

Report to TRO Panel

Public Path Diversion and Extinguishment Orders

s118 and s119 Highways Act 1980 - Diversion of Definitive Footpath 83 Crompton (part), Extinguishment of Un-recorded Highway at Heyhill Farm, Low Crompton Road, Royton and s53(2) Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement

Portfolio Holder:

Councillor A Ur Rehman, Cabinet Member for Neighbourhood Services

Officer Contact: Deputy Chief Executive – People and Place

Report Author: Jean Greer, Traffic Engineer
Ext. 4306

25 July 2019

Purpose of Report

To seek approval to the making of a Combined Diversion, Modification of Definitive Map and Statement Order for Footpath 83 Crompton (part) and an Extinguishment Order for the un-recorded highway at Heyhill Farm, Low Crompton Road, Royton as detailed in the report.

Executive Summary

The Council has received an application from the resident of Heyhill Farm for the diversion of Footpath 83 Crompton (part) and the extinguishment of an un-recorded highway at Heyhill Farm, Low Crompton Road, Royton, which both pass through the garden and farm fields adjacent to the farm buildings.

The application has been considered in the light of draft guidance on public rights of way passing through gardens and farmyards. It is considered that, in the interests of the resident and footpath users, the footpaths should be diverted/extinguished and that officers be given delegated authority to carry out the necessary procedures with a view to confirming the diversion and extinguishment orders in the event that no objections to the orders are received

Recommendation

It is recommended that the Council make :

- a. a Combined Public Path Diversion Order for the diversion of Footpath 83 Crompton (part) under Section 119 of the Highways Act 1980 as detailed in the report and officers be authorised to carry out the necessary procedures with a view to confirming the Order in the event that no objections are made to the Order.
 - b. Modification Order to the Definitive Map and Statement for Footpath 83 (part) as detailed in the report
 - c. Public Path Extinguishment Order for the un-recorded highway at Heyhill Farm, Low Crompton Road, Royton as detailed in the report under Section 118 of the Highways Act 1980 and officers be authorised to carry out the necessary procedures with a view to confirming the Order in the event that no objections are made to the Order.
-

**Public Path Diversion and Extinguishment Orders
s118 and s119 Highways Act 1980 - Diversion of Footpath 83 Crompton (part),
extinguishment of un-recorded highway at Heyhill Farm, Low Crompton Road,
Royton and s53(2) Wildlife and Countryside Act 1981 Modification of the Definitive
Map and Statement**

1 Background

- 1.1 The Application has been made by the resident of Heyhill Farm, Royton, via their Agent for the diversion of Footpath 83 Crompton (part) and an un-recorded highway, which passes through the rear of the grounds of the property.
- 1.2 The Government have issued 'Draft Guidance on diversion or extinguishment of rights of way that pass through gardens, farmyards and Commercial premises'. The Guidance describes the problem of Public Rights of Way which pass through contained spaces, such as private gardens. It states that 'Members of the public may not be comfortable following a path through a contained space of this type because doing so may be infringing on the privacy of a house owner'. So such path alignments can deter people from exercising the public's right to walk along the path'.
- 1.3 The Order-making and Confirming Authority are guided to weigh the interests of the landowner against the overall impact of the proposal on the public as a whole, noting that reducing or eliminating the impact of the current route of the right of way on the landowner, in terms of privacy, security and safety, are important considerations to which due weight should be given. In these limited circumstances only, the Order-making Authority should, therefore, be predisposed to make the Order provided it satisfies all the relevant tests for the making of an Order set out in the legislation.
- 1.4 The principal test is that the diversion should be substantially as convenient and seek to ensure a balance between the interests of the public, as users and the occupier and in relation to the extinguishment, that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.

2 Proposal

- 2.1 The route of Footpath 83 Crompton is shown on attached plan (764/A4/221/1). The path commences from the south at point C, to the north-east of Heyhill Yard/Paddock. It then crosses the property, passing close to the south-eastern edge of the farm house building, to the northern boundary of the yard/paddock at point B. Footpath 83 Crompton then continues north-east towards Low Crompton and also south-west to Low Crompton Road via the farm entrance (point A).
- 2.2 The un-recorded highway, at points G to H on the attached plan will be extinguished as otherwise, if the diversion of Footpath 83 is confirmed, it will not connect to any other length of highway. It is therefore considered to be expedient

that the path or way should be stopped up on the ground that it is not needed for public use.

- 2.3 Stiles for the ingress and egress of animals will be placed at points D, E and F. The applicant is putting in place all relevant stiles, plan number 764/A4/221/1 and closing the original stiles at his own cost. Stiles at points D and E and the diverted path will be on the neighbouring farm's land ie Mr Miller, Treetops Farm who has given his permission in writing.
- 2.4 The diverted path starts at point C to point F at the edge of the field over a new stile. This then commences between a post and wire fence and hedgerow to a new stile approx. 68m north to point E. The path then commences in a westward direction on the neighbour's land ie Mr Miller, Treetops Farm, to follow the field boundary, joining Low Crompton Road.
- 2.5 The applicant proposes a diversion along the boundaries of the field, this gives a clearly delineated path for the public use. The distance travelled around the diversion is minor and well provided. Any inconvenience to members of the public will be minimal.
- 2.6 Users of the diverted route will not be deterred from using the route which can occur if using the existing alignment which passes through a paddock and land associated with farm buildings at Heyhill Farm.
- 2.7 The required highway signage, from the metalised road and the waymarkers along the route will be paid for by the Applicant ie both installation, posts and the sign.
- 2.8 If the order is Confirmed it will be necessary to modify the Definitive Map and Statement for Footpath Crompton 83 (part). The Council have an obligation to continuously review the Map and Statement. The Public Rights of Way (Combined Orders) (England) Regulations 2008 allows the Order-making Authority to make a Combined Order for a diversion proposal and Definitive Map and Statement Modification. In light of the above it is considered that this is appropriate in this case.

Points of Note – Drawing 764/A4/221/1

Label	Grid Reference		Comments
	Easting (m)	Northing (m)	
A	392337	408841	
			Existing FP 83 Crompton (Part) leaves Low Crompton Road and extends from Point A to Point B in a general north-easterly direction for a distance of 32

			metres
--	--	--	--------

B	392368	408857	
			Existing FP 83 Crompton (Part) extends from Point B to Point C in a general south-westerly direction for a distance of 136 metres
C	392306	408735	
D	392334	408860	A New Style is to be installed at Point D
			Diverted FP 83 Crompton (Part) extends from Point D to Point E in a general easterly direction (on the northern side of the boundary feature), for a distance of 65 metres
E	392397	408852	A New Style is to be installed at Point E
			Diverted FP 83 Crompton (Part) extends from Point E to Point F in a general south-westerly direction (on the western side of the boundary feature), for a distance of 68 metres
F	392376	408790	A New Style is to be installed at Point F
			Diverted FP 83 Crompton (Part) extends from Point F to the aforementioned Point C in a general south-westerly direction for a distance of 92 metres, where it re-joins the existing route of the FP 83 Crompton
G	392330	408787	
			An unrecorded highway extends from Point G to Point H in a general north-easterly direction (on the eastern side of the boundary feature), for a distance of 60 metres
H	392357	408835	

Schedule 1
Footpaths to be Diverted – Drawing 764/A4/221/1

Road	Length
Footpath 83 Crompton (Part) Section as indicated on map) A-B-C	The whole width that is part of Footpath 83 Crompton commencing at Point A (Ordnance Survey Grid Reference (“GR”) SD92337 08841) and proceeding for a distance of 32 metres in a general easterly direction to Point B (GR SD92368 08857) then turning to a general south-westerly direction for a distance of 136 metres to Point C (GR SD92306 08735) for a total distance of 168 metres or thereabouts

Schedule 2
Diverted route of Footpath – Drawing 764/A4/221/1

Road	Length
Footpath 83 Crompton (Part) Section as indicated on map) D-E-F-C	A (surface description) 2 metre wide footpath commencing from Point D (GR SD92334 08860) proceeding for a distance of 65 metres in a general easterly direction to Point E (GR SD92397 08852) then turning to a general south-westerly direction for a distance of 68 metres to Point F (GR SD92376 08790) then in a general south-westerly direction for a distance of 92 metres to the aforementioned Point C (GR SD92306 08735) for a total distance of 225 metres or thereabouts

Schedule 3

Part 1 Modification of Definitive Map

Description of the path to be diverted (A-B-C):

From Point A (OSGR 392337e, 408841n), to Point B (OSGR 392368e, 408857n), to Point C (OSGR 392306e, 408735n)

Description of the path to be added (D-E-F-C):

From Point D (OSGR 392334e, 408860n), to Point E (OSGR 392397e, 408852n), to Point F (OSGR 392376e, 408790n), Point C (OSGR 392306e, 408735n)

Part 2 Modification of Definitive Statement

Statement to be amended

District and page number	Page Number	Status	Length	Description	Width
Crompton Footpath 83	5	Footpath	1269 metres	Path from Park Lane, Royton to Cowlshaw. Path proceeds east of Heyhill Farm towards a stile and then proceeds northwards along the western edge of a field boundary towards another stile whereby the path heads in a westerly direction along the north side of a field boundary and then heads in a north-easterly direction with a spur path on the north side of a field boundary linking to Low Crompton Road through a stile. Path follows north-east course through a further stile to field boundary below Low Crompton Farm (with spur path linking through gate with Low Crompton Road near the farmhouse) and thence turns south-east to follow field boundaries through four stiles to source of River Irk. Path then crosses field to stile at field boundary to further stile and thence south to link with occupation road at Cowlshaw (opposite No 47)	Approx 2 metres

Schedule 4
Footpath to be Extinguished – Drawing 764/A4/221/1

Footpath	Length
Un-recorded highway from points G to H	60 metres

3 Options/Alternatives

- 3.1 Option 1: To approve the recommendation.
- 3.2 Option 2: Not to approve the recommendation.

4 Preferred Option

- 4.1 The Preferred option is to approve Option 1. This will benefit the occupants of Heyhill Farm and the Users of the Footpaths and will test the proposal through the democratic process. Option 2 will maintain the status quo where the property has the liability of Footpaths passing through the paddock and farm yard and Users are inhibited when passing through the yard.

5 Informal Consultation

Parish Council

- 5.1 The Parish Council have no objection to the proposal.

Footpath Societies

- 5.2 The Ramblers Association have no objection to the proposal.

Ward Councillors

- 5.3 The Ward Councillors at the time of receiving the Application had been consulted and no comments were received. The Ward Councillors have been consulted again and Councillor D Williamson and Councillor D Murphy support the proposal.

Landowners

- 5.4 The closest landowner neighbour John Miller of Treetops Farm, Low Crompton Road, Royton was consulted and confirms in writing he agrees with the proposal.

6 Financial Implications

- 6.1 A Stopping Up fee of £2,500 (£2,611 in 2019/20) was paid by the applicant in 2018. The standard fee is intended to cover costs associated with each application including; legal works, signage, advertising and general administrative effort. As a result, no additional financial burden will fall upon the Council in dealing with this application. (Nigel Howard/Sadrul Alam)

7 Legal Services Comments

- 7.1 Under S119 of the Highways Act 1980 the Council may make a public path diversion order where it appears to it to be expedient, either in the interests of the owner, lessee or occupier of land crossed by the path, or in the interests of the public, that it should be diverted. The confirming body for the order must also be satisfied that the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or in the interests of the public and that the path will not be substantially less convenient to the public as a consequence of the order. The confirming body must also be satisfied that it is expedient to confirm the order having particular regard to the effect on public enjoyment of the path as a whole, the effect on other land served by the existing path and the effect of the new diversion on the land and other land held with it, to be crossed by the diversion.
- 7.2 To make an order under S118 of the Highways Act 1980, it must appear to the Council that it is expedient that the footpath should be stopped up on the ground that it is not needed for public use. The order shall not be confirmed, either by the Secretary of State (if the order is opposed) or the Council (if the order is not opposed) unless he or, as the case may be, the Council are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the footpath would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 of the Highways Act.
- 7.3 In the event of objections to the Orders, they will be sent to the Secretary of State for determination. If no objections are received it is recommended that officers be given delegated authority to determine whether it is expedient to confirm the Orders, as otherwise this decision would have to be taken at a future meeting of the TRO Panel, adding unnecessary delay to the process. (A Evans)

8 Human Resources Comments

- 8.1 None.

9 Risk Assessments

- 9.1 None

10 IT Implications

- 10.1 None.

11 Property Implications

11.1 None.

12 **Procurement Implications**

12.1 None.

13 **Environmental and Health & Safety Implications**

13.1 None.

14 **Equality, community cohesion and crime implications**

14.1 None

15 **Equality Impact Assessment Completed?**

15.1 Not Applicable

16 **Key Decision**

16.1 No.

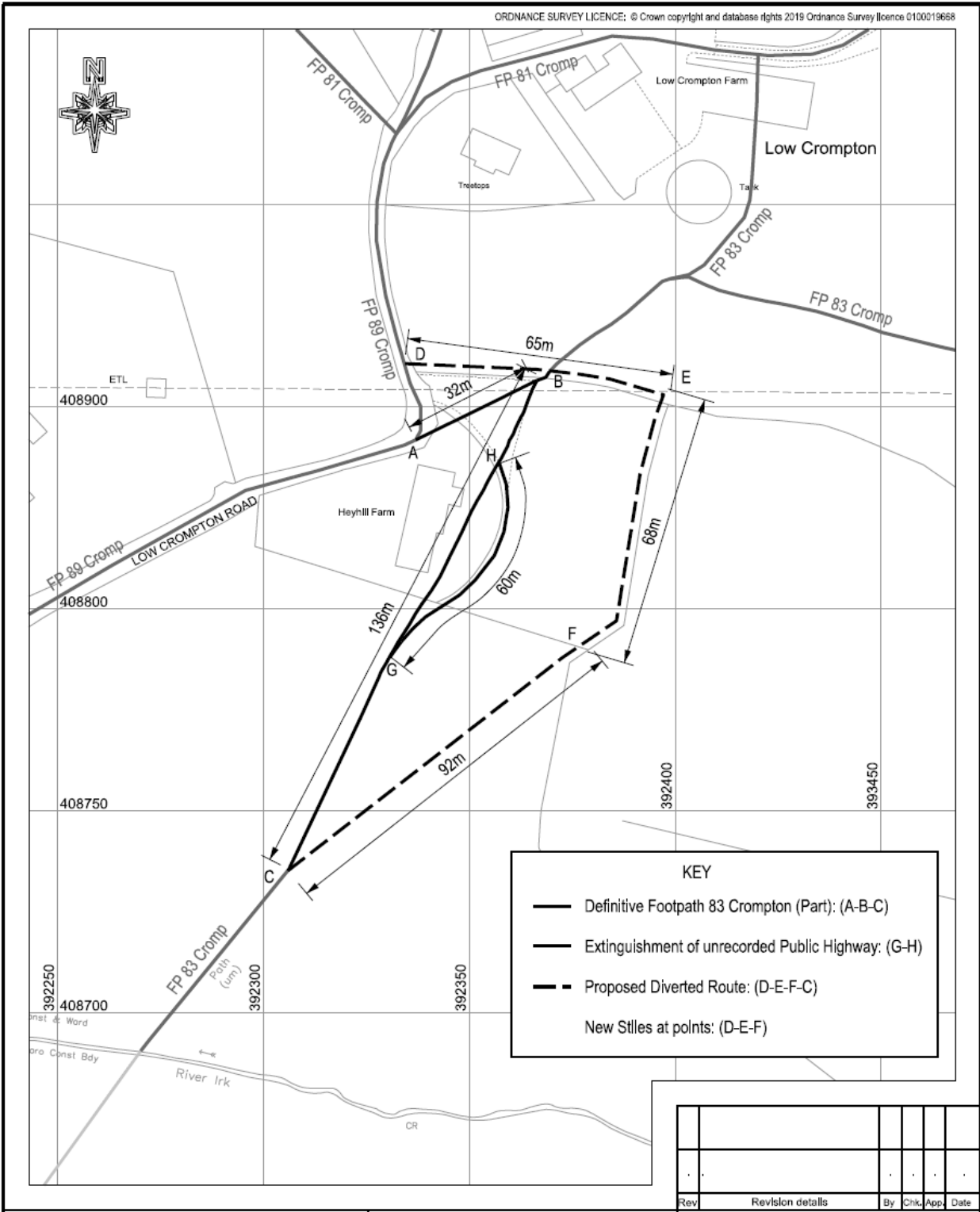
17 **Key Decision Reference**

17.1 Not applicable.

18 **Background Papers**

18.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

None.



KEY

- Definitive Footpath 83 Crompton (Part): (A-B-C)
- Extinguishment of unrecorded Public Highway: (G-H)
- Proposed Diverted Route: (D-E-F-C)
- New Stiles at points: (D-E-F)

Rev	Revision details	By	Chk	App	Date

<p>Oldham Council</p>	<p>Shaw & Crompton Parish Council</p>			<p>Title</p> <p>Diversion of Public Highway Combined Order s119 Highways Act 1980 Diversion of Public Footpath 83 Crompton (part), Extinguishment of unrecorded Public Highway s118 and Wildlife and Countryside Act 1981 S53(2) Modification of the Definitive Map and Statement</p>
	<p>Project</p> <p>Heyhill Farm, Low Crompton Road, Royton</p>			
<p>Unity partnership HIGHWAYS & ENGINEERING Henshaw House, Cheapside, Oldham OL1 1NY</p>	<p>Drawn by</p> <p>RW</p>	<p>Date</p> <p>06/19</p>	<p>Purpose of Issue</p> <p>Order Plan</p>	<p>Drawing No.</p> <p>764/A4/221/1</p>
	<p>Checked by</p> <p>JG</p>	<p>Date</p> <p>06/19</p>	<p>Scale at A4 size</p> <p>1:1250</p>	
	<p>Approved by</p> <p>GS</p>	<p>Date</p> <p>06/19</p>	<p>Rev.</p> <p>.</p>	

H:\SURVEY\Non-survey projects\PUBLIC RIGHTS OF WAY\PROW DIVERSIONS\Hey Hill Farm Low Crompton\Hey Hill Farm.dgn