

Document: Appendix B

Title of Report: Officer Investigation Report

DMMO Reference: 207, Old Lane, Scapegoat Hill

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Executive Summary

Definitive Map Modification Order (DMMO) Application

1. On the 13 April 2018, an application ([DMMO S14207](#)) was submitted to Kirklees Council (the Council) under [s53\(5\) of the Wildlife and Countryside Act 1981](#) to modify [West Yorkshire County Council Definitive Map and Statement for the Kirklees Area](#) (DMS), as shown in **Figure 1** (1952 DMS) and **Figure 2** (1985 DMS) in **Appendix C**.
2. The application, as shown by the pink solid line (annotated AC for clarity) in **Figure 3**, seeks to record a public footpath between Old Lane to Taylor Lane via the burial ground at Scapegoat Hill. This route shall be known as route 1.
3. In addition, and on the discovery of evidence submitted with the application and other evidence, the Council has also investigated two other routes that branch off from the application route as a route to the High Street via steps (route 2, ABD), and also a route to the High Street via Vermont Close (route 3, ABEGF), as shown in **Figure 4**, as follows:
 - R1 (route 1) Old Lane to Taylor Lane via burial ground (ABC)
 - R2 (route 2) Old Lane to High Street via steps (ABD)
 - R3 (route 3) Old Lane to High Street via Vermont Close (ABEGF)
4. A public footpath is defined in [section 66 of the 1981 Act](#) as:

“... a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road”
5. The application was properly made in December 2018 under the requirements of [Schedule 14 of the Wildlife & Countryside Act 1981 \(the 1981 Act\)](#). The requisite certificate of service of notice was submitted in December 2018 confirming that notice of the application had been served on two landowners in relation to route 1.
6. The application was submitted in relation to [Planning application 2015/ 92476 for the erection of three detached dwellings on land at Old Lane /Taylor Lane,](#)

[Scapegoat Hill, Huddersfield, HD7](#) which was granted on appeal late in 2017 and when built may have prevented passage along ABE.

7. The submission gave as evidence twenty-two User Evidence Statement Forms (UEFs) from wholly or largely local people, several annotated historic Ordnance Survey (OS) maps (1906, 1932, 60s/70s?, 1994), an aerial photograph with a yellow post it dating it as 1962, an extract from a book about Scapegoat Hill Baptist Church about purchase of the burial ground, a Huddersfield Examiner newspaper article about volunteers maintaining the burial ground dated 16 March 2006, annotated HM Land Registry title documents, and a plan of the proposed new housing development relating to the planning application [Planning application 2015/ 92476](#) and associated applications.
8. Officers considered further evidence including Ordnance Survey (OS maps), aerial photos, officer photos, Kirklees Council (KC) records, and documents at West Yorkshire Archive Service including the 1910 Finance Act Plan and accompanying Valuation Books for Golcar, and other evidence submitted by the public, residents, users, and landowners.
9. A consultation was carried out in November 2022 on all three routes inviting any evidence from the public, Ward Members, the Parish Council, user groups, landowners, residents, and any occupiers.

Planning Inspectorate Direction

10. Following a representation by the applicant, the Council was directed on 12 August 2020 by the Planning Inspectorate, on behalf of the Secretary of State for Environment, Food, and Rural Affairs, (decision reference [FPS/Z4718/14D/17](#) pursuant to paragraph 3(2) of Schedule 14 of 1981 Act), to determine the Schedule 14 application (our reference DMMO S14207) no later than 1 October 2021.

Planning permission

11. The DMMO application appears to have been triggered at the time of the appeal of the refusal of planning permission in relation to a housing development on land at Old Lane/Taylor Lane, Scapegoat Hill, HD7 in the

summer of 2017. The appeal was upheld by the Planning Inspector and planning permission was granted in November 2017. Some of the landowners relating to route 1 mentioned the grant of planning permission for planning application (see [2015/92476](#) and [2018/92336](#)) for the erection of 3 detached dwellings inferring that since it has now been developed for housing, any public rights along route 1, were no longer present. However, in simple terms, planning permission or any subsequent development in itself does not extinguish or divert any recorded or indeed any 'unrecorded' public rights of way. A public right of way can only be extinguished or diverted by a legal Order. This is also the case when a development with planning permission is built.

12. In correspondence with the developer (landowner 1) dated 3/7/2020 at the time development works started on the site of this housing development, an Officer advised that *'Works you undertake to the alleged public rights of way would be at your risk and the grant of planning consent or subsequent development of the land would have no extinguishing effect on any unrecorded public rights that may subsist.'*

Landownership

13. This first part of route 1, ABE is now within the landholding of No.6 Old Lane (Landowner 1). The second part leading through Scapegoat Hill Baptist Church burial ground is owned by The Yorkshire Baptist Association (Landowner 2).
14. Previously route 1 was solely owned by The Yorkshire Baptist Association. According to [A Short History of the Baptist Church, Scapegoat Hill \(1921\) \(huddersfield.exposed\)](#) a plot of land for a burial ground in '1903 was secured by the Church' and was 'consecrated as the last resting place of the 'dear departed' (**Figure 5**)'. It's understood that a second plot of land adjacent which contains no graves to the north and west of the burial ground was purchased at a later date by the Church and sold in 2018 to Landowner 1. Two users have referred to the southern part of this area as 'Moss Side' and one user said it was used for allotments post war.
15. In 2015, Yorkshire Baptist Association and a developer submitted planning applications for the erection of dwellings on the 2nd plot adjacent to the burial

ground dated 4 August 2015. It was initially refused on 10 May 2017, appealed on 20 July 2017 and the appeal was upheld on 24 November 2017 by a Planning Inspector and included a road widening provision for Old Lane. See [Planning application 2015/62/92476/W, Yorkshire Baptist Association, Scapegoat Hill](#) and subsequent applications including [2018/92336](#).

16. Route 2 currently has two owners including No.33 High Street (Landowner 10) adjacent to the west, and No.6 Old Lane (Landowner 1), with majority of the route lying on unregistered land from the top of the steps to the High Street (BD) (**Figure 6**). In the absence of a registered owner, the unregistered land abutting a way may be considered to be owned [*ad medium filum*](#) (meaning to the mid-point) by the adjacent landowners. This presumption is rebuttable. The landowners adjacent to the unregistered land on route 2 are Nos.37, 39, 41, 33 and 27a, 27, 29a and 29 High Street. Around nine households may use route 2 for access to their dwellings. A single garage is located near point A (**Figure 4**).
17. Route 3 at EF (which branches off from route 1 ABE) has three owners, No.5 (Landowner 8) and No.6 Old Lane (Landowner 1) and No.2 Vermont Close (Landowner 7). There is also an unregistered stretch along the narrow-walled route to and just beyond the gate at No.2 Vermont Close at its eastern end (**Figure 6**). In the absence of a registered owner, the unregistered land abutting a way may be considered to be owned [*ad medium filum*](#) (meaning to the mid-point) by the adjacent landowners. This presumption is rebuttable. The landowners adjacent to the unregistered land on route 3 are Yorkshire Baptist Association (Landowner 2), No's 2, 3 and 4 Vermont Close and presently No. 6 Old Lane. About seven households may use Vermont Close for access to their dwellings from point F.

Character of application route 1

18. The application route commences at the junction with Old Lane between 12 Grandstand and 35 High Street (SE 0896 1636) nearest postcode HD7 4NJ (point A). The route leads east for approximately 88 metres to the top of the graveyard and then turns south for approximately 36 metres over a flight of steps and through an iron gate to the junction with Taylor Lane at point C (SE 0905 1635). The physical characteristics of the application route are shown in

the photos in **Figure 7**. The photos are largely dated 22 June 2017 and prior to the development of the site for housing.

19. The surface of the application route is described by users (prior to any housing development) as a grassy drystone walled lane with stone or concrete steps and flags through the burial ground. Users reported route 1 had a varying width of between 2 feet to 12 feet or 1m to 4m or car width.
20. Route 1 has an iron gate between the burial ground and Taylor Lane at point C, as shown at the bottom of the steps in **photo 12, Figure 7**.

Character of discovered route 2

21. Route 2 commences at the junction of Old Lane and at the same point as route 1, at point A (SE 0896 1636). The route leads east for approximately 14 metres to the bottom of a flight of relatively narrow stone steps (point B) where it continues north for approximately 68 meters to the junction of the High Street adjacent to and between 27a High Street and 37 High Street at point D (SE 0895 1643). The physical characteristics of the route 2 are shown in the photos in **Figure 8**, all dated 22 June 2017.
22. The surface of the route 2 was a grassy walled lane (as with route 1) leading to a steep flight of stone steps and continuing onto flags and tarmac. Route 2 has been measured on KCs Kompass mapping as of a varying width between 1.7m and 5m.

Character of discovered route 3

23. Route 3 commences at the junction of Old Lane and at the same point as route 1 and route 2 at point A (SE 0896 1636). The route leads east for approximately 56 metres (point E, **Figure 4**) and then continues north-east for approximately 130 metres to a gate (point G, **Figure 4**) where the route continues through the garden of No.2 Vermont Close and then continues along a private road through Vermont Close to the junction of the High Street adjacent to and between No.1 Vermont Close and No.6 Vermont Close at point F, **Figure 4** (SE 0911 1643). The physical characteristics of route 3 are shown in the photos in **Figure 9**, all dated 22 June 2017.

24. Route 3 commences as a grassy walled lane along the same line as route 1 at point A and then diverges just before the old stone gates at point E to continue along a narrow-walled lane to a gate at point G at the garden of No.2 Vermont Close. The route is grassed and paved through No.2 Vermont Close, then tarmacked along the access road to Vermont Close to point F. Route 3 is of a varying width (EF) of between 1.4 to 7m as measured on KCs Kompass mapping.
25. Route 3 has a gate at point G in the wall on the unregistered land (part of the narrow-walled route) at the top of the burial ground (photo 34 and photo 35, **Figure 9**)

Statutory Provisions - Wildlife & Countryside Act 1981

26. [Schedule 14, Paragraph 3 of the 1981 Act](#) sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make a DMMO.
27. [Section 53\(3\)\(c\)\(i\) of the 1981 Act](#) provides that the Council has a statutory duty to make a DMMO upon the discovery of evidence which, when considered with all other relevant evidence available, shows:

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic’
28. As was made clear by the following case law [R v Secretary of State for Wales ex parte Emery \[1997\] QBCOF 96/0872/D](#), section 53(3)(c)(i) involves two tests at the schedule 14 stage:

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

Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way

cannot be reasonably alleged to subsist, then the Council should find that a public right of way has been reasonably alleged to subsist.

29. If there is a conflict of evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then members should determine that a public right of way has been reasonably alleged to subsist.
30. If either Test A or Test B are answered in the affirmative at the Schedule 14 stage, the Council has a duty to make a DMMO.
31. Confirmation of a DMMO is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A.

Statutory Provisions - Highways Act 1980

32. The relevant provision, in relation to the dedication of a public right of way based on user evidence, is found in [section 31\(1\) of the Highways Act 1980 \(1980 Act\)](#). The legislation sets out that where a way has been enjoyed by the public 'as of right' and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was a lack of intention to dedicate.
33. Under s31(2), the period of twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.
34. There is no legal interpretation of the term 'the public' as used in s31(1). It is not taken to mean the public in its widest sense. Use wholly or largely by local people may be use by the public.
35. There is no statutory minimum level of use required to show sufficient use to raise a presumption of dedication, but it must have been by a sufficient number of people to show that it was use by 'the public', which may vary from case to case as guided by the Government's [Definitive Map Consistency Guidelines](#).
36. The terms 'as of right', means the use must have been 'without force, without secrecy and without permission'. Force might include breaking locks, cutting wire, passing over through or around a blockage. The use must have been

open and in a manner that a person rightfully entitled would have used it that is not with secrecy. If there is express (e.g., clear, and specific) permission, then use is not 'as of right'. The issue of toleration or acquiescence and doing nothing about it, is consistent with use being 'as of right'.

37. The presumed dedication under s31(1) is rebuttable, by proof that the landowner had a lack of intention to dedicate. The burden of proof rests with the landowner to show that there is sufficient evidence to demonstrate there was no intention to dedicate. In relation to signage, proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication is required under s31(3).
38. The test is whether a reasonable user of the path would understand that the landowner was not intending to dedicate a public right of way as addressed under the following caselaw [Godmanchester Town Council, R \(on the application of\) v. Secretary of State for the Environment, Food and Rural Affairs \[2007\]](#) there must have been some overt acts by the landowner to show the public at large that the landowner had no intention to dedicate whether by notice or otherwise (e.g. notices, signs, barriers, obstructions, charging, closing, indicating use by permission only).
39. Private land signage can imply that the public are being discouraged from using a route, but technically such a landowner's sign would be correct as there is 'private land'. Such a sign in itself, is not considered to go far enough to communicate a lack of intention to dedication. A public right of way can be defined as the public's right to pass and repass over a strip of land, more often than not, land in private ownership. Furthermore, caselaw ([Paterson v Secretary of State for the Environment, Food and Rural Affairs & Ors \[2010\] EWHC 394](#)) dictates that private land signage in itself, is not '*documentary evidence that would inevitably defeat the claim*'.
40. In cases where an application route is in more than one ownership, and only one of the owners has demonstrated a lack of intention to dedicate it for public use, it should be considered whether it is possible for public rights to have been acquired over sections of the way in other ownerships.

41. [Section 31 of 1980 Act](#) was enacted to remove the need to demonstrate any capacity to dedicate a public right of way, mainly due to settled land and tenancy agreements. In cases where there is no identified owner (e.g., unregistered land) available to produce evidence to demonstrate a lack of intention to dedicate the land for public use, s31(1) presumed dedication, would not be rebutted. Where there is satisfactory evidence of user by the public, dedication may be assumed even though there is no evidence to show who was the owner at the time or that they had the capacity to dedicate. Similarly, under Common Law, sufficient evidence of public use raises an inference of implied dedication against the freeholder whoever they may be (*R v Petrie [1855]* (119 E.R. 272). Either way the onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.
42. There is case law on what constitutes an 'interruption' in relation to presumed dedication under s31(1). [Godmanchester](#) as referred to in **para 38** is of relevance in terms of an overt and effective landowner challenge to public use. There is also [Ali v Secretary of State for Environment, Food And Rural Affairs & Ors \[2015\]](#) where the main consideration is to establish whether the intention of the landowner to assert their right to close the route has been conveyed to the public. It is the 'intent' that is important. Therefore, an interruption due to short sporadic events or the presence of building materials, would not necessarily in themselves constitute an interruption.
43. Where two uses (the use of the landowner and the use of recreational users) coincide, there may be occasions when the two rights of user cannot be enjoyed simultaneously. Case law shows that the deference of one party to the other's use is simply a matter of courtesy (see [R \(on the application of Lewis\) v Redcar & Ors \[2010\]](#)) and therefore do not constitute an 'interruption'.
44. Alternatively, user evidence can be considered at common law, which requires evidence of public use over a period of time to contribute to a justifiable conclusion of implied dedication by the landowner(s) based on their actions. The main principles of establishing a highway under common law are:

- Use by the public should be as of right, without force, secrecy, or permission.
 - It can be inferred that a reasonable landowner knows of the use but did nothing to prevent it.
 - No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).
 - The more, notorious, intensive, and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.
 - Each case is judged on the facts available.
 - The onus of proof lies with the person making the claim to show that there was use and that it can be inferred that the owner knew of it and did nothing to stop it.
45. [Section 32 of the 1980 Act](#) requires a court or other tribunal, before determining whether a way has or has not been dedicated as a highway, to take into consideration any plan, or history of the locality or other document which is tendered in evidence. Each document shall be applied evidential weight justified by the circumstances, such as the antiquity of the document, the purpose and status of the document, and the custody in which it has been kept and produced.

Guidance for Members

46. General guidance for Council members is provided at **Appendix A**. In summary, Members are asked to decide if a DMMO should be made. This requires consideration of all available evidence (user, landowner, documentary or historic, other) including the consultation and the Officer recommendations.
47. It is the Councils statutory duty to keep the Definitive Map and Statement (DMS) up to date and make any requisite DMMOs where necessary based on the discovery of evidence. After considering the evidence and the relevant criteria, members have three options:
- i. The first option for members is for the Council to make a DMMO to modify the DMS based on the Officers recommendation

- ii. The second option for members is for the Council to make a DMMO to modify the DMS based on members interpretation of the evidence
 - iii. The third option is for members to turn down the application route 1 (and the discovered route 2).
48. The likelihood or otherwise of any DMMO attracting opposition should form no part of the decision. In addition, factors such as suitability or desirability, safety, maintenance, or privacy, are 'other matters' that cannot and must not be considered or taken into account under s53 of the 1981 Act.

Documentary Evidence Evaluation

49. The available documentary or historic evidence has been investigated for all three routes under [section 32 of the 1980 Act](#), with accompanying Figures and Photos at **Appendix C**. The section below will focus on the analysis of the evidence required for the purpose of making an informed decision.

Applicant's historic or documentary evidence

50. The applicant provided several items of historic or documentary evidence (as listed in **para 7**). Several items of the applicants historic or documentary evidence appear to relate to landownership or future development of the land and do not contain any information relevant to the physical existence of the routes or the establishment of public rights, therefore they have not been discussed here.
51. However, of note is an annotated aerial photo with a yellow post it note which says '*1962 photo showing the green lane + footpath to Vermont Close*', as shown in **Figure 10**. A piece of land labelled on the photo as the '*burial ground*' does not contain any graves, it is a plot of land also known as '*Moss Side*' reported to be used as allotments post war, previously owned by the Church, sold in 2015 and is part of the site for the new housing development (built). The aerial photo shows the physical existence of part of route 1, 2 and 3 along points A to B to E. As with OS maps, this aerial photographic image can corroborate the existence of the routes, but it provides no confirmation of public rights over the routes.

Golcar Enclosure Award

52. Scapegoat Hill was historically within the township of Golcar, enclosed in 1823. The relevant documents are available online as follows:

- [Manor of Golcar: Copy of the Award Made in the Year 1823 \(1919\) by Pilkington & Jones - Huddersfield Exposed: Exploring the History of the Huddersfield Area](#) Golcar Enclosure Award, 1823
- [Golcar Enclosure Act of 1820 - Huddersfield Exposed: Exploring the History of the Huddersfield Area](#) Golcar Enclosure Act, 1820
- [Scapegoat Hill is situated, as the map shows, on the eastern edge of the Pennines, over 300m above sea level \(scapegoathillhistory.com\)](#) Golcar Enclosure Award Map

53. With reference to The Golcar Enclosure Map (**Figure 11**) High Street and Old Lane to which routes 1, 2 and 3 connect were awarded in the 1823 Golcar Enclosure Award as '*Pike Law Edge Road*' and '*Haugh's Road*' with the status of public bridle and private carriage & occupation roads. The quality of the extract of the map is relatively poor, but it shows that the routes 1, 2 and 3 did not exist at that time and were not awarded as public footpaths. There are only cul-de-sac routes leading to ancient enclosures and farm buildings (now No.2 Vermont Close, and No.33 High Street).

Ordnance Survey (OS Maps)

54. Officers looked at published OS maps dated 1854, 1893, 1907, 1919, 1925, 1932 and 1963. It can be noted that 2nd Edition OS maps carry a disclaimer which states that '*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.*' In 1905, OS instructed surveyors to record permanent gates and fences as solid black lines, and it is likely that same symbology was used to earlier maps. Importantly, whilst OS Maps are generally taken to be a reliable indication of the physical features present on the date of the survey and therefore corroborate the existence of routes, they provide no confirmation of public rights over any routes.

55. The 1854 OS 6-inch map (**Figure 12**) shows that route 3 leading easterly from Old Lane (formerly *Haugh's Road*) to High Street (formerly *Scapegoat Hill*

Road, now via Vermont Close) formed first. There is no route depicted from point C at Taylor Lane northwards and no burial ground or steps (route 1). Route 2 is shown as a cul-de-sac route southwards from point D from the High Street. However, there is a solid black line across the route between point A and point E as indicated by the red circle possibly indicating a boundary feature such as a fence, wall, gate, or it could be a change of surface. It is, most likely a gate as **photo 5** in **Figure 7** shows an old stone gate post at the same location. However, this does not mean the route was not passable.

56. The 1893 OS 25-inch map (**Figure 13**) shows that route 2 formed second as a route leading southerly from High Street (formerly *Pike Law Edge Road*) to Old Lane (formerly *Haugh's Road*). Route 2 and route 3 are shown as through routes, but solid black lines across these routes are shown in three places by the red circle annotations indicating a fence, wall, gate, or it could be a change of surface. **Photo 2** and **photo 5** in **Figure 7** show old stone gate posts. Structures such as fences, walls or gates could affect ease of access as a through route but does not mean the routes were not passable.
57. The 1907 OS 25-inch map (**Figure 14**) depicts route 2 and route 3 in the same way as the 1893 OS map. However, two (rather than 3) solid black lines as shown by the red circle annotations. What is new is the annotation 'F.P' meaning '*footpath*' on the branch of route 3.
58. The 1919 OS 25-inch map (**Figure 15**) depicts route 2 and route 3 in the same way as the 1893 and 1907 OS maps, but depicts one solid black line as shown by the red circle annotation on route 3. What is new is a '*Burial Ground*' and a '*Manse*' adjacent to Taylor Lane. There are no steps from Taylor Lane depicted within the burial ground.
59. Neither route 1, 2 or 3 are shown on the 1925 OS 1 inch map (**Figure 16**). When colour was introduced to OS maps, roads were coloured according to a standard of repair and so the best roads were red, average roads were yellow-orange and poor or narrow roads left white. However, there is no 'road or route' at all shown where route 1, 2 or 3 might have been, as indicated by the red circle annotation.

60. The 1932 OS 25-inch map (**Figure 17**) depicts a new solid line on route 2 and the same solid line on route 3. What is new is the symbology for a short set of steps into the burial ground from Taylor Lane on application route 1, as shown by the red oval annotation.
61. The route through the burial ground is not shown until 1963 OS 1:2500 map as a series of steps (**Figure 18**), but it falls short of and does not join route 3 annotated as 'F.P'.

Aerial photos

62. Aerial photos sourced via KC Kompass mapping dated 2000 to 2018 are shown in **Figures 19 to 24**. The aerial photos show the physical existence of all 3 routes. The route EG does not appear to be heavily vegetated in the 2002 aerial photo. It appears more vegetated in the 2006 aerial photo, but it is not possible to propose whether it was impassable or not. By 2012, the trees on EG appear to have been removed and the route appears less vegetated, but it is a winter image. The 2018 aerial photo appears to show the route as more vegetated again. This suggests some seasonal changes in vegetation on route 3 and also possibly some practical maintenance over the years.
63. On 6/12/23 landowner 5 provided an aerial photo of route 3 (**Figure 25**) and they dated it July 1966. The aerial photo shows the physical existence of route 3 between points E and F and includes point G (as annotated in **Figure 4**). The narrow-walled route is shown adjacent to the line of trees just above the burial ground steps. The curved line of the old wall is in the same position as it is today (around point G in **Figure 4** and photo 34 in **Figure 9**). A double walled route continues eastward to the High Street, part of which is obscured in the photo by tree canopy.

Finance Act 1910

64. An extract from the 1910 Finance Act Valuation Plan for the area is provided at **Figure 26** and was sourced by Officers on request at West Yorkshire Archive Service - Wakefield. The plan shows that route 1 and route 3 lie within hereditaments and therefore would have been valued for incremental tax. Route 2 appears to be largely excluded from the adjacent hereditaments at the

northern half, although some interpretation is required due to gaps in the red colour wash. At the southern half it appears to be within hereditaments, but again some interpretation is required. Exclusion of a route may suggest that it was in public ownership and vested in the highway authority or for some other credible reason. However, in the absence of any other evidence, this does not indicate that the route was unrated and belonged to the highway authority.

65. The accompanying Valuation Book to the 1910 Finance Act Valuation Plan for the Parish of Golcar was checked in person by Officers at [West Yorkshire Archive Service - Wakefield \(Catalogue Reference C243/225 and C243/226\)](#). Route 1 and route 3 and the southern end of route 2 all lie with parcels 1247, 3067, as shown in **Figure 26**. Officers can confirm there are no records of deductions for '*Public rights of way or use*' for parcels 1247 and 3067. Similarly, Officers can confirm there are no records of deductions for 'Public rights of way or use' for parcels adjacent to route 2, namely parcels 1261, 1270, 1271, 1272, 1276, 1274 and 1277.
66. Whilst the OS Maps show that the routes physically came into existence over time between 1854 and 1963, the Golcar Enclosure Award shows no public rights of way were awarded in 1823, and similarly the analysis of the Finance Act 1910 documentation suggests that no public rights of way existed at the time of that survey in relation to the routes.

Conveyances and Deeds

67. A conveyance dated 6 December 1952 relating to one of the dwellings adjacent to route 2 available at [HM Land Registry](#) is shown in **Figure 27**. The word '*Roadway*' is annotated on the conveyance at point A just off Old Lane on route 1 and therefore also on routes 2 and 3. A '*public footpath*' is annotated at the steps along route 2 between D and B (closer to B). Again, the word '*Roadway*' is annotated on the northern part of route 2 as it joins point D.
68. This conveyance provides evidence of reputation in support of public status along route 2. The inference is that any public footpath may continue to a place the public have a right to be (i.e., Old Lane and High Street) and may support

implied dedication at common law together with the user evidence (discussed below).

69. In order to address any co-extensive private rights over route 2, it can be noted that a resident fronting route 2 indicated that route 2 was needed for access to houses on that route including on foot and by vehicle. Another resident mentioned that they had a private vehicular access from the High Street from D to the top of the steps as provided for in their house deeds. Such rights are considered to be private rights rather than public rights.
70. Again to address any coextensive private rights over route 3, the Registered Title for No.2 Vermont Close, also available publicly at [HM Land Registry](#) refers to a private '*right of way*' granted in 1966 along what is now part of the access road from the High Street to Vermont Close. The '*right of way*' does not continue westwards into the land holding of No.2 Vermont Close. The title is available at HM Land Registry but has not been included in this report. Two residents of Vermont Close have indicated a private right access over part of route 3, that does not include the land holding of No.2 Vermont Close.
71. With reference to **para 6.2.17** of the Government's [Definitive map orders: consistency guidelines](#) published in 2003 and last updated in April 2016, it should be borne in mind that a conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. This evidence therefore needs to be considered along with all other relevant evidence.
72. In the absence of any other available evidence, Officers therefore consider that the annotation '*public footpath*' whilst not conclusive evidence of a public right of way, provides good evidence of 'reputation' in support of public status along route 2, however the annotation '*Roadway*' is considered to generally point to a private right rather than evidence of reputation in support of public status.

The National Parks And Access To The Countryside Act 1949

73. Neither route 1, 2 or 3 were recorded on the 1952 DMS nor on the 1985 DMS as shown in **Figure 1** and **Figure 2**, respectively. Officers can confirm that no walking schedules have been found for these routes, and they have not been

included on draft and subsequent definitive maps. There are no records of any objection or representation to the non-recording of these routes.

74. The DMS is conclusive as to the status of the highways described generally without prejudice to the possible existence of higher rights, also meaning that the DMS is conclusive evidence of what is shown on it, but not evidence that what is not shown, does not exist. Hence the process by which the DMS can be updated by way of an evidence based DMMO.

Highways Registry and the List of Streets

75. Route 2 and part of route 3 are both recorded on the List of Streets held under [s36\(6\) Highways Act 1980](#) as highways not maintainable at public expense when the former Council took over the highways function from District Council in 1974, as shown in **Figure 28**.
76. Highways Registry index cards show that route 2 ABD called '*path adjacent 27 High Street to Old Lane*' is 'unadopted' and not maintainable at public expense. Similarly, index cards show that part of route 3 (part of F to G) called '*Vermont Close*' is also 'unadopted' and not maintainable at public expense. Photos of these cards are available on request, but are not shown in **Appendix C**.
77. Whilst public rights and maintenance at public expense are two separate things, there can be some overlap. However, there is nothing in the List of Streets or the Highways Register which points to the public status of routes 1, 2 or 3.

Conclusion on evaluation of historic or documentary evidence

78. Officers consider that whilst routes 1, 2 and 3 have physically existed for a considerable time, the available documentary or historical evidence does not in itself provide conclusive evidence of public rights on foot. The '*footpath*' depicted and annotated on part of route 3 do not in itself indicate any public rights on foot. However, the conveyance annotating a '*public footpath*' in relation to the steps on route 2 Old Lane to High Street via steps, provides good evidence of reputation in support of public status along route 2. The

inference is that any public footpath may continue to a place the public have a right to be (i.e., Old Lane and High Street).

User Evidence Evaluation

79. The available user evidence for routes 1, 2 and 3 has been investigated under [section 31\(1\) of the Highways Act 1980](#) (the 1980 Act) for the presumed dedication of a public right of way. A summary of the user evidence is shown in **Figure 29**, and a summary of some of the landowner evidence is shown in **Figure 30**.
80. Twenty two user evidence forms were submitted to the Council. A further ten user evidence forms were received during the investigation although two users submitted two UEFs about different routes UEF7/27 and UEF 6/25, and two users did not state their period of use (UEF10 and UEF31).
81. The user evidence has been evaluated on the submissions from members of the public without a private right, as appropriate, because such evidence cannot be included as evidence for public use. Five users are considered to have a type of private right in relation to one or more of the route either because they use the route for access to their dwellings or they were visiting relatives on the route. These are UEF 7/27 (route 2), UEF 8 (route 2), UEF 16 (route 3), UEF 6/25 (route 2), UEF 26 (route 2).
82. Although the applicant claimed route 1 only in the application, they also provided an annotated map that '*depicts the old footpaths used by villagers in years gone by to access Golcar for work etc*' (**Figure 31**) which led to or from a place the public have a right to be. In addition, the majority of users marked (initialled and dated) additional routes on the map in their User Evidence Statement Forms. The routes and part routes drawn or described are indicated by the columns with the letters AB, ABC, ABD, DBC, EG, EF as shown in **Figure 4** and summarised in **Figure 29** and will be known as:
- R1 (route 1) Old Lane to Taylor Lane via burial ground (ABC)
 - R2 (route 2) Old Lane to High Street via steps (ABD)
 - R3 (route 3) Old Lane to High Street via Vermont Close (ABEGF)

Bringing into Question

83. In relation to the presumed dedication of a public right of way under the Highways Act 1980, s31(1) the period of 20 years use is calculated retrospectively. 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.

DMMO application, route 1 and 2

84. Where mentioned, users indicated in their evidence that routes 1 and 2 were open and available up until the housing development works started on site (approx. 2020). Therefore in the absence of any earlier action, the making of an application to modify the DMS would have brought any unrecorded public rights into question.
85. The DMMO application is dated 14 December 2018 however, the majority of the user evidence forms were completed the previous year and are dated 2017. However, the DMMO application seems to have been made following successful appeal of planning permission for development in November 2017. For the purposes of the 20 year period, the relevant periods relating to the routes are therefore considered to be November 1997 to November 2017 - the date of appeal of planning permission was upheld. However, Officers have also assumed that use would have continued in the same quantity and frequency through 2018 in relation to submission of the DMMO application.

Gate, route 3

86. Several users annotated a route EG on their maps with a gate at point G (see **Figure 4**, **Figure 29**, and **Figure 33**). Some users annotated a route EF with or without a gate. Some users mentioned the gate at point G was locked.
87. On 21 November 2023, Officers wrote to eleven users who had mentioned or annotated part or all of route 3 EGF in their User Evidence Statements. These users were asked to clarify when route 3 was gated, did the gate prevent use of route 3 and was the gate locked or unlocked (always or sometimes). No responses were received.

88. In their Landowner Statement dated 12/6/22 the former landowner (Landowner 5) who built No.2 Vermont Close (resided 1996 – 2002, purchased the land in 1984) stated they had *'put a gate at the end of our property in 2000, it was never locked, this gate has since been replaced by another'* (see **Figure 30**). This is the gate at point G.
89. On the 28/11/23, Landowner 5 also reported by phone that *'they had made the existing wall higher for extra privacy and erected a gate with a bolt on the inside, that gate was never locked, but added that he had occasionally locked the gate at night because kids used to play in the trees on the walled route on the other side of the gate and that these trees have since been cut down by someone'*. This is the gate at point G.
90. In a Statutory Declaration dated 27/10/23 the Agent for Landowner 1 refers to being informed by Landowner 5 that *'there was always a closed and often locked farm gate adjacent to what is now No.2 Vermont Close'* which Landowner 5 *'had in part replaced with the garden boundary when he was building what is now No.2 Vermont Close.'* However, Landowner 5 clarified on 6/12/23 in a note that *'I have never seen a farm gate, we purchased the land for No 6. Vermont Close in 1984 – no gate then'* and provided an aerial photo from 1966 (**Figure 25**) which does not show a farm gate on EGF. Landowner 5 clarified in the note that *'it wasn't a farm ...kept a few chickens'* and verbally added that the only gate was adjacent to the chicken pens (to the east).
91. In their Landowner Statement dated 2/12/23 a 2nd former landowner of No.2 Vermont Close (2003-2007(10)) (Landowner 6) stated that *'When we moved in we opened the gate to see what the path was like. To my memory it was on a latch (possibly a bolt – not sure). It did not have a lock.'* And that the *'gate was always shut on the latch'*. This is the gate at point G. Whilst the landowner stated they lived there until 2007, public records on Rightmove record no sale until 2010. On 9/2/24 Officers asked Landowner 6 by email to clarify if it was possible to open the gate from the graveyard side when it was on the latch (and not bolted). And the response by email was *'...from what I can remember, there was a latch on the graveyard side of the gate as well as the house side. I*

presume that the bolt was put on at some point to stop people using the latch, but it was never an issue for us.'

92. In their Landowner Statement dated 6/8/22 a 3rd and current landowner of No.2 Vermont Close (2010 to present) (Landowner 7) stated that *'a gate was in the boundary wall when we purchased the property. We replaced the gate/door with a similar one in 2019 – it is not locked'*. **See Figure 30.**
93. On 5/9/23 Landowner 7 wrote to Officers to seek to withdraw their earlier evidence relating to the gate at point G being *'not locked'* and reported in a Supplementary Statement dated 5/9/23 that *'We have previously stated that the gate to the graveyard has not been 'locked'. This is not correct'...**'We can lock and block the gate if we wish to, and this has always been the case as long as we have owned the property'* and *'When the current gate was first installed, we padlocked it'*. See photos 34, 35 and 36 in **Figure 9** of the old gate. Additional photos on file show that the gate was bolted on the inside with the latch removed. Landowner 7 also stated on 5/9/23 that the original gate was replaced in 2019 with a new gate has no handle on the graveyard side by deliberate design.
94. With reference to **para 37**, the burden of proof rests with the landowner to provide evidence that the gate in question was locked and when, under s31(3) of the 1980 Act. Landowner 7 said they bolted the door on the inside when they moved in 2010, and also provided photo of the bolted gate which is stated to have been taken in 2015, which another provided dated 2019 when they replaced the gate with another.
95. For route 3 only, the relevant period 1997 to 2017 is therefore considered to have been rebutted by the bolting of the gate at point G and some proof of that bolting. The alternative relevant periods are therefore 1990 to 2010 based on Landowner 7's subsequent evidence or 1995 to 2015 if based on the photo of the bolted gate.

A Way

96. As already mentioned, **Figure 31** *'depicts the old footpaths used by villagers in years gone by to access Golcar for work etc'* submitted by the applicant with

the DMMO application. There are several connected routes, including routes 1, 2 and 3 which are interconnected and lead to and from a place the public have a right to be: Old Lane (point A), Taylor Lane (point C), and two points on the High Street (point D and point F), as shown in **Figure 4**.

97. As shown in the summary of user evidence in **Figure 29**, twenty three users annotated route 1 ABC on their map and an additional six users annotated part of route 1. Sixteen users annotated route 2 (ABD) on their map and an additional ten users annotated part of route 2. Five users annotated they had used route 3 AEF on their map with a further 1 user annotated use on part of route 3. In addition five other users referred to route 3 or the gate at point G (indicated by the ? in that column) however, it has not been possible to further clarify their use as they did not respond to the request for further information.
98. As shown in **Figure 29**, four users (UEF 6, 8, 22, 29) appear to indicate that at times they visited the graves or the burial ground only, but they also used route 1 or route 2 other than to visit graves or the burial ground. Similarly, users indicated that they saw others visiting graves, as well as using a through route.
99. Users described the routes varying in width between 1m on the steps on route 2 to 5m or car width on the grassy lane on route 1.
100. Where specified, some users referred to route 1 as the '*green lane*' or the '*grass path*', route 2 as '*the gap*' or '*the ginnet*' and route 3 has been referred to as the '*old footpath*'.
101. Although not mentioned by the Church it is perhaps important to discuss whether a public right of way can be presumed dedicated over consecrated ground. According to [A Short History of the Baptist Church, Scapegoat Hill \(1921\) \(huddersfield.exposed\)](#) by Nathan Haigh', the burial ground was said to be 'consecrated' in 1903 (see **Figure 5**). Of note is the [The Baptist Union of Great Britain: Guideline Leaflet PC07: Burial Grounds](#) via www.baptist.org.uk/resources last updated in June 2019 which states on page 7 under '*Closing A Burial Ground*' that '*It is important to note that a Baptist burial ground is not consecrated ground but is a private burial ground. This is a fact which is often not understood by those who are not Baptists*'.

102. Officers therefore consider the burial ground can be treated like any other private land, and sincerely wish no disrespect to Scapegoat Hill Baptist Church and those associated by that statement. Furthermore, given that the public claim to have used the route 1 through the burial ground (BC) for over 20 years on an alignment down the steps which avoids actual graves or burial plots, and given the permanency of the steps leading to the other routes 2 and route 3, it appears to Officers that route 1 is compatible with the lands purpose as a burial ground.

Evidence of Use during Relevant Periods

103. The user evidence summary in **Figure 29** shows public use of route 1 and route 2 on foot from the 1980s steadily increasing to the present day. Two users reported their use was pre-1966 which may relate to route 1 or route 2. Eleven users appear to indicate knowledge of or use of route 3.

Route 1

104. As shown in **Figure 29**, twenty-three users stated they used route 1, ABC on foot during the relevant period 1997 to 2017. At the start of the relevant period 10 users stated they were using route 1, ABC. At the end of the relevant period 21 users stated they were using route 1 and its assumed this continued through 2018 until it was physically impossible to do so when route 1 was obstructed by development in 2020. An additional 2 users (UEF 5, 13) used BC as part of route 2 DBC during the relevant period 1997 to 2017. In relation to the frequency of the public's use was 6 daily, 6 weekly, 2 monthly, 1 every few months and 1 twice a year. In addition 7 users said their use was more than daily, more than weekly, regularly or that it varied. It is collective use during the 20 year relevant period that is important.

105. The evidence of public use of the application route 1 (ABC) is considered to be sufficient to demonstrate public use and enjoyment. The presumption of dedication is not raised until the 'as of right' together with 'without interruption' are considered.

Route 2

106. As shown in **Figure 29**, sixteen users stated they used route 2 ABD on foot during the relevant period 1997 to 2017. At the start of the relevant period nine users stated they were using route 2, ABD. At the end of the relevant period 14 users stated they were using route 2 ABD and its assumed this continued through 2018 until it was temporarily interrupted by barriers at the top of the steps due to works at the bottom of the steps due to the construction of the new housing development. In relation to the frequency of the public's use, 2 daily, 5 weekly, 1 monthly, 1 every few months and 1 twice a year. In addition, 6 users said their use was more than weekly, regularly or that it varied.
107. In addition, ten users indicated they had used part of route 2 ABD. On the 21 November 2023, Officers wrote to some users who had provided some evidence in relation to route 2, because they had annotated part of the route on their map in the User Evidence Statement Form, or mentioned it in their evidence or during the consultation. Users were asked to clarify their use in terms of dates or use, frequency etc. One user made an initial response by phone, but did not follow through on clarifying their evidence.
108. The evidence of public use of the application route 1 (ABD) is considered to be sufficient to demonstrate public use and enjoyment. The presumption of dedication is not raised until the 'as of right' together with 'interruption' are considered.

Route 3

109. Eleven users appear to indicate knowledge of or use of route 3. Five users (UEFs 4, 7, 10, 16, 20) indicated they used it during the alternative relevant periods 1990 to 2010 and, 1995 to 2015 (see **Figure 34**) ABEGF. However, one of the five users indicated they used it only once (UEF 7), and one used it to visit a family farm on route (UEF16), but this would be considered to be a type of private right. One user (UEF 10) indicated they had known the route since 1980, but they did not indicate a start date for their use.
110. Some users indicated that route 3 was impassable due to vegetation and rubble, no dates were provided as to when it became impassable.

111. In a hand -written note received on 6/12/23 Landowner 5 stated that *'The rubble is probably from the house above numerous building work has taken place over the last 15 years.'* And that *'Route E-F was usable as late as 2003 when we sold No.2 Vermont Close'*
112. In their Landowner Statement dated 2/12/23 Landowner 6 (2003-2007(10)) stated that *'The pathway was very overgrown when we moved in with brambles. It was never cut back. It was not blocked by rubble'*.
113. Landowner 7 (2010 to present) stated in a Supplementary Statement dated 5/9/23 that the *'old path on the graveyard side of our gate is, and always has been overgrown and impassable'*.
114. Officers met with a representative of the Church (Landowner 2) on site on 19/1/22 to discuss the DMMO application and the consultation. The narrow walled route EG was discussed. The representative said that the Church had employed contractors to clear the narrow walled route from E to the gate at point G approximately 18 months to 2 years ago in response to objections to the housing development (that would make the vegetation clearance sometime in the first half of 2020). The representative went onto say that Landowner 7 said they would open their gate if they (the Church) wanted to use this as a footpath - presumably for private access to the burial ground.
115. On 21 November 2023, Officers wrote to all eleven users who had mentioned route 3 EGF in their User Evidence Statements. They were asked to clarify their use and in particular when route 3 had become overgrown or impassable due to vegetation. No responses were received.
116. As such, Officers consider that the route 3 became difficult to pass EG, between 2003 and 2007, aerial photos show that some of the trees were cut down between 2006 and 2012, and the Church stated they cleared the route in 2020. However, the route may have fallen out of use prior to these dates.
117. In summary, it remains that the quality and quantity of user evidence on the basis of only three or four users, including one who used it only once, is not sufficient to demonstrate public use and enjoyment. Whilst it is not necessary

under statute or at common law to consider further tests including 'without interruption' or 'as of right', these tests have been considered below for completeness because routes 1, 2 and 3 are interconnected. Such tests may be of importance should any new user evidence relating to route 3 come to light in future.

Actually enjoyed

118. All users of route 1, 2, and 3 described their use on foot. No user described their use by horse or by cycle. Two users stated they used route 2 with a vehicle as a private right of access (UEF 6, 26), one user (UEF 16) said they used part of route 1 in a small two wheeled tractor. In addition, members of the Church (Landowner 2) used route 1 for access for the hearse and mourners during funerals at the burial ground (**Figure 35**).
119. Users described the purpose of their use on foot, for walking/ dog walking/ for leisure, going to the bus stop/school/shopping in Golcar. Four users described visiting the graveyard/burial ground (UEFs 6, 8, 22, 29). Users described seeing others who were also on foot - walking/ dog walking/ running/ with children/ for leisure/visiting the graveyard. One user (UEF 16) mentioned visiting a 'farm' at what is now Vermont Close to 'move stone'.
120. Three users mentioned a gap in the wall on the route BE (see **photo 6 and photo 9, Figure 7**). User UEF 30 mentioned an '*opening in wall to grass bank where we used to play as children*'. User UEF 29 said '*there was an opening in the wall from Moss Side into what were allotments during the rationing post war days*'. User UEF 7/27 said there was a stile in the wall along BE. The Church (Landowner 2) said that the 2nd plot of land adjacent to the burial ground has never contained any graves due to the difficult geology.

By the public

121. Having discounted any private type of use, the user evidence shows all users were using the route as members of the public and were all wholly or largely local people. Some users had moved away, but completed evidence statements for when they lived locally. Addresses are available on the original UEF's.

122. There are dwellings along all three routes and as such users who were considered to be exercising private rights for access to their dwellings have been discounted from the analysis where relevant and appropriate (UEF 6/25, 7/27, 8, 16 ,26).

As of right - without force

123. Users do not describe any barriers, fences, impassable stiles, locked gates, building materials or obstructions had ever been present on the route 1 and 2 in question to forced open and causing users to turn back during the relevant periods (see **Figures 29** and **Figure 36**).

124. However, in relation to route 3, users and landowners refer to a gate at point G which was bolted or locked on the inside at some point which brought the route into question, but generally there is no evidence of a forced use of route 3.

As of right - without secrecy

125. For use to be as of right it must be open and of such a nature that if 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.

126. All users except one, said they saw others using the routes (**Figure 29**), but this is taken to mean route 1 and route 2, rather than route 3. It is not known whether users used route 3 when it was possible to open the gate and the residents were out. Four landowners at Vermont Close stated in their Landowner Statement Forms that they had not seen anyone using route 3, only landowner 2 who built the bungalow in 1999/2000 witnessed use by two people.

127. In the Landowner Statement Form dated 22/11/2021, the Church (Landowner 2) stated that they had not seen anyone (meaning the general public) using route 1.

128. Given all of the above there is no evidence to suggest that there were any attempts to conceal public use of the routes.

As of right – without permission

129. In relation to routes 1, 2 and 3 the user evidence shows that no user ever asked for permission and no user was ever given permission (see **Figure 29**).
130. In relation to route 1, in the Landowner/Occupier Statement Form dated 22/11/21, the Church (Landowner 2) stated that no user had asked for, nor had been given, permission.
131. In the Landowner/Occupier Statement Form dated 7/6/22, an adjacent landowner (landowner 4) to route 2 stated that no user had asked for, nor had been given, permission.
132. In relation to route 3, in the Landowner/Occupier Statement Form dated 12/6/22 Landowner 5 (former owner of No.2 Vermont Close) stated that no user had asked for, nor had been given, permission. They also stated that *'the footpath E to F was and is a public right of way and was stated as such on the house deeds.'* And *'we used that path whilst we were living at No.2. On one occasion an elderly Scapegoat Hill Resident came past and stated she was only using it because it was a public right of way'*.
133. In relation to route 3, on the 27/10/23, the Agent for Landowner 1 said that Landowner 5 *'had only ever encountered two people attempting to pass through the gate during his ownership, who had stopped to explain that they were in what be or was his front garden'* but allowed *'them to go through on both occasions'* and the Agent stated this meant they passed with *'permission'*. However, whilst the Agent appears to suggest this means by 'implied permission' Officers consider it is in the context of all the other evidence Landowner 5 has submitted, that it is more likely to be a toleration or an acquiescence.
134. Permission in relation to use being 'as of right', should there be any evidence of express (e.g., clear, and specific) permission, then use is not 'as of right'. A public right of way and a permissive way are mutually exclusive. A simple definition of a permissive path is one where the landowner has granted permission for the route to be used by the public, but they also have the right to withdraw that permission if they choose.

135. Officers therefore do not consider that use of route 1, 2 or 3 was with any express permission of the relevant landowners at the time. Use of the routes by the public is therefore considered to be 'as of right' meaning, without force, without secrecy and without permission.

Without interruption

Users – general

136. No user indicated that their use of route 1 or route 2 had been interrupted except by development works in 2020/21 which is after the end of the relevant periods. No user has described ever being challenged or stopped or being turned back or being told by landowners that routes were not public (see **Figure 29**). Similarly, no user indicated signs other than those listed in **Figure 37** about cleaning up dog mess or no public right of way or private land signs erected in preparation for the housing development works, which is after the relevant periods.

Funerals and burials

137. At a site visit with Officers on 19/1/22, a representative from the Church (Landowner 2) said that the hearse used the lane to access the top of the burial ground during funerals. This, they said, was because parking on Taylor Lane is problematic because it is very narrow, and the steps are steep for mourners and the coffin. If the hearse and mourners could take access along route 3 (AE) then it follows that the public could physically also do the same on foot.
138. In the Landowner Statement Form dated 22/11/21, The Church (Landowner 2) answered 'no' to whether the way they had used the land made the route difficult or impassable at any time and 'no' to whether they had never stopped or turned people back.
139. In an email dated 12/12/22 from the Church's Graveyard Secretary was stated that *'the older members are clear that they have never been aware of a public right of way through the graveyard. They agree that there has been access from D to A but not from A to C via the burial ground'...* and *'the older members thoughts on A to F are that this has been unused for many years'*. However, it

is not known what is meant entirely by the statement about there being no access A to C but if taken to mean that access was not at all possible, it conflicts with almost all of the user evidence and landowner evidence. As such they may well mean that there is no recognised or similar public access through the burial ground.

140. In an email dated 27/10/23 from the Agent of Landowner 1, the Agent stated in relation to route 1 AC and vice versa, that they were aware of '*significant updates from the Scapegoat Hill Baptist Church itself, as well as some of its affiliates*' and '*refers to permissive and managed access for funeral events, route being impassable*'...'*undoubtedly there may have been a 'way through' at times, but there is no doubt that this was neither consistent, continuous, nor available*'....'*on what were evidently the rare occasions it was opened up*'.
141. Officers consider use for '*funeral events*' to be a private use of a private burial ground to which the public could presumably attend if they wished. Whilst some users may have indeed at times only visited the burial ground (4 users said so), the user evidence on which the analysis of presumed dedication or at common law relates is based on use as a thoroughfare between highways (Old Lane to Taylor Lane), rather than visits to the burial ground for funerals or burials or otherwise.
142. See **Figure 35** for a picture of the hearse at point E, which shows sufficient room around the parked vehicle for persons to pass during funerals should they be present to, although out of a mark of respect it is expected that any public may not have used the route at the same time as a funeral service or burial.
143. It is perhaps important to discuss for completeness whether occasional funeral events taking place for no more than a couple of hours on occasion constitutes an interruption to public use in the context of a lack of intention to dedication under s31(1) of the 1980 Act .
144. There is caselaw on what is meant by 'interruption', as explained in **para 42**. According to such caselaw the main consideration is to establish whether the intention of the landowner to assert their right to close the route has been conveyed to the public. It is the 'intent' that is important. It is reasonable to

assume that the intent in relation to an occasional funeral or burial was to carry out a burial, rather than an intent to close the route to the public to convey the route was not for 'public use'.

145. Also, as referred to in **para 43** where two uses (the use of the landowner and the use of recreational users) coincide there may occasions when the two right of user cannot be enjoyed simultaneously, the deference on one party to the other's use simply being a matter of courtesy (see caselaw [R \(on the application of Lewis\) v Redcar & Ors \[2010\] UKSC 11](#)).
146. First, in their Landowner Statement Form dated 22/11/21 the Church answered 'no' to whether they had stopped or turned back anyone or made it known to them that the route was not public, no signs have been erected and they did not make the route difficult or impassable at any time, and no one asked for or was given permission. Secondly, no user has mentioned their use being interrupted by funeral events.
147. Officers consider that public use is therefore not considered to have been interrupted by funeral or burial events. Officers therefore consider that use of route 1 and route 2 has not been interrupted.
148. Whilst the quantity and quality of the user evidence is not sufficient to demonstrate public use and enjoyment of route 3 and it is therefore not necessary under statute or at common law to consider use 'without interruption', these tests have been considered below should new user evidence come to light in future.

Fencing, building materials, route 3

149. In a Statutory Declaration dated 27/10/23 the Agent for Landowner 1 refers to being informed by Landowner 5 that route 3 had been '*blocked by fencing and materials*' during the building of No.2 Vermont Close (1997 to 1999/2000).
150. In a handwritten note received on 6/12/23 the Landowner 5 stated that '*Route E-F was usable as late as 2003 when we sold No.2 Vermont Close*'.

Landowner 5 did not state the route was blocked by fencing or materials in their Landowner Statement Form.

151. No user refers to route 3 being blocked by '*fencing or materials*'. On 21 November 2023, Officers wrote to all eleven users who had mentioned route 3 EGF in their User Evidence Statements. They were asked to clarify when or whether route 3 became obstructed e.g., by building materials or walls. No response was received.
152. Officers therefore do not consider that use of route 3 was interrupted by the presence of fencing or materials.

Evidence of Lack of Intention to Dedicate a Public Right of Way

Route 1

153. Landowner Statement Forms were sent out to all landowners or residents fronting route 1. Three were completed and returned (Landowners 1, 2, 3). There were also additional comments or evidence in email or letter form.
154. In an email dated 4/7/22 the Church (Landowner 2) stated that '*this is not a public graveyard, and the steps are there for people visiting the graves and also for the gardener when he is working there*'. However, land being private in itself is not generally something that can defeat a claim to add an unrecorded public right of way on the DMS. A public right of way can be defined as the public's right to pass and repass over a strip of land, more often than not, land in private ownership.
155. In their Landowner Statement Form dated 6/12/22, the Church (Landowner 2) stated '*no*' to the following questions. Whether they were aware of any right of way, seen anyone using the route, stopped, or turned anyone back, made it known to them that it was not public, made the route difficult or impassable, whether anyone had asked for or been given permission, locked any gates or placed any obstructions, erected any notices, submitted a section 31(6) landowner deposit etc.

156. In their Landowner Statement Form dated 22/11/22, the Church also stated that the iron gate between the burial ground and Taylor Lane was '*kept closed, not locked recently*'. See **Figure 32** for a photo of the iron gate.
157. When asked on the User Evidence Statement Form no user indicated that the iron gate from the burial ground to Taylor Lane had ever been locked during their use (**Figure 29** and **Figure 33**). However, one user (UEF 28) mentioned '*not in the last 10 years*' but they had only known the route for those 10 years, so they meant they did not have knowledge of any gate or its locking before then.
158. On the 23/11/23, Officers emailed the current graveyard secretary to request clarification of the evidence as to when the gate was locked and at what times of day. No response was received. With reference to **para 37**, the burden of proof rests with the landowner to provide evidence that the gate in question was locked and when, under s31(3) of the 1980 Act. No further proof has been submitted at the time of writing, as such this means the Church has not taken any actions which constitute a lack of intention to dedicate.
159. Landowner 1 completed a Landowner Statement Form for route 1 and route 2 dated 9/11/21. Landowner 1 stated they registered an interest in the land in 2015 and bought it in 2018. Landowner 1 stated that there is '*no right of way*'... '*there is an access off Taylor Lane that serves the grave/burial ground*'. They answered '*no*' to whether they had seen anyone using the route, ever stopped, or turned anyone back, whether anyone had asked for or been given permission. They answered '*yes*' to whether they had made it difficult or impassable as they were '*constructing a new private house*', they had obstructed the site/land by fencing it off for safety in April/May 2020 outside of working hours Mon-Fri and had put up notices to saying '*Private Land – No public right of way*' at the entrance to the development which were replaced when they went missing in 18 May 2020 (see **Figures 36** and **37**) This is all outside of the relevant periods and therefore cannot be considered a lack of intention to dedicate because of that.

160. Landowner 3 (adjacent to route 1) completed a Landowner Statement Form dated 20/6/22 stating that route 1 was now a *'private driveway'*, and as such *'privacy should be afforded'* adding that there is *'gated access to the graveyard 200 yards away'*. Again this is outside the relevant period.

Route 2

161. In relation to route 2, Landowner Statement Forms were sent out to all landowners or residents fronting the route or taking access over it which includes a stretch of unregistered land on the route BD. Three Landowner Statement Forms are of relevance to route 2 – Landowners 1, 2 and 4.

162. Landowner 1 in their Landowner Statement Form dated 9/11/23 and accompanying documents provided a *'plan that highlights a current path that is used occasionally which crosses our land and we have and are maintaining this for the benefit of the community'* (see **Figure 38**).

163. In an email dated 27/10/23 the Agent for Landowner 1 refers to route 2 which is partly in the ownership of Landowner 1 who *'owns a small part of this land at the bottom, adjacent to the newly gated entrance on Old Lane...has part of these works has tidied the area at the site of the retaining wall and even installed steps'*. And that Landowner 1 has *'opened this up for the event that a formal order is made and confirmed against it'* and has *'no difficulty with Route A to D being formalised as PROW'*.

164. Landowner Statement Form were received dated 7/6/22 from Landowner 4 fronting route 2 and may own a section of the way up to the centre of the land based on the *ad medium filum* presumption. They answered *'no'* to whether they had stopped or turned anyone back, made it known to them that it was not public, made the route difficult or impassable, no one had asked for or been given permission, not locked any gates or placed any obstructions, not erected any notices, not submitted a 31(6) landowner deposit etc. They also went on to say that route 2 is *'needed for access to houses'* and *'it has also been used for many years for access on foot to the route marked A-B-C on the map'* (meaning route 1).

Route 3

165. In relation to route 3, Landowner Statement Forms were sent out to all landowners or residents fronting the route or taking access over it. Five forms were completed including two other residents of Vermont Close. Landowners 5, 6, 7, 8 and 9 are of relevance to route 3 branching EGF.
166. In relation to route 3 EGF, all three owners (including 2 previous owners) of No.2 Vermont Close completed a Landowner Statement Form. Landowner 5 and 6 submitted additional evidence and current landowner submitted a Supplementary Statement signed 5/9/23.
167. In a Landowner Statement Form dated 12/6/22, Landowner 5 stated they were aware route 3 EGF was a public right of way because an *'elderly Scapegoat Hill Resident came past and stated she was only using it because it was a public right of way' and because a public right of way...'* was stated as such on the *house deeds'*. However, Officers have viewed the Official Registered Title and Plan available at HM Land Registry for No.2 Vermont Close and that document refers to a private right of way, rather than a public right of way. No other *'deeds'* have been submitted by Landowner 5. Similarly, in their Landowner Statement Forms dated 8/6/22 and 12/6/22, two residents of Vermont Close (Landowners 8 and 9) referred to a private right of access from the High Street to their dwellings only.
168. In the same Form dated 12/6/22, previous Landowner 5 answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement, not locked any gates or placed any obstructions but clarified that they had *'put a gate at the end of our property in 2000 it was never locked, this gate has since been replaced by another'* and later it had sometimes been bolted at night.
169. In a Landowner Statement Form dated 2/12/23, previous Landowner 6 stated that they were *'told by the seller when we moved in that there was a right of way through the gate at the back of the property. It was very overgrown and whilst we live there it was never used'*. And *'the pathway was very overgrown*

when we moved in with brambles, it was never cut back, it was not blocked by rubble'. It is not known whether the *'right of way'* referred to is a private one or a public one. They also answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement, not locked any gates or placed any obstructions. They stated that no one had ever wanted to use route 3 EF.

170. In a Landowner Statement Form dated 8/6/22 current Landowner 7 stated *'there has been a gate/door in the wall since the property was built' ... 'We replaced this gate/door with a similar one in 2019' ... 'it is not locked'*. However, the Supplementary Statement signed 5/9/23 they state that they bolted it on the inside when they moved in. They also answered *'no'* to having stopped or turned back anyone, made the route difficult or impassable, had anyone asked for permission or been given permission, not erected any notices or signs, not deposited a s31(6) landowner statement,
171. The locked gate in the wall at point G on the route EF is situated on the unregistered land (**Figure 6 and photos 34, 35, 36 in Figure 9**). Applying the *ad medium filum* rebuttable presumption currently puts No.2, No.3, No.4 Vermont Close, No.6 Old Lane and Yorkshire Baptists Association as the adjacent owners. With no registered 'owner' whilst there can be a bringing into question of public use or rights by the erection of a locked gate on unregistered land, the issue is that under statute (presumed dedication under s31(1) of the 1980 Act) or at common law, a way can be dedicated without ownership being known, the onus is on those who seek to provide evidence that they 'own the land' to demonstrate a 'lack of intention to dedicate'.
172. Whilst the locked gate is situated on land that is not within the title of No.2 Vermont Close, the three owners of No.2 Vermont Close appear to consider themselves to be the likely owners of the land the gate was erected on as it has been absorbed into the garden, as described in their evidence and statements. Officers assume that such ownership may be by way of an ['adverse possession of unregistered land'](#) for example, by amongst other things, being in physical control and singular possession of the said land. Should adverse possession

apply then it is likely that a lack of intention to dedicate would have been demonstrated by the locking of the gate in 2010/2015 (which is also a bringing into question date for route 3).

173. In relation to route EG (the unregistered land) becoming variously overgrown with vegetation and shrubs, as there is no 'overt act' to demonstrate to the public that their use is being challenged, this does not demonstrate a lack of intention to dedicate.

Conclusion on a lack of intention to dedicate

174. Given all of the above, there is insufficient evidence indicating a lack of intention to dedicate routes 1 and 2 as public footpaths during the relevant period (1997 to 2017) or to rebut the presumption that they have been so dedicated under s31(1) of the HA 1980.
175. In relation to route 3, whilst there is insufficient evidence indicating a lack of intention to dedicate route 3 as a public footpath during the alternative relevant periods (1990 to 2010 or 1995 to 2015 etc), route 3 already failed the statutory test of presumed dedication under s31(1) of the HA 1980 due to the quantity and quality of the user evidence being insufficient.

Conclusion on presumed dedication of routes 1 and 2

176. The evidence of public use considered above is sufficient to raise the presumption the application route 1, Old Lane to Taylor Lane via burial ground (ABC) and discovered route 2, Old Lane to High Street via steps (ABD) have been dedicated as public footpaths under section 31(1) of the 1980 Act during the relevant period 1997 to 2017. Officers consider that the presumption is not rebutted by any opposing evidence of a lack of intention to dedicate and an Order should be made to record these routes on the DMS based on a reasonable allegation that the ways subsist.
177. The evidence of public use of route 3 Old Lane to High Street via Vermont Close is insufficient to raise the presumption the discovered route 3 has been dedicated as a public footpath under section 31(1) of the 1980 Act during the alternative relevant periods (1990 to 2010 or 1995 to 2015 etc).

Common law dedication of route 3 and conclusion

178. Although route 3 is considered to have failed the statutory user test for presumed dedication, the available user and landowner evidence relating to route 3 must also be considered at common law. Such a dedication requires the capacity to dedicate, and also requires acceptance by the public. There appears to have been an acquiescence by a landowner between 1984 and 2003 and another landowner up to 2010 in relation to public use over part of route 3 EGF branching off from route 1, which may constitute a common law dedication. Landowner 5 reported that they left a route through No.2 Vermont Close to accommodate the *'old footpath'* on historic OS maps, which they say they thought was a public right of way because an elderly Scapegoat Hill resident had said so. They also installed a gate with a latch on both sides in a wall between the burial ground and No.2 Vermont Close which was openable from both sides.
179. In terms of acceptance by the public, as **Figure 34** shows only 4 users, used this route and one of those only 'once'. Therefore the quantity and quality of the user evidence is not sufficient to imply such an acceptance has occurred under the principles of a common law dedication, which requires a more intensive and notorious use over a longer or a shorter period than 20 years. This may well be because a reputed *'old footpath'* had fallen out of use due to the several factors discussed above (gate, presence of a dwelling, overgrown). Indeed a representative for landowner 2 (Church) said that in relation to the congregation *'The older members thoughts on A to F are that this has been unused for many years'*. Officers consider therefore that it is not reasonable to imply that there has been a common law dedication of a public footpath along route 3. Therefore, no Order should be made to record route 3 on the DMS.

Width

180. Based on the judgements in [Hale v Norfolk County Council \(2000\)](#), the fact that at public path leads between hedges, fences, or any other type of boundary does not give rise to any presumption that a highway extends to those boundary features. It is necessary to decide, as a question of fact, if possible,

whether any boundary feature was erected in order to separate the land enjoyed by the landowner from land over which the public had rights of way. Whether it may be inferred that a landowner has fenced or walled against the highway depends on the nature of the land through which the highway passes, the width of the margins, the regularity of the boundary lines, and anything else known about the circumstances in which the boundary features were erected.

181. In this case, route 1 and route 2 are shown as identifiable features of a certain width on historic OS maps, but they were not awarded public rights as part of the Golcar Enclosure Award 1823 or were likely not public rights of way at the time of the Finance Act 1910. Furthermore, it has already been established that presumed dedication of public rights date from 1997 – the start of the modern user evidence relevant period. Therefore the ‘boundary to boundary’ presumption does not apply.
182. The boundaries of the routes were most likely set out in relation to private routes between houses or private tracks. The boundaries were not, erected in order to separate land enjoyed by the landowner from land over which the public had rights of way. There can be no presumption, therefore, that the boundaries as they were between the relevant period 1997 to 2017 define the extent of the public rights which exist over it. Public rights are likely to extend to the width over which it can be shown that there has been sufficient public use of the appropriate quality to satisfy the test for presumed dedication in section 31(1) of the 1980 Act.
183. It appears that routes 1 and 2 been used for many years by members of the public other than those resident at the adjacent properties. During the relevant period of 1997 to 2017 the surface of the application route 1 is described by users (prior to any housing development) as a grassy drystone walled lane with stone or concrete steps and flags through the burial ground. Users reported route 1 had a varying width of between 2 feet to 12 feet or 1m to 5m or car width. And the surface of the route 2 was a grassy walled lane (as with route 1) leading to a steep flight of stone steps and continuing onto flags and tarmac. Route 2 has been measured on KCs Kompass mapping as of a varying width between 1.7 and 5m.

184. In relation to route 1, it is considered that public rights have been established over the width of the grassy walled track A to E and over the width of the flight of steps E to C (see **Figure 7**). In relation to route 2, it is considered that public rights have been established over the width of the grassy walled track A to B and over the width of the flight of steps from point B and then over the flagged and tarmacked area to D (see **Figure 8**).
185. It is therefore recommended that a Definitive Map Modification Order is made to record public footpaths with variable widths based on the user evidence and measurements of the routes and aerial images, as shown by the shading on the indicative draft Order map (**Figure 41**). The current OS mastermap shows boundaries after the land has been developed for housing. The draft Order map has therefore been based on the boundaries shown on the 2020 OS mastermap (prior to the housing development) and adjusted using aerial images, as there are spatial differences when overlaying different maps.

Limitations

186. As mentioned, route 1 has an iron gate between the burial ground and Taylor Lane at point C, as shown in photo 12, **Figure 7** and **Figure 32**. Many users report a gate here, and where further comments were provided it has been unlocked, see **Figure 33**. The Church indicated in their Landowner Statement Form dated 22/11/22 that it had been in place for '*100+ years*' and was '*not locked recently*', but did not respond to a request on 23/11/23 for clarification on that locking in terms of dates and times. As such, Officers consider that route 1 is presumed dedicated subject to the limitation of a gate at point C, as shown in **Figure 41**.

Recommendations

- Make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath from Old Lane to Taylor Lane via burial ground (route 1) subject to the limitation of a gate and to record a public footpath from Old Lane to High Street via steps (route 2)
- Do not make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath from Old Lane to High Street via Vermont Close (route 3)

- To confirm any Order if unopposed, or if objections are received and not withdrawn and the matter referred to the Planning Inspectorate for determination, to actively support confirmation of the Order at any public inquiry or hearing.

Reasons for Recommendations

- It is reasonable to allege that route 1 Old Lane to Taylor Lane via burial ground subsists as a public footpath and subject to the limitation of a gate under s31(1) of the Highways Act 1980 (HA 1980) on user evidence during the relevant period 1997 to 2017
- It is reasonable to allege that route 2 Old Lane to High Street via steps subsists as a public footpath under s31(1) of the Highways Act 1980 (HA 1980) on user evidence during the relevant period 1997 to 2017
- In relation to route 3 Old Lane to High Street via Vermont Close, it is not reasonable to allege that a public footpath subsists under s31(1) of the HA 1980 on user evidence during the alternative relevant periods, or at common law.
- In relation to confirming its own Order or supporting the confirmation of the Order at any public inquiry or hearing, providing no new evidence is submitted, Officers consider that route 1 and route 2 both subsist on ‘the balance of probabilities’ or satisfy Test A (**para 28**) and the Council should support the confirmation of any Order.
- The Council has a statutory duty to keep the DMS under continuous review, investigate and determine any Order applications and make any Orders that appear to it requisite in consequence of the discovery of evidence that the DMS requires modification and to confirm any Order if unopposed or forward any Order to the Planning Inspectorate for determination if any Order is unopposed but requires modification, or if objections are received and not withdrawn.