

TRO Panel

Decision Maker: Director of Environment, Nasir Dad

Date of Decision: 11 January 2024

Subject: Public Path and Definitive Map and Statement Modification Order

S119 Highways Act 1980 - Diversion of Definitive Footpath 44 Crompton (part), at Shore Edge, Buckstones Road, Shaw, and S53A – Wildlife and Countryside Act 1981

Report Author: Liam Kennedy, PRow Officer

Ward: Shaw

Reason for the decision: The Council has received an application from the resident of Shore Edge Farm for the diversion of Footpath 44 Crompton (part) which passes through their land.

Summary: To seek approval to the making of a Public Path Diversion and Definitive Map and Statement Modification Order for Footpath 44 Crompton (part) as detailed in the report.

Background: The application has been made by the resident of Runge Farm, Buckstones Road, Shaw for the diversion of Footpath 44 Crompton (part) which passes through the gardens of Runge Farm, Shore Edge Farm and Hill Cottage. The proposed diversion crosses parcels of land for which there are no registrations according to Land Registry searches – therefore, posting of site notices would be necessary to inform relevant parties of the intention to divert.

The Department for Environment Food and Rural Affairs (DEFRA) 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 44 Crompton is shown on attached plan (764/A4/240/1). The path commences at point A, approx. 70m east of Buckstones Road following a north easterly route for approximately 55m to point B then south easterly for approximately 75m to point C

and continuing southeast for a further 142m to point D to join existing Footpath 47 Crompton. The existing route runs through gardens of Runge Farm, Shore Edge Farm and Hill Cottage. The description of the current route is given in Schedule 1.

The diverted route is also shown on the plan and follows points A-E-F-D. The description of the diverted route is given in Schedule 2.

The applicant proposes a diversion along the existing track on the ground.

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 3 properties.

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 44 Crompton (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 Sykes supports the application.
- Cllr Gloster supports the application

Shaw & Crompton Parish Council have been consulted and no representations received.

Footpath Societies have been consulted and;

- The Ramblers Association have no objection to the proposal.
- The Wednesday Walkers have no objection to the proposal.
- The Peak and Northern Footpath Society have no objection to the proposal.

Landowners – written consent has been obtained from all identified landowners.

Recommendation(s):

It is recommended that the Council make a Public Path Diversion & Definitive Map and Statement Modification Order for the diversion of Footpath 44 Crompton (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 and the Director of Legal Services 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 the Public Path Diversion and Definitive Map and Statement Modification Order will be £3k and will be revenue expenditure.

The application fee of £3k was paid by invoice by the applicant on 13 October 2023.

(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

Consultation has been undertaken with relevant parties and there are no objections to the proposal. (Jonathan Downs – Corporate Policy Lead)

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/A4/240/1

Part of existing Footpath 44 Crompton which commences at point A (GR SD95196 09632) proceeding in a north easterly direction for a distance of approximately 55 metres to point B (GR SD95233 09668) then continues in a generally south easterly direction for a distance of approximately 75 metres to point C (GR SD95277 09612) and continues southeast for a distance of approximately 142 metres to point D (GR SD95325 09482) where it joins existing Footpath 47 Crompton.

Schedule 2 – Description of Proposed Diverted Route – Drawing 764/A4/240/1

Part of Footpath 44 Crompton commencing at point A (GR SD95196 09632) proceeding in a southerly direction for a distance of approximately 82 metres to point E (GR SD95213 09554) then continuing south for a distance of approximately 109 metres to point F (GR SD95217 09447) to join existing Footpath 47 Crompton. From here the route proceeds east, northeast and east again following the alignment of Footpath 47 Crompton for a distance of approximately 139 metres to point D (GR SD95325 09482).

Schedule 3 – Current Definitive Statement

See below table.

| District and page number | Page Number | Status | Length (m) | Description | Comments |
|--------------------------|-------------|--------|------------|---|----------|
| CROMPTON 6 | 6 | F.P. | 965 | From Buckstones Road (No.479) to Buckstones Road (Shore Edge). Path commences in Buckstones Road near No.479 and for short length of occupation road follows line of path | |

| | | | | | |
|--|--|--|--|---|--|
| | | | | <p>No.43 and thence continues in northerly direction past Top o'th Dog Hill Farm (unoccupied) across two field areas to wall marking boundary of Top o'th Scarr Farm Unit. Path crosses line of path No.45 to stile in next wall. Path then joins occupation road to east of Cutts Farm and turns west for a distance of 36 metres and passes through stiles into field area and thence northwards to join highway near Runge Farm; leading past Hollows Farm and Weeder Square to link with Buckstones Road adjacent to No.249 Buckstones Road</p> | |
|--|--|--|--|---|--|

Schedule 4 – Modification of Definitive Statement

See below table. Additions in bold.

| District and page number | Page Number | Status | Length (m) | Description | Comments |
|--------------------------|-------------|--------|------------|---|----------|
| CROMPTON 6 | 6 | F.P. | 1163 | Footpath commencing at (GR SD95088 09701) on Buckstones Rd next to Shore Edge Methodist Church proceeding along the track to Weeder Square for a distance of approximately 149 metres to (GR SD95196 09632) then proceeding south continuing along the track for a distance of approximately 191 metres to (GR SD95217 09447) then proceeding east and north-east along a track towards the scout camp for a distance of approximately 101 metres to (GR SD95289 09483) and proceeding east on another track | |

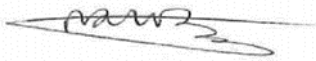
| | | | | | |
|--|--|--|--|--|--|
| | | | | <p>for a distance of approximately 38 metres to (GR SD95354 09483) then proceeding in a generally southerly direction for a distance of approximately 113 metres to (GR SD95381 09371) where the route meets Footpath 45 CROMPTON, continuing south for a distance of approximately 55 metres to (GR SD95389 09317) where the route meets Footpath 46 CROMPTON. Continuing in a general southerly direction past the former Top o'th Dog Hill Farm for a distance of approximately 432 metres to (GR SD95557 08954) to join Footpath 43 CROMPTON for a distance of approximately 55 metres to (GR SD95553 08895) to terminate on</p> | |
|--|--|--|--|--|--|

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|--|--|--|--|-------------------------|--|
| | | | | Buckstones Road. | |
|--|--|--|--|-------------------------|--|

There are no background papers for this report

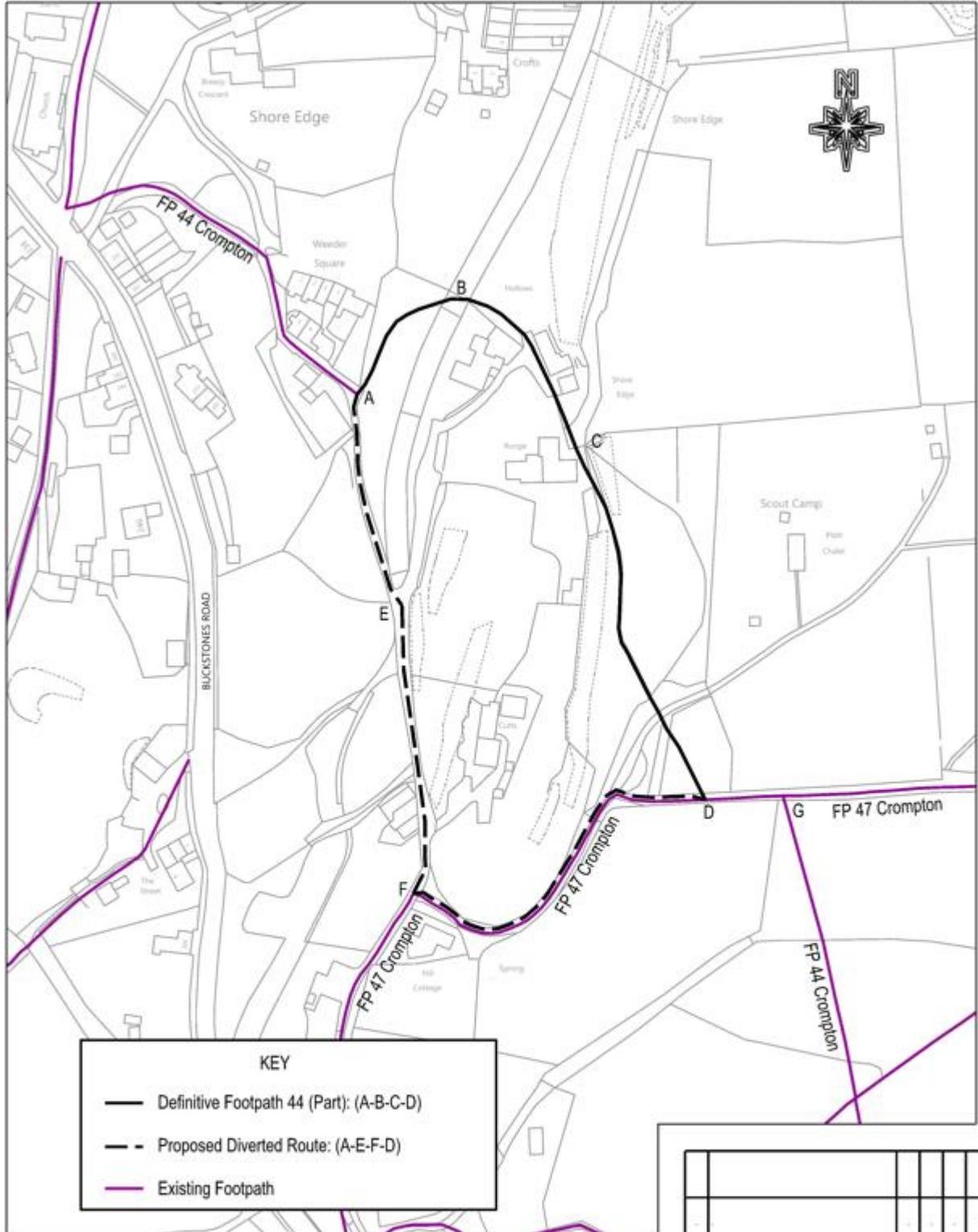
| | |
|---------------------------------|--|
| Report Author Sign-off: | |
| Liam Kennedy | |
| Date: 8 December 2023 | |

In consultation with Director of Environment



Signed :

Date: 22 December 2023



KEY

- Definitive Footpath 44 (Part): (A-B-C-D)
- - Proposed Diverted Route: (A-E-F-D)
- 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 Shore Edge, Shaw | | |
| Drawn by RW | Date 08/23 | Purpose of issue information |
| Checked by LK | Date 08/23 | Scale at A4 size |
| Approved by | Date | 1:2000 |

| | |
|--|-----------|
| Title Diversion of Public Highway Combined Order s119 Highways Act 1980 Diversion of Public Footpath 44 Crompton (part) and Wildlife and Countryside Act 1981 S53(2) Modification of the Definitive Map and Statement | |
| Drawing No. 764/A4/240/1 | Rev. . |

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