

Name of meeting: Planning Sub-Committee (Huddersfield Area)

Date: 17th 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

Purpose of report: **Members are asked to consider the** evidence and determine an application for an order under section 53 of the **Wildlife and Countryside Act 1981** 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 approximately 1.2 metres or 4ft. The footpath in question is shown on the appended plan. **Members are asked to make a decision on making an Order and seeking its confirmation.**

NB This report was previously considered at the Huddersfield Area Planning Sub-committee on 21 April 2021. Please see paragraph 9.2 for information about the previous decision and an explanatory note regarding re-determination of this matter.

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
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	Colin Parr – 8 April 2021
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Eamonn Croston – 9 April 2021
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 8 April 2021
Cabinet member portfolio	Not applicable

Electoral wards affected: Holme Valley South

Ward councillors consulted: Cllrs. Davies, Firth and Patrick

Public or private: Public

Has GDPR been considered? Yes. Evidence considered contains various personal data, included within witness evidence and other documents. Personal data has been redacted in documents contained within appendices to this report.

1. Summary

- 1.1. In September 2020 the Council received an application made on behalf of Peak & Northern Footpaths Society (PNFS) for a Definitive Map Modification Order (DMMO) to modify the Definitive Map and Statement of public rights of way ('the DMS') by varying the particulars contained in the Statement in respect of the width of part of public footpath Holmfirth 60 ('path 60') in the vicinity of Wolfstones Heights and Wolfstones Heights Farm, Netherthong.¹
- 1.2. An extract from the Definitive Map is found at item 3a in appendix B. An extract from the Statement is included at item 3b in appendix B. Path 60 is currently recorded in the Statement as approximately 1.2m or 4 feet wide. The application proposed that the width of part of path 60 from Wolfstones Road at grid reference SE 1269 0911 to a point at SE 1296 0911 should be recorded in the Statement as between 3 and 4 metres. These points were described in the application and on the plan accompanying the application (item 3 in appendix c) as points A and B respectively. The application, cover letter, accompanying plan and Certificates of Service of Notice are included in appendix C. The point lettered B on the plan that accompanied the application has been marked as point E on the plan of the route found at item 1 in appendix B.
- 1.3. During the investigation of the application, officers have identified various intermediate points of significance, including field boundaries and the position of limitations such as gates and stiles as recorded in the DMS. Those point are shown by letters B, C and D on the plan of the route at item 1 in appendix B. The point described by the applicant as point B is referred to hereafter as point E. Several further intermediate points are also referred to in the detailed 'Discussion of Evidence' accompanying this report, being points where buildings directly abut the route (A1, A2 and A3), or where there is a change in surface (B1).
- 1.4. Due to the scale of the Definitive Map and (1:10,000) and the thickness of the lines used to depict the public rights of way, the map only shows the general position of path 60 and not its exact position or width.
- 1.5. The part of path 60 that is the subject of this report is shown in the set of photographs at item 2 in appendix B. Briefly, the route commences at Wolfstones Road at point A and follows a tarmac surfaced driveway in an easterly direction towards Wolfstones Heights Farm. After passing the house, the route continues as a grass surfaced enclosed track to point E, where there is a stile. The whole route (i.e., between walls or fences) appears to have been considerably wider in the recent past than the width of approximately 1.2m recorded in the Statement. Available photographs taken in the period from 2000 to 2020 suggest a greater width showing a greater width than 1.2m may have been available for use. The length of path

¹ The locality of the path in question was historically within the township of Netherthong. It is currently within Netherthong Ward within the Holme Valley Civil Parish. Wolfstones Heights is closer to the *village* of Upperthong than the *village* of Netherthong and is sometimes referred to as being in Upperthong. It was thus described as such during informal consultations regarding the present application.

in question form part of a popular walk from Netherthong to an Ordnance Survey triangulation pillar (trig point) on the high ground a short distance to the west of point A at Wolfstones Height.²

- 1.6. The route falls largely with the registered title to Wolfstones Heights Farm (acquired by the current owner in 1995) and is bordered to the north by a separate property known as Wolfstones Heights. Although possibly once a single property (Wolfstones), for many years Wolfstones Heights and Wolfstones Heights Farm had been in separate ownership. The owner of Wolfstones Heights Farm purchased the abutting property in January 2017.
- 1.7. There have been a number of planning applications in recent years for development at Wolfstones Heights and Wolfstones Heights Farm, along with many improvements under permitted development rights. Work carried out has also included the erection, possibly by the mid-1990s, of automated electric gates at point A, with a stile alongside to bypass the gates. There is no record of installation of these gates, or any stile in that vicinity, having been authorised by the highway authority.
- 1.8. In 2014 planning permission was granted for development at Wolfstones Heights Farm that would require the diversion or extinguishment of part path 60 that runs along the driveway to the property. In 2015 an application was made for diversion under s257 of Town and Country Planning Act 1990 ('the 1990 Act'). The proposed development and the specifics of the diversion subsequently changed following the purchase of Wolfstones Heights and in response to informal consultation regarding the proposed diversion. The proposed alternative route was also physically constructed on the ground and made available on a permissive basis; it is currently signed as such. It is not necessary to go into detail of the proposed diversion in this report. However, the history of diversion proposals and the Council's current stance is explained briefly by way of background information.
- 1.9. The diversion proposals attracted considerable public attention. On 30 January 2020 the Council's Huddersfield Area planning sub-committee resolved to refuse the application for a diversion order under section 257 of the 1990 Act. Having not been successful in persuading the Council to make a public path diversion order under section 257 of the 1990 Act, the agent for the landowner made an application to the Secretary of State for Transport for a separate diversion Order under section 247 of the 1990 Act.³ On 19 August 2020 the Department for

² The land at Wolfstones Height, to the west of Wolfstones Road, is understood to have been a former public stone quarry included in the Netherthong Inclosure Award of 1829. A number of exhausted stone quarries are (or have been) owned by the Holme Valley Land Charity. Holme Valley Parish Council is the sole corporate trustee. While most sites have been sold off or leased out in recent years, the land at Wolfstones has been retained for the benefit of the community – for informal recreation. Although not currently recorded as a public right of way there is a well-used path leading off Wolfstones Road immediately opposite point A.

³ An application to the Secretary of State for Transport for an Order under s247 of the 1990 Act would normally only be made where it would be necessary to stop up or divert part of a public carriageway to allow the approved development to be carried out. The Council's similar powers under s257 of the 1990 Act only extend to public paths.

Transport's National Casework Team advised that a draft diversion Order had been made. Copies of that draft Order, plan and notice are included for information in appendix G.

- 1.10. On 16 September 2020 the Council's Strategic Planning Committee considered an officer report regarding the Council's stance on the Secretary of State's draft s247 Order. Members unanimously approved an officer recommendation for the Council to object. Due to the authority's objection, the Secretary of State will hold a Public Inquiry into that draft Order, should the applicant still wish to pursue the proposed diversion. The virtual Public Inquiry will commence on 24 August 2021.
- 1.11. On or shortly prior to 6 September 2020, i.e., immediately prior to the Strategic Planning Committee meeting on 16 September, fence posts were erected within the driveway to Wolfstones Heights Farm, running east from point A to approximately point A3. The fence narrowed the available width to approximately 1.2m, located along the northerly side of the pre-existing driveway. This is the width currently recorded in the Statement that accompanies the Definitive Map.
- 1.12. Application forms for a Definitive Map Modification Order (DMMO) were sent to PNFS on 7 September and an application to modify the DMS dated 30 September 2020 was received by the Council on or before 6 October 2020. The requirements regarding applications and requirements to serve notice are contained in paragraphs 1 and 2 of Schedule 14 to the Wildlife and Countryside Act 1981.
- 1.13. Notice was served on the registered owner of Wolfstones Heights Farm and Wolfstones Heights, as well as other identified occupiers of Wolfstones Heights Farm, also any unknown occupier of Wolfstones Heights (although the property abuts the way does not include land directly affected by the claim). A Certificate of Service of Notice was sent to the Council as required by paragraph 2 (3) of Schedule 14 of the 1981 Act. It is understood that the agent for the landowner has suggested notices may not have correctly served on all owners or occupiers of land to which the application relates, or that there is some other irregularity. No further assistance has been provided. For avoidance of doubt the applicant was directed by officers to serve duplicate notice on the land itself, addressed to the occupiers. This was done and the fact certified to the Council. A certificate dated 11 December 2020 is at item 6 in Appendix C.
- 1.14. The Council has a duty to consider the evidence contained with the application and determine the application as soon as reasonably practicable after receipt of the certificate. However, it also has a standalone duty to keep the DMS under continuous review and may make any Order as appears to it to be requisite following the discovery of evidence that the Map or Statement require modification. It thus has the discretion to waive strict compliance with the requirement

However, there is nothing in law to prevent the Secretary of State making an Order under s247 that only affects a public footpath.

on the applicant to serve notice on all owners or occupiers of land to which the application relates, (although no such deficiency has been identified).

- 1.15. In light of the considerable backlog of similar applications already received, it would be normal for there to be a considerable delay before the application would be considered. However, the position and width of footpath Holmfirth 60 are material considerations which may affect the Secretary of State for Transport's decision on whether or not a diversion Order should be made, and the area of highway to be stopped-up that might be shown on any s247 Order plan. A virtual Public Inquiry is to be held into the proposed diversion Order, opening on 24 August 2021. So, it is clearly appropriate to determine the DMMO application without delay.
- 1.16. The application was principally supported by 'user evidence statement forms' ('UEFs', otherwise 'WCA8 forms') completed by 14 individuals who claimed to have personally used footpath Holmfirth 60, collectively over several decades. Significantly, the width that was claimed to have been used was described in all cases as greater than the recorded approximately 1.2m currently recorded in the Statement. The forms also include questions regarding the presence or absence of stiles, gates or other structures or obstructions during the period of claimed use.
- 1.17. 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 public rights of way carried out in the early 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 in respect of an obstruction (automated electric gates at point A). The applicant also supplied copies of various other documents. This included partially redacted correspondence between various interested parties about the gates at point A, covering from the period from 2018 to 2020. This material had previously been disclosed in response to a Freedom of Information request.⁴
- 1.18. The Council has also considered further documentary evidence available to it, including Ordnance Survey and other maps, also other documents relating to the development and review of the DMS etc. Available photographs and aerial photographs have also been taken into consideration. An informal consultation exercise was also carried out in November / December 2020, resulting in the receipt of various additional evidence from users of the way and other individuals. Several people also asserted that the greater width had not been used by the public as claimed, or available for such use, due to the presence of various things stored or deposits placed, along the line of the route at various times.

⁴ Copies of various documents released are included at item 18 in appendix D.

- 1.19. 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 as submitted and additional comments received in response to the consultation exercise. These focus on the width claimed to have been available and actually used and the periods of claimed use, and evidence regarding gates, stiles and similar structures that may or may not have been in situ at various locations at various times.
- 1.20. Section 56 of the Wildlife and Countryside Act 1981 provides that a Definitive Map and Statement 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.
- 1.21. Where the map is conclusive evidence, as at any date of the existence of a highway (in this case a public footpath), 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.
- 1.22. There is no question as to the existence, as of the 'relevant date' of the current Definitive Map (22 April 1985) of a public footpath of a width of approximately 1.2m or 4ft within the general corridor depicted by the line marked on the Definitive Map. This public right of way was subject to various limitations and conditions as described in the Statement. However, this does not preclude the actual width of the public right of way actually being greater than approximately 1.2 metres at the relevant date of the current Definitive Map and Statement (1985), or that was recognised to exist at the relevant date of the original West Riding County Council Definitive Map (1952).
- 1.23. It is also possible that even if the evidence shows that the public's rights were historically confined to a width of approximately 1.2 metres or 4 feet, public rights may have been dedicated over a greater width than 1.2 metres by virtue of a presumed dedication under section 31 of the Highways Act 1980 (use of a way, by the public, 'as of right' for a full period of 20 years), or through dedication of a public right of way at common law..
- 1.24. Attention must also be given to limitations and condition such as gates and stiles that are depicted by symbols on the Definitive Map and described in the Statement. It is conceivable that if any such structures have been absent over a qualifying period a public right of way may have been dedicated (or re-dedicated) without such limitations. Should public rights have come

into existence over a greater width than 1.2 metres, any right of way might be subject to other limitations.

- 1.25. If a path 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. It is necessary to decide the preliminary question of whether the walls or fences were put up with reference to the highway or for some other reason.

2. Information required to take a decision

- 2.1. Members are asked to consider the report, the available evidence for and against application to vary the particulars recorded in the Statement, and the detailed 'Discussion of Evidence' found at item 1 in appendix A, and decide what Order, if any, to make.
- 2.2. It is the Council's statutory duty to maintain the Definitive Map and Statement and make any requisite Orders.
- 2.3. General guidance for members is included at Appendix 1.
- 2.4. The application is made under the Wildlife & Countryside Act 1981 ('the 1981 Act').
- 2.5. The Council should consider the available evidence and, by Order make such modifications to the Definitive Map and Statement 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.
- 2.6. The events described in section 53 (3) include (but are not limited to) the following:
 - Section 53 (3) (b): The expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway.
 - Section 53 (3)(c) (iii): the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows "that there is no public right of way over land shown in the map and statement as a highway of any description, or *any other particulars contained in the map and statement require modification.*"
- 2.7. Members must consider whether or not the evidence shows, on balance of probabilities that, at the relevant dates of the current or first Definitive Maps and Statements, the footpath known as Holmfirth 60 was of a greater width than approximately 1.2 metres currently recorded in the Statement.

- 2.8. Members should also consider whether or not a public right of way has been dedicated over a greater width than the approximately 1.2 metres or 4ft currently recorded. This may be through presumed dedication under section 31 of the Highways Act 1980 or dedication of a public right of way at common law, along with acceptance by the public.
- 2.9. Section 31 of the Highways Act 1980 provides that:
- “where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”.*
- 2.10. The twenty-year period for the purposes of section 31 would be calculated retrospectively from the date that any public right of way was brought into question. Where there is deemed dedication under section 31 of the 1980 Act, an Order could be made under section 53 (2) (b) of the 1981 Act.
- 2.11. Members are also requested to consider whether there has been dedication, or re-dedication, of a public right of way without the various limitations or conditions currently described in the statement for path 60 and indicated on the definitive Map.
- 2.12. Matters such privacy and security are not relevant to the question of the width of path 60 or the possibility of the dedication of a public right of way over a greater width than that currently recorded. Nor are the merits of any proposed diversion of any part of path 60. Further, the professional standing of any owners or occupiers is of no relevance to the question of the existence of public rights or any limitations. These are not matters to be taken into consideration.
- 2.13. Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, then the Council would not be able to formally confirm its own Order but 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.
- 2.14. After considering the evidence and the relevant criteria members have a number of options.
- 2.15. The first option for members is for the Council to make an Order to modify the Definitive Map and Statement to vary the particulars contained in the Map and Statement for footpath Holmfirth 60 to record a width for length A-E 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.

- 2.16. The second option for members is to refuse the application and to decide that the Council should not make any Order.
- 2.17. The third option is for members is for the Council to make another Order to modify the Definitive Map and Statement in line with members interpretation of the evidence.
- 2.18. Should the committee choose the first option at option at paragraph 2.15 or the third option at paragraph 2.17 it is requested that members also consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

3. Implications for the Council

3.1. Working with People

- 3.1.1. Not applicable

3.2. Working with Partners

- 3.2.1. Officers have engaged with landowners and user groups when gathering and investigating the evidence connected with this application.

3.3. Place Based Working

- 3.3.1. N/A

3.4. Climate Change and Air Quality

- 3.4.1. Work to ensure that the public rights of way network is are correctly recorded on the Definitive Map and Statement and are available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with Council's response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality.

3.5. Improving outcomes for children

- 3.5.1. Not applicable

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

- 3.6.1. 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 public rights of way and any other modifications that should be made to the legal record .
- 3.6.2. The Council must make a decision regarding the application and the legal width of path Holmfirth 60 making any Order that is requisite further to section of the Wildlife and

Countryside Act 1981. In accordance with the Council's delegation scheme, this is a matter for this committee.

- 3.6.3. Any person may make an objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order made would be forwarded to the Secretary of State and most likely be considered by an Inspector appointed by the Secretary of State, who may or may not confirm the Order.
- 3.6.4. The financial costs associated with the making or confirmation of an Order, or associated with referral of an opposed Order the Secretary of State, would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.

4. Consultees and their evidence

- 4.1. In late November 2020 ward members and others invited to provide evidence regarding the width of path Holmfirth 60 and have been informed of the report being brought to sub-committee.
- 4.2. Officers have contacted various statutory and local user groups, and the owners / occupiers of Wolfstones Heights Farm and Wolfstones Heights, requesting submission of any available evidence regarding the application. The landowner's agent was also informed of the consultation / request for evidence or further comments.
- 4.3. Also invited to offer evidence were various people who had previously contacted the Council to express a view on the merits of a previously proposed diversion of part of the path under investigation. This included people who were in favour of the diversion as well as people who were opposed to it. Such people were considered likely to be able to supply evidence regarding the width and use of the route in question.
- 4.4. Informal consultation notices / plans were also posted at both ends of the length of path 60 under investigation and on the Council's website.
- 4.5. As well as a request for general comments on the application, people were asked to provide responses to a number of specific questions. The text of the communication sent is included at items 1-3 in appendix E.
- 4.6. Responses were received from 20 individuals, including 1 person who had previously completed a UEF. 12 people described use, or availability for use, of a greater width than 1.2m. Use was over a number of years, with some people describing periods of use between 4 and 50 years. Information was also received about the presence or absence of gates, stiles and other structures along the route in question.

- 4.7. Several people who responded to the consultation did not supply evidence of relevance to the width of path 60 but instead raised other matters such as the merits of the proposed diversion, issues with other paths in the area, speculation regarding the motivations of the applicant, or about the professional or social standing of the owners / occupiers of the land. These comments are of no relevance to the matter in hand.
- 4.8. Several respondents did indicate that the part that been used was a narrower strip following the northernmost side. Further, that at various times, passage had not been available along the southern side due to presence of scaffolding and stored building materials, farming vehicles, and related equipment etc. Accounts were also given about gates and stiles on the route. The respondents who made such assertions were all associated in some way with Wolfstones Heights Farm. Several respondents who made such assertions were invited to provide any additional evidence, e.g., photographs, documents etc., that might support such claims; also, to clarify comments made about various structures. Only limited follow up submissions were received, clarifying the position of gates that were described (at point B, latterly moved to A3). No further substantive follow-up submissions have been received. ⁵
- 4.9. An extract from a township map of 1832 was also provided by one consultee. (The original of this map is in private ownership). See items 1a-1b in appendix D.
- 4.10. Anonymised summaries of the comments received regarding widths, and structures such as gates, are included in appendix A.
- 4.11. Comments and evidence received have been taken into consideration alongside other evidence discovered. Evidence is considered in the 'Discussion of Evidence' at item 1 in appendix A, which should be read in detail.
- 4.12. In general, comments support the applicant's case that the public right of way is 3-4m wide, or certainly between the physical boundaries indicated in photographic and map evidence. Assertions submitted regarding the unavailability of the southern side of the route are not generally supported by documentary evidence and are at odds with claims of numerous people, who indicated that the whole width between physical boundaries was generally available / used.
- 4.13. The evidence also indicates the existence of a gates / a fence, later replaced by a pair of gates, at or near point B. A stile is recorded at this location in the current DMS. While electric gates are referred to by several respondents, along with a 'bypass' stile', the gates amount to an occasional obstruction of the existing PROW, with most consultees not having encountered closed gates. Evidence regarding gates and other structures is considered at length in the

⁵ Several respondents who objected to the application were also asked if they were content for their detailed submissions to be included more or less verbatim in the appendices to this report, for the assistance of members. No responses have been received.

detailed 'Discussion of Evidence' at item 1 in appendix A. The submissions, when considered alongside all other evidence available, suggest that other recorded structures have been absent for several decades (including other gates and stiles at points B, C and D).

- 4.14. Any decision should be based on all the available evidence and not the level of support or opposition to proposed modification of the Definitive Map and Statement.

5. Next steps

- 5.1. If an Order is made, it will be advertised in the local newspaper and notices placed on site. Copies of the notice and Order would be sent to landowners and various statutory and non-statutory consultees. Anyone may submit a written objection to the Order during the relevant notice period (minimum 42 days).
- 5.2. If no duly made objections are received, or if any objections made are withdrawn, the Council could confirm its own Order.
- 5.3. If objections to an Order are received and not withdrawn an Order must be referred to the Secretary of State for Environment, Food and Rural Affairs who will make a decision as to whether or not an Order should be confirmed. That would normally involve the appointing of an Inspector and the holding of a public local inquiry to hear the evidence. Alternatively, a case may be considered through an exchange of written representations or at an informal public hearing.
- 5.4. Should the Council not make any Order, the applicant may, within 28 days of service of notice by the Council of its refusal decision, appeal the decision to the Secretary of State. The Secretary of State may direct the Council to make an Order. (Wildlife and Countryside Act 1981, Schedule 14).

6. Officer recommendations and reasons

- 6.1. **Officers recommend that** members choose option 1 at paragraph 2.15. The Council should make a Definitive Map Modification to vary the particulars recorded in the Map and Statement in respect of the recorded width, with the addition and removal from the Statement of various limitations, as described at paragraph 2.15.
- 6.2. **Officers also recommend that**, 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

- 6.3. In light of the requirements described at paragraphs 2.5 to 2.13 and in accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in Appendix A to this report, (in

particular paragraphs 3.1 to 3.22 in the Discussion), it 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.

- 6.4. 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 described at paragraph 2.15 above.

7. Cabinet Portfolio Holder's recommendations

- 7.1. Not applicable

8. Contact officer

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9. Background Papers and History of Decisions

- 9.1. This report is accompanied by the following appendices:

Appendix 1 – Guidance to Members; Appendix A1 – Discussion of Evidence; Appendix B1 – Plan showing Holmfirth 60 at Wolfstones Heights Farm; Appendix B2 – Photographs of the route.

Details of all background papers can be found [here](#)

Appendix 1 – Guidance to Members
Appendix A – Discussion and Summaries of Evidence
Appendix B – Plans, Photographs and Definitive Map and Statement
Appendix C – Application for Definitive Map Modification Order
Appendix D – Documentary Evidence
Appendix E – Informal Consultation
Appendix F – Land Ownership
Appendix G – Section 247 Order

- 9.2. Previous decisions:

- 30 January 2020: Sub-Committee decision to refuse an application for an Order under s257 Town and Country Planning Act 1990 to divert part of footpath Holmfirth at Wolfstones Heights Farm.
- 16 September 2020: Strategic Planning Committee decision confirming the Council's stance regarding a Draft Order made by the Secretary of State for Transport under s247 Town and Country Planning Act 1990 proposing diversion of part of footpath Holmfirth 60 at Wolfstones Heights Farm.

- 21 April 2021: Huddersfield Area Planning Sub-committee. The Sub-Committee agreed: 1. To option 1 in the considered report to make a Definitive Map Modification Order to vary the particulars recorded in the Map and Statement in respect of the recorded width, with the addition and removal from the Statement of various limitations; and 2. That should the Order be opposed, and the matter referred to the Secretary of State, that the Council should actively support the confirmation of the Order at any public inquiry or hearing.
- *Note: 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 re-determination.*

This report, for consideration by members at the 17 June 2021 Sub-Committee meeting, is effectively the same report considered by members on 21 April 2021, save for the addition of this note regarding the decision of the committee on 21 April.

10. Service Director responsible

10.1. Sue Procter - Service Director, Environment, Economy & Infrastructure.