

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

**Date:** 17 August 2017

**Title of report:** Submission of opposed definitive map modification order to the Secretary of State (DEFRA) and the council stance on its determination. Batley public footpath 71, Hey Beck Lane

**Purpose of report:** Members are asked to note the requisite submission of an opposed definitive map modification order (“DMMO”) to the Secretary of State DEFRA, to add a public footpath to the definitive map and statement, as shown between points A & B on the plan ‘A’ attached to this report; **and to determine the stance** to be taken by the council as the order making authority in the determination process undertaken on behalf of the Secretary of State.

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  Is it also signed off by the Service Director for Financial Management, IT, Risk and Performance?  Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Joanne Bartholomew on behalf of Naz Parkar 27 July 2017  Yes. Eamonn Croston on behalf of Debbie Hogg. 24 July 2017  Julie Muscroft 27 July 2017
Cabinet member <a href="#">portfolio</a>	N/A

**Electoral wards affected:** Batley East

**Ward councillors consulted:** Cllrs. M Akhtar, F Fadia & A Stublely notified of the SOS direction and the opposed order.

**Public or private:** Public

## 1. Summary

- 1.1 The Secretary of State directed the council to make a definitive map modification order (“DMMO”), this was reported to the sub-committee and authorised on 6 April 2017.
- 1.2 The DMMO, if confirmed as made by the Secretary of State will add Batley footpath 71, at Hey Beck Lane, to the definitive map and statement, as shown in Plan A.
- 1.3 The order made on 15 May 2017 attracted an objection from Mr Lilley, the landowner, appended at App A.
- 1.4 The council must submit the opposed order to the Secretary of State (DEFRA) in accordance with Schedule 15, 7 (1), Wildlife & Countryside Act 1981.
- 1.5 When submitting an opposed order, the council should indicate its own stance, as the order-making authority (“OMA”) on the determination of the order.
- 1.6 The council may support or oppose confirmation of the order, or, particularly when it has been directed to make an order, take a neutral stance.

## 2. Information required to take a decision

- 2.1 In October 2016 members considered an application for a definitive map modification order (DMMO) to add a public footpath to the definitive map and statement at Hey Beck Lane and to delete a public footpath from the definitive map at Hey Beck Lane.
- 2.2 After consideration, members resolved not to make an order to do either, on the grounds that there was insufficient evidence to support the application.
- 2.3 The applicant exercised his right to appeal to the Secretary of State DEFRA against the Council’s decision not to make any order
- 2.4 In March 2017 the Secretary of State issued her decision on the appeal, allowing the appeal in part. Her inspector concluded “*that a public right of way on foot has been reasonably alleged to subsist along the addition route*”, as shown in attached Plan A. However “*the available evidence falls short of what is necessary to trigger the making of an order to delete a public right of way*”.
- 2.5 The Secretary of State therefore directed the Council to make a DMMO to add the claimed route to the definitive map and statement as a public footpath.
- 2.6 The committee papers regarding the October 2016 and April 2017 decisions may be consulted.
- 2.7 When submitting an opposed order the council is expected to fulfil its role as order making authority (“OMA”), even in cases of direction.

2.8 It is the council's statutory duty to maintain the definitive map and statement.

### **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 (eg 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 forward an opposed order, for consideration by an inspector appointed by the Secretary of State, who may or may not confirm the order.

3.5.3 Previous committee report of 6 April 2017 noted at 5.3 that this matter would return for sub-committee consideration.

3.5.4 The Secretary of State expects to be informed of the council's stance and the reason for it taking that stance, if it is not in support of its own order.

3.5.5 Where an order has been made upon direction, a council may usually take a neutral stance.

3.5.6 The council is responsible as OMA for certain aspects of the DEFRA determination process, including administrative, legal and public inquiry or hearing accommodation costs.

### **4 Consultees and their opinions**

- 4.1 The full committee papers regarding the 13 October 2016 and 6 April 2017 reports and decisions are available.
- 4.2 Ward members were informed of the two previous committee processes and have been informed that the order has been opposed and that it is requisite to send it to the Secretary of State for determination, with a stance on its confirmation, as OMA.
- 4.3 The order was made on 15 May 2017. During the 28 day formal notice period the council received one objection.
- 4.4 Mr D Storrie made the objection on behalf of Mr R Lilley, the owner of land crossed by the order route. In it, Mr Storrie reiterated the objections already made to the proposed modification. The objection in full is at Appendix A.
- 4.5 The objection states that the addition of the order route would be perverse and that neither the current alignment of footpath 49 or the order addition route is ideal to the two neighbouring property owners.
- 4.6 **Officers would note** that Mr Lilley has previously denied the existence of these additional unrecorded public rights over his land. Landholders may apply to the council for an order to change public rights of way. We have no such application regarding the addition order route.

## 5 Next steps

- 5.1 In April 2017, sub-committee was informed that this matter would be brought before its members again after the order was made and advertised.
- 5.2 Members are asked to note the requisite submission of the opposed order and to determine the stance that the council takes in the Secretary of State's determination of the opposed order.
- 5.3 The order bundle will be prepared and sent to the Rights of Way Section at the Planning Inspectorate, which works on behalf of the Secretary of State, DEFRA.
- 5.4 A decision on confirmation would be reached after either exchange of written representations, a hearing, a public inquiry or an in-house decision.
- 5.5 As the order making authority ("OMA"), the council would take appropriate part in those processes.
- 5.6 The sub-committee has previously made a Council decision that the available evidence is insufficient to demonstrate, on the balance of probabilities, that the public footpath rights subsist. That Council decision was that a reasonable allegation had not been demonstrated by the evidence either.
- 5.7 A council neutral stance is appropriate and in accordance with the Planning Inspectorate's Rights of Way Section Advice Note no 1 and its guidance on procedures for considering objections to orders. Advice note 1 states:

5.7.1 *“In most cases, an OMA will not make an order unless it is satisfied that the circumstances justify it. Exceptions to this occur when an OMA declines to make the requested order but the applicant successfully appeals to the SoS. This will result, in the case of definitive map orders, in the OMA being directed to make the order [...]. In such circumstances, where the OMA has previously assessed the facts of the case and decided the making of an order is not justified, it may opt to oppose confirmation of the order or it may choose to adopt a neutral stance whereby it neither supports nor objects to confirmation.”*

5.8 The guidance states:

5.8.1 *“Local authorities do not always support orders that they have made. A local authority may have been directed to make an order by the Secretary of State, or new evidence may have come to light after the order was made which leads the local authority to change its view. If the local authority sends such an order to us the local authority should explain that it does not support it.”*

## 6. **Officer recommendations and reasons**

6.1 That the Council takes a neutral stance when it submits the order to the Secretary of State for determination.

## 7. **Cabinet portfolio holder’s recommendations**

7.1 Not applicable

## 8. **Contact officer**

Giles Cheetham, Definitive Map Officer

## 9. **Background Papers and History of Decisions**

9.1 872/1/MOD/181

9.2 As sub-committee report and decision : Item 10 of 13 October 2016

9.3 As sub-committee report and decision : Item 7 of 6 April 2017

## 10. **Assistant Director responsible**

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