

Confirmation Stage – Investigation Report

**Wildlife & Countryside Act 1981 – Section 53
West Yorkshire County Council Definitive Map and
Statement for the Kirklees Area**

**Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map
Modification Order 2024**

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Executive Summary

1. The Statement of Case concerns the 'Kirklees Council (Kirkburton 256 – Moor Lane) Definitive Map Modification Order 2024', made following two long definitive map modification order applications to record public rights along Moor Lane, Farnley Tyas. The applications, dated 1996 and 2007, sought the addition of a bridleway or footpath along the Order route, supported by witness statements and later documentary submissions in 2020. After the Council was directed by the Planning Inspectorate to determine the 2007 application, a pre-Order consultation was conducted in 2023, which produced additional user evidence and landowner submissions.
2. The Council subsequently made the Order under section 53(2)(b) of the Wildlife and Countryside Act, 1981, in January 2024 to record Moor Lane as a restricted byway in consequence of an event specified in section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981. The Order was made based on an investigation of documentary evidence in accordance with section 32 of the Highways Act, 1980, which was sufficient to reasonably allege that the way had been historical dedicated at common law as a public carriageway and taking into account the extinguishment provision for mechanically propelled vehicular rights in section 67 of the Natural Environment and Rural Communities Act, 2006. Two duly objections were received, which have not been withdrawn, on the grounds that the Order route should be recorded as a public footpath. The Order must therefore be referred to the Secretary of State for confirmation. The purpose of this report is to determine the Councils stance on confirmation of the Order.
3. The Order route leads between Manor Road and Farnley Road along a historic lane forming part of the long-established network of tracks in Farnley Tyas. The land has historically been owned by the Kaye family, later the Dartmouth Estate, and subsequently Farnley Estates Limited, with a short unregistered segment at its eastern end adjacent No. 40 Manor Road. The investigation report sets out the statutory requirements for modifying the definitive map under section 53 of the Wildlife and Countryside Act 1981 and explains the differing evidential tests for making and confirming an order. While the reasonably alleged test suffices at the order-making stage, confirmation requires proof on the balance of probabilities. Section 31 of the Highways Act 1980 also applies, providing for deemed

dedication where the public have used a route as of right and without interruption for at least twenty years.

4. A comprehensive review of documentary evidence has been undertaken, drawing upon estate maps, commercial maps, Ordnance Survey mapping, Finance Act material, local authority records, and the 1968 estate sale catalogue. While these sources consistently show the physical existence of Moor Lane as a long-established way, and there is some corroboration between Greenwoods 1817 Map of Yorkshire, the 1893 1:2500 Ordnance Survey map, and 1910 Finance Act map sufficient to reasonably allege that a restricted byway subsists to make the Order, having revisited the available evidence, overall Officers do not consider that the documentary evidence provides sufficient evidence, on the balance of probabilities, to demonstrate that the Order route was dedicated as a public carriageway.
5. Officers have therefore considered deemed dedication under section 31 of the Highways Act, 1980. For the purposes of section 31(2), the right of the public to use the way was considered to have been brought into question by the definitive map modification order applications in 1996 and 2007, and a later two-stage section 31(6) deposit of a map and statement and lodged declaration in 2012/13. The first relevant period of twenty years was therefore calculated retrospectively as 1976 to 1996 ('the relevant period'); however, two overlapping relevant periods have also been considered: 1987 to 2007 and 1992 to 2012.
6. The investigation concluded that each element of the first question of fact, whether the way has been "*actually enjoyed by the public as of right and without interruption for a full period of 20 years*", was met in all relevant periods to raise the rebuttable deemed dedication of a footpath. The burden of proof then shifted to whoever sought to rebut the statutory conclusion. However, the second question of fact was not satisfied, namely that there is "*sufficient evidence that there was no intention to dedicate*". Although there is some evidence of equestrian use and reputation as a bridleway, the evidence is sparse and insufficient to show that the way has actually been enjoyed by the public for a full period of 20 years to provide the landowner with an opportunity of resisting and challenging the use.
7. Currently, there are two gates and three stiles along the Order route. However, the available documentary and user evidence shows that they were erected towards the end of the first relevant period and not at the date of dedication coeval with the early user in 1976. Therefore, the Order route is not deemed to have been dedicated subject to

limitations. Owing to the presence of structures and dense vegetation, the width of the Order route currently used by the public is presently narrow. However, documentary and user evidence show that the full width of the Order route was used by the public at the date of dedication, with an approximate width of 3.6 metres and a pinch point of 2.6 metres at its eastern end.

8. Officers conclude that the Council should support confirmation of the Order with modifications to replace all references to restricted byway with public footpath and a modification of the width to be recorded on the definitive statement.

Background Information

9. On the 22nd February 1996, The Ramblers submitted a definitive map modification order application to Kirklees Council ('the Council') under [section 53\(5\) of Wildlife and Countryside Act, 1981](#), ('WCA'). The application sought to modify the West Yorkshire Metropolitan County Council Definitive Map and Statement for the Kirklees Area ('the definitive map and statement') by Order to add a bridleway along a route known as Moor Lane, Farnley Tyas, leading between Manor Road and Farnley Road. The application was properly made under the requirements of Schedule 14 of the WCA and the submission gave as evidence 13 witness statements. The 1996 application was later supplemented by a further witness statement in 1997. The applicant certified to the Council that the requirements of [paragraph 2 of Schedule 14 of the WCA](#) had been complied with and the relevant landowners and occupiers have been notified of the application.
10. Subsequently, on 11th October 2007, a second definitive map modification order application was submitted to the Council on behalf of the Huddersfield Rucksack Club ('the second applicant'). The second application sought to modify the definitive map and statement by Order to add a footpath along Moor Lane commencing on Manor Road and leading south-westerly towards, but stopping short of, its junction with Farnley Road. The second application was properly made under the requirements of Schedule 14 of the WCA and the submission have as evidence 6 witness statements. Lastly, on 10th December 2020, Kirklees Bridleways Group submitted documentary evidence to support the claims, namely: 1719 Warburtons Route (Huddersfield Highways Down the Ages), 1841 Ordnance

Survey Boundary Sketch Map & Remark Book, 1893 Ordnance Survey 1:2500 First Edition Map, and 1910 Finance Act Map.

11. The Council had a statutory duty to determine the applications under [Schedule 14, paragraph 3](#), of the WCA. The Council also have a free-standing duty under section 53(2) to continuously review the definitive map and statement together with a duty under section 53(3)(c) of the WCA to consider all relevant evidence available to it, which includes the documentary evidence submitted by Kirklees Bridleways Group. Following a representation by the second applicant, the Council were directed by the Planning Inspectorate (Ref: [FPS/Z4718/14D/19](#)), on behalf of the Secretary of State for Environment, Food, and Rural Affairs, pursuant to paragraph 3(2) of WCA, to determine the application no later than 20th November 2022.
12. A pre-Order consultation was conducted with Kirkburton Parish Council, Almondbury Ward Members, user groups and landowners between 9th August 2023 and 11th September 2023. The consultation elicited several responses: Kirkburton Parish Council, Huddersfield Ramblers, and Huddersfield Rucksack Club all supported the claims; 21 members of the public provided further evidence of public use. Four landowners/adjacent landowners submitted 'Landowner Statements'. All the new evidence was duly considered as part of the investigation.
13. A report on the application, investigation and consultation was submitted to the Council's [Planning Sub-Committee \(Heavy Woollen Area\)](#) on 9th November 2023. The committee considered all the available evidence set out in the report and [resolved](#) to make a definitive map modification order under section 53(2)(b) of the WCA in consequence of the occurrence of an event specified in section 53(3)(c)(i) to record Moor Lane, between Farnley Road and Manor Road, Farnley Tyas, as a restricted byway on the definitive map and statement. However, the committee resolved that a further report be submitted to a future meeting to consider the Council's position on confirmation of the Order. The purpose of this investigation report is to determine the Council's stance on confirmation of the Order.
14. The '[Kirklees Council \(Kirkburton 256 – Moor Lane\) Definitive Map Modification Order 2024](#)' ('the Order') (see **Appendix A**) was duly made by the Council on 19th January 2024 under section 53(2)(b) of WCA in consequence of the occurrence of an event specified in section 53(c)(i). For the purposes of the Order, the relevant date is 9th November 2023. If confirmed as made, the Order will record a restricted byway on the definitive map and

statement along a route known as 'Moor Lane' leading between Manor Road and Farnley Road ('the Order Route').

15. A [public notice](#) was published in the Huddersfield Examiner on 26th January 2024, served on statutory consultees, at local offices, and posted on site at either end of the Order route in accordance with the requirements of [paragraph 3 of Schedule 15 to the WCA](#). The 42-day public notice period commenced on 26th January 2024 and ended on 8th March 2024. The Order elicited two duly made objections received by the Council on 9th February 2024 and 12th February 2024 respectfully, which have not been withdrawn. As required by paragraph 7(1) of Schedule 15 to the 1981 Act, the authority has submitted the Order to the Secretary of State for confirmation.

16. The investigation report will address why Officers consider that the Order should be confirmed in light of any new evidence and provide comments on the objections.

Description of Order Route

17. The Order route is partly an old historic way known as Moor Lane. It is located in the town of Farnley Tyas, in the civil parish of Kirkburton, within the Metropolitan Borough of Kirklees, in the West Riding of Yorkshire. Farnley Tyas is a small rural village located 3 miles southeast of Huddersfield and is situated on a hilltop approximately 900ft above sea level between Almondbury, Castle Hill, Thurstonland, and Honley. The Order route commences on Manor Road and leads southerly along a tarmac access road that provides access to the properties of 40 Manor Road and Ash Croft. The Order route continues southerly to its junction with an ancient route known as 'Crab Lane' and then leads generally south-westerly along a predominantly vegetated track with a relatively narrow width between 2.5-3 metres to its junction with Farnley Road (Photos of the Order route shown in **Appendix B**).

Landownership

18. Farnley Tyas is a historic village that was first mentioned in the Domesday Book of 1086 as 'Fereleia' (Darby, 2008). Tyas is a manorial affix from the family name of 'le Tyeis' who held land in the area from the 13th century (Mills, 2011). The majority of the village was owned by the Kaye family of Woodsome that built Woodsome Hall since 1378 (Yorkshire Archaeological Society, 1895). By 1732 the lands were in the possession of the Earl of Dartmouth and the village grew into a predominantly farming community. In 1969, the land was sold to a William Shaw & Sons (Huddersfield) Limited, which became Farnley Tyas Estates Limited and has remaining in their ownership until the present day but is now known as 'Sprillers' (Land Registry Title 'WYK479161') (see **Appendix C**). The relevant land was included in an Agricultural Holdings Act tenancy to Malcolm Kaye. The Kaye family had been farming the land as tenant farmers for 300 years for rough grazing land for grazing predominantly cattle.
19. In 2019, Farnley Estates Limited sold the freehold of an area of land known as 'The Old Brewery' covering part of the western section of the Order route at its junction with Farnley Road (Land Registry Title 'YY120185') (see **Appendix C**). A small section of the Order route is unregistered and despite extensive enquiries, the Council was not able to ascertain the ownership of the land in question. On 17th January 2024, in accordance with paragraph 3(4) of Schedule 15 to the WCA, the Secretary of State directed that it was not necessary for the Council to serve notices on the owners and occupiers of the land over which the route runs as required by paragraph 3(2)(b)(i).

Statutory Provisions

Section 53 of the Wildlife and Countryside Act, 1981

20. The Council have a statutory duty to keep the definitive map and statement under continuous review and under [section 53\(2\)\(b\) of the WCA](#):

“... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, 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.”

21. In this case, as the applications seek to add the Order route to the definitive map and statement as either a footpath or bridleway, the relevant evidential event to investigate the documentary and user evidence contained in [section 53\(3\)\(c\)\(ii\) of the WCA](#), namely:

“(3) The events referred to in subsection (2) are as follows-

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

22. Whilst it suffices under section 53(3)(c)(i) for a public right of way to be reasonably alleged to subsist at the order-making stage, the standard of proof is higher for the order to be confirmed. At this stage, the test to be applied to the available evidence is the civil standard of proof, that is, the balance of probabilities. 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.

23. A bridleway, footpath, and restricted byway are defined in [section 66 of the WCA](#) as:

““bridleway” means a highway over which the public have the following but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;”

““footpath” means 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;”

““restricted byway” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;”

24. A restricted byway is defined in [section 48\(4\) of the Countryside and Rights of Way Act, 2000](#) as:

“In this Part-

“restricted byway rights” means-

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles; and

“restricted byway” means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.”

Section 31 of the Highways Act, 1980

25. [Section 31 of the Highways Act, 1980](#), so far as material to this case, provides:

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

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land over which any such way as aforesaid passes-

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

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

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

(6) An owner of land may at any time deposit with the appropriate council-

(a) a map of the land, and

(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

Any, in any case in which such a deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time-

(i) within the relevant number of years from the date of the deposit or

(ii) within the relevant number of years from the date on which the previous declaration was lodged under this section.

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

(6A) Where the land is in England-

(a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,

(b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and

(c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years.

(7) For the purposes of the foregoing provisions of this section “owner”, in relation to any land, means a person who is for the time being entitled to dispose of the fee simple of the land;...

(7A) Subsection (7B) applies where the matter bringing the right of the public to use the way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

26. It is not necessary for present purposes to refer to the remainder of s.31 of the Highways Act, 1980. Deemed dedication under statute therefore involves consideration of a proviso, and then two questions of fact. The meaning of the proviso *“other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication”* have the same legal effect as, and are equivalent to, the words *“as a highway”*.

27. The first question of fact is whether the way has been *“actually enjoyed by the public as of right and without interruption for a full period of 20 years”*. Each element of must be met to raise the presumption that a way has been dedicated as a highway. The burden of proof to satisfy the first question of fact rests on the applicant for the modification order. If the first question can be given the answer ‘yes’, there will be a rebuttable ‘deemed’ dedication. The burden of proof then shifts to whoever seeks to rebut the statutory conclusion, which stands unless the specified statutory condition of escape, the second question of fact, is satisfied, namely that there is *“sufficient evidence that there was no intention to dedicate”*.

Section 32 of the Highways Act 1980

28. The relevant legal framework for assessing documentary evidence is under s.32 of the Highways Act, 1980, which provides:

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place,

shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

29. The provision is declaratory of the common law and confirms that any map or other document, adduced in evidence in determining whether a way has been dedicated a highway must be take into consideration. In assessing the value of a document, those considerations include: the antiquity of the document; the status and reputation of the person by whom it was made; the facts surrounding its creation and the purpose from which it is produced. Analysis of evidence usually comprises of three stages: the identification of fact, the derivation of an inference from the fact, and an assessment of the evidential weight of the inference.
30. Direct evidence of highway status will often be impossible to find over the passage of time and inferences must be drawn from the circumstantial evidence. Circumstantial evidence does not carry as much weight as direct evidence, and no matter how reasonably the inference drawn, it is generally no more than a rebuttable presumption. Each aspect 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. The cumulative effect of a number of separate issues of circumstantial evidence is to increase the weight of that evidence.
31. This is often expressed through the use of the ‘rope analogy’. One strand of rope on its own may be weak and insufficient to carry a weight, but several strands together increase the strength of the rope and may then carry more weight (see [R v Exall \[1866\] 176 ER 850](#)). 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 (see paragraph 83 of [Commission for New Towns v JJ Gallagher \[2003\] 2 P&CR 24](#)).

Reasons For Confirming the Order

32. In [R. \(on the application of Roxlena Ltd.\) v Cumbria County Council & Another \[2019\] EWCA Civ 1639](#), the Appellant contended that if documentary evidence before a Council was not sufficient to demonstrate on the balance of probabilities at the order-making stage that a public right of way subsisted to justify confirmation, it could not have been reasonable to make a definitive map modification order. Lord Justice Lindholm disagreed and confirmed that the reasonably alleged test applies equally to documentary evidence cases as it does to user evidence, citing the relevant authorities. However, at the confirmation stage, the legislation implies a revisiting by the surveying authority of the material on which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage:

[37] Under the 1981 Act the order-making part of the process is separate from confirmation, and involves a different approach to the evidence. This has been consistently recognized by the courts. The procedure under Schedule 14 to the 1981 Act was described by Roch L.J. in ex p. Emery (at p.377b) as "preliminary". He said (at p.377e-h) that "[where] there is no credible evidence of 20 years' user or where there is incontrovertible evidence that the landowner had no intention during the period to dedicate the way to the public, ... then the decision should be not merely that the allegation that a right of way subsists is not reasonable, but that no right of way as claimed subsists". However, where there is "conflicting evidence on one or other or both issues", an authority "must bear in mind that an order under [section] 53(2) made following a [Schedule] 14 procedure still leaves [objectors] with the ability to object to the order under [Schedule] 15 when conflicting evidence can be heard and those issues determined following a public inquiry". He went on (at p.379c) to approve observations made by Owen J. in R. v Secretary of State for the Environment, ex p. Bagshaw (1994) 68 P. & C.R. 402 (at pp.407 to 409) – that the words of section 53(3)(c)(i) indicate "that the evidence necessary to establish that a right of way is reasonably alleged to subsist over land must be less than that which is necessary to establish that a right of way does subsist", and that "bearing in mind the structure of [the 1981 Act], this seems to be clear". He also endorsed Owen J.'s formulation of the relevant question as being "Does the evidence produced by the claimant together with all the other evidence available show that it is reasonable to

allege a right of way?". Consistent with this is another observation made at first instance, by Evans-Lombe J. in Todd v Secretary of State for Environment, Food and Rural Affairs [2004] EWHC 1450 (Admin) (at paragraph 51(iii)) – that the provisions of paragraph 6 of Schedule 15, which confer on an authority a discretion to confirm unopposed modification orders, "... imply a revisiting by the authority ... of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage".

"[74] The reasons I have given for rejecting the parallel argument relating to the footpaths are also relevant here. The crucial question is whether the allegation is a "reasonable" one. This is not a high test, and deliberately so. The fact that the allegation is based on primary documents rather than user evidence as such does not bear on the principle. A reasonable allegation can properly be based on documentary material alone – as Roch L.J. effectively accepted in ex p. Emery (at p.379c) when endorsing Owen L.'s observation in ex p. Bagshaw (at p.409) that "if... the evidence were to be wholly documentary it might be possible, satisfactorily or reliably, to evaluate that evidence without any necessity for a hearing, and in these circumstances answer the question whether a reasonable person could reasonably allege a right of way to subsist."

33. In making the Order, the Officers 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, 1805 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.

34. 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. All of the documentary evidence has been considered using the balance of probabilities test at the confirmation stage.

Documentary Evidence

Warburton: The Road Between Huddersfield and Penistone 1719 & 1720 Map of Yorkshire

35. Warburton's 1720 Map of Yorkshire was published at a scale of 24 miles to 1 inch and was made from an actual survey (see **Appendix D**). The notebooks of the survey are discussed in 'Huddersfield Highways Down the Ages' by W.B. Crump in 1968. An extract of the surveyors' notes is transcribed by W.B. Crump and were submitted in evidence to Kirklees Bridleway Group to support a claim that the Order route subsists as a public bridleway on the basis that the Order route is described as a thoroughfare road to Highburton (see **Appendix D**).
36. The documents show that a main route between Huddersfield to Penistone, and onwards to London, was through Farnley Tyas via Woodsome Road, The Village, Butts Road, Thurstonland Road, Green Side Road, and Brown's Knoll Road. Warburton's route therefore does not lead directly passed the Order route, as confirmed by the measurements and the 1720 Map. However, the surveyors' notes describe: "*A Rd. on ye Rt. to Honley ye Lt. High Burton + (Moor Lane)*". It is clear that W.B. Crump names the route and corrects the surveyors' spelling mistakes. The reference to 'Moor Lane' is therefore based on W.B. Crump's interpretation of the survey. Kirklees Bridleway Group infer that the Order route was used as a thoroughfare to Highburton via the route through Carr Wood to Woodsome Lees.
37. However, as shown in **Appendix D**, Warburton's route does not lead directly passed the Order route. Therefore, in the first instance, 'Moor Lane' may only refer to the section of present day Moor Lane that leads between Brockholes Road and Farnley Road, which joins Storthes Hall Lane and in turn leads to Highburton. Today, Moor Lane forms a thoroughfare with Farnley Road and Storthes Hall Lane to Highburton and Kirkburton. In an 1827 stopping-up order of a public footpath, two Justices of the Peace describe Storthes Hall Lane as follows (see **Appendix E**):

“... a certain Highway in the Township of Thurstonland aforesaid leading from Farnley Tyas aforesaid to Kirkburton in the Riding aforesaid called Storthes Hall Lane...”.

38. Similarly, an extract of plate 17 of [Jefferys 1772 County of York Map](#) (see **Appendix F**) also confirms that Moor Lane and Storthes Hall Lane forms a thoroughfare road from Farnley Tyas to Highburton. On the balance of probabilities, the route to Highburton described in Warburtons 1719 survey includes the section of Moor Lane maintained at public expense as a public carriageway, Farnley Road, and Storthes Hall Lane, rather than the Order route. Moreover, the surveyor provided the distances between points in miles, furlongs, and poles. One furlong equals 200 metres, and one perch equals 5 metres; 8 furlongs make up a mile, and 40 perches make up 1 furlong.
39. The distance between station 14 ‘Enter Farnley Town End’ (3m, 3f, 15p) and station 16 ‘A Rd. on ye Rt to Honley ye Lt. Highburton + (Moor Lane)’ (4m, 1f, 0p) is 5 furlongs and 25 poles, which equates to approximately 1,131 metres. Measuring this distance on modern Ordnance Survey mapping from approximately just north of the ‘The Village’ at ‘Field Lane’, leading along ‘The Village’, ‘Butts Lane, and part of ‘Thurstonland Road’, places the point that the surveyors/W.B. Crump notes as ‘Moor Lane’, as exactly at the ancient parish boundary between Thurstonland and Farnley Tyas. On the other hand, the distance from Farnley Tyas village to the junction of the Moor Lane, is only 780 metres.
40. Measuring the distance leading northerly from the parish boundary to ‘Enter Farnley Moor. Open’ (3m, 7f, 10p) is 0m, 1f, 39p, which is approximately 350 metres and is, give or take, the distance between the ancient boundary and the present day junction of Brockholes Lane/Moor Lane/Butt Lane. The junction of Moor Lane with the start of Farnley Moor is consistent with Jefferys 1772 County of York Map and the 1805 Farnley Tyas Estate Terrier Map. Overall, the inference to be drawn from Warburtons 1719 and 1720 documentary evidence is therefore equivocal with regard to the Order route.

Table 1: Analysis of 1719 Warburtons of Road between Huddersfield & Penistone

Station	Progressive Distance (miles, furlongs, perches)	Distance Between Point and Station 14 (metres)	Description	Modern Description
14	3 3 15	0	Enter Farnley Town Junction of End. A house on ye Rt. Woodsome Road, & Scattering houses on and The Village ye Lt. ye main body of ye Town on ye Lt. A way on ye Lt. to it.	
	3 4 0	90	Leave Farnley. Open Rt.	The Village
	3 ? ?		A Rd. on ye Rt. to Honley (Farnley Lane)	Honley Road. Junction with Butt Lane
16	3 7 10	780	Enter Farnley Moor. Open.	Junction of Butt Lane, Moor Lane, Brockholes Lane, and Thurstonland Road.
	4 1 0	1131	A Road + ye Rt. to Honley ye Tl. Highburton + (Moor Lane)	Farnley Tyas and Thurstonland Parish Boundary
17	4 3 0	1533	Descend (Farnley Moor End)	Farnley Moor End. Junction with Greenside.

1805 Farnley Tyas Estate Terrier Map

41. At the Order-making stage, Officers analysed a traced terrier map of the Dartmouth Estate, approximately dated to 1828, which showed referenced plots of land and the alignment of existing ways at that time, although there was no direct evidence of status. Following the making of the Order, Officers have obtained a copy of 'Farnley Tyas: A History' by Dr

Caroline Page from Honley Civic Society, which contains a copy of a survey map, dated 1805, 'Terrier of the Dartmouth Estate' (see **Appendix G**). Dr Caroline Page comments:

“... in 1805 Lord Dartmouth’s agents Kent, Pearce and Kent completed a rent revision for the Yorkshire Estates. They then considered it advisable to prepare ‘a register’ giving detailed information of the whole of the Estates. In a letter to Lord Dartmouth Mr. Pearce said that ‘it shows the represent disposition of the property’. In this Survey of 1805 (Dartmouth Estate 1805) each holding is dealt with separately, giving the name of the building or farm, the name of the tenant, the name of each field and its number on the key map, its type of cultivation, i.e. meadow, pasture or arable, the rents before and after the increase and the buildings on the holding. The mills and collieries are listed with detailed information on each. The script is in a beautiful copperplate hand and there are delightful illustrations. A part from the value of the information it contains, the book itself is a work of art”.

42. The cartouche to the 1805 survey map states 'Farnley & Rowley Sections' and shows and names woodlands, fields, houses, watercourses, and a dashed black line in the manner of a footpath leading to Birks Wood. The 1805 survey predates the diversion/stopping up of the ancient Woodsome Lane and the creation of part of Farnley Bank Road between the Order route and Manor Road. The map shows all routes, whether throughfare or cul-de-sac, public or private, generally as enclosed routes coloured sienna.
43. The 1805 survey map confirms that the Order route led to Farnley Moor, which is annotated as 'non cultivating', providing an indication of the provenance of the name 'Moor Lane' and its purpose. The continuation of Moor Lane through Farnley Moor is shown as unenclosed and then is enclosed once it becomes 'Brockholes Lane'. The 1805 survey map also shows that the southern section of the route now known as 'Farnley Bank Road' existed at this point in time and continued towards Storthes Hall Moor Lane and 'Highburton'. Notably, the northern section of 'Farnley Bank Road' did not exist (also historically known as 'New Lane'), but it is shown on 1817 Greenwoods Map of Yorkshire, indicating that it was dedicated at some point between 1805 and 1817. Nevertheless, overall, the document confirms the existence of the Order but is equivocal with regards to its status.

1817 Greenwoods Map of the County of Yorkshire

44. The Order-route is depicted on Greenwoods 1817 Map of the County of Yorkshire (see **Appendix H**) as a thoroughfare ‘Cross Road’, leading between what is now Farnley Road and Manor Road, at a time when highways were reparable by the inhabitants at large, before section 23 of the Highways Act, 1835, came into effect on 20th March 1836. A research paper titled: ‘*What is a Cross Road?*’ was presented by the author at the Order-Making stage, in support of the argument that any route described as a ‘cross road’ on a commercial map should be accepted as a public carriageway.
45. On behalf of Kirklees Bridleways Group, reference was also made to case law, such as *Trafford v St Faith’s Rural District Council* [1910] (‘*Trafford*’), *Hollins v Oldham* [1995], ‘*Gallagher*’, and [Fortune & Others v Wiltshire Council & Another \[2010\] EWHC B33 \(Ch\)](#) & [Fortune & Others v Wiltshire & Another \[2012\] EWCA Civ 334](#). With the exception of *Fortune*, the judgements in question were considering a map produced by a different cartographer and either many years before or after Greenwoods 1817 Map of Yorkshire. The precedents set should be considered, but in the context of any individual map.
46. In *Trafford*, Neville J considered that commercial maps are: “... *admissible as some evidence of reputation, but the weight of the evidence is another matter*”. In particular, the depiction of a route as a ‘Good Cross or Driving Road’ on Bryant’s 1826 Map of Norfolk was considered to provide an indication of reputation and provided a: “... *little bit of evidence to indicate that as early as 1826 this road was considered to be a public road*” as it was inferred that the characterisation of the road was based on information provided by local inhabitants. However, the case was mainly decided on a sale plan of 1848, which described the way as a public road. Furthermore, in [Norfolk v Mason \[2004\] EWHC B1 \(Ch\)](#), Judge Roger Cooke stated with regards to *Trafford*:
- “It would be unwise ever to rely on this decision as saying that Bryant is something on which great weight should be put as to status or anything else. The significance of the result was that Bryant was consistent with everything else”.*
47. Judge Roger Cooke also considered the status to be inferred from the depiction of a route as a ‘Good Cross or Driving Road’ on the same Bryant’s Map, and its evidential value, concluding that whilst the depiction of a route as a ‘Good Cross or Driving Road’ on

Bryant's map is prima facie consistent with, in the absence of contrary evidence, "... a little piece of evidence in support of public rights", but by itself, Bryant's map is anything but a firm indicator and not too much reliance should be placed on the document. Similarly, although with regards to a route depicted as a parochial road on a commercial map by John Cary, HHJ Neuberger stated in *Gallagher*:

"However, it appears to me that there is one factor which provides a little support for the Commission's case. One of the historical maps, namely Cary, does tend to suggest that Beoley Lane was a public carriageway. This is because it was denoted as a "parochial road".

48. The judgements in *Trafford*, *Mason*, and *Gallagher* are consistent on the 'little' evidential weight attributed to commercial maps. This is due to the reliance that can be placed on the surveyor/cartographer, as explained in *Hollins v Oldham* [1995]. HHJ Howarth analysed 'Burdetts Map of 1777, which included two types of road on its key: 'turnpike roads' and 'cross roads', and therefore comparable to Greenwoods 1817 Map of Yorkshire. HHJ Howarth stated:

"The latter category, it seems to me, must mean a public road in respect or which no toll was payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged".

49. The depiction of the route in question, known as 'Pingot Lane' as a Cross Road, raised a *prima facie* inference of public status for the travelling public on horseback or horse and carriage. However, the judgement continues: "*Pingot Lane must have been considered, rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles*", which indicates that the depiction and characterisation of a route on the commercial map is evidence of what the surveyor/mapmaker thought, which would depend on their methodology. Similarly, in [Price v Nunn \[2023\] EWHC 3200 \(Ch\)](#), HHJ Russen KC considered an 1824 Map surveyed by Bryant and stated:

"The experts agreed that this was the type of map produced for the benefit of the travelling gentry and I therefore accept Mr Carr's point that that it would show routes

that could be used by the public. However, without more, that does not establish that every route shown was suitable for vehicular use.”

50. The decision in *Fortune* noted that Greenwoods Map of Wiltshire, 1829, showed a thoroughfare including the lane in question as a ‘Cross Road’ and concluded that the map supported “*the emerging picture*” of an established thoroughfare. The Court of Appeal noted that in their judgement, the label ‘Cross Road’ added further support. They noted that:

“... the consistency of treatment of Rowden Lane and Gypsy Lane in commercially produced maps for well over a century showed, if nothing else, the reputation enjoyed by Rowden Lane... [the judged tested] each provisional conclusion against what had come before and what came after [and his] approach to ‘consistent depiction’ was fully justified”.

51. *Fortune* highlights the fact that commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. Commercial maps may nevertheless be corroborative evidence, and combined with other sources, they can tip the balance of probability in favour of such status.

52. Where public or private status can be inferred from a commercial map, depending on the associated key/reference, it can infer the class of highway as either bridleway or vehicular class of public status. However, it is considered to reflect no more than the opinion of the cartographer and may be dependent on their methodology and how effective their inquiries were into determining status. It is quite possible that surveyors may have wrongly classified some ways and therefore, whilst the documents can provide an inference of reputation, the evidential weight is significantly less than from some other documentary sources where the legal status of the way was critical to the purpose of the survey (Discovering Lost Ways).

53. Officers discovered information relating to the production of Greenwoods Map of Yorkshire. An advertisement in the Leeds Mercury, April 15, 1815, related to the “*Proposals for publishing by subscription a new map of the County of York, from an actual survey... In this map... the course of... public and private roads... will be correctly exhibited...*” (see **Appendix I**). In the absence of evidence to the contrary, it is logical to deduce that

Greenwoods 'Cross Roads' would have included both public and private. In *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77, the judge stated:

"The road is again shown on the map of 1802 by Faden and again in Greenwood's map of 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the topographer-author was intending to represent the road on his map as a public highway".

54. This is supported by a paper in the Rights of Way Law Review titled: 'Nineteenth and Early Twentieth Century Non-OS Maps' (September 2001) by Dr Yolande Hodson, an expert in the *Gallagher* judgement, which states:

"We know that Greenwood employed several surveyors and draftsmen, but we know nothing of their competence or instructions, and very little detail about the methods used and whether there was any systematic checking for error".

"Greenwood's portrayal of roads was very simple. They were either 'Turnpike Roads' or Cross Roads'. If they were enclosed they were shown by solid lines, and if they were unfenced, the roads were shown by dashed lines. The enclosing line or casing of the turnpike roads was shaded (thickened) on the south and east sides (a convention also used by Ordnance Survey). The cross roads were drawn with a narrower width and lacked the shaded line. Public and private roads were not differentiated. A cursory examination of Greenwood's maps will show that the term 'cross road' seems to have been a catch-all phrase to mean roads other than turnpike roads. A significant number of the so-called cross roads do not, in fact, cross from one route to another, but end up, on the map, in the middle of nowhere or at isolated buildings".

55. These factors do not support the proposition that all routes depicted as a cross road on Greenwoods 1817 Map of Yorkshire map were public and lessens the weight to be placed on the document. The nature of the Order route as a thoroughfare, connecting with accepted highways at both ends, following the interpretation of 'cross roads' in *Hollins v Oldham* [1995], may suggest the reputation of a public way rather than private. However, noting that the depiction may only represent the right or wrong opinion of the cartographer, and the 1815 advert, this is not hugely persuasive and would require corroboration from other documentary evidence. For example, a route from Farnley Tyas to Woodsome Leas

is also shown as a 'Cross Road'. Today, it is recorded on the definitive map and statement as a public footpath and was described by two Justices of the Peace in an 1827 stopping-up order as an "... *a certain occupation road in the Township of Farnley called Lees Lane*".

56. This conclusion concurs with the Barristers opinion provided to Officers on behalf of Kirklees Bridleways Group at the Order-Making stage, titled 'RE: Status of Cross Roads' at paragraph 16-18 when considering the proposition "*whether on the balance of probabilities a cross road is definitely a public carriageway and byway*". The Barrister considered at paragraphs 17 and 18 that this was too wide a proposition without taking into account the evidential weight of the commercial map, and all other relevant evidence relating to a particular way.

1893 – 1906 Ordnance Survey Maps

57. At the Order-Making stage, Kirklees Bridleway Group presented Officers with an extract of [Yorkshire \[West Riding\] Sheet CCLX.8 First Edition 1893 1:2500 Ordnance Survey Map \(Appendix J\)](#). The contents of the map were surveyed in 1888, and it was published in 1893. The Order route is shown as an enclosed route and is the only route from the 1968 list of 'Roads in Hand' depicted with shading on its southern side leading from the junction of New Lane and Burnt Hill Lane, passed 'Farnley Tyas Brewery' to the eastern end of what is now called Manor Road, at a 'Smithy'. At this period of time the Order route was most likely used to access the brewery, tannery, smithy, adjacent fields, and farms. The depiction of the Order route with shading on its southern side provides an indication that it was a metalled road, less than 14 feet wide, and well maintained at the time of the survey, in 1888. The term 'well-maintained' was defined:

"... as meaning a road capable of being travelled over at high rate of speed all year round. Roads inferior to these were again to be divided into two classes by distinct characteristics".

58. The 1893 OS 25 Inch Map includes a disclaimer, which states: "*The representation on this map of a Road, Track, or Footpath is no evidence of the existence of a right of way*". However, the depiction of the Order route in the same manner as known vehicular highways may provide an inference that the status of the Order route is similar and was

maintained at public expense. In this instance, the Order route is shown in the same manner as the surrounding road network, with Honely Road, Butts Road, The Village, Manor Road, Farnley Road, and Woodsome Road also shown with shading either on their eastern and southern side.

59. However, a circular that applied to published 1:2500 OS plans is dated 30th November 1885, and this specifies that both public and private roads were to be shaded. Whilst a distinction between public and private roads was intended, with the latter shading being less prominent, in the Rights of Way Law Review Paper, titled: ‘Roads on OS 1:2500 Plans 1884-1914’, Dr Yolande Hodson states:

“Roads... may have been second class standard, in which case they could have been either public or private. This illustrates the danger of interpreting a road as public on the grounds that it looks like all other known public roads.”

60. The author concludes that, when viewed in isolation, the inference that can be drawn from shading of a second class road on the 1:2500 maps was the character of the roads themselves, rather than clarifying their legal status or who was bound to repair them. In the High Court in *Fortune*, HHJ McCahill QC derived a similar inference at paragraph 744, following a consideration of quotes from Dr Yolande Hodson as the leading expert on the matter, that the OS maps could never be definitive of legal status as it was simply not their purpose.

61. On the other hand, Dr Yolande Hodson indicates that an inference on status may be drawn in comparing the 1:2500 plans with the relevant one-inch map:

“Private roads, which might have been shown as at least second class on the 1:2500 plans, were generally shown as third or fourth class at the one-inch scale. It follows that if any interpretation is attempted on large-scale plans published between November 1885 and 1912, the relevant one-inch maps should also be consulted.”

62. Officers have therefore consulted the applicable one-inch [1896 Ordnance Survey Revised New Series Map \(Sheet 86 – Glossop\)](#), surveyed between 1871 to 1872, revised in 1894, and published in 1896 (**Appendix J**). The plan shows a four-fold classification scheme for roads: (1) First Class Metalled Road; (2) Second Class Metalled Road; (3) Third Class Metalled Road; and (4) Unmetalled Road. Each category was subdivided further into

‘fenced’ or ‘unfenced’. The new scheme followed the 1892 Dorrington Committee, which considered the original classification of roads was bad, and recommended the adoption of the classification of roads adopted by the Military Committee of 1891. The Committee intended for a distinction in the first and second class roads between those maintained by authorities as highways, and private roads. However, the differentiation was never made on the one-inch map.

63. The Order route is shown on the 1896 one-inch map as a fenced Third Class Metalled Road leading from Farnley Road, passed the brewery, and then diverges as two routes. One route turns north-north-westerly as an unfenced Unmetalled Road to what was known as ‘Park Farm’. The Order route continues easterly then northerly to join Manor Road as a fenced Unmetalled Road. The 1892 Donnington Committee defined Third Class Metalled Road as: “... of an inferior character, whether maintained by a public authority or not” and the fourth class as “*Unmetalled roads, tracks, and green lanes*”.

64. At face value, the surveyor’s interpretation of the Order route on the 1896 One-Inch Map as a third and fourth class road is therefore equivocal because many private roads would be included in these categories. Nevertheless, the depiction of the Order route from the 1893 25-Inch OS Map to the 1896 One-Inch OS Map has followed the projected treatment of private roads as theorised by Dr Yolande Hodson. Furthermore, the Order route is the only route in the area that is never again shown on any subsequent 25-Inch OS Maps with shading on either its eastern or southern side. This may reflect a coordination with the One-Inch Maps, as indicated in the 1905 OS [‘Instruction to Field Examiners’](#), which states:

“One-inch revisers deal with a larger area of country at a time than large-scale surveyors and revisers, and are more likely to arrive at a uniform classification. Hence on the large scale, Examiners should, if possible, follow the one-inch classification. Should the latter in any case be found seriously and clearly wrong, the Examiner should report the fact in writing”.

65. The instructions notes that OS maps are not entirely error free. The Order route is continuously shown as a Third Class/Fourth Class Road, on all subsequent ‘New Series’ OS One-Inch Maps. Overall, each Ordnance Survey maps are generally equivocal with no indication of public or private status when viewed in isolation. The *prima facie* inference is that the Order route possibly had a well maintained surface when surveyed in 1888 and when it was used for multiple purposes but had a poor/unmetalled surface throughout the

20th century. Nevertheless, the depiction of a second class road on the 1893 25 Inch Map but then reclassified as a third/fourth class road on the 1896 One-Inch Map is more consistent with private status, as suggested by Dr Yolande Hodson, as is the differentiation between the Order route and known vehicular highways on all 20th century 25-Inch and One-Inch OS Maps.

1910 Finance Act Map

66. The 1910 Finance Act, often referred to as the ‘1910 Survey’ or ‘Domesday Book of the 20th century’, was a national value of land conducted subsequent to s.26(1) of [The Finance \(1909-10\) Act, 1910](#) for the purpose of taxation. The exclusion of a road from adjoining taxable hereditaments (shown as uncoloured and unnumbered) could provide evidence that the route was a highway. In [Robinson Webster \(Holdings\) v Agombar \[2001\] EWHC 510 \(Ch\)](#) (‘Agombar’) Mr Justice Etherton described the 1910 Finance Act records as “most powerful” evidence and states at paragraph 47:

“[47] The 1910 Finance Act map and schedule are, in my judgement, most material evidence in relation to the status of the Blue Land at that time. It would have been in the interest of the owner of the Blue Land to acknowledge that the Blue Land was a public highway and so not taxable. On the other hand, it would have been the concern of those acting for the Commissioners to establish that the Blue Lane was private land and not subject to public rights. The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority. In the circumstances, whether or not the Commissioners consulted with officers of the Rural District Council about the status of the Blue Land, I see no reason to infer, as I was urged to do by Mr Hodge QC, that the designation of the Blue Land on the 1910 Finance Act plan and schedule was simply a mistake.”

67. However, in the Rights of Way Law Review publication titled ‘Uncoloured roads on 1910 Finance Act maps’, dated 2002, David Braham Q.C. writes:

“In Agombar, Etherton J. referred to ‘untaxed public roads’. It is tempting to conclude that the treatment of the uncoloured roads stemmed from the exemption afforded to land owner by a rating authority, but Instruction 560 shows that the Inland Revenue were regarding the frontagers, not the highway authority, as the relevant owners of the uncoloured roads.

See also RWLR s.1.1 p.42 for the point that roads for whose maintenance a R.D.C was responsible did not vest in the R.D.C. Many of the uncoloured roads were in ‘R.D.C areas.’

68. Nevertheless, the view in *Agombar* was endorsed and adopted as a statement of the practice and procedure for carrying out the survey by HHJ McMahon QC in *Fortune* in the High Court by at paragraph 757, correctly in the judgement of Lewison LJ in the Court of Appeal. In *Fortune*, the disputed part of Rowden Lane was shown on the 1910 Finance Act map as uncoloured and not forming part of any taxable hereditament:

“[80] Mr Mould submitted, correctly in our judgement, that the treatment of the disputed section of Rowden Lane on the Finance Act map shows very clearly that it was regarded at that time as a highway. For it to have been so regarded it must necessarily have been dedicated as a highway at some time earlier than 1910. That in turn entails that the then owner of the land over which it ran had the necessary intention to dedicate at common law (because there was no statutory presumption of dedication at that time). The action of Mr Rich (who was in fact the owner of the soil) in claiming that Rowden Lane was a highway is in itself powerful evidence of previous dedication. At the time of the Finance Act map it is also clear from all the cartographical evidence that Rowden Lane was physically capable of accommodating vehicles. Not only that, but Mrs Fortune asserts that it was in fact used by vehicles (although not by members of the public). It had existed in that physical configuration for centuries.”

69. However, Lewison LJ stated that the 1910 Finance Act records formed part of a jigsaw and not to be viewed in isolation. In [Maltbridge Island Management Company v Secretary of](#)

[State for Environment and Hertfordshire County Council \[1998\] EWHC Admin 820](#), Justice Sullivan stated the 1910 Finance Act documents are of corroborative evidential value and *“It is true that different explanations can be advanced for what is shown in the 1910 Act material”*, and the decision-maker is entitled to consider which explanation seemed the more likely on the balance of probabilities. In *Gallagher*, Neuberger J stated that the treatment of a route as uncoloured on the record plans together with a width wide enough to carry vehicles raises the inference of public carriageway but did not regard it as a strong point and cautioned, at paragraph 106, that the maps are unambiguous in this regard and appear to have been prepared in a hurry.

70. In [‘Land and Society in Edwardian Britain’](#), Brian Short further emphasises that the 1910 Finance Act documents should be viewed collaboratively with other documentary evidence and to consider the various possible explanations why a route is shown uncoloured, to answer *“Whose input led to the map showing an uncoloured route?”*. The question to be addressed in such cases is whether such a route is a genuinely public one, given that there was no public consultation, and therefore correctly left uncoloured: *“Much depends on the local context, and the importance of considering the 1910 material alongside supporting documents is again emphasised”*. Equally, in ‘Public or Private? An Analysis of the Legal Status of Rights of Way in Norfolk’, Tom Breen underlines the corroborative nature of Finance Act documents and their limitations when inferring status from the record plans:

“The act instructed that ‘each piece of land... shall be separately valued’, overlooking instances when the use of a road, and the costs of its upkeep, were known to be shared. This is perhaps the biggest limitation of the source: the simple binary distinction between white and coloured does not represent the multi-faceted and complex nature of many rights of way. There are also examples of adjacent map sheets contradicting one another, one sheet may leave a road white, while another may colour it. We must question whether the valuers colouring each sheet understood the implications of their actions. Much like the tithe maps and apportionments, the Finance Act assessed land for tax purposes and was not primarily concerned with the status of rights of way. Nevertheless, legal cases in 1998, 2001, and 2012 all considered the Finance Act to be viable evidence. It is worth noting however that in these cases the Finance Act evidence was corroborated by other sources”

“Neither Tithe nor Finance Act documents can therefore establish, unequivocally, the legal status of particular roads. These sources offer only a pale reflection of the legal status of roads, but a reflection nonetheless”.

71. The relevant 1910 Finance Act record plan showing the area of land to which the Order relates is 'IR 134 6 72' (see **Appendix K**). The base map is the [1906 Second Edition 25-Inch OS Map](#), which was revised in 1904, and shows the relevant area of land within the boundary of Farnley Urban District Council. The whole of the Order route is shown uncoloured on the reference plan prepared by District Valuers under s.26(1) of [The Finance \(1909-10\) Act, 1910](#) and not within the hereditament of any private individual. The document therefore provides some indication that the Order route was considered to be in public ownership and vested in Farnley Tyas Urban District Council under [s.149 of the Public Health Act, 1875](#), on the basis that it was a public carriageway maintainable at public expense and dedicated as a highway at some time prior but must not be viewed in isolation.
72. However, it is noted that generally all routes in the Farnley Tyas area, whether known public thoroughfares or private cul-de-sacs leading to fields, mills, or farmsteads, are all shown uncoloured. The Earl of Dartmouth was the [Lord of the Manor for Farnley Tyas](#) and owned most of the land recorded in the Valuation Book as the land was never enclosed by parliamentary act. Of the 289 hereditaments, the Earl of Dartmouth owned 234. The units of valuation abutting the Order route were nos. 20, 23, 29, 30, 32, 34, 36, 44, 49, and 199. With the exception of no. 23, all the hereditaments are owned by the Earl of Dartmouth, and with the exception of nos. 29 & 30, they are all in separate occupation. Therefore, it is equally reasonable to infer that the Earl of Dartmouth owned the soil of the Order route but it was in multiple occupation and left uncoloured on that basis.
73. In arriving at the 'Total Value' of a unit of valuation, the valuer may make deductions from the 'Gross Value' in respect of 'Public Rights of Way or User'. Since the making of the Order, the Council have also investigated available Field Books created by the District Valuer during the 1910 Finance Act survey. Unit of valuation nos. 20, 30, and 49 are partly adjacent the Order route and record deductions for public rights of way (see **Appendix K**). However, the deductions are, on the balance of probabilities, in respect of other parcels of land away from the Order route crossed by public footpaths known as Kirkburton 55 and 61.

1925 Thurstonland and Farnley Tyas Urban District Council Minutes

74. The Thurstonland and Farnley Tyas Urban District Council was formed in 1925 following an amalgamation of Thurstonland Urban District and Farnley Tyas District. On the 9th April 1925, the highways in the district were divided in the three areas, with the second and third group in the Farnley Tyas area (see **Appendix L**):

Table 2: Analysis of 1925 UDC List of Highways

No. 2 District	Modern Name
<i>Longley Lane from Hall Ing & Brockholes Lane through to Thunderbridge (including:- Height Green Lane, Yards, Greenside, Green Lane, and Wood Lane)</i>	Hall Ing Lane, Greenside Road, Wood Lane
<i>Farnley Moor Lane from Yards to junction with Moor Lane</i>	Thurstonland Road (to junction of Brockholes Lane/Moor Lane)
<i>Storthes Hall Lane and Moor to the Brewery</i>	Storthes Hall Lane, Farnley Road (up to Farnley Mill)
No. 3 District	Modern Name
<i>Farnley Lane from High Royd through the Village & New Line to Woodsome Mill Bridge. (Including:- Bankfoot, Farnley Bank, Rushfield, and Birksmillgate)</i>	Honley Road, The Village, Woodsome Road, Bankfoot Road, Millgate, Farnley Bank, St Helens Gate
<i>Hey Lane</i>	Hey Lane
<i>Moor Lane from Longley Lane to the Brewery & to the Village</i>	Brockholes Lane/Moor Lane
<i>Butts Lane to the Village</i>	Thurstonland Road
<i>The Village</i>	The Village/Manor Road

75. Today, the majority of these routes are the ordinary road network and are maintained at public expense. The inference of the 1925 list of highways is therefore that the routes shown therein were all-purpose highways repairable by the inhabitants at large. The production of the list predates the coming into force of section 84 of the Public Health Act, 1925 on the 7th August 1925 and the requirement of every urban authority to prepare a list

of streets within their district of the streets which are repairable by the inhabitants at large. Nevertheless, it can be inferred that the list was prepared for the administration of maintenance.

76. The 1925 list notably states: “*Moor Lane from Longley Lane to the Brewery & to the Village*”. At face value, the description of the route could encompass the Order route. Storthes Hall Lane and Storthes Moor Lane are also described as leading to “*the Brewery*”. As shown on the 1893 OS 1:2500 map, a brewery was located at the western end of the Order route. However, by 1904, the brewery relocated from the Order route to its present location at the junction of Moor Lane/Farnley Road as shown on the [1906 OS Second Edition 1:2500 map](#) (see **Appendix J**). Furthermore, the Order route now joins Manor Road, which was allocated its name in 1931 and was described as “... *the Road from the Village to Town Bottom*” (see **Appendix L**). Therefore, if the description encompassed the Order route, it may be expected that it would state “to Town Bottom”.

77. Moreover, the Order route now joins Farnley Road, which in 1925 was known as ‘New Lane’. There are numerous examples of involvement by the highway authority in New Road before and after the 1925 list of highways (see **Appendix L**). For instance, New Lane was repaired in 1908, widened in 1929/30, described as a ‘Main Road’ in 1930 and responsibility was transferred to West Riding County Council. Lastly, since 1928, New Lane has formed part of the omnibus service under The Huddersfield Corporation (General Powers) Act, 1920 (see **Appendix M**).

78. Finally, the [1924 Ordnance Survey ‘Manchester District \(Special Sheet\)’ One Inch Popular Edition](#) (see **Appendix J**), which was revised between 1919 to 1921, corrected and printed in 1924. On this map, Hey Lane, Brockholes Lane, Moor Lane (to Farnley Road), The Village, Storthes Hall Lane, New Lane and Farnley Road are all shown coloured either orange or dashed orange, with shading on their southern or eastern side, indicating that they were ‘Other Roads’, with a 14ft wide metalled surface, fit for ordinary traffic, or an indifferent/winding road. In contrast, the Order route was shown uncoloured as either a private road or a road with under 14ft wide metalled surface in bad condition. On the balance of probabilities, the description “... *from Longley Lane to the Brewery & to the Village*” includes New Lane as the natural continuation of both Moor Lane and Storthes Moor Lane (now Farnley Road) as ordinary vehicular highways and does not provide evidence of highway status along the Order route.

1968 Farnley Tyas Sale Catalogue (Dartmouth's Estate)

79. In 1968, the Earl of Dartmouth sold the 'Farnley Tyas Estate' in a sales catalogue (see **Appendix N**) which included a list of lands in the possession of the estate, together with grants, wayleaves, and easements affecting the land. The catalogue states:

“(3) None of these statements contained in these particulars as to this property are to be relied on as statements or representation of fact.

“(4) Any intending purchase must satisfy himself by inspection or otherwise as to the correctness of each of the statements contained in these particulars.”

80. The information contained in the Sales Catalogue must therefore be viewed with caution but nevertheless inferences from its contents can be made. A list of 'Roads in Hand' is provided, which are referenced to the plot numbers, names, and acreage included in the relevant [1932 Ordnance Survey 25-Inch Map](#) (see **Appendix J**). The Order route is included in this list:

Table 3: Analysis of 'Roads in Hand' list in 1968 Farnley Estate Sale Catalogue

<i>Roads in Hand</i>		
OS No.	Name	Modern Status/Name
718	Plump Lane	Private
740	Ludhill Lane	Private road, public footpath
747	Lane to Royd Wood	Private
749	Road at Ludhill	Private road, public footpath
Pt. 886	Road to Farnley Hey	Private road, public footpath
940	Road	Private road, public footpath
955	Moor Lane	Order route
967	Crab Lane	Private
1023	Toft Lane	Private road, public bridleway
1057	Cliffe Lane	Private road, public footpath
1069	Lane	
Pt. 1010	Part Best Lane	Private road, public footpath

1121	Field Lane	Private road, part public footpath, part public bridleway
1130	Track off Field Lane	Private
Pt. 1280/1292	Woodsome Hall Lane	Private road
Pt. 1331	Track through Farnley Wood	Private
Pt. 1338	Track through Copse	Private
Pt. 1345	Road at Low Common	Private
1364	Road at Millgate	Private

81. None of the routes included on the list are ordinary vehicular highways today, however, many are private roads with coexisting public paths. This correlates with the fact that none of the routes recorded on the 1925 Thurstonland & Farnley Tyas Urban District Council highways list, which are ordinary vehicular highways today, are duplicated on the 1968 'Roads in Hand' list. The inference of inclusion on the 1968 list of 'Roads in Hand' is that the soil of the routes, including the Order route, were considered by the Dartmouth Estate to be in their possession as private land and not in public ownership and vested in the highway authority under section 226 of the Highways Act, 1959, which was in operation at the time. This is supported by Farnley Tyas Urban District Council minutes dated 1892 and 1893, which show that Ludhill Lane was in private ownership and was considered for adoption to be repairable by the inhabitants at large (see **Appendix O**).

82. A route in private ownership does not necessarily mean that it was not a highway, for instance they could have been repairable *ratione tenurae*. However, whilst it is a possibility, the 1968 list does not provide supporting evidence of such a contention. On the contrary, there is evidence that other routes included on the list were of private status. For instance, the 'Road to Farnley Hey' is described in the Farnley Tyas Urban District Council minute book on 5th June 1907 as a "... *private road leading from the Councils Highway to Farnley Hey Fold*" (see **Appendix O**).

Definitive Map Review Records

83. Sections 27 to 33 of [the National Parks and Access to the Countryside Act, 1949](#), gave all county councils the duty of surveying and mapping all public rights of way within their area. The survey was to be completed in three stages: draft, provisional, and definitive) with reviews conducted every five years. Schedule 3, Part II of [the Countryside Act, 1968](#), streamlined the process to speed up the reviews and required that any representation/objection duly made in respect of alterations affected by the draft revision, or of anything omitted from the draft map, and is not withdrawn, would result in a public inquiry:

“(3) If any representation or objection is duly made in respect of alterations effected by the draft revision, or of anything omitted therefrom, and is not withdrawn, the Minister shall cause a local inquiry to be held.

(4) If any such representation or objection is duly made, and is not withdrawn, the Minister shall, subject to the following provisions of this paragraph, and after taking into consideration any report by the person appointed to hold the local inquiry, take a decision on the objection or representation, and if he considers that the draft revision should be modified to give effect to his decision he shall give to the authority such directions as appear to him necessary for the purpose.”

84. The West Yorkshire Metropolitan County Council published the draft review on 1st October 1979, which was deposited at the Kirklees Metropolitan Council offices between the 29th February to 1st June 1980. [The London Gazette notice on 25th February 1980](#) stated:

“Any representations or objections with respect to alterations effected by the Draft Revision or to anything omitted therefore and the above-mentioned reclassification of roads used as public paths, should state clearly what they relate to and the grounds on which they are made. They should be sent in writing to The Regional Director, Department of the Environment, Housing and Planning, City House, New Station Street, Leeds, LS1 4JB, on or before 1st July 1980”.

85. On the 13th April 1980, within the public notice period, a letter was sent to West Yorkshire Metropolitan County Council by a member of the public who had examined the draft review of the definitive map and statement (see **Appendix P**). The letter submitted a list of routes

recommended for inclusion to the legal record of public rights of way, which included the application route:

“Yesterday I paid a visit to the Kirklees Information Centre to examine the proposed definitive footpath map. Will you please consider the following alterations or additions:

Farnley Tyas – Following the track from Netherton MR. 172122 to Mill at MR. 166125- consider as an addition.”

86. The letter appears to be a representation to the draft definitive statement due to the omission of the application route, amongst others, although it does not provide any user or documentary evidence to support the claim. An investigation considered the 1850, 1895, and 1:2500 Ordnance Survey maps and noted that it was shown as ‘Moor Lane’. Remarks on the claim and investigation commented that no previous representation had been made although there was some evidence that the route had the reputation of being used by horse-drawn traffic (see **Appendix P**):

“A site inspection reveals a well trod path varying in width from 8 to 12 feet between walls. From the evidence of the 1850 and 1895 maps it may well be an ancient highway. Local residents say it was used by horse drawn traffic many years ago. There is no known Enclosure Award for Farnley Tyas and it is not included in the Thurstonland in Kirkheaton Enclosure Award. It is capable of bridleway status but not so used although not obstructed by any locked gates.”

87. The officer’s recommendation further states:

“Had representation been made, favourable consideration would have been given to including the path on the map subject to there being sufficient evidence of use.”

88. Overall, the recommendation indicates that the officers were not satisfied that the available documentary evidence and reputation of the Order route was sufficient to add the Order route to the definitive map and statement, and evidence of use was required. As no previous representation had been made, the application was to be considered for inclusion at the next review, which never took place as section 53 of the Wildlife & Countryside Act, 1981, replaced the procedure for county-wide surveys with a system of continuous amendments to the definitive map and statement.

89. A site visit was conducted by definitive map officers on 27th November 2000 (see **Appendix Q**), which commented that the Order route was: “*Well used by pedestrians – Stile preventing horses at the Manor Road end*” and marked on a map a field gate at the western end at its junction with Farnley Road. Notably, both site inspections commented that there was a well-trodden path and use by pedestrians, which is consistent with the status of at least public footpath.

90. Finally, subsequent to the 1997 definitive map modification order application, the Council have on file a notes of a meeting that took place on 15th October 1998 (see **Appendix S**), which states:

“A Stuart Hirst (663675) of 40 Manor Rd came into reception with some queries re Moor Lane + track past Woodview Farm at Netherton/Farnley Tyas. He had a letter from Landowners Agent (Carter Jonas) saying that they believed Moor Lane to be a bridlepath of this is useful evidence for you.”

91. At the time Carter Jonas represented the landowner ‘William Shaw and Sons’. The Council contacted Carter Jonas on 8th August 2023 requesting a copy of the letter. Unfortunately, owing to successive relocations of offices, the letter is no longer available. Overall, there is some evidence of reputation that the Order route is a highway of at least footpath status with some indications of bridleway status, but not sufficient evidence.

Highways Registry Card (List of Streets)

92. The statutory function and evidential value of the list of streets was described in [Trail Riders Fellowship v Secretary of State for the Environment, Food And Rural Affairs \[2017\] EWHC 1866](#) at paragraphs 14 and 15:

“[14] The function and purpose of the DMS is clearly to record in a way which is “conclusive” (in accordance with the provisions of the 1981 Act) the existence and course or alignment of rights of way. Quite separate and distinct are the provisions of Part IV of the Highways Act 1980 (the 1980 Act) which relate to the maintenance of highways which are maintainable at public expense. Section 36(6) of the 1980 act provides that:

"The council of every county ... shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense."

[15] *The word "street" is very widely defined in that Act and includes "any highway, road, lane, footway, alley or passage", and it is common ground that Oakridge Lane falls within that definition of a street. A list of streets (LoS) is a public document which is required to be kept available for public inspection (see section 36(7) of the 1980 Act). A LoS may serve a range of purposes, but it is apparent that its essential and primary purpose is to enable anyone to find out whether or not a given street or highway is maintainable at public expense and, if so, by which authority. There is no provision in relation to a LoS corresponding to the "conclusive" provisions of section 56 of the 1981 Act in relation to a DMS."*

93. The relevant highways registry card (see **Appendix S**) the section of Moor Lane between Farnley Road and Thurstonland Road, a length of approximately 363 metres, as "*Public*". On the other hand, the Order is described as "*Moor Lane East of Farnley Road*" as "*Private Unmade*" with the annotation of "*GW 4.1.90*", which may suggest a date when a survey took place. The Order route was originally described as "*Private Road*", but the word "*Road*" was later crossed out.

94. As the primary purpose of the list of streets is to identify highways maintainable at public expense, the designation 'private' on the Highways Registry Card is strong evidence that the Order route is not publicly maintainable. This inference is consistent with the inferences afforded by the 1925 Thurstonland and Farnley Tyas UDC list of highways and the 1968 Farnley Tyas Estate Sale Catalogue. However, unlike the definitive map and statement, the list of streets is not conclusive and the 'Private' notation neither provides positive or negative evidence that public rights of way do or do not exist.

Overall Conclusion on Documentary Evidence

95. Overall, the documentary evidence presents a long and consistent history of the existence of the Order route but are generally equivocal or limited to infer public status. The 1719

Warburton, when assessed together with the surrounding contemporary evidence such as Jefferys 1772 Map of the County of York and 1827 Quarter Sessions Stopping-Up Order, on the balance of probabilities refer to the section of Moor Lane that is an ordinary vehicular highway, together with Farnley Road and Storthes Hall Lane to Highburton, rather than the Order route. The 1805 Farnley Estate Map offers a valuable insight into the early landholding pattern and confirms the Order route's purpose leading to Farnley Moor. However, the document is a record of property, not public rights, and is equivocal with regards to status.

96. Greenwoods 1817 Map of Yorkshire similarly demonstrates that the Order route has existed along broadly the same alignment for at least three centuries and is annotated as a 'Cross Road' with the appearance of a thoroughfare. The document was produced for the travelling public and provides some indication that the surveyor considered the way to be either a bridleway or carriageway. However, the evidential value of the commercial map is limited as the 1815 advert shows that the term 'Cross Road' did not distinguish between public and private ways.
97. The Order route is shown as a second-class metalled road on the 1893 1:2500 Ordnance Survey map, which is an indication of surface condition rather than status. At this point a tannery and a brewery were located adjacent the Order route. The reclassification of the Order route from a second-class metalled road on the 1893 1:2500 Ordnance Survey map to a partly third and fourth class road on the 1906 One-Inch series, in contrast to the surrounding vehicular highway network, is more consistent with a minor or private route rather than a public carriageway. It is notable that between the publication of the 1:2500 and one-inch maps, the brewery moves away from the Order route, which may indicate its metalled surface served a private purpose. Whilst this does not preclude public rights, it equally cannot elevate the Order route to more than equivocal evidence of status.
98. The 1910 Finance Act map provides the most significant positive indication of possible public status, because the Order route was left uncoloured and excluded from adjacent hereditaments. This treatment may suggest that it was regarded as a public carriageway vested in Farnley Tyas Urban District Council at the time of valuation. However, the Finance Act material must not be viewed in isolation and is only of corroborative value. The uncoloured treatment may arise from several possible explanations, including mapping practice rather than legal certainty, and the courts have emphasised that such

evidence is corroborative only. Significantly, all public and private routes in the Farnley Tyas are shown uncoloured regardless of status.

99. The 1925 list of highways created by the Thurstonland and Farnley Tyas Urban District Council is ambiguous with regards to the Order route. However, interpreted together with contemporary 1919 Ordnance Survey mapping and 1925 Omnibus Order indicate, on the balance of probabilities, that the description: “*Moor Lane from Longley Lane to the Brewery & to the Village*” encompassed Brockholes Lane, Moor Lane, and Farnley Road (New Lane), rather than the Order route on the basis that New Lane was maintained and widened at public expense at this time and the brewery was no longer located on the Order route.
100. The inclusion of the Order route in the 1968 Dartmouth Estate Sale Catalogue list of ‘Roads in Hand’ strongly indicates that the landowner, at least by the mid-twentieth century, considered the route to be private and within their ownership and not part of the publicly maintainable highway network, which is consistent with the 1974 List of Streets. There is also a strong correlation between the 1925 and 1968 documents in that the routes included in each are mutually exclusive.
101. The definitive map review material from the late twentieth century provides further context. Officers at that time acknowledged the route’s historic character and reputation for pedestrian use and even noted claims of former horse-drawn traffic. However, there is no confirmation that such use by horse-drawn traffic was by the public or was in association with the tannery or brewery that was historically located on the Order route. Officers concluded that the available documentary evidence was insufficient to justify the addition of the route to the definitive map without supporting user evidence.
102. At the Order-making stage, the synergy between Greenwoods 1817 Map of Yorkshire, the 1893 1:2500 Ordnance Survey map, and the 1910 Finance Act Map was considered sufficient to reasonably allege that the Order route subsists as a restricted byway, taking into account the provisions contained in [section 67 of the Natural Environment and Rural Communities Act, 2006](#). However, having revisited the available documentary evidence at the confirmation stage, the cumulative effect does not demonstrate, on the balance of probabilities, that the Order route was dedicated as a public carriageway at common law.
103. The corroborative effect of the 1893 and 1906 Ordnance Survey maps, the 1925 highways list, the 1968 Roads in Hand list, and the 1974 List of Streets collectively indicate that the

Order route was not considered to be a vehicular highway. Whilst there is some corroboration between Greenwoods 1817 Map of Yorkshire and the 1910 Finance Act map, they are of limited evidential value and equally showed private roads as 'Cross Roads' or 'uncoloured', respectively. However, there is no longer synergy with the 1893 Ordnance Survey Map and the inference is not sufficient to outweigh the inference pointing towards a private road. The 1719 Warburton Survey, the 1805 Farney Estate Map, and the Definitive Map records are equivocal with regards to public carriageway status.

104. The most likely explanation is that the Order route originated as a private track across land in the ownership of the Earl of Dartmouth to Farnley Moor. The documentary evidence is compatible with the existence of a public footpath but does not rise to the level required to establish higher rights. Accordingly, the documentary material establishes continuity of existence and some degree of public reputation, there are indications pointing either way and therefore, in the Officers opinion, the probability that the Order route subsists as a public carriageway is, at most, equal. Therefore, it is necessary to consider, on the balance of probabilities, whether the way was dedicated as a public right of way based on evidence of use by the public.

Section 31 of the Highways Act, 1980

... the date when the right of the public to use the way was brought into question...

105. Section 31(2) of the Highways Act, 1980, requires that the relevant twenty year period of use is to be calculated retrospectively from the date on which the public use of the way is brought into question. In order for the right of the public to be 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 challenged, so that they might be apprised of the challenge and have a reasonable opportunity of meeting it, as per Lord Denning in *Fairey v Southampton County Council* [1956] QB 439.

106. In [R \(oao\) Godmanchester Town Council v Secretary of State for the Environment Food and Rural Affairs \[2007\] UKHL 28](#) (*'Godmanchester'*), Lord Hoffman concluded (see paragraphs 37 and 38) that section 31 of the Highways Act, 1980, contemplates that there will ordinarily be symmetry between the concept of a landowner providing sufficient evidence to negative the intention to dedicate, such as under paragraphs (3), (5), or (6) of section 31 of the Highways Act, 1980, and the concept of bringing the public right to use the way into question for the purposes of section 31(2).
107. Section 31(6) provides for a two-stage approach to the provision by the landowner. Stage 1 is the deposit with the Council of a map and statement indicating the ways which the owner admits are highways. The role of the map and statement is to provide a date from which to reference the lack of intention to dedicate and to identify the land in respect of which each deposit is being made. Stage 2 is the lodging of a declaration, formerly a statutory declaration under Schedule 1 of the Statutory Declarations Act, 1835, which may be made "*at any time*" within the relevant period of time, which confirm that no additional highways have been dedicated over the land as shown in the map and statement.
108. In order to take advantage of the statutory declaration afforded by section 31(6), both the stage 1 deposit and stage 2 lodging of a statutory declaration must have occurred. It is only the subsequent statutory declarations, when combined with the stage 1 deposit, which will satisfy the provisions of section 31(6) and it is in fact the declarations which amount to the sufficient evidence (as outlined by Lord Hope of Craighead at paragraph 53 in *Godmanchester*). By completing both stages, the landowner confirms their intention not to dedicate any additional highways during the time interval between the date the map and statement was deposited and the date the declaration was lodged.
109. On the 12th November 2012, a map and statement were deposited with the Council under section 31(6) on behalf of Farnley Estates Limited relating to the land over which the application routes are alleged to subsist. The deposition was followed by a stage 2 lodged declaration on 13th January 2013 (**Appendix T**). Therefore, the landowner has sufficiently negated the intention to dedicate the way as a highway and simultaneously brought to the public right to use the way into question, creating a relevant period of:
- (1) 12th November 1992 to 12th November 2012.
110. The section 31(6) submissions postdate the two definitive map modification order applications. In the absence of any other event that brought the public right to use the way

into question, subsections (7A) and (7B) of s.31 of the Highways Act, 1980, which were inserted by [section 69 of the Natural Environment and Rural Communities Act, 2006](#), provide that the date an application is made according to paragraph 1 of Schedule 14 to the Wildlife and Countryside Act, 1981, can be taken as the date at which the public's right to use the claimed path was brought into question.

111. Paragraph 1 of Schedule 14 to the Wildlife & Countryside Act, 1981 requires that:

“(1) An application shall be made in the prescribed form and shall be accompanied by-

(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”

112. Paragraph 8 of [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1993 \[SI 12 1993\]](#) (*‘the 1993 Regulations’*) stipulates that:

“(1) An application for a modification order shall be in the form set out in Schedule 7 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.

(2) Regulation 2 above shall apply to the map which accompanies such an application as it applies to the map contained in a modification or reclassification order.”

113. Paragraph 2 of the 1993 Regulations states:

“A definitive map shall be on a scale of not less than 1/25,000 but where the surveying authority wishes to show on a larger scale any particulars required to be shown on the map, or in addition, an inset map may be used for that purpose.”

114. The applications were made in the form prescribed by Regulation (2) & 8(1) and Schedule 7 of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 [SI 12 1993] (*‘the 1993 Regulations’*) and accompanied by copies of the evidence on which the applicant sought to rely. The 1996 definitive map modification order application was accepted by the authority as compliant with paragraph 1 of Schedule 14 on 6th March 1996.

The 2007 definitive map modification order application was accepted by the authority as compliant on 11th November 2007.

115. Therefore, for the purposes of s.31(2), (7A) and (7B) of the Highways Act, 1980, it is considered that the right of the public to use the way was also brought into question on 6th March 1996 and 11th November 2007, creating two further overlapping relevant twenty year periods of:

- (2) 6th March 1976 to 6th March 1996
- (3) 11th November 1987 to 11th November 2007

Where a way over any land... has actually been enjoyed by the public

116. The next preliminary stage of the inquiry is to examine the quality and quantity of use which is relied upon to determine whether the way ‘... *has been actually enjoyed by the public...*’. This requires an assessment of whether the public have had the amenity or advantage of using a way and the evidence is of sufficient quantity to amount to the assertion of the right and consonant in quality to the nature of the right which is being claimed. The preliminary threshold was set out by Mr Justice Ouseley at paragraph 21 in [Wright & Anor v Secretary of State for Environment, Food and Rural Affairs \[2016\] EWHC 1053](#):

“The relevant case law is not contentious. Mann v Brodie (1885) 10 App. Cas. 378 shows that use must be by a sufficient number of people to show that it was use by the public, a number which may vary from case to case. R (Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11, [2010] 2 AC 70, and others cited in it, deal with the quality of the user. The use had to be sufficient to bring home to the mind of the reasonable non-absentee landowner that the public were asserting a continuous right to use each route in question. The user over the twenty year period did not have to be by the same people.”

117. In total, there are forty-one statements from members of the public providing evidence of long standing use along the application route since 1910 for the purpose of leisure and

recreation. Thirteen user evidence forms were submitted in 1996 that were not accompanied by a plan, but they provide a description of the start and end points as well as grid references and it is clear that they used the entirety of the way. One user evidence form was provided in 1997, five in 2007, one in 2015, and twenty-one user evidence forms/statements in 2023. The majority of the forms from 1997 to 2023 were accompanied by a pre-prepared plan showing the relevant area and any existing public footpaths, over which the witnesses annotated the route they used and any gates, stiles, or signs. The depiction of the Order route is a linear way between Manor Road and the junction of Farnley Road/Moor Lane are consistent on nearly all the maps.

118. In [Rowley & Another v Secretary of State for Transport Local Government and the Regions \[2002\] EWHC 1040 \(Admin\)](#), Mr Justice Elias acknowledged at paragraph 12 that when determining sufficiency of public use, it is necessary to discount any use inconsistent with the assertion of a public right of way:

“Accordingly in determining whether there is sufficient use to raise the issue of whether a public right of way has been established, the issue is whether there is enjoyment of a kind which lead a reasonable landowner to believe that those using the land were asserting a public right. In my view it follows that the landowner is not required to have regard to those whom he knows are using the pathway with his express permission, because he would not believe that they were seeking to assert a right. But if others are using the particular path to a sufficient degree to suggest the assertion of a right, then the issue of whether if that use is open, unforced and not precarious comes into play.”

119. The test is therefore whether a reasonable landowner would anticipate that such persons were seeking by their conduct alone to assert a public right of way. UEF/10 may have used the Order route by licence and their use has therefore been discounted:

“Father was a tenant farmer including the footpath.”

120. During the (1) 1992-2012 and (2) 1987-2007 relevant periods, there is evidence of use on foot by a total of thirty-five members of the public and thirty users during the 1976-1996 relevant period, which consonant with the status of a public footpath. However, as shown in Graph 1 below, although there was use of the Order route by different members of the public during relevant periods (2) and (3), collectively the level and frequency of public was highest between 1976 to 1996, when the public walked the Order route predominantly on

a ‘daily’, ‘weekly’, ‘monthly’, or ‘every few months’ basis. Furthermore, some users used terms to indicate their interval of use as ‘often’, ‘occasionally’, ‘frequently’, or ‘regularly’, which although difficult to categorise, suggests a recurrent pattern of use. In comparison, from 1996 to 2012, and during relevant periods (1) and (2), the frequency of use is predominantly ‘every few months’ or ‘yearly’. The evidence is not limited to their own individual use and all witnesses saw others walked the Order route.

Table 4: Public Use During Overlapping Relevant Periods

<i>Relevant Period</i>	<i>Total</i>	<i>Throughout</i>	<i>Part</i>
(1) 1992-2012	35	11	24
(2) 1987-2007	35	14	21
(3) 1976-1996	30	20	10

121. Three members of the public (UEFs 29, 37, & 38) provided evidence that they used the Order route with a horse in the 1980/90s, but stopped due to the erection of gates and stiles, which prevented use on horseback as a thoroughfare. The evidence of occasionally use by the public is consistent with the survey conducted by the Council in 1980 during the review of the definitive map and statement that the Order route was capable of bridleway status but not use used although not obstructed by any locked gates. Notably, the majority of users only saw other people walking the Order route and an adjacent landowner of 40 Manor Road states:

“... it is certainly no[t] accessible on horseback and with some confidence I can state that no horse has ever ventured near it”.

122. Similarly, an adjacent landowner has lived in the area since 1986 and also stated:

“I have never seen a horse use the proposed route, due mainly to it being totally unsuitable for equestrian users and in places impassable for horses.”

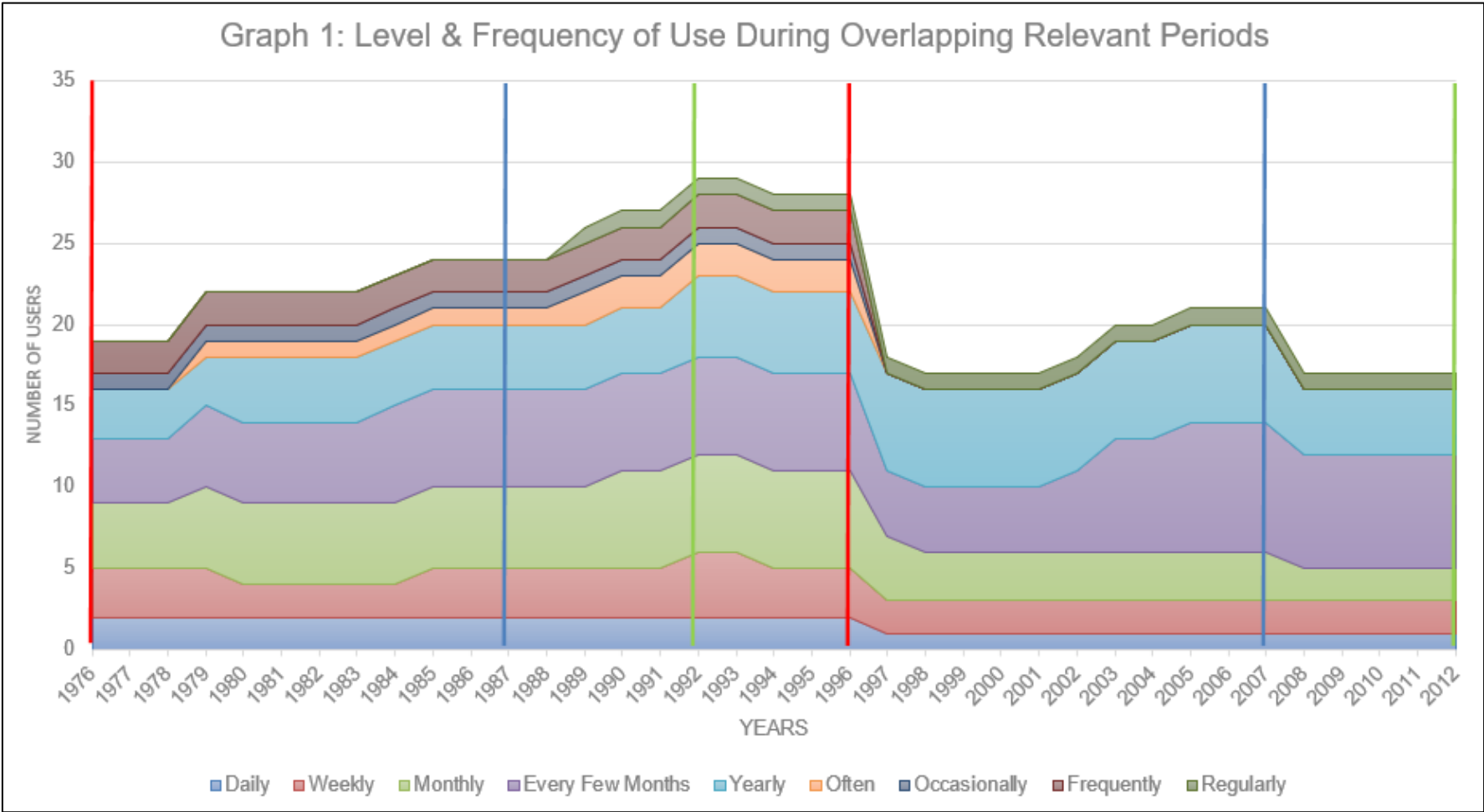
123. Overall, the evidence on use on horseback is very limited and insufficient to demonstrate that the Order route has actually been enjoyed by the public for a full period of 20 years. During all relevant periods, the number of users on foot is relatively significant in terms of the number of people given the rural location of the Order route and the use being of a recreational nature. In the circumstances, the use is such as might reasonably have been

expected given the location of the Order route and sufficient to show that it was use by the public. The user evidence is also of sufficient quality to show that the Order route has been actually enjoyed by the public and is sufficient to bring home to the mind of the reasonable-non absentee landowner that the public were enjoying and asserting a continuous right to use the way, which provided an opportunity of resistance and interruption. As the public right to use the way was first brought into question in 1996 and the quantity and quality of use is sufficient during the relevant period of 1976-1996, this will be considered further.

Red Line = Relevant Period (1) (1976-1996)

Blue Lines = Relevant Period (2) (1987-2007)

Green Lines = Relevant Period (3) (1992-2012)



Graph 2: Duration of Use by Each Witness Compared to Relevant Periods

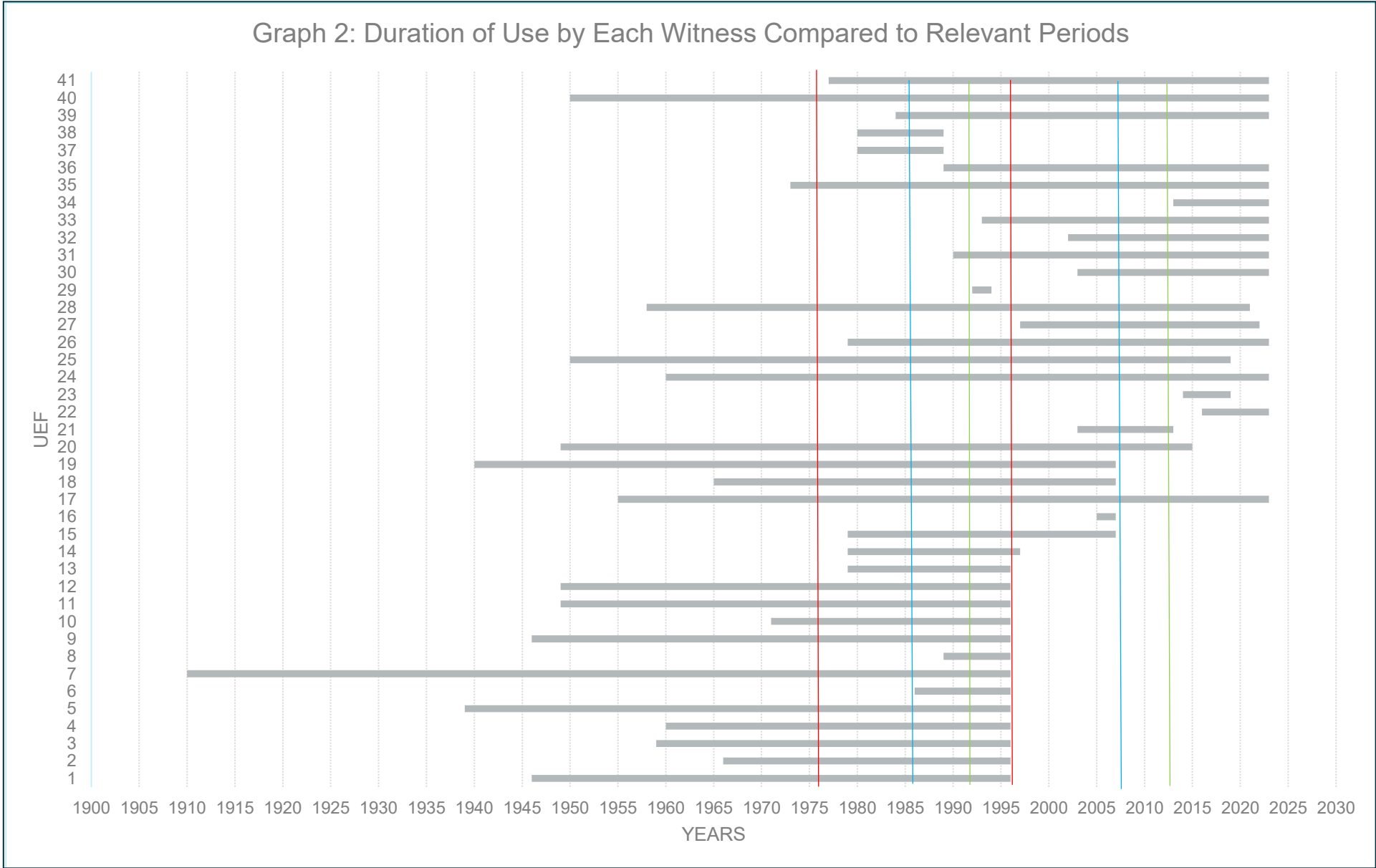


Table 5: User Evidence Summary

UEF Ref No.	Years Used	Frequency	Mode			Width (m)	Structures/Signs			Seen Others			Permission	Challenged	Landowner/Tenant	Additional Information
			F	H	B		Gates	Stiles	Notices	F	H	B				
1	46-96	Occasionally	Y				Y	Y	N	Y			N	N	N	"Various gates to stop cattle straying & stiles for pedestrian access" "Used for many years by the villagers"
2	66-96	Monthly	Y				Y	Y	N	Y			N	N	N	
3	59-96	Monthly	Y				Y	Y	N	Y			N	N	N	"This is a pleasurable flat scenic walk which I have enjoyed since childhood & the only path that enables a circular walk around the village"
4	60-96	Frequently	Y				Y	Y	N	Y			N	N	N	"Several gates & stiles along route to prevent cattle from straying"
5	39-96	Daily	Y				Y	Y	N	Y			N	N	N	"Gates so cattle don't stray and stiles so you can see the route"
6	86-96	Weekly	Y					Y		Y			N	N	N	
7	1910-1996	Frequently	Y				Y			Y			N	N	N	"... used as of right"
8	89-96	Often	Y				Y	Y	N	Y			N	N	N	"This route is used by villagers quite often and should be kept as a right of way"
9	46-96	2-3x a year	Y					Y		Y			N	N	N	
10	26-96	Very often	Y				Y	Y	N	Y			N	N	Y	"Father was a tenant farmer including the footpath"
11	71-97	2-3x a year	Y					Y		Y			N	N	N	"Recent squeeze stiles" "... near Moor Lane End"
12	49-96	n/a	Y				Y	Y		Y			N	N	N	"Gates to stop cattle straying" "I have seen plenty of people walking this footpath"
13	79-96	Quite Often	Y					Y		Y			N	N	N	
14	57-97	Several x 12	Y			7-2ft	Y	Y	N	Y			N	N	N	"Recently a stile has been erected at the Manor Rd end about 50 yards on by the tenant farmers of Park Farm and at the Mill end a gate has been put across but there is still access to walkers"
15	79-2007	Several x 12	Y				Y	Y	N	Y			N	N	N	
16	2005-2007	3x a year	Y			2-3ft	Y	Y	N	Y			N	N	N	"Metal Gate Farnley Road end"
17	1955 - 2023	Every few months	Y			0.5-1.5m	Y	Y	N	Y			N	N	N	"Structures similar to at present"
18	1965-2007	Weekly 1970s/1-2x a year after	Y			3m	Y	Y	N	Y			N	N	N	"Metal Gate Farnley Road end" "On Map SE11 Huddersfield" "Long been used by walkers and runner"
19	1940s-2007	Once a year	Y			2ft	Y	Y	N	Y			N	N	N	"Metal gate... at junc with Farnley Tyas Rd"
20	1949-2015	Weekly	Y			Vehicular to 2ft wide	Y	Y	N	Y			N	N	N	"To my knowledge it was accepted as a right of way, no questions asked (since 1971)" "Moor Lane appears to be part of the route to Farnley Mill as the land continues past Woodview Farm to Mill Lane and at some previous time was probably used by horse drawn vehicles".
21	2003 - 2023	Every few months	Y			1m	Y		N	Y			N	N	N	
22	2016-2023	Monthly	Y			2-3m variable	Y	Y	N	Y			N	N	N	
23	2014-2023	Once a year	Y			10 yards	N	N	N	N			N	N	N	
24	1960-2023	Once a year	Y			1m - 2.5m			N	Y			N	N	N	
25	1950-2019	Monthly	Y			2m but narrows	Y	Y	N	Y			N	N	N	"There was a building near point B where I once kept hens and before that a brewery/lemonade factory that was the last information I was told as a child"
26	1979-2023	Every few months	Y			4m but narrows	Y		Y	Y			N	N	N	"Gates - in May 2020 a gate was installed at the Farnley Road end which was fitted with a lock making it difficult to access the route. The lock was removed a short while after and the gate remains but is unlocked. Also in May 2020 two further gates were erected along the footpath with signs...". "In May 2020 two further gates were erected along the footpath, one a few hundred yards from the Farnley Road end and the other approximately 100 yards from the Manor Road end and attached to each gate was a sign stating "Permissive Footpath Caution Livestock Grazing".
27	1997 - 2022	Once a year	Y			Variable			Y	Y			N	N	N	"Signs indicating that the route is a public footpath"
28	1958 - 2021	Once a year	Y			Variable	Y	Y	N	N			N	N	N	
29	1992 - 1994	Weekly	Y	Y		2m	Y	Y	Y	Y	Y		N	N	N	"I rode this as a bridleway as a child/teen in the early 1990's..." "Derelict house on the Farnley end, now fences and gates all along the path" "Fences x3" "Recent signs saying permissive footpath"
30	2003 - 2023	Every few months	Y					Y		Y			N	N	N	"Our children... have also frequently joined us on these walks"
31	1990 - 2023	Monthly	Y			Variable	Y	Y	Y	Y						"There are signs at each end saying that the route is granted permissive footpath status by the landowner"
32	2002 - 2023	Every few months	Y			2ft in winter, width varies	Y	Y	N	Y			N	N	N	"I walked this route between 2003 and 2013, on many occasions, with my husband... I recall [husband] telling me about this path as a young schoolboy while on nature walks in a class of children with his Kirkburton school teacher in the late 1930s. From what he said it was clearly an historic track linking old local industries..."
33	1993 - 2023	Once a year	Y										N	N	N	
34	2013-2023	Every few months	Y				Y		Y	Y			N	N	N	
35	1973 - 2023	Daily	Y										N	N	N	"Moor Lane is part of the original route from Kirkburton to Honley through Farnley Tyas and should be accessible to all"
36	1989 - 2023	Regularly	Y							Y			N	N	N	"I have been told that Moor Lane is part of a historic path which ran from Kirkburton through Farnley Tyas to Honley"
37	1980's			Y												"I have been talking to my friends & we believe we used the path in the 80's riding from Kirkburton"
38	1980's	Regularly		Y												"This is a route which myself and fellow horse riders utilised in the 1980s"
39	1984 - 2023	During summer months	Y			Variable			N	Y			N	N	N	"It is likely that it was originally wide enough to allow a horse and cart to travel along it"
40	1950-2023	Weekly	Y			1.5y		Y	N	Y			N	N	N	"Horses would never have been able to traverse the path due to the stiles (maybe 3 at intervals)
41	1977 - 2023	Every few months	Y			Variable	Y	Y	Y	Y			N	N	N	"I think this land is or was owned by Farnley Estates looking at the right of access notice on the top gate near Shottons. Farnley Estates have many notices about access dotted about their land. The notice they have on the gate near point A opposite Shootons seemed to appear when the public footpath sign disappeared" "The only evidence I have are the public footpath sign posts. There is no double they were there but have now disappeared unfortunately I do not have any photos or anything as I wouldn't have ever considered I needed them"
Total			39	3	0		26	28	6	35	1	0	38	38	37	

as of right...

124. The use and enjoyment by the public must be “as of right”, which is a tripartite test meaning without force, without secrecy, and without permission. The quality of the use by the public must therefore be peaceable, open, and not based on any license. Its meaning is closer to “user as if of right”. The test is strictly objective, the actual state of mind of the user is irrelevant. Use ‘as of right’ is use which would have the outward appearance to the reasonable landowner of the assertion of a right, but which is, in fact, trespassory. In, [R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council \[1999\] UKHL](#), at paragraph 18, Lord Hoffman expressed the meaning of the term ‘as of right’ as follows:

“It became established that user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the license of the owner... The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user, and in the third, because he had consented to the user, but for a limited period.”

125. In this case, there is no clear evidence that the use of the Order route was anything other than open and peaceable. However, the majority landowner has stated that public use of the Order route took place with their license as the freehold owner during the relevant periods. The landowner stated in their ‘Landowner Statement’ that they not given anyone permission to use the Order route nor been asked for permission by anyone wanting to use the Order route, but also states:

“The ramblers approached us in 1986 to ask for this route to become a public footpath. We turned down the request. This was all by way of discussion. The route was left open as a permissive route only.”

126. Additionally, UEF/19 appended to their witness statement a copy of a letter dated 15th October 2007 from the Estate Manager to ‘Rights of Way and Highways’ at Kirklees Council, made subsequent to the 2007 definitive map modification order application regarding ‘Permissive Access’, stating:

“The Estate over the last couple of years have been looking to create a number of permissive footpaths and bridleways. A recent meeting was held with a Mr Neil Windett, Countryside Manager at Kirklees Council.

I enclose a copy of correspondence, being an application form for a modification order in order to have a former track dedicated as a public footpath The Estate would most strongly contest such application.

Moor Lane is one of a number of former cart tracks to which permissive access is to be sought, in fact work was undertaken to Moor Lane, that is the spraying and control of brambles, during both 2006 and 2007, to create a viable access way prior to application for designation as permissive footpath/bridleway.”

127. The letter indicates that there was a prospective intention, not overtly brought to the attention of the public, to dedicate the Order route as a permissive access, and certainly not during the 1976-1996 relevant period. However, as clarified by Lord Bingham of Cornhill in [R v City of Sunderland ex parte Beresford \(FC\) \[2003\] UKHL 60](#) at paragraphs 5 and 6, use of a way will not be by permission due to inaction by the landowner with knowledge of use of the way:

“[5] I can see no objection in principle to the implication of a license where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants’ use of the land is pursuant to his permission, This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants’ use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.

[6] Authority, however, establishes that a license to use land cannot be implied from mere inaction of a landowner with knowledge of the use to which his land is being put...

128. The landowner also states that permissive access only signs have been erected at either end of the Order route, which have been maintained and replaced when required and could

not recall a time when signs weren't in place. The landowner confirmed that the signs have never been torn down or vandalised throughout the years. None of the users provided any evidence of signage during the relevant period. As stated in [Taylor v Betterment Properties \(Weymouth\) Ltd and Another \[2012\] EWCA Civ 250](#) by Lord Justice Patten, where there is a conflict of evidence regarding the presence of notices:

"[52] I agree with the judge that the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with. Evidence from some local inhabitants gaining access to the land via footpaths that they did not see the signs is not therefore fatal to the landowner's case on whether the user was as of right. But it will in most cases be highly relevant evidence as to whether the landowner has done enough to comply with what amounts to the giving of reasonable notice in the particular circumstances of that case. If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land."

129. Similarly, in [R \(Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust v Oxfordshire County Council \[2010\] EWHC 530](#), in paragraph 22 of the judgement, Justice Waksman QC set out guiding principles for considering the sufficiency of landowner signage on claimed public right of way. In particular, paragraph 22(2) states:

"Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user."

130. On the other hand, there is corroboration between users (UEFs 26 & 28) and an adjacent landowner that permissive signs were first erected at either end of the Order route in 2020, after the relevant periods. In particular, UEF 26 states:

"In May 2020 two further gates were erected along the footpath, one a few hundred yards from the Farnley Road end and the other approximately 100 yards from the Manor Road end and attached to each gate was a sign stating, "Permissive Footpath Caution Livestock Grazing."

131. Furthermore, the owner of No. 40 Manor Road confirmed in their 'Landowner Statement':

“Notices claiming permissive access, from the stile to the gate before the old brewery, were erected for the first time in 2019/20 not in 2013/14 as claimed.”

132. The witness statements are confirmed by the ‘Landowner Statement’ by the new owner of the old brewery, which states:

“Advised by previous owner to put a sign same as theirs on front gate.”

133. Finally, a Definitive Map Officer conducted a site visit on 14th August 2013 and took photos of the Order route. The photos show the presence of gates and stiles but no notices. In fact, the site visit was conducted with a view to securing permissive access along the Order route subsequent to an email dated 29th July 2013, after the relevant periods, from the estate manager:

“The above track runs between OS points SE171127 and SE166124 and is not a right of way on the definitive plan. The estate would like to give permissive usage over the total length of the track possible for both footpath and bridleway. As such I enquire as to whether Kirklees do have a standard document to ‘declare’ the permissive usage.”

134. The statement by the landowner that permissive notices were erected prior to 2020 is not supported by independent witnesses or documentary evidence. On the balance of probabilities, the use of the Order route by the public was without permission throughout the relevant periods.

... and without interruption for a full period of 20 years...

135. The meaning of the proviso “without interruption” and the relevant case law was summarised in [Fernlee Estates Ltd v City and County of Swansea \[2001\] EWHC Admin 360](#), at paragraph 16:

“In order to constitute an interruption for the purposes of Section 31(1) of the Highways Act 1980 there must be some physical and actual interruption which prevents enjoyment of the way rather than merely acts which challenge the user while allowing it to go on: Merstham Manor Ltd v Coulsdon and Purley [1937] 2 KB 77, 84-85. A mere absence of continuity in the de facto user will not stop time running, there must be an interference with the enjoyment of a right of passage.

Jones v Bates [1938] 2 All 237, 246. Thirdly, “interruption” means “interruption of fact.” However, the circumstances of and the intention with which the barring of the way takes place are relevant. For example, the blocking of a road by a broken down vehicle would not amount to a relevant interruption. Lewis v Thomas [1950] 1 KB 438.”

136. Most users refer to various gates and stiles along the length of the Order route for the purposes of stock control and this is confirmed by the landowner:

“There are gates and fencing to keep the livestock in. Always been there to keep the livestock in the field. Gates have always remained shut to keep the livestock in. Gates and fencing have been in place for 100s of years.”

137. The only reference to a locked gate is by UEF/26, stating:

“Gates - in May 2020 a gate was installed at the Farnley Road end which was fitted with a lock making it difficult to access the route. The lock was removed a short while after and the gate remains but is unlocked. Also in May 2020 two further gates were erected along the footpath with signs...”

138. However, there is no evidence that the enjoyment of the way by the public was physically and actually interrupted by a positive act by the landowner with the intention of challenging the public’s right of passage during the relevant periods.

the way is deemed to have been dedicated as a highway...

139. Consequently, in this case, there is sufficient evidence that the enjoyment of the way by the public was ‘as of right’ and was not physically and actually interrupted by a positive act by the landowner with the intention of challenging the public’s right of passage during the relevant periods of 1976-1996, 1987-2007, and 1992 to 2012. Therefore, each element of the first question of fact under s.31(1) of the 1980 Act is satisfied, such that the Order route is deemed to have been dedicated as a footpath. The presumption is rebuttable.

unless there is sufficient evidence that there was no intention during that period to dedicate it.

140. The burden of adducing evidence sufficient for the purposes of negating an intention to dedicate the Order route as a footpath rests with whoever in the particular case needs to rebut the presumption. There is no evidence of any signs or notices consistent with section 31(2) sufficient to negative the intention the landowner to dedicate the way as a highway during the relevant periods, letters submitted to the Council under section 31(5), or deposits/declarations under section 31(6) of the Highways Act, 1980. On the contrary, one witness (UEF/41) stated that public footpath signs were located at the western end of the Order route at its junction with Farnley Road, which is also corroborated by UEF/27, stating:

"I think this land is or was owned by Farnley Estates looking at the right of access notice on the top gate near Shootons. Farnley Estates have many notices about access dotted about their land. The notice they have on the gate near point A opposite Shootons seemed to appear when the public footpath sign disappeared."

"The only evidence I have are the public footpath sign posts. There is no doubt they were there but have now disappeared unfortunately I do not have any photos or anything as I wouldn't have ever considered I needed them."

141. The freehold owner of the Order route during the relevant period answered in their 'Landowner Statement' that they had never stopped or turned back anyone using the route, or made it known to them that they route was not public. An adjacent landowner of 40 Manor Croft stated that they had been asked on several occasions if the Order route was a public footpath, and the adjacent landowner answered 'no', turning back two members of the public who walked an alternative route. However, events occurred after 2016 and not during the relevant periods.
142. The statutory conclusion is therefore not rebutted by "*sufficient evidence that there was no intention to dedicate*" the way as a footpath during the relevant periods and, on the balance of probabilities, the way is deemed to have been dedicated under statute.

Overall Conclusion on Deemed Dedication

143. Officers conclude that the public right to use the Order route was brought into question in 1996, 2007, and 2012, creating three overlapping relevant periods of 1976-1996, 1987-2007, and 1992-2012. In all relevant periods, each element of the first question of fact under section 31(1) of the Highways Act, 1980, has been met to raise the presumption that a way has been dedicated as a footpath. The primary evidence negating an intention to dedicate the way as a highway postdates 2012 and primarily occurred in 2019/20 with the erection of permissive signage. Accordingly, there is not sufficient evidence to rebut the presumption and show that the freehold owner of the Order route negated the intention to dedicate the way as a footpath. The statutory conclusion therefore stands.
144. Therefore, Officers consider that, as it is more probable than not that the Order route subsists as a public footpath, the definitive map and statement require modification in consequence of the occurrence of an event as specified in section 53(3)(c)(i) of the WCA. It is recommended that the Council support confirmation of Order with modifications.

Limitations

145. In [Turner v Walsh \(1881\) 6 App Cas 636](#), the court observed at common law, the date of dedication by the landowner is coeval with and at the start of the period of use by the public:

“Would not the inchoate right run on to maturity rather than be blocked by the intermediate passing of this Act? This language does not accurately express the presumption which arises from long-continued user. It is not correct to say that the early user establishes an inchoate right capable of being subsequently matured. If the right had been inchoate only in 1861, the argument of the Appellant that it could not have matured or acquired after 1861, except in the mode prescribed by the Act, would have great force. The proper way of regarding these cases is to look at the whole of the evidence together, to see whether there has been such a continuous

and connected user as is sufficient to raise the presumption of dedication; and the presumption, if it can be made, then is of a complete dedication, coeval with the early user. You refer the whole of the user to a lawful origin rather than to a series of trespasses.”

146. Although this was a decision of the Privy Council, and technically not binding on the English courts, the underlined passage is accepted to be a correct statement of English Law. The effect of that the act of dedication is deemed to have occurred at the beginning of the period of continuous user, not at the end of it. The observation was applied in the context of section 31 of the Highways Act, 1980, by Lightman J in [Oxfordshire County Council v Oxfordshire City Council \[2004\] Ch 253](#) at paragraph 98:

*“Four general observations should be made regarding this section. The first is that the public right of way arises by reason of a dedication deemed to have been made at the commencement of the 20 year user: see *Turner v Walsh* (1881) 6 App Cas 636 at 642...”*

147. Similarly, at paragraph 42 in [Whitworth & Ors v Secretary of State for Environment, Food & Rural Affairs \[2010\] EWCA Civ 1468](#), Lord Justice Carnwath gave an *obiter* in with regards to deemed dedication under statute:

“In my view, the same conclusion would follow even if there had been no finding of pre-existing bridleway rights, so that the claim had rested solely on use after 1973. One would then be considering the inference to be drawn from the actual use between 1973 and 1993. It is true that regular use by both horse-riders and cyclists over that period would be consistent with as assumed dedication as a restricted byway at the beginning of the period (had that concept then existed)...”

148. Therefore, for a limitation to be recorded it must have been present at the start of the relevant 20 year period under consideration, such that the Order route was dedicated to the public subject to the presence of that limitation. With reference to **Appendix B**, currently, a wooden field gate is located at the western end of the Order route near its junction with Farnley Road at grid reference SE 1667 1245 with a sign stating: ‘*Permissible right of way on foot. PLEASE CLOSE THE GATE*’ (see photos 2 & 3). Photos taken in 2013 (see photos 40 & 41), and an annotation of map following a site visit in 2000 by council officers (see **Appendix Q**), show that the wooden field gate replaced a metal field gate. Further along the Order route, a second wooden field gate is located at grid reference

SE 1676 1252 with a sign stating: '*Permissive Footpath CAUTION Livestock grazing*' (see photos 6 & 7). The available evidence indicates that the wooden field gates were erected in 2019/20.

149. A wooden fence with a squeeze stile structure is located at grid reference SE 1680 1255, which was present in 2013, 2007 (see photos 9, 39, and 42), and appears to be recorded as a feature on 1994 Ordnance Survey landline mapping (see **Appendix J**). Two squeeze stiles are located at SE 1697 1258 (see photos 12, 13) and SE 1708 1273 (see photos 16, 17) were at field boundaries where the southern drystone wall is no longer present and were present in 2013. At the eastern end of the Order route near Manor Road and its junction with Manor Road, at grid reference SE 1718 1273, a fence lined with barbed wire limits public use of the way to a narrow gap between the structure and the drystone wall, with a sign attached stating: '*Permissive Footpath CAUTION Livestock grazing*'. Photos accompanying the 2007 definitive map modification order application at this point indicates that a structure crossed the full width of the Order route. The structure is also shown on the 2000 map annotation.
150. Most user evidence forms indicate the presence of various gates and stiles limiting public use during the relevant periods to prevent cattle straying. However, there is corroborating witness and documentary evidence that the stiles and gates were not in place at the start of the 1976-1996 relevant period:
- (1) The way was enclosed by drystone walls and there is no indication [1964 1:2500 Ordnance Survey](#) (**Appendix J**) mapping preceding the relevant period of any structures limiting public use of the Order route.
 - (2) The site inspection conducted in 1980 (**Appendix P**) during the review of the definitive map and statement noted a well-trod path varying in width from 8 to 12 feet between walls, which was capable of bridleway status but not so used although not obstructed by any locked gates. This remarks indicate that no stiles limited public use, otherwise potential use by horse riders would not be possible.
 - (3) There is some evidence of use by horse riders (UEFs 29, 37, & 38) in the late 1980s/early 1990s, which although insufficient to presume dedication of a bridleway, indicate the Order route was free from structures at that point in time.

(4) UEF/11 completed their witness statement in 1996 and refers to “*Recent squeeze stiles*” near “*Moor Lane End*”.

(5) UEF/14 completed their witness statement in 1997 and marked the location of structures along the Order route on their appended map and stated: “*Recently a stile has been erected at the Manor Rd end about 50 yds on by the tenant farmer of Park Farm and at the Mill end a gate has been put across but there is still access to walkers.*”

(6) UEF/20 stated in evidence that the stiles and gates were: “*Erected by Tenant famer (now deceased) to control his cattle in specific areas (1980-1990) simple home-made wooden.*”

151. Overall, there is sufficient documentary and witness evidence that the Order route was not dedicated subject to the limitation of any stiles or gates at the start of the first relevant period in 1976. Such structures across the Order route amount to an obstruction unless subsequently authorised. Accordingly, Officers conclude that it is not appropriate to record limitations in the Order since they were not present at the beginning of the relevant 20 year period.

Width

152. The Order route is consistently shown on 1:2500 Ordnance Survey maps from [1893](#) to [1964](#), and up to 1994 landline as an enclosed way approximately 3 to 3.5 metres wide. The physical layout of the Order route does not appear to have changed significantly since the 1805 Farnley Estate Terrier Map. As the features of the way existed prior to the date of dedication at the start of the 1976-1996 relevant period, it cannot be said that the boundary features were set out by reference to the highway, as per Chadwick LJ at paragraph 33 in [Hale v Norfolk County Council \[2001\] Ch 717](#):

“[33] *It seems to me much less clear that there is any foundation for a presumption of law that a fence or hedge which does, in fact, separate land over part of which there is an undoubted public highway from land enjoyed by the landowner has been erected or established for that purpose. It must, in my view, be a question of fact in*

each case. To take an obvious example: there could be no room for any such presumption unless the highway predated (or was contemporary with) the fence of hedge...”.

153. The ‘boundary to boundary’ principle will therefore not apply to the Order route. Nevertheless, the full width of the way between the two drystone wall boundaries could be presumed to have been dedicated under statute or at common law on the basis that that was the extent of the public use at the time of dedication. There is a distinction between the availability of the width between boundary features and the actual dedication of the width between boundary features. The width of the way that is presumed to have been dedicated as a highway is a question must be derived from the available user evidence. Where there is no such clear evidence, will be based on the mode of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features may dictate what may be considered reasonable. In the absence of evidence to the contrary, the width recorded should be sufficient to enable two users to pass comfortably. This width may well be greater than the width of the “trodden path”.
154. The user evidence forms completed in 1996 do not provide evidence as to width. The determination is therefore based on user evidence submitted in 2007 onwards by 17 users. Of those users that estimated the width of the Order route, many noted its variability. Today, the western section of the Order route commencing at its junction with Farnley Road to the second wooden field gate, is of vehicular width between 2-4 metres wide. Beyond that point, the Order route is heavily vegetated such that the estimated width of the Order route narrows to 1 metre for some users, whilst others estimate that, due to overgrown vegetation, the width of the Order route is 2ft wide, or 0.6 metres. The latter width estimate represents the trodden line.
155. On the other hand, several users provide evidence that the full width of the Order route was historically available at the date of dedication:
- The 1980 site investigation by West Yorkshire Metropolitan County Council (**Appendix P**) measured a width between 2.4 to 3.6 metres: “*A site inspection reveals a well trod path varying in width from 8 to 12 feet between walls.*”

- UEF/14 commenced using the Order route in 1955 and estimated the historical width used by the public as 2 metres: *“Used to be approx 7ft but now very much overgrown now reduced to 2ft.”*
- UEF/18 commenced using the Order route in 1965 and stated that the Order route was: *“Originally 3m. Now not as wide.”*
- UEF/26 commenced using the Order route in 1979 and stated: *“The route is predominantly a track of circa 4 metres wide which over the years due to collapsing walls and tree/shrub has narrowed significantly in places.”*

156. As the Order route was not originally dedicated subject to gates and stiles, they are a nuisance at common law and unlawful obstruction. Therefore, the width of the Order route to be recorded in the definitive statement should reflect the use by the public at that start of the relevant period, which is most accurately observed by a site survey conducted by West Yorkshire Metropolitan County Council officers in 1980 of varying between 2.4 to 3.6 metres. The measurements strongly corroborate with the [1964 1:2500 Ordnance Survey \(Appendix J\)](#) mapping and 1994 Ordnance Survey landline (**Appendix J**), which show that the Order route has a width mostly of approximately 3.6 metres with a pinch point of 2.6 metres at the northern end of the Order route near its junction with Manor Road and adjacent No. 40 Manor Road.

Recommendations

157. On the balance of probabilities, the Order route subsists as a 3.6 metre wide, with a 2.6 metre pinch point, public footpath free from limitations based on deemed dedication of the way under section 31 of the Highways Act, 1980. [Schedule 15, paragraph 8\(1\) of the Wildlife and Countryside Act, 1981](#), states:

“8(1) The Secretary of State shall not confirm an order with modifications so as-

(a) ...

(b) ...

(c) to show as a highway of one description a way which is shown in the order as a highway of another description,

Except after complying with the requirements of sub-paragraph (2).

(2) The said requirements are that the Secretary of State shall-

(a) give such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which shall not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal, which must include particulars of the grounds relied on, may be made;

(b) if any representation or objection duly made is not withdrawn (but subject to sub-paragraph (3)), hold a local inquiry or afford any person by whom any such representation or objection has been made an opportunity of being heard by a person appointed by the Secretary of State for the purpose; and

(c) to consider the report of any person appointed to hold an inquiry or to hear representations or objections.

(3) The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order in accordance with his proposal.

(4) Sub-paragraph (2)(a) shall not be construed as limiting the grounds which may be relied on at any local inquiry or hearing held under this paragraph."

158. Officers therefore recommend that the Council support confirmation of the Order with the following modifications:

- In the preamble to the Order, after "*the right subsists is a*", delete "*restricted byway*" and add "*public footpath*".
- In the Schedule, Part 1 – Modification of the Definitive Map, under the heading 'Description of Path or Way to be Added', after "A", delete: "*restricted byway*" and add "*public footpath*". After "*by the broken*", delete "*green*" and add "*black*". After

“(Point B on the map) with a”, delete “varying”. After “width”, delete “as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72)” and add “of 3.6 metres and a pinch point of 2.6 metres at Grid Reference SE 1718 1275”.

- In the Schedule, Part 2 – Modification of Definitive Statement under the column heading “Description of Route” delete *“Restricted byway”* and add *“Public footpath”*. Under the column heading “Width (M)” delete *“Varying width as shown excluded from the adjacent hereditaments on the 1910 Finance Act map (IR 134/6/72).”* and add *“3.6 metres with a pinch point of 2.6 metres at grid reference SE 1718 1275”*.
- In the map attached to the Order, in the ‘Legend’ delete “Restricted byway” and add “Public footpath”. Change the colour notation from a broken green line with short bars at intervals to a broken black line with short bars at intervals to represent a public footpath.