

## TRO Panel

**Decision Maker:** Director of Environment, Nasir Dad

**Date of Decision:** 23 November 2023

**Subject:** Public Path and Definitive Map and Statement Modification Order

S119 Highways Act 1980 - Diversion of Definitive Footpath 146 Saddleworth (part), at Hill Top Cottages, Knott Hill Lane, Delph, and S53A – Wildlife and Countryside Act 1981

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

**Ward:** Saddleworth North

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**Reason for the decision:** The Council has received an application from the resident of 1 Hill Top Cottages for the diversion of Footpath 146 Saddleworth (part) which passes through gardens adjacent to the residences.

**Summary:** To seek approval to the making of a Public Path Diversion and Definitive Map and Statement Modification Order for Footpath 146 Saddleworth (part) as detailed in the report.

**Background:** The application has been made by the resident of 1 Hill Top Cottages, Knott Hill Lane, Delph for the diversion of Footpath 146 Saddleworth (part) which passes through the gardens of property numbers 1-3.

The Department for Environment Food and Rural Affairs have issued 'Government Guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or 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 feels like infringing on the privacy of a house owner..... Such path alignments can deter people from exercising the public's right to use the path'.

In cases where a public right of way passes through a garden or curtilage of a residential dwelling, the Order-making and Confirming Authority are guided to weigh the interests of the owner and/or occupier 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 owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given. In these cases, the Order-making Authority should, therefore, be predisposed to make and the confirming authority will be similarly predisposed to confirm an 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.

The principal 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.

In such circumstances it is in the public interest that any change to remove or reduce the impacts on the property owner or occupier of the existing public right of way should, wherever possible, involve diversion or replacement of the way rather than extinguishment alone.

**Proposal:**

The route of Footpath 146 Saddleworth is shown on attached plan (764/A4/241/1). The path commences at point A, approx. 100m west of the junction of Knott Hill Lane and Knarr Barn Lane following a north easterly route for approximately 38m to point B. The existing route runs through gardens of properties 1-3. The description of the current route is given in Schedule 1.

The diverted route is also shown on the plan and follows points B-C. The description of the diverted route is given in Schedule 2.

The applicant proposes a diversion along the land boundary. Associated works to facilitate the diversion include widening the existing gap in the dry-stone wall, installation of a gate and creation of a ramp due to the level difference. The distance travelled around the diversion is minor. Any inconvenience to members of the public will be minimal.

Users of the diverted route will not be deterred from using the route, which could occur if using the existing alignment as it passes across the garden areas of properties 1-3.

The required highway signage, from the metallised road and the way markers along the route will be paid for by the Applicant i.e. both installation, post and sign.

If the order is confirmed it will be necessary to modify the Definitive Map and Statement for Footpath 146 Saddleworth (part). 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.

***What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):***

Option 1: To approve the recommendation  
Option 2: Not to approve the recommendation.

***Consultation: including any conflict of interest declared by relevant Cabinet Member consulted***

The Ward Members have been consulted and;

- Cllr G Harkness has no objection to the proposal providing the agreed works are carried out.
- Cllr L Lancaster has no objection to the proposal.

Saddleworth Parish Council have been consulted and no representations have been received.

Footpath Societies have been consulted and;

- The Ramblers Association have no objection to the proposal providing the agreed works are carried out.
- The Wednesday Walkers have no objection to the proposal providing the agreed works are carried out.
- The Peak and Northern Footpath Society have no objection to the proposal providing the agreed works are carried out.

Landowners – written consent has been obtained from the landowner.

***Recommendation(s):***

It is recommended that the Council make a Public Path Diversion & Definitive Map and Statement Modification Order for the diversion of Footpath 146 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 the Director of Environment 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.

***Implications:***

*What are the **financial** implications?*

The cost for introducing the order will be £2.68k and will be revenue expenditure.

This will be funded from the application fee of £2.68k already received from the applicant within the Highways TRO budget.

(John Edisbury)

*What are the **legal** implications?*

Under Section 119 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.

In the event of objections to the order, the order will be sent to the Secretary of State for determination. If no objections are received it is recommended that the Director of Environment, 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)

What are the **procurement** implications?

None

What are the **Human Resources** implications?

None

**Oldham Impact Assessment Completed (Including impact on Children and Young People)**

No

What are the **property** implications

None

**Risks:**

None

**Co-operative implications**

Modifications to Footpath 146 is welcomed as this will address the grievance of the resident who submitted the complaint and illustrate co-operative ways of working

(Mahmuda Khanom)

**Community cohesion disorder implications in accordance with Section 17 of the Crime and Disorder Act 1998**

None

**Environmental and Health & Safety Implications**

None

**IT Implications**

None

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution? Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget? Yes

Are any of the recommendations within this report contrary to the Policy Framework of the Council? No

**Schedule 1 – Description of Existing Footpath Route – Drawing 764/A4/241/1**

Existing FP146 Saddleworth commences at point A (GR SD97856 07445) proceeding in a north easterly direction for a distance of approximately 38 metres to point B (GR SD97890 07462) then continues in a generally easterly and north-easterly direction on its existing alignment.

**Schedule 2 – Description of Proposed Diverted Route – Drawing 764/A4/241/1**

Footpath 146 Saddleworth commencing at point C (GR SD97879 07438) proceeding in a northerly direction for a distance of approximately 26 metres to point B (GR SD97890 07462) then continues in a generally easterly and north-easterly direction on FP146s existing alignment.

**Schedule 3 – Current Definitive Statement**

See below table.

District and page number	Page Number	Status	Length (m)	Description	Comments
Saddleworth 6B&D	6B&D	F.P.	901	Footpath commencing at its junction with Hill Top Lane at Hill Top Cottages and proceeding in a north easterly direction to its junction with Woodhouse	1.2m wide 1 Field Gate 1 Stile

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**Schedule 4 – Modification of Definitive Statement**

See below table. Additions in bold.

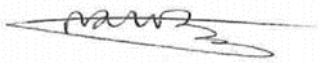
District and page number	Page Number	Status	Length (m)	Description	Comments
Saddleworth 6B&D	6B&D	F.P.	866	<b>Footpath commencing at (GR SD97879 07438) approximately 75 metres west of the junction of Knott Hill Lane and Knarr Barn Lane via pedestrian gate in dry-stone wall proceeding north for a distance of approximately 26 metres to (GR SD97890 07462) then proceeding east for a distance of approximately 85 metres to (GR SD97974 07474) then north for a distance of approximately 80 metres to (GR SD97972 07553) then northeast for a distance of approximately 270 metres to (GR SD98167 07736) where</b>	1.2 metres wide 1 Field Gate 1 Stile

				<p>it meets  <b>FP149</b>  <b>Saddleworth</b>  then east for  a distance of  <b>approximately</b>  <b>405 metres</b>  via  <b>Woodhouse</b>  <b>Knowl</b> to  <b>terminate at</b>  <b>Stoneswood</b>  <b>Road (GR</b>  <b>SD98561</b>  <b>07792)</b></p>	
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**There are no background papers for this report**

<b>Report Author Sign-off:</b>	
Liam Kennedy	
<b>Date:</b> 2 November 2023	

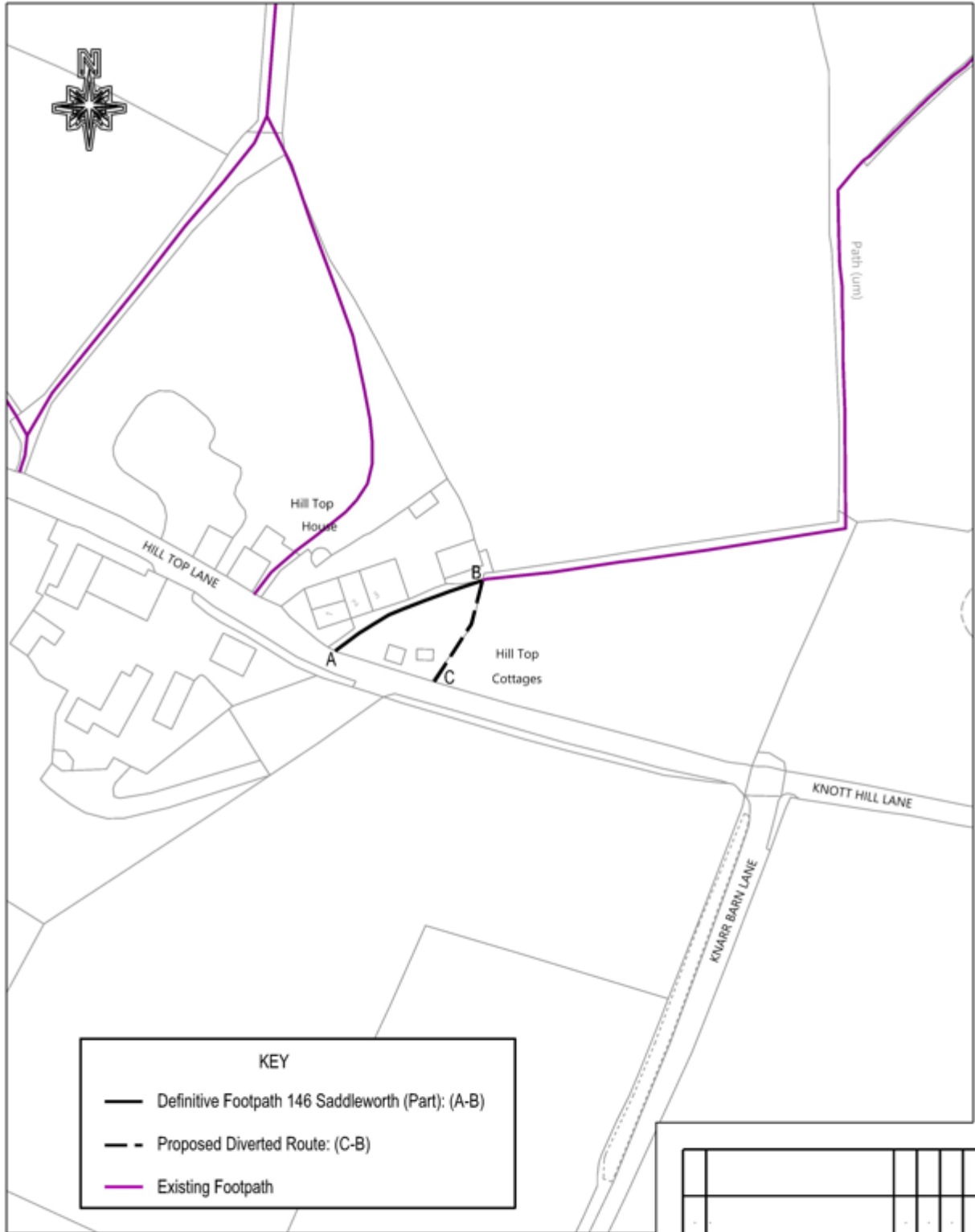
In consultation with Director of Environment



Signed :

Date: 8.11.2023





KEY	
	Definitive Footpath 146 Saddleworth (Part): (A-B)
	Proposed Diverted Route: (C-B)
	Existing Footpath

Rev	Revision details	By	CHK	App	Date



**Oldham Council**

**Place and Economic Growth  
HIGHWAYS & ENGINEERING**  
Henshaw House, Cheapside, Oldham OL1 1NY

Client Oldham MBC	
Project Hill Top Cottages, Delph	
Drawn by RW	Date 08/23
Checked by LK	Date 08/23
Approved by .	Date .
Purpose of issue information Scale at A4 size 1:1250	

Title Diversion of Public Highway Combined Order s119 Highways Act 1980 Diversion of Public Footpath 146 Saddleworth (part) and Wildlife and Countryside Act 1981 S53(2) Modification of the Definitive Map and Statement	
Drawing No. 764/A4/241/1	Rev. .