

## Report to TRO Panel

### **Public Path Diversion and Definitive Map and Statement Modification Order**

### **S257 Town and Country planning Act 1990 – Diversion of Definitive Footpath 119 Saddleworth, Treetops Close, Dobcross, and S53A Wildlife and Countryside Act 1981 Modification of the Definitive Map & Statement**

#### **Portfolio Holder:**

Councillor J Stretton, Cabinet Member for Neighbourhoods

**Officer Contact:** Gordon Anderson, Head of Highways & Engineering

**Report Author:** Liam Kennedy, PRow Officer

**16<sup>th</sup> June 2022**

#### **Purpose of Report**

To seek approval to the making of a Public Path Diversion and Definitive Map and Statement Modification Order for Footpath 119 Saddleworth, Treetops Close, Dobcross as detailed in the report.

#### **Executive Summary**

The Council has received an application from a resident of Treetops Close, Dobcross for the diversion of part of Footpath 119 Saddleworth. The footpath is situated adjacent to the rear gardens on the west side of Treetops Close, Dobcross.

The applicant has planning consent FUL/348134/21 (approved 12/04/2022) for the change of use of the landscaped area to the west of these properties to garden. The proposed diversion will skirt the proposed gardens, follow part of an existing footpath which forms part of the access to Holy Trinity C of E Primary School and terminate on Woods Lane .

The footpath cannot be diverted unless the Council approves the proposal and the respective order is confirmed unopposed or confirmed by the Secretary of State.

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### **Recommendation**

It is recommended that the Council make a Public Path Diversion and Definitive Map and Statement Modification Order for the diversion of Footpath 119 Saddleworth under Section 257 of the Town and Country Planning Act 1990 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.

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### **Public Path Diversion and Definitive Map and Statement Modification Order**

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**S257 Town and Country Planning Act 1990 - Diversion of Footpath 119 Saddleworth, Treetops Close, Dobcross and S53A Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement**

**1 Background**

- 1.1. In July 2017 the Traffic Regulation Order Panel granted approval to divert part of Footpath 119 Saddleworth at Treetops Close, Dobcross pursuant to planning application PA/340311/17. The diversion was required to enable residents of Treetops Close to incorporate an area of Council owned land into their rear gardens. The footpath is situated adjacent to the rear gardens on the west side of Treetops Close, Dobcross.
- 1.2 A Public Path Diversion and Definitive Map and Statement Modification Order was made and several objections to the Order were received. Attempts were made by the Council and the applicant to resolve the objections without success and in September 2019, as required when there are objections to a Public Path Diversion and Definitive Map and Statement Modification Order, the Order was referred to the Secretary of State for determination under reference ROW/3237390. One of the objectors requested an accompanied site visit with the Planning Inspector dealing with the Order. However due to the various coronavirus lockdowns during 2020-21, the site visit did not take place until June 2021, by which time the planning permission PA/340311/17 had expired and the Order could no longer be implemented.
- 1.3 Despite this, the Inspector continued to determine the Order. A copy of the Inspector's decision is attached at Appendix 1. He was unable to confirm the Order as the planning permission had expired but in his written decision he stated that in light of the time taken to arrange an accompanied site visit it was right for him to consider the substantive merits of the Order so that the Council could make an informed decision whether to resubmit the Order at some future date. He concluded that it would have been expedient to confirm the Order had it remained valid. The expectation is therefore that if a similar planning permission is obtained and a similar Public Path Diversion and Definitive Map and Statement Modification Order is made and objected to, the Order is likely to be confirmed by the Secretary of State, as the previous Order would have been if the planning permission had not expired.
- 1.4 Based on this decision, the applicant has obtained planning consent FUL/348134/21 (approved 12/04/2022) for the change of use of the landscaped area to the west of these properties to garden. The proposed diversion will skirt the proposed gardens, follow part of an existing footpath which forms part of the access to Holy Trinity C of E Primary School and terminate on Woods Lane. The footpath cannot be diverted unless the Council approves the proposal and the respective Order is confirmed unopposed or confirmed by the Secretary of State.

**2 Current Position**

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- 2.1 It is considered appropriate to divert the footpath in the light of guidance from Government regarding the problems of landowners and the public where rights of way pass through gardens. It should be noted that this guidance is draft only. The proposal will move to path the perimeter of the gardens. The proposal to divert the path was included in the planning application and this has received approval. The footpath specification is as follows;
- Footpath to be 1,500mm in width along entire length, with a 5% gradient.
  - Path to be edged in 150mm x 38mm x length tanalised timber edging boards, screwed to 50mm x 50mm x 450mm pointed timber pegs every 1000mm to outside of footpath set 50mm under finished ground level.
  - Sub-base to be DTp Type1 granular sub-base, to a well consolidated finished depth of 100mm, incorporating a non-woven geo-textile liner.
  - Walking surface to be 50mm, consolidated depth, after compaction on self-binding gravel/limestone fines.
  - Any boundary fences to be installed as required by Oldham Council Planning Dept as defined in the planning approval.
- 2.2 In paragraph 7 of his decision the Planning Inspector stated that it would be unrealistic, impractical and undesirable for the approved development to co-exist with the continued presence of the public right of way.
- 2.3 The schedules to this report contain requirements relating to the detail of the diverted path which it is considered will make the path and the surroundings acceptable to users of the path the landowners and the Council.

### 3 **Proposal**

- 3.1 The route of Footpath 119 Saddleworth is shown on attached plan (764/A4/231/1) and follows points A-B. The path commences off Woods Lane following a north westerly direction then proceeding east to its junction with Treetops Close, Dobcross. The description of the current route is given in Schedule 1.
- 3.2 The diverted path is also shown on the plan and follows points B-C-D. The description of the diverted route is given in Schedule 2.
- 3.3 If the order is confirmed it will be necessary to modify the Definitive Map and Statement for Footpath 119 Saddleworth. The Council have an obligation to continuously review the Map and 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 current wording for the Definitive Statement is given in Schedule 3 and the amended wording is given in Schedule 4. See Appended documents.

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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.

### 5 Informal Consultation

#### Parish Council

- 5.1 None received.

#### Footpath Societies

- 5.2 PNFS have raised concerns regarding the accessibility of the proposed diverted route. This in particular relates to the gradient of the diverted route being greater than that of the existing route. The inclusion of steps will be part of the lease and detail of the construction will be forwarded to PNFS at a later date, once received.

#### Ward Councillors

- 5.3 None received.

#### Landowners

- 5.4 The only affected landowner is the applicant.

### 6 Financial Implications

- 6.1 The applicant has previously paid the standard diversion fee. Due to circumstances the advertising costs will be covered by the PRoW budget.

(James Postle)

### 7 Legal Services Comments

- 7.1 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

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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. As stated above, a Planning Inspector has previously decided that it would be expedient to confirm this diversion in the event of any objections. That decision should carry significant weight in the event of objections to the latest proposals.

(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.

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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.

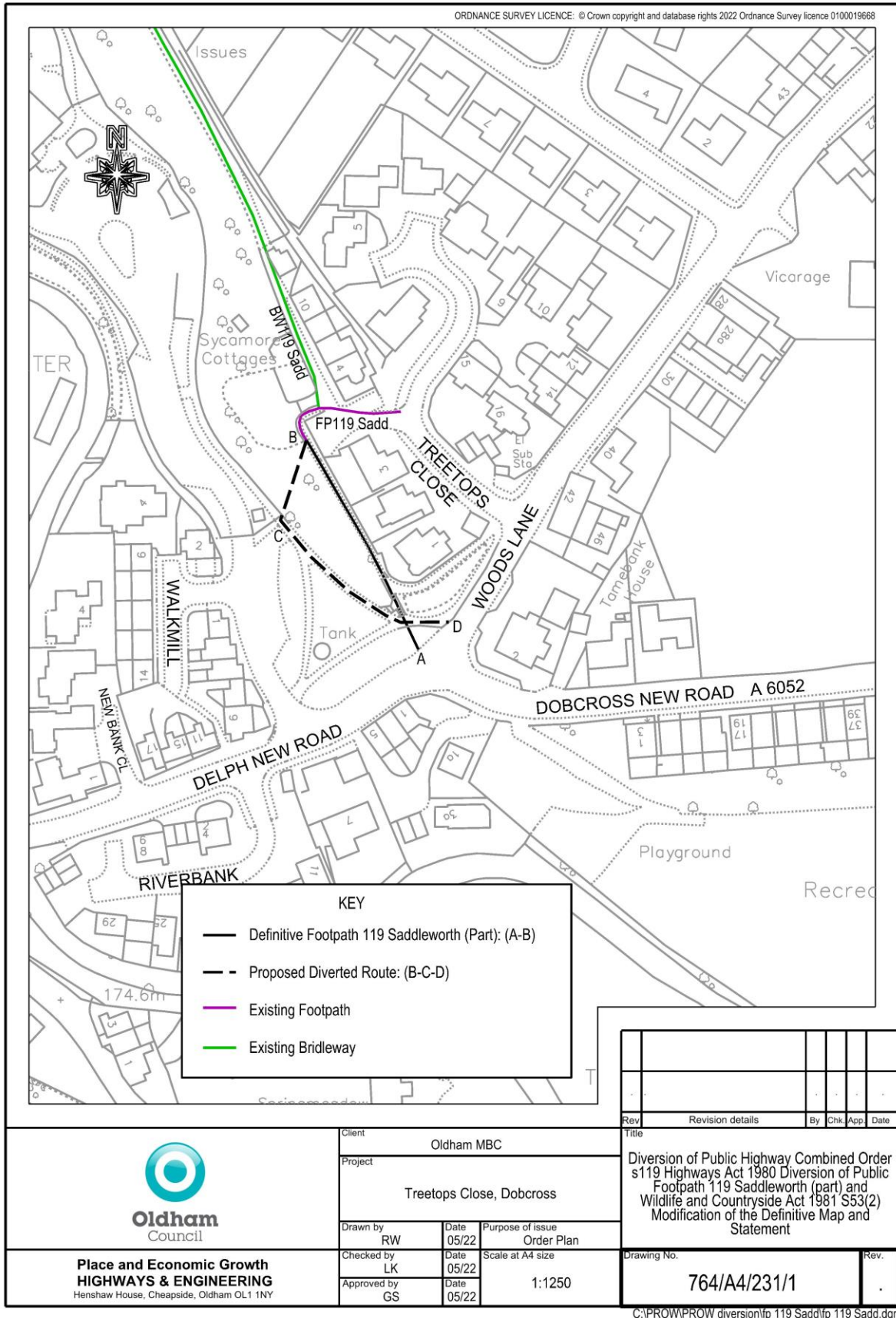
19 **Background Papers**

19.1 There are no background papers for this report.

20 **Appendices**

Appendix 1 - Planning Inspectorate Order Decision in respect of Order ROW/3237390 dated 23 June 2021

# Appendix 1: Plan and Schedules





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## Schedule 1

### Description of Existing Footpath Route – Drawing 764/A4/231/1

Existing FP 119 Saddleworth from a point A OS Map Reference 398969 406397 on the detached footway at the junction of Woods Lane and Delph New Road, Dobcross in a northerly direction for a distance of 63 metres to point B 398939 406452 adjacent to the turning head adjacent to 3 Treetops Close.

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## Schedule 2

### Description of Proposed Diverted Footpath Route – Drawing 764/A4/231/1

Footpath 119 Saddleworth from point B (OS Map Ref 398939 406452) adjacent to the turning head adjacent to 3 Treetops Close, Dobcross in a south westerly direction for a distance of 22 metres to point C (OS Map Ref 398932 406431) on the footpath to Holy Trinity Church of England Primary School, Dobcross, then in a south easterly direction along the footpath for approximately 55 metres to point D (OS Map ref 398977 406404), having a minimum width of 2 metres, as shown on the attached map.

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### Schedule 3

#### Current Definitive Statement

District and page number	Page Number	Status	Length	Description	Comments
Saddleworth Footpath 119	6D	Bridleway + F.P.	1400 metres	Footpath commencing at its junction with Woods Lane Dobcross and proceeding in a north westerly direction to Sycamore Cottages and continuing as Bridleway in a north westerly then northerly direction to its junction with Gatehead Road with a branch footpath proceeding northward at the Mill Pond to its junction with Platt Lane	3m wide and 1.2m wide – public path order creation – confirmation date 29.05.88

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## Schedule 4

### Modification of Definitive Statement

District and page number	Page Number	Status	Length	Description	Comments
Saddleworth Footpath 119	6D	Bridleway + F.P.	1414 metres	Footpath commencing at its junction with Woods Lane Dobcross (OS Map ref 398977 406404) and proceeding in a north westerly direction on the footpath from Holy Trinity Church of England Primary School, Dobcross for a distance of 55m to (OS Map Ref 398932 406431) then proceeding in a north easterly direction for a distance of 22m to (OS Map Ref 398939 406452) and continuing as Bridleway in a north westerly then northerly direction to its junction with Gatehead Road with a branch footpath proceeding northward at the Mill Pond to its junction with Platt Lane	2m wide public path order creation – confirmation date 29.05.88