

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

**Date:** 13 December 2018

**Title of report:** Application for a definitive map modification order to add a public footpath to the definitive map and statement, Clayton Fields, Edgerton. (Application reference 204).

**Purpose of report:** **Members are asked to consider** the evidence and decide on any requisite modification of the definitive map and statement of public rights of way. An application has been received for a definitive map modification order to record a public footpath.

**Members are asked to make a decision** on the council's response to the application and evidence received, which may potentially be the making of an order, and forwarding any order made to the Secretary of State, if opposed.

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 <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	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 3 December 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 29 November 2018
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Deborah Wilkes on behalf of Julie Muscroft 29 November 2018
Cabinet member <a href="#">portfolio</a>	N/A

**Electoral wards affected:** Greenhead

**Ward councillors consulted:** Cllrs. Patterson, Sokhal, Ullah.

**Public or private:** Public

## 1. Summary

- 1.1 The council has received an application, relating to the recording of alleged public rights of way under the Wildlife & Countryside Act 1981, to modify the definitive map and statement of public rights of way (“DMS”) by order, affecting land at Clayton Fields. Changes to the definitive map and statement of this kind are called definitive map modification orders (“DMMO”). App A shows this DMMO application form and plan, (file reference number 204).
- 1.2 Sub-committee has already made decisions in relation to seven DMMO applications at Clayton Fields, as well as a decision in relation to an application by the landowner and prospective developer to extinguish alleged public rights of way and provide alternative public ways.
- 1.3 The council has subsequently made a DMMO and a section 257 order, which have been advertised, and are subject to duly-made objections. These orders are appended at App X and Y.
- 1.4 Sub-committee’s previous decisions are to submit both these opposed orders to the Secretary of State at DEFRA to determine.
- 1.5 Members’ attention is brought to public rights of way officer reports, background papers & appendices, and associated sub-committee decisions regarding Clayton Fields at the meetings between August 2017 and June 2018. Links are shown at section 9 of this report.
- 1.6 The application before members today relates to the route in appended Plan 1.
- 1.7 The application claims that, in its previous DMMO decision, the Council has incorrectly recognised the alignment of the route subject of DMMO application reference 183.
- 1.8 The Council received DMMO application 204 on 4 July 2018 for an order to modify the definitive map and statement of public rights of way to record a public footpath from Huddersfield footpath 345 to Murray Road.
- 1.9 The Clayton Fields land is north of Edgerton Road. Huddersfield 345 is the definitive footpath that runs along the western side of the site, Murray Road and Queens Road form the public road to the east of the site.
- 1.10 With the application, the Council also received a video file (App B) and a “statement letter” (in App A).
- 1.11 The applicant’s statement letter refers to the previously-decided application 183 and the user evidence forms connected with the application 183, which has already been considered by sub-committee.

- 1.12 The applicant has subsequently asked officers to add copies of various maps and other documents to the DMMO file 204 for consideration. Copies are included at App C.
- 1.13 The applicant has asked for Mr Adamson's submissions also to be considered, which are appended at App D.
- 1.14 The council is yet to receive any written evidential submissions from landowner Paddico (267).
- 1.15 The council has to determine the definitive map modification order application. The council must consider the available evidence, before reaching a decision on whether it is requisite to make any order to modify the definitive map and statement. If the council makes an order, it must be advertised and notice given, with a period for formal objections to be made. If opposed, it would have to be submitted to the Secretary of State at DEFRA to determine.
- 1.16 The council must decide what, if any, rights have been shown to satisfy the relevant test(s). This means that the council may make a different order or none at all, after appropriate consideration of the available evidence.
- 1.17 The evidence, whether for or against the application and any recording of any public right of way, is to be noted and considered.
- 1.18 When considering additions to the definitive map and statement of public rights of way, the council must make an order
  - 1.18.1 If a public right of way is shown to subsist on the balance of probabilities, or
  - 1.18.2 if the right of way is shown to be reasonably alleged to subsist.

## **2. Information required to take a decision**

- 2.1 Members are asked to consider the report, the available evidence for and against the recording of public rights, and decide what action to take.
- 2.2 It is the council's statutory duty to maintain the definitive map and statement and make any requisite orders.
- 2.3 Guidance for members is appended (Appendix 1).
- 2.4 The application is made under the Wildlife & Countryside Act 1981.
- 2.5 The council should consider the available evidence and determine whether to make an order to modify the record of public rights of way when it is requisite in accordance with section 53 of the Wildlife & Countryside Act 1981.
- 2.6 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof for a final decision is the civil

- one, that is, the balance of probabilities. If disputed, an order confirmation decision by the SoS would be made solely on the balance of probabilities.
- 2.7 Government guidance to local authorities is contained in DEFRA'S Rights of Way Circular 1/09, version 2
- 2.8 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69304/pb13553-rowcircular1-09-091103.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf)
- 2.9 Members are advised that when a definitive map modification order is made, which attracts objections which are not withdrawn, then the council have to forward it to the Secretary of State at DEFRA for determination. The DMMO consistency guidelines, are issued to the Secretary of State's inspectors in the planning inspectorate
- 2.10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517495/Full\\_version\\_February\\_2016\\_consistency\\_guides\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf)
- 2.11 The application 204 also lists as a submitted document, the application route marked on site plan R/1954/1C (see App E).
- 2.12 The current landowner, Paddico (267) Ltd has not accepted that public rights subsist across the land, and has not submitted any evidence relating to the existence of any alleged public rights. As previously reported to sub-committee, Paddico submitted an application under section 257 TCPA 1990 to extinguish any public rights claimed to subsist over the land (and provide alternative routes) to enable them to progress with sale and development of the site, along with the joint s257 applicant, the proposed developer Seddon Developments, which is looking to purchase and develop the site in accordance with planning consent for the site.
- 2.13 After considering the evidence and the relevant criteria members have a number of options.
- 2.14 The first option for members is to refuse the application and to decide that the Council should not make an order.
- 2.15 The second option for members is to conclude the evidence is sufficient for the Council to make another order to modify the definitive map and statement, to reflect unrecorded rights, and either confirm it or forward it to the Secretary of State if it is opposed.

2.16 The third option is for members to conclude that the application and evidence relate to a question about the precise alignment of a route that is already subject to a DMMO made by the Council in October 2018, which is opposed and is to be submitted to the Secretary of State, and that the council should submit additional evidence and information relating to application 204 with the opposed DMMO bundle file.

### **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 has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded and mistakenly recorded public rights of way.

3.5.2 The Council must make a decision regarding the order application and any appropriate PROW status of this route, making any order that is requisite further to Wildlife & Countryside Act 1981, e.g. section 53. In accordance with the Council's delegation scheme, this is a decision for the sub-committee.

3.5.3 Any person may make an objection or representation to an order modifying the definitive map and statement. If objections are not withdrawn, any order made would be forwarded to the Secretary of State at DEFRA, and likely considered by an inspector appointed by the Secretary of State, who may or may not confirm the order.

## **4 Consultees and their opinions**

- 4.1 Ward members have been informed about the public footpath claim and have been informed of the report being brought to sub-committee.
- 4.2 Officers have contacted the landowner, statutory and local user groups.

## **5 Next steps**

- 5.1 If a further order is made, it will be advertised on site and in the local newspaper. All owners and occupiers will receive a copy of the order as well as other statutory consultees. Anyone may submit written objections to the order during the relevant notice period.
- 5.2 If no one makes an objection the Council could confirm the order. If objections are made, and not withdrawn, the order has to be referred to Secretary of State DEFRA, who will decide if the order should be confirmed. This usually involves appointing an inspector to consider the evidence from all parties at a public inquiry, hearing or by exchange of correspondence.
- 5.3 In October 2018, the Council made a DMMO for multiple routes, as well as a public path order to enable development by extinguishing alleged rights of way and providing alternative ways. Both orders have been objected to, and are to be submitted to the Secretary of State at DEFRA.
- 5.4 If the Council decides that no further order is to be made, then officers would look to submit the evidence relating to DMMO application 204 to the Secretary of State, when forwarding the opposed DMMO for his decision. The applicant may wish to approach the Secretary of State by way of representations, who may direct the Council to make an order. [WCA 1981, Schedule 14, (4)]. It would be for the Secretary of State to decide if there were any grounds for such an appeal. If the council refuses to make an order, the applicant generally has 28 days to appeal after notice is served by the council of its refusal decision, however, in this case the council has already made an order, which it intends to submit to the Secretary of State for his determination.
- 5.5 The order made under the Town & Country Planning Act 1990, section 257, to extinguish public rights of way and provide alternative routes at Clayton Fields is also opposed and to be submitted to the Secretary of State. Further to previous sub-committee decision, the Council is seeking the confirmation of that order,

potentially after modification to reflect any change to the DMMO. The council would ask the Secretary of State to determine the existence of public paths, and then to extinguish them to enable the implementation of the planning consent.

## 6. **Officer recommendations**

6.1 **Officers recommend that** members choose option 3 at paragraph 2.16 and decide that the DMMO application 204 relates to a dispute over the specific alignment of a route that is already subject to an unconfirmed, undetermined DMMO made by the council, which is to be submitted to the Secretary of State for determination.

6.2 **Officers further recommend that** members decide that the evidence relating to file 204 should be submitted to the Secretary of State along with the opposed DMMO.

### **Reasons**

6.3 There is significant evidence regarding public use over a period of some decades. of a route from Huddersfield 345, along to the south of Clayton Dike, to Murray Road/Queens Road. The application 204 cites evidence already submitted and considered by members in relation to DMMO application 183.

6.4 The application submissions indicate that application 204 claims to relate to what the applicant considers to be a correct alignment of the routes contained in application 183 and in the October 2018 DMMO footpath 477 shown at App X.

6.5 The matter before members appears to be a query over the precise alignment of the DMMO order route 477, which may be explored when the Secretary of State determines the DMMO that is already made and opposed and to be forwarded for his determination. For comparison, Appendix W shows the three alignments as shown in application plan 183, application plan 204 and footpath 477 in the opposed October 2018 DMMO.

6.6 The applicant could be informed that no further order is to be made, and that the evidence would be added to the file bundle submitted to the Secretary of State with the opposed order.

6.7 The Secretary of State may confirm the DMMO as made, not confirm it, or modify it and then confirm it. His inspector may decide that a public inquiry is the preferred

process to assist in a final determination of this matter, allowing for evidence to be given in person, where it would be open to cross-examination, enabling a more detailed examination for the government's inspector, if required.

6.8 Officers would forward both DMMO and public extinguishment path order for determination.

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

7.1 Not applicable

**8. Contact officer**

Giles Cheetham, Definitive Map Officer

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**9. Background Papers and History of Decisions – see item 18.1 on the main Agenda**

**10. Service Director responsible**

10.1 Joanne Bartholomew, Service Director, Commercial, Regulatory & Operational Services