

## Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected: Ribble Valley North East
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### Highways Act 1980 – Section 119

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

### Proposed Diversion of Part of Wiswell Footpath 17, Ribble Valley Borough (Annexes B & C refers)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Wiswell Footpath 17, Ribble Valley Borough.

#### Recommendation

1. 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.
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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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 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.

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 proposed diversion is in connection with a small scale development of residential properties where the existing route crosses the garden of one of the properties.

Whilst it would be 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 an improvement in privacy and security.

## Consultations

Ribble Valley Borough Council, Wiswell Parish Council, Whalley Parish Council and Barrow Parish Council have been consulted and have not raised any objection to the proposal.

The Peak and Northern Footpaths Society and the Ribble Valley branch of the Ramblers Association 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 objection to the proposal have been received.

Electricity North West Limited (ENWL) have advised that they have a high voltage cable in the area of the proposed footpath diversion and that any ground works in the area of this must be carried out using safe digging practices. This information has been passed onto the applicant.

## Advice

Points annotated on the plan

Point	Grid Reference	Description
A	SD 7359 3776	Point where footpath crosses bitmac surfaced path adjacent to the western side of the private estate road.
B	SD 7357 3776	Junction of Wiswell Footpath 17 and Clitheroe Road.
C	SD 7357 3777	Point where footpath turns 90 degrees immediately adjacent to the junction of the private estate road and Clitheroe Road.

## Description of existing footpath 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	WNW	20 metres	The entire width

### Description of new footpath

A footpath 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	Generally NW	25	2	Bitmac surfaced path, adjacent to the western side of the private estate road
C	B	Generally S	5	2	Bitmac surfaced path, adjacent to the eastern boundary of Clitheroe Road
Total distance of new footpath			30		

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 Wiswell Footpath 17 to be amended to read as follows:

The 'Position' column to read: "Junction of footpath 5 to Clitheroe Trunk Road (A.59) to SD 7359 3776 at the point where footpath crosses bitmac surfaced path adjacent to the western side of the private estate road, continuing in a generally north-westerly direction on the bitmac surfaced path for 25 metres to SD 7357 3777 at the junction of the private estate road and Clitheroe Road then runs on the bitmac surfaced path, adjacent to the eastern boundary of Clitheroe Road for 5 metres to SD 7357 3776. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.51 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 7359 3776 and SD 7357 3776 and the width between those points is 2 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 remove the public footpath from the garden of the residential property. This will improve the privacy and security for the residents, enabling them to fence around the garden area.

The proposed diversion will not alter the points of termination of Wiswell Footpath 17, 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 Wiswell Footpath 17, 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 high voltage cable in the area of the proposed footpath diversion and that any ground works in the area of this must be carried out using safe digging practices. This information has been passed onto the applicant.

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 land crossed by the proposed alternative route is in the ownership of the applicant. The land crossed by the existing footpath proposed to be diverted crosses land that is in the joint ownership of the residents of 112 Clitheroe Road, Barrow, Clitheroe, Lancashire BB79AQ and they have confirmed their agreement to the proposed diversion.

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 path 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 exiting path.

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 many users might prefer to walk on the new route, because the proposal will divert the footpath around the curtilage of the residential dwelling and as such, some users of the path 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 under The Equality Act 2010. The alternative routes will be of adequate width and there is no intention to install stiles or gates on the alternative routes.

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 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
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File Ref: PRW-03-47-17

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Reason for inclusion in Part II, if appropriate

N/A