

Regulatory Committee

Meeting to be held on 18 September 2019

Part I

Electoral Division affected:
South Ribble East

Highways Act 1980 – Section 25

Proposed Public Path Creation Agreement for a Public Footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston

(Annex 'B' refers)

Contact for further information:

Mrs R Paulson, Planning and Environment Group
07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

Proposed dedication by agreement of a publically maintainable public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston, PR5 4JW.

Recommendation

- (i) That the proposal for Public Path Creation Agreement to dedicate a length of public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, be accepted, subject to the removal of the restrictive covenants which currently bind the landowner.
- (ii) That after removal of restrictive covenants affecting the land, a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owners of 23 Elmsett Road, Walton-le-Dale and Lancashire County Council on the terms detailed in this report to dedicate a length of public footpath as shaded pink on the attached map, and marked A-B-C-D-A.

Background

The adopted footpath, F2992 is located at the north east corner of the Holland Slack housing development, providing access from the residential area to the network of public rights of way at Holland Wood, Mosley Wood and the River Darwen.

The land immediately to the east of F2992 slopes steeply down to the River Darwen and prior to 2013, this slope carried over it a footpath (7-2-95). In 2013, there was a landslide resulting in a significant length of footpath 7-2-95 being lost down the river embankment and the adopted footpath (F2992) becoming unstable. F2992 has since

partially collapsed and is therefore unsafe for public use and has been temporarily closed since that time.

Various options of how to remedy the situation have been considered, including the provision of a revetment wall to reinstate the footpath but, as that would be located on the edge of the steep embankment, it could be subject to further erosion and Highway Engineers have advised that might not offer a suitable long term solution.

The opportunity has arisen for the county council to enter into an agreement with the owners of the adjacent property, 23 Elmsett Road, to create a public footpath on the eastern boundary of their land that appears to be sustainably more stable. This footpath would bypass the collapsed and unstable section of F2992, and it is envisaged that it would provide a suitable footpath link for many years to come.

On investigating the title of the owners of the adjacent property, it was found that restrictive covenants were in place relating to using the area of land required only as a garden and reserving a 'protected strip' for the benefit of a statutory undertaker. The county council could not take a dedication of a public footpath that was subject to such restrictions. Discussions have taken place and both parties who benefit from the covenants have now agreed in principle for the release of those covenants on the land to be dedicated.

Consultations

Section 25 of the Highways Act 1980 requires that the county council shall consult any other local authority in whose area the proposal is situated. Accordingly, the necessary consultation has been carried out with South Ribble Borough Council and at the time of writing, no objection regarding the proposal has been received.

Advice

Points annotated on the plan

Point	Grid Reference	Description
A	SD 5667 2744	Southern point of footpath dedication area, immediately adjacent to the fence to be erected, alongside Elmsett Road.
B	SD 5667 2744	South east corner of footpath dedication area adjacent to junction of Elmsett Road and F2992.
C	SD 5667 2746	Northern point of footpath dedication area, immediately adjacent to the fence to be erected at its junction with F2992.
D	SD 5667 2745	North west corner of footpath dedication area, immediately adjacent to the fence to be erected.

E	SD 5667 2744	South west corner of fence to be erected immediately adjacent Elmsett Road.
---	--------------	---

Description of Proposed Footpath

A footpath on land shaded pink on the attached map and marked A-B-C-D-A, being an area of approximately 30 square metres, approximately 2 metres in width and 15 metres in length adjacent and contiguous with the existing footpath.

The public footpath to be created by the proposed Public Path Creation Agreement will not be subject to any limitations and conditions.

Officers' assessment of the proposal against the legislative criteria for entering into a Public Path Creation Agreement.

Under Section 25 of the Highways Act 1980, the county council may enter into an agreement with a freehold owner for the dedication of a footpath, bridleway or restricted byway. The purpose of this provision is to ensure dedication of land that is necessary or beneficial, since the dedication of a route under Section 25 becomes maintainable at public expense.

The proposal is considered to be a benefit to the public in providing a safe and convenient public footpath that will be a link from the Holland Slack housing development to the network of public rights of way at Holland Wood, Mosley Wood and the River Darwen. The original route of F2992 has become unstable following the landslip and has partially collapsed, with footpath 7-2-95 collapsing down the embankment a few years ago, and it is not considered feasible nor cost effective for F2992 to be reinstated. The new Section 25 dedication would provide a safe route to link the two parts of F2992 and would be necessary (without reinstating the current F2992) to provide a continuation of the existing network of public rights of way.

Before the collapse of footpath 7-2-95 and the subsequent closure of F2992 on safety grounds, the route was well used and formed an important link in the network of public rights of way. Following the closure of the footpath, regular requests for the footpath to be reinstated have been received from local residents.

It is advised that the proposed Public Path Creation Agreement, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and geographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The land crossed by the proposed footpath is in the registered ownership of the owners of 23 Elmsett Road, Walton-le-Dale. The proposed creation is by means of an agreement, therefore there will be no compensation payable as a consequence of the coming into operation of the Public Path Creation Agreement.

It is also advised that the needs of disabled people 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. The alternative route will be of adequate width, with no gate or stiles.

Further, it is also advised that the effect of the Public Path Creation Agreement is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

Financial Implications

The agreed Heads of Terms state that no consideration payment will be made for the land dedication under Section 25 Public Path Creation Agreement. However, it is proposed that the county council will agree to pay the owners' reasonably incurred legal costs and disbursements in connection with formalising the Public Path Creation Agreement and removal of the restrictive covenants. We have not been able to agree a definitive figure for this at present.

The county council propose to install a 1.5 metre wide compacted stone surface within the area to be dedicated and an approximately 20 metre length of 6ft high, close boarded fence on the owners' land immediately adjacent to Elmsett Road and the western edge of the area proposed to be dedicated. The cost of the works on site are expected to be in the region of £5000.

As soon as may be practical after the dedication of a footpath in accordance with a Public Path Creation Agreement, Lancashire County Council are required give notice of the dedication by publication in a local newspaper circulating in the area in which the land to which the Public Path Creation Agreement relates is situated. The cost of the advertisement is expected to be in the region of £200.

It is proposed that the cost of the works, legal costs and disbursements payable to the landowners and the cost of the newspaper advertisement will be borne by Lancashire County Council. It is suggested the cost of implementing the Public Path Creation Agreement, including the cost of the works on site, would be substantially less than the cost of reinstating the original footpath. Furthermore, as the new footpath would be located further away from the edge of the slope, it would not be subject to the same level of risk of a future collapse.

As the public footpath will be created by means of a Public Path Creation Agreement, it will automatically become maintainable at public expense. The landowners will take ownership of and become responsible for any future maintenance of the 6ft close boarded fence.

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 (item 3) 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 agree that the county council, after the removal of restrictive covenants affecting the land, enters into an agreement with the landowners for the creation of a publicly maintainable footpath and bears the cost of the site works, legal costs and disbursements payable to the landowners and the cost of the newspaper advertisement.
- To not agree that the county council enters into an agreement with the landowners for the dedication of a publicly maintainable footpath and to request officers to investigate further the feasibility and costs of carrying out works to reinstate and stabilise the land over which F2992 is located.

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

Paper	Date	Contact/Directorate/Ext
File Ref: PRW 07-02-095		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A