

## Regulatory Committee

Meeting to be held on 15 November 2017

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

### Wildlife and Countryside Act 1981 – Section 53A(2)

### Proposed Diversion of Part of Lydiate Footpath 4, West Lancashire Borough (Annexes B & C refer)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Lydiate Footpath 4, West Lancashire Borough.

#### Recommendation

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Lydiate Footpath 4, from the route shown by a bold continuous line and marked A-B-C-D-E-F, to the route shown by a bold broken line and marked A-C-G 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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.

#### Background

A request has been received from the owners of land to the east of Green's Lane near to the Leeds and Liverpool Canal Rimmer's Bridge, Lydiate, L31 4LS, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Lydiate Footpath 4.

The existing footpath takes a circuitous route across arable land, following an old field boundary. The boundaries have been changed and now the fencing takes a more obvious, straighter alignment between the two fields. The diversion, if successful will divert the footpath alongside the fenceline and the footpath will become a field edge path, instead of a cross field path.

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

## **Consultations**

West Lancashire Borough Council have been consulted and have confirmed that have no objection to the proposal.

Due to boundary changes, Lydiate Footpath 4 is within the area covered by Downholland Parish Council. Therefore, Downholland Parish Council and Aughton Parish Council and have been consulted and are due to consider the diversion proposal at their forthcoming meetings on the 14th November (Downholland Parish Council) and 13th November (Aughton Parish Council).

The West Lancashire Ramblers and the West Lancashire Footpath Group have replied to the consultation to confirm that they have no objection to the proposal. The Peak and Northern Footpaths Society have also been consulted and at the time of writing, their response is awaited.

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

## **Advice**

(All lengths and compass points given are approximate)

### **Points annotating the routes on the attached plan**

Point	Grid Reference	Description
A	SD 3737 0600	Unmarked point in field south of the fence, 70 metres north east of the junction of Lydiate Footpath 4 and Green's Lane.
B	SD 3755 0615	45 degree bend in existing footpath at an unmarked point in the field 30 metres north of the fence.
C	SD 3761 0615	Point immediately south of the fence, where it is crossed by the existing footpath 360 metres north east of the junction of Lydiate Footpath 4 and Green's Lane.
D	SD 3778 0616	45 degree bend in existing footpath at an unmarked point in the field 85 metres south of the fence.
E	SD 3786 0624	Point to the east of the wooden ditch crossing at eastern boundary of the field.

F	SD 3786 0625	Junction of Lydiate Footpath 4 and Aughton Footpaths 8 and 32, at a point east of the ditch on 10 metres north of the existing footbridge.
G	SD 3786 0626	Point east of the ditch in the north east corner of the field.

### **Description of existing footpath to be diverted**

The entire width of that part of Lydiate Footpath 4 described below and shown as bold continuous line marked A-B-C-D-E-F on the attached plan

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	OTHER INFORMATION
A	B	Generally north east	240	Cross field footpath
B	C	East	65	Cross field footpath
C	D	East	170	Cross field footpath
D	E	Generally north west	115	Cross field footpath and ditch crossing
E	F	North	10	Grass surfaced footpath running to the east of the ditch
Total distance of new footpath			600	

### **Description of new footpath**

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	East north east	290	2	Grass surfaced field edge path
C	G	Generally East north east	270	2	Grass surfaced field edge path and ditch crossing
Total distance of new footpath			560		

The public footpath to be created by the proposed Order will not be subject to any limitations and 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 Lydiate Footpath 4 to be amended to read as follows:

The 'Position' column to read: "Green's Lane - SD 3737 0600, running for 450 metres east north east as a field edge path on the south side of the field boundary to SD 3774 0623 then generally east for 110 metres as a field edge path and ditch crossing to SD 3786 0626 at the Aughton Boundary. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.63 km"

The 'Other Particulars' column be amended to read "The width of the section of footpath between SD 3737 0600 and SD 3786 0626 is 2 metres There are no limitations on the section of footpath between SD 3737 0600 and SD 3786 0626."

### **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, assisting with farming operations enabling the owners to retain the current layout the fields and to efficiently manage the land. The aerial view below illustrates the current layout of the field boundaries in relation to the existing route (A-B-C-D-E-F) and the proposed alternative route (A-C-G). The outline of the fields can be identified by a lighter and darker shade of brown. The current fenceline runs immediately to the north of the proposed alternative route.



It is noted that the existing route is obstructed by a post and wire fence at points A and C.

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 proposed alternative route from where the existing footpath can be viewed.

The legislation requires that if the termination point of a footpath is proposed to be altered, then the Authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public.

The proposed diversion will alter the eastern point of termination of Lydiate Footpath 4 and place it at another point on Aughton Footpath 32 being the same highway or a highway connected to it and is substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Lydiate Footpath 4, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out. This includes the installation of a new ditch crossing at point G that the applicants will provide at their own expense.

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, of which we are aware at the time of writing.

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 suggested that the diversion would be beneficial to the needs of agriculture as the proposed alternative route being a field edge footpath, rather than a cross field path would enable the applicants to manage their land more efficiently.

The applicants own part of the land crossed by the footpath proposed to be diverted (C-D-E) and all of the proposed alternative route (A-C-G). Part of the land crossed by the existing footpath (A-B-C) and (E-F), along with the mineral rights to part of the land crossed by the existing and proposed routes is in the ownership of other parties, all of which have provided their written agreement to the diversion.

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 and gradient to the exiting footpath. It is suggested that the alternative route would be more convenient as it would provide a field edge path, rather than the current situation where the footpath crosses the worked, arable land.

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 proposed alternative route would be a field edge path and as such, some users of the footpath may feel more comfortable and at ease, than following a route that crosses arable land.

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 owners that are known have confirmed their agreement to the diversion. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

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, with no gate or 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'.

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 4) 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: 211-681 File Ref: PRW-08-11-04		Planning and Environment Group
		Mrs R J Paulson, 01772 532459
Reason for inclusion in Part II, if appropriate		
N/A		