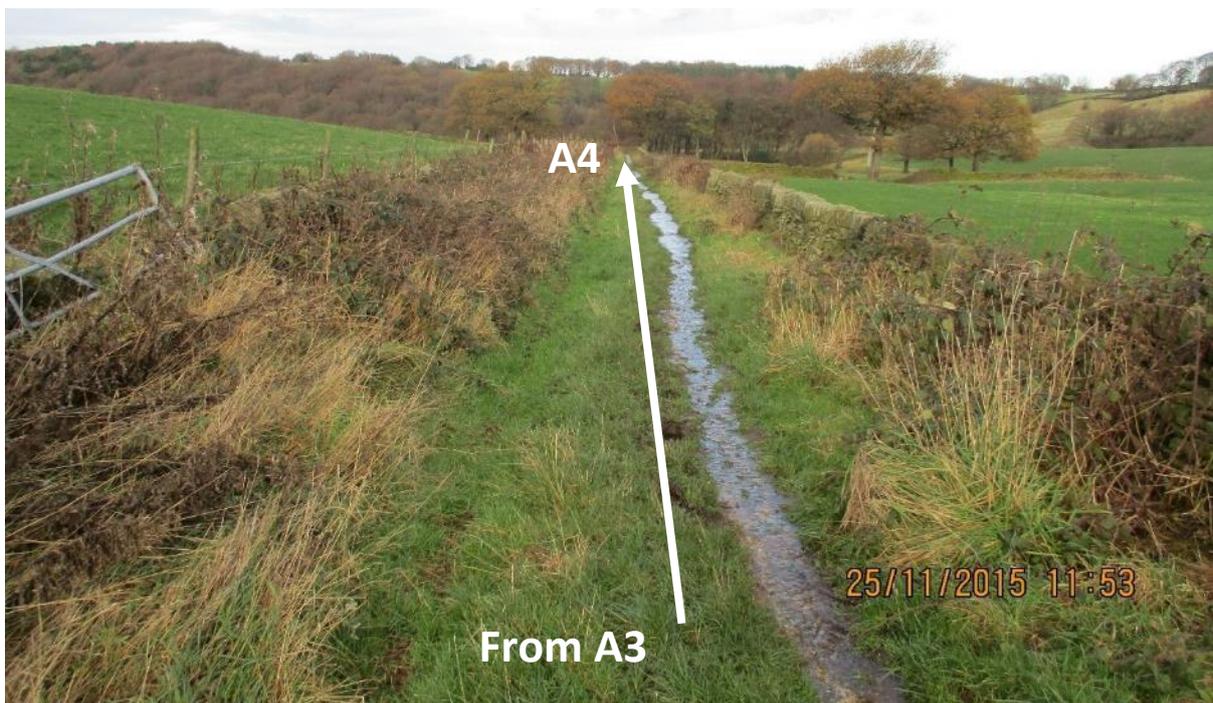
15. Meltham 70 at point A3, at junction with track towards Manor Farm. Looking south towards A. 25 Nov 2015.



16. View north along Meltham 70 from just south of point A3 (junction with track to Manor Farm). The concrete surface continues for some distance south of the camera position over part of the width of the track to a field gateway at point A5. 25 Nov 2015.



17. Point A3, looking north along Meltham 70 in direction of point B. 25 Nov 2015.



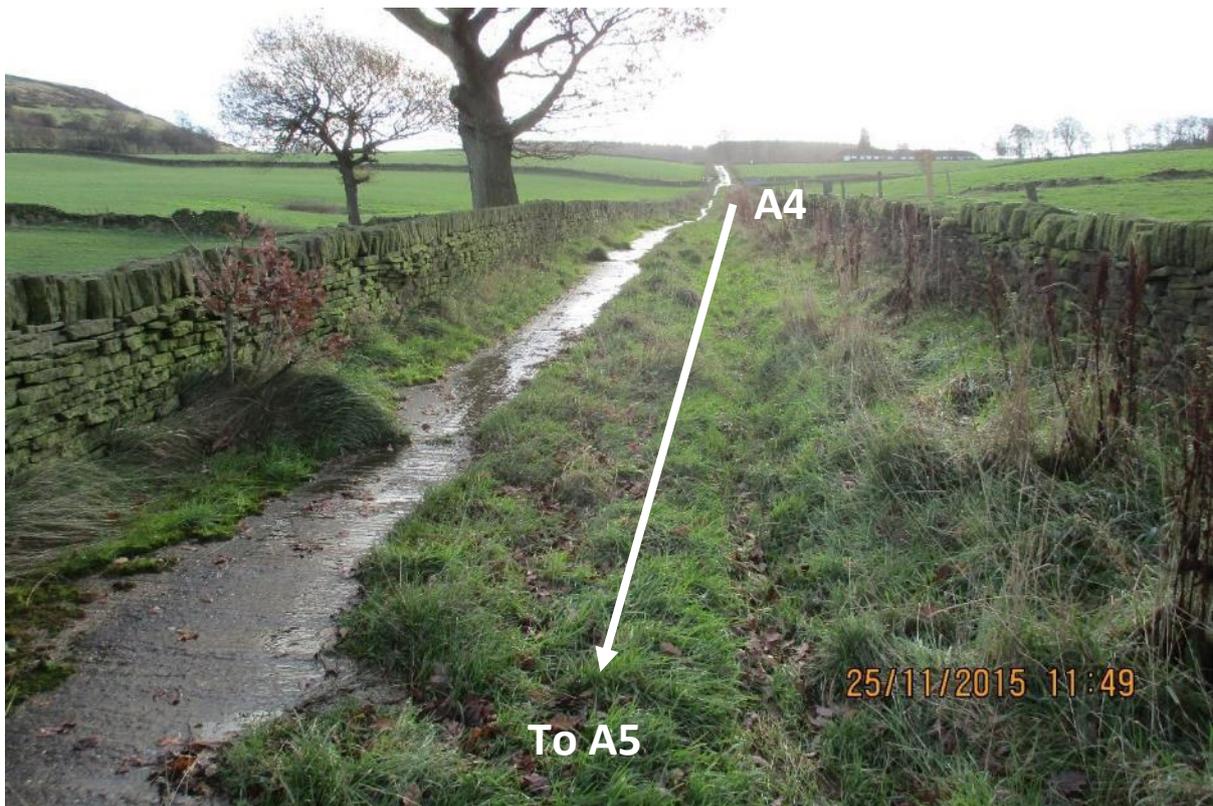
18. Meltham 70 north of point A3, looking towards A4 (where Meltham 70 is crossed by field footpath Meltham 40). The surface here is largely grass and concrete. 25 Nov 2015.



19. Meltham 70 south of point A4. The concrete surface appears only to cover part of the width, with a stone and grass surface alongside. Taken by Kirklees Council staff 1994 or 1995.



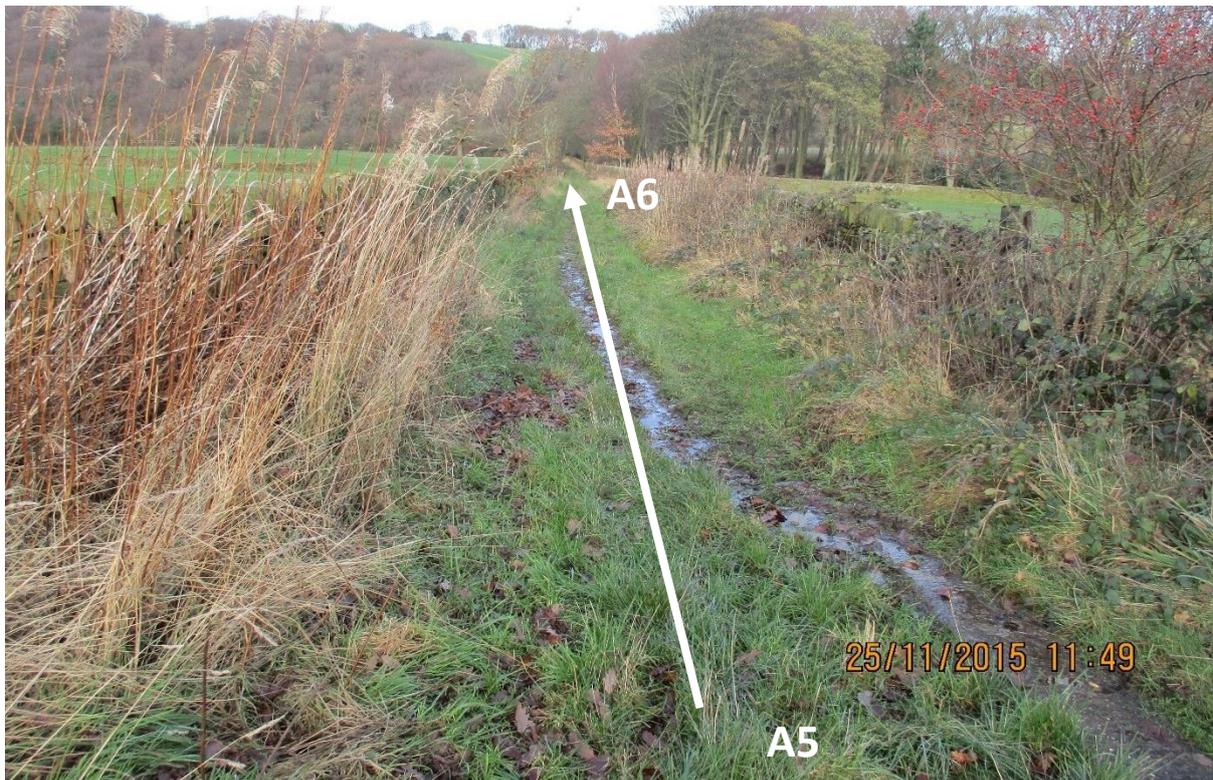
20. Meltham 70 looking north from its junction with FP Meltham 40 at point A4. 14 Oct 2016.



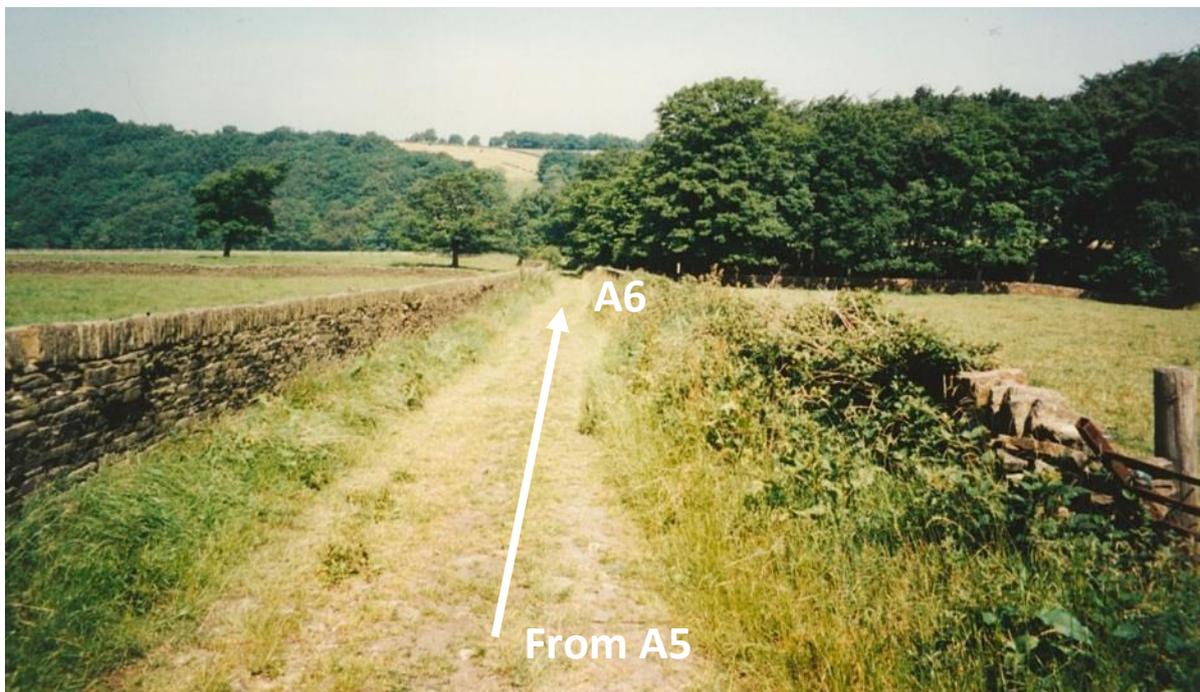
21. View south along Meltham 70 from near point A5. The concrete surface stops in the vicinity of a disused field gateway just behind the camera position. 25 Nov 2015.



22. Meltham 70 between point A4 and A5. 25 Feb 2006.



23. Meltham 70 near point A5 looking towards A6. Looking south. The concrete surface ends at around this point, near a former field gateway on the right. 25 Nov 2015.



24. View north along Meltham 70 from similar location to photo 19 above at point A5. The surface is stone and grass. Undated (c. late 1990s).



25. View north along Meltham 70 from vicinity of A6 towards A7. 17 Sep 2020.



26. Meltham 70 in vicinity of point A7, looking north. 25 Nov 2015.



27. Wooden post and rail barrier on one side of Meltham 70 at point A8. Beyond this point the track curves to the north east. 17 Sep 2020.



28. Meltham 70 between points A8 and A9. The track curves to the north east towards Bank Dike at point A9. The 'Private Land' sign relates to land on the opposite side of the wall (Meltham Golf Club). 17 Sep 2020.



29. Culvert carrying Bank Dike beneath Meltham 70 at point A9. This 'bridge' is referred to in various User Evidence Forms. Photo supplied by Applicant 1 in Jan 2016.



30. Meltham 70 north east from Bank Dike at point A9. The track curve to the north. 17 Sep 2020.



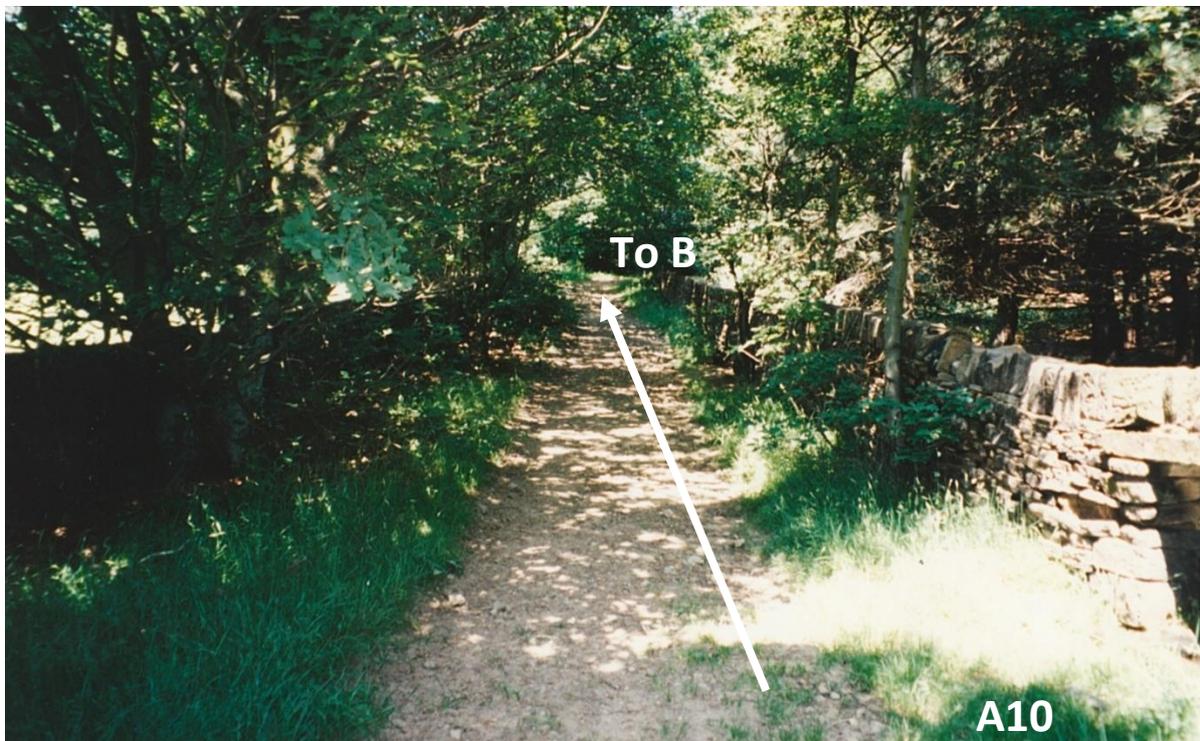
31. Looking back along Meltham 70 towards point A9. 25 Nov 2015.



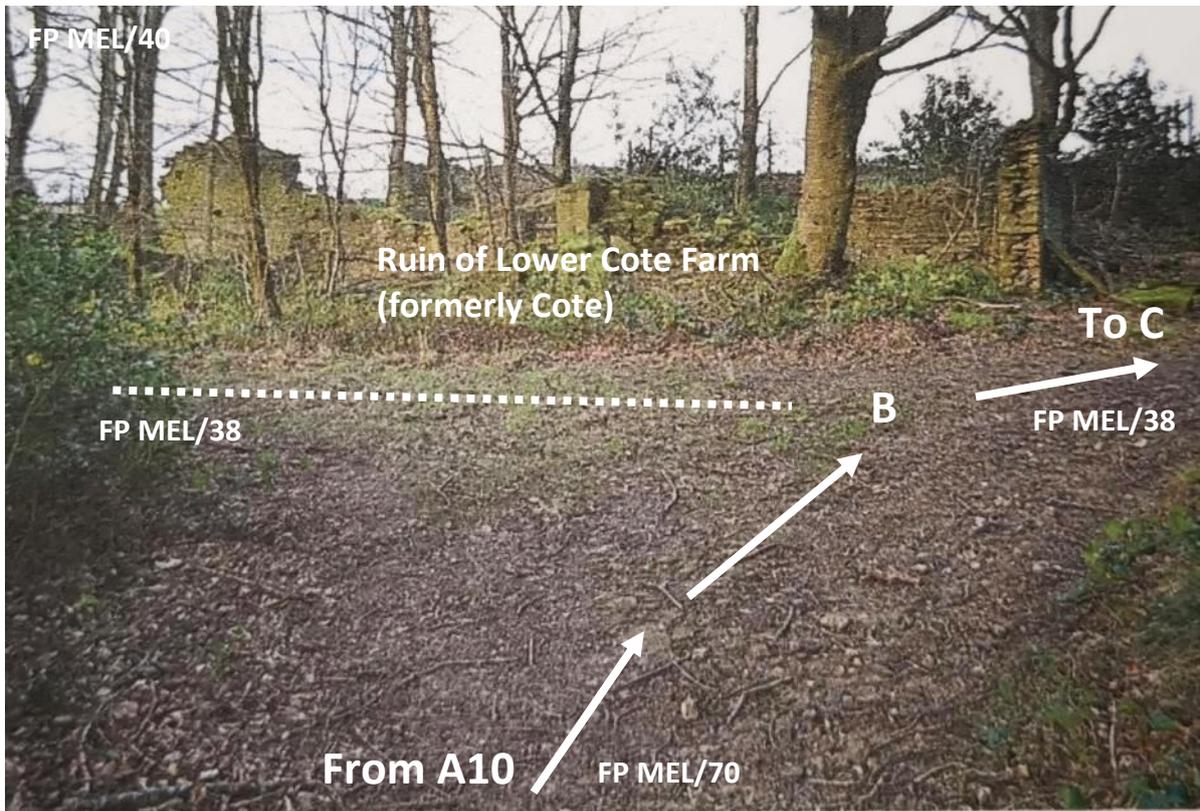
32. Meltham 70 between point A9 and spring / trough at point A10. 17 Sep 2020.



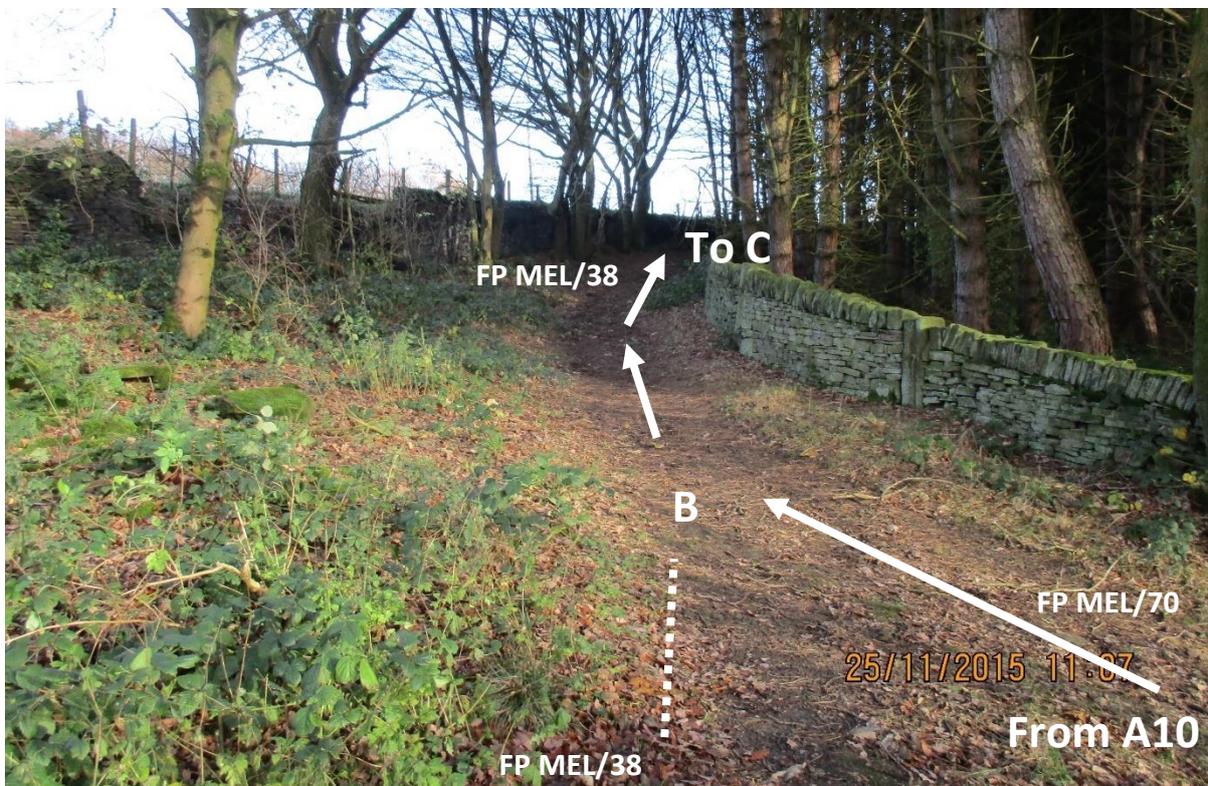
33. Spring-fed trough in wall adjacent to Meltham 70 at point A10. This is south of the remains of buildings at Lower Cote Farm. 25 Nov 2015.



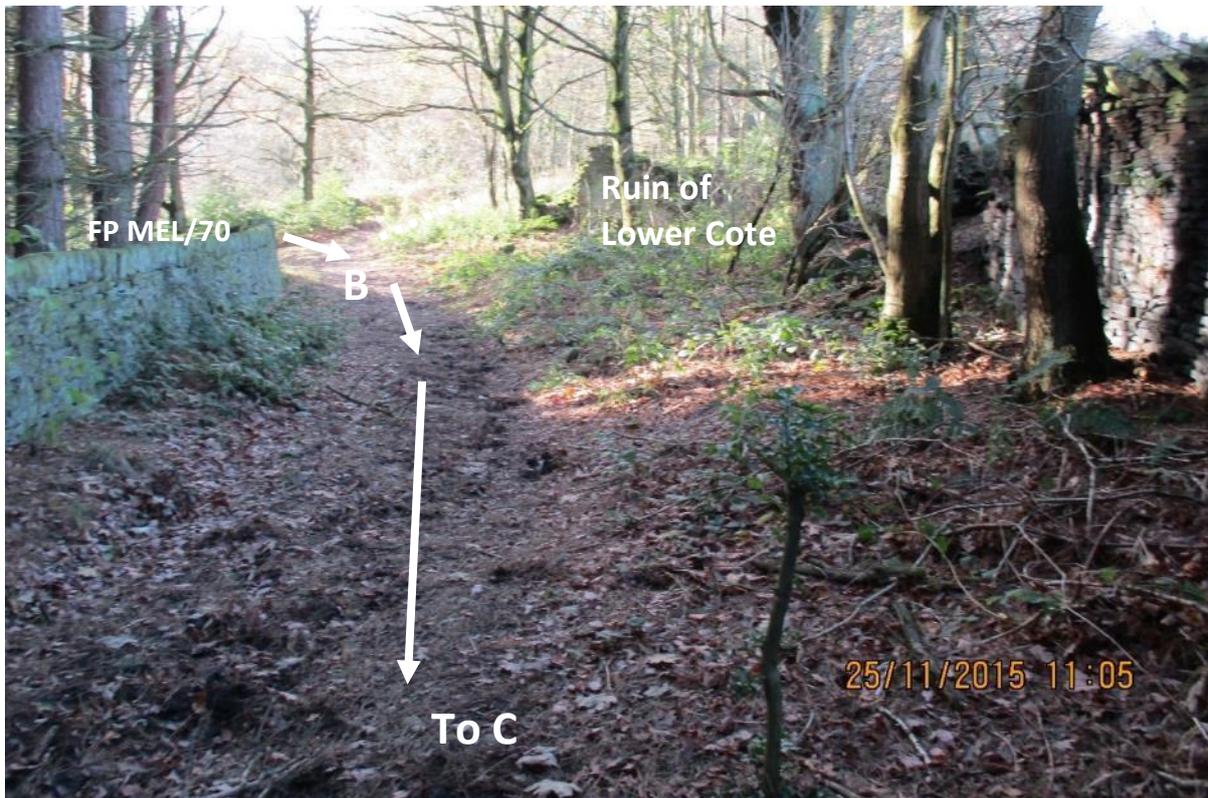
34. Meltham 70 looking north from near the trough point A10 towards point B. Undated (c. late 1990s).



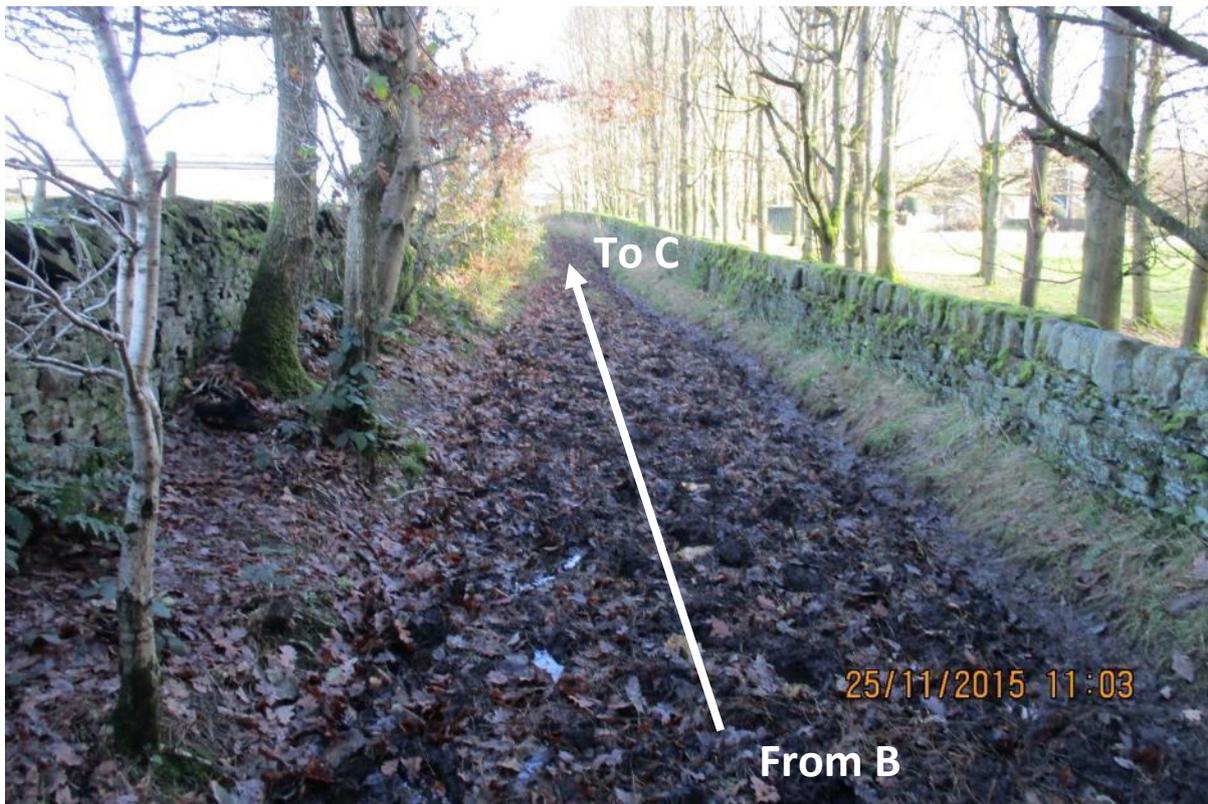
35. Junction of Meltham 70 and Meltham 38 near ruins of Lower Cote Farm (formerly Cote). Photograph supplied by applicant 1 in Jan 2016.



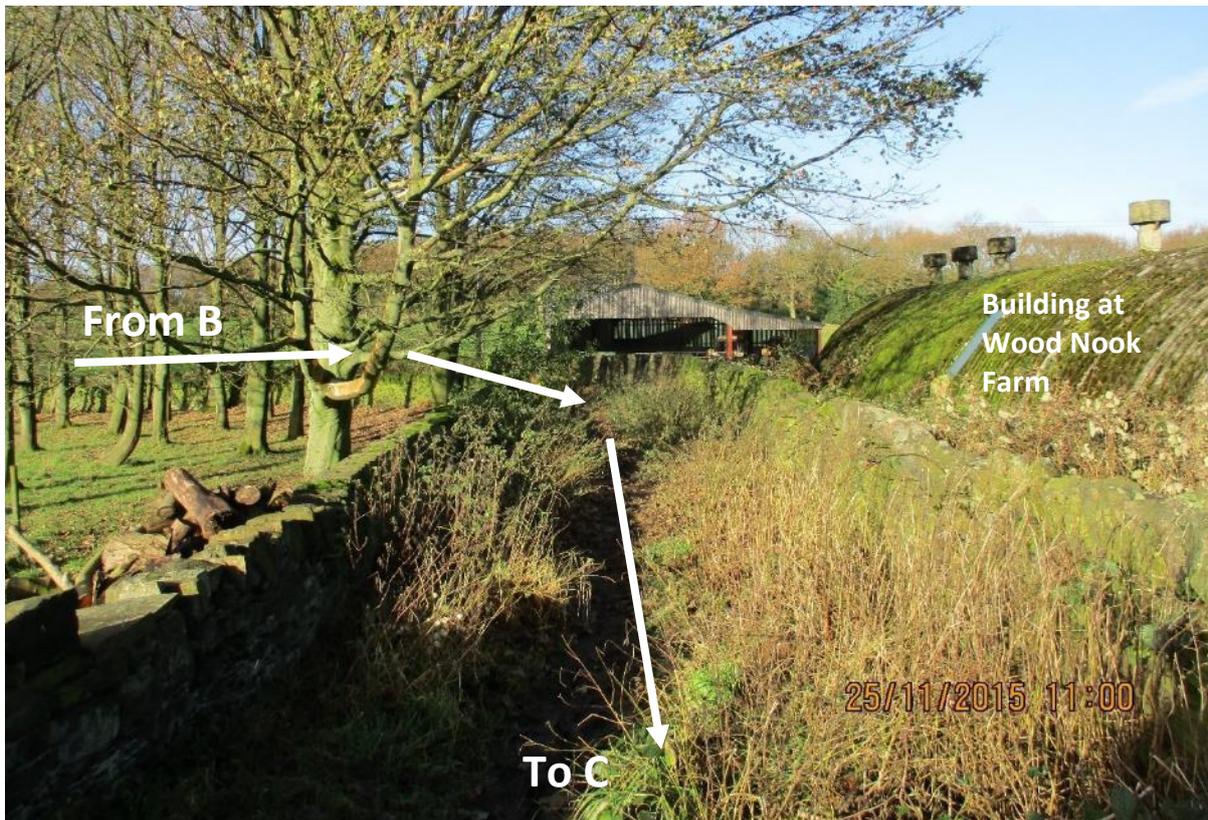
36. Meltham 38 east of junction with Meltham 70 at point B near ruins of Lower Cote Farm. 25 Nov 2015.



37. View back towards point B (junction with Meltham 70 at Lower Cote). 25 Nov 2015.



38. Meltham 38 between point B at Lower Cote and point C at Wood Nook. 25 Nov 2015.



39. View back along Meltham 38 from point C near Wood Nook House, in direction of point B.



40. Meltham 38 near point C at Wood Nook House. The wooden barriers / fences to either side of the track are approximately at the end of FP Meltham 38 as indicated on the Definitive Map. The accompanying Statement describes the route as terminating at Wood Nook Lane (point D). 17 Sep 2020.



41. Barriers / fences on Meltham 38 at / near point C. The route continues past Wood Nook House to Wood Nook Lane. 25 Nov 2015.



42. Barriers at Point C on Meltham 38 at Wood Nook House. 17 Sep 2020.



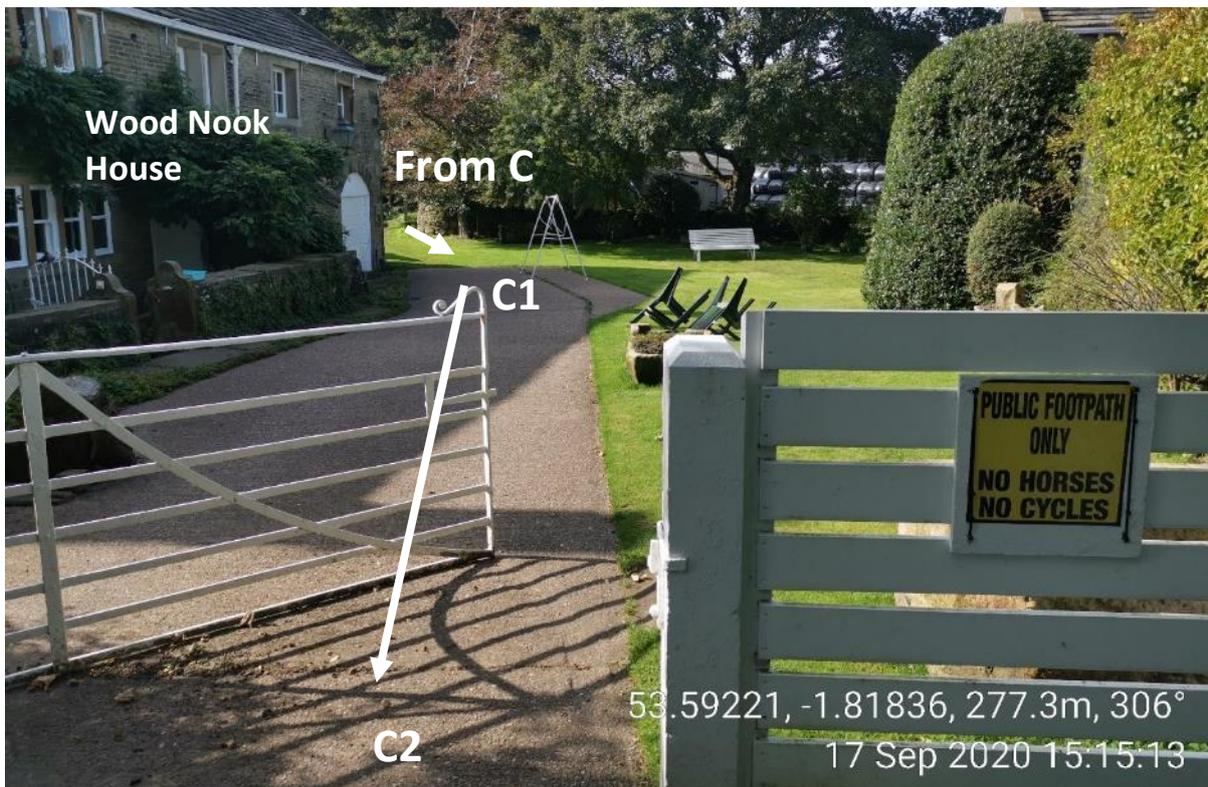
43. View from point C to C1 (where surface changes from grass to concrete) and gate at C2. Adjacent to Wood Nook. 17 Sep 2020.



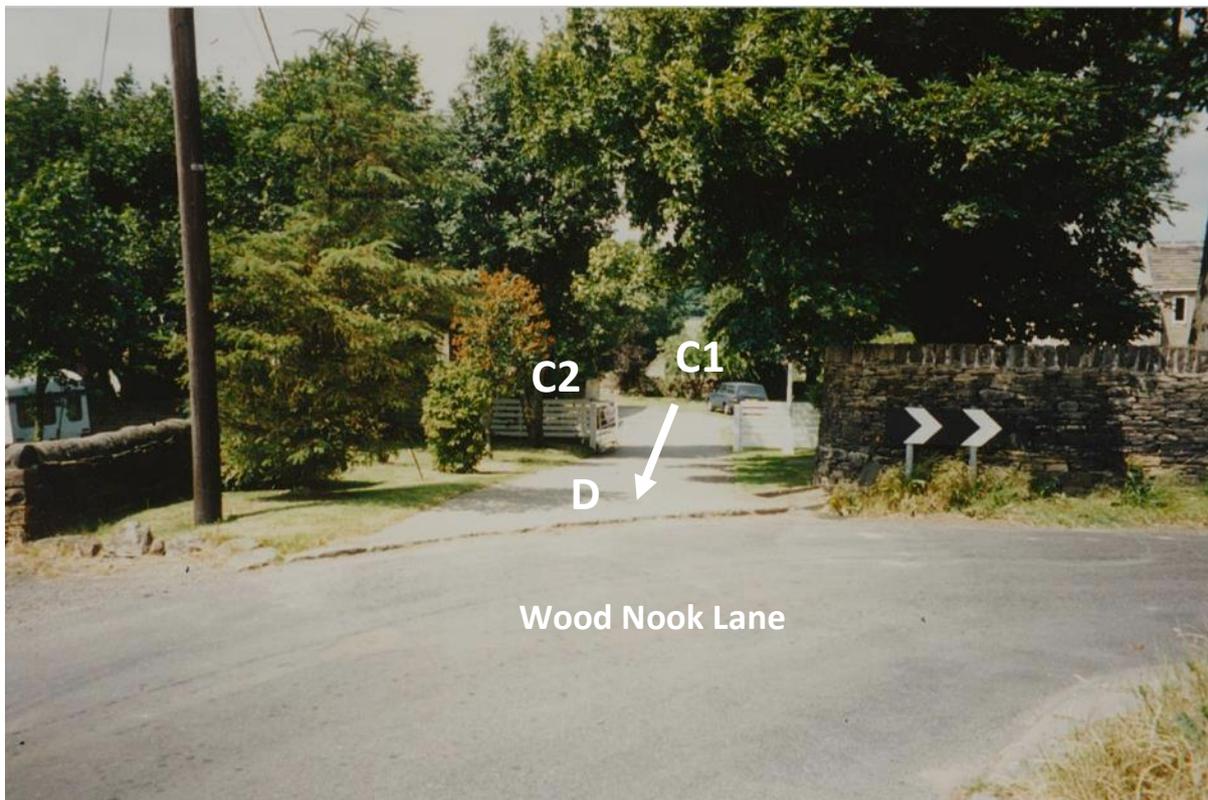
44. 'Mounting block' near point C1 at Wood Nook House. 25 Nov 2015.



45. Gate at point C2 near Wood Nook House. 17 Sep 2020.



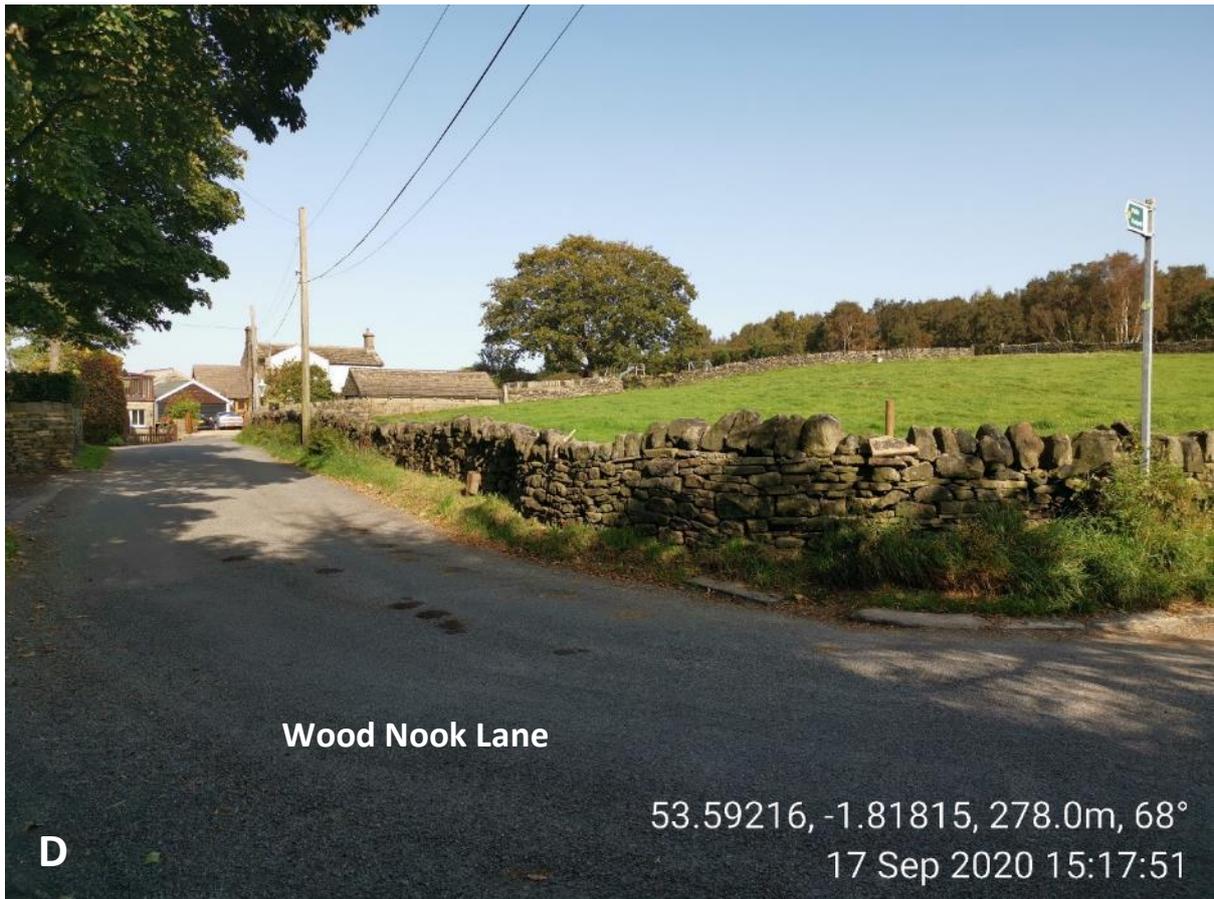
46. Gate at point C2 near Wood Nook House. Looking west towards point C1. The sign is of the same design to that installed at point A1 in 2016. 17 Sep 2020.



47. Point D at junction with Wood Nook Lane. Undated (c. mid- late 1990s).



48. Point D at junction with Wood Nook Lane. 25 Nov 2015.



49. 'Public Footpath' signpost on Wood Nook Lane opposite point D. 17 Sep 2020.