

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

Date: 21 June 2018 (deferred from 17 May 2018)

Title of report: Amendments to the authority given by sub-committee in October 2017 for the 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 amendments to the authorisation of October 2017 given for an order to extinguish claimed public footpath rights over land at Clayton Fields and to provide alternative pedestrian routes. The footpath routes to be extinguished would be those resulting from the sub-committee decisions on the seven Clayton Fields definitive map modification order applications, and the alternative routes would be as authorised in October 2017 and as shown in relevant planning consents. **Members are asked to make a decision** on amending the authorisation in relation to the routes to be extinguished, so that they are correctly shown in making the s257 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	Karl Battersby 8 May 2018
Is it also signed off by the Acting Service Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Eamonn Croston 4 May 2018
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Julie Muscroft 8 May 2018
Cabinet member portfolio	N/A

Electoral wards affected: Greenhead

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

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 increase in recorded width of recorded public footpath Hud/345. Sub-committee made a decision on one of the DMMO applications in February 2018 and a report for sub-committee decision on the other six precedes this report.
- 1.4 To facilitate the development in accordance with the above planning consents, an application for an order to be made under section 257 was 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, the routes considered by the council to be at least reasonably alleged to subsist would be dealt with and the routes shown in the planning consent layout would be provided and recorded as public footpaths. These routes would be in accordance with the sub-committee's decisions on the seven DMMO applications, which are all expected to precede members' consideration of this report. A decision in relation to application 183 has already been made and the other six applications are expected to be considered prior to this report being considered. Appended Plan 3 shows the site layout in the relevant planning consent. Plan 2 shows the alternative routes to be provided.
- 1.5 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 to the s257 process. The Council could dedicate public rights over those parts within the Council's ownership, currently vested in Streetscene & Housing.
- 1.6 The s257 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.”

- 1.7 The informal preliminary consultation on the section 257 application attracted numerous objections, reported in October 2017, where sub-committee authorised the making of an order to extinguish the DMMO application routes and provide alternative routes.
- 1.8 Prior to considering this report and agenda item, sub-committee would likely have made determinations regarding all the seven Clayton Fields DMMO applications and this report concerns any amendments that ought to be recognised in the s257 authority to reflect those DMMO application decisions by sub-committee.
- 1.9 If the section 257 application and order are successful, this would address the routes resulting from the council’s decisions on the seven DMMO applications as far as they affect the development site.
- 1.10 If members approve amendments to the s257 order-making authority given in October 2017, the order under section 257 of the Town & Country Planning Act 1990 would be made and 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. The amendments described in this report are those which would match the decisions made by sub-committee regarding the existence of public rights of way over the Clayton Fields site, including decision made at the 17 May 2018 sub-committee meeting on an earlier DMMO agenda item. The joint applicants wish the council to proceed with determining what rights are considered to satisfy the DMMO criteria, so that the appropriate routes are subject to the s257 order.
- 2.6 Option 1 is to refuse to amend the authority already given for a section 257 order.
- 2.7 Option 2 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990 in accordance with the sub-committee public rights of way decisions on the seven DMMO applications at Clayton Fields. 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 at DEFRA 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 principle of extinguishing the DMMO routes and providing alternative routes by way of an order under section 257 and the detail of that change has already been authorised by sub-committee in October 2017, further to previous officer report.
- 4.2 Once sub-committee has made a decision regarding all the seven DMMO applications at Clayton Fields, members are asked to amend the detail of the proposed changes to paths in that previous s257 decision to reflect their subsequent DMMO decisions.
- 4.3 Officers consider that it is evident that any order made under section 257 should reflect the council’s decisions on the existence of public routes on the site.
- 4.4 **Officers would note** that the here proposed section 257 order applied for would deal with all the routes recognised by the council within the site that are subject of the seven DMMO applications. It would extinguish those routes recognised by sub-committee, 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 north of point L & D on Plan 3. Those DMMO short lengths of 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 as landowner may choose to dedicate a link path over its land if required at a later stage.

- 4.5 An additional plan has been appended at Plan 6 further to the member briefing. This shows the development layout overlaid with the February decision 183 route and the recommendation routes in the preceding DMMO report.

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 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:
- 6.1.1 choose option 2 at 2.7 above and give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under s257 of the Town & Country Planning Act 1990 to reflect the routes determined to subsist, or to be reasonably alleged to subsist in relation to the seven Clayton Fields DMMO applications and to reflect the routes proposed in the implementable planning consents, including the widening of part of Huddersfield 345 lying to the west of the site and
- 6.1.2 delegate authority to the Service Director, Legal, Governance and Commissioning to determine the routes to be extinguished (routes in the DMMO report recommendations are indicatively shown in Plan 5/AppZ, along with the DMMO ref 183 route determined by sub-committee in February). The intention is for the s257 order to reflect the decisions by sub-committee.
- 6.2 Sub-committee has already given authority in October 2017 for an order to be made to extinguish routes at Clayton Fields and provide alternative routes to match those in planning consents already granted. This report concerns amendments to reflect DMMO decisions subsequently made by this sub-committee when detailing the routes to be extinguished.

7. **Cabinet portfolio holder's recommendations**

7.1 Not applicable

8. **Contact officer**

Giles Cheetham, Definitive Map Officer

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:

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1602&ID=1602&RPID=505515714>

Plan 1 Routes as shown in DMMO applications

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

Plan 3 DMMO application routes over site layout (A3 at 1:1250 scale)

Plan 4 – proposals at definitive footpath Hud/345 – Extra width to be dedicated.

Plan 5/App Z – digitised amended routes in the recommendation in preceding sub-committee DMMO report and previous decision on route 183

Plan 6 Development site layout overlaid with routes in the officer recommendation in preceding sub-committee DMMO report and previous decision on route 183 application. (Requested by members)

10. **Service Director responsible**

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