

Report to TRO Panel

Public Path Diversion and Definitive Map and Statement Modification Order

s119 Highways Act 1980 - Diversion of Definitive Footpath 185 Saddleworth (part), at Mount Sorrel, Mount Lane, Dobcross and s53A Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement

Portfolio Holder:

Councillor A Chadderton, Cabinet Member for Neighbourhoods

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17th March 2022

Purpose of Report

To seek approval for the making of a Public Path Diversion and Definitive Map and Statement Modification Order for Footpath 185 Saddleworth (part) at Mount Sorrel, Mount Lane, Dobcross as detailed in the report.

Executive Summary

The Council has received an application from the resident of The Old Vicarage, Streethouse Lane, Dobcross for the diversion of Footpath 185 Saddleworth (part) across their land via their agent Roundhay Properties Ltd.

The application has been considered in light of draft guidance on public rights of way passing through gardens and farmyards.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 footpath should be diverted and that Officers be given delegated authority to carry out the necessary procedures with a view to confirming the Public Path Diversion and Definitive Map and

Statement Modification Order in the event that no objections to the order are received.

Recommendation

It is recommended that the Council make a Public Path Diversion and Definitive Map and Statement Modification Order for the diversion of Footpath 185 Saddleworth (part) under Section 119 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981 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.

Dobcross and s53A Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement

1 Background

- 1.1 The application has been made by the landowner via their agent for the diversion of Footpath 185 Saddleworth (part). A diversion was originally proposed together with the diversion of part of Footpath 118 Saddleworth. However following discussions with the Peak and Northern Footpath Society, it is considered that the proposed diversion detailed in this report would be more appropriate diversion route.
- 1.2 The Government have issued 'Draft Guidance on the diversion or extinguishment of rights of way that pass through gardens, farmyards and commercial premises'.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 houseowner'. 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 the relevant test for the making of an Order set out in the legislation, namely that in the interests of the landowner it is expedient that the line of the right of way should be diverted.
- 1.4 The principle test before deciding whether to confirm a Public Path Diversion and Definitive Map and Statement Modification Order is that the diversion should not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order.

2 Proposal

- 2.1 The route of Footpath 185 Saddleworth is shown on the attached plan (764/A4/229/1) marked in red. The path commences off Mount Lane (approximately 252m from its junction with Streethouse Lane) following a northerly route for approximately 29m, then proceeding west for approximately 71m. At this point Footpath 185 branches off to the north for a distance of approximately 77m and north-west for a distance of approximately 88m (points F & G on attached plan). The description of the current route is given in Schedule 1.
 - 2.2 The diverted path is also shown on the plan marked in blue from point H-L including the access points via proposed new kissing gates at point H & K. The description of the diverted route is given in Schedule 2.
 - 2.3 The applicant proposes a diversion within the boundaries of their land which is significantly more direct, with improved connectivity to Footpaths 117 & 181 Saddleworth and will negate the use of the footbridge on the current route which is in a poor state of repair.
 - 2.4 Users of the diverted route will not be deterred from using the route, which could occur if using the existing alignment as it passes between property and buildings at Mount Sorrel.
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- 2.5 The required highway signage, from the metallised road, the way markers along the route and new kissing gates will be paid for by the Applicant (i.e. provision & installation of kissing gates and installation of signage).
- 2.6 If the Order is confirmed it will be necessary to modify the Definitive Map & Statement for Footpath 185 Saddleworth (part). The Council have an obligation to continuously review the Map & Statement. The Public Rights of Way (Combined Orders) (England) Regulations 2008 allow 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. The amended wording for the Definitive Statement is given in Schedule 3.

Schedule 1

Description of Existing Footpath Route – Drawing 764/A4/229/1

Existing FP185 Saddleworth leaves Mount Lane (GR SD98443 06169) heading North for a distance of approximately 29m to (GR SD98440 06196), then proceeds West for a distance of approximately 71m to (GR SD98369 06203). At this point Footpath 185 branches off to the north for a distance of approximately 77m to (GR SD98388 06277) and north-west for a distance of approximately 88m to (GR SD98300 06250). Both branches join Bridleway 178 Saddleworth on the unadopted stretch of Husteads Lane.

Schedule 2

Description of Proposed Footpath Route – Drawing 764/A4/229/1

Footpath 185 Saddleworth commencing at point H (GR SD98342 06001) through a kissing gate and proceeding North for a distance of 53 metres to point I (GR SD98328 06052) then North-North West for a distance of 80 metres to point J (GR SD98300 06126) then heading in a general Northerly direction for a distance of 116m to point K (GR SD98313 06238) through a kissing gate and further North for 14 meters to point L (GR SD98311 06251) to join BR178 Saddleworth on Husteads Lane.

Schedule 3

Current Definitive Statement

District & Path Number	Page Number	Status	Length	Description	Comments
Saddleworth 185	6	Footpath	917m	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 Sorrell with (1) branch proceeding northeastward to its junction with path No.184 at Bankfield and (2) a branch proceeding north westward from Mount Sorrell to its junction with path No.178	1.2m wide 3 stiles

Schedule 4

Modification of Definitive Statement

District & Path Number	Page Number	Status	Length	Description	Comments
Saddleworth 185	6	Footpath	835m	Footpath commencing at (GR SD98342 06001) at kissing gate off Mount Lane and proceeding North	1.2m wide 2 stiles 2 kissing gates (GR SD98342 06001 & GR SD98313 06238)

				<p>for a distance of 53m to (GR SD98328 06052) then North-North West for a distance of 80m to (GR SD98300 06126) then heading in a general Northerly direction for a distance of 116m to (GR SD98313 06238) through kissing gate and further North for 14m to (GR SD98311 06251) to join BR178 Saddleworth on Husteads Lane, proceeding East for a distance of approximately 51m to (GR SD98436 06296) then North for a distance of 46m to (GR SD98420 06340) then West for a distance of 61m to (GR SD98363 06316) then Northwest for a distance of 67m to (GR SD98324 06371) where the path branches (1) to head in a</p>	
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				general North Easterly direction for a distance of 224m to its junction with FP184 SADD at (GR SD98484 06508) (2) continuing Northwest for a distance of 123m to its junction with FP184 SADD at Broadgate (GR SD98254 06473).	
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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 applicant and landowner as well as PRoW Network users with a more direct route following the topography of the land with increased connectivity to other sections of the Network. Option 2 will maintain the status quo where the property has the liability of the footpath passing in close proximity to their residence, infringing upon privacy.

5 Consultation

- 5.1 Parish Council
Saddleworth Parish Council – No comments received.

Societies

The submitted application is a direct result of consultation & negotiation with Peak and Northern Footpath Society. No other objections have been raised.

Ward Councillors

Cllr L Lancaster – ‘As the Applicant have said that they will meet the costs, I can agree to this.’

Landowners

The only landowner affected is the applicant.

6 Financial Implications

- 6.1 The costs have been met by the applicant of £2,685.00.

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.

8.2 In the event of objections to the Order, it 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 Order, 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 **Co-operative Agenda**

8.1 Not applicable.

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 Not applicable.

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.

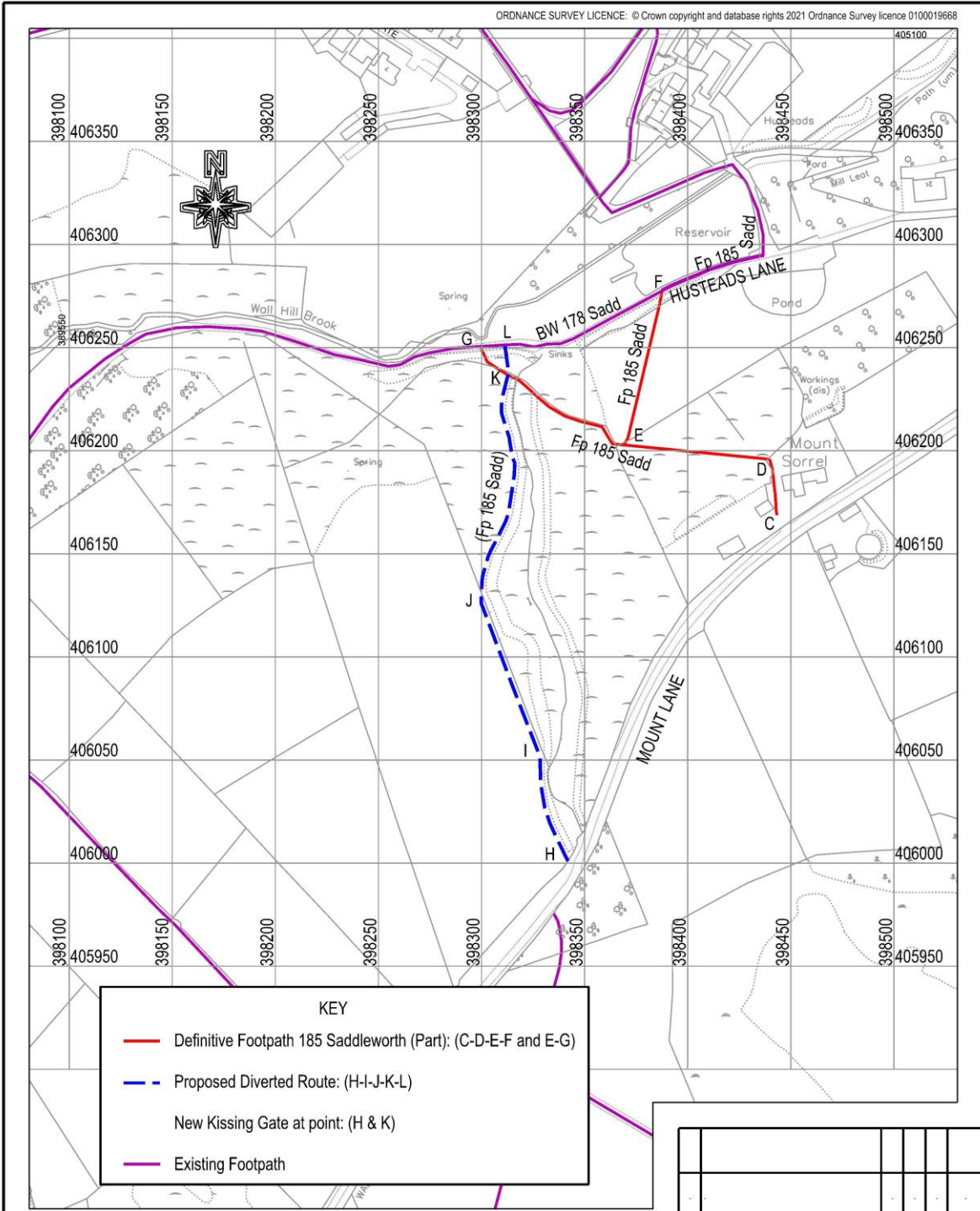
19 **Background Papers**

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 None



KEY

- Definitive Footpath 185 Saddleworth (Part); (C-D-E-F and E-G)
- - - Proposed Diverted Route: (H-I-J-K-L)
- - - New Kissing Gate at point: (H & K)
- Existing Footpath

Rev	Revision details	By	Chk	App.	Date

 Oldham Council	Client Oldham MBC		Title Diversion of Public Highway Combined Order s119 Highways Act 1980 Diversion of Public Footpath 185 Saddleworth (part) and Wildlife and Countryside Act 1981 S53(2) Modification of the Definitive Map and Statement
	Project Mount Sorrel, Mount Lane, Dobcross		
 HIGHWAYS & ENGINEERING Henshaw House, Cheapside, Oldham OL1 1NY	Drawn by RW	Date 11/21	Purpose of issue Order Plan
	Checked by LK	Date 11/21	Scale at A4 size 1:2500
	Approved by GS	Date 11/21	Drawing No. 764/A4/229/1
			Rev. .
