



Oldham
Council

Report to TRAFFIC REGULATION ORDER PANEL

Definitive Map and Statement Modification Order Update - Diversion of Definitive Footpath 26 Oldham, land off Knowls Lane, Oldham

Portfolio Holder: Councillor Goodwin, Cabinet Member for Don't Trash Oldham

Officer Contact: Nasir Dad, Director of Environment

Report Author: Liam Kennedy, PRow Officer
Ext. 4306

13th June 2024

Reason for Decision

The purpose of the report is to request approval to submit amendments to the Planning Inspectorate in respect of the Definitive Map and Statement Modification Order relating to Footpath 26 Oldham, to correct factual errors in the Order.

Recommendation

It is recommended that the Panel agree to submit to the Planning Inspectorate the proposed amendments to the Definitive Map and Statement Modification Order relating to Footpath 26 Oldham detailed in Appendix 3 of the report.

Definitive Map and Statement Modification Order Update - Diversion of Definitive Footpath 26 Oldham, Land off Knowls Lane, Oldham**1 Background**

- 1.1 At the last meeting on 14 March 2024, the Panel considered an update report on the Definitive Map and Statement Modification Order relating to the diversion of part of Footpath 26 Oldham, at Knowls Lane, Oldham. The report requested approval to submit amendments to the Order to the Planning Inspectorate to correct factual errors and the Panel agreed to defer consideration of the amendments to this meeting.
- 1.2 The Council granted planning permission to an application from Russell Homes UK Limited, to facilitate the proposed development of a link road leading to the Knowls Lane Housing Development (Hybrid Planning Permission PA/343269/19). Planning Ref: MMA/344723/20 (Approved 23 April 2021) required the diversion of part of Footpath 26 Oldham, to facilitate the construction of the link road. The Council have the power, subject to Section 257 Town and Country Planning Act, to divert Footpath 26 Oldham in order for the development to be carried out in accordance with the granted planning permission.
- 1.3 The Council made an order diverting Footpath 26 Oldham, over the proposed link road via a stepped route on 4 May 2022. A copy of the order is attached at Appendix 1. The order was subsequently advertised in the local press and received numerous objections. The objections could not be resolved, so the matter was referred to the Planning Inspectorate and a Public Inquiry was held 13-14 June 2023. The Inspector's decision (ref: ROW/3303492) not to confirm the Made Order was issued 31st July 2023. Russell Homes successfully challenged the Inspector's decision by judicial review and a Consent Order (ref: AC-2023-LON-002664) was confirmed by the High Court, quashing the Inspector's decision on 27 October 2023.

2 Current Position

- 2.1 As a result of the High Court Consent Order, we are now in a position of having made the Order and it remains to be confirmed. As objections remain unresolved, the matter has again been referred to the Secretary of State to confirm the Made Order and will be determined by an Inspector appointed on behalf of the Secretary of State by the written representations procedure. Since the last meeting of the Panel in March, the Planning Inspectorate have confirmed the timescales for the written representations procedure.
- 2.2 The written representations procedure will start on 4 June 2024 and the Council has until 18 June 2024 to submit its statement of case to the Planning Inspectorate. Everyone who has made an objection or representation or any other written representation about the order, or any other person wishing to make representations in writing, then has until 30 July 2024 to submit their statement of case and by 14 September. Everyone who has made an objection or representation, the Council, the applicant and anyone who has written to the Planning Inspectorate in respect of the order must ensure that any comments they wish to make about any or every other statement of case is received by the Planning Inspectorate. It is not proposed to submit any additional statement of case but to rely on the Council's statements of case which were submitted for the public inquiry, copies of which are attached at Appendix 2.
- 2.3 Prior to the public inquiry in June 2023, it was noted that modifications to the Made Order were required to amend the description of the overall length and description of the

footpath in the definitive statement for Footpath 26 Oldham, to reflect the fact that Footpath 26 Oldham terminates at Footpath 197 Saddleworth. Footpath 26 Oldham joins Footpath 25 Oldham and then runs to meet Footpath 197 Saddleworth where it terminates. The measurements given in the Order were only between its commencement at Knowls Lane and where it joined Footpath 25 Oldham. The amendments also removed the reference to the number of steps and riser depth, specified the width of the stepped route and confirmed that the diversion of the footpath would take effect when the Council certifies that the diverted route has been provided. The amendments were submitted by the Director of Legal Services acting under delegated powers and were accepted by the previous Planning Inspector and would have been included in the Confirmed Order if the decision had been to confirm the Made Order.

2.4 However, as the Inspector did not confirm the Made Order and as given that the decision was subsequently quashed, the Council will need to submit the amendments to the Planning Inspectorate again to be considered by a new Inspector appointed as part of the written representations procedure. The proposed amendments to the Made Order are detailed in Appendix 3, and include an amended width of the stepped route (1.2 metres) as the original amendment submitted to the Planning Inspectorate gave the incorrect width of the stepped route as 1 metre.

2.5 Russell Homes have recently submitted to the Council a non-material amendment (NMA/352826/24) to their planning permission relating to the stepped route. The amendment proposes that the stepped route should consist of 30 steps on either side of the proposed link road with treads @ 1200 mm and risers @ 170 mm and 1:4.5 gradient of steps overall. Handrails will also be provided. The proposed amendment is currently being consulted on by the Planning Section.

3 Options/Alternatives

3.1 Option 1 is to submit the proposed amendments to the Made Order detailed in Appendix 3 to the Planning Inspectorate.

3.2 Option 2 is to not submit the proposed amendments to the Made Order detailed in Appendix 3 to the Planning Inspectorate.

4 Preferred Option

4.1 It is recommended that Option 1 be approved. This will assist the Planning Inspector, as without modification, the Made Order will be inaccurate and Footpath 26 Oldham will be incorrectly described in the definitive statement. It would also be unclear when the diversion can be brought into effect (in the event that the Made Order is confirmed by the Planning Inspector).

4.2 If the Panel were to approve Option 2, then Officers would not be authorised to submit the amendments to the Planning Inspector or confirm the Council's agreement to those amendments to the Inspector (if they were submitted by another party to the appeal) so it would be a matter for the Inspector to decide whether they recommend to the Secretary of State that such modifications should be made in any event.

5 Consultation

5.1 The Ward Members have been consulted and no comments have been received.

6 Financial Implications

6.1 None.

7 **Legal Implications**

7.1 The Planning Inspector may make minor modifications to a diversion order provided that they do not affect land not affected by the order (eg the modifications cannot make a diversion follow a different route). The proposed amendments to the Made Order detailed in Appendix 3 do not affect the line of the proposed diversion route in the Made Order and can be considered to be minor as they are either procedural or they correct inaccuracies in the description of Footpath 26 Oldham in the definitive statement. (A Evans)

8. **Co-operative Implications**

8.1 No comments (James Mulvaney, Policy Manager)

9 **Human Resource Implications**

9.1 None

10 **Risk Assessments**

10.1 The legal comments are separately noted in this report., based on those comments it appears there is a relatively low risk for this report as the modification is only to correct the previous Order in relation to the wording. There is potential risk around this project as it has previously been subject to a Judicial Review and there may be further objections received. (Vicki Gallacher)

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 None

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

15.1 None

16 **Oldham Equality Impact Assessment, including implications for Children and Young People**

16.1 No

17 **Key Decision**

17.1 No

18 **Key Decision Reference**

18.1 N/A

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 :

File Ref : TM2 - 249

Name of File : FP26 OLDH Knowls Lane

Records held in Highways Department central electronic storage.

Officer Name : Liam Kennedy

Contact No : 0161 770 4306

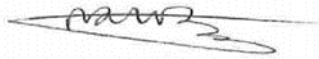
20 **Appendices**

20.1 Appendix 1 – Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Modification Order 2022

Appendix 2 – Council statements of case for the public inquiry

Appendix 3 – Proposed amendments to the Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Modification Order 2022

In consultation with Director of Environment



Signed :

Date: 31.05.2024

APPENDIX 1

**OLDHAM BOROUGH COUNCIL (FOOTPATH 26 OLDHAM) PUBLIC PATH DIVERSION AND
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

**PUBLIC PATH DIVERSION AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER**

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53A(2)

**OLDHAM BOROUGH COUNCIL (FOOTPATH 26 OLDHAM) PUBLIC PATH DIVERSION
AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

This order is made by Oldham Borough Council under section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to divert the footpath to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 namely MMA/344723/20 – Section 73 application. Variation of Conditions 8 (landscaping management) and amendments to approved plans within condition 13 (link road plans) to PA/343269/19 for up to 265 new homes (outline) and new link road between Knowls Lane and Ashbrook Road (full).

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the Oldham Metropolitan Borough Council Definitive Map of Public Rights of Way definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of highways hitherto shown or required to be shown in the map and statement.

BY THIS ORDER:

1. The footpath over the land shown by a bold black line on the attached map and described in Part 1 of the Schedule to this order (“the Schedule”) shall be diverted and the Oldham Metropolitan Borough Council Definitive Map of Public Rights of Way definitive map and statement shall be modified as described below.
2. There shall be created to the reasonable satisfaction of Oldham Borough Council an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion of the footpath shall have effect on the confirmation of this order and upon the occurrence of the diversion the Oldham Metropolitan Borough Council Definitive Map of Public Rights of Way definitive map shall be modified by deleting from it the path or way referred to in paragraph 1 of this order and the path or way referred to in paragraph 2 of this order shall be added to it, and the definitive statement shall be modified as described in Part 3 of the Schedule.
4. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULE

PART 1

Description of site of existing path or way

Existing Footpath 26 Oldham commencing at GR SD95648 04292 off Rhodes Hill proceeding in an easterly direction for a distance of approximately 480 metres to its junction with Footpath 25 Oldham at GR SD96048 04267 as shown on the attached map.

PART 2

Description of site of alternative highway

Footpath 26 Oldham commencing at GR SD95648 04292 off Rhodes Hill and proceeding for a distance of 168 metres in an easterly direction to point A (GR SD95808 04305) then turning to and proceeding in a south-easterly direction for a distance of 35 metres following stepped route to point C (GR SD95831 04289). Proceeding east across link road for a distance of 15 metres to point D (GR SD95851 04289) then heading east and north-east for a distance of 36 metres following stepped route to point B (GR SD95851 04289) and proceeding east and south-east for a distance of 181 metres to GR SD96048 04267 where Footpath 26 Oldham joins Footpath 25 Oldham, a total distance of 435 metres or thereabouts as shown on the attached map.

PART 3

Modification of Definitive Statement

Variation of particulars of path or way

Statement to be deleted

District and page number	Page Number	Status	Length	Description	Comments
Oldham Footpath 26	11	Footpath	480 metres	The path is a worn grass track leaving Rhodes Hill just south of Thornley Brook and running in an easterly direction south of the Brook. It crosses the Brook near the junction with path 25 before joining definitive footpath no.197 in Saddleworth U.D.	

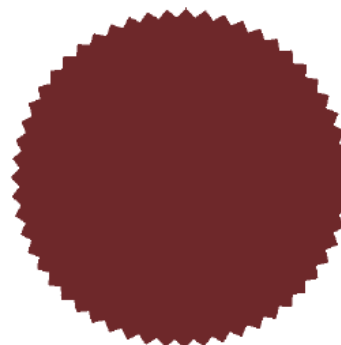
Statement to be added

District and page number	Page Number	Status	Length	Description	Comments
Oldham Footpath 26	11	Footpath	435 metres	Footpath 26 Oldham commencing at GR SD95648 04292 off Rhodes Hill and proceeding for a distance of 168 metres in an easterly direction to GR SD95808 04305 then turning to and proceeding in a south-easterly direction for a distance of 35 metres following stepped route to GR SD95831 04289. Proceeding east across link road for a distance of 15 metres to GR SD95851 04289 then heading east and north-east for a distance of 36 metres following stepped route to GR SD95851 04289 and proceeding east and south-east for a distance of 181 metres to GR SD96048 04267 where Footpath 26 Oldham joins Footpath 25 Oldham, a total distance of 435 metres or thereabouts.	Min. width 1 metre 79 steps with treads @ 178 mm riser

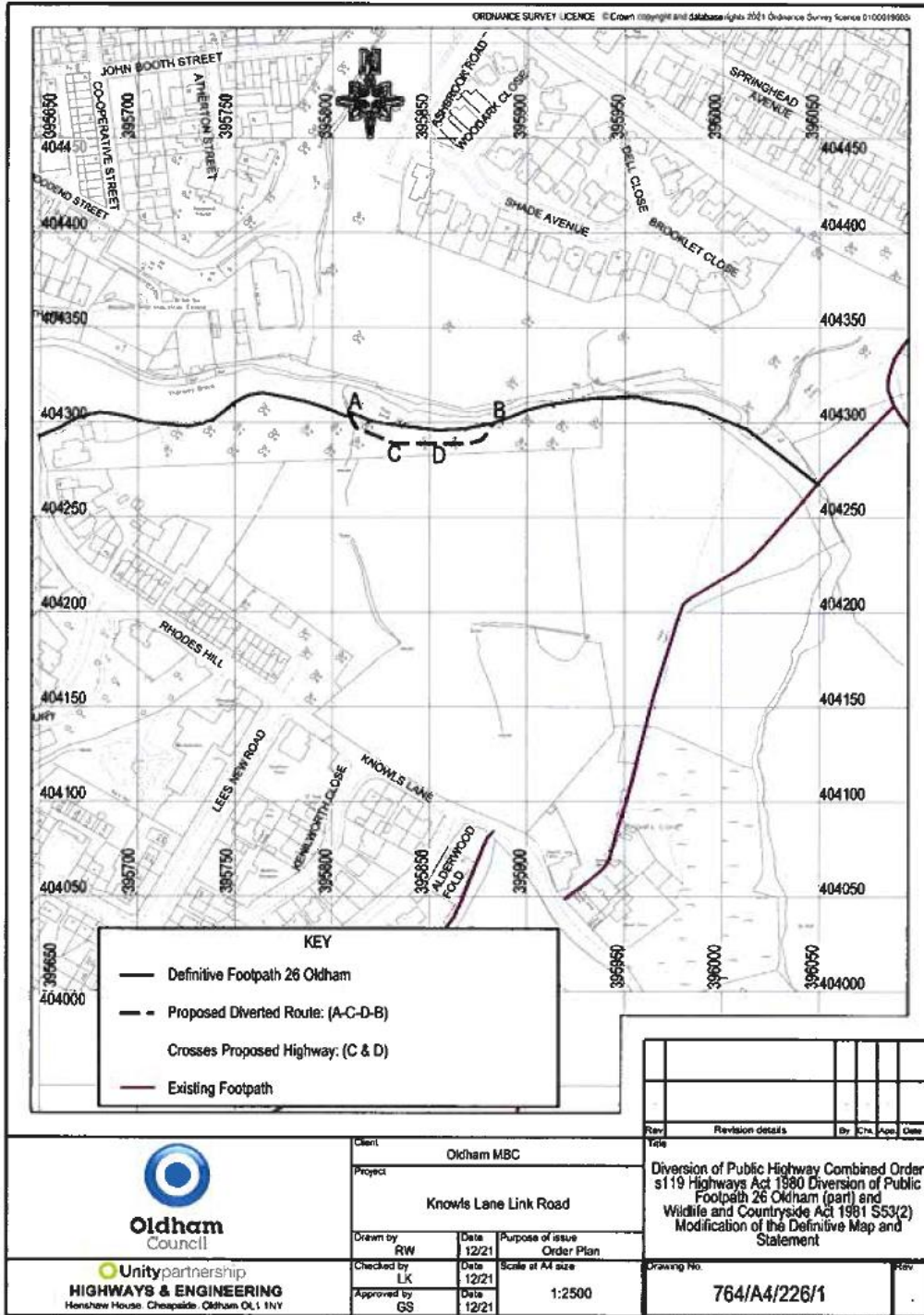
THE COMMON SEAL of)
 OLDHAM BOROUGH)
 COUNCIL was hereunto)
 affixed on 4th May 2022)
 in the presence of: -)

RE

Alan Evans
ALAN EVANS
GROUP SOLICITOR



Number in Seal Book
 7804/22^B



Alan Evans
ALAN EVANS
GROUP SOLICITOR

Number in Section
 7804/22 C

APPENDIX 2

COUNCIL STATEMENTS OF CASE FOR THE PUBLIC INQUIRY

It is considered necessary for the Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Modification Order 2022 to be confirmed to enable development to be carried out which was approved under planning application number MMA/344723/20.

The planning application was made under section 73 of the Town and Country Planning Act 1990 to vary conditions attached to planning permission PA/343269/19 for up to 265 new homes (outline) and a new link road between Knowls Land and Ashbrook Road, Oldham (full), in particular condition 13 (link road plans). Planning permission was granted on 23 April 2021.

Condition 12 of the planning permission specifies that link road and associated highways infrastructure will be developed in accordance with specified approved drawings, including Path Realignment Works (Sutcliffe) Drawing No. 28959-628-P5, which shows the diverted route of Footpath 26 Oldham crossing the link road via 4 flights of steps on either side of the link road.

The link road authorised by the planning permission will cross Thornley valley via an embankment to join Knowls Lane with Ashbrook Road, Oldham. Thornley Brook flows along the valley bottom and Footpath 26 Oldham runs alongside Thornley Brook. The construction of the embankment to carry the link road across Thornley valley will obstruct Footpath 26 Oldham. It is therefore necessary to divert Footpath 26 Oldham over the link road. Otherwise it will not be possible to implement the planning permission MMA/344723/20, as the embankment and link road will be obstructing the route of a public right of way, which is a criminal offence.

During the planning process the possibility of crossing the valley via a bridge, which would not have required the diversion of the footpath, was considered but was discounted due to construction and maintenance implications, environmental considerations and for viability reasons. A tunnel through the embankment was also discounted for practical reasons, including that it may create a security hazard for vulnerable footpath users and deter use. It was determined that a stepped diversion route to take footpath users from the valley floor up and over the link road and back down to the valley bottom was the most appropriate method of diverting the footpath. A ramped access route was not considered appropriate as it would require a path length of approximately 160 metres to allow for ramps and landings, compared to approximately 89 metres for the stepped route, resulting in greater ecological impact and loss of woodland than the stepped route. Planning permission was therefore granted by the Council for a stepped access diversion of Footpath 26 Oldham across the new link road as detailed on Drawing No. 28959-628-P5 referred to in condition 12 of the planning permission.

The Council considers that the Order should be confirmed as otherwise the planning permission MMA/344723/20 cannot be implemented and the link road cannot be constructed. If the Order is not confirmed, a new planning permission would be required which diverted the footpath in a different manner.

ADDITIONAL STATEMENT OF CASE OF OLDHAM COUNCIL

1. Further to the statement of reasons submitted by the Council to the Planning Inspectorate with the order, the Council would like to submit the following additional information in support of the grounds on which the order should be confirmed.
2. As stated previously, the Council considers that the order should be confirmed to enable the planning permission MMA/344723/20 (variation of conditions attached to planning permission PA/343269/19 for up to 265 new homes (outline) and a new link road between Knowls Land and Ashbrook Road, Oldham (full)) to come forward, without which the residential outline element cannot be implemented and the link road cannot continue to be constructed.
3. The site of the proposed housing development occupies a sustainable location close to a variety of services and amenities. Implementation of the housing development will make an important contribution towards ensuring that the Council can achieve its 5 year housing land supply provision for which there has been under-supply in recent years, particularly in the Saddleworth West and Lees ward of the Borough, within which the site is located.
4. The housing development will also significantly supplement the provision of affordable housing units in the area, with 53 additional properties to be provided, adding choice to the available mix of accommodation locally. The scheme also includes land release to facilitate future expansion to local primary school places.
5. Furthermore, the proposed link road, which will cross the existing route of Footpath 26 Oldham, will not only serve the approved residential development, but also bring to fruition a long-standing development plan commitment to relieve traffic levels at the nearby Hartshead Street junction with the A669 Oldham Road, creating wider benefits for the local community.
6. Consequently, there are significant planning benefits in ensuring the development can progress by approving the diversion of Footpath 26 Oldham.
7. In relation to the accessibility of the proposed footpath diversion, upon receipt of the footpath diversion application, the Council provided representatives of The Ramblers Association (RA) and the Peak and Northern Footpath Society (PNFS) with details of the proposed diversion and steps construction detail. The response from PNFS was that in principle there were no objections to the diversion 'in order to cross the new road in a sensible way' and that the proposed riser depth of 178mm be reduced to the maximum recommended depth of 175mm and include a concrete edging to maximise longevity of the new structure. The RA were in agreement with the comments made by PNFS (see Appendix 1 for copies of the emails).

APPENDIX 3

**PROPOSED AMENDMENTS TO THE OLDHAM BOROUGH COUNCIL (FOOTPATH 26
OLDHAM) PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2022**

Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Modification Order 2022

Proposed amendment to paragraph 3 of the Order

3. The diversion of the footpath shall have effect on the **date on which Oldham Borough Council certify that the terms of paragraph 2 above have been complied with** and upon the occurrence of the diversion the Oldham Metropolitan Borough Council Definitive Map of Public Rights of Way definitive map shall be modified by deleting from it the path or way referred to in paragraph 1 of this order and the path or way referred to in paragraph 2 of this order shall be added to it, and the definitive statement shall be modified as described in Part 3 of the Schedule.

Proposed amended Definitive Statement to be added

District and page number	Page Number	Status	Length	Description	Comments
Oldham Footpath 26	11	Footpath	519 metres	Footpath 26 Oldham commencing at GR SD95648 04292 off Rhodes Hill and proceeding for a distance of 168 metres in an easterly direction to GR SD95808 04305 then turning to and proceeding in a south-easterly direction for a distance of 35 metres following stepped route of 1.2 metres width to GR SD95831 04289. Proceeding east across link road for a distance of 15 metres to GR SD95851 04289 then heading east and north-east for a distance of 36 metres following stepped route of 1.2 metres width to GR SD95851 04289 and proceeding east and south-east for a distance of 181 metres to GR SD96048 04267 where Footpath 26 Oldham joins Footpath 25 Oldham, then proceeding in a generally north easterly direction for a distance of approximately 84 metres before joining FP197 Saddleworth at GR SD 96088 04334, a total distance of 519 metres or thereabouts.	

The amended wording is indicated in bold writing