

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

Portfolio Holder:

Councillor C Goodwin, Cabinet Member for Don't Trash Oldham

Officer Contact: Nasir Dad, Director of Environment

Report Author: Liam Kennedy, PRow Officer

Ext. 4306

Highways Regulation Committee

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 provide accurate context to the proposed amended wording in the Order.

Recommendation

It is recommended that the Committee 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 the Schedule 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 The Council granted planning permission to an application from Russell Homes UK Limited to facilitate the proposed development of a link road leading to 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.
- 1.2 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 13th-14th 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.
- 1.3 Following the decision of the High Court, the matter was referred back to the Planning Inspectorate for determination via the written representations procedure. Following the written representations procedure, on 19 November 2024 the Order was proposed for confirmation subject to modifications by an Inspector appointed on behalf of the Secretary of State. A copy of the Inspector's decision is attached at Appendix 2. As the proposed modifications increase the width of the footpath, they affect land not affected by the Order as submitted and consequently they are required to be advertised and notice of the proposal to modify the Order published to give an opportunity for objections and representations to be made to the Planning Inspectorate about the proposed modifications. Representations may be made between 5 – 26 February 2025. A copy of the Planning Inspectorate notice of proposals to modify the Order is attached at Appendix 3.

2 Current Position

- 2.1 The proposed modifications to the Definitive Statement for Footpath 26 Oldham are accurate but require further clarification where the Definitive Statement is to be read independently from the Order. Namely, the provision of Grid References in place of the lettered points referred to in the 'Comments' section of the Definitive Statement at Part 3 of the Order. Without looking at the map attached to the Footpath Diversion Order, the lettered points in the Definitive Statement are meaningless.
- 2.2 In checking the Grid References using more accurate mapping, we have been able to provide more precise grid references for points A, B, C and D as follows. Point A should be SD95800 04306, Point B should be SD95883 04298, Point C should be SD95837 04288 and Point D should be SD95852 04288. It is therefore recommended that the Planning Inspectorate be requested to insert/correct the Grid References used in the Order.
- 2.3 The amendments required to the Order are detailed in the Schedule below.

3 Options/Alternatives

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- 3.1 Option 1: To submit the proposed amendments to the Order detailed in the Schedule below to the Planning Inspectorate.
Option 2: Not to submit the proposed amendments to the Order detailed in the Schedule below to the Planning Inspectorate.

4 **Preferred Option**

- 4.1 It is recommended that Option 1 be approved. This will clarify the geographical position of points A, B, C and D.
- 4.2 If Option 2 is approved, Officers would not be authorised to submit the amendments to the Planning Inspectorate and the Definitive Statement as amended by the Planning Inspectorate will be less accurate and useful than it could be.

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- 5 **Consultation**
- 5.1 Ward Councillor Alicia Marland is in support of Option 2 – not to submit the proposed amendments to the Order.
- 6 **Community Cohesion Implications, including crime and disorder implications under Section 17 of the Crime and Disorder Act 1998**
- None
- 7 **Risk Assessments**
- Not applicable
- 8 **Co-operative Implications**
- Not applicable (James Mulvaney, Policy Manager)
- 9 **Procurement Implications**
- None
- 10 **Financial Implications**
- 10.1 Submitting amendments to the Planning Inspectorate for a Definitive Map and Statement Modification Order relating to Footpath 26 will have no financial implications to the Authority. (John Edisbury)
- 11 **Legal Implications**
- 11.1 The Planning Inspector may make minor amendments to a diversion order provided that they do not affect land not affected by the original order (eg the modifications cannot make the diversion follow a different route). The suggested amendments in this report to be submitted to the Planning Inspectorate do not affect the line of the diversion route and can be considered minor, as they improve the description of Footpath 26 Oldham in the Definitive Statement. (A Evans)
- 12 **Equality Impact, including implications for Children and Young People**
- 12.1 No

13 **Key Decision**

13.1 No

14 **Key Decision Reference**

14.1 Not applicable

15 **Background Papers**

15.1 None

16 **Appendices**

- 16.1 1) Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Order 2022
- 2) Planning Inspector's Decision 19 November 2024
- 3) Planning Inspectorate Notice of Proposal to Modify Public Path Order

Schedule

**Proposed amendments to Part 2 of the Order (Description of site of alternative highway)
(additions in bold)**

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 SD95800 04306)** then turning to and proceeding in a south-easterly direction for a distance of 35 metres following stepped route to point **C (GR SD95837 04288)**. Proceeding east across link road for a distance of 15 metres to point **D (GR SD95852 04288)** then heading east and north-east for a distance of 36 metres following stepped route to point **B (GR SD95883 04298)** 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.

Proposed amendments to Part 3 of the Order (Modification of Definitive Statement – Statement to be added) (additions in bold, deletions striked)

District and path number	Page Number	Status	Length (m)	Description	Comments
Oldham Footpath 26	11	Footpath	519 metres	Footpath 26 Oldham commencing at GR SD95648 04292 off Rhodes Hill	Kissing gates at points C GR SD95837 04288 and D GR SD95852 04288

				<p>and proceeding for a distance of 168 metres in an easterly direction to GR SD95800 04306 then turning to and proceeding in a south-easterly direction for a distance of 35 metres following stepped route of 2 metres width to GR SD95837 04288. Proceeding east across link road for a distance of 15 metres to GR SD95852 04288 then heading east and north-east for a distance of 36 metres following stepped route of 2 metres width to GR SD95883 04298 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</p>	<p>Between points A GR SD95800 04306 and GR SD95837 04288 30 steps and between points D GR SD95852 04288 and B GR SD95883 04298 30 steps</p>
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				84 metres before joining FP197 Saddleworth at GR SD 96088 04334, a total distance of 519 metres or thereabouts.	
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APPENDIX 1
Public Path Diversion Order

**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.	

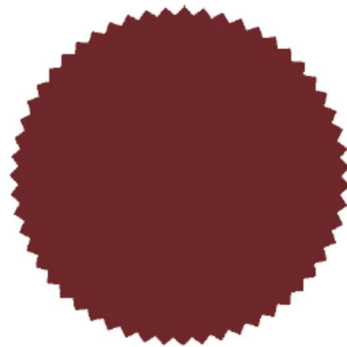
Statement to be added

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

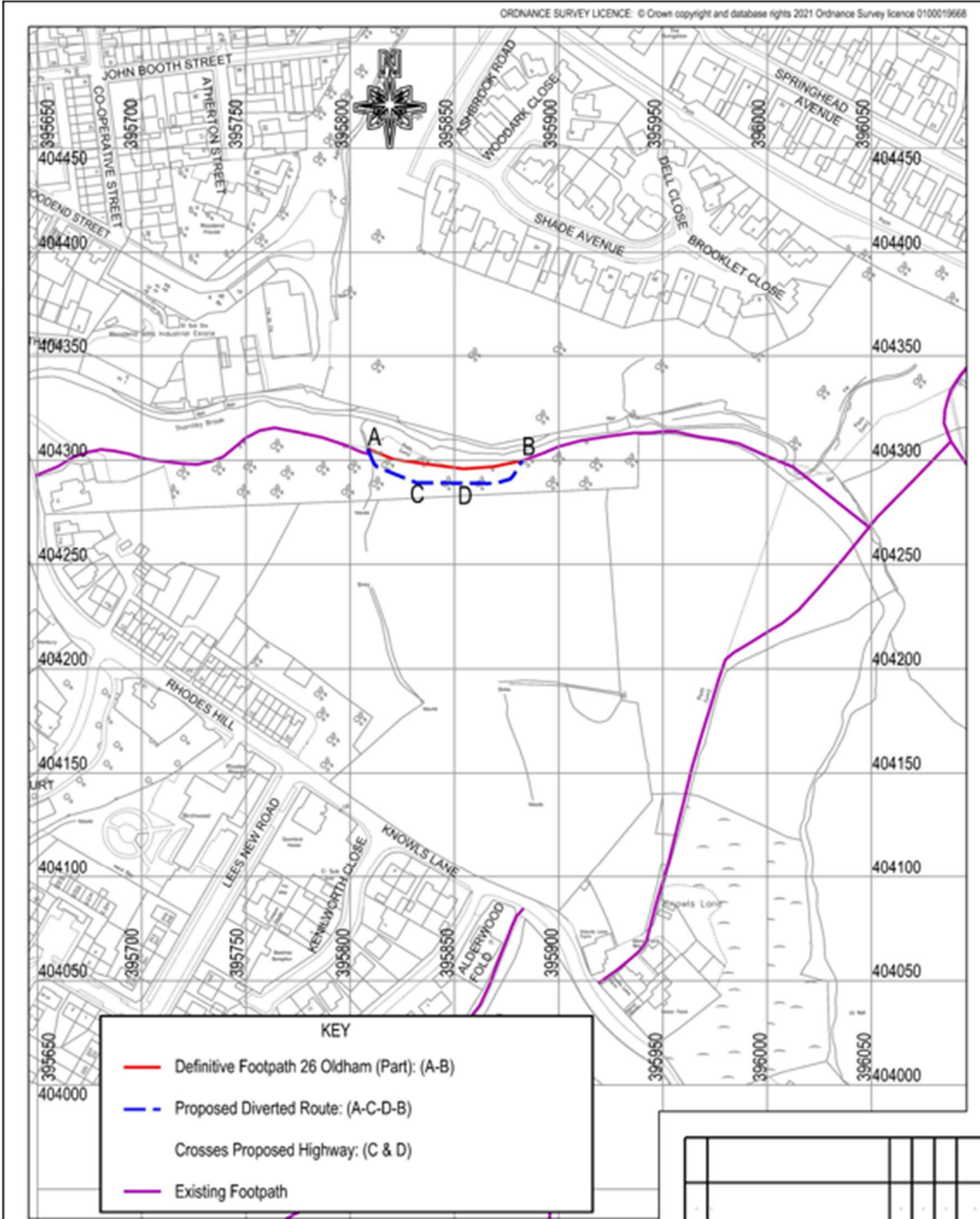
THE COMMON SEAL of)
 OLDHAM BOROUGH)
 COUNCIL was hereunto)
 affixed on 4th May 2022)
 in the presence of: -)

RE

Alan Evans
ALAN EVANS
GROUP SOLICITOR




Number in Seal Book
 7804/22 ¹⁵



KEY

- Definitive Footpath 26 Oldham (Part): (A-B)
- - - Proposed Diverted Route: (A-C-D-B)
- Crosses Proposed Highway: (C & D)
- 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 26 Oldham (part) and Wildlife and Countryside Act 1981 S53(2) Modification of the Definitive Map and Statement
	Project		Knowls Lane Link Road		
	Drawn by	Date	Purpose of issue		
	Checked by	Date	Scale at A4 size		
Unitypartnership HIGHWAYS & ENGINEERING Henshaw House, Cheapside, Oldham OL1 1NY		Approved by	Date	1:2500	Drawing No. 764/A4/226/1

APPENDIX 2
PLANNING INSPECTORS DECISION NOTICE 19 NOVEMBER 2024



Interim Order Decision

Site visit 23 September 2024

by Nigel Farthing LLB

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 November 2024

Order Ref: ROW/3303492R

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as the Oldham Borough Council (Footpath 26 Oldham) Public Path Diversion and Definitive Map and Statement Modification Order 2022.
- The Order is dated 4 May 2022 and proposes to divert the public right of way shown on the Order map and described in the Order Schedule.
- There were 11 statements of case submitted by way of objection to confirmation of the Order under this written representation procedure.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision, which require advertising.

Procedural Matters

1. A previous Inspector determined this Order following an Inquiry held on 13 and 14 June 2023. The Inspector's Decision ('ID') of 31 July 2023 to not confirm the Order was challenged by way of Judicial Review and quashed by the High Court and now needs to be re-determined.
 2. No party requested a hearing or inquiry be held, and I have re-determined the Order on the basis of the written representations of the interested parties. I undertook a site visit on 23 September 2024. The references in square brackets below relate to particular paragraphs in the ID.
 3. In response to evidence given at the Inquiry, and the findings in the ID, the Applicant has secured a non-material amendment (NMA) to the substantive planning permission (PA/343269/19 (the permission)). The permission is a single hybrid permission which covers both the construction of a link road and the provision of 234 dwellings.
 4. The NMA relates to the design of the proposed diversion route, changing this from a 96 stepped route (the original proposal) to a ramp with shallow steps (the NMA proposal).
 5. The ID [2] identifies various issues with the Order Map and notes that the Council had provided a correctly scaled map to use if the Order were to be confirmed. By this decision the Order is proposed for confirmation subject to the modifications detailed in the formal decision below. The revised Map, which is attached to this Decision, shall be attached to the Order for the purposes of clarification.
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Main Issues

6. The Order was made by Oldham Borough Council (the Council) in accordance with Section 257 of the 1990 Act. The main issues to be considered are accurately outlined in the ID [3 - 6] save in respect of the requirement to have regard to the material provisions of any rights of way improvement plan for the area. This was one of the grounds upon which the ID was challenged and it was accepted by the Secretary of State that this was not an issue which had been raised at the inquiry and therefore not a matter upon which any significant weight should have been placed.

Reasons

Site visit

7. I undertook a site visit on 23 September when I walked the full length of Footpath 26 (FP26) in both directions. I also explored the immediate area, including walking the routes giving access to the footpath.
8. The physical elements of FP26, including the Order route section, and the surrounding area are well and accurately described in the ID [7 – 10]. I would add that the Order route is accessed at its western end from Rhodes Hill. Access from Rhodes Hill onto the footpath at this point is constrained by a stone wall on one side and an upright stone embedded in the ground on the other. Whilst this presents little problem to a reasonably mobile person, the gap is certainly too narrow to accommodate a wheelchair and may present a difficulty to those with mobility issues.

The Necessity Test

Whether the diversion is necessary to allow development to be carried out in accordance with planning permission.

9. The ID contained a finding [11 – 14]) that the diversion of the Order route is necessary to enable the approved development to proceed. I agree with that conclusion.

The Merits Test

Whether the disadvantages to the public likely to arise as a result of the diversion are outweighed by the advantages of the proposed diversion along with any planning benefits.

10. The test to be applied is explained in the ID [15]. I would emphasise that in assessing the respective advantages and disadvantages, I am required to accept that the granting of permission confers a public benefit; it is not permissible for me to look behind the reasons for or merits of that permission.
11. My task is to assess whether any overall disadvantages flowing from the proposed diversion are of such significance as to outweigh the benefit of implementing the permission. The ID concluded that the overall disadvantages of the proposed diversion were sufficient to outweigh the benefit of implementing the permission. In re-determining this matter, the Applicant urges me to have regard to two issues.

12. First, the planning permission current at the time of the inquiry has since been modified by reason of the NMA. The Applicant argues that the changes substantially address a number of the concerns identified in the ID.
13. Second, the ID approached the balancing exercise on the basis that, in assessing the benefit arising from implementing the permission, it was necessary to consider only that element of the hybrid permission that relates to the construction of the link road, rather than the benefit that will accrue from the provision of the scheme to construct 234 dwellings.
14. I shall address these two issues in turn: -

Effect of the NMA

15. At the inquiry both written and oral evidence was presented about the original proposal for the diverted footpath to cross the embankment which will support the new link road. The scheme was to provide a total of eight flights each of 12 steps (96 in total), with a gradient of 1:2. The steps would have a width of 1.2 metres, a depth of 350mm and a rise of 170mm. No handrails were to be provided. The previous Inspector found (ID [34]) this 'would significantly disadvantage the public and prevent all but the fittest and most able from using it' and that 'For many path users and new residents, the number of steps, height and steepness of the embankment would make the Order route completely inaccessible, and others would find it substantially less convenient'. Further it was found that the lack of handrails would be 'a significant disadvantage to members of the public, particularly disabled and older users and young families.'
16. In response to these findings, the Applicant has engaged with the Objectors who had spoken about these issues at the inquiry and now proposes, by way of the NMA, a revised scheme for the configuration of the proposed route over the embankment.
17. The Applicant's statement of case includes full details of the changes resulting from the NMA proposal. The Objectors criticisms of the revised scheme, set out in their statements of case, fall broadly into two categories; those relating to the fairness of the process and those addressed to the substance of the revised scheme. I address these concerns below.

Fairness of the process

18. The parties did not take up the opportunity for the re-determination of this Order to be dealt with by way of inquiry or hearing and it is thus proceeding by way of the written representation procedure.
19. Many of the objections complain that the revised scheme introduced by the NMA has not gone through a proper consultation process and specifically that it has not been approved by the Council's Highway Regulatory Committee. In response the Applicant states that it undertook informal consultation with the Objectors. The Objectors acknowledge a degree of consultation but question its adequacy and the commitment of the Applicant to that process.
20. At this confirmation stage of the process the Council have no further responsibility for decision making, that now being the responsibility of the Inspector on behalf of

the Secretary of State. Accordingly, the Council Highway Regulation Committee has no part to play.

21. The Applicant invites me to confirm the Order with modifications. In deciding whether the Order should be modified, I am first required to consider whether the proposed modifications are so significant that a new Order should be made. If I conclude that no new order is required, I must then decide whether, in the interests of fairness, the parties have had proper opportunity to consider and comment upon the changes resulting from the modification.
22. As explained previously, the NMA amends the detail of the means by which the proposed path will cross the embankment supporting the new link road. The substance of the original proposal remains unchanged, that FP26 will be diverted over the embankment by way of a series of steps on either side. It is the detail and configuration of the steps that are modified by the NMA. I do not consider this to be a change of such significance as to necessitate the making of a new order.
23. I must then consider whether the written representation procedure has given all parties a fair opportunity to consider, understand and comment on the detail of the proposed diversion following the making of the NMA.
24. The written representation procedure is a standard means of dealing with matters of this nature. There is no requirement for any consultation prior to the exchange of representations although I recognise that some level of informal consultation did take place prior to the redetermination procedure commencing.
25. The procedure involved first the Applicant submitting a detailed statement of case with full supporting documentation including full details and specifications of the NMA. The Objectors have had opportunity to consider the revised scheme set out in the statement of claim and to submit their own statements of case in response. Subsequently there has been a further round of comment. Eleven Objectors have taken advantage of this process. I accept that the written representation procedure is an inherently fair process which has been applied correctly in this case. In reaching this decision I have taken account of all representations made and I do not consider the process has resulted in any unfairness to the Objectors.

Effect of the NMA on the disadvantages of the proposed diversion

26. The ID, under the heading 'The disadvantages of the proposed diversion' identified two main concerns, being the safety of the new road crossing and the gradient of the Order route over the embankment.
27. The question of the safety of the road crossing was dealt with in the ID [19 - 22]. This concluded that 'any disadvantages of the new road crossing to the public would be limited'. The NMA has no impact on road crossing concerns. The previous Inspector had the benefit of hearing relevant evidence at the inquiry, and I have no reason to disagree with the conclusion reached.
28. The contentious modifications are those which arise from the NMA and relate to the specification of the Order route. The ID [26 - 32] details concerns about the configuration of the Order route. These concerns relate to the number and size of steps and their gradient and to the absence of a handrail. Particular concern was

expressed about the suitability of the proposed diversion route for use by persons with impaired mobility by reason of age, disability or mobility issues.

29. The ID records evidence given at the inquiry relating to the difficulties a disabled user would find in trying to negotiate the originally proposed diversion route. It details the evidence given by a wheelchair user who stated that he would not be able to use the proposed steps. It was concluded that these issues would result in a significant disadvantage to members of the public.
30. The principal changes made by the NMA are to replace the eight flights of steps with a ramp incorporating shallower and fewer steps. The revised scheme provides for 30 steps on each side (60 in total) with each step being increased to 2 metres in width and to 1.2 metres in depth. The resultant gradient is 1:4.5 as opposed to 1:2 under the original scheme. Provision is also made for the inclusion of a handrail and kissing gates at the top of each flight of steps. The surface of the steps is specified to be self-binding gravel as in the original proposal.
31. A common theme of the Objectors is that the changes introduced by the NMA are not sufficient to satisfy their concerns, or the concerns outlined in the ID. The underlying rationale would appear to be that users of FP26 currently enjoy a relatively flat walk along the valley bottom, but will, if the Order is confirmed, be faced with the obstacle of ascending and descending the embankment and crossing a busy road and consider this represents a significant disadvantage.
32. I recognise that the introduction of the embankment would inevitably introduce an obstacle that does not currently exist and that this is disadvantageous. The Applicant intends the changes introduced by the NMA to mitigate any such disadvantage. The stepped ramp introduced by the NMA is in accordance with the suggestions made by some objectors at the inquiry. I note that the wheelchair user who gave evidence at the inquiry stated that, whilst he would not be able to use the steps specified in the original proposal, he would, with a more powerful attachment, be able to negotiate a stepped ramp, as would an all-terrain wheelchair.
33. The increase in width, and depth of the steps, allowing users to pass on the ramp, and the introduction of a handrail will provide a route which is accessible to a wider range of users.
34. The ID [25 - 26] recognised that the existing topography and condition of FP26 limits the ability of some people to use the route. My site visit endorsed this judgement; there are sections of FP26 which are narrow, uneven and in places precarious where the bank has eroded. There are obstacles in the form of protruding rocks and tree roots, uneven steps and narrow sleeper bridges crossing streams running down the side of the valley. These issues necessarily limit access to some parts of the existing footpath for certain people.
35. I accept that the changes introduced by the NMA provide significant mitigation to the concerns identified in the ID. I also consider, when assessing the question of disadvantage, it is appropriate to have regard to the limitations arising from the existing nature and condition of FP26.

36. Having regard to all of the foregoing I am satisfied that the scheme now before me substantially reduces the significance of the disadvantage to the public of the proposed diversion.
37. The Applicant proposes modifications to the Order to reflect the NMA. It provides for the removal from the Order of any specifications for the steps other than to substitute a width of 2 metres. Instead, it provides that the Order shall only have effect on the date on which the Council 'certify that the terms of paragraph 2 have been complied with'. The effect of the modification is that the Council must be satisfied that the proposed route has been laid out in accordance with the NMA before the diversion will be effective.
38. Some objectors have expressed concern whether, if the Order is confirmed, there is any certainty that the diverted route over the embankment will be constructed in accordance with the NMA. I am satisfied that the proposed modification is adequate to ensure that the diversion route is created and laid out in accordance with the planning permission as modified by the NMA.

Advantages of the proposed diversion

39. The advantages of the proposed diversion are detailed in the ID [36 – 37] which concluded that these did not outweigh the disadvantages to path users. I have concluded that the changes introduced by the NMA mitigate the disadvantages.

Advantages of the proposed development – the hybrid permission

40. The ID identified the need to balance any advantages arising from the proposed development against any disadvantages of the proposed diversion (ID [38]).
41. For the purpose of carrying out the balancing exercise the previous Inspector concluded that the only element of the hybrid planning permission that requires the diversion of the Order route is that relating to the construction of the link road and that the permission for residential development was not conditional upon the provision of the link road (ID [39 – 41]). In consequence the benefits flowing from that part of the permission relating to the provision of 234 dwellings were given only limited weight.
42. Various objections maintain this position, asserting that the diversion is not required to enable the residential development to proceed.
43. The Applicant argues that the planning permission is a single hybrid permission which includes both the construction of the link road and provision of the housing, and it is the whole of this permission that the Order seeks to enable.
44. The planning permission is subject to various conditions. Conditions 1 – 4 are stated to be applicable 'to the full (link road) element of the permission only'. Conditions 5 – 13 are stated to be applicable to 'both the outline (residential) and full (link road) elements of this permission'. Condition 12 provides: -

'The access, alignment and standard of the Link Road and associated highways infrastructure will be developed in accordance with the following approved drawings;'
45. I am satisfied that the effect of this condition is to require the diversion of FP26 in relation to both the construction of the link road and the housing development. In

consequence it is necessary to consider the benefit derived from the housing development as well as from the link road when balancing these against the disadvantages of the diversion.

46. The development of 243 houses on this site is a long-standing policy objective of the Council. The site has been allocated within Oldham's development plan for both housing and the link road since 1995. The development will provide a broad mix of housing including 53 affordable dwellings and, I am told by the Council, is necessary to assist it in meeting its 5-year housing land supply requirement.
47. I am required to accept the merits of the approved planning permission. For the reasons given I attach significant weight to the benefits which flow from the permission, and these include the benefits arising from the provision of the link road identified by the previous inspector in the ID [41].

Public Sector Equality Duty

48. The previous Inspector considered the application of the Public Sector Equality Duty (PSED) of the Equality Act 2010 (ID [42 – 45]). The Inspector's conclusion was that younger, older, less mobile and disabled users would be significantly disadvantaged and discriminated against if the Order were to be confirmed. I have accepted that the NMA proposal will significantly mitigate the concerns identified by the previous Inspector such that any disadvantage to those vulnerable groups of users will not be significant when assessed in the context of the footpath as a whole.

Conclusions on the Merits Test

49. The test to be applied is whether the disadvantages to the public likely to arise as a result of the diversion are outweighed by the advantages of the proposed diversion along with any planning benefits.
50. In reaching conclusions on the Merits Test there are two factors which differ from the exercise undertaken by the previous Inspector. First, I have concluded that the disadvantages to the public have been substantially mitigated by the NMA proposal. Second, I have found that in assessing the planning benefits it is necessary to give significant weight to the provision of 243 dwellings in addition to the benefit of the link road. Thus, in carrying out the balancing exercise the disadvantage to the public is lessened whilst the weight attaching to the benefit derived from delivering the permission is increased. I am therefore led to conclude that the benefits of implementing the planning are not outweighed by the disadvantages to the public of the diversion. Accordingly, I conclude that the Merits Test is met.

Whether the development is substantially complete

51. The position remains as identified in the ID [48] and I am therefore satisfied that the development is not substantially complete.

Rights of Way Improvement Plan (ROWIP)

52. The ROWIP for Oldham covered the period 2008 to 2017 and is therefore not current. The Order route was not one surveyed by the Council in connection with

the plan. The objectives of the ROWIP are not a mandatory consideration in determining whether to confirm an Order under section 257 of the 1990 Act.

Other matters

53. Objectors highlight the attraction of the walk currently afforded by FP26 and the impact the construction of the link road will have on the environment and the enjoyment of the area. I recognise that FP26 currently runs along a natural and relatively unspoiled valley giving a sense of tranquillity despite being within an urban area. Whilst recognising the concerns expressed, these are issues which were addressed in the planning process and are not factors which I can take into account within this procedure.
54. Objectors also complain that the Council have failed in their duty to maintain the surface of FP26. I have described the condition of the path on the day I visited and I agree that it shows little sign of recent maintenance, but it is not very different to many paths in similar rural settings. In any event, the existing condition of the path is not a matter material to my decision.

Overall conclusions

55. I have concluded that both the necessity and merits tests are met, and I propose to confirm the Order subject to the modifications detailed in my Formal Decision below. I propose to modify the Order to include as limitations the kissing gates and the steps to reflect the terms of the NMA.

Formal decision

56. I propose to confirm the Order subject to the following modifications:

Delete from paragraph 3 the words 'confirmation of this order' and insert 'date on which Oldham Borough Council certify that the terms of paragraph 2 above have been complied with'

Delete from the Schedule Part 3 Statement to be added: -

the words '435 metres' and insert '519 metres'

After the words 'for a distance of 35 metres following stepped route' insert the words 'of 2 metres width'

After the words 'for a distance of 36 metres following stepped route' insert the words 'of 2 metres width'

After the words 'where Footpath 26 Oldham joins footpath 25 Oldham' insert the words 'then proceeding in a generally north easterly direction for a distance of approximately 84 metres before joining FP197 Saddleworth at GR 96088 04334, a total distance of 519 metres or thereabouts.'

In the Comments column delete the words: -

'Min. width 1 metre' and '79 steps with treads @178 mm riser'

In the Comments column add the words: -

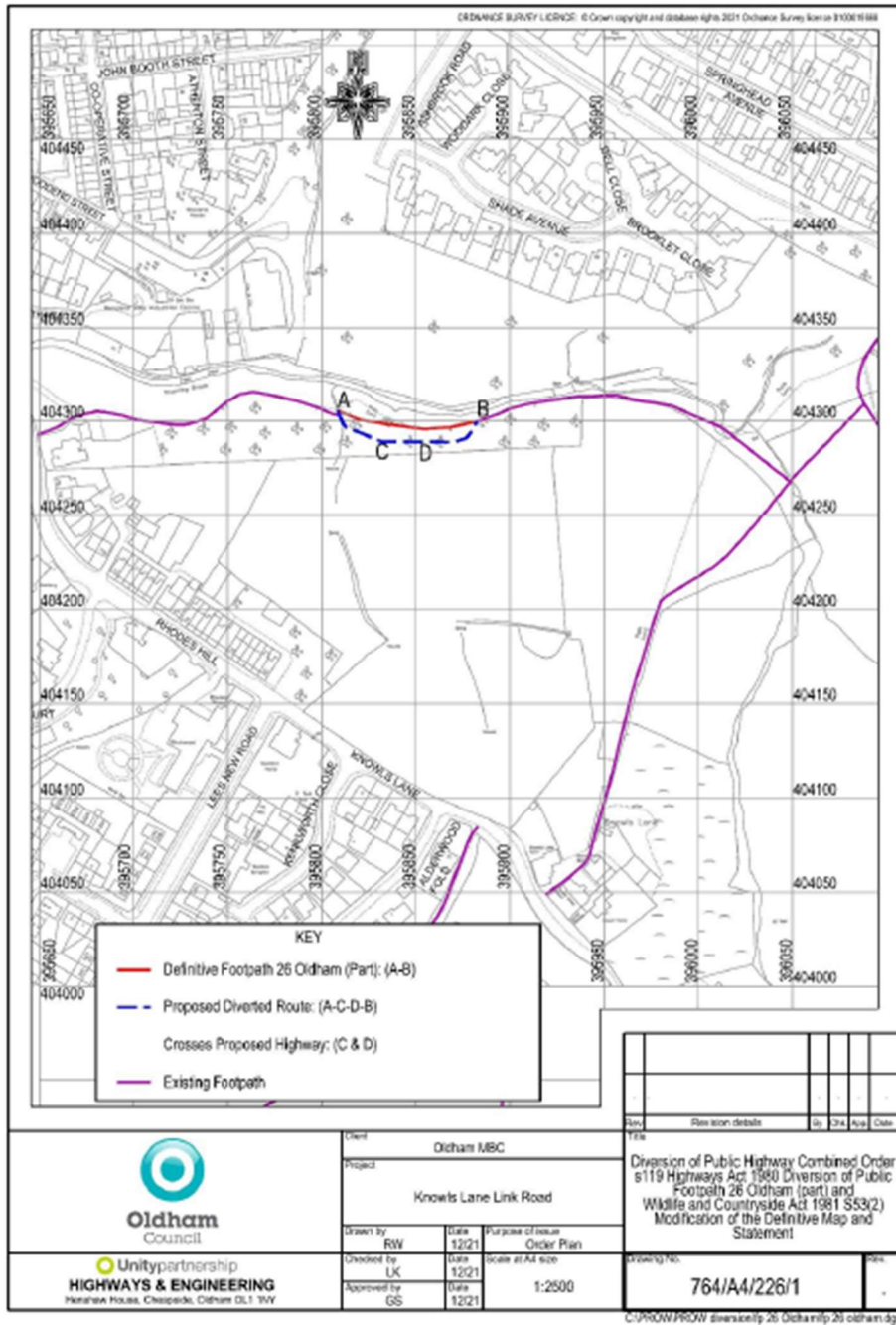
'Kissing gates at points C and D'

'Between points A and C 30 steps and between points D and B 30 steps'

57. Since the confirmed Order would, by reason of the increased width of the proposed footpath, affect land not affected by the Order as submitted, I am required by virtue of Paragraph 3(6) of Schedule 14 to the 1990 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the representation procedure.

Nigel Farthing

INSPECTOR



APPENDIX 3
Notice of Proposal to Modify Public Path Order

NOTICE OF PROPOSAL TO MODIFY PUBLIC PATH ORDER

TOWN AND COUNTRY PLANNING ACT 1990

Notice is hereby given pursuant to paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990 that the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs to determine the **Oldham Metropolitan Borough Council** (Footpath 26 Oldham) Public Path Diversion & Definitive Map & Statement Modification proposes to modify the order by deleting from paragraph 3 the words 'confirmation of this order' and insert 'date on which Oldham Borough Council certify that the terms of paragraph 2 above have been complied with' Delete from the Schedule Part 3 Statement to be added: - the words '435 metres' and insert '519 metres' After the words 'for a distance of 35 metres following stepped route' insert the words 'of 2 metres width' After the words 'for a distance of 36 metres following stepped route' insert the words 'of 2 metres width' After the words 'where Footpath 26 Oldham joins footpath 25 Oldham' insert the words 'then proceeding in a generally north easterly direction for a distance of approximately 84 metres before joining FP197 Saddleworth at GR 96088 04334, a total distance of 519 metres or thereabouts.' In the Comments column delete the words: - 'Min. width 1 metre' and '79 steps with treads @178 mm riser' In the Comments column add the words: - 'Kissing gates at points C and D' 'Between points A and C 30 steps and between points D and B 30 steps'.

A copy of the order as submitted and a copy of the order showing the proposed modification together with the Inspector's Order decision dated 19 November 2024 have been deposited at Civic Entrance, Civic Centre, West Street, Oldham OL1 1UL and may be inspected free of charge during normal working hours.

Any representation or objection with respect to the proposed modification may be sent to Ian Aston by email: ian.aston@planninginspectorate.gov.uk quoting reference number **ROW/3303492** on all correspondence between 05 February 2025 and 26 February 2025 and should state the grounds on which it is made. Alternatively, this may be sent in writing to Rights of Way Section, Room 3/A, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. It should be noted that any such representation or objection may be made available for viewing by interested parties at the council offices on request.

If you use Artificial Intelligence (AI) to create or alter any part of your documents, information or data, you should tell us that you have done this when you provide the material to us. [See the detailed guidance for further information.](#)

Dated this 05 day of February and 2025.