

Report title: Councils' stance on confirmation of the 'Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map Modification Order 2024'.

Meeting:	District Wide Planning Committee
Date:	30th July 2026
Cabinet Member (if applicable)	Not Applicable
Key Decision Eligible for Call In	Not Applicable
Purpose of Report Members are asked to make a decision on the Councils stance for confirmation of an opposed definitive map modification order.	
Recommendation - Officers recommend authority is given to the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation. - Officers recommend that authority is given to support confirmation of the opposed Order with modifications to record the way as a public footpath based on use by the public (Option 3 para 6.1).	
Reasons for Recommendation - The Order is opposed; therefore the Council is unable to confirm the Order. - Officers have revisited the available documentary and user evidence and consider that, on the balance of probabilities, the Order route subsists as a public footpath, rather than a restricted byway, based on deemed dedication under section 31(1) of the Highways Act, 1980.	
Resource Implications None. It is the Councils statutory duty under section 53(2) of the Wildlife & Countryside Act, 1981, as the surveying authority, to keep the definitive map and statement under continuous review.	

Date signed off by <u>Strategic Director</u> & name	David Shepherd – 15/07/2026
Is it also signed off by the Service Director for Finance?	Kevin Mulvaney – 15/07/2026
Is it also signed off by the Service Director for Legal Governance and Commissioning (Monitoring Officer)?	John Chapman (on behalf of Samantha Lawton) – 15/07/2026

Electoral wards affected: Kirkburton

Ward councillors consulted: Councillor Armer, Councillor Smith, Councillor Taylor

Public or private: Public

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

1. Executive Summary

- 1.1. This report seeks a decision on the Council's position regarding the confirmation of an opposed Definitive Map Modification Order (DMMO) relating to Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, within the Kirkburton ward.
- 1.2. The Order was made on 19 January 2024 under section 53 of the Wildlife and Countryside Act 1981 following the discovery of evidence suggesting that a public right of way subsists over the route. Initially, the route was proposed to be recorded as a restricted byway. During the statutory consultation period, two duly made objections were received, both arguing that the evidence supports the existence of a public footpath, not a restricted byway.
- 1.3. As the Order is opposed, the Council is legally unable to confirm it and must forward it to the Secretary of State (via the Planning Inspectorate) for determination. In doing so, the Council must also set out its stance on whether it supports confirmation of the Order and, if so, in what form.

- 1.4. At the confirmation stage, the evidential test is the civil standard of proof, the balance of probabilities, which is more stringent than the “reasonably alleged” test applied when making the Order. Officers have therefore revisited both the documentary and user evidence in detail
- 1.5. Following this reassessment, officers conclude that:
- The documentary evidence demonstrates continuity of the route and some public reputation but is insufficient on the balance of probabilities to establish that the Order route subsists as a vehicular highway or restricted byway.
 - The user evidence, assessed under section 31(1) of the Highways Act 1980, is sufficient to demonstrate deemed dedication of the Order route as a public footpath, with an approximate width of 3.6 metres (with a pinch point of 2.6 metres at the eastern end).
- 1.6. Officers therefore consider it is not appropriate for the Council to take a neutral stance or to support confirmation of the Order as made. Instead, Officers recommend that the Council supports confirmation of the Order with modifications, replacing references to a restricted byway with a public footpath and amending the recorded width.
- 1.7. Accordingly, the Officer recommendation (**Option 3, para 6.1**) is to:
- Authorise the Service Director of Legal, Governance & Commissioning to forward the opposed Order to the Secretary of State for confirmation; and
 - Support confirmation of the Order with modifications to record Moor Lane as a public footpath.
- 1.8. There are no additional resource implications arising from this recommendation. The action accords with the Council’s statutory duty to keep the Definitive Map and Statement under continuous review. The final decision on confirmation, including whether a hearing, inquiry, or written representations procedure is used, will rest with the Planning Inspectorate.

2. Information required to take a decision

- 2.1. On 9th November 2023, the Planning Sub-Committee (Heavy Woollen Area) determined two definitive map modification order applications to add Moor Lane, Farnley Tyas, a historic route between Manor Road and Farnley Road, as a public path on the West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area ('the definitive map and statement') and [resolved](#):

“That approval be given to make a Definitive Map Modification Order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a restricted Byway on the Definitive Map and Statement, and that a further report be submitted to a future meeting to consider the Council’s position on confirmation of the Order.”

- 2.2. The '[Kirklees Council \(Kirkburton 256 – Moor Lane\) Definitive Map Modification Order](#)' ('the Order') was made on 19th January 2024 under [section 53\(2\)\(b\) of the Wildlife & Countryside Act, 1981](#) in consequence of an event specified in section 53(3)(c)(i), namely the discovery by the authority of evidence that Moor Lane is reasonably alleged to subsist as a restricted byway. The 42-day public notice period for the Order commenced on 26th January 2024 and ended on 8th March 2024. A duly made objection to the Order was received from a member of the public on 6th February 2024 stating:

“I disagree with the decision that Moor Lane should be a restricted byway. Based on user evidence it should be a public footpath.”

- 2.3. A second duly made objection to the Order on behalf of the Huddersfield Rucksack Club, an applicant for the Order, was received on 12th February 2024 stating:

“I am writing on behalf of the Huddersfield Rucksack Club to object to the Council decision to make a modification order under section 53 to add a restricted byway to the definitive map and statement.

Based on the claim which we made to Kirklees in 2007, and on evidence of usage as a footpath for at least 90 years, we claim that Moor Lane

should be designated as a public footpath on the Definitive Map, and not as a restricted byway.”

- 2.4. As the Order is opposed, the Council must forward the Order to the Secretary of State (Planning Inspectorate) for confirmation, in accordance with [Schedule 15, paragraph 7\(1\) of the Wildlife and Countryside Act, 1981](#). The Council must also determine its stance of confirmation in light of the objections. As the Planning Sub-Committee (Heavy Woollen Area) was decommissioned on 23rd May 2024, it is appropriate for the decision to be made by the District-Wide Planning Committee, as its replacement.
- 2.5. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonable alleged to subsist at the order-making stage, at the confirmation stage, the authority or the Secretary of State must revisit the material on which the original order was made and subject it to the more stringent civil standard of proof, that is the balance of probabilities test to determine if the Order route does subsist. If the evidence is such that a tribunal of fact can say: we think it more probable than not, then the burden is discharged. But if the probabilities are equal, such as there is a conflict of credible evidence that cannot be resolved, it is not.
- 2.6. Therefore, an Order that was correctly made based on a reasonable allegation may ultimately not be confirmed as made, if at all, if the evidence is insufficient to show, on the balance of probabilities, that the way subsists. In order to determine the Council's stance on confirmation of the Order, it is necessary to re-visit the material on which the original order was made. The Council may actively support confirmation of its Order as made, support confirmation with modifications, or alternatively take a neutral stance.

Documentary Evidence

- 2.7. In making the Order, the Council's investigation considered all documentary evidence available to them in accordance with [section 32 of the Highways Act, 1980](#), namely:
- Warburton: The Road Between Huthersfield and Penistone 1719 & 1720 Map of Yorkshire; 1772 Jefferys County of York Map, Undated Farnley Tyas Estate Terrier Map; 1817 Greenwoods Map of Yorkshire; 1893 OS 1: 2,500 Map, 1896 OS One-Inch Map, 1906 OS One-Inch

Map, the 1910 Finance Act Map, 1925 Thurstonland and Farnley Tyas Urban District Council Records, 1928 Omnibus Order Notice in the London Gazette, 1968 Farnley Tyas Sale Document, and Definitive Map Review Records & 1998 Letter.

- 2.8. Officers have revisited the material on which the original order was made and discovered new documentary evidence, namely 1805 Farnley Estate Map, 1827 Quarter Sessions Stopping-Up Order, and 1910 Finance Act Field Book Extracts. Each piece of evidence has to be initially considered on its own to assess their reliability. However, each aspect of evidence must also be assessed in light of the other aspects of documentary evidence. In the end, after considering all the aspects together, the decision-maker has to determine whether they are satisfied on the balance of probabilities that the use and reputation of the Order route was such to justify the inference that it was dedicated as a highway.
- 2.9. The documentary evidence demonstrates that the Order route is a long-established physical way of considerable antiquity. The earliest evidence, including the 1719/1720 Warburton material, was considered in context with other contemporary sources, but on balance was found to relate to the through routes comprising the existing public road network and not specifically to the Order route itself. The 1805 Farnley Tyas Terrier Map confirmed the physical existence of the Order route leading to Farnley Moor, but, as an estate management document, is equivocal as to public status.
- 2.10. Greenwoods 1817 Map of Yorkshire depicts the Order route as a 'Cross Road', which gives some indication that the surveyor regarded it as a through route to public use on horseback or cart. However, the evidential weight of the document is limited as Greenwood's mapping did not distinguish reliably between public and private roads and therefore the document cannot by itself establish public rights.
- 2.11. Ordnance Survey maps from 1893 onwards show the Order route as an enclosed way and indicate changes in its physical character over time. Whilst the 1893 large scale OS map suggests a metalled surface, this corroborates the existence of brewery and tannery along the Order route. Later mapping reclassifies the Order route in a manner more consistent with a private road than with a public carriageway.

- 2.12. The 1910 Finance Act map provides an indication of public status as the route is shown uncoloured and excluded from adjacent hereditaments. This treatment may suggest it was a public carriageway in public ownership and exempted from taxation. However, the 1910 Finance Act material is only corroborative and cannot be viewed in isolation, particularly because other clearly private routes in the area were also left uncoloured.
- 2.13. Later twentieth-century records point towards private status. The 1925 Thurstonland and Farnley Tyas Urban District Council highways list was found, on the balance of probabilities, to refer to the surrounding highway network rather than the Order route itself. The inclusion of the Order route in the 1968 Dartmouth Estate sale catalogue under Roads in Hand' strongly suggests that it was regarded by the estate as private land. This is reinforced by the highway's registry card/list of streets, which records the Order route as "Private Unmade".
- 2.14. The definitive map review records add further context and acknowledge the Order routes historic character and reputation for pedestrian and horse-drawn use but also record that the available documentary evidence alone was insufficient to justify the addition of the Order route to the definitive map without supporting evidence of public use.
- 2.15. Overall, the documentary evidence is sufficient to show a long and consistent history of the Order route's existence but is generally equivocal on status. At the order-making stage, the combined effect of Greenwoods 1817 map, the 1893 Ordnance Survey map, and the 1910 Finance Act material was sufficient to reasonably allege that higher rights might subsist. However, on the balance of probabilities, the cumulative documentary evidence does not establish that the Order route was dedicated at common law as a public carriageway.

User Evidence

- 2.16. Overall, there is evidence of public use from 41 members of the public, submitted between 1996 and 2023, showing longstanding public use of the Order route, principally on foot, over several decades. The available evidence demonstrated use of the full route between Manor Road and Farnley Road for walking and recreation, with some use dating back to the early twentieth century.

- 2.17. For the purposes of section 31(2) of the Highways Act, 1980, Officers identified three events that brought the public right to use the way into question: the dates of the 1996 and 2007 definitive map modification order application, and the landowners 2012/13 section 31(6) deposit and declaration. Three overlapping retrospective twenty year relevant periods were considered for the purposes of section 31(1), namely: 1976-1998, 1987-2007, and 1992-2012.
- 2.18. The quantity and quality of public use on foot was found to be sufficient in all three relevant periods to demonstrate actual public enjoyment of the Order route. Evidence was provided by 30 users in the 1976-1996 relevant period, and 35 users in each of the latter relevant periods. The user evidence supported public footpath status only. Although there was some evidence of horse rider use, this was limited to a small number of witnesses and was not sufficient to show use on horseback for the full twenty-year periods.
- 2.19. The public use was as of right: open, without force, and without permission. The landowner's assertion that the Order route was a permissive way was not supported by the available evidence indicating that permissive signs were erected only in 2019/20, outside any of the relevant periods.
- 2.20. The evidence also showed that use was without interruption. Whilst gates and stiles were present for stock control, there was no evidence that they prevented public passage or were used during the relevant periods to challenge public use of the Order route.
- 2.21. There is insufficient evidence negating an intention to dedicate the way as a highway during the relevant periods. There were no effective notices, no sustained challenges to users, and no statutory deposit until 2012/13, capable of rebutting the presumption of dedication for the earlier periods.
- 2.22. Although gates and stiles are now present, the evidence indicates that these were introduced after the beginning of the earliest relevant period and therefore should not be recorded as limitations. In relation to width, the evidence supports a recordable width of approximately 3.6 metres, with a pinch point of 2.6 metres near Manor Road.
- 2.23. Overall, Officers consider that there is sufficient evidence to show, on the balance of probabilities, deemed dedication of the Order route as a public footpath under

section 31(1) of the Highways Act, 1980, and the definitive map should be modified by adding the way to the legal record of public rights of way.

3. Implications for the Council

3.1. Council Plan

3.1.1 Not applicable

3.2. Financial Implication

3.2.1. The financial costs associated with the confirmation and referral of the opposed Order to the Secretary of State would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the Order route in question.

3.3. Legal Implications

3.3.1. The Council has a statutory duty under section 53(2) of the Wildlife and Countryside Act, 1981, to keep the definitive map and statement under continuous review and as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3)(c), shall by Order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

3.4. Climate Change and Air Quality

3.4.1. Not applicable.

3.5 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

3.5.1 Not applicable

4. Consultation

4.1. Kirkburton Ward Members were consulted at the pre-Order stage. No responses were received.

5. Engagement

5.1. Not applicable.

6. Options

6.1 The Options for Members are as follows:

Option 1 to authorise the Service Director of Legal, Governance & Commissioning to forward to the Order to the Secretary of State at Defra for confirmation but take a neutral stance on its confirmation.

Option 2 to authorise the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation and to support confirmation of the Order as made.

Option 3 to authorise the Service Director of Legal, Governance & Commissioning to forward the Order to the Secretary of State at Defra for confirmation and to support confirmation of the Order with modifications.

6.2 Should Members choose Options 1 or 2 they are requested to clarify the evidential basis behind the decision.

7. Officer Recommendation

7.1 Officers recommend that Members choose **Option 3**, para 6.1 above.

8. Reasons for Recommended Option

8.1. Officers have revisited the evidence on which the original order was made and subjected it to the more stringent balance of probabilities test at the confirmation stage.

8.2. Officers consider that the documentary evidence establishes continuity of existence and some degree of public reputation. However, whilst it was reasonable to allege the existing of a vehicular highway at the order-making stage, there are indications pointing either way.

8.3. Overall, at the confirmation stage, the documentary evidence is not sufficient, on the balance of probabilities, to infer that the Order route subsists as a vehicular highway and the burden of proof is not discharged. Therefore, Officers do not recommend that the Councils support confirmation of the Order as made.

- 8.4. Officers subsequently evaluated the available evidence of public use in accordance with section 31(1) of the Highways Act, 1980, and determined that the Order route is deemed to have been dedicated as a public footpath free from limitations with an approximate width of 3.6 metres and a pinch point of 2.6 metres at its eastern end.
- 8.5. Officers conclude that, on the balance of probabilities, the Order route subsists as a public footpath and the definitive map requires modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Wildlife & Countryside Act, 1981. Therefore, it is not appropriate for the Council to take a neutral stance.
- 8.6. On the contrary, Officers recommend that the Council support confirmation of the Order but with modifications to replace all references to 'restricted byway' with 'public footpath' and a modification of the width to be recorded in the definitive statement.

9. Next steps and timeline

- 9.1. The Council forward the Order to the Secretary of State at Department for Environment, Food & Rural Affairs (DEFRA) for confirmation in accordance with paragraph 7(1) of Schedule 15 of the Wildlife and Countryside Act, 1981.
- 9.2. The Planning Inspectorate will decide whether to hold a hearing or an inquiry, or whether a written exchange of evidence and comments would be the most efficient way to decide the case.
- 9.3. The Planning Inspectorate will publish a decision report online and send copies of the decision report and a copy of the order map to the Council, all statutory objectors, the applicant, and supporters or interested parties.
- 9.4. If the Order is not confirmed, the Council shall give notice of the decision by serving a copy of it on any persons on whom notices were required to be served under paragraph 3(2)(b) or (4) of Schedule 15 of the Wildlife and Countryside Act, 1981.
- 9.5. If the Order is confirmed as made, the Council shall give a 42-day public notice in accordance with paragraph 3(1)(c) of Schedule 15 of the Wildlife and Countryside Act, 1981 of the decision to confirm the Order in accordance with paragraph 11 of Schedule 15 of the Wildlife and Countryside Act, 1981.

- 9.6. Under paragraph 8(1)(c) of Schedule 15, the Secretary of State shall not confirm an order with modifications so as to show as a highway of one description a way which is shown in the order as a highway of another description.
- 9.7. Therefore, if the Order is proposed to be confirmed with modifications, as per the Officer recommendations, a notice of proposed modification(s) will be published followed by a 28-day public notice period under paragraph 8(2)(a) of Schedule 15 of the Wildlife and Countryside Act, 1981. If no duly made representations or objections to the proposed modifications are received, the Planning Inspectorate may confirm the Order (see para 9.5 above). If a representation or objection is duly made and not withdrawn (see para 9.2 above). The Planning Inspectorate will publish a final decision report.

10. Contact officer

Mark Drydale, Definitive Map Officer,

11. Background Papers and History of Decisions

- Decision of the Planning Sub-Committee (Heavy Woollen Area) (09.11.23)
- Pre-Order Officer Investigation Report
- Confirmation Stage Officer Investigation Report & Appendixes

12. Appendices

None.

13. Service Director responsible

Service Director: Tony Galloway (Interim)

Highways and Streetscene, Place Directorate