

Wildlife and Countryside Act 1981

Application for a Definitive Map Modification Order

Claim for a Public Footpath at Roundwood Grove, Parish of Rawmarsh

1. Purpose of this report

This report outlines the result of investigations by officers into the above application, it sets out all the evidence discovered by officers and makes a recommendation based on those findings.

2. Background

2.1 On 25th January 2022, Rotherham Metropolitan Borough Council (RMBC) received a duly made Definitive Map Modification Order (DDMO) application for a public footpath to be added to the Definitive Map and Statement between Claypit Lane/Green Lane to the east side of Roundwood Grove. This is a route between the back of the houses of Roundwood Grove and the boundary of Roundwood Golf Club in the parish of Rawmarsh, Rotherham. The application route is shown on the attached plan between points A to B in Appendix A.

2.2 The application is based on both user evidence and documentary evidence which is outlined in the body of the report. The application is supported by user evidence forms claiming use of the route on foot, on pedal cycle and by motor vehicles between 1955 and 2021 (66 years).

2.3 The Council is under a statutory duty to investigate evidence received within the application and use this information to make a recommendation on the submission based upon a comprehensive assessment of all the evidence.

2.4 It is believed that the council received the application subsequently after the erection of a fence at the back of number 42 Roundwood Grove blocking the route.

3. Consultations

Informal consultations with local user groups and elected members have been conducted. There is not a parish Council within the area of Rawmarsh. All of the responses to the informal consultation are included in Appendix B. As the applicant was unable to identify the owners of the land, Rotherham Council can be directed to serve Notice by posting said notices at either end of the application route.

4. Site Visit

A site visit was undertaken on 01/11/2022 by rights of way officers from Rotherham Metropolitan Borough Council as part of their investigations, to which appropriate Covid-19 social distancing protocols were followed. A site visit did not cross the section adjacent to 42 Roundwood Grove as this section of the application route was incorporated between two locked fences.

5. Legislative Context

5.1 Rotherham Metropolitan Borough Council is the Surveying Authority for the purposes of the review of the Definitive Map and Statement for the borough of Rotherham. Section 53 of the Wildlife and Countryside Act 1981 places a duty for the Surveying Authority to keep the Definitive Map and statement under continuous review and to make any changes to the Definitive Map and Statement (a Definitive Map Modification Order) upon the discovery of evidence where necessary.

5.2 Section 53(3)(c)(i) provides that an order should be made upon the discovery of evidence which (when considered with all other relevant evidence) 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.

5.3 The standard of proof for both making and confirmation of an Order under Section 53(3)(c)(i) is the same, namely that the civil test of the “balance of probability”. An exception to this applies in circumstances where the Council considers that the evidence available shows that a right not shown in the Definitive Map and Statement can be said to be reasonably alleged to subsist, this provides for the making of an Order to allow the evidence to be tested.

5.4 With few exceptions, before any highway can come into being there must be an act of dedication by the landowner, followed by an acceptance of the said dedication by the public. The act of dedication need not to be express, it may be presumed or implied as a result of the actions (or inaction) of the landowner. Public acceptance is generally demonstrated through public use of the way. Such use must be of a nature that can be defined as being “as of right” Section 31 of the Highways Act 1980. To satisfy as of right it is important to establish whether those conditions were met (without force, without secrecy, without permission).

5.5 Section 31 of the Highways Act 1980 states: *“(1) Where a way over land, 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, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

“The period of twenty 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 notice, such as is mentioned in subsection (3) below or otherwise.”

“Where the owner of the land, which any such way as aforesaid passes has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and has maintained the notice after the first 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 negate the intention to dedicate the way as a highway.”

5.6 Section 31(1) has two ‘limbs’ - the first provides that proof of twenty years continuous user “as of right” endorses a claim that a highway exists; the second (sometimes referred to as ‘the proviso’) provides that proof of a lack of intention to dedicate the way as a highway defeats the claim. It is for those claiming the existence of rights to first discharge their burden of proof, before an objector is obliged to provide any evidence showing a lack of intention to dedicate.

5.7 The establishment of highway rights under the common law is not bound by the use being for any given period (unlike presumed statutory dedication under Section 31, as set out above), with the courts having ruled that rights can, in certain circumstances, be established in a very short period of time.

5.8 In reaching a conclusion (under both the common law or Section 31 of the 1980 Act) the decision-maker must take into account Section 32 of the Highways Act 1980, which states: *“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 weight thereto as the court or tribunal considers 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.”*

6. Summary of Evidence

6.1 This report summarises all relevant evidence the Surveying Authority have found including user evidence (7) and documentary evidence (8). A consideration of evidence (10) concludes that section of the report.

7. Documentary Evidence

7.1 A variety of documentary research has been conducted to assist in the determination of the application.

7.2 Valuation Office Survey Records

The 1910 Finance Act authorised the survey for the taxation of the value of land within the United Kingdom undertaken by the Valuation Office. These survey records include Ordnance Survey Plans and accompanying field books. All land was recorded and given a holding number; information from different landowners and surveyors about each land parcel were written into field books and the holding numbers were annotated on the 1902 Second Edition of the Ordnance Survey maps. These field books include deductions that were noted by the surveyor that would influence the value for the land at the time the land was evaluated which could include allowances for public rights of way.

7.2.1 An extract from the field books in relation to the land where the application route is included in this report. The application route is located within one holding number and the holding number crosses four separate second edition Ordnance Survey Plans in relation to the 1910 Finance Act field books. Appendix D shows the Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIX.3 NE Rawmarsh. Appendix E shows the Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIX.3 SE

Rawmarsh. Appendix F shows the Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIII.4 and Appendix G shows the Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIII.16.

7.2.2 The area relating to the application route falls into field book number 2890 which is shown on Appendices: D, E, F and G. The field book entry for 2890 and public right of way deductions is included in Appendix H. Appendix H on Page 4 shows the valuer of the land to note a £50 deduction for "footpaths" which was considered a large amount for rights of way deductions. This indicates that there was more than one footpath within the holding number area of 2890 however it does not indicate exactly where exactly these footpaths started and ended or how many footpaths these deductions were taken account for. This means that there is a possibility they could be referring to the application route but there is no evidence to say for certain that it was. There is already one other legally recorded public right of way on the Definitive Map and Statement for RMBC in the holding number area of 2890 which is Rawmarsh Footpath Number 11 between Kilnhurst Road and Roundwood Farm. This suggests Rawmarsh Footpath No 11 was one of the footpaths the land surveyor was referring to. However there is a high chance the holding number for 2890 (that covers the land owned by Roundwood Farm) accounted for deductions of the route from Green Lane to Roundwood Farm, which the application route makes up part of it.

7.3 Secretarial Department Statement

Appendix K is a secretariat statement from 11th February 1959 discussing "Footpaths in Parkgate and Rawmarsh" and this was an interview by Mr J R S Creighton who was a Surveyor to the Council. Page two of the statement said that:

"it was agreed that a public right of way exists between the bottom of Green Lane and a point on the cartway opposite the bottom of Roundwood Grove." The Park Gate representatives said that thereafter the paths was merely a means of accommodating the tenant of Roundwood Farm, Mrs Clegg with an

access for her tractors and other vehicles. No public right of way existed in the area now other than the above and notices had been posted by the Company warning the public of this fact.”

7.3.1 There is sufficient evidence to suggest that the Council and the Park Gate representatives were referring to the application route as having public rights in the Secretarial Statement as this was discussed by Mr Creighton and the Company, the company being Park Gate. The route behind Roundwood Grove is believed to be the old access road which connects up to Roundwood Farm which is also proven by the Park Gate representatives who said these paths were only used for an access for her tractors and other vehicles. That does not mean to say that the route was in fact private but it is clear there was a discussion with the Council and the Company about what status the paths had and it also confirms that there was a vehicular access route from Green Lane up to Roundwood Farm that existed at the time of 1959. The company being Park Gate put up notices on their land saying no other public rights of way existed other than the one at the bottom of Green Lane and Roundwood Grove which suggests Park Gate had come to a decision with the Council that this route was a public right of way.

7.4 Ordnance Survey Maps at scales 1:10,560 and 1:63,360

7.4.1 Ordnance Survey maps have been produced since approximately 1801 and were made for military purposes to record all tracks and roads which could be used in time of war which included both public and private routes. Since 1888, Ordnance Survey maps included a disclaimer “the representation on this map of a road track or footpath is no evidence for a right of way” and this is presumed to apply to earlier maps. Although Ordnance Survey maps did not show public rights of way before 1960, they are useful for research in determining DMMO applications as they can help depict what physically existed on the ground at the time the map was drafted. The Definitive Map was drawn up in 1952 across all authorities in England and Wales (apart from the Borough of London) using Ordnance Survey Maps as a base map with public rights of way drawn as an overlay.

7.4.2 Ordnance Survey maps from the National Library of Scotland show a physical route on the ground between the bottom of Green Lane and connecting back to the end of Roundwood Grove dating from approximately 1948 to the present day. This suggests use of the application route (Green Lane connecting back to the east of Roundwood Grove) could have happened from approximately 1948 onwards as a similar line is shown on the Ordnance Survey maps from the late 40s to the present day. The Ordnance Survey maps indicate that the residential housing on Roundwood Grove were constructed between the years 1938 and 1949 by comparing the Ordnance Survey maps in Appendix L and Appendix M; these maps dated 1938 and 1948 retrospectively.

7.4.3 Earlier Ordnance Survey maps show a through route from the bottom of Green Lane up past Roundwood Farm connecting up to Kilnhurst Road dating from approximately 1850 to 1966, around the time when the Steel Works were built. Blocking the through route up to Roundwood Farm. This doesn't necessarily prove or disprove any public rights but show what was physically recorded on the ground that there was a route.

7.4.4 It is clear that the route shown from 1850 is within the same area as the application route as Appendix L shows that the road Roundwood Grove and the residential dwellings were built just north of the route.

7.4.5 Likewise for roads, a road being uncoloured does not mean that it was private – uncoloured roads could be public or private. The connection from Green Lane up to Kilnhurst Road is shown as an uncoloured route in Appendix J. And although a coloured road might be taken to be public the OS gave no guarantees that it was. This also applies for the Geological survey maps which are just variants of an OS map - so like any OS map is tells you what is on the ground, but not whether any route shown is public or private.

8 User Evidence Forms

8.1 The application is supported by 21 User Evidence Forms (UEFs) claiming use of the route on foot, on pedal cycle and by motor vehicle over a 66-year period between 1955 and 2021.

8.2 The majority of people who filled in their user evidence forms stated that their use of the route ended in March 2021 due to the route being blocked by fences blocking the segments of the route adjacent to number 42 Roundwood Grove. It can be assumed therefore the right of the public to use the application route was brought into question at some point around March 2021, the statutory period considered to be 2001 –2021.

8.3 One of the applicants' forms did not fill out all of the questions in the form therefore their answers were not recorded in Figures 1, 2 and 3 which includes data of the applicant's personal use of the route. 20 user evidence forms were therefore included within the figures.

8.4 All 20 applicants said they used the route on foot. 90 percent of the applicants used the route over 20 years, which satisfies 'as of right'. The median year being 30, mode was 53 and the range was 56. The results are set out in figure 1.

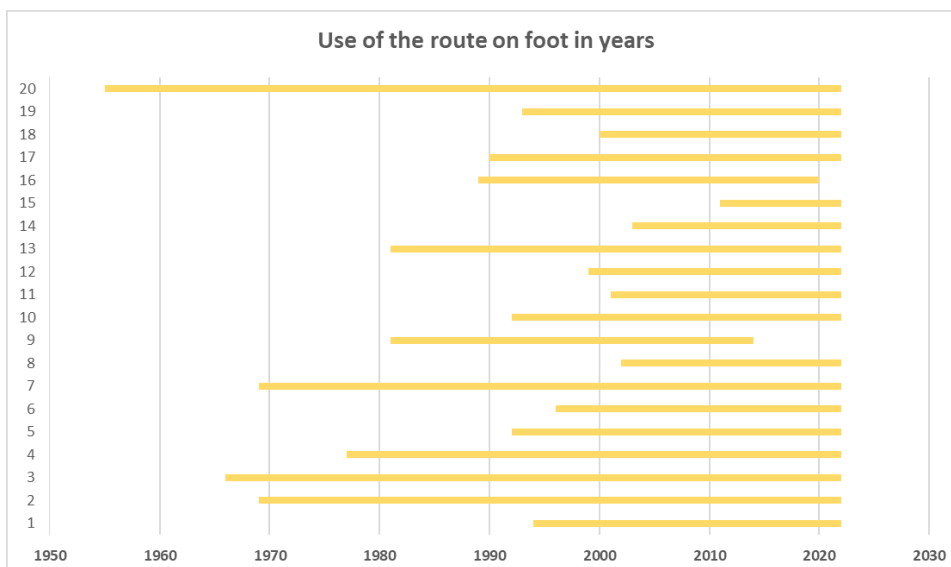


Figure 1. A graph to display the duration in years of use of the route on foot by 20 people obtained from User Evidence Forms.

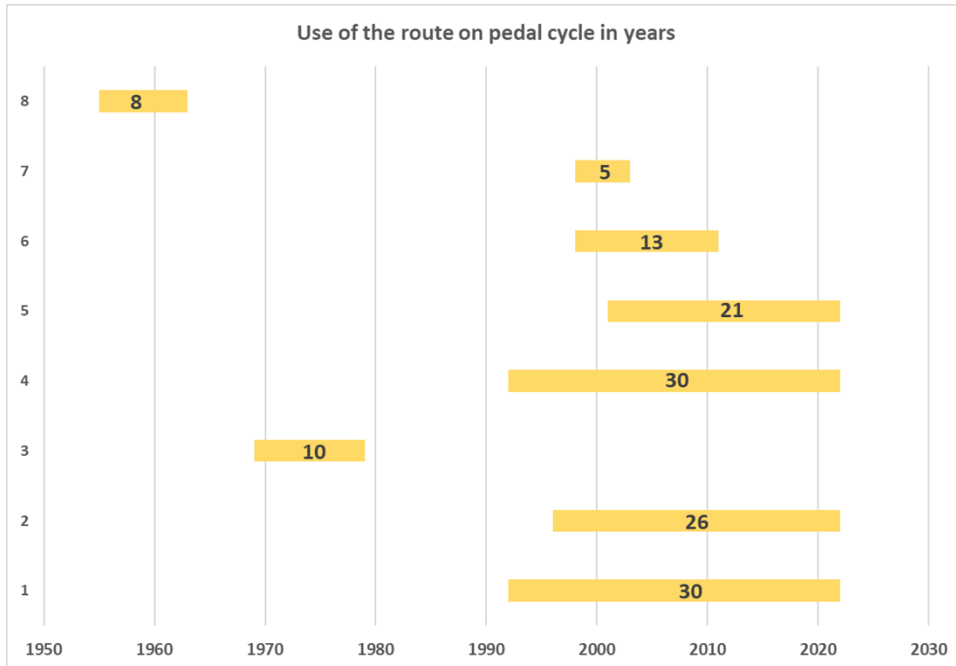


Figure 2. A graph to display the duration in years of use of the route by pedal cycle by 8 people obtained from User Evidence Forms.

8.5 Eight out of twenty applicants who filled in a user evidence form said they used the route on pedal cycle as well as on foot. Four users were over 20 consistent years use to satisfy 'as of right'. The median year being 17, mode was 30 years and the range was 25 years.

Twelve out of twenty applicants used the route in a motor vehicle as well as on foot. All twelve applicants either lived or had previously lived on Roundwood Grove. Although eleven out of twelve

people used the route consistently over 20 years this was restricted to only the residents of Roundwood Grove which suggests use within a motor vehicle was not public which does not satisfy 'as of right'. The median year being 28, mode was 30 years and the range was 34 years.

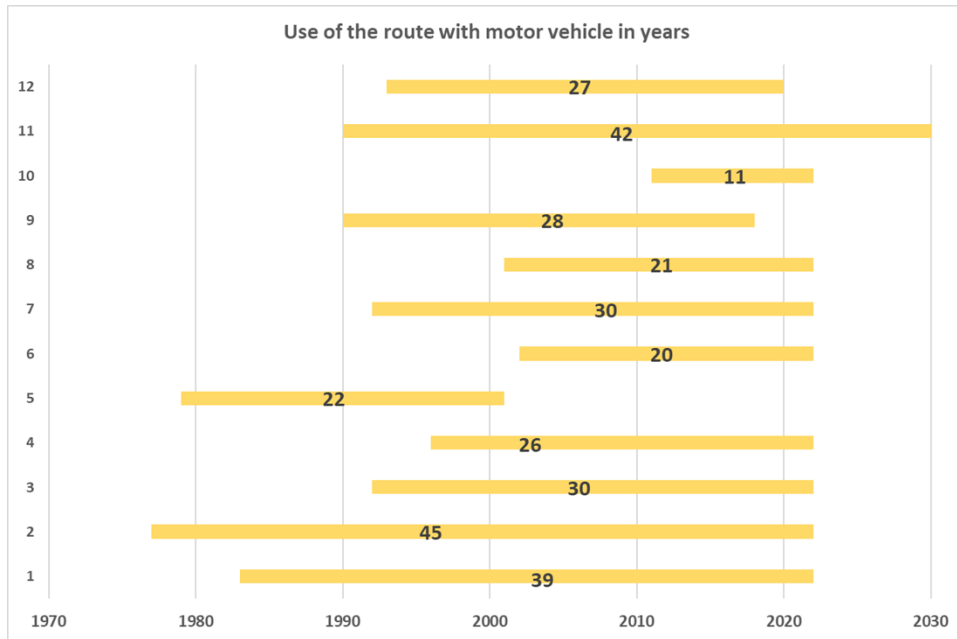


Figure 3. A graph to display the duration in years of use of the route by motor vehicle by 12 people obtained from User Evidence Forms.

8.6 19 out 21 user evidence forms had fully consistent answers stated that there were no gates, stiles or notices on the route while they used the route except two people who didn't answer the question which indicates it has always been an open lane with no furniture. Several people who used the route made further comments to say that it was always fully accessible from the top to the bottom while they lived in the area. There were also comments in the user evidence forms from multiple applicants stating that the Council once held a meeting to consider gates at the top and bottom of the

lane and permission which was refused on the grounds of needing emergency vehicles if they ever needed access.

8.7 20 out of 21 user evidence forms either stated the route has never been diverted except one person who didn't answer the question and another applicant said they used the route to access work when the weather was poor which doesn't mean the route ever deviated but instead their use was influenced by the weather and instead it was a misinterpretation of the question. It therefore is assumed that the lane has not been diverted, the route has not deviated and has remained consistent. All applicants stated that they had not been given permission to use the route and they all had not been challenged using the route, until the fence was put up and the subsequent DMMO application was sent to the Council to determine the status of the application route.

9 Consideration of Evidence

Over half of the user evidence forms said that the route was blocked in Spring or March 2021 by a fence covering the full width of the lane and some stated that the route had never blocked before. This is the first recorded challenge of public use of the route in the application which raised the presumption of dedication, the statutory period being 2001 to 2021.

18 out of 20 applicants used the route over 20 years, which satisfies 'as of right'. The evidence regarding the alignment with the applicants over the years was consistent, the used line had never deviated or had been blocked up until March 2021. There had been no recorded notices, signs, gates or stiles along the route which indicates it has always been an open lane with no furniture. No one had ever been challenged using the route or had been given permission to use the route. The only recorded challenge

which was brought to the attention of the surveying authority was when the fence was put up in March 2021.

The 1910 Finance Act documents also show evidence which could suggest the application route was public as shown by the deductions of £50 for public footpaths in the area of 2890 however it doesn't show exactly what routes they were referring to and which sections of the route the deductions were considered for. It could also be the case that the deductions were for private roads as shown by the easements heading in the field books. This means that the application route could have been deemed as a private or a public route, or it could have been referring to another route entirely. However, it is possible to claim a public right of way on a private road.

Several Ordnance Survey maps from 1938 to the present day show the application route as a dotted line which suggests it was a used route, although the Ordnance Survey showed what was physically visible on the ground. Before the 1960s, Ordnance Survey did not show public rights of way. Likewise the Geological Survey plans which show roads as uncoloured don't prove whether a road is public or not as uncoloured roads could be public or private.

The secretariat report indicating that a surveyor for the Council came to an agreement that the route was public and that notices were put up in the 1960s to show the public that this was a right of way and all the other routes within the area of Park Gate land were not.

There are often anomalies with the definitive map which is why the public have a right to challenge whether a route should be recorded as a public right of way on the Definitive Map and Statement under common law.

10 Conclusion

10.1 The decision whether or not to make a Definitive Map Modification Order is “quasi-judicial” in nature. This means that whilst all interested parties must be given the opportunity to have their say, the decision must be made taking into account *all* of the available and relevant evidence. The decision-maker must make the decision based upon their own objective assessment of the relevant evidence.

10.2 The decision maker must consider that Definitive Map Modification Orders do not create or extinguish public rights of way, they seek to update the legal records of public rights of way to reflect a true representation. Factors such as suitability, importance, property values and public safety, whilst they are important concerns, are not matters that can be lawfully taken into account as part of the decision-making process.

10.3 If the Surveying Authority is satisfied on the balance of probability that public footpath rights exist based on the evidence discussed in this report, they should resolve that:

- a) A Definitive Map Modification Order be made to add as a public footpath as the route shown on the plan at Appendix A.
- b) In the event of no objections being received, or if such objections are received, if they are subsequently withdrawn, the Order be confirmed;
- c) In the event of objections being received, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination to which the Surveying Authority will present their stance to the Secretary of State depending on what evidence they have, whether that be the evidence written in this report or further evidence that has not been discovered yet.

10.4 If the Authority is not satisfied, on balance of probability, that the alleged public footpath rights discussed within this report subsists or are reasonably alleged to subsist and therefore a Definitive Map

Modification Order should not be made under reasonable allegation, they should resolve to refuse the Application and advise the Applicant of his rights to appeal to the Secretary of State.

10.5 It is the view of officers that a Definitive Map Modification Order should be made to add the application route between Claypit Lane/Green Lane to Roundwood Grove onto the Definitive Map and Statement for the Parish of Rawmarsh. There is enough user evidence to support the application submitted in 2021 that public rights exist under the reasonably alleged test under Section 53 of the Wildlife and Countryside Act 1981. Alternatively, under common law there is enough evidence to support public rights for the application route.

Appendices

Appendix A – Order Plan for the route between Claypit Lane/Green Lane and Roundwood Grove

Appendix B – Informal Consultation Responses

Appendix C – Land Registry Search Details

Appendix D – Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIX.3 NE Rawmarsh – Scale 1:1,250

Appendix E – Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIX.3 SE Rawmarsh – Scale 1:1,250

Appendix F – Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIII.4 – Scale 1:2,500

Appendix G - Ordnance Survey Sheet for Yorkshire West Riding CCLXXXIII.16 – Scale 1:2,500

Appendix H – Field Book No. 2890 Valuation Office Survey Record – Page 3 and 4

Appendix I – Sheet 87 Ordnance Survey Revised Barnsley 1907 to 1908, Geological Survey. Reproduced with the permission of the National Library of Scotland – Scale 1:63,360

Appendix J – Sheet 103 Ordnance Survey Map Published 1947. Reproduced with the permission of the National Library of Scotland – Scale 1:63,360

Appendix K – RMBC Secretariat Report from 11th February 1959 “Footpaths in Parkgate and Rawmarsh”

Appendix L - Yorkshire Sheet CCLXXXIX.NE 1938 Published 1947. Reproduced with the permission of the National Library of Scotland – Scale 1:10,560

Appendix M – Yorkshire Sheet CCLXXXIX.NE 1948 Published 1949. Reproduced with the permission of the National Library of Scotland – Scale 1:10,560

