

**Name of meeting and date:**

Planning sub-committee (Heavy Woollen area) 1 September 2016

**Title of report:**

**Application for a definitive map modification order to delete public footpath Batley 49 (part) from the definitive map and statement, and to add a public footpath at Hey Beck Lane, Woodkirk, Dewsbury.**

**1. Purpose of report**

Members are asked to consider an application and decide whether to make a definitive map modification order (“DMMO”) to delete part of public footpath Batley 49 from the definitive map & statement and/or to make a DMMO to add a public footpath to/from the definitive map & statement.

**2. Summary of Report**

The landowners of a property on Hey Beck Lane claim that the public footpath shown in the definitive map and statement across their property is not a public footpath and should not be shown in the legal record of public rights of way held by the council.

They claimed in application and other submissions that it was diverted by the former Batley Borough council several decades ago and they also claim that an unrecorded route used over some decades was where it was diverted to, has been used by the public since, is a public footpath and should be formally recorded across their neighbours’ property.

Members are asked to consider the evidence against the relevant legal criteria, noting the relevant guidance, before deciding whether to make the order to delete the footpath and/or to add the footpath.

The applicants have subsequently informed the council that their DMMO application is wholly unnecessary. The council was directed to determine the DMMO application by the Secretary of State by August 4 2016, and officers report to sub-committee for a decision.

**3. Ward Councillor comments**

No comments on the existence of public rights to date.

**4. Officer recommendations and reasons**

That sub-committee resolves not to make an order to delete the part of Batley public footpath 49 because the evidence is insufficient to show that there is no public right of way over the land in question **and** that sub-committee resolves not to make an order to add a public footpath because the evidence is insufficient to show that either a public right of way (i) subsists or (ii) is reasonably alleged to subsist.

Appendices: <https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13403>

The applicants and their representatives have made numerous arguments and submissions presented in favour of their case, including:

- The public footpath 49 across the Bragg property was diverted by Batley Borough Council after an additional adjacent triangle of land was bought from Savile Estate in 1966 by the owner of 75 Hey Beck Lane.
- The council's records are incomplete so the council does not have a record of this change, which was effected on the ground, with the route through the Bragg's property closed and a route from the Batley footpath 55 to the field directly across Mr Lilley's land being made available in accordance with the 'lost' Batley Borough council diversion order.
- The route across the neighbouring land has been dedicated as a public right of way on foot due to unchallenged public use over the years, in any case.
- There is no public right of way shown over the Braggs' land in the council's formal record of public rights of way so the application being made was "*wholly unnecessary.*"

Officers do not consider the first three points to be impossible, but consider that none is demonstrated to a sufficient level to make any order either to add or to delete a footpath in line with the application. Officers do not consider that, further to consideration of the evidence, the council should make any other DMMO either. Further evidence may lead in future to a different opinion and conclusion, the recommendation offered is on the basis on evidence currently before the council.

In summary, officer view is simply that:

- At some point in time some decades ago the definitive path has been physically moved and obstructed and another route made available.
- At some point in time part of the land carrying the recorded path was added to the property at 75 Hey Beck Lane.
- In the 1990's Kirklees officers and others involved dealt with the path on the ground instead of the recorded public footpath 49.
- A diversion order (PPO) made 18 August 1992 was opposed and ended up at public inquiry. Like the council, the appointed inspector did not note the difference between the physical route shown in the order and the definitive recorded path when deciding the order and writing his decision letter. The inspector did not confirm the diversion order in his decision of April 1994, so the 1992 diversion order had no effect on the alignment or existence of any recorded, unrecorded or alleged public rights of way.
- The definitive public right of way has not been changed by any order since its recording on the 1952 Definitive Map & Statement ("DMS"). No other order has been adduced.
- During the 1991-94 diversion process, Mr Lilley blocked the route across his land from path 55 to public use for some months from before 27 August 1992 to March 1993, interrupting public user. He has blocked the route since summer 2012.

This view is not a statement from officers that the addition route is not and could not be a public footpath, but rather a view that there is insufficient evidence before members to demonstrate a reasonable allegation that it is a public footpath. Similarly, officers would note that it is possible that the footpath 49 was diverted formally, but there is little evidence to demonstrate that it was, such that it would justify the deletion modification of the DMS as sought in the application. Even if members of the public used the application addition route over Mr Lilley's lawn for a requisite period without challenge, leading to a presumption of dedication over that route of a public footpath – such use would not in itself mean that the public footpath Batley 49 across the Braggs' land has been extinguished or diverted or should otherwise be deleted from the DMS.