

Name of meeting: Planning sub-committee (Huddersfield Area)

Date: 31 August 2017

Title of report: Application for extinguishment of claimed public footpaths at Clayton Fields, Edgerton Road, and provision of alternative routes. Town & Country Planning Act 1990, section 257.

Purpose of report: **Members are asked to consider** an application for an order to extinguish claimed public footpath rights over land at Clayton Fields and to provide alternative pedestrian routes. The claimed routes to be extinguished, which are the subject of definitive map modification order applications, and the alternative routes are shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance? Is it also signed off by the Assistant Director (Legal Governance and Commissioning)?	Naz Parkar 17 August 2017 Yes: Philip Deighton on behalf of Debbie Hogg 17 August 2017 Yes: Julie Muscroft 15 August 2017
Cabinet member portfolio	N/A

Electoral wards affected: Greenhead

Ward councillors consulted: Cllrs. M Sokhal, C Pattison & S Ullah: 1 June 2017.

Public or private: Public

1. Summary

- 1.1 The council received an application from Seddon Homes Limited and Paddico (267) Limited for an order, to extinguish the claimed public rights of way and to provide alternative pedestrian routes, under section 257, Town & Country Planning Act 1990.
- 1.2 The proposals in the application for the order would be in accordance with planning consent for residential development. Outline planning consent has been granted under 2014/93014 and reserved matters consent granted under 2017/90190.
- 1.3 The land at Clayton Fields off Edgerton Road is subject to seven applications for definitive map modification orders to be made by the council. Six of these DMMO applications seek the recording of public footpaths across the site and the seventh concerns the claim for an increase in recorded width of recorded public footpath Hud/345 along the west of the site.
- 1.4 Two definitive map modification order (“DMMO”) applications claiming the existence of public footpaths across the land were made in 1996. When the land was registered as a (town and village) green by the council in 1996, these two DMMO applications were held in abeyance. The registration of the Clayton Fields land as a village green was declared invalid by decision of the Supreme Court in 2014. After that court decision, which had the effect of removing the protection afforded the land as a registered green, a further five DMMO applications have been received by the council, all relating to the land at Clayton Fields. These applications have not been determined by the council. Mr Magee is joint applicant of the 1996 applications and Mr Adamson is named applicant in the five more recent DMMO applications. They have both contributed to the preliminary consultation process, in writing and at meetings.
- 1.5 To facilitate the development in accordance with the above planning consents, an application for an order to be made under section 257 has been received. The joint applicants are the current landowner and prospective owner/developer. If an order is made, confirmed and brought into force in accordance with this section 257 application, all the DMMO application routes within the site would be dealt with and the routes shown in the planning consent layout would be provided and recorded as public footpaths. These routes are shown in plans 1 (indicating the claimed routes to be extinguished) & 2 (new footpath routes to be provided) appended to the report. Appended Plan 3 indicates the claimed routes over the site layout in the relevant planning consent. Appendix F contains seven plans of claimed routes (six proposed to be extinguished), showing each of the claimed routes as submitted with the seven DMMO applications.

- 1.6 Parts of DMMO claimed paths 30 and 185 lie outside the site, linking points L & D on Plan 1 to the public footpath 345 to the north, over council-owned land. Treatment of these parts would be separate.
- 1.7 The applicants note in their application papers, *“The applicants are ready to start construction of the consented scheme on the Site but are aware of a number of alleged footpaths which cross the Site. The purpose of this application is to stop up any alleged pedestrian public rights of way that exist on the site to enable construction of the development to start. This will secure the delivery of much needed new homes for the area. These new footpaths will connect into the local footpath and highway network, and will provide links to local schools, bus routes and the town centre. The new routes will improve local pedestrian links for both residents of the new development, and existing local people.”*
- 1.8 The informal preliminary consultation on the section 257 application attracted numerous objections, detailed in Section 4 below. These include concerns on the retention of routes, environmental matters and provision of additional routes. The applicants invited objectors to a meeting on site to discuss the application, which was attended by a number of objectors and two ward councillors, Cllr Sokhal & Cllr Ullah.
- 1.9 As the prospective developer, Seddon Homes, agreed to a further meeting at council offices with the representatives of the objectors, who are also the applicants for the DMMO claims mentioned above and are part of Clayton Fields Action Group. Council officers and the same two ward councillors also attended. Seddon looked at various requests put to them by objectors to amend the layout of the development, and any resultant planning requirements were also discussed.
- 1.10 Seddon then met the CFAG representative on site again, after pegging out various features on the ground. It became apparent to Seddon that the attempts at reaching a compromise agreeable to the various parties were unsuccessful, and Seddon confirmed this to officers.
- 1.11 The council received a copy of a letter from CFAG to Seddon which *“look[ed] forward to continuing to resolve these issues”*. However, Seddon considered that Mr Adamson, for CFAG, had refused to accept what Seddon may have been prepared to offer.
- 1.12 In the absence of any agreed compromise, which may have resulted in the withdrawal of all PROW applications (section 257 and DMMO), the current section 257 application is put before sub-committee for consideration.
- 1.13 CFAG’s chair has formally requested that the council suspend this s257 application process pending re-opening of public access to the fields from Deveron Grove, stating that part of the applicants’ application declaration is false, as claimed route

186 is blocked at Deveron Grove. The author, Mr Adamson, asked for the request letter of 7 August 2017 to be appended to this report (App E).

- 1.14 Mr Adamson has also made formal representations under Schedule 14 of the Wildlife & Countryside Act 1981 to the Secretary of State asking him to direct the council to determine the DMMO application 183. This request, against the council's delay in deciding whether to make a DMMO, concerns just one of the five DMMO applications at the site made by Mr Adamson. As noted above, if this s257 application by the landholder and the developer is successful, claimed pedestrian rights over DMMO route 183 would be extinguished.
- 1.15 If this section 257 application is successful, it would address claimed public rights in the seven DMMO applications as far as they affect the development site, so it is not considered necessary to determine the DMMO applications before considering this section 257 application. If the DMMO applications were determined and were all successful, resulting in the formal recording in the definitive map and statement of the claimed routes, then a section 257 application similar to this current one would likely result.
- 1.16 Officers will have to respond to the request for a direction for DMMO file 183, which would include and be influenced by the sub-committee decision on this report.
- 1.17 Officers informed concerned members of the public both before and since the section 257 application, that they would not be looking to take enforcement action against the reported blockage of the claimed route at Deveron Grove.
- 1.18 If members refuse the application, or this proposal to deal with the DMMO application routes by making a public path order fails further along in the process, then the council would still be obliged to determine the seven DMMO applications.
- 1.19 If members approve the making of an order under section 257, it would be advertised and if any objections are made and not withdrawn, the council could not confirm the order. Opposed orders could only be confirmed by the Secretary of State at DEFRA, which may involve a public inquiry.

2. Information required to take a decision

- 2.1 Section 257 of the Town & Country Planning Act 1990 gives an authority the power to divert or extinguish footpaths, bridleways or restricted byways if it is satisfied that it is necessary to do so in order to enable development be carried out in accordance with planning permission granted under Part III (of the Act).
- 2.2 Account must be taken of the effect of the order on those entitled to rights which would be extinguished.

- 2.3 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 7 deals with planning and PROWs.
- 2.4 Paragraph 7.15 states: *“The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”*
- 2.5 The section 257 application is a proposal put forward by the applicants in accordance with, and based on, the planning consents granted for the site. Members are asked whether this application proposal fulfils the relevant section 257 criteria and to determine whether the council makes the order applied for. It is not a question of whether a different layout or a different provision of paths identified by third parties is possible or would be preferable to others.
- 2.6 Option 1 is to decide to refuse the application to make the order.
- 2.7 Option 2 is to authorise the Assistant Director of Legal, Governance & Commissioning to make an order under section 257 of the Town & Country Planning Act 1990 **and only to confirm it if unopposed**, but to defer its decision on sending any opposed order to the Secretary of State at DEFRA.
- 2.8 Option 3 is to authorise the Assistant Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would authorise confirmation of the order by the council if unopposed, or seeking confirmation of an opposed order by forwarding it to the Secretary of State to confirm.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

- 3.1.1 Providing better facilities for physical activity works towards local and national aims of healthy living.

3.2 Economic Resilience (ER)

- 3.2.1 There is an indirect impact of a welcoming environment which helps promote and retain inward investment

3.3 Improving Outcomes for Children

- 3.3.1 See 3.1.1

3.4 Reducing demand of services

- 3.4.1 See 3.5.

3.5 Other (e.g. Legal/Financial or Human Resources)

- 3.5.1 The Council receives applications to change public rights of way, in this case to facilitate development already granted planning consent.
- 3.5.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.
- 3.5.3 Any person may make an objection or representation to the order.
- 3.5.4 The council may choose to forward an opposed order to the Secretary of State at DEFRA ("SoS") to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. The council recharges the costs of applications to the applicant as appropriate, but the council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.
- 3.5.5 If the council confirms its own orders, or after an order has been confirmed by the SoS, the council may recharge its costs of concluding the order process, including bringing an order into force.
- 3.5.6 Development proposals, including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4 Consultees and their opinions

- 4.1 The public rights of way unit undertook an informal preliminary consultation which included notices posted on site and maintained for 4 weeks, and correspondence with statutory consultees, interested parties including utility companies, user groups and St Patricks School, as well as ward councillors.
- 4.2 During this consultation process ward councillors have not expressed an opinion in favour or against the application. Cllr Sokhal and Cllr Ullah attended two meetings with the applicants and objectors arranged through the PROW office.
- 4.3 Those respondents raising concerns or objections about the proposal were invited by officers, on behalf of the applicants, to attend a site meeting.
- 4.4 At the site meeting, Seddon, the joint applicants and prospective developers of the site, agreed to further meetings with some of the objectors and then put forward their response to the objectors' requests at a subsequent meeting back on site. Seddon report that Clayton Fields Action Group did not find the Seddon proposals acceptable, so a compromise was not reached.
- 4.5 The council received various responses during the preliminary consultation, which are appended at App A1 and A2.
- 4.6 Two responses (C & D) were asking if Hud/345 public footpath from Edgerton Road to St Patricks School was to be lost, which it is not.
- 4.7 Concerned responses/objections came from Clayton Fields Action Group ("CFAG"), Marsh Community Forum, St Patricks School and the others appear to have been from local residents.
- 4.8 A number of grounds for objection were raised:
 - 4.8.1 The loss of the claimed routes, particularly route DMMO 183 (Shown in appendix F and between Points G-H on Plan 1).
 - 4.8.2 The existing paths should be retained.
 - 4.8.3 The existing routes have been used by many people for a long time.
 - 4.8.4 The housing development should incorporate the existing paths.
 - 4.8.5 Loss of existing woodland and habitat if the proposal goes ahead.
 - 4.8.6 Japanese knotweed on site.
 - 4.8.7 Much of the proposed alternatives footpath routes would become footways on estate roads, not separate paths.
- 4.9 Also, objectors state that the proposed Woodland Walk (route Y-Z on Plan 2):
 - 4.9.1 is unsatisfactory and unacceptable,
 - 4.9.2 can never be built,
 - 4.9.3 is preposterous and unnecessary
 - 4.9.4 would be difficult to construct

- 4.9.5 will be hard to negotiate
 - 4.9.6 will not be maintained adequately,
 - 4.9.7 will be impassable to disabled people,
 - 4.9.8 will be dangerous,
 - 4.9.9 has not been subject of a detailed construction specification,
 - 4.9.10 should run above the line of the tree canopy,
 - 4.9.11 should be considered individually in comparison to route DMMO 183 and not within the whole site package of changes.
 - 4.9.12 will not be built by the landowner.
- 4.10 Further concerns raised during the preliminary consultation included:
- 4.10.1 A different site layout with different and additional paths could be provided and would be better.
 - 4.10.2 The land carrying route DMMO 183 and the site's public open space and the council's allotment lands nearby could be transferred as a community asset to a trust and accepted by CFAG.
 - 4.10.3 An additional route could be accommodated across the developed site on the sewer easement line.
- 4.11 St Patrick's School sought the provision of additional off-road routes for pedestrian use and noted the devastation that has already taken place to wildlife. The school also seeks improvement of the footbridge carrying footpath Hud/345 over Clayton Dike, due to the effect of the large volume of water in periods of heavy rain.
- 4.12 No objections were received at this informal stage from any PROW statutory consultees or user groups, which would be consulted if an order is made.
- 4.13 Officers asked for comments from the council's ecology officer (in planning) on the contents of the consultation replies. The full ecology officer response is appended at App B. The Ecology officer stated: *"Potential ecological effects and requirements for mitigation have been considered as part of the outline and reserved matters planning applications for the wider development. Where required, conditions have been attached to the reserved matters permission to ensure the LPA is able to influence details of the means of creating the Woodland Walk and management of the retained habitats. These conditions also require the developer to manage non-native invasive species (including Japanese knotweed) in an appropriate manner. It is my understanding that the ecological issues raised have already been considered as part of the previous permissions and should not be revisited as part of the Section 257 application."*
- 4.14 **Officers would note** that the PROW unit had sought improvement of the public footpath 345 footbridge near St Patrick's school through the planning process for the

development, but no such contribution was secured during the planning application process.

- 4.15 The consultation process attracted replies from utility companies, with the applicants being asked to contact them regarding any proposed works.
- 4.16 The Police Architectural Liaison Officer had no adverse comments.
- 4.17 No response was received from Peak & Northern Footpath Society, Open Spaces Society, Auto Cycle Union, CTC, Huddersfield Rucksack Club, Byways & Bridleways Trust, Kirklees Bridleways Group, Huddersfield Ramblers, KC allotments officer, WY Police, WY Fire, WYAS, WYPTE, MYCCI, Road Haulage Association, National Grid, KCOM, Yorkshire Water, BT, NTL, & YEDL.
- 4.18 The applicants were asked for their observations on the consultation replies. The applicants' comments on the consultation responses are appended at App C. The applicants' original statement in support of their application is appended at App D.
- 4.19 **Officers would note** that the route of claimed route 183, as identified in that DMMO application form plan at App F, which is subject of concern in the preliminary consultation, is actually north of much of the proposed garden areas of plots 25-34 as identified on appended Plan 3 between points G & H. Some objectors do not wish this route to be moved, but many, including the applicant have identified it as running outside the proposed gardens, towards Clayton Dike.
- 4.20 **Officers would note** that the Woodland Walk provision is required in the planning consent by condition, and would have to be satisfactorily provided and signed-off prior to the requested section 257 order being brought into force.
- 4.21 **Officers would note** that matters raised about the development of the site and impact on the claimed routes were raised during the planning process, and considered by the council as the local planning authority in their decisions.
- 4.22 **Officers would note** the extent of provision of pedestrian access across the developed site shown in appended Plan 2, with connections provided between all the access points to the site identified in the DMMO applications (i.e. three links west to footpath 345, plus links to Queens Road, Deveron Grove, Edgerton Road & one link north within the site towards Clayton Dike/footpath 345). These do include some pedestrian links along footways on the proposed estate road, but also other off-road link routes, routes across public open space and the Clayton Dike Woodland Walk. Footpath 345 which currently has a recorded width of 1.2 metres will be protected and enhanced by recording additional width, which has been welcomed by CFAG's representative. This shown in detail in Plan 4, both the additional width and the extinguishment of any rights beyond that addition, affecting the proposed plots etc.

- 4.23 **Officers would note** that Seddon Homes considered the request to relocate the Woodland Walk within the development, but their suggestion that it may be moved to the line at the rear of plots 25-34, was not acceptable to CFAG's representative, who is also the applicant to five of the seven DMMO applications for the site.
- 4.24 **Officers would note** that the proposed section 257 order applied for would deal with all the routes within the site that are subject of the seven DMMO applications. It would extinguish six of them and record additional footpath width for the other, as well as creating numerous alternative pedestrian routes. A small length of claimed footpath, outside the development site on council land, would still be outstanding and is subject of two of the DMMO applications – the parts of DMMO claims 30 & 185 north of point L & D on Plan 3. Those short DMMO claimed path parts would still need to be dealt with even if the section 257 order is made, confirmed and brought into force. The council may choose to dedicate a link path over its land if required at a later stage.
- 4.25 **Officers note** that CFAG's representative has asked the council to suspend action on this application. The access from Deveron Grove is not currently recorded as a public footpath and the owner has already indicated to CFAG that they are not looking to open it at present. Officers do not consider it to be reasonable to suspend this application because a landowner has not opened this claimed route, even if the applicants' undertaking indicates otherwise.

5 Next steps

- 5.1 If an order is made, it would be advertised and notice served.
- 5.2 If the order is unopposed the council may confirm it.
- 5.3 If any objections are duly made and not withdrawn, the council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the council may decide to abandon the order.
- 5.4 If members decide to authorise the making of an order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:
- 5.4.1 any objections that are received, and
 - 5.4.2 potential referral of the order (if opposed) back to the Secretary of State, or
 - 5.4.3 abandonment of an opposed order.
- 5.5 If sub-committee refuses the application, the order is not made. There is no appeal right for the applicant against a refusal.

6. Officer recommendations and reasons

- 6.1 Officers recommend that members choose option 3 at 2.8 above and give authority to the Assistant Director, Legal, Governance and Commissioning to make and seek confirmation of an order under s257 of the Town & Country Planning Act 1990.
- 6.2 On balance, officers consider that the relevant criteria at 2.1 and 2.2 above are satisfied, and that the benefits of the order would outweigh any negative effect on the public rights. As a whole, the proposed pedestrian provision within the site is appropriate.

7. Cabinet portfolio holder's recommendations

- 7.1 Not applicable

8. Contact officer

Giles Cheetham, Definitive Map Officer, Public Rights of Way

9. Background Papers

872/6/EXT/Clayton Fields

DMMO applications 30, 31, 183, 184, 185, 186 & 187.

Planning files e.g. 2014/93014 & 2017/90190

Appendices:

Plan 1 Claimed DMMO routes to be extinguished

Plan 2 Proposed routes to be created and provided as part of the development

Plan 3 Indicative routes to be extinguished shown over site layout

Plan 4 – proposals near footpath Hud/345 – extra width and extinguishment.

A1 & A2 – Preliminary consultation responses

B - Council ecology officer comments on preliminary consultation responses.

C – Applicant comments on consultation responses

D – Applicant application statement

E – CFAG letter of 7 August 2017 requesting suspension of the s257 application.

F – 6 Routes to be extinguished and one to be widened (DMMO 187). Plan of each of the claimed routes, submitted with each of the 7 DMMO applications.

10. Assistant Director responsible

Joanne Bartholomew, Service Director: Commercial, Regulatory & Operational Services, Place Directorate