

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

Date: 18 July 2019

Title of report: Application for order to divert public footpath Holmfirth 146 (part) at Upper Millshaw Farm. Upper Millshaw Lane, Victoria, Hepworth. Highways Act 1980, section 119.

Purpose of report: **Members are asked to consider** an application for an order to divert part of public footpath Holmfirth 146. The public footpath route to be extinguished, and the proposed diversionary route to be created are shown on appended plans. **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 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 28 June 2019
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Yes: James Anderson, on behalf of Eamonn Croston 28 June 2019
Is it also signed off by the Assistant Director (Legal Governance and Commissioning)?	Yes: Julie Muscroft 27 June 2019
Cabinet member portfolio	N/A

Electoral wards affected: Holme Valley South

Ward councillors consulted: Cllrs. Davies, Firth & Patrick.

Public or private: Public

1. Summary

- 1.1 The council received an application from Mrs M C Whitaker for an order, to divert part of public footpath Holmfirth 146, under section 119 Highways Act 1980, which the applicant states is made in the interests of the landowner to facilitate the development and renovation of Upper Millshaw Farm and to provide security and privacy to the occupants of the new property. The application papers also identifies that the proposed diversion would be a safer, more convenient route for walkers.
- 1.2 The Council may make and confirm a diversion order under section 119 of the 1980 Act if it considers that it is expedient to do so when the following criteria are met:-
 - 1.2.1 The diversion must be in the interests of the owner, lessee or occupier of the land involved or in the interest of the public
 - 1.2.2 The alternative path to be provided should not be substantially less convenient for the public
 - 1.2.3 The point of the junction of the alternative path with other highways must not be altered unless the alternative path still ends on the same or a connected highway and it is substantially as convenient to the public.
 - 1.2.4 Any temporary circumstances preventing or diminishing the use of the path shall be disregarded.
 - 1.2.5 When seeking confirmation, the council must have regard for the effect which the diversion would have on public enjoyment of the path as a whole.
 - 1.2.6 When seeking confirmation, the Council must have regard for any material provision of any Rights of Way Improvement Plan ("ROWIP") for the area.
- 1.3 The effect of the proposal is shown on the appended Plan 1. The route to be diverted is shown by the bold solid line between points A & B, and the new route to be created is shown by the bold dashed line between points B & C. A pedestrian kissing gate for stock-keeping purposes is proposed in the application at point D on Plan 1. A pedestrian gate to British Standard BS 5709:2018 is already authorised on Holmfirth 146 immediately south of the proposed diversion by point B, and does not form part of this proposal. The Land Registry title plan for the land is shown at App A, the land north of point D is not registered, but the applicant has stated that it is under their control to the centreline of the track, which is called Mill Shaw Lane and carries the public bridleway Hol/134. The applicant landowner states that this unregistered land has been managed by them and their predecessors for many years.
- 1.4 The existing footpath through the yard at Upper Millshaw Farm would be affected by the development of new buildings and retaining walls. The proposed diversion would take the public footpath away from the immediate curtilage of the new house

development and would avoid the current necessity to negotiate a particularly steep slope to the rear of the yard to access the bridleway to the north. Land concerned is generally shown in photos appended at App D, this is a relatively remote rural path across farmland.

- 1.5 Any further ground works to provide a new public footpath are to be undertaken by the applicant to the satisfaction of the council.
- 1.6 Consent to the diversion proposal from owners and occupiers of the registered land have been provided to the Council. The Council may make an order affecting the proposed route over unregistered land north of point D, providing it gives appropriate notice. The applicant landowner has undertaken to indemnify the council against any claim for compensation relating to the application and/or order.
- 1.7 A preliminary consultation has been held on the proposal, the details are listed in section 4 of this report.
- 1.8 If members approve the making of an order under section 119, it would be advertised and if any objections are made and not withdrawn, the council could not confirm the order. Opposed orders could only be confirmed by the Secretary of State at DEFRA, which may involve a public inquiry.

2. Information required to take a decision

- 2.1 Section 119 of the Highways Act 1980 gives an authority the power to divert or 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 1.2.
- 2.3 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 5 deals with changes to the public rights of way network.
- 2.4 A location plan is appended at App B.
- 2.5 An extract of the executive summary of the ROWIP is appended at App C.
- 2.6 Option 1 is to decide to refuse the application to make the order.
- 2.7 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 119 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. (See 5.4 below).
- 2.8 Option 3 is to authorise the Assistant Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 119 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.

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 receives applications to change public rights of way, in this case to facilitate development already granted planning consent.

3.5.2 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.

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

3.5.4 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. The council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.

- 3.5.5 If the council confirms its own order, 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.
- 3.5.6 Development proposals, including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4 Consultees and their opinions

- 4.1 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.
- 4.2 In addition to that earlier consultation process, officers have consulted Cllr Davies, who was recently elected. Cllr Davies considered the diversion proposal footpath reasonable but that if the gate and footpath condition need to be improved then this should be a condition of the diversion. To date, Cllr Firth and Cllr Patrick have not expressed an opinion in favour or against the application.
- 4.3 Further to the original consultation, the applicants proposed minor changes to the proposed route to improve accessibility over the slopes up to the bridleway 134 at points C - D.
- 4.4 After this, there were no outstanding objections to the diversion proposal, however Peak & Northern Footpath Society (“PNFS”), which had stated, “*The response from the consultants is satisfactory, and we have no further comments at this stage.*”, has since clarified that it intends to oppose the diversion proposal due to the condition of public footpath Holmfirth 146 at the site and the condition of the gate that has already been authorised by point B on the existing Holmfirth footpath 146. PNFS is not satisfied with the steps that the landholders have taken to protect the existing public footpath.
- 4.5 No other objections were received at this informal stage from any PROW statutory consultees or user groups, which would be consulted if an order is made.
- 4.6 **Officers would note** that officer delegation powers may not be exercised where there is objection to a proposal at preliminary consultation stage. The PNFS opposition appears to be based on dissatisfaction about current ground conditions and a gate just before the start of the Order routes. The applicants have addressed

concerns raised in the PNFS's response to the preliminary consultation, amending the route to PNFS satisfaction, and have undertaken improvement works on the ground. The new route of footpath 146 would need to be to an appropriate standard for it to be signed off for public use, much later in the diversion process. Officers will liaise further with the applicants about the existing gate at point B and it appears reasonable to put the question of proposed diversion to members at this time. PNFS is a statutory consultee on such orders.

- 4.7 The consultation process attracted replies from utility companies, with the applicants being asked to contact them regarding any proposed works where appropriate.
- 4.8 The Police Architectural Liaison Officer had no adverse comments.
- 4.9 Huddersfield Rucksack Club had no objection.
- 4.10 No response or no objection was received from Open Spaces Society, Auto Cycle Union, CTC, Byways & Bridleways Trust, Kirklees Bridleways Group, Huddersfield Ramblers, WY Police, WY Fire, WYAS, WYPTE, Atkins, MYCCI, Road Haulage Association, National Grid, KCOM, Yorkshire Water, BT, NTL, & YEDL.
- 4.11 The applicants were asked for their observations on the preliminary consultation replies. The applicants sought to improve the proposed footpath around points C – D, reducing the gradient of the slope and confirming their ground works to improve the surface.

5 Next steps

- 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:
 - 6.1.1 option 3 at 2.8 above and give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under section 119 of the Highways Act 1980 to divert Holmfirth public footpath 146 (part) as shown in Plan 1, AND
 - 6.1.2 for a pedestrian gate to British Standard 5709:2018 at point D to be included in the order, rather than the kissing gate described in the application.
- 6.2 On balance, officers consider that the relevant criteria within paragraphs at 1.2 above are satisfied, that the diversion would be in the interests of the landowner/occupier and that the relevant criteria regarding protection of public benefits of the immediate rights of way network are satisfied. Officers consider that a kissing gate would not be the least restrictive appropriate option, in accordance with British Standard 5709: 2018, but that a pedestrian gate is warranted for stock control purposes. Officers note PNFS' concerns about footpath and gate condition; PNFS' informal objection is one made 'in principle', and PNFS does not actually raise objection to the detail of the proposed change to footpath 146.

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

- 7.1 Not applicable

8. **Contact officer**

Giles Cheetham, Definitive Map Officer, Public Rights of Way

9. **Background Papers**

- 9.1 872/6/Div/Hol146

9.2 Appendices

- 9.2.1 Plan 1 proposed diversion
- 9.2.2 App A Land Registry title plan
- 9.2.3 App B location plan (Post code: HD9 7TR)
- 9.2.4 App C ROWIP extract
- 9.2.5 App D photos of routes and gate/ground near point B.

10. **Service Director responsible**

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