

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

23 NOVEMBER 2017

**Modification of the definitive map and statement Item 13 – Page 35
Determination of public rights of way and their status at Huddersfield
231, Nether Moor, South Crosland, Huddersfield. Definitive map
modification order application to record a public footpath (Add footpath
and vary particulars).**

Please note two submissions on this PROW agenda item.

The council has received a written submission on behalf of the applicants Mr & Mrs Bradley, which opposes the recommendation and asks for the order applied for to be made:

“Agenda item 13. Application to add a public footpath HUD/231 to the Definitive Map and correct the Definitive Statement

On behalf of the applicants Mr and Mrs Bradley, Nether Moor Farm

Dear Elected Members,

We received the above Council report and submission on the evening of Wednesday 15th November 2017, having been advised by the Council that they would not release the documents until they were released to elected members.

We advised in return that we would not be able to fully review the documents until Saturday 18th November 2017 and would have to reply the same day as I am to be out of the Country until the evening of Tuesday 21st November.

The Council Report

Despite this short time frame we have reviewed both the officers 55 page report, the 48 page Leeds memo and the attached consisting of 372 pages. This is a total of 475 pages, which took 8 hours to primarily interrogate by a person experienced in public rights of way matters.

We are sure that the elected members have similarly read all 475 pages and noted the following:

1. Contrary to normal procedure, no site visit has been arranged.
2. The officers rely upon both historical and modern user in an attempt to prove their case. Elected members will be aware that officers only need to prove one to make their case.

3. The report does not explain how the route was dedicated and accepted as a public right of way when there was no evidence of it being a public right of way prior to it becoming subject to "strict settlement" and continuing as such until after the claimed path survey by the Council of the day in the early 50s.
4. There is no "walking survey card" produced to explain why the officer of the day who undertook the claimed survey in the 1950s thought the way was a public footpath all the way through, rather than just to the cross field path.
5. The reports do not explain how the draft definitive statement following the claimed survey refers to the way as being unobstructed when historically, according to independent mapping, at least two gates or bars have always existed across it.
6. There is no explanation how the claimed public footpath along a private farm road became marked as a CRF.
7. There is no explanation how the CRF became marked thereafter as a Road Used as a Public Path, thereby suggesting public bridle rights now existed.
8. There is no explanation as to how during the review in 1985 the way then became marked as a solid black line and the Definitive Statement became detailed as a Byway Open to All Traffic despite no Order being made.
9. There is no explanation as to how the Ordnance Survey, post 1999, became told and began to show the route as from 2003 as a Byway Open to All Traffic.
10. The elected members will have noted that the historic evidence in the 74 appendices, by way of maps and photographs, are so poorly scanned and reproduced that they are unable to blow them up to view the evidence, unlike those produced by the applicant.
11. The elected members will have noted that the failure to provide good copies makes it impossible for them to view the gates, walls, route and details referred to in the officers and applicants reports.
12. Elected members will have noted that the officer's report says, in relation to a barrier across the lane, that "the bar did not seem long enough to cross the lane". She did not however examine the bar, or measure it. We can confirm it was and is long enough and has been used since earliest memory to block the lane against all comers that were not invited or given permission.
13. In relation to the modern user evidence purporting to show presumed dedication the officers have failed to provide the elected members with the "user evidence forms".
14. If the "user evidence forms" had been provided it would become clear that those users have been challenged and that their evidence is incorrect. Whilst we would be loath to suggest lying has taken place by users, there is certainly inconsistency within the statements made over the telephone to officers and actual fact.
15. Elected members will have noted that the "user evidence" charts provided by the officers, in their current form, are misleading in that they do not clearly identify the date of first challenge.
16. Importantly, as the charts do not separate those that claim legitimate private access rights with permission from those that claim usage as of right to pursue a public way thus giving a wholly false impression.
17. When the lawful access use is removed from the charts the picture is quite different and insufficient, even if the usage claimed is true (which we would deny), to prove a public right of way.

Additionally.

Elected members will have noted that there is no reference with the documents as to;

The Councils action since 2009, when they were advised that the way was not a byway in law or fact and that it could never be shown in law or fact as a Byway,

There is no mention of the multiple incorrect issuing of flawed Section 143 Highways Act Notices to clear the lane.

There is no mention of the two actual attempted enforced clearances by officers, the first of which led to the arrest of one person at the officers behest. Both attempts were rebuffed.

There is no mention of the Councils failure to pursue prosecution of the arrested person, as this required a statement that the way was and is a public vehicular highway.

There is no mention of the attempted but failed Section 130 Highways Act appearance of Kirklees Bridleway Group and the Council in Huddersfield Magistrates Court in front of the District Judge in an attempt to get an Order to clear the route. Despite the employment of a Barrister, by the Council supporting the action, this was rebuffed by the applicants and the Bridleway Group then withdrew.

There is nowhere in the report any mention of an apology to the land owners for the Councils persecution of them for the last 9 years when the Council insisted, even when told they were acting without lawful excuse, that the way was not and is not and could never be a Byway Open to All Traffic.

There is no mention in the report of the estimated £50,000 of rate payers money that has been spent on failed Court and other legal action by the Council on this matter, nor acknowledgement of the expense, both financially and emotionally, that the land owners have been put through so far to prove the Council wrong in the, now admitted, ill-founded belief that the route is or could be a Byway Open to All Traffic.

There is no information in the report that acknowledges that the Council will now correct the erroneous on line mapping system that incorrectly shows the route as a Byway Open to All Traffic and also inform the Ordnance Survey of the error on their mapping.

Other back ground information.

Since my involvement in this matter within Kirklees I have also dealt with routes elsewhere in the Councils area.

These include a number of Highways Act Section 143 Notices issued or threatened. These have either been withdrawn or not acted upon by the Council following my input.

In another case the Council requested the removal of an ancient recumbent oak tree in ancient protected woodland. When the owner questioned both the need to remove and the fact that the tree did not obstruct a public footpath the Council still went ahead, granted themselves planning permission and destroyed the tree. It was later proved that the tree did not cross a footpath but a permissive one formed to view the tree and an ancient spring line.

Recently I appeared in front of this Committee regarding the addition of another footpath which the officers advised the Order should not be made. This Committee went with the officer's recommendation, despite our protestations. Upon appeal the Secretary of State overturned the Council and directed that the order should have been made. That order is still not made almost a year later.

In another matter, complaints were made to the Council that a nearby recorded Byway Open to All Traffic was obstructed by a footbridge that prevents motorised use and it was unlawfully authorised by the Council in 2001. The Council has declined to open up that route.

All of the above suggests that officers within the Council have made multiple errors in the past and continue to do so now.

The Application in question.

It is fact that the route was not recognised by the land owners as public right of way of any kind but they presumed that as a public footpath came across their field that it must proceed along their drive to the public highway known as Sandy Lane. They permitted friends and neighbours to use the route on horseback when it was not inconvenient to the owners.

This changed in 2009 when the applicants challenged users in "off road" motor vehicles, prevented their use and turned them back. This altercation involved the violent assault on Mr Bradley who was pinned against his locked gate across the disputed route by the vehicle being driven him. The matter was reported to the Police.

The applicants then became aware that their drive and their farm track was marked on the Ordnance Survey as a public Byway Open to All Traffic.

There then followed conversations with the Highway Authority regarding how this had come to pass and what could be done about it. They were advised that the only thing they could do was to investigate the matter themselves and hope for a down grade to a Bridleway. Acting on this advice from Council officers they did this and submitted an application to down grade. The application was later amended to down grade to footpath.

When I was brought into the discussion, and further investigation was undertaken, it became clear that the route did not possess public footpath rights all the way through but only from Points A to B on the application map. That is from Sandy Lane to the start of the cross field path.

As the incorrect application already made (and amended) showed on the Councils system as a "downgrade" they attracted a lower score than those to "add" on the Councils Priority Matrix table. To that end the application to "down grade" was withdrawn and the current application to "add" was made. At that time signs were erected informing the public of this but allowing continued permissive foot and horse use to continue. All local user groups were informed via letter and in person.

The situation changed when the applicants were firstly verbally abused and threatened by members of the local horse riding fraternity and then the Council threatening enforcement action on the basis of their now accepted erroneous position. At that point the continuation route was closed and just the permissive footpath, subject to this application, was left open.

The matter has now, at last, come before elected members.

We say that the application route, and only the application route, is a public footpath.

The officer's report says it and a continuation should be a Bridleway.

For the reasons stated above, we say you should not accept their findings but go with ours. In any case the matter will, without any doubt, go eventually to Public Inquiry for us to defend our position and Users to put their case. If the Order as made is overturned by the independent Planning Inspectorate on behalf of the Secretary of State there will then be a 2nd Inquiry. Each will cost the Council an estimated £5000 to £10,000 (without barristers' fees).

What we would ask is for elected members to read this sorry tale and then decide who has been shown to be right so far.

Andy Dunlop

Rights of Way Consultant "

Officers note that this does not introduce further evidence and would refer members to the content of the reports and appendices, including the relevant criteria to be satisfied. Anyone may formally object to any relevant order made by the council, which may force a referral for determination by the Secretary of State at DEFRA. The officer recommendation remains.

The council has received an objection from a member of the public to the recommendation, which would "downgrade" and "deny [public] vehicular rights".

"From the link you sent, it seems that the landowner is requesting a footpath and the council's officers are recommending a bridleway. This would deny vehicular rights on the RoW. If the RoW was a road used as public path (RuPP) in 1975 and was subsequently reclassified as a byway, then Kirklees should have some paperwork regarding this conversion from RuPP to byway and should defend it's status as a byway. I feel sure that if the RuPP had remained recorded on the definitive map into the recent past, interested parties would have been contacting Kirklees RoW to have it's status changed to a byway, that it has apparently been recorded as a byway has denied them the opportunity to do so.

As things stand I would object to the RoW being reclassified as a footpath or a bridleway."

"My objection to downgrading the RoW status of HUD 231 is that this RoW has been classified as a byway on the Kirklees definitive map since 1985. Had it been classified as a RuPP before 2000 then those using it for vehicular access would have had the opportunity to claim it's byway status before 2000. Had there been no evidence of it's byway status between 1985 and 2000 it would have been classified as a restricted byway (not a bridleway).

I am not in a position to make the claim but had there been evidence of historic vehicular use before 1.12.1930 then Kirklees could have legitimately classified this route as a byway. The opportunity to present evidence was lost because it appeared as a byway on the definitive map."

Officers note that this does not introduce further evidence and would refer members to the content of the reports and appendices, including the relevant criteria to be satisfied. Anyone may formally object to any relevant order made by the council, which may force a referral for determination by the Secretary of State at DEFRA. The officer recommendation remains.

Planning Application 2017/92825

Item 17 – Page 133

Change of use of part of bakery to gymnasium

1, Ruth Street, Newsome, Newsome, Huddersfield, HD4 6JF

Update to paragraph 4.2, within 4.0 Relevant Planning History;

Surrounding area

2017/92716: Erection of outbuilding and alterations to cart shed – Conditional Full Permission

The above application consisted of various physical alterations to no.1 Ruth Street (the B1 unit, formally Parfitts Bakery). This includes the erection of an outbuilding, along with the replacement of a wooden wall with a masonry wall.

This is pertinent to the current application as the wall in question is the proposed gym's shared external wall with The Old Coach House's rear yard. It was considered appropriate that the physical works to the wall be considered as part of 2017/92716 as it was deemed more relevant to the site's B1 use: regardless of the outcome of the current Change of Use application, the applicant wishes for the wall to be changed from wood to stone.

Within application 2017/92716 officers considered that the change of the wall, from timber to masonry, would have a neutral impact upon the amenity of The Old Coach House's residents subject to the windows being obscured. It is also not envisaged that the gym users would have any serious impacts on users of the B1 unit which has recently received the planning permission referenced above.

Outline application for erection of residential development

Land off, Huddersfield Road, Meltham, Holmfirth, HD9

Additional Representations:

Councillor Greaves has raised the following objection to the proposal:

Meltham has seen a lot of development proposals in the last few years and I am concerned that there is already too much in the pipeline, and that this application does not help matters.

It is distant from schools, services and other areas of housing and is very much out on a limb.

Being near to the industrial complex it is a site more suitable to employment use and the average speed of traffic on Huddersfield Road is in excess of the current limit and will need traffic measures to make the access onto the road safe i.e. crossing point, turning lane, lane dividers, speed warnings (e.g. SIDs).

Highways

Highways DM have assessed the proposal and raise no objections.

Further to consultation with the Councils Street Lighting Department, the following comments are as follows:

The existing street lighting in this location is mounted on Northern Powergrid's (NPG) wooden distribution poles, with the electricity supply taken from their overhead lines. Due to the layout of the equipment the existing street lighting does not meet current standards for this type of road and subsequently will need bringing up to standard as part of the development, in particular with the introduction of a new junction. To achieve the required lighting standard, it is anticipated that we will need to install lighting columns that exceed the height of the wood poles and overhead lines and for that reason the existing NPG equipment would need to be removed to facilitate this, with the overhead cable being replaced with an underground supply. It is also worth noting that there are no mains cables present on the opposite side of the road so the option of installing street lighting on the opposite would require the provision of new electricity supply cables.

In line with the comments above, It is suggested the developer must make provision, along the entire frontage of this site, to enable an acceptable system of street lighting to be installed to facilitate the safe movement of traffic and pedestrians in this area.

In respect of receipt of plans indicating vehicle tracking for an 11.85m refuse collection vehicle (dwg ref 1272-Dwg 1), this aspect is considered acceptable. Speed surveys have been carried out (Abacus Traffic Surveys) for approximately 300 vehicles in each direction of the site access, with the 85th%ile wet weather speed been 40 mph in each direction respectively. Sight lines from the site access of 43m x 120m in each direction are achievable and considered acceptable based on the speed results.

The forward stopping distance for a HGV's on the approach to the site access of 120m visibility is achievable to slow down for vehicles turning right into the proposed site access.

The existing PROW Meltham 21 has been identified by the applicant, however further liaison will be required to ensure the internal road is diverted after the point of access to accommodate this accordingly.

A stage 1 safety Audit has been carried out on the proposals, a formal response to this audit from the designer will be required addressing all matters raised as required.

In conclusion, Highways DM consider the proposals acceptable from a highways prospective subject to safety audit response being completed, if planning are minded to approve the application the following conditions should be included:

Drainage

The Council Drainage Officer as representative of the Lead Local Flood Authority has assessed the proposals:

The central watercourse running through the site is partially culverted. The applicant has stated that they are not proposing to culvert any of the open part of the watercourse which runs through the site. The applicant states that there is space internally to gain access across the whole of the site without the need for culverting, this is shown with an arrow on the attached plan. At the top of the site there is a gap of around 15-20 metres here (depending on effecting trees) that is used to cross the site at the moment.

Policy PLP27 of the Publication Draft Local Plan states that *culverting or canalization of watercourses will not be permitted unless it can be demonstrated to be in the interests of public safety or to provide essential infrastructure and that there will be no detrimental effect on flood risk and biodiversity...*

It is considered that the proposed access would avoid the watercourse. The internal layout would need to be designed having regard to the existing watercourse on site, but there appears to be an area towards to upper slopes of the site where a crossing is likely to impact less on the watercourse and biodiversity interests. Conditions are recommended requiring full drainage details and the impact on the watercourse would be considered fully at reserved matters stage.

Ecology

In addition to the comments in the officer report, the Council's biodiversity officer makes the following comments:

The site is in excess of 2.5 km from the South Pennine Moors SPA and there are no existing records of golden plover in the near vicinity of the site. Impact to the SPA through loss of functionally connected habitat is therefore unlikely. Due to the scale of the proposed residential development and the location of the site in relation to the South Pennine Moors SPA/SAC, significant effects resulting from increased visitor pressure or increased vehicle movements are unlikely.

Additional recommended planning conditions:

Access sightlines to be provided
Scheme of street lighting
Details of junction of estate road

Additional S106 matters:

It is recommended that the S106 also includes for the provision of Travel Cards (subsidised cost of a Metro Travel Card) for the benefit of future occupiers.

Planning Application 2017/92422

Item 21 – Page 189

Erection of single storey side and rear extensions to dwelling, erection of machinery store and engineering operations

9, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield, HD7 4NW

Amended plans submitted:

The applicant has submitted some amended plans which have removed the link between the proposed rear extension and the existing garage. By removing this link and leaving the garage as an outbuilding the applicant contends that the garage should not be included within the volume calculations. As a result the applicant considers the volume increase over and above the original dwelling to be just under 34%. The applicant's calculation does not however appear to take into account the volume of the link which has now been omitted and so when this is taken into account the figure would be closer to 30%.

Whilst the amendment means that the existing garage would not become physically attached to the dwellinghouse, the garage nevertheless represents an addition to the property (being added since the 1st July 1948) and as such it is relevant to include the garage when considering all extensions and additions to the property and the impact on the openness of the Green Belt.

Given the reduced size of one of the extensions officers have recalculated the increase in volume provided by the existing and proposed extensions and the garage. The revised increase is 47% (as opposed to 51%).

The proposed amendment does not materially alter the original assessment. The overall volume increase remains at a level that would represent disproportionate additions to the original building in officers' view.

The amendment also does not address concerns with the impact on the openness of the Green Belt. The removal of the garage link would retain the 0.9m separation distance between the existing dwellinghouse and garage but in visual terms the garage continues to be viewed as an addition to the property which would harm the openness of the Green Belt.

Planning Application 2017/91132**Item 22 – Page 201****Erection of two storey side extension to form enlarged Class A1 shop at ground floor with A2 office unit and residential flat above****Fix It Supplies, 12b, Hillhouse Lane, Fartown, Huddersfield, HD1 6EF**

10.3 The description of the proposed use as it appears on the agenda reads "Class A1 shop at ground floor with A2 office unit and residential flat above". The application form and the design and access statement did not in fact specify whether the office accommodation was intended to be A2 or B1. The applicant has subsequently confirmed that the intended use of the upper floor is to be B1 not A2. However, since permission already exists for a mixed use development including A1, A2 and B1 use on the site, this is not considered to be crucial to the determination of the application. The description will however be changed to clarify that the intended use is not restricted to A2.

Local Planning Authority Appeals**Item 12 – Page 11**

An additional appeal decision has been received.

Electoral ward affected: Holme Valley South

- 2.1 Outline application for erection of one dwelling at Land Between 48-52, Greenhill Bank Road, New Mill, Holmfirth, HD9 1ER. (Officer)
(Dismissed)
-