

Report to TRO Panel

Definitive Map Modification Order

S53 – Wildlife and Countryside Act 1981 Claim to Register a Public Bridleway from Standedge Foot Rd to Huddersfield Rd, Diggle

Portfolio Holder:

Councillor A Chadderton, Cabinet Member for Neighbourhoods

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Reason for Decision

To determine an 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 between Standedge Foot Road and Huddersfield Road, Diggle (the application route), which is shown on the attached location plan.

Executive Summary

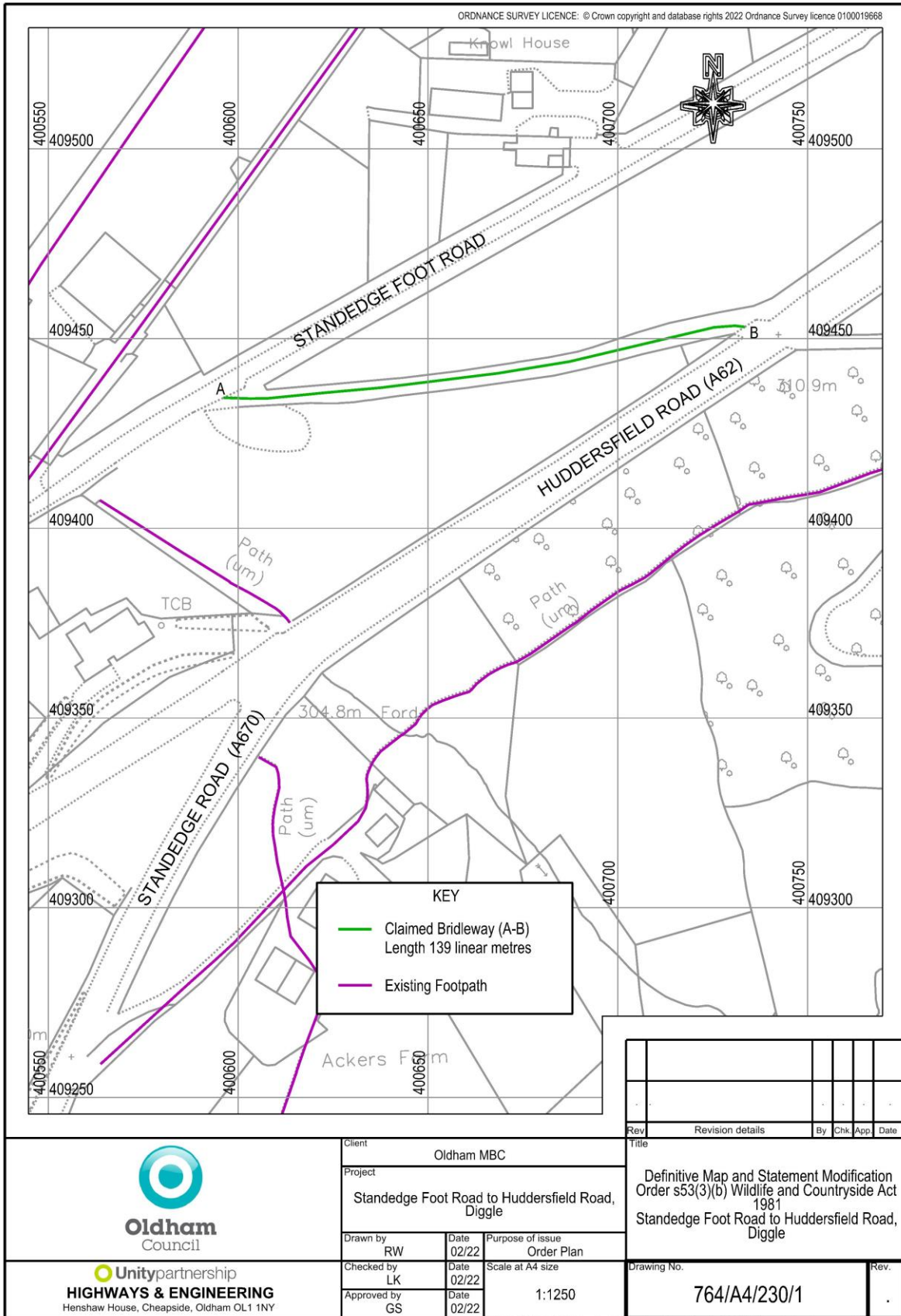
The Council has a duty to investigate and determine applications for Modification Orders submitted under the 1981 Act. The Application has been received in respect of the application route which is claimed to be a bridleway. However, unusually, the Application is not supported by any User Evidence Forms showing the use made of the application route.

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 the legal requirements as described in paragraph 1.2 of this report.

It is considered that there is insufficient 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 the application for a Modification Order in respect of a route running between Standedge Foot Road and Huddersfield Road, Diggle to be recorded in the definitive map and statement as a bridleway be rejected due to the lack of evidence showing that the route has been used as a bridleway.



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S53 – Wildlife and Countryside Act 1981. Claim to Register a Public Bridleway from Standedge Foot Rd to Huddersfield Rd, Diggle.**1 Background**

1.1 The application was submitted by the British Horse Society (BHS) on 4th March 2021. The application is not supported by any User Evidence forms showing use of the route as a bridleway or any other type of highway. There are 9 maps included with the application (see attached 'Summary of Evidence' document)

1.2 The Applicant's Evidence

Numerous maps have been provided by the BHS in support of the application. However no User Evidence showing the use made of the route by horses has been submitted. The BHS has been requested to provide user evidence but has refused to do so and has requested that the application be determined based on the map evidence alone.

2 Current Position

2.1 The BHS have submitted a claim to register a Public Bridleway but have failed to provide the necessary documentary evidence to support the claim.

3 Options/Alternatives

3.1 Option 1 – To approve the application.
Option 2 – Not to approve the application.

4 Preferred Option

4.1 The preferred Option is Option 2 due to the lack of documentary evidence to substantiate the claim.

5 Consultation

5.1 Saddleworth Parish Council – No comments received.
Ward Councillors – Cllr L Lancaster "I am generally in favour of improving and increasing public access, including for horse-riders. However, if the Applicant is legally required to have demonstrated prior use for this category of persons (which is my reading of it) and hasn't done so, then I can appreciate your difficulty in recommending approval of the Order.

6 Financial Implications

6.1 None.

7 Legal Services Comments

7.1 Under section 53 of the 1981 Act, the Council is required to make a Modification Order amending the definitive map and statement where it appears requisite in consequence of

the discovery by the Council of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the definitive map and statement subsists or is reasonably alleged to subsist over land in the area to which the definitive map relates, being a right of way such that the land over which the right subsists is a public path (ie a footpath or bridleway) or a restricted byway.

- 7.2 The documentary evidence submitted by the BHS is strong evidence of the physical existence of a path or track on the dates the various maps were produced but the maps give no indication of what use is made of the path or track and therefore what category of highway (if any) it should be considered to be. In appropriate circumstances map evidence can be used as supporting evidence to identify the particular nature of a highway eg title maps referring to a specific road as a bridleway, but the map evidence provided by the BHS consists of 3 historic Ordnance Survey maps from 1854 – 1896 and 5 other maps from 1903 onwards. The depiction of any road, track or path on an Ordnance Survey map does not constitute evidence of the existence of a public right of way and the other maps also do not identify the highway status of the application route.
- 7.3 The burden of proof on establishing that the application route is a bridleway lies with the BHS as the applicant. Despite being requested to provide additional evidence to support their claim that the application route is a bridleway they have decided not to do so. As the Council cannot be satisfied on the balance of probabilities that the application route is a bridleway (or any other type of highway), the claim should be rejected. The applicant has a right of appeal to the Secretary of State against the Council's decision not to make a Modification Order. (A Evans)

8 **Co-operative Agenda**

8.1 None.

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 These were dealt with in the previous report.

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.

20 **Appendices**

20.1 'Summary of Evidence' File name 'GRE-0043'