

## 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:

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event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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