

Name of meeting: Planning sub-committee (Huddersfield)

Date: 30 January 2020

Title of report: Application to divert part of public footpath Holmfirth 60 at Wolfstones Heights Farm, Upperthong. Town & Country Planning Act 1990, Section 257

Purpose of report: **Members are asked to consider** an application for an order to divert part of public footpath Holmfirth 60. The public footpath route to be extinguished, and the proposed diversionary route to be created are shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Karl Battersby 20 January 2020
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Yes - Eamonn Croston 20 January 2020
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes - Deborah Wilkes on behalf of Julie Muscroft 20 January 2020
Cabinet member portfolio	Not applicable

Electoral wards affected: Holme Valley South

Ward councillors consulted: Cllrs. Davies, Firth & Patrick.

Public or private: Public

1. Summary

- 1.1. The Council received a revised application in April 2019 from Mr S Butterfield for an order, to divert part of public footpath Holmfirth 60, under section 257 of the Town & Country Planning Act 1990, to enable the development to take place to fully implement

planning permission(s). The effect of the proposed diversion is shown on appended Plan 1. The public footpath to be diverted is shown by the bold solid line A-B, and the new public footpath to be created by bold dashed line B-C.

- 1.2. The existing public footpath would be affected by the development, as shown in the planning application block plans for 2018/93277 & 2018/93302 at App A1 and A2. A location plan is at App G.
- 1.3. Any further works to provide a new public footpath are to be undertaken by the applicant to the satisfaction of the Council. Some construction works have already taken place for the proposed new route, B-C. This work by the applicant is without prejudice to the decision before members and is at his risk.
- 1.4. Over time there have been slight amendments affecting the diversion proposals and application submissions, preliminary consultation took place on the first application in September-October 2017, and took place on an amended proposal, including the proposed dedication of an additional public footpath route, in July 2018. In November 2018, the application was withdrawn. In April 2019 the council received a new application, without the earlier proposed additional public footpath dedication, and preliminary consultation on that took place in June 2019. Details of responses are at section 4 and appendix D of this report. Responses were received in favour of the proposed diversion, and there are various responses by those not in favour. Applicant's comments on responses are at App E1 and E2.
- 1.5. The applicant has been in discussion with officers about the providing, through a formal agreement with the council, improvements to construct a hard surface to the highway verge on Wolfstones Road between the current and the proposed end points of footpath 60. In terms of timing, this improvement would be required to be provided only if the public footpath diversion process is to be completed. The proposal is that the agreement would be under section 278 of the Highways Act 1980, it would be made before a diversion order is made. The details of this could be agreed by officers if authority is given to make an order.
- 1.6. If members approve the making of an order under section 257, it would be advertised and if any objections are made and not withdrawn, the council could not confirm the order. Opposed orders could only be confirmed by the Secretary of State at DEFRA, which may involve a public inquiry. The Council is not obliged to forward an opposed order.
- 1.7. The council may form a view on making an order, and also on whether to forward an order if opposed, and on what stance to take on an opposed order.

2. Information required to make a decision

An application has been received to divert part of footpath 60 at Wolfstones Heights Farm, Wolfstones Road, Upperthong under section 257 of the Town & Country Planning Act 1990. The applicant cites planning permissions 2014/92814, *"(quoting the related Decision Notice) the formation of a new access and stopping up of existing access, diversion of public right of way and related external works"*, and 2017/91374 *"(again quoting the related Decision Notice) the demolition of a garage building, the erection of garages, garden room and fuel store with associated landscaping works"*, as amended by non-material amendment permissions 2018/NMA/93302 and 2018/NMA/93277. Here are Kirklees web links:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2014%2f92814>

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f91374>

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f93302>

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f93277>

2.1 The Council may make and confirm a diversion order under Section 257 of the Town & Planning Act 1990 Act if it considers that it is expedient to do so when the following criteria are met:-

- a) it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
- b) The Council must also take into account the suitability of the proposal and the effect the change would have on those entitled to the rights that would be extinguished.

2.2 The statutory procedure is a two-stage process which involves the making of a footpath diversion order. The order would be subject to public consultation by way of statutory advertisement and notices posted on site. If no objections are received or they are resolved, the Council may confirm the order as unopposed. If the order is opposed and the objections cannot be resolved, the order could only be confirmed if submitted to the Secretary of State (at DEFRA) for determination.

2.3 Section 7 of DEFRA's circular 1/09 covers the topic of planning permission and public rights of way. Decisions on opposed orders which may be forwarded to the government to determine, are made on behalf of the Secretary of State at DEFRA.

2.4 Weblink:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf

2.5 At paragraph 7.11, it states: "It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights. Planning authorities must ensure that applicants whose proposals may affect public rights of way are made aware of the limitations to their entitlement to start work at the time planning permission is granted. Authorities have on occasion granted planning permission on the condition that an order to stop-up or divert a right of way is obtained before the development commences. The view is taken that such a condition is unnecessary in that it duplicates the separate statutory procedure that exists for diverting or stopping-up the right of way, and would require the developer to do something outside his or her control."

- 2.6 Paragraph 7.15 states: “The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”
- 2.7 Plan 1 shows the proposal and appended plan 2 shows the surroundings.
- 2.8 The applicant’s submitted supporting statement is appended at App B, along with his submitted highways survey. The proposal to develop the site affects the driveway carrying footpath 60, with the public footpath to be diverted to reach its proposed new junction with Wolfstones Road. Also at App B are photos and a photo plan submitted regarding the nearby land accessed by the public (see paragraph 2.13 below).
- 2.9 The diversion proposal would allow pedestrian rights to be stopped up on a section of public footpath and an alternative public footpath provided, to allow an improved vehicular access to be created to the property and a current driveway to be closed. The length to be stopped up is shown by the bold solid line from points A - B on appended Plan 1, whilst the path to be added is shown by the bold dashed line B-C.
- 2.10 The applications identify that as a result of the proposed diversion the terminal point of footpath 60 on Wolfstones Road would change, moving approximately 115 metres along Wolfstones Road to the north. The application submissions identify that the link between the current and proposed ends of the footpath 60 would be along Wolfstones Road, specifically mentioning the verge. Further to PROW’s consultation on the diversion proposals, separate discussions regarding works to amend this Wolfstones Road verge between points A and C have taken place, relating to improvements by the applicant to provide a hard surface to improve it for pedestrian use. (Photos of current verge at App X).
- 2.11 In report Appendix B, the applicant’s statement of 29 March 2019 in support of the diversion application, paragraph 6.3 states, “*Briefly, works that cannot be completed without the diversion of the Footpath are the current stone wall to the south of the Footpath area cannot move and the garden lawn cannot be extended northwards towards the building known as Wolfstone Heights. In addition, the engineering works, levels alterations and connecting steps to the lower garage roof terrace and establishment of parking areas, as well as underpinning engineering and retaining walls, all of which is now more particularly established through the respective NMAs, cannot be concluded. This is because all such works necessitate the removal of the access drive to Wolfstones Heights Farm, part of which is covered by the part of the Footpath intended for diversion.*”
- 2.12 Kirklees PROW did not object to the grant of planning consents. PROW Officer had met the applicant’s agent on site at an early stage, and identified areas that may be brought up as issues by the public if an application to divert the footpath was made. The PROW officer stated that Wolfstones Road had a serviceable verge between the current and proposed path ends, which was intended to convey that it was walkable without risk of injury underfoot. No relevant objections appear to have been made by

the public to early planning applications, but once PROW undertook consultation specifically on the diversion proposal, objections were raised, including those by people who had not realised that the development described in planning applications would affect the footpath 60, or require its diversion. The Council therefore had not been in a position to take these comments and concerns about the public footpath into account when considering the planning applications, where they were raised later.

- 2.13 Appended Plan 2 and the photo plan at App C include an area of land up to the Ordnance Survey 'trig' point, with a track from the road. Where footpath 60 currently meets Wolfstones Road, the land across the road from point A and stretching west is owned by the Holme Valley Land Charity, whose trustee is the Holme Valley Parish Council. This land includes a track and an Ordnance Survey trig point mentioned by the applicant and many respondents to the consultation. The use of this land is the subject of various submissions to the Council, both for and against the application proposal. The HV Land Charity's website identifies in its Approved by Trustee's Action Plan of 14 November 2016 that the land is "*reserved for use by the public for informal recreation*".
- 2.14 Officers received further clarification from the Land Charity's Management Committee, which authorised the clerk to respond as follows: "There is public access to the site. There is no public access by permission. Public access is tolerated. There is no formal public access through any other arrangement. There is also no formal public access through the Land Charity's site to get to the adjacent farmer's field. I think it is necessary to clarify that the site at Wolfstones is not designated as open access land with Natural England, but is ungated and therefore accessible by the community. Those who wish to access it can do so and don't need to keep to the footpaths, but it is not formally open access land"
- 2.15 http://www.holmevalleylandcharity.org.uk/wp-content/uploads/2012/10/14_11_16-Action-Plan-Approved-by-Trustee.pdf
- 2.16 The applicant has submitted 2019 photos of signs relating to access to this land. App C.
- 2.17 Preliminary public consultations have been held on the proposal, the latest in July 2019; the details are listed in section 4 of this report.
- 2.18 In considering this decision, members have a number of options in relation to the section 257 order.
- 2.19 Members may take into account the proposal for the applicant to enter into an agreement with the council for the improvement to provide a hard surface at the verge of Wolfstones Road.
- 2.20 Option 1 is to refuse to make the order.
- 2.21 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 257 of the Town & Country Planning Act 1990 **and only to confirm it if unopposed**, but for officers to report back to members for its decision on sending any opposed order to the Secretary of State at DEFRA. (See 5.4 below).
- 2.22 Option 3 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would authorise confirmation of the order by the council if

unopposed, or otherwise seeking confirmation of an opposed order by forwarding it to the Secretary of State to confirm.

- 2.23 Option 4 is to authorise the Service Director of Legal, Governance & Commissioning **to make** an order under section 257 of the Town & Country Planning Act 1990 **and to confirm it if unopposed, and if opposed to submit it to the Secretary of State only if the applicant makes the case for confirmation** of the opposed order at hearing or inquiry. This would authorise confirmation of the order by the council if unopposed, or forwarding an opposed order to the Secretary of State to determine, where promotion of the order at inquiry or hearing may be undertaken by another party and where the council would look to fulfil its administrative role in proceedings. The Council would look to the applicant to pursue his own application. This is described in the Planning Inspectorate's rights of way section's Advice Note 1, paragraph 7.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774694/Advice_note_1_Revised_Jan_2019_PDF.pdf

“Sometimes an OMA is content to make the requested order but is not prepared to support it at an inquiry if it is opposed. This often occurs when an order is made under the Town and Country Planning Act 1990 to enable development to proceed, or an order to divert a path is made under the Highways Act 1980 in the interests of a landowner; the developer or the landowner is often asked to make the case for confirmation. The OMA may choose to remain neutral as regards confirmation of the order, to passively support it or even to oppose it if new information or objections following advertisement cause a change of mind.” Paragraph 12 continues, that in such circumstances, the Council may look to “secure the agreement of the applicant or another supporter of the order to take the lead in presenting the case.” Although not such an agreement, paragraph 5.1 of the applicant's supporting statement states, “The applicant's team would look forward to being able to formally respond to and examine any issues, at a local inquiry if necessary, following any objections to the order”.

3 Implications for the Council

3.1 Early Intervention and Prevention (EIP).

3.1.1 Providing better facilities for physical activity works towards local and national aims of healthy living.

3.2 Economic Resilience (ER)

3.2.1 **There** is an indirect impact of a welcoming environment which helps promote and retain inward investment.

3.3 Improving outcomes for children.

3.3.1 See 3.1.1

3.4 Reducing demand for services

3.4.1 See 3.5

3.5 Other (e.g. Legal/Financial or Human Resources)

3.5.1 The Council receives applications to change public rights of way, in this case to facilitate development already granted planning consent.

3.5.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.

- 3.5.3 Any person may make an objection or representation to the order
- 3.5.4 The council may choose to forward an opposed order to the Secretary of State at DEFRA (“SoS”) to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. Although the applicant would be responsible for most of the costs associated with the order process and for the costs of implementation of any changes on the ground, the council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry. Under current legislation, costs incurred by the council in that determination process would not be recoverable.
- 3.5.5 If the council confirms its own order, or after an order has been confirmed by the SoS, the council may recharge its costs of concluding the order process, including bringing an order into force
- 3.5.6 Development proposals, including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4 Consultees and their opinions

- 4.1 The public rights of way unit undertook three rounds of informal preliminary consultation which included notices posted on site and maintained for 4 weeks, information published on the Involve part of the Council’s website, and correspondence with statutory consultees, interested parties including utility companies and user groups, as well as ward councillors.
- 4.2 Ward councillors: Cllr Patrick, initially raised concerns then, in October 2017, wrote “I think the amended route, as discussed, is acceptable to me given that the development will (as explained) affect some of the route between the two houses. Not perfect, but on balance ok. If the additional route across the fields were possible that would be an added benefit.”
- 4.3 Cllr Patrick in response to consultation in July 2018, wrote, “I think with the additional path this is a much better proposal and I have no objections.” **Officers note** that the additional path proposed in the second consultation, is not part of the current proposal before sub-committee.
- 4.4 Cllr Patrick offered no comment in the 2019 consultation.
- 4.5 Other ward councillors have offered no comment to date.
- 4.6 Holme Valley Parish Council supports the application.

4.7 Responses have been received indicating support for the application and are shown at App D (App D lists responses by each round of consultation undertaken). These supportive comments concern:

- New pathway a huge improvement to the old pathway
- The pathway as you will have seen is fenced at both sides allowing my dogs to run freely without the fear of them heading off into the private drive ways of their home
- The new pathway is gated and joins the original further down the track which is perfect not just for my dogs but also when I walk with young children allowing them to run freely
- The proposed route is wide and level, it has wonderful views over the duckpond to lands far far away
- current path loses all views as it goes between two buildings
- dedicated walkers route which isn't shared with vehicles
- from a Health and Safety point of view it's far far safer than negotiating the tarmac drive, as this becomes slippery especially in winter
- obvious issue that it's a driveway so we often have to get out of the way of vehicles without much warning! Why would people want to walk up a drive?? It's stressful
- the new path is much more scenic and relaxing to use
- spectacular view offered by the instated new route
- top of the original route (up the driveway of the property, comes out at a highly dangerous bend
- new paths exit point provides visibility each way
- The new route avoids the main drive way and as I turn right slightly shorter
- visual view is hugely improved on exit from the new pathway easier to spot cars coming either down the hill or up the hill before joining the road
- always felt that I am being intrusive and nosey, I have had to keep my dogs on their leads to stop them running into the Butterfield's garden and parking area
- always had to be aware of cars leaving the house with the risk of both the dogs and myself being knocked down
- ourselves and other walkers are doing so for leisure, therefore it enhances our walking experience
- impressed with the landscaping of the new path
- fantastic stone work, drystone walls repaired properly, good path, benches to use
- I prefer the less claustrophobic open path
- children / grandchildren could run freely on the path without fear of vehicles / or farm machinery coming down the very narrow driveway
- usually parked cars on the left (due to dog walkers coming up to the trig point) parking and then walking their dogs the rest of the way
- The proposed diversion would offer so much more privacy for everybody and it would feel alright to stay for a while and enjoy the scenery
- the diversion offers great improvement from running on a semi private drive which we invariably have to share with cars
- The new route adds to my regular running route by just six minutes, taking into account running back up the road from the new exit point towards the trig point land, before turning around at the trig point and going back along the same route
- existing route offers a tarmac driveway sandwiched between two extremely high stone walls which act as a very unpleasant wind tunnel

- we felt nervous of potentially bumping in to animals who reside at the house as we are aware how territorial even the softest animals can be
- it is a much better surface to run on before joining the tarmac road
- The new path is easier on the joints. The substrate and gradient have made it possible for me join Wolfstones road without the deep mud which plagued the original route when the surface water following heavy rainfall would flow from the highest point (trig point,) directly down the path and inevitably down the driveway route into the soft ground
- The aforementioned drive is also extremely challenging when wet or icy
- The exit point of the diversion provides a wide exit point with views up and down the road and a large area for our walking group to congregate before moving on
- using a neat grass verge down the side of the road at the side of the house and linking the old and new paths
- also the tarmac ground is much better for my youngest who is only 2

4.8 The Council's Highways Safety engineer's comments are in full at App D. Conversion of the verge to a formal footway was identified as the only suitable mitigation measure for the change of the terminal point for Holmfirth 60 on Wolfstones Road. When queried by the applicant's agent, Highways Safety noted that the "*primary concern is the safety of pedestrians on the blind bend between the 2 access points (approx. 100m of verge).*" (See paragraph 2.10 above). **Officers note** proposals for improvement works to the verge to form part of a formal agreement under section 278, Highways Act 1980.

4.9 The Ramblers, a statutory consultee on orders, objects to the diversion proposal. Its grounds stated in 2019 are at Respondent ZH in App D. The Ramblers objected at earlier consultation stages.

4.10 The Peak & Northern Footpath Society, a statutory consultee, objects to the proposal. Grounds stated in June 2019 are shown at respondent ZD in App D, and PNFS objected at earlier consultation stages. As well as objections based on the changed path, PNFS queried the spending of public money on pursuing an opposed order.

4.11 Local running group, the Holmfirth Harriers object to the proposal, and objected at earlier consultation stages. June 2019 grounds at Respondent U at App D.

4.12 Responses were received that may be identified as being against the application diversion proposal and are also shown at App D. (App D lists responses by each round of consultation undertaken). These negative comments concern:

- Footpath coming out on dangerous bend
- Without a pavement
- Existing path is straight line between Netherthong and Wolfstones Heights
- the diversion would involve taking an unnatural line around two sides of a triangle and would significantly increase (almost double) the distance they would have to walk on the road
- The 'trig point' is NOT "relatively recently constructed". The programme to install Triangulation pillars began in the 1930s with the vast majority in place in the post war late 1940s. Locals have walked to this point over the unimproved/unused land since time immemorial. This practice has then been formalised under the stewardship of the

Holme Valley Land Charity

- Any conflict which may have existed between vehicles and pedestrians are eliminated by the creation of the new vehicle access drive and keeping pedestrians on the existing line
- The surveys do not take into account any usage after 1600
- survey seems to assume people only walk at weekends
- The original footpath is safer having been in large groups of walkers
- little threat to the security or privacy of the householder
- established path is a broad track, not a dark, narrow 'pinch point'
- diverted path takes the route needlessly northwards, interrupting the smooth, direct climb from Netherthong and adding unnecessary distance.
- new path's junction with Wolfstones road means that the walker is inconvenienced by having to climb the hill on the road
- emotional connection that local walkers feel with historic paths such as this one
- part of local culture and heritage woven together with ancient dwellings such as Wolfstones Heights
- narrow road and a quite dangerous
- current route is on the lane down to the stables which is access for vehicle use so can't be closed
- divert the existing driveway in order to fulfill planning permissions and facilitate access for emergency vehicles. I have no objection whatsoever to the driveway and vehicle access being diverted but I dispute this being a necessary justification for the diversion of the footpath
- the diversion would mean having to walk the last part along a road to get to the trig point at Wolfstones
- Kirklees and Holme Valley Parish Council are signed up to the Climate Change Emergency and this proposal goes against encouraging and supporting that ethos
- Holme Valley Neighbourhood Plan (in preparation) ,the number one priority requested in feedback by local residents was to support the maintenance and improvement of footpaths in the area
- planning consent does not divert or close public rights of way
- potential conflict between pedestrians and vehicles' on a very lightly used driveway (the only vehicles I have ever encountered have been involved in the building works at Wolfstones Heights), where vehicles travel at around walking pace, be improved by forcing pedestrians along 120 meters of public highway, which has no public footpath and a speed limit of 60 mph
- Part of the pleasure of using a footpath is passing by and through building and hamlets and having "the opportunity to experience the immense variety of English landscape and the settlements within it
- most users approaching the proposed diversion from the direction of Netherthong continue to the Wolfstones trig point
- surveys were undertaken in winter
- A memorial, with seating, has recently been constructed immediately to the west of the Wolfstones trig point and the landowner has erected a sign giving permission to cross the land at this point
- not sufficient justification for the loss of amenity and increased safety risk to the many local walkers using this footpath
- alternative route will be much less convenient & significantly less enjoyable

- verge is not suitable for walking on as there are too many obstructions
- Why should one person's benefit outweigh the public's loss of this path
- proposal seems to suggest that the building of garages cannot go ahead unless the path is diverted as of today the garages seem to be almost complete
- the current path does not cause any particular issues of overlooking or invading privacy the domiciles are situated well back from the current path
- no way be beneficial to myself or others members of the public to move the path
- proposed diversion ruins the continuity of the beautiful walk from Wolfstones Heights to Netherthong
- The many "green lanes" within the Holme Valley are a unique feature of the Valley, characterised by dry stone walls and grass verges on either side of the lane, often with grass in the centre, providing an invaluable habitat for wild life
- Approval of this diversion will set a dangerous precedent for other residents throughout the valley who feel that they can change established footpaths simply for their own personal benefits
- new path comes out at a blind corner, there are no paths nearby to connect to it, only road walking
- entirely traffic free route using rural paths including Holmfirth Footpath 60 to reach the viewpoint at Wolfstone Heights
- proposed new route is therefore less commodious
- never met a vehicle on there in 25 years
- no direct evidence in the report that the burglary at the property was as a result of the use of the footpath
- clearly sufficient room for walkers to use the footpath without coming into conflict with visitors to the property
- difficulties the fire engine encountered accessing the property has nothing to do with the public right of way
- argument that access to the heights may not always be the case is a smokescreen
- Pedestrians would then still have to cross the road in a potentially more dangerous position to walk facing oncoming traffic
- The fact that there has been no accident in the location with the current route in place is evidence of the safety of the current exit point
- The design of the garage and other features would appear to be a deliberate attempt to create an excuse for the 'need' for a change, and could have been designed not to impede the present route
- the present route has far less impact on those living in the development than the average pavement does on any village, town or city
- The footpath was known about when the property was purchased and any development should have taken the route into account. Not deliberately sought to change it
- With the newly constructed access driveway there is no reason why walkers and cars (or other vehicles) should cause an increased risk to pedestrians
- recreational walkers, from dog-walkers to committed hikers, do not like walking on public tarmac roads for longer than they need to, however quiet they are
- To allow the diversion would, we feel, be against the interests of users of the footpath
- At the Netherthong end, the path passes through a property with no problem
- To divert it would lose its essential character
- (I) use the path to connect to and from the one adjacent to Carr Farm on Wolfstones

Road. This change will mean more time spent on the road and having to negotiate the brow of the hill

- The entrance to the proposed footpath from Wolfstones Road is currently rutted and uneven. If this re-routing is to take place the landowner should be obliged to make improvements
- Kirklees planners granted planning permission 2014/62/92814/w without properly considering the effects on Holmfirth Footpath 60 and how this popular public footpath is used
- The proposed new route has several sharp turns on it which are not acceptable
- proposed new route for Holmfirth Footpath 60 is therefore considerably less commodious
- The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered
- diversion would reduce the amount of road walking for those using the path. However, this would only be the case for those coming from/going towards the north (Honley direction)
- the latest planning application that there is no necessity to divert the path in order to construct the garages
- The current path does not interfere with the privacy of Wolfstone Heights farm nor does it appear to do so should it remain
- no more than 20% of users of Holmfirth 60 turn right onto Wolfstones Road towards Honley

4.13 The applicant's comments on consultation responses are shown at App E1 and E2. The applicant considers that he has addressed and rebutted the negative comments on the proposed diversion.

4.14 Atkins Global, Northern Gas Networks, Cadentgas, Open Spaces Society, Auto Cycle Union, Cycle Touring Club, Huddersfield Rucksack Club, West Yorkshire Police Crime Prevention, Kirklees Bridleways Group, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, KCOM and Road Haulage Association offered no response or no objection.

4.15 Notices were posted on site for 28 days.

5 Next steps

5.1 If an order is made, it would be advertised and notice served. There will be a statutory 28 day (minimum) notice period during which time the public may make representations and objections.

5.2 If the order is unopposed the council may confirm it.

5.3 If any objections are duly made and not withdrawn, the council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the council may decide to abandon the order.

- 5.4 If members authorise the making of an order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:
- 5.4.1 Considering objections that are received, and
 - 5.4.2 The potential referral of an opposed order to the Secretary of State, or
 - 5.4.3 Abandonment of an opposed order
- 5.5 If sub-committee refuses the application, the order is not made, the public footpath would remain on its current alignment and the planning permissions could not be fully implemented as granted. There is no statutory appeal right for the applicant against a council refusal to make a section 257 order.

6 Officer recommendations and reasons

- 6.1 **Officers ask** members to make a decision on whether to make an order, choosing one of the options regarding that decision identified in paragraphs 2.20 to 2.23 above.
- 6.2 There are many points raised with the Council both for and against the proposal, with views on the perceived advantages and disadvantages.
- 6.3 Officers consider that, after assessing the information, it would be reasonable for members to decide to make an order, or to decide to refuse to make an order.
- 6.4 Members may consider whether the diversion is required to fully implement relevant planning permission.
- 6.5 Members may consider whether there is good reason to refuse the diversion application despite the grant of planning permission, including consideration of the guidance of DEFRA in paragraphs 7.11 and 7.15 of circular 1/09. Officers consider that the information available to the Council now, that was not available to the Council when deciding the planning applications, may also be taken into account and, on balance, for members, the information as a whole may weigh sufficiently to lead to a refusal, e.g. if they consider that the negative effect of the proposal on public path users outweighs the positive effect of the development and that confirmation should not or would not be sought, so no order ought be made.
- 6.6 Alternatively, in considering this merits test, members may decide that the diversion might be acceptable. This test is described in the judgements in Vasiliou v SoS Transport [1991] 2 All ER 77 and in R (Network Rail) v SoS Environment, Food and Rural Affairs [2017] EWHC 2259 (Admin). Members may resolve that, in taking into account any significant disadvantages or losses flowing directly from the order, for the public generally and also considering any countervailing advantages to the public, along with the degree of importance attaching to the development, any such disadvantages or losses are not of such significance or seriousness that they should not make the Order.
- 6.7 If members decide to authorise the making of an order, then the council's stance on that order and on any objections or representations it may attract, and what to do next would be determined by which option they choose.
- 6.8 Although not formally forming part of the order, provision of improvement works, for the benefit of pedestrian users of Wolfstones Road between the existing and proposed

ends of footpath 60, may be considered by members, along with other factors, in the decision of whether to make the Order.

6.9 Officers recommend members to

- 6.9.1 **Choose option 4** at 2.23 above, that the Service Director of Legal Governance and Commissioning be authorised to make an Order under Section 257 of the Town & Country Planning Act 1990 to divert Holmfirth 60 (part) as shown on report Plan 1 and to confirm the order if unopposed, and to forward an opposed order for determination whilst not actively promoting its confirmation, if the applicant makes the case for confirmation in DEFRA's determination; **and to**
- 6.9.2 **require** the making of a relevant formal highway verge improvement agreement before the section 257 order is made **and to**
- 6.9.3 **require** the coming into force of a relevant formal highway verge improvement agreement before the section 257 order comes into force.

6.10 With the options available to members, this recommended approach appears to officers, on balance, to be appropriate, given the previous grant of planning consent, the content and timing of consultation comments and submissions received, the nature of the specific development work that requires the diversion, and that a refusal at this stage could not be appealed. It would allow the diversion proposal to move forward and potentially enable the applicant to pursue the desired diversion through DEFRA if an order is opposed. That may result in a public inquiry, where this finely balanced matter and the many arguments received may be presented and considered in person, with opposing views on this contentious matter open to examination before the determining DEFRA inspector. If the footpath diversion process were to be completed the recommendation would lead to securing the works for pedestrian verge improvements between points A and C on Plan 1. The nature and delivery of those verge works would be the subject of further discussion and formal agreement through appropriate Kirklees highways officers before an order is made.

7 Cabinet Portfolio Holder's Recommendations

7.1 Not applicable.

8 Contact officer

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9 Background Papers and History of Decisions

9.1 PROW file 872/DIV/6/60 Wolfstones: Rights of Way Improvement Plan

9.2 Planning consents – website links shown at Section 2 above.

9.3 Appendices

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD2037&ID=2037&RPID=507121906>

- 9.3.1 Plan 1 - diversion proposal plan
- 9.3.2 Plan 2 – plan of the nearby area (including trig point)
- 9.3.3 App A1 & A2 - planning application block plans 2018/93277 & 2018/93302
- 9.3.4 App B1 - applicant's supporting statement
- 9.3.5 App B2 - applicant's highways survey
- 9.3.6 App C – applicant 2019 photos and photo plan of HVLC land etc.
- 9.3.7 App D – consultation comments on the proposals

- 9.3.8 App E1 – applicant comments on the 2019 diversion consultation comments
- 9.3.9 App E2 – applicant comments on previous diversion application consultation comments
- 9.3.10 App F - Aerial photo 2014
- 9.3.11 App G - location plan
- 9.3.12 App W1 – photos of path 60 proposed to be diverted - Plan 1 A-B
- 9.3.13 App W2 – photos of proposed diversionary path - Plan 1 B-C
- 9.3.14 App X – 2019 photos of grass verge/Wolfstones Road - Plan 1 C – A.

10 Service Director responsible

10.1 **Sue Procter** Service Director, Environment; Economy & Infrastructure Directorate