

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

Date: 13 December 2018

Title of report: Council stance on the definitive map modification order submitted to DEFRA. Public rights of way and their status at Huddersfield 231, Nether Moor, Huddersfield.

Purpose of report: On 1 November 2018 Members were asked to note an interim emergency decision made by Karl Battersby regarding the depiction of Huddersfield 231 on the Definitive Map. Members were informed that the consideration of the status of the way would be returned to the Planning Sub-Committee on 13 December 2018 to consider the Council's stance at the public inquiry into the status of the way. The status and existence of public right of way Huddersfield 231 has been questioned, and an order made, which has been formally opposed. This report concerns the council's stance in the determination of this matter by the Secretary of State at DEFRA in light of the interim emergency decision to record the way as a footpath and revert to the previous stance that the way is a bridleway.

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	Karl Battersby 29 November 2018
Is it also signed off by the Assistant Director for Finance, IT, and Transactional Services?	James Anderson on behalf of Eamonn Croston 29 November 2018
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Deborah Wilkes on behalf of Julie Muscroft 29 November 2018
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 On 23 November 2017, sub-committee made a decision to authorise the making of an order to record Huddersfield public right of way 231 at Nether Moor as a public bridleway.
- 1.2 This was reported to members following the investigation and production of a report commissioned by the Council.
- 1.3 A definitive map modification order (“DMMO”) to record Huddersfield 231 as a public bridleway was made, in line with the recommendation in the commissioned report.
- 1.4 The order was advertised and has been opposed by the landowner, who is also the applicant in DMMO files 159 & 182 relating to this matter.
- 1.5 Shortly before the council’s statement of case was due to be submitted to DEFRA, officers were advised that the position to be supported should be that the way be recorded as a public footpath, rather than a bridleway in the light of Government advice produced by the Secretary of State.
- 1.6 Due to the timing of DEFRA deadlines and the sub-committee meetings, interim emergency delegated powers were exercised by Karl Battersby to submit a case seeking the recording of Hud/231 as a footpath. Officers recognise that recording the route as a public footpath was not in line with the sub-committee decision of November 2017.
- 1.7 Members are asked to note that delegated decision to submit a statement of case indicating that Huddersfield 231 should carry only footpath rights, but officers latterly came to the conclusion that the council could in fact support the existence of the way as a bridleway.
- 1.8 A public inquiry is scheduled to commence in late January 2019. The inspector appointed by the Secretary of State to determine the order will consider the evidence.
- 1.9 The inspector may confirm the order as a bridleway, or modify and then confirm the order, or not confirm the order in which instance it would remain a BOAT.

2. Information required to take a decision

- 2.1 Consider this report and decide whether to revert to the previous position and stance on the order, that the way is a bridleway.
- 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.

5 Next steps

5.1 The determination of the DMMO by the Secretary of State follows a process which involves submission of various documents by the council and a public inquiry. The council will continue in that process, following the stance approved by members.

6. Officer recommendations and reasons

6.1 **Officers recommend that** members note the emergency decision, recognise the amended advice since then, and endorse its original stance that the way ought to be recorded as a public bridleway, in line with the sub-committee's decision of November 2017.

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.

10. **Assistant Director responsible**

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