

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

Date: 23 November 2017

Title of report: Modification of the definitive map and statement. Determination of public rights of way and their status at Huddersfield 231, Nether Moor, South Crosland, Huddersfield. Definitive map modification order application to record a public footpath (Add footpath and vary particulars).

Purpose of report: Members are asked to consider the evidence and decide on the requisite modification of the definitive map and statement of public rights of way. The status and existence of public right of way Huddersfield 231 has been questioned, and an application has been received for a definitive map modification order to record only part of the route, as a public footpath only. **Members are asked to make a decision** on making an 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 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	Naz Parkar 13 November 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Yes – Phil Deighton on behalf of Debbie Hogg 9 November 2017
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes – Deborah Wilkes on behalf of Julie Muscroft 8 November 2017
Cabinet member portfolio	N/A

Electoral wards affected: Crosland Moor & Netherton

Ward councillors consulted: Cllrs. E Hill, M Kaushik & M Sarwar.

Public or private: Public

1. Summary

- 1.1 The council received an application (at Background Document C) from the landowner at Nether Moor Farm in February 2014 for an order to modify the definitive map and statement of public rights of way to record the western part of Hud/231 as a public footpath, i.e. for that western part from Sandy Lane to public footpath 233 to be the only recorded public right of way at Hud/231. (DMMO file ref: 182).
- 1.2 The council also received a definitive map modification order application (at Background Document B) from the landowner to record the whole of Hud/231 as a public footpath. This application was originally submitted in 2009, but was returned to the applicant at their request and re-submitted to the council in Summer 2012 (DMMO file ref: 159). This DMMO application 159 was withdrawn by the landowner applicants in December 2016.
- 1.3 The evidence considered in preparation of this report includes submissions in both these applications as well as other available evidence. This includes documentary evidence, as well as user and other personal evidence
- 1.4 The depiction of Hud/231 in the current definitive map is as a solid line, which is not a notation recognised in the key. The current definitive statement describes Hud/231 as a “byway open to all traffic”. (Background Document A) The correct notation for a byway open to all traffic is a bold solid line with ‘v’ markings either side along its length. Officers recognise this anomaly.
- 1.5 The applicant alleges that there were other errors in the recording of Hud/231 by West Yorkshire Metropolitan County Council (“WYMCC”) in its production of the 1985 definitive map and statement.
- 1.6 Hud/231 was recorded in the definitive map and statement for the Huddersfield area prepared and published by WYMCC in 1975. It was shown as a “road used as a public path” in the definitive map and described as a “Footpath (CRF)” in the definitive statement. (Background Documents QQ & RR)
- 1.7 The applicant alleges that there were errors in the recording of Hud/231 by the County Council in its production of the definitive map and statement for the Huddersfield area prepared and published by WYMCC in 1975.
- 1.8 The council has to determine the definitive map modification order application. The council must consider the available evidence, before reaching a decision on making any requisite order to modify the definitive map and statement to show a correct record of public rights of way.
- 1.9 An investigation has taken place and a report with recommendations produced, in work commissioned by Kirklees council from Leeds council. The resulting report is

appended to this brief cover report, along with many associated documents listed in the appendices.

2. Information required to take a decision

- 2.1 Consider the appended report, the available evidence 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 Guidance for members is appended (Appendix 1).

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 PROW matters at Hud/231 over recent years and have been informed of the report being brought to sub-committee.
- 4.2 See the appended detailed report.

5 Next steps

- 5.1 If an 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 If the Council does not make any order, then the applicant may appeal by way of representations to the Secretary of State who may direct the Council to make an order. [WCA 1981, Schedule 14, 3 (4)]. The applicant has 28 days to appeal after notice is served by the council of its refusal decision.

6. Officer recommendations and reasons

- 6.1 **Officers recommend that** members authorise the Service Director, Legal, Governance and Commissioning to make and seek confirmation of a definitive map modification order (“DMMO”) to record Huddersfield 231 as a public bridleway under section 53 (3) c (ii) of the Wildlife & Countryside Act 1981, in accordance with the conclusions in the appended report.
- 6.2 The anomaly in the notation of route Hud/231 in the definitive map and statement warrants the making of an order to modify the formal record of public rights of way.
- 6.3 The application and discovered evidence warrant an investigation into the appropriate status, to be reflected in any order made to modify the formal record of public rights of way.
- 6.4 In conclusion, the appended report commissioned by the Council states at paragraph 5.2:
“It is considered that the documentary and user evidence demonstrates, on the balance of probabilities, that particulars relating to the recorded status in the map and statement and the line style shown on the Definitive Map require modification to show Huddersfield Path No. 231 as a public bridleway. Therefore an Order to modify the Definitive Map and Statement should be made to show Huddersfield

Path No. 231 as a bridleway under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.”

6.5 Section 53 (3) c (ii) states that an order to modify the definitive map and statement should be made upon **”(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows— (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”**

6.6 It is noted that the landowners’ outstanding application (DMMO file 182) sought an order to record a public footpath, limited to part of route Hud/231. The recommended order would recognise public pedestrian, as well as horse and bicycle riding rights over all of Hud/231 between Sandy Lane and Nether Moor Road.

7. Cabinet portfolio holder’s recommendations

7.1 Not applicable

8. Contact officer

Public Rights of Way publicrightsofway@kirklees.gov.uk

9. Background Papers and History of Decisions

9.1 872/1/MOD/159 & 182

9.2 Appendices

9.2.1 Appendix 1 – guidance for members.

9.2.2 Commissioned report

9.2.3 Published background documents.

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13494>

10. Assistant Director responsible

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