

# Lancashire County Council

## Regulatory Committee

Wednesday, 15th March, 2017 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

### Agenda

#### Part I (Open to Press and Public)

#### No. Item

1. **Apologies.**
2. **Disclosure of Pecuniary and Non-Pecuniary Interests.**  
Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.
3. **Minutes of the meeting held on 25th January 2017.** (Pages 1 - 6)
4. **Guidance.** (Pages 7 - 30)  
Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.
5. **Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Coppull Bridleway 22,  
Chorley Borough** (Pages 31 - 40)
6. **Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion Of Part Of Arkholme Footpath 4,  
Lancaster City** (Pages 41 - 52)
7. **Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Barnacre-with-Bonds  
Footpath 43, Wyre Borough.** (Pages 53 - 62)

**8. Urgent Business**

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

**9. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Thursday 8<sup>th</sup> June 2017, in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I Young  
Director of Governance,  
Finance and Public Services

County Hall  
Preston

# Agenda Item 3

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 25th January, 2017 at 10.30 am  
in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Jackie Oakes (Chair)

#### **County Councillors**

I Brown	R Shewan
A Clempson	D Stansfield
B Dawson	D Whipp
G Gooch	P White
C Henig	B Yates

#### **1. Apologies**

Apologies for absence were received from County Councillor Kim Snape, County Councillor Julie Gibson and County Councillor Paul Hayhurst.

#### **2. Disclosure of Pecuniary and Non-Pecuniary Interests**

No pecuniary or non-pecuniary interests were disclosed.

#### **3. Minutes of the last meeting**

**Resolved:** That the minutes of the meeting held on 16<sup>th</sup> November 2016 be confirmed and signed by the Chair.

#### **4. Guidance**

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority on submission of Public Path Orders to the Secretary of State.

**Resolved:** That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

#### **5. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a byway from Main Road to Packet Lane, Bolton le Sands, Lancaster District**

A report was presented on an application for the addition of a public byway open to all traffic from Main Road to Packet Lane, in accordance with File No. 804-578.

Details of the application and the evidence related to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) and of the effect of the Natural Environment and Rural Communities Act 2006 were presented both as part of the report and by officers at the meeting.

One Member was in favour of the byway being open to all traffic as she was concerned about the lack of access for emergency services and about excluding villagers from accessing this route.

Another Member queried whether a case could be built around a mechanically propelled vehicular route. Jane Turner confirmed that the evidence of use available showed that in the relevant 5 years, the main public use had not been vehicular and that to save the mechanically propelled rights more evidence of vehicular use would need to be produced, for this to be classed as a byway open to all traffic. David Goode informed the Committee that if they were minded to agree the recommendation to not accept the application for the byway to be open to all traffic, then if significant evidence became available, this would be referred back to the Committee.

It was stated that it should be made clear to the applicant that if they had more evidence of vehicular access, they needed to let the officers know and, if sufficient, it would be referred back to the Committee.

**Resolved:**

- (i) That the application for the addition of a byway open to all traffic from Main Road to Packet Lane, Bolton le Sands, in accordance with File No. 804-578, be not accepted but instead a route of a different description be added;
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53(c)(i) of the Wildlife and Countryside Act 1981 to add a restricted byway from Main Road to Packet Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A – B;
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**6. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Deletion of Footpath 339 Rawtenstall, at Turton Hollow Road,  
Rossendale Borough**

A report was presented on an application for the deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough, in accordance with File No. 804-460. The application was on the grounds that the Definitive Map and Statement incorrectly recorded the route of a footpath at this location being largely along a line recorded to the south of Turton Hollow Road.

Details of the application and the evidence related to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex 'A') were presented both as part of the report and by officers at the meeting.

Having examined all of the information provided, the Committee agreed that there was sufficient evidence for an Order to be made to delete section A-B-C, as shown in the papers, from the Definitive Map and Statement.

**Resolved:**

- (i) That the application for the deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough, in accordance with File No. 804-460, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3) (c) (iii) of the Wildlife and Countryside Act 1981 to delete part of Footpath 339 Rawtenstall from the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B -C.
- (iii) That being satisfied that the test for confirmation can be met, the Order be promoted to confirmation.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Higher Road to Wellbrow Drive,  
Longridge, Ribble Valley**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley, in accordance with File No. 804-582.

Details of the application and the evidence related to it, together with a summary of the law in relation to the continuous review of the Definitive Map and Statement of Public Rights of Way (in the form of Annex 'A') were presented both as part of the report and by officers at the meeting.

Use of the route was evidenced as being for recreation, to visit friends, get to the shops, to play, for family walks with children, to deliver newspapers and as a short cut to the local shop.

The Committee noted that no objections to the proposal had been made. Electricity North West had highlighted the fact that there were underground cables located along the full length of the route.

Details of the site inspection which took place on 4<sup>th</sup> December 2016 were provided to the Committee.

A concern was raised about this proposal as it was thought it may encourage anti-social behaviour and therefore be a danger to young people. Jane Turner explained that it was the Committee's role to decide whether to add this footpath to the Definitive Map and Statement, on the basis of evidence of public rights. Any concerns following this decision being made could be dealt with separately.

**Resolved:**

- (i) That the application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, in accordance with File No. 804-582, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) the Wildlife and Countryside Act 1981 to add a footpath from Higher Road to Wellbrow Drive on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 Section 119A Rail Crossing Diversion Order and Wildlife and Countryside Act 1981 Section 53A Proposed Diversion of Part of Heath Charnock Footpath 44, Chorley Borough**

A report was presented on the proposed diversion of part of Heath Charnock Footpath 44, Chorley Borough.

The Committee noted that an application had been received from Network Rail to divert part of Heath Charnock Footpath 44, in connection with its proposal to replace Heath Charnock Level Crossing with a stepped footbridge.

The length of the existing path proposed to be diverted was shown by a bold continuous line marked on the plan as A-D, as shown in the agenda papers. The proposed alternative route was shown on the plan by a bold dashed line and marked A-B-C-D.

It was reported that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received. In addition, the Committee noted that Chorley Borough Council, Heath Charnock Parish Council and the Peak and Northern Footpaths Society had raised no objections to the proposal. Although Chorley Ramblers did not oppose

the proposal, they had asked for reassurance that access to the flight of steps on each side of the railway would be safe, flat and dry.

The Committee considered the stance to be taken regarding confirmation.

**Resolved:**

- (i) That an Order be made under Section 119A of the Highways Act 1980 to divert part of Heath Charnock Footpath 44, from the route shown by a bold continuous line and marked A-D on the attached plan, to the route shown by a bold dashed line and marked A-B-C-D.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**9. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Wiswell Footpath 17, Ribble Valley  
Borough**

A report was presented on the proposed diversion of Wiswell Footpath 17, Ribble Valley Borough.

The Committee noted that a request had been received from Reilly Developments Ltd, Brockmill Barn, Wingates Road, Wigan WN1 2SJ, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Wiswell Footpath 17 in the vicinity of 112 Clitheroe Road, Barrow, Clitheroe, Lancashire BB7 9AQ.

It was reported that the proposed diversion was in connection with a small scale development of residential properties where the existing route crossed the garden of one of the properties.

Whilst it would be have been feasible for the footpath to remain in its existing location across the garden the proposal, if successful, would provide the owners of the property with improved privacy and security.

The Committee noted that the necessary consultation with the statutory undertakers had been carried out and that no adverse comments or objections to the proposal had been received.

The Committee considered the stance to be taken on confirmation.

**Resolved:**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Wiswell Footpath 17, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked A-C-B on the attached plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**10. Urgent Business**

There were no items of Urgent Business.

**11. Date of Next Meeting**

It was noted that the date of the next meeting of the Committee would be held at 10.30am on Wednesday 15<sup>th</sup> March 2017 in Cabinet Room 'B' – The Diamond Jubilee Room, County Hall, Preston.

I Young  
Director of Governance, Finance  
and Public Services

County Hall  
Preston



## Regulatory Committee

Meeting to be held on 15<sup>th</sup> March 2017

Electoral Division affected: All
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## Guidance for the members of the Regulatory Committee

(Annexes 'A','B' and 'C' refer)

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, [jane.turner@lancashire.gov.uk](mailto:jane.turner@lancashire.gov.uk)

### Executive Summary

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

### Recommendation

The Committee is asked to note the current Guidance as set out in the attached Annexes and have reference to the relevant sections of it during consideration of any reports on the agenda.

### Background and Advice

In addition to any advice which may be given at meetings the members of the committee are also provided with Guidance on the law in relation to the various types of Order which may appear on an agenda.

A copy of the current Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way is attached as Annex 'A'. Guidance on the law relating to certain Orders to be made under the Highways Act 1980 is attached as Annex 'B' and on the actions of the Authority on submission of Public Path Orders to the Secretary of State as Annex 'C'.

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

Providing the members of the Committee with Guidance will assist them to consider the various reports which may be presented.

## **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
Current legislation		Jane Turner, Office of the Chief Executive 01772 32813
Reason for inclusion in Part II, if appropriate		
N/A		

## **Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way**

### **Definitions**

The Wildlife and Countryside Act 1981 gives the following definitions of the public rights of way which are able to be recorded on the Definitive Map:-

**Footpath** – means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; these rights are without prejudice to any other public rights over the way;

**Bridleway** – means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; these rights are without prejudice to any other public rights over the way;

**Restricted Byway** – means a highway over which the public have a right of way on foot, on horseback or leading a horse and a right of way for vehicles other than mechanically propelled vehicles, with or without a right to drive animals along the highway.  
(Mechanically propelled vehicles do not include vehicles in S189 Road Traffic Act 1988)

**Byway open to all traffic (BOATs)** – means a highway over which the public have a right of way for vehicular and all other kinds of traffic. These routes are recorded as Byways recognising their particular type of vehicular highway being routes whose character make them more likely to be used by walkers and horseriders because of them being more suitable for these types of uses;

### **Duty of the Surveying Authority**

Section 53 of the Wildlife and Countryside Act 1981 provides that a Surveying Authority shall keep the Definitive Map and Statement under continuous review and as soon as reasonably practicable after the occurrence of any of a number of prescribed 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.

#### *Orders following “evidential events”*

The prescribed events include –

#### Sub Section (3)

- b) the expiration, in relation to any way in the area to which the Map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

- c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows –
- (i) that a right of way which is not shown in the Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, a byway open to all traffic; or
  - (ii) that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description; or
  - (iii) that there is no public right of way over land shown in the Map and Statement as a highway of any description, or any other particulars contained in the Map and Statement require modification.

The modifications which may be made by an Order shall include the addition to the statement of particulars as to:-

- (a) the position and width of any public path or byway open to all traffic which is or is to be shown on the Map; and
- (b) any limitations or conditions affecting the public right of way thereover.

#### *Orders following "legal events"*

Other events include

"The coming into operation of any enactment or instrument or any other event" whereby a highway is stopped up diverted widened or extended or has ceased to be a highway of a particular description or has been created and a Modification Order can be made to amend the Definitive Map and Statement to reflect these legal events".

Since 6th April 2008 Diversion Orders, Creation Orders, Extinguishment Orders under the Highways Act 1980 (and other types of Orders) can themselves include provisions to alter the Definitive Map under the new S53A of the Wildlife and Countryside Act 1981 and be "combined orders" combining both the Order to divert and an order to alter the Map. The alteration to the Definitive Map will take place on the date the extinguishment, diversion or creation etc comes fully into effect.

#### **Government Policy - DEFRA Circular 1/09**

In considering the duty outlined above the Authority should have regard to the Department of the Environment Food and Rural Affairs' Rights of Way Circular (1/09). This replaces earlier Circulars.

This Circular sets out DEFRA's policy on public rights of way and its view of the law. It can be viewed on the DEFRA web site. There are sections in the circular on informing and liaising, managing and maintaining the rights of way network, the Orders under the

Highways Act 1980 and also sections on the Definitive Map and Modification Orders. Many aspects are considered such as -

When considering a deletion the Circular says - "4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements.

These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed.

Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified."

Where a route is recorded on the List of Streets as an Unclassified County Road the Circular says – "4.42 In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights.

However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status."

## **Definitive Maps**

The process for the preparation and revision of definitive maps was introduced by Part III of the National Parks and Access to the Countryside Act 1949.

Information about rights of way was compiled through surveys carried out by Parish Councils (or District Councils where there was no Parish Council) and transmitted to the Surveying Authority (County or County Borough Councils) in the form of Survey Maps and cards.

The Surveying Authority published a draft map and statement and there was a period for the making of representations and objections to the draft map. The Authority could

determine to modify the map, but if there was an objection to that modification the Authority was obliged to hold a hearing to determine whether or not to uphold that modification with a subsequent appeal to the Secretary of State against the decision.

After all appeals had been determined the Authority then published a Provisional Map and Statement. Owners, lessees or occupiers of land were entitled to appeal to Quarter Sessions (now the Crown Court) against the provisional map on various grounds.

Once this process had been completed the Authority published the Definitive Map and Statement. The Map and Statement was subject to five yearly reviews which followed the same stages.

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 1<sup>st</sup> January 1953 and the first review of the Definitive Map was published in 1975 with a relevant date of 1st September 1966.

### **Test to be applied when making an Order**

The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered.

S53 permits both upgrading and downgrading of highways and deletions from the map.

The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised.

The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. There has to be evidence discovered. The claimed right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B).

This second test B is easier to satisfy but please note it is the higher Test A which needs to be satisfied in confirming a route.

The statutory test at S53(3)(c)(ii) again refers to the discovery of evidence that the highway on the definitive map ought to be shown as a different status.

The statutory test at S53(3)(c)(iii) again refers to evidence being discovered that there is no public right of way of any description after all or that there is evidence that particulars in the map of statement need to be modified.

The O'Keefe judgement reminds Order Making Authorities that they should make their own assessment of the evidence and not accept unquestioningly what officers place before them.

All evidence must be considered and weighed and a view taken on its relevance and effect.

An Order Making Authority should reach a conclusion on the balance of probabilities. The balance of probability test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act.

### **Recording a “new” route**

For a route to have become a highway it must have been dedicated by the owner.

Once a route is a highway it remains a highway, even though it may fall into non use and perhaps become part of a garden.

This is the position until a legal event causing the highway to cease can be shown to have occurred, or the land on which the highway runs is destroyed, perhaps by erosion which would mean that the highway length ceases to exist.

Sometimes there is documentary evidence of actual dedication but more often a dedication can be inferred because of how the landowner appears to have treated the route and given it over to public use (dedication at Common law) or dedication can be deemed to have occurred if certain criteria laid down in Statute are fulfilled (dedication under s31 Highways Act).

### **Dedication able to be inferred at Common law**

A common law dedication of a highway may be inferred if the evidence points clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is on the Claimant to prove a dedication. Evidence of use of the route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether a path has been dedicated. No minimum period of use is necessary. All the circumstances must be taken into account. How a landowner viewed a route may also be indicated in documents and maps

However, a landowner may rely on a variety of evidence to indicate that he did not intend to dedicate, including signs indicating the way was private, blocking off the way or turning people off the path, or granting permission or accepting payment to use the path.

There is no need to know who a landowner was.

Use needs to be by the public. This would seem to require the users to be a number of people who together may sensibly be taken to represent the people as a whole/the local community. Use wholly or largely by local people may still be use by the public. Use of a way by trades people, postmen, estate workers or by employees of the landowner to get to work, or for the purpose of doing business with the landowner, or by agreement or licence of the landowner or on payment would not normally be sufficient. Use by friends of or persons known to the landowner would be less cogent evidence than use by other persons.

The use also needs to be “as of right” which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent

with use as of right. Case law would indicate that the use has to be considered from the landowner's perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway.

Current use (vehicular or otherwise) is not required for a route to be considered a Byway Open to All Traffic but past use by the public using vehicles will need to be sufficiently evidenced from which to infer the dedication of a vehicular route. Please note that the right to use mechanically propelled vehicles may since have been extinguished.

### **Dedication deemed to have taken place (Statutory test)**

By virtue of Section 31 of the Highways Act 1980 dedication of a path as a highway may be presumed from use of the way by the public as of right – not secretly, not by force nor by permission without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during the twenty year period to dedicate it.

The 20 year period is computed back from the date the existence of the right of way is called into question.

A landowner may prevent a presumption of dedication arising by erecting notices indicating that the path is private. Further under Section 31(6) a landowner may deposit with the Highway Authority a map (of a scale of not less than 1:10560 (6 inches to the mile) and statement showing those ways, if any, which he or she agrees are dedicated as highways. This statement must be followed by statutory declarations. These statutory declarations used to have to be renewed at not more than 6 yearly intervals, but the interval is now 10 years. The declaration would state that no additional rights of way have been dedicated. These provisions do not preclude the other ways open to the landowner to show the way has not been dedicated.

If the criteria in section 31 are satisfied a highway can properly be deemed to have been dedicated. This deemed dedication is despite a landowner now protesting or being the one to now challenge the use as it is considered too late for him to now evidence his lack of intention when he had failed to do something to sufficiently evidence this during the previous twenty years.

The statutory presumption can arise in the absence of a known landowner. Once the correct type of user is proved on balance, the presumption arises, whether or not the landowner is known.

Guidance on the various elements of the Statutory criteria;-

- Use – see above as to sufficiency of use. The cogency, credibility and consistency of user evidence should be considered.
- By the public – see above as to users which may be considered “the public”.



- As of right - see above
- Without interruption - for a deemed dedication the use must have been without interruption. The route should not have been blocked with the intention of excluding the users.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a "calling into question" (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

### **Documentary evidence**

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

In assessing whether or not a highway has been dedicated reference is commonly made to old commercial maps of the County, Ordnance Survey maps, sometimes private estate maps and other documents, other public documents such as Inclosure or Tithe Awards, plans deposited in connection with private Acts of Parliament establishing railways, canals or other public works, records compiled in connection with the valuation of land for the purposes of the assessment of increment value duty and the Finance Act 1910. Works of local history may also be relevant, as may be the records of predecessor highway authorities and the information gained in connection with the preparation and review of the Definitive Map.

It should be stressed that it is rare for a single document or piece of information to be conclusive (although some documents are of more value than others e.g. Inclosure Awards where the Commissioners were empowered to allot and set out highways). It is necessary to look at the evidence as a whole to see if it builds up a picture of the route being dedicated as a highway.

It should be noted that Ordnance Survey Maps (other than recent series which purport to show public rights of way and which derive their information from the Definitive Map) contain a disclaimer to the effect that the recording of a highway or right of way does not imply that it has any status. The maps reflect what the map makers found on the ground.

Synergy between pieces of highway status evidence – co-ordination as distinct from repetition would significantly increase the collective impact of the documents.

### **Recording vehicular rights**

Historical evidence can indicate that a route carries vehicular rights and following the Bakewell Management case in 2004 (House of Lords) it is considered that vehicular rights could be acquired on routes by long use during years even since 1930. However, in May 2006 Part 6 of the Natural Environment and Rural Communities Act 2006 came into force. Public rights of way for mechanically propelled vehicles are now extinguished on routes shown on the definitive map as footpaths, bridleways or restricted byways unless one of eight exceptions applies. In essence mechanical vehicle rights no longer exist unless a route is recorded in a particular way on the Council's Definitive Map or List of Streets or one of the other exceptions apply. In effect the provisions of the Act curtail the future scope for applications to record a Byway Open to All Traffic to be successful.

The exceptions whereby mechanical vehicular rights are "saved" may be summarised as follows-

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 6<sup>th</sup> April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

It is certainly the case that any application to add a byway to the Definitive Map and Statement must still be processed and determined even though the outcome may now be that a vehicular public right of way existed before May 2006 but has been extinguished for mechanically propelled vehicles and that the route should be recorded as a restricted byway.

### **Downgrading a route or taking a route off the Definitive Map**

In such matters it is clear that the evidence to be considered relates to whether on balance it is shown that a mistake was made when the right of way was first recorded.

In the Trevelyan case (Court of Appeal 2001) it was considered that where a right of way is marked on the Definitive Map there is an initial presumption that it exists. It should be assumed that the proper procedures were followed and thus evidence which made it reasonably arguable that it existed was available when it was put on the Map. The standard of proof required to justify a finding that no such right of way exists is on the balance of probabilities and evidence of some substance is required to outweigh the initial presumption.

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative Map and Statement of highest attainable accuracy. "The evidence needed to remove a public right from such an authoritative record will need to be cogent. The procedures for defining and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years without being questioned earlier."

### **Taking one route off and replacing it with an alternative**

In some cases there will be no dispute that a public right of way exists between two points, but there will be one route shown on the definitive map which is claimed to be in error and an alternative route claimed to be the actual correct highway.

There is a need to consider whether, in accordance with section 53(3)(c)(i) a right of way is shown to subsist or is reasonably alleged to subsist and also, in accordance with section 53(3)(c)(iii) whether there is no public right of way on the other route.

The guidance published under the statutory provisions make it clear that the evidence to establish that a right of way should be removed from the authoritative record will need to be cogent. In the case of *R on the application of Leicestershire County Council v SSEFR* in 2003, Mr Justice Collins said that there "has to be a balance drawn between the existence of the definitive map and the route shown on it which would have to be removed and the evidence to support the placing on the map of, in effect a new right of way." "If there is doubt that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay."

The court considered that if it could merely be found that it was reasonable to allege that the alternative existed, this would not be sufficient to remove what is shown on the map. It is advised that, unless in extraordinary circumstances, evidence of an alternative route which satisfied only the lower "Test B" (see page 4) would not be sufficiently cogent evidence to remove the existing recorded route from the map.

### **Confirming an Order**

An Order is not effective until confirmed.

The County Council may confirm unopposed orders. If there are objections the Order is sent to the Secretary of State for determination. The County Council usually promotes its Orders and actively seeks confirmation by the Secretary of State.

Until recently it was thought that the test to be applied to confirm an Order was the same test as to make the order, which may have been under the lower Test B for the recording of a "new" route. However, the Honourable Mr Justice Evans-Lombe heard the matter of *Todd and Bradley v SSEFR* in May 2004 and on 22nd June 2004 decided that confirming an Order made under S53(3)(c)(i) "implies a revisiting by the authority or Secretary of State of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage." And that to confirm the Order the Secretary of State (or the authority) must be "satisfied of a case for the subsistence of the right of way in question on the balance of probabilities." i.e. that Test A is satisfied.

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities, that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.

July 2009

## **Revised basic Guidance on the law relating to certain Orders to be made under the Highways Act 1980**

- **Diversion Orders under s119**
- **Diversion Orders under s119A**
- **Diversion Orders under s119ZA**
- **Diversion Orders under s119B**
- **Diversion Orders under s119C**
- **Diversion Orders under s119D**
- **Extinguishment Orders under s118**
- **Extinguishment Orders under s118A**
- **Extinguishment Orders under s118ZA**
- **Extinguishment Orders under s118B**
- **Extinguishment Orders under s118C**
- **Creation Order under s26**

Committee members have received a copy of the relevant sections from the Highways Act 1980 (as amended). The following is to remind Members of the criteria for the making of the Orders and to offer some guidance.

DEFRA's Rights of Way Circular (1/09 version 2) sets out DEFRA's policy on public rights of way and its view of the law. It can be found on DEFRA's web site. Orders made under the Highways Act 1980 are considered in Section 5 where the Guidance says that "the statutory provisions for creating, diverting and extinguishing public rights of way in the Highways Act 1980 have been framed to protect both the public's rights and the interests of owners and occupiers. They also protect the interests of bodies such as statutory undertakers."

Often the legal test requires the Committee to be satisfied as to the expediency of something. It is suggested that for something to be expedient it is appropriate and suitable to the circumstances and may incline towards being of an advantage even if not particularly fair. Something which is expedient would seem to facilitate your achieving a desired end.

Whether something is as convenient or not substantially less convenient may need to be considered. It is suggested that convenient refers to being suitable and easy to use.

Under S40 of the Natural Environment and Rural Communities Act 2006, every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Under Section 11 of the Countryside Act 1968 in the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.

## **Diversion Order s119**

### TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the owner, lessee or Occupier.

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is only being moved to another point on the same highway or to another highway connected to it and the point is substantially as convenient to the public.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

### TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient in the interests of the owner, lessee or occupier

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the route will not be substantially less convenient to the public.

That it is expedient to confirm it having regard to the effect the diversion would have on public enjoyment of the path or way as a whole.

That it is expedient to confirm it having regard to the effect on land served by the existing right of way (compensation can be taken into account)

That it is expedient to confirm it having regard to the effect on the land over which the "new" section runs and any land held with it (compensation can be taken into account).

Also having regard to any material provision of any Rights of Way Improvement Plan.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

That there is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

### GUIDANCE

The point of termination being as substantially convenient is a matter of judgement subject to the test of reasonableness. Convenience would have its natural and ordinary meaning

and refer to such matters as whether the new point of termination facilitated the access of the highway network and accommodated user's normal use of the network.

That the diverted path is not substantially less convenient would mean convenience again being considered. The wording in the Statute allows the diversion to be slightly less convenient but it must not be substantially less so. The length of the diversion, difficulty of walking it, effect on users who may approach the diversion from different directions are factors to be considered.

The effect on public enjoyment of the whole route has to be considered. It would be possible that a proposed diversion may be as convenient but made the route less enjoyable (perhaps it was less scenic). Alternatively the diversion may give the route greater public enjoyment but be substantially less convenient (being less accessible or longer than the existing path).

It may be that the grounds to make an Order are satisfied but the Committee may be unhappy that the route can satisfy the confirmation test. It is suggested that in such circumstances the Order should be made but the Committee should consider deferring the decision on whether to confirm it (if there are no objections) or (if there are objections) whether to instruct officers not to even send the Order to the Secretary of State for confirmation or to instruct to submit the Order to the Secretary of State and promote the confirmation of same. The Council has a discretion whether to submit this type of Order to the Secretary of State. It is not obliged to just because it has made the Order.

Under amended provisions, the "new" section of route will "appear" on confirmation of the Order (or a set number of days thereafter) but the "old" route will remain until the new route is certified as fit for use. It would appear that the public could quickly have the use of a new section which is fit for use as soon as confirmed but if the new route is unfit for use for a long time, the old line of the Right of Way is still there for the public to use.

It is advised that when considering orders made under Section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

It would appear that a way created by a Diversion Order may follow an existing right of way for some but not most or all of its length.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Reference to having regard to the material provisions of the Rights of Way Improvement Plan refers to the RWIP prepared in June 2005. The full document is on the County Council's web site.

## **Diversion Orders under s119A**

### TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway otherwise than by a tunnel or bridge

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is being moved to another point on the same highway or to another highway connected to it.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

Whether the railway operator be required to maintain the diversion route.

Whether the rail operator enter into an agreement to defray or contribute towards compensation, expenses or barriers and signage, bringing the alternative route into fit condition.

### TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient to do so having regard to all the circumstances and in particular to –

Whether it is reasonably practicable to make the crossing safe for use by them public; and

What arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

A rail crossing diversion order shall not be confirmed unless statutory undertakers whose apparatus is affected have consented to the confirmation (such consent not to be unreasonably withheld).

### GUIDANCE

The statutory provisions make it clear that the diversion can be onto land of another owner lessee or occupier

A change to the point of termination has to be onto a highway but the statutory provisions do not insist that the point has to be substantially as convenient (as is the requirement in S119).

The grounds for this type of diversion order refer to balancing the safety of continuing to use the level crossing and whether it could be made safe rather than divert the path. The information from the rail operator is therefore considered to be very important.



## **Diversion Orders under s119ZA**

## **Diversion Orders under s119B**

## **Diversion Orders under s119C**

## **Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

## **Extinguishment Order under s118**

### **TO MAKE AN ORDER**

To be satisfied that it is expedient that the path be stopped up on the ground that the footpath or bridleway is not needed for public use.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

### **TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED**

To be satisfied that it is expedient to do so.

To have regard to the extent to which it appears that the path would be likely to be used by the public.

To have regard to the effect which the extinguishment would have as respects land served by the path (compensation can be taken into account).

Where the Order is linked with a Creation Order or a Diversion Order then the Authority or Inspector can have regard to the extent to which the Creation Order or Diversion Order would provide an alternative path.

That there is no apparatus belonging to or used by statutory undertakers under in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

### **GUIDANCE**

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

To be satisfied that it is expedient to confirm means that other considerations other than use could be taken into account perhaps safety, perhaps cost.

An Order can be confirmed if it is thought that, despite the fact that it was likely to be used, it is not needed because of a convenient path nearby.

Councils are advised to take care to avoid creating a cul de sac when extinguishing only part of a way.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

### **Extinguishment Orders under s118A**

#### **TO MAKE AN ORDER**

An Order under this section can be made where it appears expedient to stop up a footpath or bridleway in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway, other than by tunnel or bridge.

#### **TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED**

The Order can be confirmed if satisfied that it is expedient to do so having regard to all the circumstances and in particular whether it is reasonably practicable to make the crossing safe for use by the public and what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

#### **GUIDANCE**

It is noted that there is not the same requirements as under S118 to consider need for the route. Instead it is safety which is the reason for the Order being made to close the right of way.

### **Extinguishment Orders under s118B**

Section 118B enables footpaths, bridleways, restricted byways or byways open to all traffic to be extinguished permanently by two types of Special Extinguishment Order.

#### **TO MAKE THE FIRST TYPE OF S118B ORDER**

The highway concerned has to be in an area specially designated by the Secretary of State.

To be satisfied that it is expedient that the highway be extinguished for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community.

To be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and

That the existence of the highway is facilitating the persistent commission of criminal offences.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

Also having regard to whether and to what extent the Order is consistent with any strategy for the reduction of crime and disorder prepared under S6 Crime and Disorder Act 1998 and

Having regard to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

TO MAKE THE SECOND TYPE OF S118B ORDER

To be satisfied that the highway crosses land occupied for the purposes of a school.

That the extinguishment is expedient for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health or safety arising from such activity.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

That regard is had to any other measures that have been or could be taken for improving or maintaining the security of the school

That regard is had as to whether it is likely that the Order will result in a substantial improvement in that security

That regard is had to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

GUIDANCE

Under S118B there are specific criteria to be satisfied before an Order can take effect and to remove a highway from the network of rights of way. It should be noted that an Order extinguishes the footpath (or other type of highway) permanently. Members of the Committee may also be aware of the power, since April 2006, of the Council to make Gating Orders whereby highway rights remain but subject to restrictions which are reviewed annually and will eventually be lifted.

### **Extinguishment Orders under s118ZA**

Guidance under this section will be made available when required

### **Extinguishment Orders under s118C**

Guidance under this section will be made available when required

### **Creation Order under s26**

#### **TO MAKE AN ORDER**

To be satisfied that there is a need for the footpath or bridleway and

To be satisfied that it is expedient that the path be created

To have regard to the extent the path would add to the convenience or enjoyment of a substantial section of the public, or

To have regard to the extent the path would add to the convenience of persons resident in the area

To have regard to the effect on the rights of persons interested in the land, taking compensation provisions into account.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

#### **TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED**

The same test as above.

#### **GUIDANCE**

Again there is convenience to consider.

There may also need to be some consensus as to what constitutes a substantial section of the public.

Persons interested in the land may include owners and tenants and maybe mortgagees.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Regulatory Committee  
Meeting to be held on the 15<sup>th</sup> March 2017

## **Guidance on the actions to be taken following submission of a Public Path Order to the Secretary of State**

### **Procedural step**

Once an Order has been made it is advertised it may attract objections and representations. These are considered by the Authority and efforts made to get them withdrawn. If there are any objections or representations duly made and not subsequently withdrawn the Authority may -

1. Consider that information is now available or circumstances have changed such that the confirmation test would be difficult to satisfy and that the Order be not proceeded with;
2. Consider that the Order should be sent into the Secretary of State with the authority promoting the Order and submitting evidence and documentation according to which ever procedure the Secretary of State adopts to deal with the Order; or
3. Consider that the Order be sent to the Secretary of State with the authority taking a neutral stance as to confirmation

### **Recovery of Costs from an Applicant**

The Authority may only charge a third party if it has power to do so. We can charge an applicant for a public path order but only up to a particular point in the procedure – in particular, once the Order is with the Secretary of State we cannot recharge the costs incurred promoting the Order at a public inquiry, hearing or by written representations.

The power to charge is found in the - **Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

### **Power to charge in respect of the making and confirmation of public path orders**

(1) Where—

- (a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or
- (b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

(a) a charge in respect of the costs incurred in the making of the order; and

(b) a charge in respect of each of the following local advertisements, namely the local advertisements on the making, on the confirmation, and on the coming into operation or force, of the order.

### **Amount of charge**

(1) Subject to paragraphs (2) and (3) below, the amount of a charge shall be at the authority's discretion.

(3) The amount of a charge in respect of any one of the local advertisements referred to in regulation 3(2)(b) shall not exceed the cost of placing one advertisement in one newspaper

### **Refund of charges**

The authority shall, on application by the person who requested them to make the public path order, refund a charge where—

(a) they fail to confirm an unopposed order; or

(b) having received representations or objections which have been duly made, and have not been withdrawn, the authority fail to submit the public path order to the Secretary of State for confirmation, without the agreement of the person who requested the order; or

(c) the order requested was an order made under section 26 of the 1980 Act and proceedings preliminary to the confirmation of that order were not taken concurrently with proceedings preliminary to the confirmation of an order made under section 118 of the 1980 Act; or

(d) the public path order is not confirmed by the authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made.

Policy Guidance on these Regulations is found in Circular 11/1996. Administrative charges can be charged up to the point where the order is submitted for determination and thereafter for advertising the confirmation decision and any separate notice of the Order coming into operation or force.

### **Careful consideration of stance**

Recently there has careful analysis of all the work officers do and the cost of these resources and how to best use the resources.

The above Regulations have been considered and it is advised that the test as to when an Order should be promoted be clarified and applied consistently.

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there is no substantial disbenefits to the public the applicants be able to promote the Order themselves.

This is not the same as considering whether the Order can be confirmed as set out in the statute. It is consideration of what actions the Authority should take on submitting the Order. It is not an easy consideration but officers will be able to advise in each particular matter.





## Regulatory Committee

Meeting to be held on 15 March 2017

Electoral Division affected: Chorley West
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### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

### Proposed Diversion of Part of Coppull Bridleway 22, Chorley Borough (Annexes B & C refer)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Coppull Bridleway 22, Chorley Borough.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Coppull Bridleway 22, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked A-C-B on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

#### Background

A request has been received from Miller Homes North West for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Coppull Bridleway 22 in the vicinity of the Coppull Enterprise Centre, Mill Lane, Coppull, PR7 5BW.

The length of the existing bridleway proposed to be diverted is shown by a bold continuous line and marked on the plan as A-B and the proposed alternative route is shown by a bold dashed line and marked A-C-B.

The proposed diversion is in connection with a planned development of residential properties on disused land to the west and north of the Coppull Enterprise Centre. The existing route crosses the main access to the development site, the private road that

is a continuation of Mill Lane. The diversion if successful, will move the bridleway to a more direct, safer crossing point with improved visibility. The diversion will also enable the developer to obtain the permission of the owner and the occupier of the land to cross the bridleway on the private road between points A-C, to access their development site with vehicles during the construction phase.

## Consultations

Chorley Borough Council and Coppull Parish Council have been consulted and have not raised any objection to the proposal.

The British Horse Society, Peak and Northern Footpaths Society and the Chorley Ramblers have also been consulted and have not objected to the proposal.

The necessary consultation with the Network Rail and the statutory undertakers has been carried out and no adverse comments or objections to the proposal have been received.

Electricity North West Limited (ENWL) have advised that they have a Deed of Grant relating to cables in the area of the proposed bridleway.

## Advice

Points annotated on the plan

Point	Grid Reference	Description
A	SD 5639 1463	Point on the bridleway between the pond and the bitmac surfaced private estate road.
B	SD 5639 1468	Point on the stone surfaced bridleway between the rear of the Red Herring pub and the railway.
C	SD 5640 1463	Point on the grass surface verge between the private bitmac surfaced private estate road and the railway.

## Description of existing bridleway to be diverted

As described below and shown by a bold continuous line A-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH	WIDTH
A	B	North	50 metres	The entire width

### Description of new bridleway

A bridleway as described below and shown by a bold dashed line A-C-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	East	15	3	Bitmac surfaced path.
C	B	North	50	3	Grass surfaced path
Total distance of new bridleway			65		

The proposed alternative route will not be subject to any limitations or conditions.

### Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Coppull Bridleway 22 to be amended to read as follows:

The 'Position' column to read: "From north end of Mill Lane to SD 5639 1463, running east for 15 metres on a bitmac surface to SD 5640 1463 then north for 50 metres on a grass surface to SD 5639 1468 then past Coppull Ring Mill to junction footpaths 21 and 23. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.36 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 5639 1463 and SD 5639 1468 and the width between those points is 3 metres."

### Officers' assessment of the proposal against the legislative criteria for making and confirming an Order.

The proposed diversion is felt to be expedient in the interests of the owner of the land in that, if the proposal is successful, it will place the bridleway onto his land, enabling the developer to gain agreement to drive over the bridleway.

The current alignment of the bridleway crosses land that is unregistered and the ownership is unknown. Therefore the developer can't contact the owner to seek permission to use that part of the private road which crosses the bridleway. However, the owner and lessee of the proposed alignment A-C is known and is supportive of the housing development because it would regenerate the site and potentially lead to an increase in business for the lessee. They are therefore, willing to provide permission for vehicles to cross their land and thereby give permission to cross the bridleway with vehicles.

The proposed diversion will not alter the points of termination of Coppull Bridleway 22, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Coppull Bridleway 22, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, with the exception of ENWL who have advised that they have a Deed of Grant relating to cables in the area of the proposed bridleway. This information has been passed onto the applicant who has confirmed that they would take the easement into consideration and this would remain intact and unaffected by the bridleway diversion.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

Part of the land crossed by the proposed alternative route is in the ownership of Helix Property Limited and Bizspace Limited is the leaseholder. They have both confirmed their agreement to the proposed diversion. Part of the land is unregistered and no owner is known, therefore notices will be posted on site and advertisements will be placed in the newspaper to publish the making and if appropriate, the confirmation of the Order to enable any unknown owners or occupiers to submit representations to the Order.

The applicant has agreed to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the bridleway into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is of similar length and the same gradient as the existing path. In addition, it would move the point where the bridleway crosses the private estate road to a point where the visibility is improved.

It will also divert the bridleway away from the, at times busy junction of the bitmac surfaced and stone surfaced estate roads.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path or ways as a whole. It is suggested that some users might prefer the new route, because of the improvement in visibility and the potential to reduce conflict between the users of the bridleway and the vehicles at the sometimes busy junction of the bitmac surfaced and stone surfaced estate roads.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. The owner and lessee that are known have confirmed their agreement to the diversion. Compensation for any material loss could be claimed by a landowner under the Highways Act 1980 Section 28. However such loss is not expected but if a claim were to arise, the compensation is underwritten by the applicant, Miller Homes North West.

It is advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council under The Equality Act 2010. The alternative route will be of an adequate width and there is no intention to install stiles or gates on the alternative route.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In this instance BS5709:2006 has been applied to the alternative route and the least restrictive option of gaps, rather than gates has been selected, reducing the limiting effect of structures.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

### **Stance on Submitting the Order for Confirmation (Annex C refers)**

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B & C (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

### **Alternative options to be considered**

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the County Council.

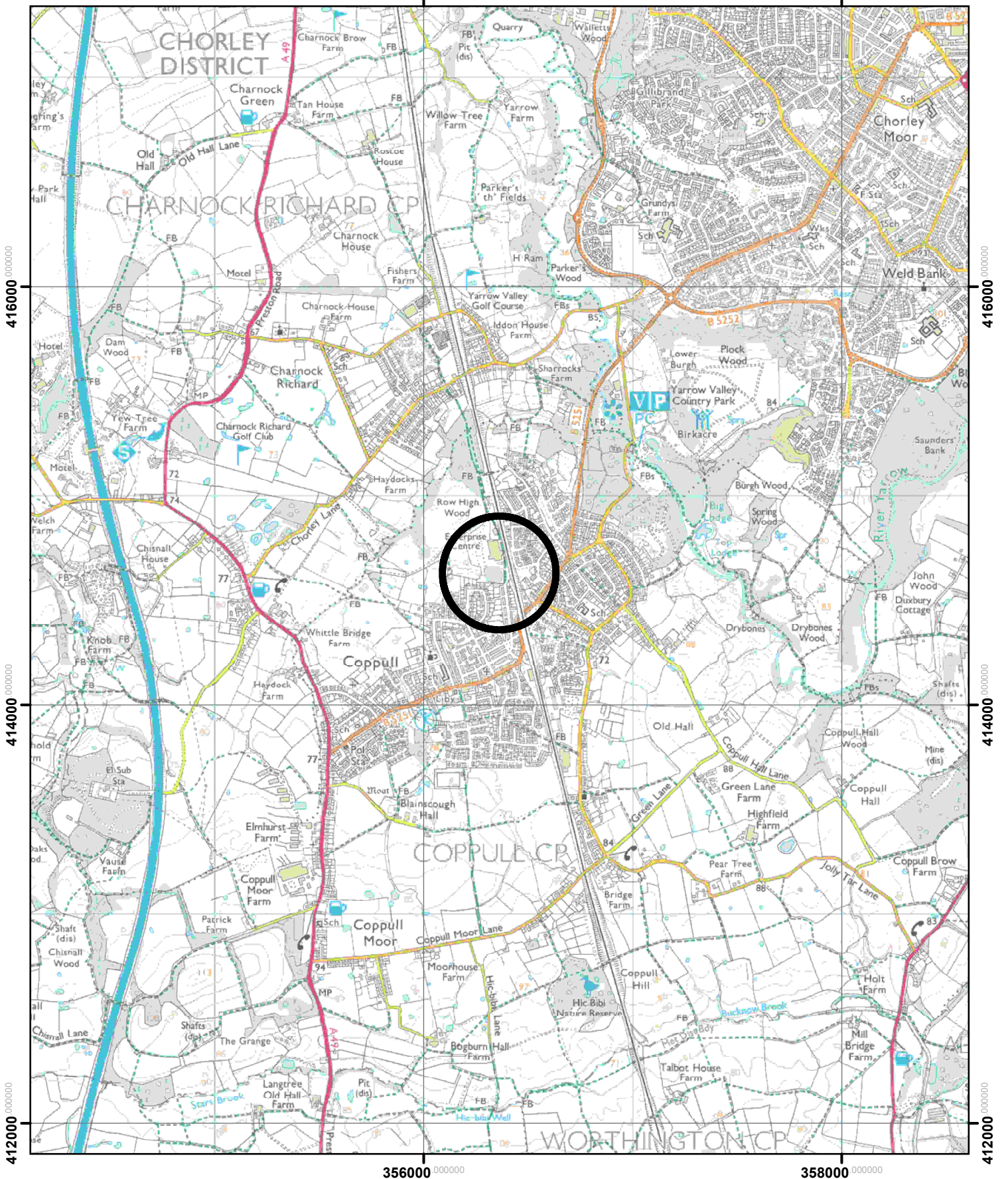
To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel Planning and Environment Group
File Ref: PRW-09-10-22		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A



Lancashire  
County  
Council

Andrew Mullaney  
Head of Planning  
and Environment

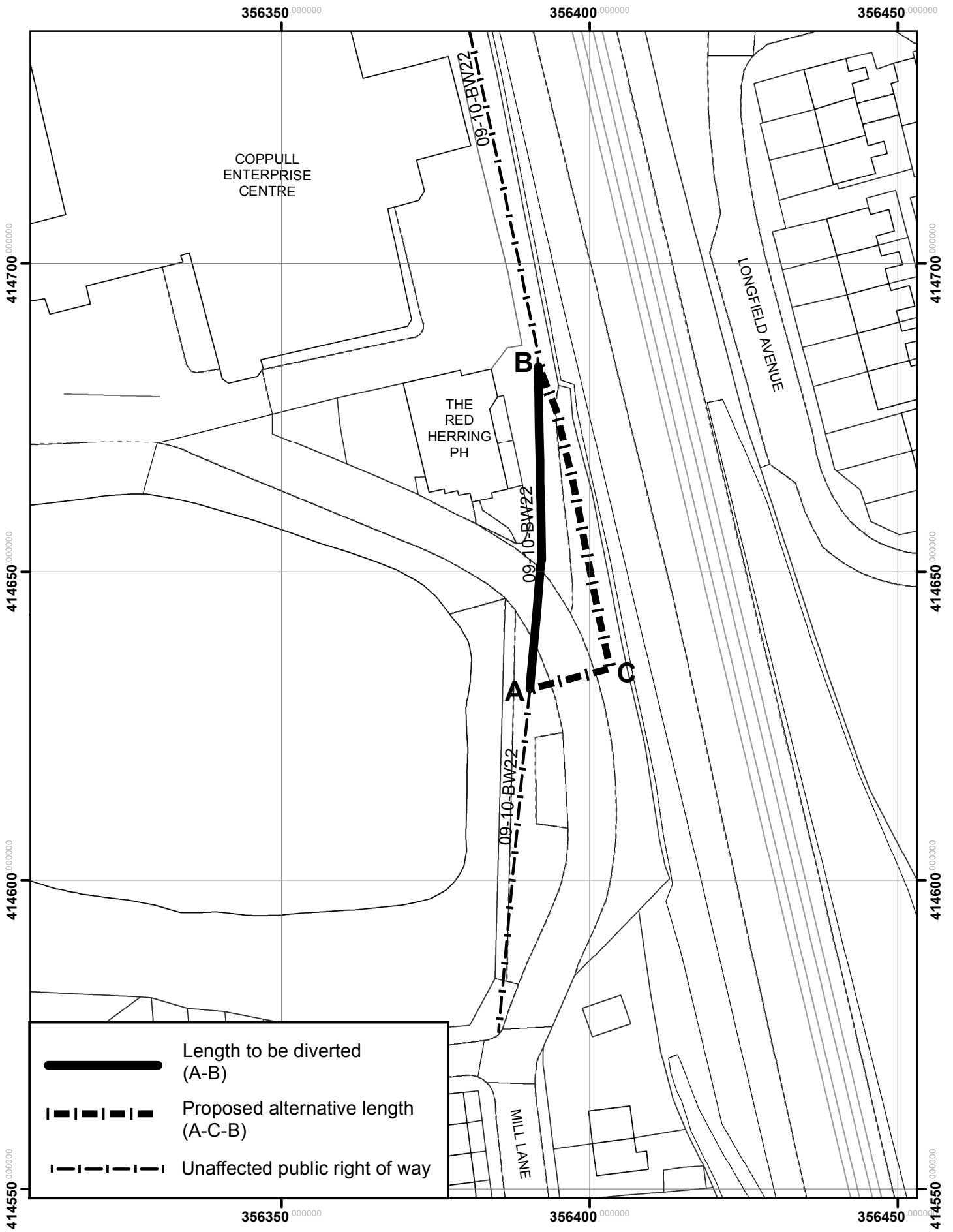
Location Plan.  
Highways Act 1980 – Section 119  
Wildlife and Countryside Act 1981 – Section 53A  
Proposed Diversion of Part of Coppull Bridleway 22, Chorley Borough.



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<p>Andrew Mullaney Head of Planning and Environment</p>	<p>Highways Act 1980 Section 119 Wildlife and Countryside Act 1981 Section 53A Proposed diversion of part of Coppull Bridleway 22, Chorley Borough.</p>	<p>Plan No: 211-679-v1</p>	
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## Regulatory Committee

Meeting to be held on 15 March 2017

Electoral Division affected: Lancaster Rural East
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### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

### Proposed Diversion Of Part Of Arkholme Footpath 4, Lancaster City.

(Annexes B & C refer)

Contact for further information:

Mrs R Paulson, 01772 532459, Planning and Environment Group.

[ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

#### Executive Summary

The proposed diversion of part of Arkholme Footpath 4, Lancaster City.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Arkholme Footpath 4, from the route shown by a bold continuous line and marked B-E-F-G to the route shown by a bold dashed line and marked B-C-D-E-H-J-G on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

#### Background

A request has been received from the owner of Willow Cottage, Main Street, Arkholme for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Arkholme Footpath 4 in the vicinity of Willow Cottage, Arkholme.

The length of the existing path proposed to be diverted is shown by a bold continuous line and marked on the plan as B-E-F-G and the proposed alternative route is shown by a bold dashed line and marked B-C-D-E-H-J-G.

The proposal, if successful would divert the footpath to run around the outside perimeter of the applicant's garden, the purpose of this being to improve privacy and security for the applicant.

The applicant's proposal initially concerned only the length of path running on the line E-F-G but an issue concerning the section of path B-E came to light during a site inspection. This section of path was found to be obstructed by part of the applicant's garden whilst the section of path B-C-D was available for public use. The applicant decided to extend the scope of his application to include the formal diversion of this section of path.

The section of path between points E and F forms the southern boundary of Willow Cottage's existing garden. The applicant proposes to extend his garden into land that is also in his ownership to include the area where the corner points are points E, F, J and H. The proposed diversion would have the effect of diverting the path to run around the outside of the extended garden. As a result, the section of path F-G which runs across adjoining farm land would need to be diverted to run from points J-G.

## Consultations

The necessary consultation with the statutory undertakers has been carried out and no adverse comments on the proposal have been received.

Consultations have also been carried out with Lancaster City Council and Arkholme Parish Council, the owners of other affected properties, and local and regional walking groups. No objections or adverse comments have been received.

Part of the proposed diversion affects the farmland between points F-G and between points J-G which is not owned by the applicant. The owner of the farmland has given his consent for the diversion.

The proposed footpath on the line B-C-D-E crosses land owned by the owners of the neighbouring property who have also given their consent for the diversion.

## Advice

### Points annotating the routes on the Plan

POINT	GRID REFERENCE	DESCRIPTION
B	SD 5843 7196	Metalled drive of Pool House 30m from Main Street
C	SD 5843 7195	Drive of Pool House at the south east corner of the garden to Willow Cottage
D	SD 5841 7196	South side of where the beech hedge meets the stone wall
E	SD 5840 7196	Boundary wall south of Willow Cottage
F	SD 5837 7195	Field boundary between the garden of Willow Cottage and the farmland

G	SD 5834 7195	An unmarked point in the farmland south west of Willow Cottage
H	SD 5838 7193	Adjacent to a fence line south of Willow Cottage
J	SD 5836 7194	The field boundary between the garden of Willow Cottage and the farmland

All lengths and compass points given below are approximate

### Description of existing footpath to be diverted

That part of Arkholme Footpath 4 running generally west from the drive to Pool House for 95 metres and shown by a bold continuous line B-E-F-G on the attached plan

### Description of new footpath

A footpath as described in the table below and shown by a bold dashed line B-C-D-E-H-J-G on the attached plan.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
B	C	SW	5	3	Gravel and grass track, gap at point C
C	D	WNW	25	1.5	Grass
D	E	WNW	5	2.3	Grass
E	H	SW	35	2	Stone
H	J	WNW	20	2	Stone, gate at point J
J	G	WNW	30	2	Cross field, grass
Total distance of new footpath			120		

The applicant has agreed to provide a stone surfaced path between E-H-J.

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a 1.3m wide gap that conforms to BS 5709:2006	Grid Reference SD 5843 7195 (point C)

The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 5836 7194 (point J)
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### Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that Order should also specify that the Definitive Statement for Arkholme Footpath 4 to be amended to read as follows:

The 'Position' column to read: "From Unclassified Road No.2/35 to grid reference SD 5843 7196, then:

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
SD 5843 7196	SD 5843 7195	SW	5	3	Gravel and grass track, gap at SD 5843 7195
SD 5843 7195	SD 5841 7196	WNW	25	1.5	Grass
SD 5841 7196	SD 5840 7196	WNW	5	2.3	Grass
SD 5840 7196	SD 5838 7193	SW	35	2	Stone
SD 5838 7193	SD 5836 7194	WNW	20	2	Stone, gate at SD 5836 7194
SD 5836 7194	SD 5834 7195	WNW	30	2	Cross field, grass
Total distance of new section of footpath			120		

then:- to Class II Road B.6254 near Bainsbeck House (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.25 km"

The 'Other Particulars' column be amended to read "The width of the section of footpath between SD 5843 7196 and SD 5834 7195 is as described in the table. The only limitations on the section of footpath between SD 5843 7196 and SD 5834 7195 are the rights of the owners of the soil to erect and maintain a gate that conform to BS 5709:2006 at SD 5836 7194 and a 1.3 metre wide gap that conforms to BS 5709:2006 at SD 5843 7195."

### Criteria satisfied to make and confirm the Order

The County Council may only make an Order if it is expedient in the interests of the owner of the land or of the public. The applicant in this case would benefit from the proposed diversion because the public footpath would run around the outside of his garden rather than cutting directly across it. The proposed diversion is therefore in his interests for reasons of privacy and security.

The legal criteria for making an Order require that the proposed diversion does not alter the termination point of a footpath except to another point on the same footpath, or to a point on a road, footpath or bridleway connected to it, as long as the new termination point is substantially as convenient. The proposed diversion of Arkholme Footpath 4 will not alter the termination points so this aspect of the criteria is satisfied.

During a site visit the condition of the route of the proposed diversion was found to be poorly drained and in need of additional surfacing work. The applicant has already carried out substantial work towards bringing this footpath into a fit condition for public use. However, the proposed Diversion Order would include a clause which prevents the existing footpath from being extinguished until the County Council has certified until the necessary work on the new footpath has been completed to a suitable standard.

“Limitations” is the collective noun used in the legislation for the right of the landowner to have structures such as gaps, gates and stiles on a public right of way. For the proposed diversion of Arkholme Footpath 4 there are two limitations: namely a gap at point C and a gate at point J. The gap at point C is a 1.3m wide gap between existing stone posts. These do not serve a practical purpose but neither do they have any significant impact on path users. The gate at point J is where the diverted footpath crosses from the garden of Willow Cottage into farmland and a gate is necessary for the purpose of keeping livestock in the field. The proposed Diversion Order would specify that the owners of the land would retain the right to maintain these structures across the right of way and that each must be maintained to the British Standard BS5709:2006 for gaps, gates and stiles.

The applicant has entered into an agreement to defray the costs of any compensation which may become payable as a result of the Order being made. A claim for compensation is not anticipated but the proposals partially affect land in separate different ownerships. Each owner has been consulted about the proposals (see above) and each will receive formal notification, including details about how to claim compensation once an Order has been made. Compensation would only become payable if a person can show that the value of their interest in the land is depreciated or that they have suffered damage by being disturbed in their enjoyment of the land.

The applicant has also agreed to defray the costs of any work required to bring the footpath into a fit condition. Therefore, if there is any delay in completing the works mentioned above, then the necessary work can be completed by the County Council and re-charged to the applicant.

The applicants have agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied

Under the criteria for confirming a Diversion Order the County Council must be satisfied that the new path is not substantially less convenient than the existing path. The footpath as a whole runs from Kirkby Lonsdale Road at its western end to Main Street in Arkholme at its eastern end, a total length of approximately 400 metres. The proposed diversion is less direct and introduces changes in direction of 90 degrees, or “dog legs”, at points D and H. This which would have the effect of lengthening the path to approximately 420 metres. It should be noted that whilst in general diversions which introduce dog legs are not acceptable this path is in a very quiet, rural location where an exception is appropriate. The Committee is advised that the additional 20 metres to the path as a whole is a marginal increase which would not have a significant impact on the public’s enjoyment of the footpath.

The width of the path is unrecorded but on parts of the existing route it has been fenced on either side in recent years to a width of approximately 1m wide. The proposed diversion will have a minimum width of 3 metres between points B and C, 1.5 metres between points C and D, and 2 metres between points D and G. The section between points C and D, a length of 20 metres, is 50 cm less than the minimum width of 2 metres which is normally required for a diversion. However, the path follows a strip of land between existing hedges and in the circumstances it is advised that the narrower width at this section would not make the proposed diversion substantially less convenient for public enjoyment of the path. The applicant has been advised that the owners would be required to keep the hedge trimmed back to maintain this width.

The views which can be enjoyed from the existing path, compared to those which can be enjoyed from the new footpath are very similar. The proposed diversion affects a relatively short length of the footpath and the views of the adjoining gardens and views of the fields beyond will be roughly similar to those which can be enjoyed from the existing path.

The County Council is required to consider the effect that the diversion may have on land served by the existing right of way. The diversion is a means of access to the farm land at point F but this land will still be served as a result of the diversion, therefore it is advised that there would be no adverse effect.

The Council is also required to consider the effect on the land crossed by the new path which is proposed by the diversion. The section of new path from point B–C–D–E is an enclosed strip of land and it does not appear that the footpath would have any negative impact on the land. The section E–H–J is also enclosed and this would run around the edge of the applicant’s garden. The section from J–G is across farmland but this would have a near identical effect on the land as the section from F–G.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and



geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and where necessary gates will be provided, rather than stiles.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In this instance BS5709:2006 has been applied to the alternative route and the least restrictive option of gates has been selected, reducing the limiting effect of structures.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

### **Stance on Submitting the Order for Confirmation (Annex C refers)**

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no real public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

### **Alternative options to be considered**

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the County Council.

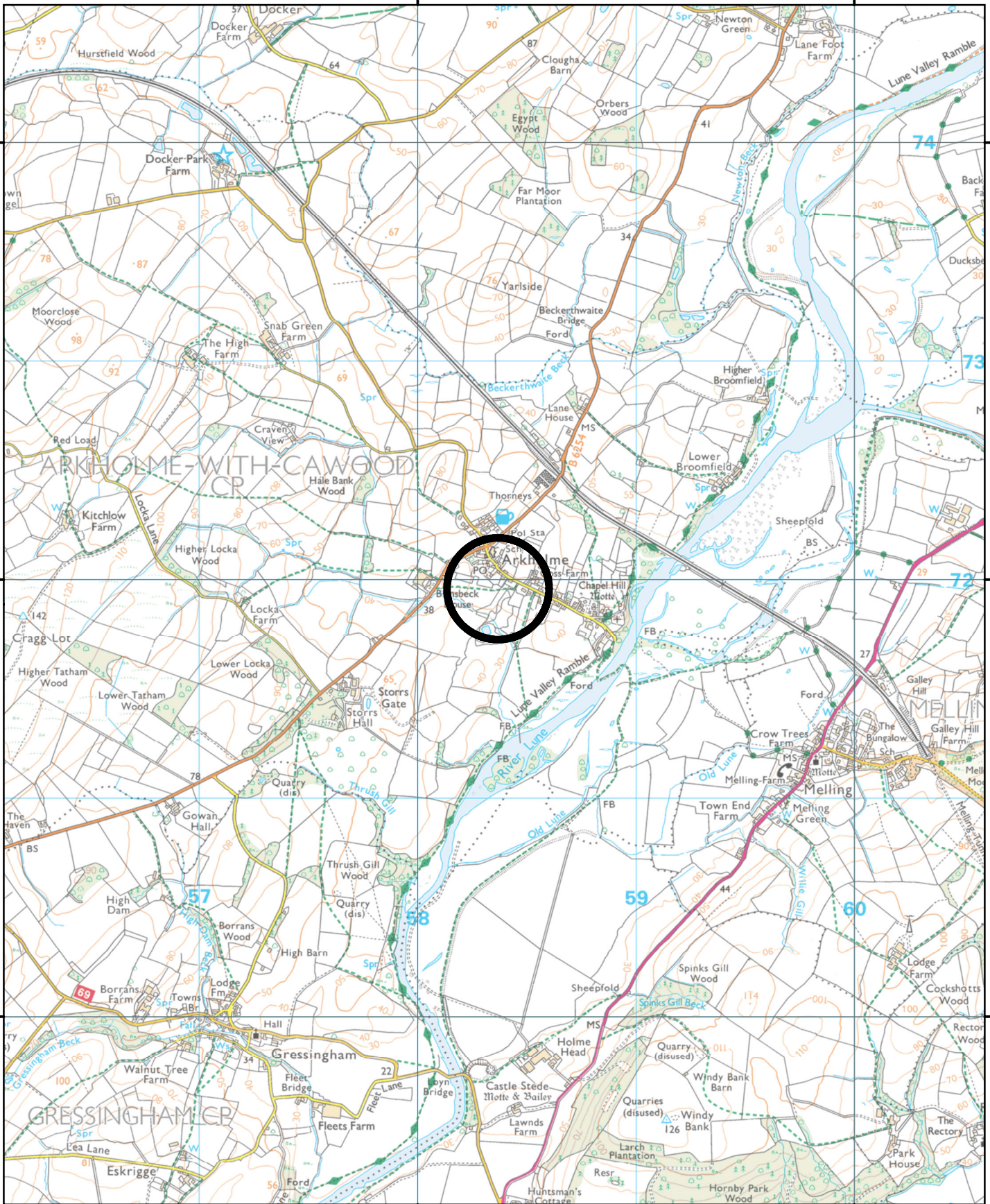
To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

**Local Government (Access to Information) Act 1985**  
**List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File Ref: 211-676 File Ref: PRW-01-04-04		Mrs Ros Paulson Planning and Environment Group , 01772 532459

Reason for inclusion in Part II, if appropriate

N/A



Lancashire  
County  
Council

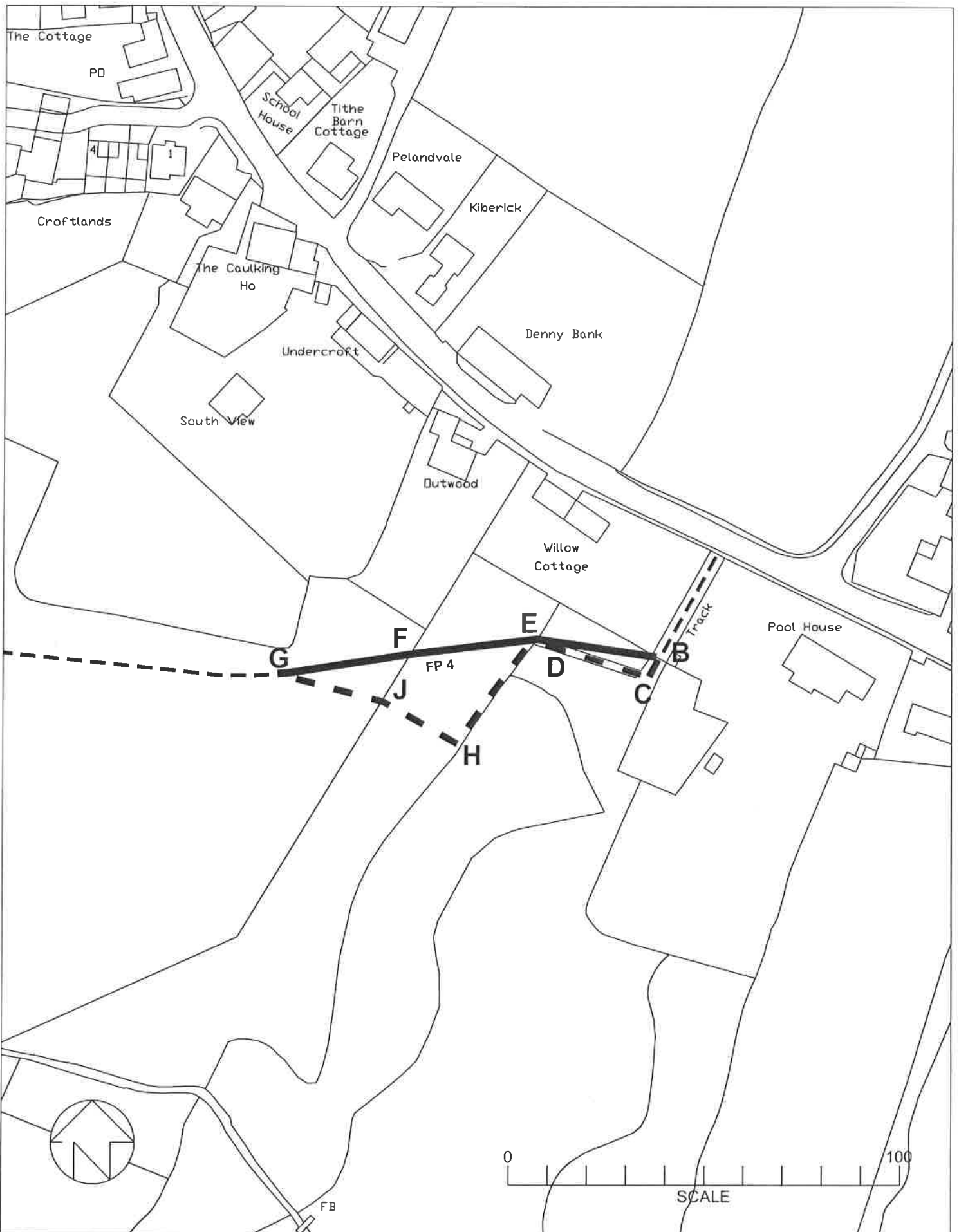
Andrew Mullaney  
Head of Planning  
and Environment

Location Plan.  
Highways Act 1980 – Section 119  
Proposed Diversion of Part of Arkholme Footpath 4, Lancaster City.



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**PROJECT:**  
 Proposed Diversion of Public Footpath 4  
 Arkholme, Lancashire District

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**DRAWN BY:** N Y

**DATE:** 9 June 2016

**SCALE:** 1:1250

**FILE REF:** R2/14/169

**REVISIONS / NOTES**

- Footpath to be diverted
- Proposed diversion
- Unaffected footpaths



## Regulatory Committee

Meeting to be held on 15 March 2017

Electoral Division affected: Garstang
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### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

### Proposed Diversion of Part of Barnacre-with-Bonds Footpath 43, Wyre Borough.

(Annexes B & C refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

[ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

#### Executive Summary

The proposed diversion of part of Barnacre-with-Bonds Footpath 43, Wyre Borough.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 43, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked A-C-B on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

#### Background

A request has been received from the owners of Birks Farm and Briggs Ghyll, Long Lane, Barnacre-with-Bonds for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 43 in the vicinity of these properties.

The length of the existing path proposed to be diverted is shown by a bold continuous line and marked on the plan as A-B and the proposed alternative route is shown by a bold dashed line and marked A-C-B.

The applicants' residential properties are located immediately to the west of the existing public footpath and the footpath runs along the driveway and crosses the parking area of one of the properties. The buildings located alongside the proposed alternative route are former agricultural buildings that are no longer in commercial use. The proposal, if successful would provide the owners of the properties at Birks Farm and Briggs Ghyll with an improvement in privacy and security.

## Consultations

Wyre Borough Council and Barnacre-with-Bonds Parish Council have been consulted and have not raised any objection to the proposal.

The Peak and Northern Footpaths Society and the Wyre Ramblers have also been consulted and have not objected to the proposal.

The necessary consultation with the statutory undertakers has been carried out and no adverse comments or objections to the proposal have been received.

## Advice

### Points annotating the routes on the Plan

Point	Grid Reference	Description
A	SD 5521 4659	Junction of bitmac surfaced footpath and concrete surfaced farm track.
B	SD 5217 4676	An unmarked point in the farmland north of Briggs Ghyll.
C	SD 5220 4672	Gated field boundary at northern end of concrete track.

All lengths and compass points given below are approximate

### Description of existing footpath to be diverted

The entire width of part of Barnacre-with-Bonds Footpath 43, running generally north from point A for 185 metres to point B, shown by a bold continuous line on the attached plan.

### Description of new footpath

A footpath as described below and shown by a bold dashed line A-C-B on the attached plan.



FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	Generally north	135	3	Concrete surfaced path
C	B	Generally north west	50	2	Grass surfaced path
Total distance of new footpath			185		

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 5220 4672 (point C)

### **Variation to the particulars of the path recorded on the Definitive Statement**

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Barnacre-with-Bonds Footpath 43 to be amended to read as follows:

The 'Position' column to read: "Junction of path Nos. 41 and 42 to SD 5221 4659, running generally north for 135 metres on a concrete surface to SD 5220 4672, passing through a gate then running generally north west for 50 metres on a grass surface to SD 5217 4676 then to junction of path Nos. 44 and 45 S.W. of Burns Quarry Wood. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.72 km"

The 'Other Particulars' column be amended to read "The width of the section of footpath between SD 5221 4659 and SD 5220 4672 is 3 metres, the width of the section between SD 5220 4672 and SD 5217 4676 is 2 metres The only limitation on the section of footpath between SD 5221 4659 and SD 5217 4676 is the right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 at SD 5220 4672."

### **Officers' assessment of the proposal against the legislative criteria for making and confirming an Order.**

The proposed diversion is felt to be expedient in the interests of the owners of the land as it would provide the residents with an increase in security and privacy as it would remove the public footpath that is currently located immediately adjacent to the windows and doors of the residential properties. It would also remove any potential

conflict between the users of the footpath and vehicles manoeuvring and parking outside the residential properties.

It is noted that the existing route is obstructed by a concrete raised area and the boundary fences between the field and the residential properties. The alternative route is currently available as a concessionary route for the public to use.

Under normal circumstances, the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed alternative route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of the user and that the existing route can be inspected notwithstanding the obstruction. This is the case with this particular footpath and access is currently available on the nearby concessionary footpath route from where the existing route can be viewed.

The proposed diversion will not alter the points of termination of Barnacre-with-Bonds Footpath 43, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Barnacre-with-Bonds Footpath 43, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicants own the land crossed by the footpath proposed to be diverted, and also in respect to the proposed alternative route.

The applicants have agreed to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is of similar length to the exiting footpath. The alternative route will introduce a change in the gradient of approximately 1.5 metres, as the land south of point C is raised above the level of the

current footpath. However, it is a shallow rise and fall in height that would be expected on a rural path in this area, therefore would not be substantially less convenient to the public, given the undulating nature of the land that would be encountered on a walk in order to reach this location.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the existing footpath runs along the driveway and immediately past the residential properties and parking areas. The proposal will divert the footpath away from the residential dwellings and as such, some users of the footpath may feel more comfortable and at ease.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and where necessary a gate will be provided, rather than a stile.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In this instance BS5709:2006 has been applied to the alternative routes and the least restrictive option of a gate has been selected, reducing the limiting effect of structures.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

### **Stance on Submitting the Order for Confirmation (Annex C refers)**

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B & C (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

**Alternative options to be considered**

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the County Council.

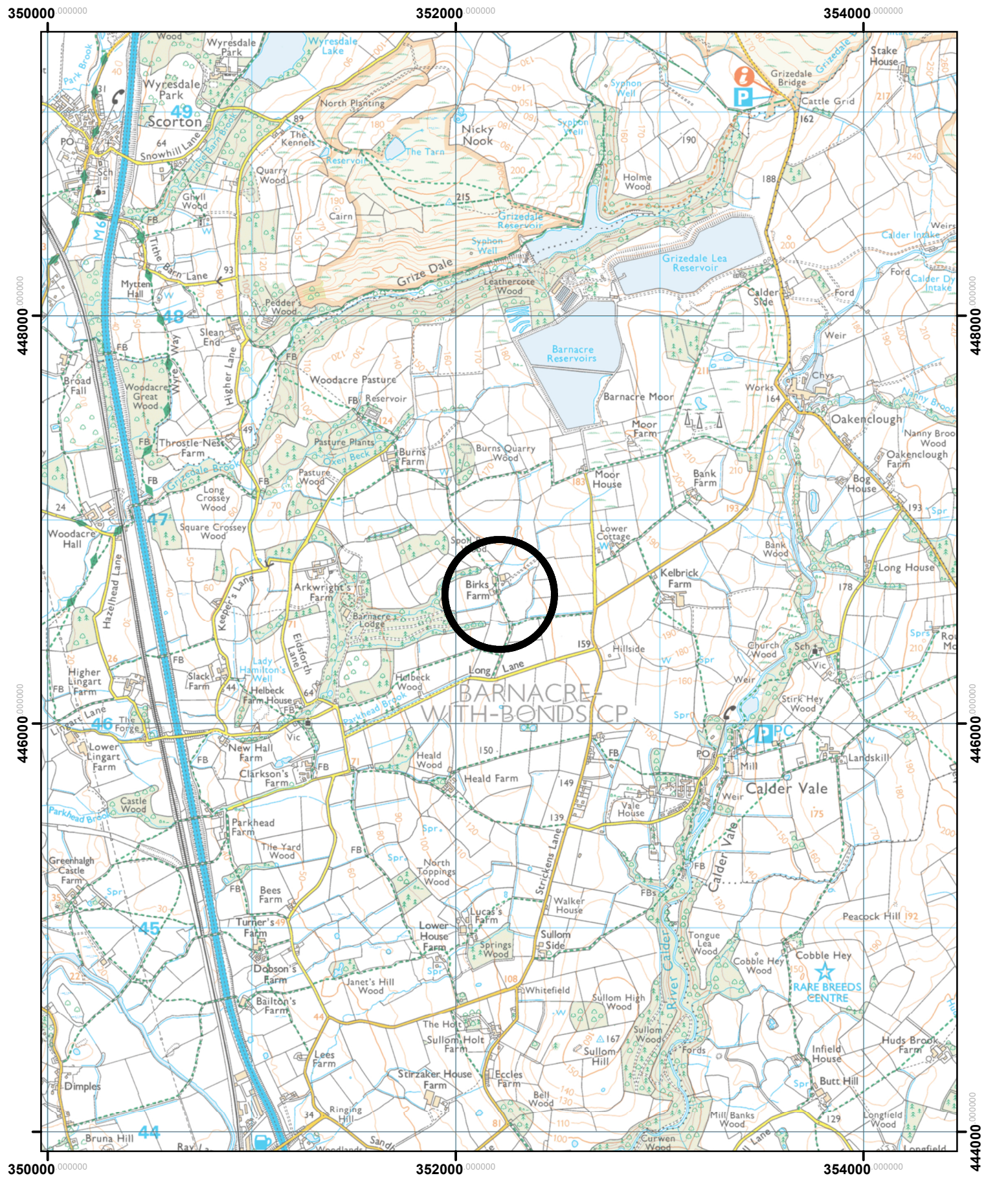
To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel Planning and Environment Group
File Ref: 211-660 File Ref: PRW-02-05-043		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A



Lancashire  
County  
Council

Andrew Mullaney  
Head of Planning  
and Environment

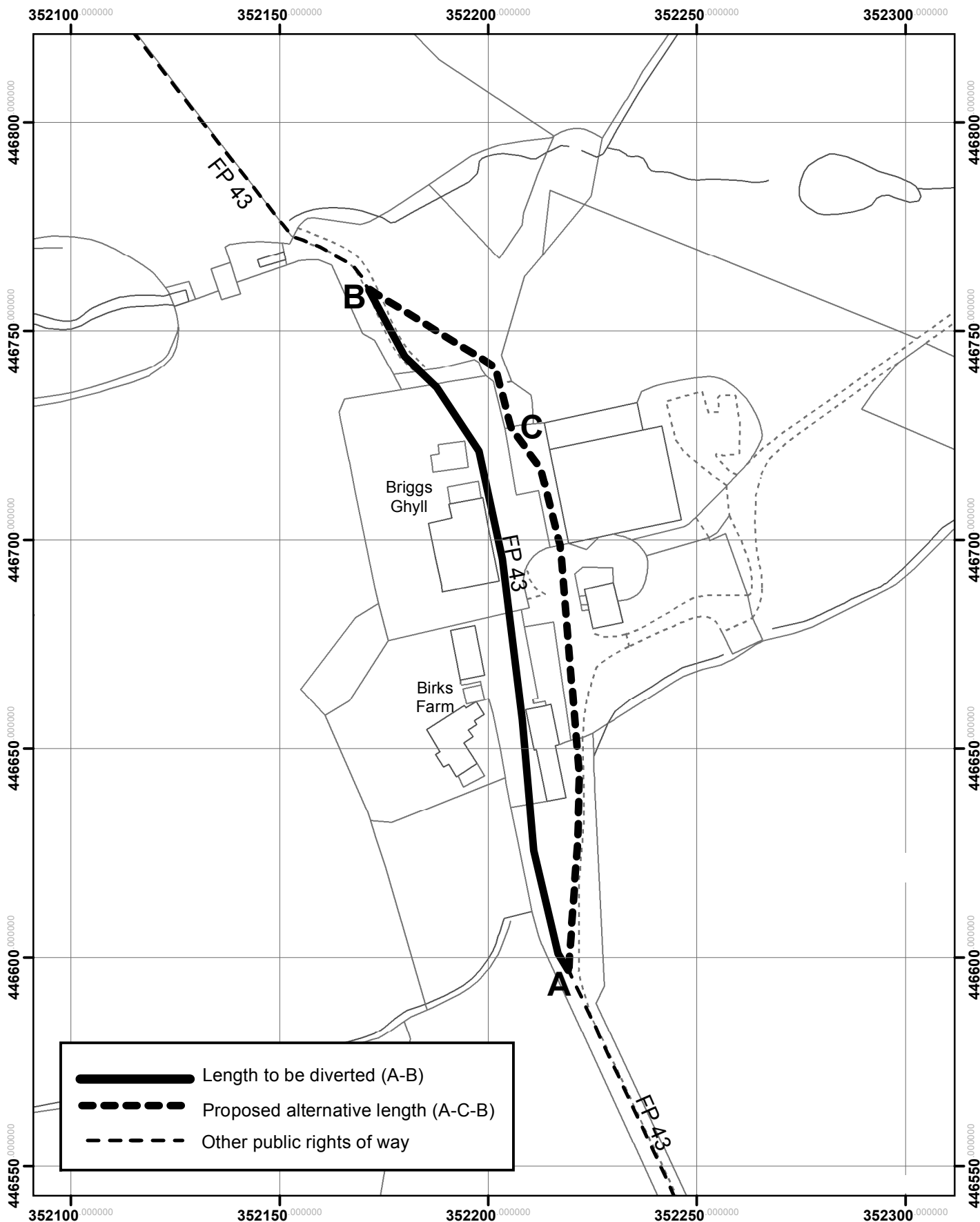
Highways Act 1980 Section 119  
Wildlife and Countryside Act 1981 Section 53A  
Diversion of part of Barnacre-with-Bonds Footpath 43, Wyre Borough




LOCATION  
PLAN

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Lancashire County Council	Andy Mullaney Head of Planning and Environment	Highways Act 1980 Section 119 Wildlife and Countryside Act 1981 Section 53A Diversion of part of Barnacre-with-Bonds Footpath 43, Wyre Borough		Plan No. 211-660 D
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