

**Regulatory Committee**

Meeting to be held on 24 July 2013

Electoral Division affected: Preston Rural
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**Highways Act 1980 – Section 119.****Wildlife and Countryside Act 1981 – Section 53A.****Proposed Diversion of Part of Whittingham Footpaths 1 and 5, Preston City.**

(Annex 'B' refers)

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**Executive Summary**

The proposed diversion of part of Whittingham Footpaths 1 and 5, Preston City.

**Recommendation**

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Whittingham Footpaths 1 and 5, from the routes shown by bold continuous lines and marked A-B-C and H-J, to the routes shown by bold dashed lines and marked A-D-E-F-G and H-K-L 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
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 Mr. William Hayhurst and Mr. Michael Hayhurst, Sandbank Estate, Cumeragh Lane, Whittingham, Preston, PR3 2AJ for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Whittingham Footpaths 1 and 5.

The length of the existing paths proposed to be diverted are shown by bold continuous lines and marked A-B-C and H-J and the proposed alternative routes are shown by bold dashed lines and marked A-D-E-F-G and H-K-L on the plan.

Sandbank Estate consists of a diverse collection of businesses such a timber merchant, warehouses and office accommodation. There are a number of vehicular movements associated with these businesses and the landowners have concerns about the potential for conflict between the public and vehicles and also the security

of the site. The footpath also passes adjacent to a dwelling that is in the ownership of the applicants and the diversion will improve the privacy and security of residents.

The diversion of Whittingham Footpath 1 would remove the cross-field footpath and place it on the edge of the field, to meet with Ashley Lane opposite the proposed alignment of Whittingham Footpath 5.

In 2007 the County Council made an Order to divert these footpaths and after publication one objection was received from the owner of Gatehouse Barn, a dwelling adjoining the proposed alternative route for Whittingham Footpath 5. The Order was subject to a Public Hearing on 9 January 2013. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs declined to confirm the Order because it was considered that there would be a substantial reduction in the privacy of the garden and paddock of Gatehouse Barn and that it might also impact upon the security of the property.

A copy of the Order Decision is attached as Appendix 'A' to this report.

Subsequently the landowners have erected a closed boarded fence along the Gatehouse Barn garden and a post and wire fence 5.5 metres from the boundary. It is proposed that the footpath will run to the east of the post and wire fence. It is therefore, suggested that the increased distance and fences reduce the potential impact on the neighbour to a level that is acceptable and that all the tests and criteria for a Diversion Order can now be satisfied.

## **Consultations**

Goosnargh Parish Council and Whittingham Parish Council have been consulted and at the time of writing have raised no objection to the proposal.

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

The Peak and Northern Footpaths Society, the Ramblers' Association and the British Horse Society have been consulted and have not raised an objection to the proposal.

Preston City Council has submitted an objection to the proposal, following comments received from one of the Councillors who represent the ward in which the proposed Public Footpath diversion is located. The comments read:

*'I'm sure you will have received the views of Whittingham Parish Council on this proposal by now from the clerk Julie Buttle. I can only echo those views. The path at present is well used by walkers and cyclists. The whole length is surfaced from Cumeragh Lane to Ashley Lane and affords both walkers and cyclists the luxury of avoiding trailing through mud. This is a long established public right of way and I would like to see it remain as it is. The proposal does not offer a hard surface for the re-route in total and would be of no benefit to the public.'*

Preston City Council also state 'It may, of course, be that the new route will be fully surfaced if approved and that this aspect of the objection will be removed. However, for now, the above comment reflects the view of the City Council to this proposal.'

In reply to the objection, the Executive Director for the Environment advises that if the Order is confirmed, the whole of the length between Cumeragh Lane and Ashley Lane will indeed be surfaced. The length A-D and the length E-F-G will consist of a 2 metre wide compacted stone surfaced path and the length D-E currently consists of a 3 metre wide concrete surface. The route will therefore be suitable for use by the public and firm underfoot even in adverse weather conditions.

The objection refers to use of the route by walkers and cyclists, however, it is recorded as a Footpath and there is no suggestion that higher rights exist. Therefore, this is not currently a public right of way that cyclists are permitted to use.

With regards to the comment that the route is a '*long established public right of way*', it is advised that a landowner is legally entitled to apply for a diversion that will move the public footpath to a location more preferable to themselves (i.e. in their interests).

It is suggested that the points raised in the objection submitted by Preston City Council can either be satisfied, or are not a relevant consideration in this instance.

## Advice

### Points annotated on the plan

Point	Grid Ref	Description
A	SD 5896 3726	Point immediately to the east of the wooden stile that is located between the field and the access road to Sandbank.
B	SD 5871 3757	Apex of the bend in Whittingham Footpath 5, adjacent to the western corner of the office block.
C	SD 5870 3764	Junction of Whittingham Footpath 5 and Ashley Lane.
D	SD 5888 3750	Point on concrete farm track located 3 metres to the north-east of a wooden field gate.
E	SD 5890 3753	Metal field gate that is located between the concrete farm track and the field.
F	SD 5890 3760	Point immediately adjacent to the bend in the sheep netting fence on the western field boundary.
G	SD 5879 3769	Mid point of edge of stone surfaced vehicle turning area, immediately adjacent to the southern edge of Ashley Lane.
H	SD 5868 3786	Point immediately to the east of the wooden stile that is located 60 metres to the north-west of the bend in Whittingham Footpath 1.
J	SD 5871 3766	Junction of Whittingham Footpath 1 and Ashley Lane.
K	SD 5871 3783	Point in the south-eastern field boundary in the southern corner of the field.

L	SD 5879 3770	Mid point of edge of stone surfaced vehicle turning area immediately adjacent to the northern edge of Ashley Lane.
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### Description of existing footpaths to be diverted

(All lengths and compass directions are approximate).

a) That part of Whittingham Footpath 5 from point A, running generally north-west for 415 metres on the concrete and tarmac surfaced access track to point B. The path then runs north for 75 metres on a concrete surface through the yard to point C. Shown by a bold continuous line on the Order Map and marked A-B-C, a total distance of 490 metres.

b) That part of Whittingham Footpath 1 from point H, running south-east for 60 metres on a grassed surfaced field edge, then runs south for 150 metres a grassed surfaced cross field path to point J. Shown by a bold continuous line on the Order Map and marked H-J, a total distance of 210 metres.

### Description of new footpaths

(All lengths and compass directions are approximate).

a) From point A running generally north-north-west for 250 metres to point D, then north-north-east for 50 metres to point E. It passes through a field gate and runs north for 60 metres to point F, then generally north-west for 150 metres passing through a pedestrian gate and continuing to point G. Between A-D and E-F-G the path will have 2 metre wide stone surface. D-E will have a 3 metre wide concrete surface. The path is shown by a bold dashed line on the Order Map and marked A-D-E-F-G, a total distance of 510 metres.

b) From point H running south-east for 40 metres as a grassed surfaced footpath to point K, then passing through a pedestrian gate and continuing as a grassed surfaced footpath generally south-south-east for 150 metres, passing through a pedestrian gate and continuing to point L.

It is proposed that the path to be created by the proposed Order will be 2 metres wide with the exception of D-E which will have a width of 3 metres. The route will be subject to the following limitations or conditions:

Limitations and Conditions	Position on path to which limitations and conditions apply
The right of the owner of the soil to erect and maintain a two way opening gate that conforms to BS5709:2006	SD 5890 3753 (point E).
The right of the owner of the soil to erect and maintain a one way opening gate that conforms to BS5709:2006	SD 5879 3769 (3 metres to the south-east of point G).
The right of the owner of the soil to erect and maintain a two way opening gate that conforms to BS5709:2006	SD 5871 3783 (Point K).
The right of the owner of the soil to erect and maintain a one way opening gate that conforms to BS5709:2006	SD 5879 3770 (3 metres north-west of L).

## **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

a) Whittingham Footpath 1 to be amended to read as follows:

The 'Position' column to read: "Ashley Lane at SD 5879 3770 running north-north-west for 150 metres, crossing a stone surfaced turning area then passing through a gate, continuing as a grassed surfaced field edge path to SD 5871 3783. The path then passes through a gate and runs north-west for 40 metres to SD 5868 3786 then continuing to the Parish boundary. (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.88 km"

The 'other particulars' column be amended to read "The width of the section of footpath between SD 5879 3770 and SD 5868 3786 is 2 metres. The only limitations on the section of footpath between SD 5879 3770 and SD 5868 3786 are a one way opening gate which conforms to BS5709:2006 at SD 5879 3770 and a two way opening gate which conforms to BS5709:2006 at SD 5871 3783"

b) Whittingham Footpath 5 to be amended to read as follows:

The 'Position' column to read: "Ashley Lane at SD 5879 3769 running generally south-east for 150 metres, crossing a stone surfaced turning area then passing through a gate, then running as a stone surfaced path to SD 5890 3760, then continuing south for 60 metres to SD 5890 3753. The path then passes through a gate and runs south-south-west for 50 metres to SD 5888 3750, on a concrete surface then runs south-south-east for 250 metres as a stone surfaced path to SD 5896 3726 continuing to Cumeragh Lane (near Valve House). (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.56 km"

The 'other particulars' column be amended to read "The width of the section of footpath between SD 5879 3769 and SD 5890 3753 and also between SD 5888 3750 and SD 5896 3726 is 2 metres. The width between SD 5890 3753 and SD 5888 3750 is 3 metres. The only limitations on the section of footpath between SD 5879 3769 and SD 5896 3726 are a one way opening gate that conforms to BS5709:2006 at SD 5879 3769 and a two way opening gate that conforms to BS5709:2006 at SD 5890 3753."

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

The proposed diversion is felt to be in the interests of the owners of the land in that, if the proposal is successful, it will move Whittingham Footpath 5 away from a vehicular access road, the buildings, the car park and a yard used for storage of

materials and where machinery operates. This will lead to an improvement in the safety on site and security of the businesses.

It will also move part of Whittingham Footpath 1, and this alteration is considered to be necessary in order to provide a safe and convenient crossing point of Ashley Lane in the event that Whittingham Footpath 5 is diverted. In addition, it will move cross field section of the footpath to a field edge therefore, the diversion of Whittingham Footpath 1 is also considered to be in the interests of the owners of the land.

The proposed diversion will alter the points of termination of Whittingham Footpaths 1 and 5 and place them on another point on Whittingham Lane being opposite each other on the same highway. It is therefore suggested that the proposed termination points are substantially as convenient to the public.

The Committee is advised that so much of the Order as extinguishes part of Whittingham Footpaths 1 and 5, is not to come into force until the County Council has certified that the necessary work to the alternative routes 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 effect of 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. The alteration of Whittingham Footpath 1 from a cross-field path to a field edge path will be an advantage to the agricultural operations. 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 sections of footpath proposed to be diverted, and also in respect to the proposed alternative routes.

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.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because, the proposed alternative routes are of a similar length and gradient to the existing routes. A stone surfaced path will be provided between points A-D and E-F-G, providing a route that is suitable for use by the public. With regards to the proposed alternative route for Whittingham Footpath 1, substantial drainage and surfacing work has already been carried out in the vicinity of point L and this has alleviated a problem with flooding that previously existed in this corner of the field. The remainder of the surface of the field edge path runs over land that is firm underfoot and is safe and convenient for the public to use in all weather conditions.

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 paths or ways as a whole. It is suggested that many users might find a walk on the new routes to be more enjoyable, because the existing footpaths runs along a vehicular access track and through an industrial area, whereas the majority of the proposed footpaths are locate on the field edge. As such, some users of the paths may feel more comfortable and at ease. Furthermore, the proposed alternative route for Whittingham Footpath 5 will provide a pleasant rural footpath with fine views of the surrounding countryside, whereas the views from a large section of the existing path is of the industrial units and offices.

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 routes will be of adequate width, where necessary gates will be provided, rather than stiles and the diversion will provide a safe and convenient crossing of Ashley Lane.

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 gates has been selected, reducing the limiting effect of structures.

It is considered that, given consideration to the alignment of Whittingham Footpath 1 being 5.5 metres from the boundary between the applicant's land and Gatehouse Barn and the fences that have been erected now reduce the potential impact on the neighbour to a level that is acceptable and that all the tests and criteria for a Diversion Order can now be satisfied. Therefore, having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

## **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' 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 according to the recommendation.

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

Paper	Date	Contact/Directorate/Ext
File Ref: PRW-06-09-01		Mrs Ros Paulson Environment Directorate, 01772 533478
Reason for inclusion in Part II if appropriate N/A		