



Date of Meeting	16 th October 2018
Portfolio	Cabinet Member for Neighbourhoods, Community & Culture
Report Author	Julie Simpson
Public/Private Document	Public

CLAIM TO UPGRADE DEFINITIVE FOOTPATH MILFP112 RUNNING FROM HUDDERSFIELD ROAD TO MILRUPP418 TO BRIDLEWAY

Executive Summary

1. In accordance with Section 31 Highways Act 1981 “where a way over land has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there is no intention during that period to dedicate it”.

Where a highway already exists a member of the public may apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 for the Council to modify the definitive map and statement subject to sufficient evidence to prove that the way was actually enjoyed by members of the public on horseback/pedal cycle as of right and without interruption for a period of 20 years or more, which (when considered with all other relevant evidence available to the Council) shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. The applicant must also notify the landowner of the application.

The Council has received such an application and supporting evidence to endorse the upgrade of a footpath (footpath MilFp112) to bridleway. The location of the route used is shown by a thick black line on the attached map to this report. The evidence provided indicates that the footpath has been used by the public as of right for over twenty years and that there is a case to make the order.

The Landowner is unable to provide evidence how the general public have been prohibited from using the route on horseback and or pedal cycle and whilst he accepts the application he has advised that the Council should consider erecting motor cycle inhibitors to counteract any illegal use.

Recommendation

2. That the Pennines Township Committee agree with the report and that the Council proceed with a definitive map and statement modification order to upgrade MilFp112 under Section 53(2) of the Wildlife and Countryside Act 1981.

That if no objections are received to the order, that the order be confirmed as an unopposed order under paragraph 6 of Schedule 15 to the Wildlife and Countryside Act 1981, and if relevant objections are received that the order be referred to the Secretary of State for a decision from either the submission of written representations or the matter held as an informal Hearing or in a Public Inquiry.

That the Head of Legal be authorised to make an Order under the relevant Acts, the effect of which, if confirmed, would be to upgrade a public footpath to bridleway.

Reason for Recommendation

3. Under Section 130 Highways Act 1980 the Council has a duty to protect and assert the rights of the public to the use and enjoyment of any highway within the borough: definitive rights of way are classed as highways under the Highways Act 1980. The Council are also required to maintain and keep under review a map, the definitive map, and statement showing the public footpaths and bridleways in its area.

As part of that review the map may be changed should members of the public submit an application to alter a route on the map, and described in the related statement, and successfully show the way to have higher rights. In this paradigm this is a Definitive Map Modification Order to upgrade an existing footpath to bridleway.

The Council has received an application from a member of the public supported by 29 evidence forms of use each indicating an uninterrupted period of enjoyment of the path on horseback between 2 and 48 years, at least 20 individual forms all provide the required 20 years use whilst the remaining 9 forms linked together also make up a further 20 years use.

The relevant landowner may provide evidence of actions taken to prohibit use by horse riders however they have been consulted, and, are unable to provide such evidence.

Currently pedestrians are the only legitimate members of public along this footpath however, the application could alter this use to include horse riders and pedal cyclist. There are many bridleways and restricted byways within the borough with such multiple uses with notably minimal incidents.

Key Points for Consideration

4. The Council are obliged to keep the definitive map and statement under review, this application contributes to meeting this obligation.

Any member of the public may submit an application to the Council to add a route to the definitive map and statement, divert or upgrade an existing footpath or bridleway if they can provide sufficient evidence to the Council that there is an intention to dedicate a bridleway by providing evidence of 20 years or more use.

The Council has received an application accompanied by 29 evidence forms, sufficient to comply with the Section 31 Highways Act 1980.

The relevant landowner has been consulted both by the applicant and the Council. The landowner has not been able to provide evidence to show the route had not been available to horse riders during the period of the claim.

The procedure allows for an objection period where any member of the public may submit an objection relevant to this order. Any unresolved outstanding issues are submitted to the Secretary of State who will make the final decision on whether the order should be made or not. The Council will proceed as stated by the Secretary of State. In the event there are no objections the Council may proceed and confirm the order.

A completed successful definitive map modification order dictates the future status of the right of way in question.

An event order is performed following a completed successful definitive map modification order to show the changes on the definitive map.

Alternatives Considered

4.1

The only alternative would be to decline to make the order. This would mean that the Council was in breach of its duty and would entitle the applicant to appeal to the Secretary of State under paragraph 4 of Schedule 14 to the Wildlife and Countryside Act 1981 against the Council's decision.

Costs and Budget Summary

5. The costs related to the order are internal officer and legal costs, financed by Environmental Management. Whilst there is no obligation to undertake any works to the route should it be successful and be upgraded to bridleway, the Council will ensure that the "bridleway" is open, safe and available for all legitimate members of the public. Should work be required along the surface or any path structures be erected (as requested by landowner) this will be carried out and financed from the Rights of Way budget.

Risk and Policy Implications

6. There are no specific risks for members to consider arising from this report however should they decide that the Council should not proceed with the order the applicant could appeal to the Secretary of State under paragraph 4 of Schedule 14 Wildlife and Countryside Act 1981.

Consultation

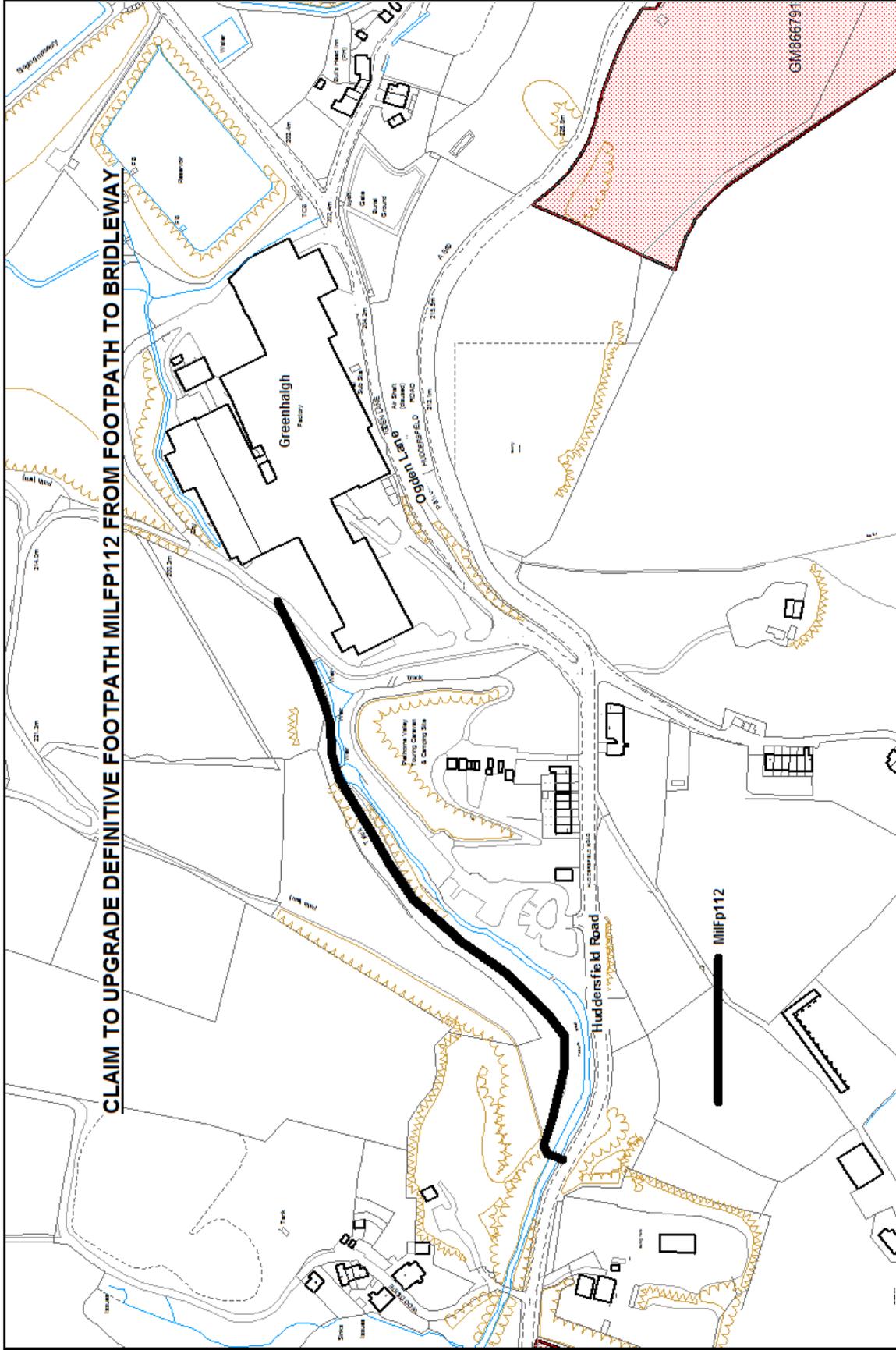
7. In addition to consulting with the Pennines Township Committee there is a legislative consultation with statutory consultees and notification to the landowner.

The order is publicised in the press and on site for notification to the general public and finally to the Secretary of State should there be outstanding objections.

Background Papers	Place of Inspection
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8. File 13807	Environmental Management, Green Lane, Heywood, OL10 2DY
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