

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION

REPORT TO: BLACKBURN WITH DARWEN BOROUGH COUNCIL
PLANNING AND HIGHWAYS COMMITTEE

DATE: 18 November 2021

TITLE: Definitive Map Modification Order for Public
Footpath 185 Darwen

WARD: West Pennine **COUNCILLORS:** Jean Rigby
Julie Slater
Neil Slater

1.0 PURPOSE OF THE REPORT

The purpose of the report is to seek committee approval for a Definitive Map Modification Order (DMMO) for Public Footpath 185 Darwen.

2.0 BACKGROUND AND DETAILS

On the 13th March 2018, the Council granted planning permission for the extension of one dwelling, the creation of an additional dwelling in the barn attached; erection of single storey extensions to the north facing elevation of both buildings, creation of associated residential curtilages and erection of boundary fencing at Cuckoldmans Farm Roman Road Eccleshill DARWEN BB3 3PP. (Application 10/17/1373)

A Public Footpath passes through the farmyard and in order that the development can be implemented as per the planning approval, it is necessary that it is diverted. In this respect, on the 13th July 2021 the Council received an application from the farm's owner to divert the section of the footpath affected.

Whilst processing this application for diversion, officers noted that, although the footpath to be diverted is shown on the council's records as FP 185 Darwen, the wording of the Definitive Statement did not fully reflect the line shown on the Definitive Map.

A DMMO is therefore required to correct this anomaly before the Public Path Diversion Order can proceed.

Under the Council's Constitution this Committee has '*The power to create, divert, stop up, extinguish and reclassify footpaths and bridleways and the power to make orders and enter agreements in relation to the same*'

The Committee therefore has to consider whether, or not, to promote the Definitive Map Modification Order. In order to assist members in making this decision, officers have prepared a detailed report with the necessary information to enable an informed decision to be made.

3.0 LEGAL

The relevant legislation is the Wildlife and Countryside Act 1981, Section 53(3)(c)(iii).

4.0 IMPLICATIONS

Customer	None
Financial	Advertising costs will be met from the PROW budget.
Anti-poverty	None
Crime and Disorder	None

5.0 RECOMMENDATION

It is the officer's recommendation that the legislative criteria have been met and that the committee should resolve to Promote the Order and authorise the Director of HR Legal & Governance to progress the necessary legal order.

6.0 BACKGROUND PAPERS: Attached detailed report

7.0 CONTACT OFFICERS: George Bell

8.0 DATE PREPARED: 3rd November 2021

Wildlife and Countryside Act 1981 Section 53(3)(c)(iii)

Definitive Map Modification Order for Public Footpath 185 Darwen

1. Introduction

- 1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of a request from officers to make a Definitive Map Modification Order (DMMO) to amend the Definitive Statement of Public Footpath 185 Darwen under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981.

2. Background

- 2.1 The Council is the Highway & Surveying Authority for the area within which the public footpath proposed for modification lies.
- 2.2 The Council granted planning permission in 2018 for building works involving the extension of properties together with the creation of associated residential curtilages and erection of boundary fencing at Cuckoldmans Farm Roman Road Eccleshill DARWEN BB3 3PP. (Application 10/17/1373)
- 2.3 In order for the development to be carried out in accordance with the planning approval, it will be necessary to divert a public right of way, which currently runs through the farmyard. As such, on the 13th July 2021 the Council received an application from the property owner to divert the section of Public Footpath 185 Darwen that would be affected by the development.
- 2.4 Whilst processing the application for diversion, officers noted that, although the footpath to be diverted is shown on the council's records as FP 185 Darwen, the wording of the Definitive Statement did not fully reflect the line shown on the Definitive Map.
- 2.5 This report seeks to address those matters being put before members of the Committee, namely the request from officers for the Definitive Map Modification Order to amend the Definitive Statement of Public Footpath 185 Darwen as detailed below in this report.

It seeks to advise members of the Committee of the outcome of an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

3. Legislative Criteria

- 3.1 Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the surveying authority to keep the definitive map and statement under continuous review. The section sets out 'events' which would require the surveying authority to promote a DMMO.
- 3.2 One such event is set out in Section 53(3)(c)(iii) of the Act whereby
'.....the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows.....'
that
'..... particulars contained in the map and statement require modification....'
- 3.3 Should the surveying authority have evidence that *'.....any other particulars contained in the map and statement require modification....'* then under Section 53(2)(b) of the Act *'...the*

surveying authority shall...’ - ‘....as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event...’

- 3.4 A Definitive Map Modification Order promoted under these criteria seeks to amend the particulars contained in the map or statement without changing the recorded status of the way.

4. Assessment against the Legislative Criteria

- 4.1 Below is an extract from the Definitive Map in the area around Cuckoldmans Farm. The Public Rights of Way are shown as dashed lines with the boundary between the Darwen and Turton administrative areas shown as a dotted line.



When the map is considered along with the associated public rights of way definitive statements (which historically were very brief and are shown in the bulleted points below) the following can be ascertained:

FP's 185 & 226 start or terminate at Cuckoldmans Farm:

- FP 185 - Cuckoldman's to Junction of No's 186 & 187.
- FP 226 - Middle Scotland Farm to Cuckoldmans.

FP's 168, 169, 169a, 170 & 171 start or terminate at Far Hillock:

- FP 168 – No 165 to Far Hillock
- FP 169 – Far Hillock east to Borough Boundary
- FP 169a – Borough Boundary to junction with F.P 170.
- FP 170 – Far Hillock via Hillock to Roman Road.
- FP 171 – Far Hillock to Drummer Stoops, with fork to No 172.

FP's 66 & 67 terminate at the old Urban District Boundary

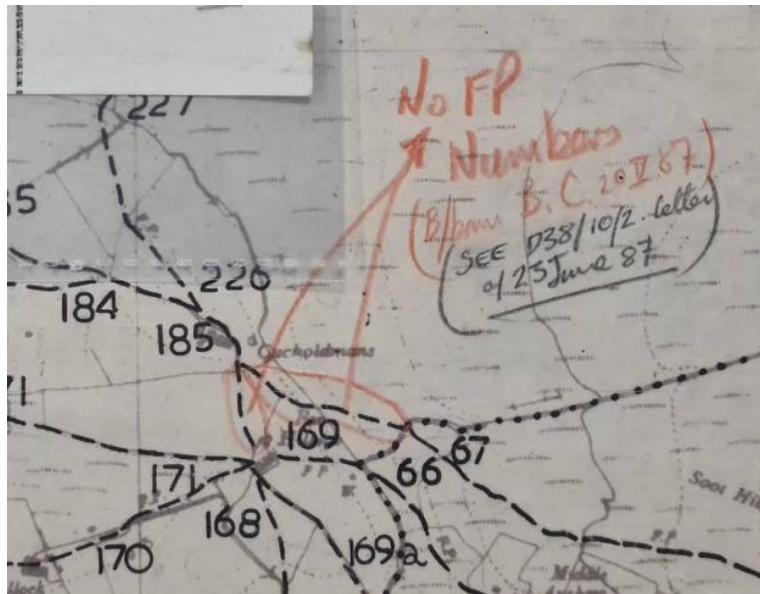
- FP 66 - Path No's 63 & 74 via Middle Aushaw to Urban Distrust Boundary West to Scott Hill
- FP 67 - Path No 95 (Lower house) via Ford (South of Horse Hey) and Soot Hill to Urban District Boundary North East of Far Hillock)

This analysis leaves the paths between Cuckoldmans & Far Hillock and Cuckoldmans & the end of FP67 with no number or Definitive Statement.

- 4.2 Whilst these paths do not appear to be numbered or to appear on any definitive statements, they are clearly shown on the Definitive Map as existing. In this respect and with regard to the path between FP 67 and Cuckoldmans, it would be reasonable to conclude that FP 67,

which is 1.06 miles long and terminates at the Urban District Boundary, would have a connecting path through to Cuckoldmans. Similarly, it would be reasonable to conclude that there would be a connecting path between Cuckoldmans and Far Hillock. It would be reasonable to conclude therefore that these paths shown on the definitive map are not as a result of drafting errors in the drawing up of the map.

- 4.3 An investigation of the PROW records revealed the following comments on an old paper copy of the definitive map:



This indicates that this issue had been identified in 1987 and was the subject of a letter dated 23rd June 1987. Officers have been unable to locate a copy of this letter but it is possible that it was to the then surveying authority, Lancashire County Council, informing them of the anomaly.

- 4.4 In addition, officers have been unable to find evidence of any previous DMMO being processed to correct this known anomaly.
- 4.5 Notwithstanding the above, around the time of Blackburn with Darwen attaining Unitary status, Lancashire County Council carried out an exercise to 'digitise' their definitive map records. This exercise included those definitive maps within the Blackburn with Darwen area. These digitised records label both of these previously unlabelled paths as continuations of FP 185 Darwen, either as a result of a previous DMMO or as the result of a review of the paths in the area.
- 4.6 Considering the evidence above it may be reasonable to conclude that the paths do exist as FP 185 Darwen and that the Definitive Statement for FP 185 Darwen requires modification to describe the route and extent of the path correctly.
- 4.7 Should the Committee be minded to approve the request for a DMMO then in order to correctly describe FP 185 Darwen, the existing definitive statement:

- Cuckoldman's to Junction of No's 186 & 187

needs modifying by the order to

- from the junction of FP's 186 & 187 Darwen to Far Hillock via Cuckoldman's with a fork south of Cuckoldman's to connect with FP67 Edgworth

5. Consultations

5.1 No consultation has been undertaken with regard to this proposal.

6. Decision Required

6.1 If, having considered all of the relevant information, Committee is minded to approve the request from officers to make a Definitive Map Modification Order (DMMO) to amend the Definitive Statement of Public Footpath 185 Darwen under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981, they should resolve that:

a) A Definitive Map Modification Order (DMMO) to amend the Definitive Statement of Public Footpath 185 Darwen as outlined in paragraph 4.7 is made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981

b) if no objections are duly lodged, the Authority confirm the Orders;

or

c) if objections are duly lodged, and not subsequently withdrawn, the Orders be passed to the Secretary of State for confirmation.

6.2 If, having considered all of the relevant information, the Committee is minded to refuse the request, officers should be advised of the reasons for the decision in order that any further action can be considered.

7. Recommendation

7.1 Whilst the Authority (Planning and Highways Committee) must make its own decision whether or not to promote the requested Order, it is the view of officers that the legislative tests appear to be satisfied, and therefore the Order may be promoted and 'made'.