

Regulatory Committee

Meeting to be held on 13 March 2019

Electoral Division affected:
Padiham and Burnley West

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Hapton 17, Burnley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Hapton 17, Burnley 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 Footpath Hapton 17, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the county council take a neutral stance with respect to its confirmation.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 Watson Laithe Farm, Accrington Road, Hapton, Burnley BB11 5QG, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Hapton 17, Burnley Borough.

Watson Laithe Farm is small holding that includes a residential dwelling, stables and agricultural buildings. The footpath runs through the property and the diversion, if successful will move the footpath onto a track that is located outside the curtilage of the residential and working areas of the farm, thereby increasing the privacy and

security for the residents, whilst providing a route that is safe and convenient for public use.

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

Consultations

Burnley Borough Council and Hapton Parish Council, have been consulted and both have confirmed that they have no objection or comments regarding the proposed diversion.

The Ramblers, Peak and Northern Footpaths Society and the British Horse Society have been consulted and all have confirmed that they have no objection to the proposed diversion. The Ramblers have commented that 'although this proposal doubles the length of the farm yard route, it is a much better route for walkers and the residents.' The Peak and Northern Footpaths Society have noted the change in gradient as A-C is a slight downhill walk, whereas A-B is level. However, they appreciate the benefit to the residents if the footpath is diverted and have confirmed that they have no objections.

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 routes on the attached map

Point	Grid Reference	Description
A	SD 8092 3105	Junction of Footpaths Hapton 11 and 17 on the east side of Watson Laithe Farm.
B	SD 8100 3101	Junction of Footpaths Hapton 16 and 17 adjacent to the entrance to Watson Laithe Farm.
C	SD 8104 3109	Junction of unrecorded stone track and Footpath Hapton 15.

n.b. Lengths and compass points given below are approximate.

Description of existing footpath to be diverted

That part of Footpath Hapton 17 as described below and shown by a bold continuous line marked A-B on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally ESE	95	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-C-D on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	ENE	125	3	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 the Order should also specify that the Definitive Statement for Footpath Hapton 17 be amended to read as follows:

The 'Position' column to read:

"Junction Footpath No.11 at Watson Laithe SD 8092 3105, running generally east north east for approximately 125 metres as a stone surfaced footpath to a junction with Footpath 15 at SD 8104 3109. The footpath then runs from SD 8100 3102 to the junction of Footpath No.18 at Habergham Eaves Parish Boundary.

The 'length' column be amended to read:

"0.21 km"

The 'Other Particulars' column be amended to read:

"Between SD 8092 3105 and SD 8104 3109 the footpath has a stone surface 3 metres wide and has no limitations".

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. Watson Laithe Farm is small holding that includes a residential dwelling, stables and agricultural buildings. The footpath runs through the property, with buildings and stables located on either side. The diversion, if successful will move the footpath onto a track that is located outside the curtilage of the residential and working areas of the farm. The diversion would also remove any

potential conflict between the users of the footpath and vehicles manoeuvring and parking within the working area of the farm.

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 not alter the extreme western or eastern points of termination of Footpath Hapton 17 but it will alter the point where the western section of Footpath Hapton 17 meets Footpaths Hapton 15 and 16, and place it at another point on Footpath Hapton 15 being the same highway. This would require approximately 80 metres of Footpath Hapton 15 to be walked before continuing on Footpath Hapton 17, however it is suggested that the numbering of the public rights of way are merely for convenience, it is a stone surfaced track with good visibility and it is suggested therefore, that the proposed termination point is substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Footpath Hapton 17, 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 and also the alternative route marked A-C.

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. Depending on the route, the diversion will either increase the length to be walked by 115 metres, or decrease it by 85 metres. In some circumstances, the increase in length could be

considered to be more inconvenient than the existing route. However, it is suggested that is not the case in this instance as this footpath is likely to be used as part of a much longer walk, the minimum of which is in the region of 3km when travelling between Hapton and the Billington Road industrial estate, or vice versa. Therefore the increase of 85 metres in length would be negligible in the context of the length of the overall walk.

There is a slight incline from point A to point C that would add a gradient to the route if travelling west to east or vice versa, as the existing A-B is level. But to reach that point, several slopes of much steeper gradients would have had to have been negotiated and therefore, the increase in gradient is not substantially less convenient.

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 be separated from the residential dwelling and working areas of the farm. As such, some users of the footpath may feel more comfortable and at ease when passing through the property.

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 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. 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 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: 211-697		Planning and Environment Group
File Ref: PRW-12-07-17		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A