

Name of meeting and date: Planning Sub-Committee (Huddersfield Area) – 17 June 2021

Title of report: Application for a Definitive Map Modification Order (DMMO) to vary the particulars of public footpath Holmfirth 60 at Wolfstones Heights Farm, Netherthong

1. Purpose of Report

- 1.1. **Members are asked to consider the** evidence and determine an application for an Order under section 53 of the **Wildlife and Countryside Act 1981** (the '1981 Act') to vary the particulars contained in the Statement for part of footpath Holmfirth 60. It is asserted by the applicant that part of this footpath at Wolfstones Heights Farm should be recorded as having a width of between 3 and 4 metres. The current recorded width is approx. 1.2 metres or 4ft. The footpath in question is shown on the plan at item 1 in appendix B to the report. **Members are asked to make a decision on making an Order and seeking its confirmation.**
- 1.2. **Note:** This matter was previously considered at the Huddersfield Area Planning Sub-Committee on 21 April 2021. The Sub-Committee agreed with the Officer Recommendations contained within the report. Following publication of the decision a technical issue was identified that had affected the availability of the live stream of the meeting from the link on the Kirklees Council website. The issue only affected the full streaming of item 6 on the agenda (i.e., this matter). Given that the discussions that led to the decision could not be viewed in full via the Council's website it was agreed that this matter would be taken back to a future meeting of the Huddersfield Planning Sub-Committee for redetermination.

2. Summary of Report

- 2.1. Public Footpath Holmfirth 60 (path 60') is recorded in the Statement accompanying the current Definitive Map and Statement (DMS) ('Relevant Date' of 1985) as 1.2m or 4ft wide along its whole length. Path 60 was recorded in the first DMS ('Relevant Date' of 1952) as being approximately 4ft wide.
- 2.2. In September 2020 an application was made on behalf of Peak & Northern Footpaths Society (PNFS) for a Definitive Map Modification Order (DMMO) to vary the particulars recorded in the DMS to increase the recorded width of part of path 60 to 3-4m. The application was supported by evidence of use by the public of a greater width than that currently recorded, along with a limited quantity of historical documentary evidence.
- 2.3. The way in question commences at Wolfstones Road at point A and follows a surfaced driveway in an easterly direction towards Wolfstones Heights Farm. After passing the house, the route continues as a grass surfaced enclosed track to a stile at point E. Historically the route had been an enclosed access road from point A to point B, with a field edge footpath continuing from point B to point E. More recently B-E has also been an enclosed track leading to fields.
- 2.4. On / before 6 September 2020 fencing was erected along the driveway (between A and A3) reducing the part available for use by the public to a strip approx. 1.2m wide along the northerly side. That action is considered to have brought any unrecorded right over the

greater width into question; the existence of a public footpath is not in itself in doubt. The dispute principally relates to the width and exact position of the public right of way (PROW).

- 2.5. Part of the length of path 60 in question has also been proposed to be diverted. In January 2020 this sub-committee declined an application made on behalf of the landowner for a Diversion Order under s.257 Town and Country Planning Act 1990 (the '1990 Act'. An application was subsequently made to the Secretary of State for Transport for a similar Order under s.247 of the 1990 Act. A draft Diversion Order has been made and published. In September 2020 the Strategic Planning Committee formally resolved that the Council should object to that Order. As a result, a virtual public inquiry will be held in August 2021. The actual legal width of the way proposed to be diverted will clearly be a material consideration to be taken into account by the appointed Inspector when assessing the merits of the proposed diversion. In light of this, investigation of this DMMO application has been prioritised over other cases. The Council officer handling matters related to the proposed diversion has not been involved with the investigation of the DMMO application.
- 2.6. The DMMO application was supported by 14 'user evidence forms' (UEFs) describing use by the public, since the 1960s, of greater widths than that currently recorded in the Statement. Typically, 3-4m or similar widths in feet, consistent with the full width between physical boundaries. The UEFs also include evidence regarding the presence or absence of stiles, gates or other structures during the period of claimed use.
- 2.7. The application was also accompanied by a limited quantity of documentary evidence, including an extract from the Nertherthong Inclosure Map of 1826 and the 'walking schedule' prepared as part of the original survey of PROW carried out in the 1950s under the National Parks and Access to the Countryside Act 1949. Also included was a copy of a notice served on the Council by PNFS in December 2018, under section 130A of the Highways Act 1980 (the '1980 Act') in respect of an obstruction (electric gates at point A had been observed to close automatically at dusk). The applicant also supplied copies of other documents. This included correspondence between various interested parties about the gates at point A, covering from the period from 2018 to 2020 and a letter to the parish council from 2000. (Documents previously disclosed in response to an FoI request.)
- 2.8. Officers have also considered other available documentary evidence, including various maps, other documents relating the development / review of the DMS, and available photographs / aerial photographs taken between 2000 to 2020.
- 2.9. An informal consultation exercise was carried out in November / December 2020. That resulted in the receipt of additional evidence from people in support of, and in opposition to the claim. Several people who opposed to the application asserted that the greater width had not been used by the public as had been claimed, or had not been available for such use, due to the presence of various things stored or deposits placed at various times, along the line of the route (particularly its southern side). Evidence was also received regarding the presence or absence of various structures such as gates / stiles, including electric gates, a bypass stile at point A and structures in the vicinity of point B.
- 2.10. A detailed analysis of evidence discovered is found in the 'Discussion of Evidence' document at item 1 in appendix A. Appendix A also includes summaries of significant aspects of the user evidence and additional comments / evidence received in response to the consultation.

- 2.11. Section 56 of the 1981 Act provides that a DMS shall be conclusive evidence as to the particulars contained therein. Where the map shows a footpath, the map shall be conclusive evidence that there was at the 'relevant date' a highway as shown on the map, and that the public had thereover a right of way on foot, without prejudice to any question of whether the public had at that date any right of way other than that right.
- 2.12. Where the map is conclusive evidence, as at any date of the existence of a highway, any particulars contained in the Statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.
- 2.13. There is no doubt as to the existence, as at the 'relevant date' of the current Definitive Map (22 April 1985) of a public footpath of a width of approx. 1.2m or 4ft within the general corridor depicted by the line marked on the Definitive Map. The PROW was recorded subject to various limitations and conditions as described in the Statement. However, that does not preclude the actual width of the PROW being of greater width than 1.2m / 4ft by 1985, or of greater width at the relevant date of the first DMS (1952).
- 2.14. It is also possible that even if the evidence shows that the public's rights were historically confined to a width of approx. 1.2m / 4ft, public rights may have been dedicated over a greater width than 1.2 metres by virtue of a presumed dedication under s.31 of the 1980 Act (use of a way, by the public, 'as of right' for a full period of 20 years), or through dedication of a PROW at common law.
- 2.15. Attention must also be given to limitations / conditions, e.g., gates and stiles, depicted in the DMS. If structures have been absent over a qualifying period, a PROW might have been dedicated (or re-dedicated) without such limitations. Should public rights have come into existence over a greater width than approx., 1.2m, any PROW might be subject to other limitations.
- 2.16. If a PROW runs between walls or fences there is a legal presumption that the whole area between these has been dedicated to the public, provided the fences were laid out with reference to the highway.
- 2.17. Members are asked to consider the report, the available evidence for / against application to vary the recorded particulars and the detailed 'Discussion of Evidence' found at item 1 in appendix A, and decide what Order, if any, to make.
- 2.18. The Council should consider the available evidence and, by Order make such modifications to the DMS as appear to them to be requisite in consequence of the occurrence of any of several events described in section 53(3) of the 1981 Act.¹
- 2.19. Members must consider whether or not the evidence shows, on balance, that, at the relevant dates of the current or first Definitive Maps and Statements, path 60 was of a greater width than approx. 1.2m / 4ft.
- 2.20. Members should also consider whether or not a PROW has been dedicated over a greater width than approx. 1/2m / 4ft. That may be through presumed dedication under s31 of the

¹ The relevant events are described at paragraph 2.6 in the full report.

1980 Act,² or through dedication of a public right of way at common law, along with acceptance by the public.

- 2.21. Members are also requested to consider whether there has been dedication, or re-dedication, of a PROW without the various limitations / conditions currently described in the Statement for path 60 and indicated on the Definitive Map.
- 2.22. Matters such as privacy / security, the merits of any potential diversion, or the professional standing of any owners or occupiers, are not relevant to the question of the width of path 60 or the existence of a PROW. These are not matters to be taken into consideration.
- 2.23. Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, the Council would be obliged to forward it to the Secretary of State for determination. However, the likelihood or otherwise of an Order attracting opposition should form no part of the decision.

3. Ward Councillor comments

- 3.1. Ward members were consulted regarding the application, in November 2020. No responses were received, and no additional evidence provided.

4. Officer recommendations and reasons

- 4.1. That the Sub-Committee authorises the Service Director, Legal, Governance and Commissioning to make a Definitive Map Modification Order to vary the particulars for footpath Holmfirth 60 to record a width for length A-E (as shown on the plan at item 1 in appendix B to the detailed report) varying between 3 and 4 metres, between physical boundaries. With removal of reference to two stiles at points B and C and a wicket gate at point D, and inclusion as a limitation a 1.2m gap alongside a gate at point B.
- 4.2. In addition, should the Order be opposed, and the matter referred to the Secretary of State, the Council should actively support the confirmation of the Order at any public inquiry or hearing.

Reasons

- 4.3. In light of the requirements described at paragraphs 2.5 to 2.13 of the detailed report (summarised at paragraphs 2.18 to 2.23 above) and in accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in Appendix A to the report, (in particular paragraphs 3.1 to 3.22 in the Discussion), it is considered that there is sufficient evidence to conclude that part of public footpath Holmfirth 60 shown as A-E on the plan at item 1 in appendix B is of greater width than approximately 1.2 metres or 4 feet recorded in the Statement accompanying the current (1985) Definitive Map or the approximate width of 4 feet described in the Statement accompanying the first (1952) Definitive Map.
- 4.4. Further, that there is sufficient evidence to conclude that, on balance of probabilities, a public right of way on foot, with a width of 3-4 metres, between points A and E, has been deemed to have been dedicated (under section 31 Highways Act 1980, or dedicated at common law), subject only to limitations of a 1.2m gap alongside a gate at point B.

² The wording of section 31 Highways Act 1980 is included at paragraph 2.9 in the detailed report.