

## Regulatory Committee

Meeting to be held on 26 June 2019

Electoral Division affected: Lancaster Rural North
---

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath Over Kellet 1 at Former Chicken Sheds, Cockle Hill, Kirkby Lonsdale Road, Over Kellet**  
(Annexes 'B' and 'C' refer)

Contact for further information:  
Ros Paulson, Planning and Environment Group  
07917 836628, [ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

### Executive Summary

The proposed diversion of part of Footpath Over Kellet 1, Lancaster City.

### Recommendation

- (i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Over Kellet 1, from the route shown by a bold continuous line and marked A-B-C, to the route shown by a bold broken line and marked A-D-B-E-C on the attached map.
- (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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

The county council has received an application from the owner of land known as the Former Chicken Sheds, Kirby Lonsdale Road, Over Kellet, Carnforth, LA6 1DD to divert the part Footpath Over Kellet 1 in connection with their proposal to build two residential properties on the land.

The legal line of the public footpath currently runs through land that will be a paddock adjacent to the property and the diversion, if successful, will enable the landowner to secure the paddock, increasing the privacy and security for the residents, whilst providing a route that is safe and convenient for public use.

The length of existing footpath to be diverted is shown by a bold continuous line and marked on the attached map as A-B-C and the proposed alternative route are shown by a bold broken line and marked A-D-B-E-C.

### **Consultations**

Lancaster City Council, Over Kellet Parish Council, the Peak and Northern Footpaths Society and the Ramblers have been consulted and at the time of writing, their responses are awaited.

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

### **Advice**

#### **Points annotating the route on the attached map**

Point	Grid Reference	Description
A	SD 5229 7007	Unmarked point on the start of a bend on Footpath Over Kellet 1 adjacent to the access track.
B	SD 5230 7011	Unmarked point 10 metres south west of the kink in Footpath Over Kellet 1 adjacent to the access track.
C	SD 5234 7019	Junction of Footpath Over Kellet 1 and Maggie Elgin Lane.
D	SD 5231 7010	Gap in garden fence 10 metres south of the access track.
E	SD 5228 7013	Unmarked point on Maggie Elgin Lane 25 metres west north west of the kink in Footpath Over Kellet 1.

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

Part of Footpath Over Kellet 1 as described below and shown by a bold continuous line marked A-B-C on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally N	60	The entire width
B	C	Generally NNE	80	The entire width

### Description of new footpath

Public footpath as described below and shown by a bold broken line A-D-B-E-C on the attached map (lengths and compass points given are approximate)

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	D	Generally NNE	50	2	Compacted stone
D	B	NW	15	2	Compacted stone
B	E	NW	25	2	Compacted stone
E	C	Generally NE	85	2	Compacted stone

The 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 Footpath Over Kellet 1, Wyre Borough be amended as follows:

The 'Position' column to read: "From Carnforth-Kirkby Lonsdale Road (Class 11 B.6254) east end of Over Kellet Village, northerly to SD 5229 7007 then runs 50 metres generally north north east to SD 5231 7910, then 40 metres north west to SD 5228 7013, then runs 85 metres north east to SD 5234 7019 then continues northerly to Unclassified Road 2/30 by Old Lime Kiln.'

The 'length' column be amended to read: "0.94 km"

The 'Other Particulars' column be amended to read "The width between SD 5229 7007 and SD 5234 7019 is 2 metres and there are no limitations between those points"

## **Criteria satisfied to make and confirm the Order**

The proposed diversion is expedient in the interests of the owners of the land for reasons of privacy and security. The applicant has been granted planning permission to build two residential properties on the land crossed by part of the footpath proposed to be diverted (B-C).

The legal line of the public footpath currently runs through land that will be a paddock adjacent to the property and the diversion, if successful, will enable the landowner to secure the paddock, increasing the privacy and security for the residents whilst providing a route that is safe and convenient for public use. The diversion will also divert that part of the footpath that is recorded as running adjacent to the driveway of the properties (A-B) and place it on a path that is segregated from the vehicular access (A-D).

It is noted that the existing route is currently obstructed by a hedge at point C and a concessionary alternative route is available on the ground which meets Maggie Elgin Lane approximately midway between points C and E.

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 Footpath Over Kellet 1.

The Committee are advised that so much of the Order as extinguishes part of Footpath Over Kellet 1, is not to come into force until the county council has certified that any 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, 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.

The applicants own the land crossed by the existing route marked A-B-C and also part of the alternative route marked A-D-B-E. Part of the alternative route A-D is in the ownership of a neighbouring land owner and they are in agreement with the

proposed diversion. Part of the alternative route E-C is not registered with the Land Registry. A different neighbouring land owner, who is also in agreement with the proposed diversion considers that the land belongs to them, although they have been unable to prove title to the land. Therefore, notices will be erected on site directed at any owner or occupier of the land.

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. Similar to the existing route, the alternative route has a firm surface underfoot that is suitable for use in all weathers. Both routes are similar in length and gradient and the land between B and E will be regraded to provide the footpath on a slight gradient as the land on which the houses are built is approximately 1 metre higher than the lane.

It is suggested 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 the new footpath more enjoyable because it will not pass through the paddock.

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. 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 people with disabilities 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, firm and well drained underfoot with no gates 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 an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes 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.

## **Local Government (Access to Information) Act 1985**

### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File Ref: 211-708 PRW-01-24-01		Planning and Environment Group
File Ref:		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A