

Regulatory Committee

Meeting to be held on 19 September 2018

Electoral Division affected: Wyre Rural East

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Barnacre-with-Bonds Footpath 48, Wyre 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 Barnacre-with-Bonds Footpath 48, Wyre 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 Barnacre-with-Bonds Footpath 48, 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-D-B on the attached plan.
- (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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

A request has been received from the owners of Waterhead Cottage, Edisforth Lane, Barnacre, Preston, PR3 1GN, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Barnacre-with-Bonds Footpath 48, Wyre Borough.

Waterhead Cottage is currently being converted from a redundant United Utilities water treatment building into a private residential dwelling. The footpath runs through the garden of the property and the diversion, if successful will increase 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 plan as A-B and the proposed alternative route is shown by a bold broken line and marked A-C-D-B.

Consultations

Wyre Borough Council and Barnacre-with-Bonds Parish Council, have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Wyre branch of the Ramblers Association have been consulted and have confirmed that they have no objection to the proposed diversion.

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 plan

Point	Grid Reference	Description
A	SD 5153 4751	Point immediately west of the end of the concrete track leading to Waterhead Cottage.
B	SD 5151 4751	Point immediately east of the stile.
C	SD 5154 4751	North east corner of property boundary.
D	SD 5151 4752	North west corner of property boundary.

Description of existing footpath to be diverted

That part of Barnacre-with-Bonds Footpath 48 as described below and shown by a bold continuous line marked A-B on the attached plan. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally WNW	25	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-C-D-B on the attached plan. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	NNE	8	2	Compacted stone path.
C	D	WNW	22	2	Compacted stone path.
D	B	WSW	7	2	Compacted stone path.
Total length of new footpath:			37		

The proposed alternative route will not be subject to any limitations or 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 Barnacre-with-Bonds Footpath 48 be amended to read as follows:

The 'Position' column to read:

"Junction with Footpath 47 to SD 5153 4751. The footpath then runs north north east for 8 metres to SD 5154 4751, then west north west for 22 metres to SD 5151 4752 then west south west for 7 metres to SD 5151 4751 then to Parish boundary west of Woodacre Pasture. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.73 km"

The 'Other Particulars' column be amended to read:

"There are no limitations between SD 5153 4751 and SD 5151 4751 and the width between those points is 2 metres."

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be expedient in the interests of the owners of the land as Waterhead Cottage is currently being converted from a redundant United Utilities water treatment building into a private residential dwelling. The footpath currently runs through the garden of the property and the diversion, if successful will increase the

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

It is proposed that the new route will have a recorded width of 2 metres and a compacted stone surface will be provided. No stiles, gates or other structures are proposed to be installed on the new route.

Currently, the footpath is subject to a temporary closure order due to the risk to the public from the development works that are ongoing. 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, as due to the development it would not be safe to open up the existing route. Access is currently available on the proposed alternative route from where the existing footpath can be viewed.

The proposed diversion will not alter the points of termination of Barnacre-with-Bonds Footpath 48, 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 48, 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, 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 have a 999 year lease for the land crossed by the footpath proposed to be diverted and for the land crossed by the proposed alternative route. United Utilities Water Limited, own the freehold for the land and have been consulted on the diversion proposal. At the time of writing their response is awaited. It is anticipated that they would have no objection to the diversion as it would be in the interests of the residents of their former building that was sold for the purpose of conversion into a private dwelling.

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 and gradient to the exiting footpath.

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 a walk on the new route to be more enjoyable, because the new footpath will be fenced from the private garden of the residential dwellings and 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 (DDA). The alternative route will be of adequate width, with no gate 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.

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: 211-685		Planning and Environment Group
File Ref: PRW-02-05-48		Mrs R J Paulson, 07917 836628
Reason for inclusion in Part II, if appropriate		
N/A		