

Report to TRO Panel

Definitive Map Modification Order

s53 – Wildlife and Countryside Act 1981 Claim to Register a Public Footpath on Land at The Meadows, Grotton

Portfolio Holder:

Councillor B Brownridge, Cabinet Member for Neighbourhood Services

Officer Contact: Deputy Chief Executive – People and Place

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Purpose of Report

To determine an Application (the Application) submitted under Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act), requesting that a Modification Order be made in respect of a route running over a parcel of land between The Meadows and Bridleway 194 Saddleworth (the application route), which is shown in purple on the attached location plan.

Executive Summary

The Council has a Duty to investigate and determine applications for Modification Orders submitted under the 1981 Act.

The Application has been received in respect of the application route.

The Application is supported by User Evidence Forms, completed by 25 individuals who claim to have used the application route for periods ranging between 22 and 55 years.

The application route is not recorded on the Definitive Map and Statement for the area and was not identified on either the draft or provisional maps prepared in the early 1950's.

The evidence in support of and against the Application must be considered and the Application determined in line with legal requirements as described in paragraph 1.5 of this report.

It is considered that there is sufficient evidence of use to raise a presumption of dedication under Section 31 of the Highways Act 1980 (the 1980 Act).

Recommendation

It is recommended that:

- a. A Modification Order in respect of the application route under s53 of the 1981 Act, should be made;
 - b. The Applicant and the Landowners be notified of the Council's decision; and
 - c. The Landowners be notified of their Right of Appeal under Schedule 15 of the 1981 Act.
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Definitive Map Modification Order
S53 – Wildlife and Countryside Act 1981
Claim to register a Public Footpath on land at The Meadows, Grotton to Bridleway 194
Saddleworth

1 Background

- 1.1 The Application was submitted by Mr Michael William Wild (the Applicant) on 15 July 2019. The Application was supported by 25 User Evidence Forms. The information contained in those Evidence Forms is summarised in Appendix 1 to this report.
- 1.2 The Application appears to have been prompted by challenges to Users of the application route made by one of the Landowners by erecting a sign, “Private Land”.
- 1.3 The basis on which the Application needs to be considered

It can be seen that the evidence in support of the application comprises of User Evidence which needs to be considered against the statutory provisions on s31 of the Highways Act 1980 on dedication.

s31 of the 1980 Act

Under s31 of the 1980 Act, a way is deemed to have been dedicated as a highway after 20 years use by the public unless there is evidence of a contrary intention. In order to establish a presumed dedication under this section, each element in the wording of s31(1) and (2) needs to be proved on the balance of probabilities.

“(1) Where a way over any land, other than a way of such a character that use if it by the public could not give rise at Common Law to any presumption of dedication, has been actually enjoyed by the public as of Right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the Right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise”.

(3) Where the owner of the land over which any such way as aforesaid passes:-

- (a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

To make a Modification Order to add the Claimed Footpath to the Definitive Map the Council needs to decide whether an event under s53 of the 1981 Act has occurred. If so, a Modification Order should be made. The “events” which are relevant to this application are those in s53(3)(b) and s53(3)(c)(i) of the 1981 Act. These provisions can overlap. “The discovery of evidence which shows that a Right subsists or is reasonably alleged to subsist” under s53(3)(c)(i) can include the discovery that the period of User required to raise a presumption of dedication has expired. Thus where an Application is made for the addition of a path on the grounds of User for a requisite period, the Application can be for an Order either under s53(3)(b) and/or under s53(3)(c)(i). An important difference between s53(3)(b) and s53(3)(c)(i) should be noted. The former does not contain words “reasonably alleged”. Unless the period has without doubt expired, the subsection does not apply. Under the latter, it is sufficient if it is no more than reasonably alleged that the way exists as a Public Right of Way.

1.4 The Applicants Evidence

The evidence submitted in support of the Application consists of User Evidence Forms completed by various individuals. In total 25 completed Right of Way Evidence Forms have been received in support of the Application.

It can be seen from the summary of User Evidence that:-

A number of people claim to have used the application route, all are local people.

Of those persons completing Evidence Forms most people referred to the existence of a sign during the period of their use informing members of the public that the application route was signed as Private. It is uncertain when this first appeared but the sign has only appeared recently i.e. there has been at least 20 years use of the application route by the persons who completed Evidence Forms before the sign appeared.

None of the persons who completed a User Evidence form have indicated that they ever sought or were granted permission to use the application route. A number have commented about the current owners having challenged people using the application route in the months prior to the Application being made.

The periods of use range from 22 to 55 years, with the earliest use being 1960. For those persons who have used the application route, the frequency of their use is high.

One supporting User Evidence Form from David Slater has a photograph attached, taken in 1997 taken of people using the application route and is clearly identifiable by a church in the background which is also shown on street view today.

1.5 Assessing the Evidence

The Applicant has applied for an Order to be made to add the application route of the Definitive Map and has submitted user evidence. The Council has to decide what it considers are the correct facts, and on the basis of those facts, whether an event under s 53(3)(c)(i) has occurred.

Use of the way is not in itself enough – it is the nature of such use that has to be established. All the provisions of s31 of the 1980 Act, together with the Common Law rules need to be carefully considered.

a) “use by the public”

Whilst the user evidence submitted comes mainly from residents who live in the area that does not mean that the use cannot be regarded as “use by the public”

In the case of *R v Inhabitants of Southampton 1887* it was held that use by the public “must not be taken in its widest senses; it cannot mean that it is a use by all the subjects of the Queen, for it is common knowledge that in many cases it is only the residents in the neighbourhood who ever use a particular road”

Use by those persons who completed User Evidence forms should be regarded as “use by the public”.

(b) “use as of right”

There has been a sign in place (precise dates unknown) informing people that the route was Private. Use would have meant ignoring the sign. However, the sign appeared recently and there has been 20 years use before the sign appeared.

None of those persons who completed User Evidence Forms have indicated being challenged themselves, except for some months prior to the Application being submitted.

On the face of it the use by those who completed User Evidence Forms appears to have been open, without force, and without the permission of the landowners.

(c) “period of 20 years To be calculated retrospectively from the date when the right of the public to use the way is brought in question, whether by a notice such as is mentioned in subsection (3) below or otherwise”

It is considered that the date when the public’s right was first called into question was when the Application was submitted. It appears that challenges from the current occupiers may well have prompted the Application. The period of consideration (for the purposes of presumed dedication under s31 of the 1980 Act) has, therefore, been taken from 1960 to 15 July 2019.

The use described in the User Evidence Forms extends throughout that period.

(d) “without interruption”

An interruption has been defined as the actual and physical stopping of the use of a way by the landowner or their Agent. Moreover, such interruption must be with the intention to prevent public use. It is not sufficient if the interruption is for some other purpose.

There seems to be no evidence that the landowners did not intend to dedicate the way ie no gates.

e) “unless there is sufficient evidence that there was no intention during that period to dedicate it”

There have in recent years been numerous legal rulings on what constitutes “sufficient evidence” that there was no intention to dedicate a highway. The leading case is *Godmanchester*, which was considered by the House of Lords in 2007. In that case the House of Lords ruled that the words “unless there is sufficient evidence that there was no intention during that period to dedicate” in s31(1) of the 1980 Act requires landowners to have communicated to users their lack of intention to dedicate and that must have been communicated at some point(s) during the 20 year period of use by the public.

For dedication at Common Law to arise the onus is on the Applicant to prove that intention.

2 Conclusion

2.1 A number of people have used the application route. Those persons appear not to constitute a limited Class and ought to be regarded as members of the public. Use of the path was called into question on 15 July 2019 when the application was made.

There is sufficient evidence to suggest that the application route has been used without interruption for at least twenty years prior to this date.

2.2 Schedule of Map Modification – Drawing

Label	Grid Reference		Comments
	Easting (m)	Northing (m)	
A	396523E	404828N	Start of Application Route
B	396602E	405070N	End of Application Route

2.3 Schedule of Modification of the Definitive Statement

District and Path Number	Page Number	Status	Length	Description	Width
293 Saddleworth	11 and 6	Footpath	277 metres	From Point A at the cul de sac end of The Meadows, Grotton (OS Map reference 396523E, 40482N) proceeding in a generally north easterly direction to Point B at Bridleway 194 Saddleworth (OS Map reference 396602E, 405079N)	1.3 metres

3 Options/ Alterations

3.1 Option 1: To approve the recommendation that a Modification Order be made in respect of a route running over a parcel of land between The Meadows and Bridleway 194 Saddleworth (the application route), which is shown in purple on the attached location map.

3.2 Option 2: Not to approve the recommendation

4 Preferred Option

4.1 The Preferred option is to approve Option 1.

5 Consultation Required

5.1 The application was originally approved by the Traffic Regulation Order Panel on 26 September 2019. However, it is a requirement of the 1981 Act that any relevant Parish Council must be consulted before the Council decides whether to make a Modification Order. Due to an oversight, Saddleworth Parish Council were not consulted before the Traffic Regulation Order Panel decided to make the Modification Order. Therefore, the Parish Council has been consulted and the application has been brought back before the Panel for reconsideration.

5.2 As mentioned in paragraph 5.1, Saddleworth Parish Council has been consulted and have made no comments. However, an email was received from Parish Councillor Richard Darlington which stated that he had moved into his address in February 1994 and the path provided access to the open countryside which he used frequently for exercise and enjoyment of nature. He considered it a sad loss when it was closed and he hoped it could be opened again for the benefit of residents in the area.

5.3 If the Modification Order is made details will be published in the press and various prescribed bodies will be notified of the Order. There will be a minimum period of 42 days for representations or objections to be made in respect of the Order. In the event of objections being received, the Order will be referred to the Secretary of State for consideration.

6 **Comments of Saddleworth West and Lees Ward Councillors**

- 6.1 The Ward Councillors have been consulted and Cllr Al-Hamdani responded that he had been consulted by both residents and the landowners and had recommended a number of actions to the landowners in order to make their case, and to the residents in terms of how to take forward their case to have continued access. There was nothing that he could see in the report which contradicted anything which he was told in those conversations, and so he had no comments to add to the report to the TRO Panel.

7 **Financial Implications**

- 7.1 This report contains no commitment to perform any kind of remedial or development work on the affected bridleway/footpaths.
- 7.2 As it stands, the proposal only commits the authority to spend approximately £1,200 on advertising costs. This will be funded from the Highways Operations Unity cost centre. (Nigel Howard)

8 **Legal Services Comments**

- 8.1 The basis on which the application needs to be determined together with an explanation of the relevant legal provisions is contained in the report. For use to be "as of right" it must have been of such a character as should have brought home to the owner of the land the fact that the public were claiming the right to use the way. In addition, whilst the owner of the land may establish his lack of intention to dedicate the claimed right of way by other means, the burden is on him to provide sufficient evidence that his lack of intention was brought home to those who were using the claimed right of way. (A Evans)

9 **Co-operative Agenda**

- 9.1 In respect of the Claim there are no Co-operative issues or opportunities arising and the proposals are in line with the Council's Ethical Framework.

10 **Human Resources Comments**

- 10.1 None.

11 **Risk Assessments**

- 11.1 None.

12 **IT Implications**

- 12.1 None.

13 **Property Implications**

- 13.1 None.

14 **Procurement Implications**

- 14.1 None.

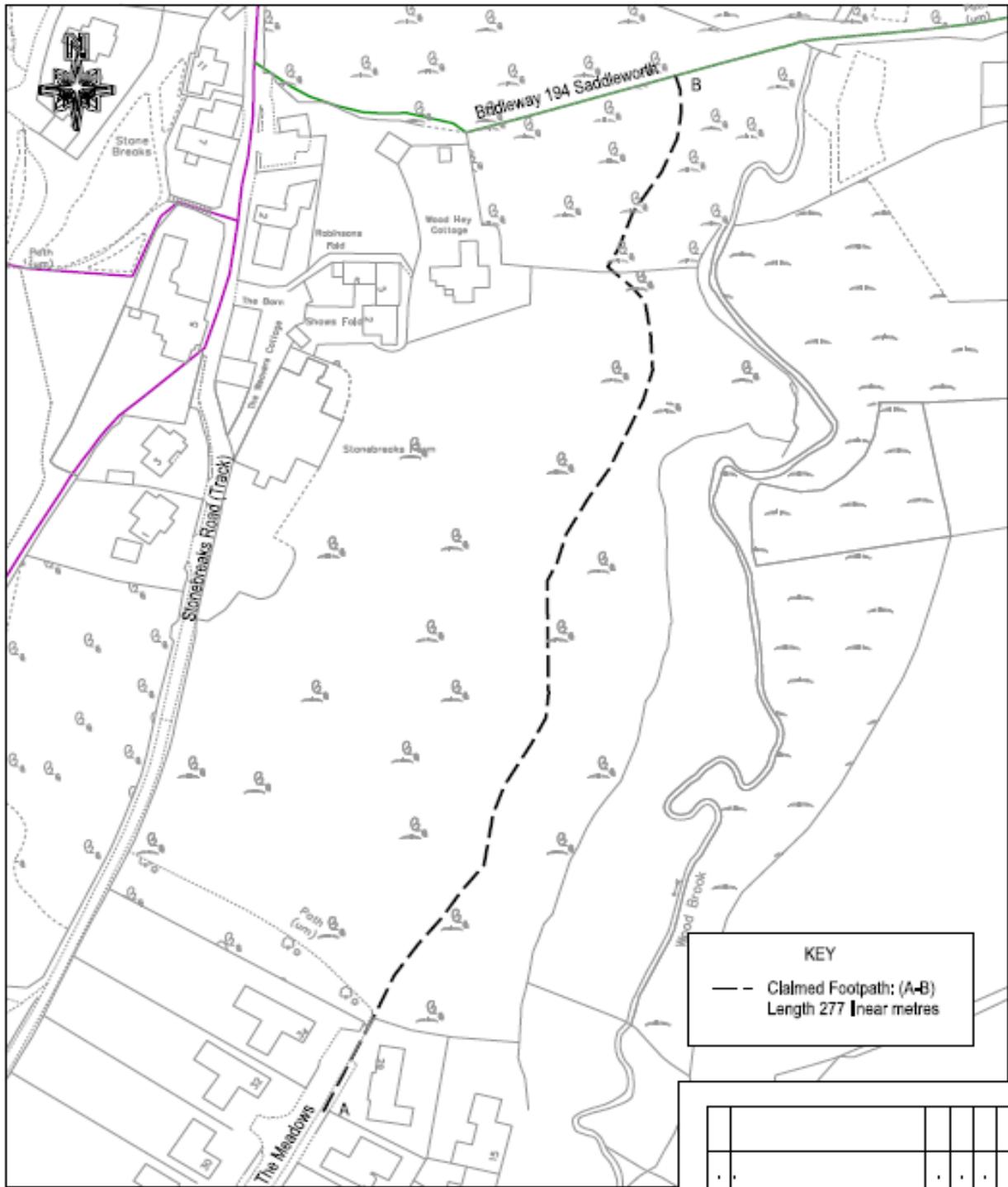
15 **Environmental and Health & Safety Implications**

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- 15.1 None.
- 16 **Equality, community cohesion and crime implications**
- 16.1 None.
- 17 **Equality Impact Assessment Completed?**
- 17.1 No.
- 18 **Key Decision**
- 18.1 No.
- 19 **Key Decision Reference**
- 19.1 Not applicable.
- 20 **Forward Plan Reference**
- 20.1 Not applicable.
- 21 **Background Papers**
- 21.1 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.
- 22 **Appendices**
- 22.1 Table 1 Summary of Supporting User Evidence Forms
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LIST OF CLAIMANTS COMPLETING FORM E

FOOTPATH THE MEADOWS GROTTON OL4 4LR TO BRIDLEWAY SPRINGHEAD

NAME	AGE	YEARS WALKED PATH
1. DONALD TAYLOR	65	55
2. DUNCAN JOHNSON	52	42
3. JOHN PURTILL	84	31
4. JEAN PIRTILL	80	31
5. KATHLEEN HODGES	78	44
6. MICHAEL WILD	76	31
7. JOHN LEYLAND	78	40
8. MARIANNE LEYLAND	76	40
9. DAVID SLATER	69	22 **
10. Cllr RICHARD DARLINGTON	86	24
11. ARNOLD ELLIS	79	30
12. MARGARET ELLIS	77	30
13. JOHN BLACKBURN	74	30
14. JEAN BLACKBURN	74	30
15. SUSAN VARCOE	62	30
16. LINDSAY WILD	43	30
17. GLENYS WILD	71	31
18. ANDREA KERSHAW	58	24 ***
19. DAVID HUTTON	71	36 ****
20. ANDREW KERSHAW	28	24
21. CHRISTINE WHEATLEY	61	26
22. THEO WHEATLEY	29	26
23. MICHAEL BIRD	72	50
24. LINDA SCHOFIELD	65	32
25. ROGER SCHOFIELD	67	32
26. ROBERT KERSHAW	61	24



KEY
 --- Claimed Footpath: (A-B)
 Length 277 linear metres

Rev	Revision details	By	CHK	Appr	Date



Unitypartnership
HIGHWAYS & ENGINEERING
 Henshaw House, Cheapside, Oldham OL1 1NY

Project The Meadows, Grotton		
Drawn by RW	Date 07/19	Purpose of Issue Order Plan
Checked by JG	Date 07/19	Scale at A4 size 1:1250
Approved by GS	Date 07/19	

Definitive Map and Statement Modification
 Order s53(3)(b) Wildlife and Countryside Act 1981
Footpath 293 Saddleworth - The Meadows, Grotton

Drawing No. **764/A4/222/1**