

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

**Date:** 6 June 2019

**Title of report:** Applications for four definitive map modification orders, each to add a public footpath to the definitive map and statement, Highfields/Clare Hill, Huddersfield (DMMO application references 208, 209, 210 & 211).

**Purpose of report:** Members are asked to consider the evidence and decide on any requisite modification of the definitive map and statement of public rights of way. Four applications have been received for definitive map modification orders to record four public footpaths.

**Members are asked to make a decision** on the council's response to the applications and evidence received, which may potentially be the making of an order, and forwarding any order made to the Secretary of State, if opposed.

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	Karl Battersby 24 May 2019
Is it also signed off by the Acting Service Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Eamonn Croston 28 May 2019
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Deborah Wilkes on behalf of Julie Muscroft 24 May 2019
Cabinet member <a href="#">portfolio</a>	N/A

**Electoral wards affected:** Greenhead

**Ward councillors consulted:** Cllrs. Patterson, Sokhal, Ullah.

**Public or private:** Public

## 1. Summary

- 1.1 The council has received four applications, relating to the recording of alleged public rights of way under the Wildlife & Countryside Act 1981, to modify the definitive map and statement of public rights of way (“DMS”) by order, affecting land between Clare Hill and Highfields. Changes to the definitive map and statement of this kind are called definitive map modification orders (“DMMO)”. **App A** shows these DMMO application forms and plans, (file reference numbers 208, 209, 210 & 211).
- 1.2 The applications before members today relate to the routes in appended **Plan 1**.
- 1.3 A location plan is appended at **App B**.
- 1.4 The Council received the four DMMO applications on 4 January 2019 for orders to modify the definitive map and statement of public rights of way to record public footpaths on routes from points A to B (208), points B to C (209), points C to D (210), and points D to A (211) in the submitted application plans.
- 1.5 The land is west of Clare Hill, a public vehicular road, and east of definitive public footpath Huddersfield 343.
- 1.6 With each application and indicative plan, the Council received a copy of annotated “*Farrell and Clark* architect site plans” (**App A**), where the applicant has detailed the alignment of alleged public footpaths.
- 1.7 All affected land used to be part of the Council’s Ramsden Estate holdings. Part of the affected land was sold to Greenhead College in the mid-1990s, and part of that has recently been bought back by the Council and is to vest in Learning & Early Support. The Council also sold part of the Ramsden Estate land, directly off Clare Hill, to Clare Hill (Huddersfield) LLP, for development of housing.
- 1.8 The council has to determine the definitive map modification order applications. The council must consider the available evidence, before reaching a decision on whether it is requisite to make any order to modify the definitive map and statement. If the council makes an order, it must be advertised and notice given, with a period for formal objections to be made. If opposed, it would have to be submitted to the Secretary of State at DEFRA (“SoS”) to determine.
- 1.9 The council must decide what, if any, rights have been shown to satisfy the relevant test(s). This means that the council may make a different order or none at all, after appropriate consideration of the available evidence.
- 1.10 The evidence, whether for or against the application and any recording of any public right of way, is to be noted and considered.
- 1.11 When considering additions to the definitive map and statement of public rights of way, the council must make an order

1.11.1 If a public right of way is shown to subsist on the balance of probabilities,  
or

1.11.2 if the right of way is shown to be reasonably alleged to subsist.

## 2. Information required to take a decision

- 2.1 Members are asked to consider the report, the available evidence for and against the recording of public rights, and decide what action to take.
- 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**).
- 2.4 The application is made under the Wildlife & Countryside Act 1981.
- 2.5 The council should consider the available evidence and determine whether to make an order to modify the record of public rights of way when it is requisite in accordance with section 53 of the Wildlife & Countryside Act 1981.
- 2.6 Section 31(1) of the Highways Act 1980 provides that a presumption of dedication is raised where a way has been enjoyed by the public as of right (without force, secrecy or permission), without interruption for a full period of twenty years. The twenty-year period ends with an act that brings into question the public's right to use the way, and is calculated retrospectively from that time (Section 31(2) of the 1980 Act). Kirklees Council deposited a map and statement under section 31 (6) in 2012 for part of the land (**App G**).
- 2.7 Under Common Law there is no specific period of user which must have passed before an inference of dedication may be shown. However, a landowner must be shown to have intended to dedicate a right of way over the land. Public use can be used as evidence to show an intention to dedicate but it must be sufficient to have come to the attention of the landowners. If other evidence exists that showed that public rights were not intended, public use will not raise an inference of dedication.
- 2.8 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof for a final decision on an order is the civil one, that is, the balance of probabilities. If disputed, an order confirmation decision by the SoS would be made solely on the balance of probabilities.
- 2.9 Government guidance to local authorities is contained in DEFRA'S Rights of Way Circular 1/09, version 2
- 2.10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69304/pb13553-rowcircular1-09-091103.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf)

- 2.11 Members are advised that when a definitive map modification order is made, which attracts objections which are not withdrawn, then the council have to forward it to the Secretary of State at DEFRA for determination. The DMMO consistency guidelines, are issued to the Secretary of State's inspectors in the planning inspectorate
- 2.12 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517495/Full\\_version\\_February\\_2016\\_consistency\\_guides\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf)
- 2.13 The current landowners have not accepted that public rights subsist across the land, and two of them, Kirklees Council and Clare Hill (Huddersfield LLP), have not submitted any evidence relating to the existence of any alleged public rights. Greenhead College denies the existence of public rights across the land, and states that a locked gate and hedging made vehicle and pedestrian access onto the pitches more difficult from Clare Hill, where the college takes access to the pitches over Clare Hill (Huddersfield) LLP's land. Greenhead College stated that they sought to prevent unauthorised access and that at the current gap used to be hedging that, along with a locked gate, restricted access. (**App C** shows landownership boundaries of the fields down to Clare Hill, **App G** shows the Council's ownership in 2012).
- 2.14 Appended to this report are copy extracts of Ordnance Survey plans from 1893, 1906, 1918, 1959, 1985, 1994 and 2019, as well as a copy extract of the definitive map published in 1985 showing footpath 343. (**App D**).
- 2.15 Appended to this report are aerial photographs of the land from 2000, 2002, 2006, 2009, 2012 and 2018. (**App E**)
- 2.16 Appended to this report are photos taken by officers at the site in May 2019. (**App F**). These follow the alignments shown in the applications and the points where they enter/leave the fields.
- 2.17 No route was identified or claimed across this land in the definitive map and statement processes in the 1950s through to the 1980s. The land crossed by the application routes has been used for sports pitches, with the application routes skirting the edge of pitches and the mown area of grass. Access is indicated in the application at 4 points, two connecting to Huddersfield footpath 343, with one to Clare Hill, a public vehicular road and one to the rear and between 20 & 22 Cambridge Road.

- 2.18 In relation to the fourth access, to the rear and between 20 & 22 Cambridge Road, highways registry officers provided the plan appended at **App H** and stated:
- 2.19 “I have highlighted green the extent of adopted public highway in the vicinity of the DMMO app 208/10 and 209/10. The access road coloured orange is unadopted but is considered to be a public highway based on the available evidence which includes layout and a Traffic Regulation Order for Permit Parking. This is in the vicinity of the application 209/10 and 210/10 to add a footpath to the Definitive Map.”
- 2.20 Part of the land affected is proposed to be the site of a school. Members are asked to note that this proposed future use of the land cannot be taken into account by the Council as the surveying authority for public rights of way in considering these DMMO applications.
- 2.21 Officers contacted the applicant in early May 2019 to enquire about the provision of the “further evidence” he noted in the submitted application forms. Officers phoned again in late-May leaving a message, and phoned and wrote on 24 May to inform the applicant about the proposed report to sub-committee on 6 June. No further evidence has been submitted at time of writing.
- 2.22 After considering the evidence and the relevant criteria members have a number of options.
- 2.23 The first option for members is to refuse the applications and to decide that the Council should not make any order because there is insufficient evidence to demonstrate that a public right of way is reasonably alleged to subsist.
- 2.24 The second option for members is to conclude the evidence is sufficient for the Council to make an order to modify the definitive map and statement, to reflect unrecorded rights in relation to all the applications, and either confirm it or forward it to the Secretary of State if it is opposed.
- 2.25 The third option is for members is to conclude the evidence is sufficient for the Council to make an order to modify the definitive map and statement, to reflect unrecorded rights in relation to some of the applications, and either confirm it or forward it to the Secretary of State.

### **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 the public footpath claims and have been informed of the report being brought to sub-committee.

4.2 Officers have contacted the landowner, statutory and local user groups.

4.3 No further evidence has been submitted. Cllr Pattison noted that she is not aware of any unrecorded public footpaths here.

## 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 (written representations).
- 5.3 If an application is refused the applicant may wish to approach the Secretary of State by way of representations, who may direct the Council to make an order. [WCA 1981, Schedule 14, 3 (4)]. It would be for the Secretary of State to decide if there were any grounds for such an appeal. If the council refuses to make an order, the applicant has 28 days to appeal after notice is served by the council of its refusal decision.

## 6. Officer recommendations

- 6.1 **Officers recommend that** members choose the first option, described at paragraph 2.23, and decide that the DMMO applications are refused.

### Reasons

- 6.2 There is insufficient evidence to conclude that public rights subsist or are reasonably alleged to subsist.
- 6.3 The appended Ordnance Survey plans do not indicate any historically surveyed physical routes across this land. The appended aerial photos do not indicate any physical connecting routes across this land.
- 6.4 The appended officer photos show the alignments and accesses around the land from definitive public footpaths, Clare Hill and the area to the rear of 20-22 Cambridge Road.
- 6.5 There is sign of lines of tread taking access to the field, but no route has been constructed or provided.

6.6 No user evidence has been submitted, indeed no evidence discovered relating to a dedication of public rights of way, whether presumed under section 31 of the Highways Act 1980, inferred under common law, or relating to any legal event or other express dedication.

6.7 Officers walked the application routes in May 2019, when the appended officer site photos were taken. In itself, the ability to follow these alignments now is not sufficient evidence to conclude that public rights of way subsist or are reasonably alleged to subsist.

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

7.1 Not applicable

## 8. **Contact officer**

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## 9. **Background Papers**

9.1 872/1/MOD/208, 209, 210 & 211

9.2 Appendices

[https://drive.google.com/drive/folders/1hbU9Sv\\_c9F1TR8F1RetccZAYT2JwgoDv](https://drive.google.com/drive/folders/1hbU9Sv_c9F1TR8F1RetccZAYT2JwgoDv)

9.2.1 Appendix 1 – guidance for members.

9.2.2 Plan 1 – Plan depicting all application routes

9.2.3 App A – DMMO application forms & plans

9.2.4 App B – location plan

9.2.5 App C - land ownership boundaries

9.2.6 App D – Ordnance Survey extracts and 1985 definitive map extract

9.2.7 App E – Aerial photographs

9.2.8 App F – officer site photos May 2019 & photo plan

9.2.9 App G - Section 31 (6) deposit mapping.

9.2.10 App H – Highways registry plan.

9.2.11 Report summary

## 10. **Service Director responsible**

10.1 Service Director, Commercial, Regulatory & Operational Services