

Report to TRO Panel

Public Path Diversion Orders

s119 Highways Act 1980 and s257 Town and Country Planning Act 1990 - Diversion of Definitive Footpaths 118 and 185 Saddleworth (part), at The Old Vicarage, Streethouse Lane, Dobcross, and at Mount Sorrel, Mount Lane, Dobcross and s53(2) Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement

Portfolio Holder:

Councillor Barbara Brownridge, Cabinet Member for Neighbourhood Services

Officer Contact: Deputy Chief Executive – People and Place

Report Author: Jean Greer, Traffic Engineer

Mobile: 07970601133

26 November 2020

Purpose of Report

To seek approval to the making of a Combined Diversion, Modification of Definitive Map and Statement Order for Footpaths 118 Saddleworth (part) and 185 Saddleworth (part) at The Old Vicarage, Streethouse Lane and Mount Sorrel, Mount Lane, Dobcross as detailed in the report.

Executive Summary

The Council has received an application from the owners who own both The Old Vicarage, Streethouse Lane and Mount Sorrel, Mount Lane, Dobcross for the diversion of Footpaths 118 Saddleworth (part) and 185 Saddleworth (part), 118 Saddleworth passes through physical buildings of The Old Vicarage and 185 Saddleworth passes through the proposed development and garden of Mount Sorrel.

The application has been considered in the light of draft guidance on public rights of way passing through gardens and a new development. It is considered that, in the interests of the resident and footpath users, the footpaths should be diverted and that Officers be given delegated authority to carry out the necessary procedures with a view to confirming the diversion 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 118 Saddleworth (part) pursuant to Section 119 of the Highways Act 1980 and a Combined Public Path Diversion order for the diversion of Footpath 185 Saddleworth (part) pursuant to s257 Town & Country Planning Act 1990 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 Footpaths 118 (part) and 185 (part) as detailed in the report.

Public Path Diversion Orders

s119 Highways Act 1980 - Diversion of Footpath 118 Saddleworth (part) and s257 Town and Country Planning Act 1990 at The Old Vicarage, Streethouse Lane and Footpath 185 Saddleworth (part) at Mount Sorrel, Mount Lane, Dobcross 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 owners of The Old Vicarage and Mount Sorrel, Dobross, via their Agent for the diversion of Footpaths 118 Saddleworth (part) and Footpath 185 Saddleworth (part), Footpath 118 passes through the physical buildings at The Old Vicarage and Footpath 185 through the new development building at Mount Sorrel.
- 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". Therefore, such path alignments can deter people from exercising the public's right to walk along the path'. The new alignments take the paths away from any buildings and across farm fields.
- 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. Planning Permission has been granted for the development at Mount Sorrel and the two diversions will meet together.
- 1.4 The principal test is that the diversion should be expedient in the interests of the owner, lessee or occupier of the land crossed by the path or the public and that the path will not be substantially less convenient to the public in consequence of the diversion.

2 Proposal

- 2.1 The route of Footpath 118 Saddleworth (part) is shown on attached plan (PROW/A4/102). The path commences from the south at point A, to the north-west of The Old Vicarage. It goes through the physical buildings, to the north west to point B.
- 2.2 The route of Footpath 185 Saddleworth (part) is shown on attached plan (PROW/A4/102). The path commences from the south at point D, to the north west of Mount Sorrel. It goes through the farm yard, to the north west to point C.
- 2.3 Stiles for the ingress and egress of animals will be placed at points E for Footpath 118 Saddleworth and at point G and C for Footpath 185 Saddleworth. The applicant is putting in place all relevant stiles, and a field gate will be put in place at Point F, at their own cost, plan number PROW/A4/102.

- 2.4 The diverted paths start at point E at the edge of the field over a new stile. This then commences across open country and fields to point F through a field gate to Point G over a stile to Point C with a new stile, for 304m. The path then meets up with the existing Definitive Footpath Network
- 2.5 The applicant proposes a diversion through open country and along the boundaries of the field, this will give a clearly delineated path for the public use.
- 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 garden, property and near farm buildings and a farm yard at Mount Sorrel.
- 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 118 Saddleworth (part) and Footpath 185 Saddleworth (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 PROW/A4/102

Label	Grid Reference		Comments
	Easting (m)	Northing (m)	
A	398659	406287	
			Existing FP 118 Saddleworth (Part) leaves Streethouse Lane and extends from Point A to Point B in a general north-westerly direction for a distance of 49 metres
B	398632	406328	
			Existing FP 118 Saddleworth (Part) Point B in a general north-westerly direction
C	398363	406203	
			Existing FP 185 Saddleworth (part) extends for 102m in a south easterly and then southerly direction for 102m
D	398443	406169	
			Point D is at the junction with Mount Lane
E	398652	406285	
			A new stile is to be installed at Point E Diverted FP 118 Saddlewoth (Part) extends from Point E to Point F in a general westerly direction for a distance of 124 metres to meet diverted Footpath 185 Saddleworth (part)

F	392376	408790	A new field gate is to be installed at Point F Diverted FP 118 Saddleworth (Part) extends from Point F to the aforementioned Point E in a general easterly direction for a distance of 124 metres.
G	398444	406250	A new stile to be installed Point G joins Point F, for a distance of 88 metres
C	398363	406203	Point C joins Point G for a distance of 92 metres with a new stile at point C

Schedule 1

Footpaths to be Diverted – Drawing PROW/A4/102

Road	Length
Footpaths 118 and 185 Saddleworth (Part) Section as indicated on map) A-B and C-D	<p>The whole width that is part of Footpath 118 Saddleworth commencing at Point A (Ordnance Survey Grid Reference (“GR”) 398659E – 406287N) and proceeding for a distance of 49 metres in a general northerly direction to Point B (GR 398632E – 406328N)</p> <p>The whole width that is part of Footpath 185 Saddleworth commencing at Point C (Ordnance Survey Grid Reference (“GR”) 398363E – 406169N) and proceeding for a distance of 102 metres in a general south easterly and then southerly direction to Point D (GR 398443E – 406169N)</p>

Schedule 2

Diverted route of Footpath – Drawing PROW/A4?102

Road	Length
Footpath 118 Saddleworth (Part) Section as indicated on map) E-F and	A (surface description) 2 metre wide Footpath commencing from Point E (GR 398652E – 406285N) proceeding for a distance of 124 metres in a general westerly direction to Point F (GR 398532E – 406262N)
Footpath 185 Saddleworth (part)	A (surface description) 2 metre wide Footpath commencing from Point F (GR 398532E – 406262N) proceeding for a distance to Point C (GR 398363E – 406203N)

Schedule 3

Part 1 Modification of Definitive Map

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

From Point A (398659E – 406287N), to Point B (398632E – 406328N)

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

From Point E (398652E – 406285N), to Point F (398532E – 406262N), to Point G (398444E – 406250N), Point C (398363E – 406203N)

Part 2 Modification of Definitive Statement

Statement to be amended

District and page number	Page Number	Status	Length	Description	Width
Footpath 118 Saddleworth	6D	Footpath	322metres	Footpath commencing at its junction with Husteads Lane, Dobcross and proceeding in a south easterly direction across Mount Lane to its junction with Path No.116.	1.2m wide 2 wicket gates 1 field gate 1 stile
Amendment			407metres	Amendment Footpath commencing at its junction with Mount Lane, Dobcross and proceeding in a north westerly direction to its junction with Path No. 185.	2m wide 2 wicket gates 2 field gates 2 stiles
Footpath 185 Saddleworth	6	Footpath	917metres	Footpath commencing at its junction with Wall Hill Road and proceeding southward in a zig-zag manner to its junction with Mount Lane at Mount Sorrel with (1) branch proceeding north eastward to its junction with Path No.184 at Bankfield and (2) a branch proceeding north westward from Mount Sorrel to its junction with Path No.178	1.2m wide 3 stiles

Amendment			995metres	Amendment Footpath commencing at its junction with Wall Hill Road and proceeding southward and then turning north easterly to its junction with Path No. 118 with (1) branch proceeding north eastward to its junction with Path No.184 at Bankfield and (2) a branch proceeding north westward from Mount Sorrel to its junction with Path No.178	2m wide 5 stiles
-----------	--	--	-----------	---	---------------------

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 The Old Vicarage, Streethouse Lane and Mount Sorrel, Mount Lane 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 buildings and farmyard and Users are inhibited and at present unable to use the whole Footpath at The Old Vicarage when passing through the garden.

5 Informal Consultation

Landowners

5.1 Mr and Mrs Arthurs are the landowner of both properties.

6 Comments of Saddleworth North Ward Members

6.1 The Ward Members have been consulted and Councillor P Byre supports Option 1. Having experience of Footpaths through property I know how embarrassed walkers can be when finding themselves in one's garden especially in the present circumstances.

6.2 Councillor G Harkness supports the recommendation.

7 **Financial Implications**

- 7.1 A Stopping Up fee was paid by the applicant Mr & Mrs Arthurs in 2019. 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.

8 **Legal Services Comments**

- 8.1 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.
- 8.2 Section 257 of the Town and Country Planning Act 1990 enables the Council to authorise the stopping up or diversion of any footpath or bridleway if it is satisfied that it is necessary to stop up or divert the footpath or bridleway in order to enable development to be carried out in accordance with planning permission granted under the Act. In the event of objections the application will be referred to the Secretary of State who must be satisfied that it is necessary to stop up or divert the footpath or bridleway and who has a discretion as to whether to confirm the stopping up/diversion. In the exercise of that discretion the Secretary of State is obliged to take into account any significant disadvantages or losses flowing directly from the stopping up/diversion which have been raised and must also take into account any countervailing advantages to the public, along with the planning benefits and the degree of importance attached to the development. He must then decide whether any such disadvantages or losses are of such significance or seriousness that he should refuse to confirm the stopping up/diversion.
- 8.3 As mentioned above, 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)

9 **Human Resources Comments**

- 9.1 None.

10 **Risk Assessments**

- 10.1 None

11 **IT Implications**

- 11.1 None.

12 **Property Implications**

12.1 None.

13 **Procurement Implications**

13.1 None.

14 **Environmental and Health & Safety Implications**

14.1 None.

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

15.1 None

16 **Equality Impact Assessment Completed?**

16.1 Not Applicable

17 **Key Decision**

17.1 No.

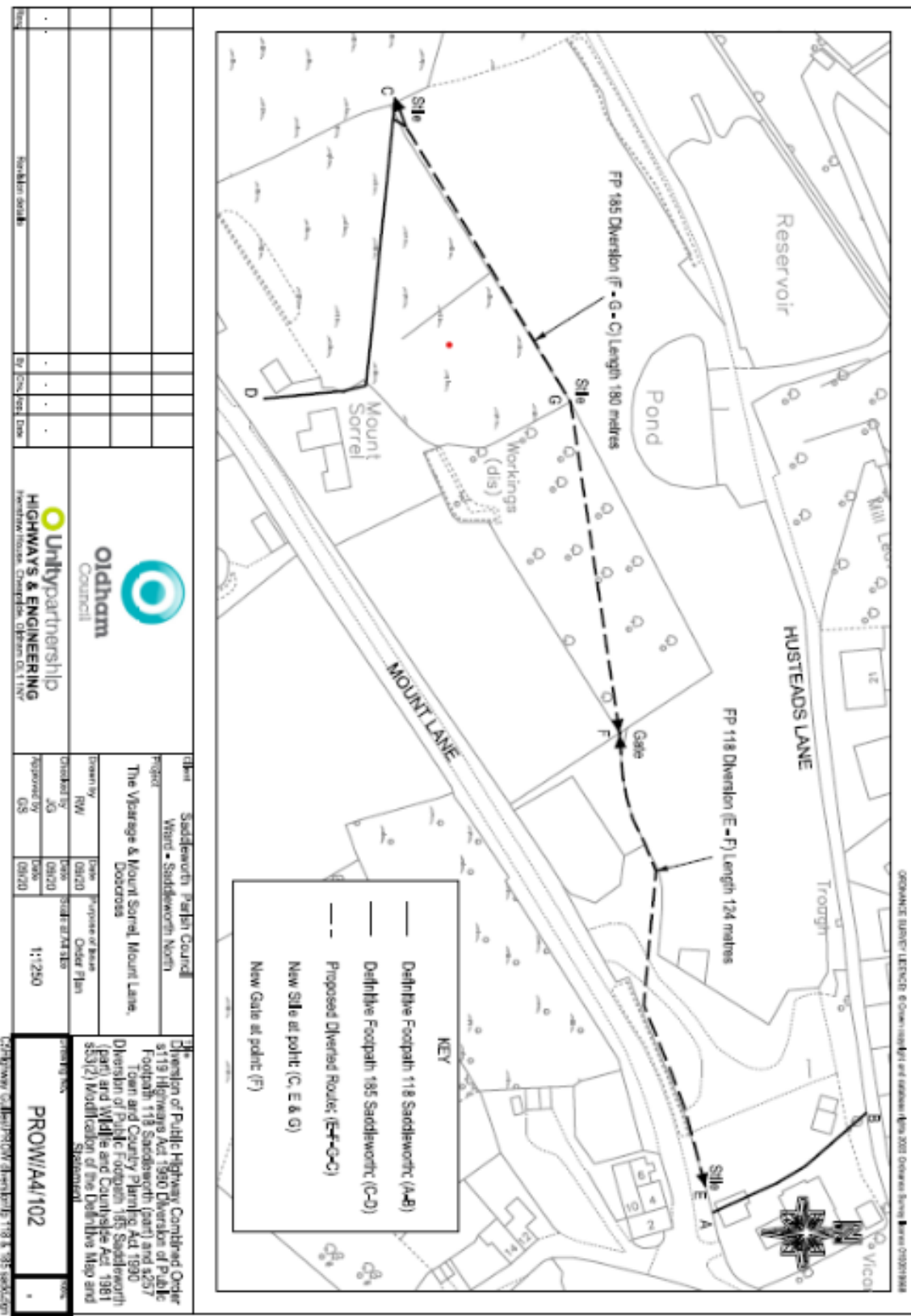
18 **Key Decision Reference**

18.1 Not applicable.

19 **Background Papers**

19.1 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.



Oldham Council The Village & Mount Sorrel, Mount Lane, DOORCOS		Saddleworth Parish Council Ward - Saddleworth North	
Drawn by	GW	Checked by	GW
Reviewed by	GS	Approved by	GS
Date	09/20	Date	09/20
Scale	1:1250	Scale	1:1250
Project: Saddleworth North The Village & Mount Sorrel, Mount Lane, Doorcos		Diversion of Public Highway Combined Order s119 Highway Act 1990 Diversion of Public Footpath 118 Saddleworth (part) and 1257 Town and Country Planning Act 1990 Diversion of Public Footpath 185 Saddleworth (part) and Wildlife and Countryside Act 1981 s53(2) Modification of the Definitive Map and Statement	
Drawing No: PROW/A4/102		Drawing Date:	
Revision No:		Revision Date:	