

BARNSLEY METROPOLITAN BOROUGH COUNCIL

Determination of a Definitive Map Modification Order application: Claimed public right of way from Rectory Lane to High Street, Thurnscoe

Report for the Head of Highways and Engineering to assist in determining a Definitive Map Modification Order (DMMO) application which seeks to record on the Definitive Map and Statement a public right of way running from Rectory Lane to High Street at Thurnscoe. The determination of this application is based on consideration of the available evidence against the legislative requirements.

1 Recommendations

It is recommended that:

- 1.1 The Legal Service Director & Solicitor to the Council is authorised to:-
 - (i) make and publish a definitive map modification order (DMMO) to amend the definitive map and statement for the area by adding the following right of way, as shown on the Plan at Appendix 1 and as described in Appendix 2;
 - (ii) in the event no objections are received and no cogent contrary evidence is produced, to confirm the DMMO as an unopposed order;
- 1.2 That officers take all necessary steps to secure confirmation of the Order (including if necessary support at any public inquiry) unless further evidence is produced which in the opinion of the Head of Highways and Engineering in consultation with the Legal Service Director & Solicitor to the Council is of sufficient weight that the conclusion in this report (that the rights of way in question exist on the balance of probabilities) is seriously in doubt in which case the matter will be the subject of a further report.
- 1.3 With regards to the claimed higher rights on the same route, that the application is rejected and the Council does not make a DMMO for the reasons set out in this report and that all interested parties be informed accordingly.

2 Background Information

- 2.1 The Council has received an application pursuant to Section 53 of the Wildlife and Countryside Act 1981 to make changes to the Definitive Map and Statement for the Dearne parish.
- 2.2 11 people submitted Form A application forms in support of the application. However, only 1 person, Mr Swiffen, submitted the Form B notice on the landowner and a Certificate of Notice Served to the Council. Mr Swiffen agreed to act as coordinator / lead applicant for the application, and the other people who submitted Form A application forms were informed that the Council would correspond with Mr Swiffen as the coordinator of the application. No objections were received to this proposal.

- 2.3 The application is accompanied by supporting evidence and all records available to the Council have been fully investigated to identify any other relevant evidence, all of which is also considered below.

3 Legal Considerations

- 3.1 The Council as surveying authority has a statutory duty to investigate the matters stated in the application pursuant to paragraph 3(1)(a) of Schedule 14 of the Wildlife and Countryside Act 1981.

- 3.2 Section 53 (3) of the 1981 Act requires it to make a DMMO as soon as reasonably practicable where there is evidence which 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. It should make an order if the available evidence meets either of the following tests:

Test A – does a right of way subsist on a balance of probabilities? This test is satisfied when there is clear evidence that a right of way exists and no credible evidence to the contrary; or

Test B – is it reasonable to allege on a balance of probabilities that a right of way subsists? This test is satisfied even where there is a conflict of evidence i.e., there is both evidence that the right of way exists, but also credible evidence that it does not. In cases where only Test B is satisfied, although the Council is obliged to make a DMMO it may not necessarily lead to it being confirmed unless further supporting evidence becomes available.

- 3.3 No account can be taken of whether a route is desirable or not. Factors such as amenity, crime or the impact on landowners are not relevant to the decision. The purpose of the order is to update the map and statement by adding a right of way that has been proven to exist on the basis of the evidence.

- 3.4 An application for a DMMO may be made on the basis of documentary evidence, user evidence, or both. Section 31 of the Highways Act 1980 provides: “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.” That period is counted retrospectively from the time when the right to use the way was first brought into question. This presumption may be rebutted where there is sufficient evidence that there was no intention to dedicate the way during that same period.

- 3.5 A right of way may also be established at common law by showing that the owner has dedicated the way to the public at large to be used as highway and that dedication has been accepted by the public as a consequence of its use. The use must be as of right, i.e., without force, without secrecy and without permission. Where there is open and intensive use and compelling evidence of knowledge and acquiescence of that use, relatively short periods of public use may be sufficient to raise an inference of dedication.

3.6 Schedule 14 of the Wildlife and Countryside Act 1981 paragraph 3(1)(b) requires any relevant Parish or Town Council to be consulted on DMMOs application before an order is made. However, there is no Parish or Town Council covering the Thurnscoe area. Consultations have also been carried out with the Barnsley Local Access Forum and local ward members. All consultation responses are reviewed below.

4 Description of the claimed path

4.1 The claimed public right of way starts at the northern end of Rectory Lane and runs generally south on a rough, part-metalled track to Lane End Mews, then continues east and south around Lane End Mews on a vehicular access track to join High Street.

4.2 The application does not make clear whether the applicant seeks to have the claimed route recorded as a public footpath or a public bridleway. User evidence has been provided of pedestrian, equestrian and cycle use, while some evidence refers to vehicular access. All possible categories of public right of way have therefore been considered in this report.

4.3 The claimed route is currently blocked by a locked metal gate and fencing at point B. Immediately south of point B the route runs through a residential development which is under construction. The new properties partially obstruct the alignment of the claimed public right of way.

4.4 The claimed route has no recorded status at present.

4.5 The landowner of the affected land south of point B claims that the public did not use the full route prior to obstruction, but instead took access on a partial route from High Street (point C) up to the start of the development site and then east into the adjacent recreational field. However, this is not the route that has been applied for, and all user evidence forms (UEFs) claim use of the full route A-B-C. Therefore the partial alternative route has not been considered.

5 Assessment of the Evidence

Date of challenge

5.1 The user evidence suggests that the metal gate at point B was installed in 2019 (no more specific date is provided), but that this gate could be easily walked around until palisade fencing was put up to block the adjacent gaps in September 2020. Installation of the fencing triggered the application.

5.2 The landowner who installed the fencing has claimed that the gate was not in fact installed in 2019, but has not provided any further information. Aerial photographs appear to show that there was no gate in place in 2018. Based on the available evidence, it is considered likely that the gate was installed at some point in 2019.

5.3 The properties being developed partially obstruct the claimed route, though access appears to have continued over the adjacent land until the fencing was installed at point B. It is not known when building commenced, but development was already encroaching

on the width of the claimed route in October 2020. Planning permission was granted in May 2019.

- 5.4 The metal gate at point B does not appear to have been interpreted as a challenge to public access by the people who filled in the UEFs, some of whom claim that the landowner told them that the gate was intended to prevent vehicles, not pedestrians. Accordingly, the date of challenge for the claimed footpath rights is considered to be the installation of fencing alongside the gate in 2020 and the evidence must therefore demonstrate use of the claimed route for a full period of 20 years prior to 2019 (i.e. 2000-2020) to satisfy the statutory test for presumed dedication. The alternate date of challenge of 2019 has also been considered for completeness.
- 5.5 The metal gate would however have clearly obstructed use of the claimed route for horse riders, cyclists and motor vehicles, and is considered to be the date of challenge for any claimed rights that are higher than public footpath. The 20 year period 1999-2019 has therefore been considered for those claimed rights.

User evidence

- 5.6 14 people submitted user evidence forms (UEFs) in support of the application (summary table at Appendix 3).
- 5.7 Further questions were later sent out regarding some aspects of the evidence. 3 responses were received. All of the information provided is considered below.

Claimed use as a footpath

- 5.8 13 people submitted UEFs claiming 20+ years' use of the route on foot. 1 further person claimed 17 years' use.
- 5.9 Form #1 has been discounted as the individual submitted 2 separate forms with differing details, including the claimed periods of use.
- 5.10 The following forms have been given less weight due to the reasons given below, but are considered to provide useful supporting evidence:
 - Form #5: some pages of the UEF are missing, no signature (although an accompanying Form A did include a signature).
 - Form #10: some pages of the UEF are incomplete, no signature.
 - Form #12: page 2 not completed.
 - Form #13 (the applicant): route used to access the rear of his property, potential private access.
- 5.11 This leaves 8 UEFs claiming 20+ years' use on foot and 1 person claiming 17 years' use on foot, plus the 4 supplementary UEFs considered in paragraph 5.10. These figures are the same for the 20 year period 1999-2019.
- 5.12 All of the forms claim use of the route on foot for leisure purposes, exercise or to access High Street. Some forms refer to use of the route to access the adjacent recreation ground, but all claim use of the full through route.

- 5.13 Some forms refer to 'public footpath' signs having been present on the route in the past but there is not considered to be sufficient evidence to corroborate this.

Claimed higher rights

- 5.14 6 people submitted UEFs claiming 20+ years' use of the route with horses and / or bicycles. However, there are issues with each of the forms:

Form #1: discounted as stated above.

Form #3: only used the route as a bridleway in the 1970s and 1980s, when he was renting stables in the farm now converted to Lane End Mews (this is not considered to affect their later use of the route as a footpath).

Form #7: Claims use with horses but only provides details of pedestrian access.

Form #11: States that use was as 'access to pony / access to farm yard', suggesting that he also kept a horse at the farm that is now Lane End Mews.

Form #12: page 2 not completed.

Form #13 (the applicant): route used to access the rear of his property, potential private access.

NB: Form #2 states that there has been use of the route by horses, but that their personal use has been on foot only.

- 5.15 Given the above, there are a maximum of 4 people who claim use of the route with horses during the relevant 20 year period, some of whom potentially had private access rights.

- 5.16 4 people submitted UEFs claiming 20+ years' use of the route with motor vehicles. These have the same issues as the claimed bridleway access. The relevant forms are #3, #7, #11 and #13, while form #2 refers to motor vehicles without claiming to have used the route in that way themselves.

Ordnance Survey maps and aerial photos

- 5.17 Ordnance Survey plans do not provide evidence about the status of paths. However, they can clarify the physical characteristics of a route at a given time. OS plans dated 1895, 1910, 1930, 1948, 1960 and 1990 consistently show the track in place, though there are single lines across the track in places, which could potentially show boundaries. The track is not labelled in any way on any plan.
- 5.18 Aerial photos dated 2002, 2009, 2013 and 2018 show the track in place as an unobstructed through route. There is no gate visible at point B at any time.
- 5.19 The applicant also provided aerial photos taken from Google earth dated 1st January 2002 which clearly show that the track was open at point B at the time.
- 5.20 The 'Officer Report' included in the planning application 2021/0615 for the site, submitted by the current landowner / developer, shows a worn track running through the site heading north towards point B.

Documentary Evidence

- 5.21 No further documentary evidence was submitted with the application, and the Council is not aware of any other relevant documentary evidence.

Land ownership + consultations with owners

- 5.22 The northern portion of the route between points A-B is unregistered land. The Council placed consultation notices at the northern end of the route to try and identify the landowner but did not receive any responses.
- 5.23 The remainder of the claimed route runs on land owned by Ivanhoe Homes, purchased in November 2019. The previous landowner states that the land was owned by their family from 1910 to 2019.
- 5.24 Householders at Lane End Mews use the southern end of the route to access their properties and were also consulted on the application. No replies were received.

Planning Applications

- 5.25 Over the years, a number of planning applications have been submitted for the land parcel south of point B. Where documents are available, the majority of these made provision for the claimed route, which is mentioned as follows:
- 5.26 B/91/1760/DE (1993). Description: Outline for erection of five dwellings.

Pre-dates the relevant period. Historical application, no electronic documents available.

- 5.27 2007/0654. Description:
(Withdrawn - documents currently unavailable).

The Outline Proposals plan includes labels the claimed route in the following ways: 'Public Footpath', 'Align with existing footpath at site boundary', '1.5m high timber post and rail fence between footpath and plot', 'Divert existing public footpath', 'Wall and bollard at transition between public footpath and adopted road' and 'line of existing public footpath'.

The Design and Access Statement states:

'There is an existing water course which bisects the site running West to East and a public footpath running parallel to the Eastern boundary and connecting Rectory Lane at its junction with Houghton Road to the North with High Street to the South.'

'Higher density is made difficult by... the area of land required to maintain a public footpath route.'

'It is also proposed to carry out realignment of the existing public footpath.'

5.28 2007/1339. Description: Erection of eight dwellings, alteration to access road, minor realignment to public footpath (Outline). (Resubmission of previous withdrawn application).

The Outline Proposals plan includes labels the claimed route in the following ways: 'Public Footpath', 'Align with existing footpath at site boundary', '1.5m high timber post and rail fence between footpath and plot', and 'line of existing public footpath'.

The Design and Access Statement states:

'There is an existing water course which bisects the site running West to East and a public footpath running parallel to the Eastern boundary and connecting Rectory Lane at its junction with Houghton Road to the North with High Street to the South.'

'There is no demarcation between the access road and the public footpath.'

'Higher density is made difficult by... the area of land required to maintain a public footpath route.'

'It is also proposed to carry out realignment of the existing public footpath.'

5.29 2010/1149. Description:

No documents available online.

5.30 2013/1337. Description: Erection of five dwellings including alterations to access road and footpath (Outline) (Amended Scheme).

The layout plan includes labels the claimed route in the following ways: 'Public Footpath', 'Align with existing footpath at the boundary', '1.5m high timber post and rail fence between footpath and plot', and 'Maintain pedestrian footpath link'.

The Design and Access Statement states:

There is an existing water course which bisects the site running West to East and a public footpath running parallel to the Eastern boundary and connecting Rectory Lane at its junction with Houghton Road to the North with High Street to the South.

There is no demarcation between the access road and the public footpath.

The existing access is an unmade track taken from the end of High Street and serves 7 dwellings at Lane End Mews. It is approximately 4.0m wide. There is a public footpath along the access road which extends through the site to the north. The proposals require the slight realignment of the public footpath to match which currently follows the line of the unmade track, to follow the line of the new road.

The developable area is however severely limited due to... the need to maintain the public footpath link and areas of land which have been set aside for the introduction of landscape planting to improve the amenity for new and existing residents.

The roadway is designed as a shared surface and serves a total of twelve dwellings (7No existing and 5No proposed). It is also proposed to carry out realignment of the existing public footpath and to formalise the existing access to Lane End Mews. Ample parking, ie 2 No spaces per dwelling is provided.

In the application form, the following question was answered 'yes': Do the proposals require any diversions/extinguishments and/or creation of rights of way?

- 5.31 2019/0499. Description: Erection of five dwellings including alterations to access road and footpath (Reserved matters of appearance and landscaping in connection with application 2013/1337). (Submitted 23rd April.)

Site layout states: 'Align with existing private road at site boundary', 'Maintain pedestrian footpath link.', and 'Line of existing public footpath.'

- 5.32 2019/1310/INVALID. Description: Variation of condition 2 - Change of design from houses and bungalows to bungalows with associated garages (Erection of five dwellings including alterations to access road and footpath (Reserved matters of appearance and landscaping in connection with a [sic].

No documents available.

- 5.33 2020/0510. Description: Residential development of 5no. detached bungalows and associated garages (part retrospective).

The land ownership had now been transferred and the references to a footpath connection had been removed from the site layout.

However, the Design and Access Statement states:

There is an existing water course which bisects the site running West to East and a public footpath running parallel to the Eastern boundary and connecting Rectory Lane at its junction with Houghton Road to the North with High Street to the South.

- 5.34 2021/0615. Description: Variation of condition 1 of application 2020/0510 (Residential development of 5no. detached bungalows) to allow variation in bungalow design for plot 3.

The application to have the claimed route recognised as a public right of way had now been submitted and brought to the attention of the developer. A link is shown to the north west corner of the site, which was added after the Council requested that a suitable diversion route was identified should the DMMO application be successful. However, the Council's public rights of way department did not agree to the alignment shown on the plans and no diversion application has been submitted to the Council.

The Officer report for the application still states:

There is an existing water course which bisects the site running West to East and a public footpath running parallel to the Eastern boundary and connecting Rectory Lane at its junction with Houghton Road to the North with High Street to the South.

There is no demarcation between the access road and the public footpath.

Under 'consultations' the document states that no comments were received on the application from PROW (public rights of way). This is incorrect.

Ivanhoe Homes and previous landowner

5.35 Ivanhoe Homes have stated that they wish to oppose the application and have highlighted what they consider to be weaknesses in the evidence. They also asked the previous landowner to contact the Council to provide evidence against the application. This correspondence with the Council is summarised as follows.

5.36 Email sent by Terry Baron, Ivanhoe Homes: 22 October 2020 19:51.

Mr Baron claims that any public access was trespass and that, according to the previous landowner, private property signs and gates had been vandalised over a number of years:

I've spoken to the previous owner of the land and she informs me that over the years there has been at least 2 sets of private property signs put up, one at the entrance over the bridge and another just beyond the bridge. These signs have been taken down by whoever and this has happened at least twice which she is willing to put in writing. Also the previous owner put barbed wire up just beyond the bridge to stop access into the council field but again this was removed by someone. The previous owner also says that if people prove that they have used the route in question for 20 years then they have been trespassing as it has always been sign written private land. They put a number of wooden gates up at the top of the lane but again they kept getting knocked down so they put a steel gate up to try and eradicate the problem but to no avail. At the moment the land is privately owned by us with no current PROW so as far as I am aware if it is clearly signed then no one should be allowed access without permission. I can understand the people who live on lane end mews needing access to their properties but there is no immediate reason why anyone should go beyond the bridge onto private land. The land in question that we bought has been in the same family for over 100 years.

5.37 Email sent by Terry Baron, Ivanhoe Homes, 22nd December 2020.

Mr Baron again claims that signs were torn down, this time claiming that they were 'no entry' signs. He refers to evidence provided by a neighbour that a single person uses the route on horseback, opening the gate to gain access (presumably the current metal gate). He goes on to claim that there was a second gate at the southern entrance to the old farm, and that the access was not taken along the lane but to the adjacent open space.

I've been in touch with the old land owner and she is going to help me where she can in getting some evidence together that people have been vandalising no entry signs to the land and trespassing for years. She has also had numerous conversations with Barnsley

council about this matter over the years when they applied for original planning. Also I have managed to speak to one of the neighbors called Richard who is a member of the young farmers association and he knows a girl called rose or grace cant remember what he said, but he said she sometimes goes through our private land on horseback on a Sunday morning. I asked how she got through the gate that's been erected for a number of years and he just said she opens it. This is the only person that he knows that does this. she has clearly been trespassing for the amount of time she's been doing this.

Originally there was a gate at the top of lane end mews when it was the farm to keep it private property, since then the dwellings were constructed on lane end mews so this was removed to obviously allow access to the properties. This left the area of land from the bridge up to the north of the site (gated off) which is the top of that lane, this area is known as the paddock and remained private property to which the old land owners still owned. The problem I think people have is not the fact that they can no longer go directly through the site but not being able to gain access to the council field (the wreck) with dogs. This is what they may have done for numerous years. At the moment they come over the bridge and turn immediately right into the field. I have never had any intentions of stopping people doing this and I have even had a quote for putting a footbridge across the watercourse beyond the turning area so they can still access the field. Could you let me know if these people have permission from Barnsley council to access this field with or without animals please.

5.38 Phone call with C. Jones, the previous landowner: 22 December 2020. She said the following:

- i. Her family owned the land from 1910 up to selling it to Ivanhoe Homes in 2019.
- ii. People may have used the lane, but they knew that they were trespassing.
- iii. The land was previously a yard with a paddock and a wooden gate at point B, which fell into disrepair, though she was unable to provide dates. There was no stile or other access alongside the gate.
- iv. Private property signs were in place near the gate and the turning area to try to prevent dumping.
- v. The former farm is called Lane End Mews as it is situated at the junction of 3 lanes.
- vi. The applicant has legal access on the lane to his bungalow.
- vii. Another person called Dobson has private access (person unknown, they have not provided evidence).
- viii. The adjacent recreation ground was donated to Dearne Council by Thornely Taylor, and the gap from the claimed route connecting to the recreation ground was left to allow maintenance access to the dike.

5.39 Email sent by Terry Baron, Ivanhoe Homes, 23rd December 2020. In this email, Mr Baron claims that the user evidence is fabricated, and that the metal gate was not installed in 2019:

It's clear that these people have got together to construct these statements but I understand that. In some of the statements it is said that the gate was constructed in 2019 which is just not true. It is also said that it was put in to stop cars and motorbikes but Christine the original owner had this erected to stop people coming through the private land. It is also said that you could walk around the side of the gate which you possibly could as the hedge that was there was removed so left a small gap. I've got an appointment with solicitor to get legal advice I know you said this may not help but the fact with proof from the old land owner that a gate was constructed to stop public trespassing with the dates and proof of numerous signs have been constructed over the years is enough for an initial enquiry into things. Also I have a further witness about these things.

5.40 Second phone call with C. Jones, the previous landowner: 11th January 2021.

In this conversation, the previous landowner was asked about the reference to a public footpath on planning applications submitted by her / on her behalf during her ownership. She replied that if a footpath was shown on the planning application, she was not aware and would not have been looking for something like that, and that, if shown, it was a mistake by the architect.

5.41 In the following months, the Council asked Mr Baron multiple times to submit any counter evidence that he wished to provide. After several requests for more time in order to gather statements from local residents who he claims can demonstrate that the route has not been used as claimed, the most recent correspondence with Mr Baron was via email on the 11th and 12th of October 2021. In the emails he again claims that signs have been taken down, and asserts that anyone using the route was trespassing:

11th October.

Unfortunately the 5 people I had willing to give evidence has now dropped to 2 due to them being afraid of some repercussions by one of the people who have given false evidence. The person in question is well known in the area of being a bully and an outspoken person who intimidates people. So I have the land owner and another person who's garden looks over our land and she was brought up there and is willing to prove that numerous signs have been vandalised over the years and prove these people were on private land so have been trespassing all these years. I've spoken with our solicitor who informs us we are well within our rights to contest these statements in a court of law, so with the landowner and our other witness that's what we'll have to do if this decision goes against us because of people's lies. They are upset because we cut the dog route off to the playing field which had to be done anyway because of site safety. I am even willing to pay for a bridge across the watercourse so access is still available to the field that wouldn't be a problem but we are not prepared to stand by and let people tell blatant lies without being challenged.

12th October.

I'll get the evidence to you but the Christine who we bought the land off is quite angry and she has spoken to someone in the council about this and is reluctant to send any

wording evidence she just says she will go all the way to fight this as she knows these people and she wants a face to face debate with them because she knows they are telling lies.

5.42 Mr Baron has not submitted any further evidence. It is not considered appropriate to grant him any further time to do so.

Conclusion

5.43 The user evidence is clear and consistent and is considered to provide good evidence of 20 years' unchallenged use of the route on foot prior to the date of challenge, regardless of whether 2019 or 2020 is taken as the date of challenge.

5.44 The user evidence is not considered to be sufficient to demonstrate 20+ years' use of the route as a bridleway prior to 2019. Although the physical characteristics of the route suggest that such use would have been possible, the number of people claiming such use within the relevant period is minor and some of that use was carried out by people who kept horses either in the adjacent stables or adjacent properties, suggesting that they were likely accessing the adjacent land and not using the route as members of the public. This evidence is considered insufficient to show use of the route as a bridleway by the public at large.

5.45 The evidence for motor vehicle access is largely anecdotal and for access to adjacent properties rather than access by the public at large.

5.46 Aerial photos appear to support the assertion made in the user evidence that there were no gates on the route in the relevant 20 year period.

5.47 Ordnance Survey plans support the claim that the track has been in place for several decades, although they are not considered to provide direct documentary evidence of public access rights.

5.48 The current landowner claims that the user evidence is fabricated and that any access has been trespass. However, he was not the landowner for the vast majority of the relevant period and is therefore unable to provide much first hand evidence. He therefore relies on assertions by the previous landowner that signs were in place to deter access, as well as claiming that the alleged date of installation of the metal gate is incorrect, therefore casting doubt on the reliability of the UEFs. However, he has provided no evidence about the installation date and, based on the evidence available to the Council, it seems reasonable to assume that the gate was erected at some point in 2019.

5.49 The previous landowner has also stated that any previous access was trespass and claimed that some people had private access rights on the route. This has been considered when reviewing the evidence, which has been weighted accordingly. They argue that they challenged public access on the route in two principal ways: via a gate at point B, and via signs adjacent to the route.

5.50 They claim that a wooden gate prevented access at point B but later fell into disrepair. However, they were not able to provide any further details about the gate or confirm

approximately when it was installed or damaged. This lack of details means that it is difficult to establish what any fence may have looked like, when it was in place or the effect that it had on public access. Moreover, aerial photos appear to show a gateless route from 2002 through to 2018. Accordingly, there is not considered to be sufficient evidence that any previous gates at point B were sufficient to challenge public access on the claimed route.

- 5.51 They also state that they put up signs stating 'private property' to prevent dumping on the land, positioned near the gate and at the turning area. Again, they were not able to provide further details or dates. One of the UEFs corroborates this, referring to 'private land' signs having been erected when dumping started when the Lane End Mews conversion took place. However, there is no suggestion in any of the UEFs that this was interpreted as a challenge to public access on the claimed route, rather that the signs were considered to have been installed to deter access on the adjacent land. Furthermore, some rights of way run over private roads, where landowners sometimes put up signs stating 'Private Road' or 'Private Drive'. This does not necessarily mean there is no public access along the road. Such signs are therefore not considered to be sufficient to rebut a presumption of dedication on the part of the landowner
- 5.52 A succession of planning applications for the site blatantly and repeatedly refer to a public footpath running across the land and the need to accommodate it within development. This strongly suggests an acceptance of public use of the claimed route by the then landowner. Although they state that they were unaware of this aspect of the plans, this is considered to be improbable, as it applies to applications spanning several years and is even included in the title of many of the applications. Even if the landowner was genuinely unaware of the inclusion of a footpath in the plans, the fact that the architect inspected the site and felt it necessary to include a footpath in the plans is considered to provide very strong evidence that the claims made in the UEFs are correct and that the claimed route was open, unchallenged and well used by the public at the time.
- 5.53 The evidence is therefore considered to be sufficient to demonstrate the presumed dedication of public footpath rights under section 31 of the Highways Act 1980. It is also considered to be sufficient to establish public footpath rights under Common Law prior to 2019.

Width

- 5.54 With regards to width, the claimed route can be divided into 3 sections: between points A and B the track is bound by hedges on either side; from B to the access track to Lane End Mews it runs across open land; and from there it runs along the access track to Lane End Mews.
- 5.55 Between points A and B the width of the track appears to have varied over time. The original gap between hedges (including grass verges on either side) appears to have been around 7 metres, which has been narrowed by encroachment of some adjacent gardens. The worn / roughly surfaced width currently starts at approximately 2 metres but then widens to between 3.5 and 4 metres. Ordnance Survey base plans suggest a surfaced width of approximately 3.5 metres.

- 5.56 Immediately south of point B it is not possible to measure the width as the new properties partially encroach on the claimed route. Aerial photographs suggest a width consistent with the surfaced width north of point B. Ordnance Survey base plans suggest a surfaced width of approximately 3.5 metres
- 5.57 The access track to Lane End Mews measures 4 metres wide at point C. While this briefly widens where the route turns into Lane End Mews, 4 metres is considered to be the appropriate width for this section of the claimed route.
- 5.58 The user evidence consistently claims a width of 4 to 5 metres. Some UEFs claim that the whole route has been accessed by vehicles in the past.
- 5.59 Given a combination of the current widths and the user evidence, 4 metres is considered to be an appropriate width for the full length of the route. In places, this will include a section of grass alongside the roughly surfaced area.

Summary of the Legal Service Director & Solicitor to the Council Assessment of the Evidence

- 5.60 Having considered all of the available evidence, the Legal Service Director & Solicitor to the Council is satisfied that the evidence submitted is sufficient to satisfy Test A for a public footpath. Accordingly, it is recommended that an Order is made to record the route as a public footpath and that the Council supports the order to confirmation stage unless new evidence is received which is considered to be of sufficient weight to put the conclusions in this report into doubt in which case the matter will be the subject of a further report.

This recommendation is reached for the following reasons:-

- (i) User evidence shows public use of the route as a footpath for periods in excess of 20 years prior to the date of the challenge, which is sufficient to raise a presumption of dedication (and also acceptance by the public at large) under section 31 of the Highways Act 1980;
 - (ii) There is no compelling evidence of a lack of intention to dedicate the route as a footpath that would rebut that presumption;
 - (iii) The evidence is also considered sufficient to raise an inference of dedication (and acceptance) at Common Law.
- 5.61 With regards to the claimed higher rights, the Legal Service Director and Solicitor to the Council is not satisfied that the evidence submitted is sufficient to demonstrate that the claimed public higher rights subsist. It is therefore recommended that the application in respect of this route is rejected. This recommendation has been reached because the user evidence is not considered to be sufficient to demonstrate presumed dedication under statute, nor an inference of dedication at Common Law.

6 Alternative Options

- 6.1 If having considered the evidence set out in this report the Head of Highways and Engineering is of the view that the Officer recommendation should not be followed they may resolve to either reject the application or defer it for further information subject to giving reasons for that decision at Section 11 of this report.

7. Financial Implications

- 7.1 The costs associated with making and confirming a DMMO have to be met by the Council.
- 7.2 If objections are received which cannot be resolved and no contrary evidence is produced to change the Council's view, the DMMO will be determined by the Secretary of State, which may involve the holding of a public inquiry. Parties are normally expected to meet their own expense although the Council will be responsible for making the inquiry arrangements. An application for costs may be made against either party only where they are shown to have acted unreasonably.
- 7.3 If the DMMO is confirmed, the route will be added to the Definitive Map and Statement and the Council shall be responsible for maintaining the route at public expense.

8. Right of Challenge and the DMMO Process

- 8.1 The making of the DMMO requires a two stage process (making and confirmation) which is governed by Schedules 14 and 15 of the Wildlife and Countryside Act 1981. The first stage involves the Council (as surveying authority) making and publishing the order which will trigger a six week period to invite objections. The second stage requires the order to be confirmed. The Council may itself confirm the order, if no objections are made or if any such objections are withdrawn. Otherwise, the order must be submitted to the Secretary of State for confirmation. The Secretary of State will usually proceed to hear all representations by way of a public inquiry (or on occasion by written representations) before making a decision as to whether an order should be confirmed.
- 8.2 Any confirmed order may be subject to legal challenge in the High Court for a further six week period on narrow legal grounds (namely that the Council or the Secretary of State has erred in law, the Order is not within the statutory powers or the statutory process has not been followed).

9. Compatibility with European Convention on Human Rights

- 9.1 The proposal is considered compatible with the convention.

10. Authority

10.1 The Head of Highways and Engineering is given delegated powers to decide whether to make the necessary legal Order based on the determination of evidence by the Legal Service Director & Solicitor to the Council – Council 166(b) 9.11.2011.

11. Decision Taken (*mark an 'x' in the appropriate box.)

The Head of Highways and Engineering approves the Officer recommendation for the reasons set out in section 5 of this report.	X
The Head of Highways and Engineering rejects the Officer Recommendation and resolves to reject the application for the following reasons: (insert reasons)	
The Head of Highways and Engineering rejects the Officer Recommendation and resolves to defer the application for the following reasons: (insert reasons)	

Signed By:



Ian Wilson

Service Manager Highway Delivery

Date of Decision: 20th December 2021

List of Appendices

Appendix 1: Plan showing the claimed public right of way

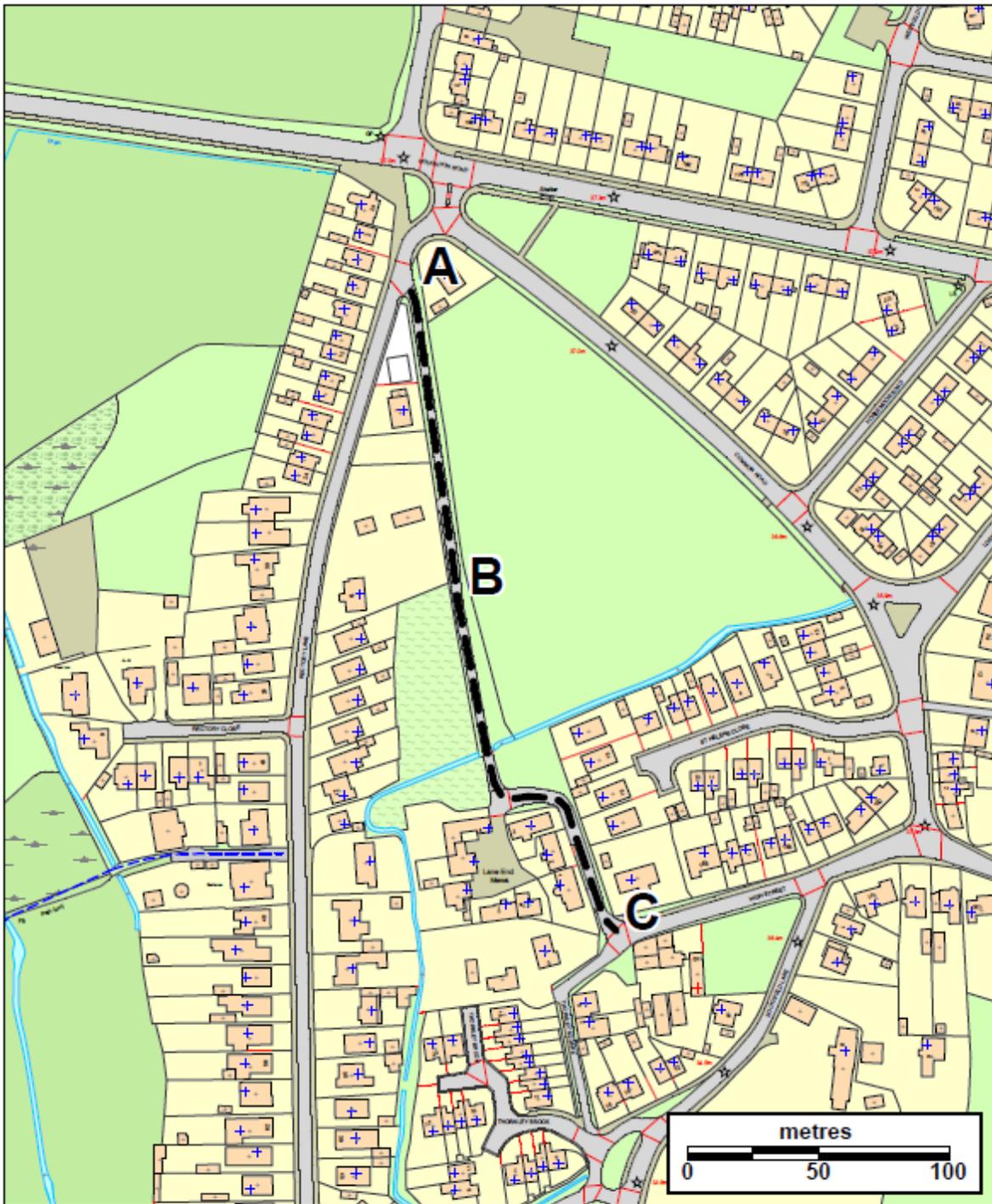
Appendix 2: Draft DMMO statement

Appendix 3: Table of user evidence

Background Papers

Rights of Way file reference: Dearne C24

Appendix 1: Plan showing the claimed public right of way



Claimed public right of way: Rectory Lane to High Street via Lane End Mews, Thumscoe	
Drawn by BMBC	Scale 1 : 2000
-	-

Footpath to be added 
Unaffected footpaths 



Appendix 2: Draft DMMO statement

1981 WILDLIFE AND COUNTRYSIDE ACT - DEFINITIVE MAP STATEMENT

AREA: DEARNE

Path No.	Map. Ref.	Description of Route	Nature of Surface	Length	Width(s) En Route	General
40	SE 40 NW 4475 0581 4483 0557	Footpath commencing at the northern end of rectory Lane, Thurnscoe and proceeding south, east then south along a track to join High Street.	Rough metalled Stone / Earth	280m	4m	-

Appendix 3: Table of user evidence

Form No.	Period of use	Length of use in years	Frequency of use	Type of use	Purpose of use	Width	Public Inquiry?
1	1975-2020 (orig. 1970 to 2010)	45 (orig. 40)	Daily (F) Monthly (B)	Foot, bicycle	Walking dogs, going to the cemetery and church.	4-5 metres (orig. 4yds)	Y
2	1970-2020	50	Daily	Foot	Dog walking. Access to High Street and cemetery.	3-4m	Y
3	1952-2020* (from 3 years)	50+	Monthly	Foot, horse, bicycle, MV	Access to stable facilities when available, visiting friends.	4-5m	Y
4	1995-2020	25	Daily	Foot	Exercise, visiting family and friends.	4m+	Y
5	1961-2020	59	Weekly	Foot	Visiting the cemetery.	-	-
6	1991-2020	29	Weekly	Foot	Exercise, leisure, dog walking. To see the animals when small.	4m+	N
7	1970-2020	50	Daily	Foot, horse, bicycle, MV	Leisure, to walk onto High Street, access to the recreation ground with the dog.	5m	Y
8	1960s-2020	50+	Daily	Foot	Walking with children / grandchildren / dog away from traffic.	Variable	Y

Form No.	Period of use	Length of use in years	Frequency of use	Type of use	Purpose of use	Width	Public Inquiry?
9	1991-2020	29	Daily	Foot	Access to field to exercise dog.	c.11ft	Y
10	-	30	-	-	-	-	-
11	1986-2020	34	Daily (F) Weekly (H+MV) Monthly (B)	Foot, horse, bicycle, motor vehicle	Access to pony / farm yard, to exercise dog, ride bicycle, visit relatives.	4-5m	Y
12	-	30	-	Foot, horse	-	3-4m	Y
13	1981-2020	39	Daily (F, H, H&C) Weekly (MV) Monthly (B)	Foot, horse, bicycle, motor vehicle, horse & cart	Leisure – walk to village or TPT. To access the rear of own property.	4-5m	Y
14	2003-2020	17	Weekly	Foot	Take the dog for a walk.	4-5m	Y