

Regulatory Committee

Meeting to be held on 15 March 2017

Electoral Division affected: Garstang
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Barnacre-with-Bonds Footpath 43, Wyre Borough.

(Annexes B & C refer)

Contact for further information:

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Executive Summary

The proposed diversion of part of Barnacre-with-Bonds Footpath 43, Wyre Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 43, 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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 the owners of Birks Farm and Briggs Ghyll, Long Lane, Barnacre-with-Bonds for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 43 in the vicinity of these properties.

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 applicants' residential properties are located immediately to the west of the existing public footpath and the footpath runs along the driveway and crosses the parking area of one of the properties. The buildings located alongside the proposed alternative route are former agricultural buildings that are no longer in commercial use. The proposal, if successful would provide the owners of the properties at Birks Farm and Briggs Ghyll with an improvement in privacy and security.

Consultations

Wyre Borough Council and Barnacre-with-Bonds Parish Council have been consulted and have not raised any objection to the proposal.

The Peak and Northern Footpaths Society and the Wyre Ramblers 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 objections to the proposal have been received.

Advice

Points annotating the routes on the Plan

Point	Grid Reference	Description
A	SD 5521 4659	Junction of bitmac surfaced footpath and concrete surfaced farm track.
B	SD 5217 4676	An unmarked point in the farmland north of Briggs Ghyll.
C	SD 5220 4672	Gated field boundary at northern end of concrete track.

All lengths and compass points given below are approximate

Description of existing footpath to be diverted

The entire width of part of Barnacre-with-Bonds Footpath 43, running generally north from point A for 185 metres to point B, shown by a bold continuous line on the attached plan.

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	Generally north	135	3	Concrete surfaced path
C	B	Generally north west	50	2	Grass surfaced path
Total distance of new footpath			185		

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 gate that conforms to BS 5709:2006	Grid Reference SD 5220 4672 (point C)

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 Barnacre-with-Bonds Footpath 43 to be amended to read as follows:

The 'Position' column to read: "Junction of path Nos. 41 and 42 to SD 5221 4659, running generally north for 135 metres on a concrete surface to SD 5220 4672, passing through a gate then running generally north west for 50 metres on a grass surface to SD 5217 4676 then to junction of path Nos. 44 and 45 S.W. of Burns Quarry Wood. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.72 km"

The 'Other Particulars' column be amended to read "The width of the section of footpath between SD 5221 4659 and SD 5220 4672 is 3 metres, the width of the section between SD 5220 4672 and SD 5217 4676 is 2 metres The only limitation on the section of footpath between SD 5221 4659 and SD 5217 4676 is the right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 at SD 5220 4672."

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 as it would provide the residents with an increase in security and privacy as it would remove the public footpath that is currently located immediately adjacent to the windows and doors of the residential properties. It would also remove any potential

conflict between the users of the footpath and vehicles manoeuvring and parking outside the residential properties.

It is noted that the existing route is obstructed by a concrete raised area and the boundary fences between the field and the residential properties. The alternative route is currently available as a concessionary route for the public to use.

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 Barnacre-with-Bonds Footpath 43, 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 Barnacre-with-Bonds Footpath 43, 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.

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 footpath proposed to be diverted, and also in respect to the proposed alternative route.

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 to the exiting footpath. The alternative route will introduce a change in the gradient of approximately 1.5 metres, as the land south of point C is raised above the level of the

current footpath. However, it is a shallow rise and fall in height that would be expected on a rural path in this area, therefore would not be substantially less convenient to the public, given the undulating nature of the land that would be encountered on a walk in order to reach this location.

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 existing footpath runs along the driveway and immediately past the residential properties and parking areas. The proposal will divert the footpath away from the residential dwellings and as such, some users of the footpath 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, 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 a gate will be provided, rather than a stile.

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 a gate 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
File Ref: 211-660 File Ref: PRW-02-05-043		

Mrs R J Paulson,
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Reason for inclusion in Part II, if appropriate

N/A