

Report of Public Rights of Way Manager

Report to Definitive Map Modification Order Application Decision Meeting

Date: 21st August 2014

Subject: Claimed Footpath Grangefield Road, Pudsey

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, names of Wards:	Calverley & Farsley, Bramley & Stanningley	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4 (1 & 2)		
Appendix number: Background Document BB & DD		

Summary of main issues

1. To determine if a Definitive Map Modification Order under Section 53 (2)(b) of the Wildlife and Countryside Act 1981 should be made following the discovery of evidence and seek authority to make a Modification Order if the evidence shows that a public right of way exists or that the Definitive Map and Statement needs modifying.

Recommendations

2. The Natural Environment Manager is requested to consider the evidence and the law to determine the status of the claimed public right of way (as shown in Background Paper A) and authorise the City Solicitor either,

To make an Order in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement by adding the route that is considered to be a public right of way and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the existence of a public right of way cannot be reasonably alleged.

and give full reasons for the decision made.

1 Purpose of this report

- 1.1 Leeds City Council is the Surveying Authority for the Leeds Metropolitan District and has a duty to keep the Definitive Map and Statement for the Area under continuous review and to make Modification Orders as necessary to take account of events requiring the map and statement to be modified.

2 Background information

- 2.1 Whilst undertaking archival research for the Definitive Map Modification Order Application for the footpath off Richardshaw Road, documentary evidence was discovered for an unrecorded section of footpath along Grangefield that forms a missing link between the northern end of Pudsey Footpath No. 48 and the adopted section of Grangefield Road. The claimed footpath is shown on Background Document A.

3 Main issues

- 3.1 The records held at West Yorkshire Archives Service and Leeds City Council were checked for documentary or historical evidence concerning the claimed footpath. When evidence is discovered which shows the existence of a public right of way the council, as surveying authority have a duty to make a Modification Order. The evidence and its implications are considered below.

Documentary Evidence

- 3.2 The records checked at the West Yorkshire Archives Service and Leeds City Council include historic Ordnance Survey maps, aerial photos, railway plans, and building plans.
- 3.3 The claimed footpath is shown on 1840 1:10,560 Ordnance Survey map with solid and dashed line as part of a much longer route between Town Street, Stanningley and a road called Bridle Road (now Mount Pleasant Road) and Lowtown, Pudsey. The railway line had not been built at this time and at the northern end it is on a different alignment to Town Street from just north of where the railway bridge is now. Grangefield Road does not exist. The continuation of the claimed footpath to the south is now recorded in the Definitive Map and Statement as Pudsey 48 or is public roads. This shows that the claimed footpath was part of a much longer footpath and should be the same status as other parts of it. The 1840 Ordnance Survey Map is shown as Background Document B.
- 3.4 On the deposited plan for the West Riding Union Railway, 1845 the claimed footpath is shown from Town Street, Stanningley to the railway line with a solid and dashed line within parcel 105 and would then continue south in parcel 109 in the township of Pudsey. The alignment just north of the railway towards Town Street is shown on a different alignment and Grangefield Road does not exist. Parcel 105 is described in the Book of Reference as a field, delph hole (delph meaning quarry in old English) and public footpath in the ownership of 'Timothy Ingham and the Board of Surveyors of the Highway of the Township of Pudsey, namely herein before named and occupied by Joseph Emmett'. Parcel 109 is described as a field, occupation road and public footpath in the ownership of

'James Watkinson and the Board of Surveyors of the Highway of the Township of Pudsey, herein before named ~~namely~~' and occupied by James Watkinson of the field. At Parcel 18 the surveyors were named as Edward Greenwood, Chairman and William Walton, Acting Surveyor. This shows that the claimed footpath was considered to be a public footpath maintained at public expense by the highway authority at this time. The 1845 West Riding Union Railway Deposited plans and Book of Reference are shown as Background Document C.

- 3.5 On the deposited plan for the Great Northern Railway, Leeds Bradford Halifax Junction Railway, 1851 the claimed footpath is shown with a solid and dashed line within parcels 88 and 92. The alignment just north of the railway towards Town Street is shown on a different alignment Grangefield Road does not exist. Parcel 88 is described in the Book of Reference as arable and meadow field, old stone quarry, gravel heap and public footpath in the ownership of Timothy Ingham and The Board for the Repair of the Highways in the Township of Pudsey and occupied by Joseph Emmett. Parcel 92 is described as meadow field and public footpath owned by Samuel Watkinson and The Board for the Repair of the Highways in the Township of Pudsey and occupied by Joseph Whiteley. It is also shown in the cross references as a footpath. This shows that the claimed footpath was considered to be a public footpath maintained at public expense by the highway authority at this time. The 1851 Great Northern Railway, Leeds Bradford Halifax Junction Railway Deposited Plans and Book of Reference are shown as Background Document D.
- 3.6 On the deposited plan for the Great Northern Railway, Further Powers, 1874 the claimed footpath is shown with double solid edges on a bridge over the railway line. To the north of the railway line it forks in two directions towards Town Street and is Parcel 5. One of these forks is the original line of the footpath and occupation road and the other provides access to an adjoining property. Grangefield Road does not exist. Parcel 5 is described in the Book of Reference as Public Highway and Road in the ownership of The Local Board of Health for the District of Pudsey James Watkinson. No occupiers are listed. This shows that the claimed footpath was considered to be a public footpath maintained at public expense by the highway authority at this time. The 1874 Great Northern Railway, Further Powers Deposited Plan and Book of Reference are shown as Background Document E.
- 3.7 In the deposited plan for the Great Northern Railway Transfer &c 1877 for a new road, additional land and proposed diversion of foot-path at Leeds (Stanningley) Sessions 1878 the realignment of the footpath as Grangefield Road is shown. The original alignment of the footpath to the north of the railway line is shown as parcel number 5 with double solid edges and labelled 'Public Foot-Path to be Diverted' and at its northern end it is labelled B. Grangefield Road is shown as a solid line labelled 'Centre Line of Proposed Road and Foot-Path' within parcel number 7 and is labelled C at its northern end. The bridge over the railway line is shown and it is labelled A on the southern side. The railway line is parcel number 4. South of the bridge the claimed footpath is shown with a solid and dashed line within parcel 1. Parcel 1 is described as 'Field and Public Footpath' owned by James Watkinson and the Local Board of Health for the District of Pudsey Henry Higson Broadbent, Clerk and occupied by William Crabtree. Parcel 4 is described

as 'Railway and Works, Telegraph Posts and Wires, Bridge and Public Foot-path' owned by The Great Northern Railway Company, the Local Board of Health for the District of Pudsey and the Postmaster General and occupied by the Great Northern Railway Company and the Lancashire and Yorkshire Railway Company – John Henry Stafford, Secretary. Parcel 5 is described as 'Public Footpath' owned by the Local Board of Health for the District of Pudsey with no occupiers.

3.8 The proposed act that accompanied the deposited plan states at section 7 that it is 'to enable the Company to construct a new road, commencing in the parish of Leeds in the West Riding of Yorkshire, on the southern side of the Leeds Bradford Turnpike-road, at the end of Butler's-place, and terminating in the township of Pudsey and the parish of Calverley, in the same Riding, at the southern boundary of the Leeds and Radford Line of the Great Northern Railway, near and on the west side of a stable or building belonging to the company and occupied by Isaac Gaunt. And the Bill will vest the said road, when made, in the persons or bodies who have control over the public highways in the said township and parishes respectively. And it will enable the Company to stop up and extinguish all rights of way in and over so much of an existing occupation road and public footpath as lies between the said turnpike-road, in the parish of Leeds, and the mill and premises of Isaac Gaunt, in the said parish of Calverley.

3.9 The finalised Further Powers Act 1878 Section 5 (2) states that 'the Company may construct a new road commencing in the parish of Leeds, in the west riding of Yorkshire, on the southern side of the Leeds and Bradford turnpike road at the end of Butlers Place, and terminating in the township of Pudsey and parish of Calverley, in the same riding, at the southern boundary of the Leeds and Bradford line of the Great Northern Railway. The said road, when made, shall vest in and be maintained by the persons or bodies who have control over the public highways in the said township and parishes respectively; and when the said road is completed the Company may, subject as hereinafter provided, stop up and extinguish all rights of way in and over so much of the existing occupation road and public footpath as lies between the said turnpike road in the parish of Leeds and the mail and premises of Isaac Gaunt in the said parish of Calverley: Provided always, that the power by this Act conferred upon the Company to stop up and extinguish all rights of way in and over the portion hereinbefore specified of the said existing occupation road and public footpath shall not be so exercised as to prejudice or interfere with the user by Messrs. Matthew Pitts & Thomas Gardom Binner, or other the owner or owners for the time being of all or any part or parts of the premises at Stanningley, in the parish of Leeds, now known as the Albion Iron Works of the said occupation road between the point where the limit of deviation is shown upon the said deposited plans across the said occupation road and public footpath at the south east corner of the said Albion Iron Works and the said Leeds Bradford turnpike road.' This section of the act granted the company the power to extinguish the northern end of the footpath and occupation road between the railway bridge and Town Street on completion of a new road which is Grangefield Road between the railway bridge and Town Street. The deposited plan, draft act and final act shows that the claimed footpath was considered to be a public footpath running along an occupation road maintained at public expense by the highway authority at this time and was to be stopped up and diverted onto a new publically maintained road provided from Town Street to the bridge over the

railway. The relevant extract of the 1877 Great Northern Railway Transfer & Deposited Plan and 1878 Act are shown as Background Document F and a later typed copy of the wording of the final act is also provided.

- 3.10 On the deposited plan for the Great Northern Railway, Widening at Leeds, Additional Lands and Stopping Up of Footroad at Stanningley, 1882 the claimed footpath is shown with double solid edges on a bridge over the railway line. To the north of the railway line there is only one route now shown on the line of Grangefield Road towards Town Street and the original line appears to be blocked. This shows that the works to provide a new road and divert the northern end of the footpath were carried out. The 1882 Great Northern Railway, Widening at Leeds, Additional Lands and Stopping Up of Footroad at Stanningley Deposited Plan is shown as Background Document G.
- 3.11 On the 1888 1:2,500 Ordnance Survey map Grangefield Road is now shown from Town Street to the bridge, over the railway and then alongside Grangefield Mill. It is labelled Grangefield Road on the northern side of the railway. The bridge is narrower than the road on either side. The claimed footpath is shown with double solid edges from just north of the railway line and over it to the middle of Grangefield Mill. From there it is shown with a solid and dashed line and is narrower. It then continues with double dashed lines and double solid lines to Lowtown, Pudsey, and is labelled *F.P.* and The Lanes and these sections are now recorded in the Definitive Map and Statement as Pudsey 48 or are public roads. This shows that the claimed footpath was part of a much longer footpath and should be the same status as other parts of it. The 1888 Ordnance Survey Map is shown as Background Document H.
- 3.12 Only part of the 1890 1:500 Ordnance Survey map is available. It shows Grangefield Road from Town Street to and over the bridge over the railway with double solid edges. It is labelled Grangefield Road from the northern side of the railway line to the centre of the bridge. Butler Place mentioned in the 1878 Act is shown at the northern end of Grangefield Road. The original line of the footpath and occupation road from the railway bridge to Town Street is called Albion Road at the northern end and now only provides access into the Albion Iron Works. The bridge over the railway line and part of the claimed footpath on the southern side of the railway is shown with double solid edges. The rest of the map is not available. The 1890 Ordnance Survey Map is shown as Background Document I.
- 3.13 On the 1907 1:2,500 Ordnance Survey map Grangefield Road is shown from Town Street to the bridge over the railway and then alongside Grangefield Mill. It is labelled Grangefield Road from the northern side of the railway line to the centre of the bridge. The ward boundary runs along Grangefield Road and the footpath. The claimed footpath is shown with double solid edges for its full length and is labelled *C.R.* at the northern end of the bridge and *C.F.P.* just after the southern end. These relate to the ward boundary and indicate that it ran along the centre of the road and centre of the footpath respectively. The bridge over the railway and the southern end are narrower than Grangefield Road and the section alongside Grangefield Mill. It then continues with double dashed lines and double solid lines to Lowtown Pudsey, and is labelled *F.P.*, *C.F.P.*, *C.R.* and The Lanes and these sections are now recorded in the Definitive Map and Statement as Pudsey 48 or are public roads. This shows that the claimed footpath was part of a

much longer footpath and should be the same status as other parts of it. The 1907 Ordnance Survey map is shown as Background Document J.

- 3.14 In 1945 works were carried out on the bridge over the railway line after the build-up of surface on the road started to become too much for the bridge structure. A series of letters between the London & North East Railway Company, Isaac Gaunt at Grangefield Mills and Pudsey Corporation identifies that Isaac Gaunt had vehicular access rights over the bridge with vehicles up to 4 tonnes, that the railway company were responsible for the structure of the bridge and that the Pudsey Corporation were responsible for the surface of the road over the bridge. Prior to the new bridge works, the road took up the full width of the bridge. After the bridge works raised footpaths were to be provided along either side of the bridge. The Pudsey Corporation removed the surfacing on the bridge, the railway company carried out the bridge repairs and waterproof filling to the road and the Pudsey Corporation then provided the waterproof surfacing to the footpaths and surfacing. This shows that the bridge over the road carried public rights of at least footpath status at this time as public maintenance of the road would not have been possible if only private rights existed. The correspondence and plans relating to the repair of the bridge are shown as Background Document K.
- 3.15 On the 1953 1:10,560 Ordnance Survey map Grangefield Road is shown from Town Street to the bridge over the railway and then alongside Grangefield Mill. It is labelled Grangefield Road from the northern side of the railway line to Grangefield Mills. The claimed footpath is shown with double solid edges for most of its length and then with a solid and dashed edge for the last bit. The bridge over the railway is the same width as Grangefield Road and the section alongside Grangefield Mill. There also appears to be a gantry or building over the claimed footpath between the mill buildings on either side. The footpath then continues with a solid and dashed line narrowing by Grangefield house then continues with double dashed lines and double solid lines widening at the Size and Grease Works to Lowtown Pudsey, and is labelled *F.P* and The Lanes. These sections are now recorded in the Definitive Map and Statement as Pudsey 48 or are public roads. This shows that the claimed footpath was part of a much longer footpath and should be the same status as other parts of it. The 1953 Ordnance Survey Map is shown as Background Document L.
- 3.16 On the 1956 1:10,560 Ordnance Survey map Grangefield Road is shown from Town Street to the bridge over the railway and then alongside Grangefield Mill. The claimed footpath is shown with double solid edges. The bridge over the railway has the same width as Grangefield Road and the section alongside Grangefield Mill. There also appears to be a gantry or building over the claimed footpath between the mill buildings on either side. The footpath then continues with a solid lines, then single dashed line after Grangefield house then continues with double solid lines from a works to Lowtown Pudsey, and is labelled *F.P* and The Lanes. These sections are now recorded in the Definitive Map and Statement as Pudsey 48 or are public roads. This shows that the claimed footpath was part of a much longer footpath and should be the same status as other parts of it. The 1956 Ordnance Survey Map is shown as Background Document M.

- 3.17 A plan of the proposed industrial estate layout for the Grangefield Industrial Estate dated the 26th of April 1960 shows the claimed footpath as Grangefield Road with double solid edges and dashed lines indicating footways. The bridge over the railway line is labelled F.B. presumed to mean footbridge. Part of Grangefield Road is labelled 'C.I.P No Record' which is believed to be Cast Inspection Point. Post office equipment is shown to exist though the bridge and underneath the road with more proposed. The plan of the proposed industrial estate is shown as Background Document N.
- 3.18 Insurance plans were produced for the properties alongside Grangefield Road. Plans of Grangefield Works dated 1960 and 1968 and the Albion Works dated 1960 show Grangefield Road running alongside the properties and crossing the railway line. On the plan of Grangefield Mills dated April 1974 Grangefield Road is shown as running between the mills and Ellbee Ltd. and an arrow points towards the railway line and says 'to Footbridge'. By 1974 the vehicular bridge had been replaced with a footbridge. An undated plan, but believed to be earlier plan of Isaac Gaunt Ltd, Grangefield Mills, the bridge over the railway is labelled 'Road Bridge' and where the claimed footpath narrows past the mills it is labelled 'Footpath'. The factory plans are shown as Background Document O.
- 3.19 On the aerial photograph dated 21st of July 1966 the claimed footpath can clearly be seen running from Grangefield Road on the north side of the railway, over the railway line on a bridge, which is narrower than the road on either side, and then along the road past Grangefield Mill. The footpath narrows down before Richardshaw Road and this narrower section is recorded on the Definitive Map and Statement as Pudsey Footpath No. 48. Richardshaw Road appears to have been recently built and there are few industrial units along it. The 1966 Aerial Photographs are shown as Background Document P.
- 3.20 On the aerial photograph dated the 25th of April 1968 the claimed footpath can clearly be seen running from Grangefield Road on the north side of the railway, over the railway line on a bridge, which is narrower than the road on either side, and then along the road past Grangefield Mill. The footpath narrows down before Richardshaw Road and this narrower section is recorded on the Definitive Map and Statement as Pudsey Footpath No. 48. The 1968 Aerial Photograph is shown as Background Document Q.
- 3.21 The 1969 1:1,250 Ordnance Survey map the claimed footpath is shown as Grangefield Road and is labelled as such by Grangefield Mill. It is shown with double solid edges and the bridge over the railway line is narrower than the road on either side. There is also a dashed line on the eastern side of Grangefield Road which indicates a footway. After Grangefield Mills the footpath continues with double dashed edges and is narrower than Grangefield Road with the width reducing further at Grangefield Houses until Richardshaw Road. This section of footpath is recorded on the Definitive Map and Statement as Pudsey Footpath No. 48. The 1969 Ordnance Survey map is shown as Background Document R.
- 3.22 On the aerial photographs dated the 19th of July 1971 the claimed footpath can clearly be seen running from Grangefield Road on the north side of the railway, over the railway line on a bridge, which is narrower than the road on either side, and then along the road past Grangefield Mill. The section of footpath that is

recorded on the Definitive Map and Statement as Pudsey Footpath No. 48 has been made up as a road and widened since the 1968 aerial photograph. The July 1971 Aerial Photographs are shown as Background Document S.

- 3.23 On the aerial photograph dated the 11th of November 1971 the claimed footpath can be clearly seen running from Grangefield Road on the north side of the railway, over the railway line on a bridge, which is narrower than the road on either side and then along a wide road past Grangefield Mill. There is a clear surface change between the claimed footpath and the recorded section of Pudsey Footpath No. 48 with the claimed footpath appearing to have a rougher surface. The November 1971 Aerial Photograph is shown as Background Document T.
- 3.24 On the 1999, 2002, 2006 and 2009 aerial photographs, the claimed footpath can be clearly seen running from Grangefield Road on the north side of the railway, over the railway bridge and along the road past Grangefield Mill. The bridge over the railway line is narrower than on the 1971 and earlier aerial photographs and on the northern side you can see that it is stepped in on each side from the earlier bridge width and on the southern side one side is stepped in. The footpath continues along Grangefield Road to Richardshaw Road and this section is recorded on the Definitive Map and Statement as Pudsey Footpath No. 49. The 1999, 2002, 2006 and 2009 aerial photograph is shown as Background Document U, V, W and X respectively.
- 3.25 On the modern Ordnance Survey Master Map the claimed footpath is shown from Grangefield Road on the north side of the railway, over the railway on a narrow bridge to Grangefield Road off Richardshaw Road. The bridge over the railway is narrower than on earlier Ordnance Survey maps and is show stepped in from the earlier bridge width on both sides of the railway in the same way as on the post 1971 aerial photographs. The Current Ordnance Survey map is shown as Background Document Y.
- 3.26 On the Leeds Cycling Map 2nd and 3rd editions dated 2006 and 2012 respectively the claimed footpath is shown as a yellow advisory route with the bridge over the railway line shown as a traffic free route. It is believed to have been shown in the same way on the 1st edition map but we do not have a copy available. Although these maps indicate that rights higher than footpath status may exist they are not conclusive as to its status and do not out-weight the other evidence of footpath status available. They also do not show if the public are actually using the footpath with a bicycle or if it has been accepted as a cycleway by the public. The Leeds Cycling maps are shown as Background Document Z.
- 3.27 Photographs of the claimed footpath were taken on the 6th of March 2014. At the southern end the claimed footpath runs along a road between adjoining properties and is roughly metalled. At the southern end of the bridge there is a post, presumably to deter motorised users and possibly cyclists. You can also see where the bridge is stepped in from earlier wider bridges. The bridge has a cage over the top of it and has a metalled surface. At the northern end there is no post but appears that one had previously existed. The footpath then continues towards Grangefield Road and is metalled with grass verges on either side. There are also several posts further along the adopted section of Grangefield Road to prevent vehicular access and after these posts Grangefield Road widens slightly

and the verges are replaced with a footway on either side. The site photographs are shown as Background Document AA.

User Evidence

- 3.28 No User Evidence Forms have been completed for this path. However, during a site visit on the 6th of March 2014 the claimed footpath was observed to be well used on foot with eight people using it within a ten minute period. Councillor Carter also stated that he remembered using this footpath in his youth when he was consulted.

Landowner Comments

- 3.29 Consultations were carried out with the landowners and Highways. No representations against the making of an Order were received and only Network Rail replied. Network Rail responded stating that they 'do not object to the proposal to formally record the bridge as a public right of way'. They also stated that 'their records show that the bridge was originally of occupation status with public foot rights. Following the release of the private rights in the crossing, the bridge became public footpath only. Our engineering records indicate that the current bridge was (re)constructed in 1975'. This information confirms the information discovered that the bridge was originally an occupation road with public footpath rights and that at some point the occupation rights were removed and the bridge reduced in width. As Network Rail are admitting that the bridge carries public footpath rights this is a clear indication that they exist as the law firmly believes that people do not lightly assert things against their interests. Matters which are against their interests are therefore more likely to be correct.
- 3.30 Network Rail also stated that there is a 'cage' fitted over the bridge which may indicate some vandalism in the area. Issues of crime and anti-social behaviour cannot be taken into consideration when determining if a Definitive Map Modification Order should be made. The email from Network Rail is shown as Background Document BB.
- 3.31 Highways provided a map showing the extent of the adopted highway along Grangefield Road. The northern side of the bridge is adopted from the bridge to Town Street. However, a Traffic Regulation Order was made in June 2006 prohibiting motorised vehicles from a point 85 metres south of Town Street to the bridge over the railway line. Bollards have been installed across the road at this point preventing vehicular access. Therefore, this section could be included in the Definitive Map Modification Order as a restricted byway as non-motorised vehicular use permitted. A copy of the extent of the adopted highway and the Traffic Regulation Order are shown as Background Document CC.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 No statutory consultations with prescribed bodies are required prior to making a Modification Order. However, in line with Department of the Environment Circular 1/09, consultation with the main user groups ward members and other council

departments has occurred. Few responses were received but they were in support of the claimed footpath. Councillor Carter stated that he remembered using the claimed footpath in his youth.

- 4.1.2 The response from the Ramblers Association is shown as Background Document DD. They support the recording of this footpath on the Definitive Map and Statement. They make some comments about the lack of signage on the path, a bollard being missing from one end of the bridge and graffiti. These issues are not relevant in consideration to a Definitive Map Modification Order but works may be required if a Modification Order is confirmed. They also referred to the extent of the adopted highway, the bollards preventing vehicular access and the route being shown on the Leeds Cycle map as a traffic free/ advisory route. As discussed above, the section of adopted highway from the posts to the bridge could be included in the Definitive Map Modification Order as a restricted byway and there is insufficient documentary or user evidence to show higher rights exist over the bridge or on the south side of the bridge.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 As the decision is a Significant Operational Decision an EDCI impact assessment is not required.
- 4.2.2 Definitive Map Modification Order Applications can only be determined on the basis of the evidence available to show if a public rights of way subsists or can be reasonably alleged to subsist. Therefore, issues such as suitability, desirability, human rights, equality and diversity cannot legally be taken into consideration when determining Definitive Map Modification Order Applications. If an Order is made and confirmed an EDCI Impact Assessment will be carried out to ensure that any works required to the path will consider equality and diversity issues.

4.3 Council Policies and City Priorities

- 4.3.1 The determination of this application is dealt with in accordance with the 'Leeds City Council Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement of Priorities' which lists priorities for keeping the Definitive Map and Statement up to date.
- 4.3.2 Statement of Action DM1 in the Rights of Way Improvement Plan states that 'we will continue to review the Definitive Map and Statement'.
- 4.3.3 Statement of Action DM2 in the Rights of Way Improvement Plan states that 'we will take a proactive approach to dealing with Definitive Map Modification Order Applications'.
- 4.3.4 Statement of Action DM6 in the Rights of Way Improvement Plan states that 'we will endeavour to meet the 2026 cut of date for recording historical public rights of way as set out in the Countryside and Rights of Way Act 2000'
- 4.3.5 Statement of Action DM7 in the Rights of Way Improvement Plan states that 'we will continue to identify and record all Definitive Map anomalies, missing links and unrecorded paths'.

4.3.6 The Parks and Green Space Strategy proposal 19 states that ‘we will promote and develop green corridors for recreation, conservation and transport.’ Proposal 22 states that ‘we will contribute to the West Yorkshire Local Transport Plan by providing sustainable transport routes in parks and green spaces.’

4.4 Resources and Value for Money

4.4.1 Leeds City Council has a duty to investigate Definitive Map Modification Order Applications and make Definitive Map Modification Orders if necessary.

4.4.2 The cost of making any Orders, should one be authorised, would be met from the existing public rights of way budget.

4.4.3 If the Order is opposed, referred to the Secretary of State and is taken to Public Inquiry, then the additional costs are incurred. Public Inquiry will cost approximately between £3000 and £7000.

4.4.4 A Modification Order recognises the existence or correct status of a public right of way and no new rights or liabilities will be created should an order be made. There are consequently no resource implications.

4.4.5 There are no additional staffing implications resulting from the making of the Order.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The Director of Environment and Housing has authority to take decisions relating to the determination of Definitive Map Modification Order Application under Section 53 of the Wildlife and Countryside Act 1981 as set out in the Constitution under Part 3, Section 3E, Officer Delegation Scheme (Council (Executive) functions), Director of Environment and Housing (2I).

4.5.2 The Wildlife & Countryside Act 1981 places statutory duty on the City Council as the Surveying Authority to investigate the matters stated in an application made under Section 53(5) of the Act and to decide whether or not to make an Order to which the application relates. Under Section 53(2)(b) of the Act, Surveying Authorities are required to keep the Definitive Map and Statement under continuous review and to make such modifications to the map and statement as appear to them to be requisite.

4.5.3 Section 53(3)(b) of the Act, requires the Definitive Map and Statement to be modified by Order on the expiration of any period such that the enjoyment by the public of a way during that period raises a presumption that the way had been dedicated as a public path or restricted byway. Section 53(3)(c)(i) of the Act, requires the Definitive Map and Statement to be modified by Order if evidence is discovered which, when considered with all other relevant available evidence, subsists or is reasonably alleged to subsist over land in the area to which the map relates. Section 53(3)(c)(ii) of the Act, requires the Definitive Map and Statement to be modified by Order if a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. Section 53(3)(c)(iii) of the Act, requires the Definitive Map

and Statement to be modified by Order if there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

- 4.5.4 Should an Order be authorised, the City Solicitor will make and advertise the Order and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination.
- 4.5.5 Section 31(1) of the Highways Act 1980 provides that a presumption of dedication is raised where a way has been enjoyed by the public as of right (without force, secrecy or permission), without interruption for a full period of twenty years. The twenty-year period ends with an act that brings into question the public's right to use the way, and is calculated retrospectively from that time (Section 31(2) of the 1980 Act).
- 4.5.6 The presumption is rebuttable by proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication (Section 31(3) of the Act) or that he has given notice to the highway authority, where a notice erected is subsequently torn down or defaced, denying any intention to dedicate (Section 31(5)) or made statutory declarations to the highway authority denying the dedication of a new right of way over the land shown in map and statement deposited with the authority (Section 31(6)).
- 4.5.7 In order to have brought the public's right to have used the alleged way in question, the landowner could have taken various measures during the claimed period of use.

These measures include:

- § Locking a gate across the path.
- § Putting up a notice denying the existence of a public right of way.
- § Physically preventing a walker from using the way.
- § Indicating that the path was for use by permission only.
- § Giving an instruction to an employee or tenant to prevent people walking the path.
- § Giving notice to the Highway Authority denying any intention to dedicate a public right of way over the land.
- § Seeking a court declaration that the way was not public or bringing an action for trespass.

- 4.5.8 The burden of proof therefore rests with the landowner to show that there is sufficient evidence to show that there is no intention to dedicate a public right of way over the claimed path during the claimed period of use.
- 4.5.9 The decision to make a Modification Order when a claim is based on user evidence only should be based on the on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a

Modification Order should be authorised. For claims where documentary evidence exists (instead of or as well as user evidence), the decision to make a Modification Order when a path is not shown on the Definitive Map and Statement should be based on if it can be shown to subsist or reasonably alleged to subsist and the decision to confirm it on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if it is considered that a right of way can be shown to subsist or can be reasonably alleged to subsist, then a Modification Order should be authorised. The decision to make and confirm a Modification Order when a path is shown on the Definitive Map and Statement should be based on the on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a Modification Order should be authorised. The question of suitability or desirability, safety or maintenance is not a relevant factor when determining applications.

- 4.5.10 Public Rights of Way cannot be extinguished by disuse. Once a right of way has come into existence, it continues indefinitely and can only be brought to an end by the use of statutory powers, thus the maxim “Once a highway, always a highway”. This is irrespective of any changes that have occurred on the ground in the meantime.
- 4.5.11 Section 32 of the Highways Act 1980 states that when determining whether a way has or has not been dedicated as a highway, any map, plan or history of the locality or other relevant document, tendered as evidence shall be taken into consideration.
- 4.5.12 Under the provisions contained within Section 130 of the Highways Act 1980 the City Council has a statutory duty to protect and assert the right of the public to the use and enjoyment of any highway and as far as possible to prevent the stopping up or obstruction of highways.
- 4.5.13 Under Common Law there is no specific period of user which must have passed before an inference of dedication may be shown. However, a landowner must be shown to have intended to dedicate a right of way over the land. Public use can be used as evidence to show an intention to dedicate but it must be sufficient to have come to the attention of the landowners. If other evidence exists that showed that public rights were not intended, public use will not raise an inference of dedication.
- 4.5.14 The personal information in Background Paper BB of this report has been identified as being exempt under Access in Information Procedures Rule Number 10.4 (1 & 2) because it contains personal information about a member of the public. This information is exempt if and for so long as in all the circumstances of the case, the public's interest in maintaining the exemption outweighs the public interest in disclosing this information. The comments relating to the modification made in the exempt documents are considered in Sections 2, 3 and 4.9 therefore the public's interests in relation to the diversion have not been affected.

4.5.15 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

4.6 Risk Management

4.6.1 As with all Definitive Map Modification Orders if the decision is taken to make an Order there will be an opportunity to object to the Order with the associated costs. However, if the evidence indicates that an Order needs to be made to modify the Definitive Map and Statement Leeds City Council have a duty to make an Order.

5 Conclusions

5.1 The deposited railway plans show that the claimed footpath has been considered to be a public footpath since at least 1845. The Ordnance Survey maps show that it has existed as part of a much longer route since at least 1840. More recent maps, photos and the site visit show that the footpath is open and available for use and is being used by the public as a footpath. It joins Definitive Footpath No. 48 to adopted highway network.

6 Recommendations

6.1 The Natural Environment Manager is requested to consider the evidence contained within the attached reports, and the law to determine the status of the alleged public rights of way and authorise the City Solicitor either,

To make Orders in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement by adding the routes that are considered to be public rights of way and either confirm them as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the existence of a public rights of way cannot be reasonably alleged.

7 Background Documents¹

Background Document A:	Map of the claimed footpath
Background Document B:	1840 Ordnance Survey Map
Background Document C:	1845 West Riding Union Railway Deposited plans and Book of Reference
Background Document D:	1851 Great Northern Railway , Leeds Bradford Halifax Junction Railway Deposited Plans and Book of Reference
Background Document E:	1874 Great Northern Railway, Further Powers Deposited Plan and Book of Reference
Background Document F:	1877 Great Northern Railway Transfer &c Deposited Plan and 1878 Act
Background Document G:	1882 Great Northern Railway, Widening at Leeds, Additional Lands and Stopping Up of Footroad at Stanningley Deposited Plan
Background Document H:	1888 Ordnance Survey Map
Background Document I:	1890 Ordnance Survey Map
Background Document J:	1907 Ordnance Survey Map
Background Document K:	Repair of Bridge Correspondence and Plans
Background Document L:	1953 Ordnance Survey Map
Background Document M:	1956 Ordnance Survey Map
Background Document N:	Proposed Plan for the Grangefield Industrial Estate
Background Document O:	1960s and 1970s Factory Plans
Background Document P:	1966 Aerial Photographs
Background Document Q:	1968 Aerial Photograph
Background Document R:	1969 Ordnance Survey Map
Background Document S:	July 1971 Aerial Photograph
Background Document T:	November 1971 Aerial Photograph
Background Document U:	1999 Aerial Photograph

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Background Document V:	2002 Aerial Photograph
Background Document W:	2006 Aerial Photograph
Background Document X:	2009 Aerial Photograph
Background Document Y:	Current Ordnance Survey Master Map
Background Document Z:	Leeds Cycling Maps
Background Document AA:	2014 Site Photographs
Background Document BB:	Email from Network Rail
Background Document CC:	Extent of Adopted Highway and Traffic Regulation Order
Background Document DD:	Consultation Reply from Ramblers Association