

Name of meeting: Planning Sub-Committee (Heavy Woollen)

Date: 4 August 2022

Title of report: Application for order to extinguish part of public footpath Denby Dale 82 at Top o th Close, Longroyd Lane, Upper Cumberworth. Highways Act 1980, section 118.

Purpose of report: Members are asked to consider an application for an order to extinguish part of public footpath Denby Dale 82 on the grounds that it is not needed for public use. 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
The Decision - Is it eligible for call in by Scrutiny?	No
Date signed off by <u>Director</u> & name	Colin Parr – 26/7/22
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Eamonn Croston 22/7/22
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Julie Muscroft – 22/7/22t
Cabinet member portfolio	N/A

Electoral wards affected: Denby Dale

Ward councillors consulted: Cllr Bamford, Cllr Simpson and Cllr Watson consulted

Public or private: Public

Has GDPR been considered? Not applicable

1. Summary

- 1.1 The council received an application from Mr & Mrs Johnson of Top o' th' Close to extinguish part of public footpath Denby Dale 82, under section 118 Highways Act 1980, on the grounds that it is not needed for public use.
- 1.2 The section of footpath to be proposed to be extinguished is shown by the bold solid line on plan 1. The location of the footpath is shown at appendix A. The footpath is currently open and available for use by the public.
- 1.3 The footpath is a cul-de-sac path that terminates at the property at Top o' th' Close This section of footpath was recorded on the original 1952 West Riding Definitive Map and on the current (1985) Definitive Map as only going to that property. (These are shown at appendix B)
- 1.4 Various historic Ordnance Survey Maps show a field edge path leading to an isolated property. Maps do not indicate a path continuing beyond the property.
- 1.5 Appendix C includes an aerial photo from 2000 before the current owners bought the property, the property was in ruins and the photograph gives no indication that the footpath was regularly used. A subsequent aerial photo from 2002 shows the property when work was in progress, a vehicular access had been opened along the line of the footpath to allow the building work. An aerial photo from 2006 show a new vehicular access has been constructed on a different alignment.
- 1.6 The land crossed by the whole length of the cul-de-sac footpath is within the same registered title as the dwelling at Top o' th' Close. Access to the property is not dependant on exercise of the public right of way.
- 1.7 The property was sold at auction and as far as the applicants are aware, the auction booklet had a note that a footpath existed along the field edge. The applicants cannot remember the footpath being mentioned on the property search, however property searches prior to 2016 did not include the footpath as a mandatory question. Two planning applications were made and although officers cannot obtain full details due to the time lapsed, we can see the decisions. Application 2001/90325 does not mention any footpaths but on application 2001/93724 a standard footpath note is listed, however this could relate to the access on Longroyd lane which is also a footpath
- 1.8 PROW has also received a letter from the neighbours of the applicant who has lived in their property since 1972. They were aware of the original owners of Top o' th' Close and believe that the land in front of the property was grassland which was cut for silage. The access was then via a wooden gate. Before the applicant purchased the property, the neighbours walked a lot having a dog. To the best of their knowledge, they have not seen members of the public use the route to Top O Th Close, despite seeing many people use the other paths especially Longroyd Lane which is part of the Kirklees Way.
- 1.9 The applicants have supplied various photographs some of these are shown at App D

1.10 PROW received one request regarding an obstruction in April 2018. One of the definitive map officers met the landowners on site to discuss reopening. The applicants removed the obstructions, opened the path and this was completed in May 2018. As far as we can tell no other requests regarding this link of footpath Denby Dale 82 have been received

2. Information required to take a decision

- 2.1. The Council may make and confirm an extinguishment order under Section 118 of the 1980 Act if it considers that it is expedient to do so when the following criteria are met:-
- a) it is expedient to stop up the path on the grounds that it is not needed for public use.
 - b) it is expedient to confirm the order having regard to the extent that the path would be likely to be used by the public. Also having regard to the effect that the closure would have on land served by the way, account being taken of the provisions for compensation.
 - c) Any temporary circumstances preventing or diminishing the use of the path shall be disregarded.
 - d) When seeking confirmation, the Council must have regard for any material provision of any Rights of Way Improvement plan (ROWIP) for the area
- 2.1. Section 118 of the Highways Act 1980 gives an authority the power to extinguish footpaths, bridleways or restricted byways if it is satisfied that the relevant criteria are satisfied.
- 2.2. Account must be taken of the effect of the order on the rights of the public as described above at 2.1.
- 2.3. Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 7 deals with changes to the public rights of way network.
- 2.4. An extract of the executive summary of the ROWIP is appended at App D.
- 2.5. Option 1 is to decide to refuse the application to make the order.
- 2.6. Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 118 of the Highways Act 1980 **and only to confirm it if unopposed**, but to defer its decision on sending any opposed order to the Secretary of State at DEFRA.
- 2.7. Option 3 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 118 of the Highways Act 1980. 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.

- 2.8. Option 4 is to authorise the Service Director of Legal, Governance & Commissioning **to make** an Order under section 118 of the Highways Act and to confirm it if unopposed, but if opposed, to submit the Order to the Secretary of State requesting confirmation, without actively supporting the confirmation of the opposed Order. This would authorise confirmation of the Order by the Council if unopposed or forwarding an opposed Order to the Secretary of State to determine, where promotion of confirmation of the Order at inquiry or hearing (or via written representations) may be undertaken by another party and where the Council would look to fulfil its administrative role in proceedings. It would passively support its Order; however, the Council would look to the applicant to pursue confirmation

3. Implications for the Council

3.1. Working with people

There has been public consultation regarding this application.

3.2. Working with partners

not applicable

3.3. Place based working

Not applicable

3.4. Climate change and air quality

Promoting walking and other green transport and providing better facilities for physical activity works towards local and national aims on healthy living, climate change and air quality .

3.5. Improving Outcomes for Children

See 3.4

3.6. Financial Implications for the people living or working in Kirklees

3.6.1. The Council receives applications to change public rights of way

3.6.2. 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.

3.6.3. Any person may make an objection or representation to the order.

3.6.4. 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.

3.6.5. Costs would be reduced if the Council only passively supports confirmation of an opposed order or takes a neutral position (as described at paragraphs 2.8 above). For example, due to a reduced need for legal representation and less expenditure of officer time if preparing for a public inquiry

3.6.6. 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.

3.7. **Other (eg Legal/Financial or Human Resources) Consultees and their opinions**
Not applicable

4. **Consultees and their opinions**

4.1. The applicants contacted local user groups prior to submitting this application and these responses were submitted with the application and these were as follows:-

- Huddersfield Rucksack Club replied considering the facts that the path is not a thoroughfare and does not lead to a view point we see no reason why in our opinion it should remain open. Whilst we would normally oppose the proposed closure of any longstanding footpath in use, we do not see the merit in this case
- Huddersfield Ramblers replied that the path is a cul-de-sac and therefore of limited use in the wider network and the path does not lead to any landmark or feature of historical, archaeological or cultural interest. For these reasons Huddersfield Ramblers would be unlikely to object.
- Denby Dale Walkers are Welcome feel the request is very reasonable and have no objections to your application for a footpath extinguishment order

These groups were also consulted by the Council during the preliminary consultation.

4.2. 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 and user groups, as well as ward councillors.

4.3. Cllr Watson stated that he can see no difficulty with this given it is effectively a dead-end path.

4.4. Huddersfield Rucksack club replied to the consultation and after consulting members stated that no one knows of this path and we do not object to its extinguishment.

4.5. Peak and Northern footpath society (PNFS) responded that they would likely object to any order to extinguish Denby Dale footpath 82. In our preliminary consultation Prow stated that the section of footpath had not been used for many years. PNFS stated that no evidence has been supplied to substantiate this claim and they are not convinced that it meets the criteria for Highway Act section 118.

4.6. Prow subsequently checked records of requests and complaints received for both the general correspondence on the footpath and in the Highways ROSS call system. No further requests were found. Highways ROSS is the call logging system that has been in use since 2007 and in which Prow and other Highways issues are logged.

- 4.7. Prow responded to PNFS with details of the aerial photos. Prow also contacted the landowners to check if they had seen people use or trying to use the path from when they purchased it. They cannot recall seeing anyone.
- 4.8. The Police Designing Out Crime Liaison Officer has no concerns about this proposal.
- 4.9. KCOM has no apparatus at this location.
- 4.10. Yorkshire Water confirmed that the water mains network is not affected by the proposed footpath extinguishment
- 4.11. No response or no objection was received from Kirkburton Parish Council, Open Spaces Society, Auto Cycle Union, CTC, Byways & Bridleways Trust, Kirklees Bridleways Group, WY Police, WY Fire, WYAS, WYPTE, Atkins, MYCCI, Road Haulage Association, National Grid, BT, NTL, & YEDL.

5. Next steps and timelines

- 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 4 at 2.7 above and give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under section 118 of the Highways Act 1980 but without actively supporting the confirmation of the opposed Order
- 6.2. Officers consider that the relevant criteria above are satisfied, that the footpath is not needed for public use and it is not likely that the footpath will be used. The footpath is not required for access to the property. It does not lead to a place of popular resort such as a viewpoint or beauty spot, or other feature of historic or cultural importance. There is no indication that the house at Top o' th' Close is of any notable historic or architectural interest in itself.

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

7.1 Not applicable

8. **Contact officer**

Phil Champion, Definitive Map Officer, Public Rights of Way

9. **Background Papers**

9.1 Appendices

9.1.1 Plan 1 proposed extinguishment plan

9.1.2 App A Location plan

9.1.3 App B Extract of the 1952 and 1985 definitive maps

9.1.4 App C Aerial photos

9.1.5 App D Photos provided by the applicant

9.1.5 App E ROWIP extract

10. **Service Director responsible**

Service Director: Commercial, Regulatory & Operational Services; Economy & Infrastructure Directorate