

**APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER (DMMO) TO RECORD A PUBLIC FOOTPATH AT OLD LANE, SCAPEGOAT HILL, COLNE VALLEY ON THE DEFINITIVE MAP AND STATEMENT, AND TWO OTHER DISCOVERED ROUTES**

|   |                                  |
|---|----------------------------------|
| <b>Meeting:</b>   | District Wide Planning Committee |
| <b>Date:</b>  | 31 October 2024                  |
| <b>Cabinet Member</b> (if applicable)   | Not applicable                   |
| <b>Key Decision</b>   | No                               |
| <b>Eligible for Call In</b>   | No                               |
| <b>Purpose of Report</b>  |                                  |
| <p>Members are asked to consider the available evidence and determine an application for a Definitive Map Modification Order (Order) under s53(5) of the Wildlife and Countryside Act 1981 (WCA 1981) to record a public footpath from Old Lane to Taylor Lane via burial ground at Scapegoat Hill on the Definitive Map and Statement (DMS).</p> <p>Members are also asked to consider the available evidence in relation to two discovered routes that branch off from the application route.</p> <p>Members are asked to make a decision on making an Order in respect of the application and the discovered routes, and the stance in relation to the confirmation of any Order made.</p>   |                                  |
| <b>Recommendations</b>  |                                  |
| <ul style="list-style-type: none"> <li>• Make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath leading from Old Lane to Taylor Lane via burial ground (route 1) subject to the limitation of a gate, and to record a public footpath leading from Old Lane to High Street via steps (route 2)</li> <li>• Do not make an Order under s53(3)(c)(i) of the WCA 1981 to record a public footpath leading from Old Lane to High Street via Vermont Close (route 3)</li> <li>• To confirm any Order if unopposed, or if objections are received and not withdrawn and the matter referred to the Planning Inspectorate for determination, to actively support confirmation of the Order at any public inquiry or hearing.</li> </ul>   |                                  |
| <b>Reasons for Recommendations</b>  |                                  |
| <ul style="list-style-type: none"> <li>• It is reasonable to allege that route 1, Old Lane to Taylor Lane via burial ground subsists as a public footpath 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</li> <li>• 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 HA 1980 on user evidence during the relevant period 1997 to 2017</li> <li>• 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.</li> <li>• 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, route 1 and route 2 subsist on 'the balance of probabilities'.</li> </ul> |                                  |

- 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.

**Resource Implications:**

- Any resource implications, financial or otherwise associated with the carrying out of this statutory duty under s53 of the WCA 1981 cannot be taken into consideration when making a decision.

**Date signed off by Strategic Director & name**

David Shepherd – 5/9/2024

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

James Anderson on behalf of Kevin Mulvaney – 6/9/2024

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

Samantha Lawton – 6/9/2024

**Electoral wards affected:** Colne Valley

**Ward councillors consulted:** Cllr Beverley Addy, Cllr Harry McCarthy, Cllr Matthew McLoughlin

**Public or private:** Public

**Has GDPR been considered?** Yes, and either omitted or redacted.

## 1 Executive Summary

- 1.1 The purpose of this report is to determine a Definitive Map Modification Order (Order) application submitted to Kirklees Council in 2018 to modify the Definitive Map and Statement (DMS), which is a statutory duty. The Planning Inspectorate has directed that the application should be determined by October 2021.
- 1.2 The application provided evidence of public use to support a claim that a way in Scapegoat Hill, Huddersfield leading from Old Lane to Taylor Lane via burial ground (route 1) is a public footpath.
- 1.3 On the 'discovery of evidence' submitted with the application, Officers have investigated two additional routes that branch off from the application route. These comprise a route from Old Lane to High Street via steps (route 2), and a route from Old Lane to High Street via Vermont Close (route 3).
- 1.4 The available documentary or historic evidence has been investigated for all three routes under [section 32 of the Highways Act 1980 \(the 1980 Act\)](#).
- 1.5 Scapegoat Hill was historically within the township of Golcar which was enclosed in 1823. The Golcar Enclosure Map shows that route 2 and route 3 originated as cul-de-sac routes leading to ancient enclosures and farm buildings. These routes were not awarded as public footpaths during the enclosure.
- 1.6 Various Ordnance Survey (OS) maps show that part of route 1 and routes 2 and 3 have physically existed on the ground for over 100 years. In particular, part of route 1 and route 3 are depicted on the 1854 OS map. Part of route 1, routes 2 and 3 are depicted on the 1893 OS map. Gates, walls, or fences (or change of surface) are indicated at some locations on all routes, but this does not mean that the routes were not passable on foot. The 1907 OS map annotates 'FP' meaning 'footpath' on part of route 3. The burial ground along route 1, first appears on the 1919 OS map, with a short set of steps depicted on the 1932 OS map. A longer staircase through the burial ground along route 1, is depicted on the 1963 OS map but does not join with the route 3 'footpath'. These OS maps carry a disclaimer that '*the representation on this map of a Road, Track, of Footpath, is no evidence of the existence of a right of way*' – meaning private or public.

Generally routes depicted on OS maps provide no indication of status in relation to rights of way.

- 1.7 The 1910 Finance Act Plan and Valuation Book for Golcar show the routes were largely recorded within hereditaments with no corresponding deductions for '*public rights of way or use*'. A 1952 conveyance annotates a '*public footpath*' on the steps along route 2, which provides evidence of reputation of the public status of 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). The same title plan annotates a '*roadway*' on part of the route 2 and part of route 1 and 3, which is considered to indicate at least a private right of access possibly private vehicular access.
- 1.8 The burial ground is a private burial ground (and is not consecrated in the sense that The Church of England ground is consecrated) and the use of the steps which avoids the graves as a public footpath appears to be compatible with the purpose for which the land is held. Officers sincerely wish no disrespect to Scapegoat Hill Baptist Church by these statements.
- 1.9 Officers therefore consider that the available documentary or historical evidence does not in itself indicate a public right on foot along routes 1, 2 or 3. However, some of the documentary or historical evidence carries some weight and supports the user evidence case, in particular the evidence of reputation of the public status of route 2.
- 1.10 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.
- 1.11 The public right to use route 1 and route 2 was first brought into question in 2017 by the DMMO application as the result of an appeal upheld by the planning inspector in relation to planning permission for a housing development affecting the routes (see [Planning application 2015/ 92476](#)). The relevant twenty-year period for analysing the user evidence is therefore 1997 to 2017. On that analysis, officers consider that the quantity and quality of the user evidence is sufficient to demonstrate public use and enjoyment of route 1 and route 2, as of right, and without interruption during the relevant

period, 1997 to 2017. No sufficient evidence of a lack of intention to dedicate public right of ways during the relevant period has been submitted.

- 1.12 Officers therefore consider that, whilst there is in part a conflict of credible evidence in relation to route 1 between the users and landowners or the agent, there is no incontrovertible evidence that route 1 and route 2 cannot be reasonably alleged to subsist. It is therefore recommended that an Order is made to record route 1 and route 2 on the DMS and approval is granted for their confirmation.
- 1.13 Alternative relevant periods have been investigated in relation route 3 (E-F) due to the erection of a gate in 2000, and its locking/bolting in 2010, and providing photo evidence dated 2015 and 2019. Although there is some evidence of reputation from landowners, residents, and users (and OS maps) that part of route 3 is an '*old footpath*', the quantity and quality of the user evidence is not sufficient to demonstrate public use and enjoyment of route 3 (E-F) under s31(1) of the 1980 Act during the alternative relevant periods. Officers therefore consider that it is not reasonable to allege that route 3 (E-F) subsists as a public footpath under statute.
- 1.14 Although route 3 (E-F) is considered to have failed the statutory test for presumed dedication due to the insufficient use by the public during the relevant period, it can 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 landowners in relation to public use over part of route 3 (E-F) branching off from route 1, from 1984 through 2000, 2003 to 2010 which may constitute a common law dedication.
- 1.15 However, in terms of acceptance by the public, 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 (open and notorious) use over a longer or a shorter period than 20 years. This may well be in part because the unregistered part of the reputed '*old footpath*' on route 3 appears to have been variously unmaintained leading to it becoming overgrown and at times possibly impassable, together with the presence of the gate and dwelling which may have discouraged its use.
- 1.16 However, the overriding factor remains the insufficiency of user evidence in relation to route 3 (E-F). As such Officers consider that it is not reasonable to imply that there has been a common law dedication of a public footpath along route 3 (E-F) during the

period under analysis. Therefore, no Order should be made to record route 3 (E-F) on the DMS.

## 2 Information required to take a decision

### 2.1 Guidance for Members

2.1.1 General guidance for Council members is provided at **Appendix A**. In summary, Members are asked to decide if a DMMO (an Order) should be made. This requires consideration of all available evidence (user, landowner, documentary or historic, other) including the consultation and the Officer recommendations.

2.1.2 It is the Council's statutory duty to keep the Definitive Map and Statement (DMS) up to date and make any requisite Orders where necessary based on the discovery of evidence.

2.1.3 Please see **Appendix D** for further information including comments in reply to statements made at the last District Wide Planning Committee on 19<sup>th</sup> September 2024.

### 2.2 Officer Investigation

2.2.1 See **Appendix B** for the detailed Officer Investigation Report including the Statutory and Common Law provisions and certain case law. Figures and photos have been arranged in a separate document at **Appendix C**.

### 2.3 Current land use

2.3.1 There is an issue in that the newly built housing development has blocked route 1 and route 3 near point E by way of the erection of a wall which prevents any passage (see [Planning application 2015/ 92476](#)). Large electric gates have also been erected near point AB. Works to the driveway have also changed the alignment and levels relating to route 2 at point AB. Landowner 1 was notified by the applicant in 2018 that a DMMO application had been submitted to the Council. In correspondence with the developer (landowner 1) dated July 2020 at the time development works started on the site an Officer advised that any development that affected an unrecorded public right of way would be at their own risk. In simple terms, planning permission or any subsequent built development in itself does not extinguish or divert any recorded or

any 'unrecorded' public rights of way. A public right of way can only be extinguished or diverted by a legal Order.

2.3.2 Should members accept the recommendation that public rights of way are found to subsist, and an Order made and confirmed then appropriate remedies or enforcement action are likely to need to be considered to ensure the ways are available for public use on foot.

2.3.3 However, whether the routes are currently obstructed, diverted or levels changed, is not something that can and indeed must not be taken into account when determining whether any public rights already subsist under statute or at common law.

### **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 the public, Councillors, landowners, occupiers, residents, the Parish Council, 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 the public rights of way network are correctly recorded on the Definitive Map and Statement and are available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with Council's

response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality

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

3.5.1 Not applicable

### **3.6 Financial Implications**

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

3.6.2 If an Order is made and that Order is confirmed on the basis of presumed dedication under section 31 of the 1980 Act, as recommended by the Officer, the public footpaths will not be highways maintainable at public expense as they came into existence through modern public user presumed dedication and after [section 38 of the Highways Act, 1959](#), came into operation. Generally, any maintenance (including the two flights of steps) generally is not something that can be taken into account when considering the evidence regarding the status of the paths or ways in question. Similarly, any remedies or enforcement action in relation to the obstruction of or the diverting of a recorded public right of way would be met by existing budgets, or 'recharge' may apply to certain works.

### **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 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 a decision regarding the DMMO application and the discovered routes and make an Order if required 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 matters for the relevant planning committee or they can be delegated to the Strategic Director Growth and Regeneration in which case the relevant scheme of delegation would apply.

3.7.3 Any person may make a duly made objection or representation to an Order modifying the DMS. If objections are made and not withdrawn, any Order made must be



forwarded to the Secretary of State and most likely be considered by an appointed Planning Inspector by way of correspondence, at a hearing or at public inquiry and they may or may not confirm the Order.

3.7.4 If an application is turned down, the applicant has 28 days to appeal after notice is served by the Council of its refusal decision. A made DMMO will be subject to a 42-day public notice period. A DMMO may be objected to and sent to the Planning Inspectorate for determination, which may take several months. A confirmed DMMO will be subject to a 28-day public notice period.

3.7.5 Should any Order be confirmed, it may be necessary to pursue legal enforcement action.

### **3.8 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)**

3.8.1 None

## **4 Consultation**

### **4.1 Landowner consultation**

4.1.1 In October 2021 and May 2022, Officers carried out a landowner/occupier consultation which included those fronting all three routes. As a result, nine Landowner Statement Forms were received. These included forms submitted by the current owners of route 1, and the owner and former owners of No.2 Vermont Close. The other forms were completed by residents taking access of route 2, route 3 or residing adjacent to route 1. The evidence presented in these forms and any additional documents and correspondence have all been considered during the investigation and are included in the Officer Investigation Report (**Appendix B**).

### **4.2 Public consultation**

4.2.1 In November 2022, Officers conducted a 28-day consultation with the public, landowners/occupiers, user groups, and Colne Valley Ward Members. The consultees were invited to provide any comments and/or evidence by 14 December 2022. Consultees were also asked to provide responses to a specific set of

questions. Consultees were given the option to respond via email, letter, or telephone.

4.2.2 Public notice of the consultation was provided on the Councils website under Changes to the Definitive Map and Statement and titled '*Investigation into the status of a claimed route from Old Lane to Taylor Lane via the burial ground, Scapegoat Hill. And an investigation into the status of two additional routes at Scapegoat Hill, from Old Lane to High Street via steps, and Old Lane to High Street via Vermont Close*'. Notices were displayed at either end of the application route and in a prominent public place. Three of these notice sites are shown in **Figure 39 in Appendix C**. Consultees were given the option to respond via email, letter, or telephone.

4.2.3 During the 28-day public consultation, fourteen responses were received from members of the public. Some landowners and residents including those fronting all routes, also responded. See **Figure 40 in Appendix C** for a summary of those responding both to the consultation and also to the wider investigation.

4.2.4 In summary:

- Eight members of the public supported the recording of routes on the DMS, of these two members of the public supported the recording of route 2 only.
- Six members of the public did not support the recording of route 1 through the burial ground and steps, mainly objecting because they asserted it is for people visiting graves and the steps are quite steep and in poor condition and that it was not a pathway to the road (not a through route).
- Landowners 1, and 3 do not support the recording of route 1 mainly because its private land and now the site of a new housing development. Landowner 2 (Church) does not support the recording of route 1, and a 'petition' with 27

signatures against route 1 through the burial ground was also submitted via the Church.

- Landowner 7 provided more information on route 3 and later submitted a supplementary statement that they did not support the recording of route 3, through the garden of their dwelling.
- Landowners 4 and 10 completed user evidence statements and support the recording of routes 1 and 2.
- Previous landowners (landowners 5 and 6), and landowners 8 and 9 appear to be neutral.

4.2.5 On the 12/12/22 the Graveyard Secretary (Landowner 2) said that *'I have spoken with the congregation and deacons regarding this matter and have received overwhelming feeling against a public right of way through our private burial ground out of respect for those at rest and their living relatives. I therefore have a duty to consider and to note the deep and personal emotions of those who would be affected by allowing a public right of way through the grounds. I have included a number of signatures attached to confirm these concerns.'* A 'petition' with 27 signatures was provided which read *'Please sign if you agree you would not like a public footpath through the church burial ground'*. However, as noted earlier, whether someone wants or does not want a public footpath to be recorded on the DMS, is not something that can be taken into account when determining an application.

4.2.6 On the 9/12/22, the Church Secretary (Landowner 2) in their capacity as a member of the public and family said that *'never in more than fifty years living in Scape have I seen a signpost anywhere giving public access on these routes'* and *'the graveyard...is used by people visiting graves, and not as a pathway to the road. The steps are also difficult to climb as they are quite steep'* that *'E-F'* was *'never in use since I took over as secretary in 2005.'*

4.2.7 On the 13/11/22, the current owners of No.2 Vermont Close (Landowner 7) stated that *'When we bought the house we wondered if there was a footpath into the burial ground through our garden as there is a gate at the back of the garden. Our solicitor investigated and was told by Kirklees that there wasn't a public footpath through our garden. We were not told that there was any possibility of an old footpath being added to the definitive footpath map in the future.'* And that the *'sellers of our house*

*confirmed to our solicitor that no one had used the route that you are showing as E-F on your plan (we call it the graveyard access) whilst they owned the house (2003-2010)'. In relation to any public use of the routes they also stated that 'Whilst I have lived in the house no-one has attempted to access the burial ground via Vermont Close, route E-F on the plan' and 'The other two routes, A-C and D-B were well used until they were blocked off in 2020 by the people building the houses on the Old Lane side of the burial ground. Steps up the burial ground from Taylor Lane are still accessible.'*

- 4.2.8 In the Supplementary Statement dated 5/9/23 Landowner 7 strongly objected to route 3. They also stated that *'it is possible that ...the applicant, as well as possibly other members of the group will be writing to the Council to withdraw their evidence'*. Officers can confirm that no one has contacted the Council to withdraw their evidence. However, of the 22 letters sent to users with a request to clarify their evidence relating to routes 2 and route 3, there was only one initial response with no follow through. However, two previous owners of No.2 Vermont Close were sent letters requesting further information about route 3, and both responded.

### **4.3 Maintenance**

- 4.3.1 In the email dated 12/12/22, the Graveyard Secretary (Landowner 2) stated *'We also have concerns regarding opening a public right of way through the burial ground due to potential Health & Safety issues. We do allow families to visit their loved ones through access from the main gate on Taylor Lane but are aware of the difficulties that these large steps up to the graves can pose for elderly visitors and funerals. The cost to replace these steps would be significant and therefore we would have serious concerns regarding additional risk if they were used as a regular thoroughfare for the general public'*.
- 4.3.2 Of note is the [The Baptist Union of Great Britain : Guideline Leaflet PC07: Burial Grounds](#) via [www.baptist.org.uk/resources](http://www.baptist.org.uk/resources) last updated in June 2019 which states on Page 1, *'It is vital that churches are aware that the health and safety requirements and responsibilities that apply to the church premises will also apply to burial grounds. It will, therefore, be necessary for churches to carry out risk assessments of burial grounds and ensure that any memorials or trees that are potentially dangerous are repaired and pruned at the earliest opportunity.'* and *'Churches will also need to*

*ensure that they have the appropriate insurance to cover the church if anyone is injured while visiting the burial ground even if the burial ground has been closed'.*

- 4.3.3 It should be noted that any future maintenance, is not something that can and indeed must not be taken into account when determining under the legal tests (statute or at common law), whether public rights subsist or are reasonably alleged to subsist.
- 4.3.4 For clarity though, the situation is that generally public footpaths would not be highways maintainable at public expense if they came into existence through public use after section 38 of the Highways Act 1959 came into operation. If they had come into existence before 1959 based on documentary or historic evidence under section

32 of the Highways Act 1980, the public footpaths would automatically be maintainable at public expense.

- 4.3.5 Because route 1 and route 2 came into existence after 1959, under s31(1) of the Highways Act 1980, they are not considered to be highways maintainable at public expense therefore the Council would not be responsible for any maintenance.

#### **Response from Colne Valley Ward Councillors**

- 4.4 Colne Valley Ward Councillors were consulted. No responses were received.

#### **Response from Parish Council**

- 4.5 There is no Parish Council for Colne Valley.

#### **Response from User Groups**

- 4.6 All user groups on the standard list of informal consultations were consulted by email. No responses were received.

### **5 Engagement**

- 5.1 Not applicable

### **6 Options**

#### **6.1 Options considered.**

- 6.1.1 After considering the evidence and the relevant criteria, members have three options:

- i. The first option for members is for the Council to make an Order to modify the DMS based on the Officers recommendation
- ii. The second option for members is for the Council to make an Order to modify the DMS based on members interpretation of the evidence
- iii. The third option is for members to turn down the application route 1 (and the discovered route 2).

- 6.1.2** The likelihood or otherwise of any Order attracting opposition should form no part of the decision. In addition, factors such as suitability or desirability, safety,

maintenance, or privacy, are 'other matters' that cannot and must not be considered or taken into account under s53 of the 1981 Act.

- 6.1.3 Should the committee choose options (i) or (ii), members are also requested to consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its own Order, or alternatively take a neutral stance.

## 6.2 Reasons for recommended option

- 6.2.1 Based on an overall assessment of the historic or documentary evidence, user evidence, landowner evidence and other evidence, Officers consider that it is reasonably alleged that the application route 1 Old Lane to Taylor Lane via the burial ground (AC), and the discovered route 2 from Old Lane to High Street via the steps (ABD), both subsist as public footpaths based on presumed dedication under section 31 of the 1980 Act during the relevant period 1997 to 2017 which is not rebutted by sufficient evidence of a lack of intention to dedicate. In relation to route 3 (EF), the quality and quantity of the user evidence is not sufficient to demonstrate use by the public both under statute and at common law.
- 6.2.2 Officers recommend that no Definitive Map Modification Order (an Order) is made under sections 53(3)(c)(i) of the 1981 Act, to record a public footpath over route 3 from Old Lane at point E via Vermont Close to High Street (point F).
- 6.2.3 Officers therefore recommend that a Definitive Map Modification Order (an Order) is made under sections 53(3)(c)(i) of the 1981 Act, to record a public footpath on the Definitive Map and Statement (DMS) along route 1 leading from Old Lane (point A) via burial ground to Taylor Lane (point C) subject to the limitation of a gate at point C on the draft Order map in **Figure 1, page 17** below and to record a public footpath on the DMS along route 2 branching from along route 1 from Old Lane at point B via steps to High Street (point D) on the draft Order map in **Figure 1, page 17** below.
- 6.2.4 In relation to route 1, **Figure 1** shows that the width of the routes to be recorded would be variable relating to public use and extend over the width of what was the grassy walled track point A to point E and over the width of the flight of steps edge to edge between point E to point C. In relation to route 2, **Figure 1** shows that the width of the routes to be recorded would be variable relating to public use and extend over the width of what was the grassy walled track at point A to point B, then over the

width of the flight of steps wall to wall from point B northwards and then over the flagged and tarmacked area to point D.

- 6.2.5 The Council can confirm the Order providing it does not elicit any objections during the formal public notice period. Confirmation of an Order is based on the 'balance of probabilities' (not beyond all reasonable doubt as is the case in criminal law) or Test A in relation to 53(3)(c)(i) of the 1981 Act.
- 6.2.6 Officers also recommend that, should the Order be opposed, and the matter referred to the Planning Inspectorate for determination, the Council should support confirmation of the Order relating to route 1 and route 2 by either written representations, public hearing, or public inquiry. This is because Officers consider that route 1 and route 2 subsist on the 'balance of probabilities'.
- 6.2.7 Confirmation of the Order would record on the DMS the application route for use by the public on foot. However, if new evidence becomes available that changes the assessment of the user evidence, such that, route 1 or route 2 are not considered to subsist on the balance of probabilities, the Council should take a neutral stance in relation to confirmation of the Order.

## **7 Next steps and timelines**

- 7.1.1 As soon as reasonably practicable after determining the application, Schedule 14(3)(3) requires the Council to give notice of their decision by serving a copy of it on the applicant and any landowner/occupier. If the Council decide not to make an Order, the applicant may appeal the decision to the Secretary of State within 28 days after service of notice under Schedule 14(4) of the 1981 Act. The process is usually delegated to a Planning Inspectorate who will consider the appeal and may direct the Council to make an Order.
- 7.1.2 If an Order is made, it will be processed under [Schedule 15 of the 1981 Act](#). This schedule provides that before making an Order, the Council shall formally consult with every local authority whose area includes the land in which the Order relates. The Order will be made in the prescribed form as set out in [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1983](#) and does not take effect until it is confirmed. On making an Order, the Council shall give public notice in



the prescribed form for a forty-two (42 day) period during which representations or objections may be duly made.

- 7.1.3 The public notice is published in a local newspaper, displayed at both ends of the way affected by the Order, at Council offices, and served on every relevant owner/occupier, local authority affected by the Order, and user groups and statutory consultees.
- 7.1.4 If the Order is unopposed, the Council may confirm it. On the other hand, an opposed Order must be submitted to the Planning Inspectorate who may determine the Order via written representations, public hearing, or public inquiry. The Order may be modified, unconfirmed, or confirmed as made. A final decision is similarly given public notice for a 28-day period.
- 7.1.5 Further information on the process and timelines is provided in these documents:

[A Guide to Definitive Map and Changes to Public Rights of Way \(2008 Revision\)](#)

[Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders.html - GOV.UK \(www.gov.uk\)](#)

## **8 Contact Officer**

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

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

- 9.1 There are no previous decisions connected with the matter.

## **10 Appendices**

- 10.1 **Appendix A Guidance to Members**
- 10.2 **Appendix B Officer Investigation Report**
- 10.3 **Appendix C Figures and Photos**
- 10.4 **Appendix D Committee Update**

## **11 Service Director responsible**

11.1 David Shepherd, Strategic Director for Place

Figure 1: Draft Order map – Public footpaths recommended to be added (ABCD)

