

Regulatory Committee

Meeting to be held on 11 March 2020

Item of Urgent Business

Electoral Divisions affected:
Lancaster Rural East and
Wyre Rural Central

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Realignment of Footpaths around Nan's Nook near Forton in Connection with the Removal of the Motorway Footbridge

(Annexes 'A' to 'C' refer)

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Executive Summary

The proposed diversion of part of Footpaths Forton 18, 24, parts of Footpath Forton 27 and Footpaths Ellel 46 and 47 in the districts of Wyre Borough and Lancaster City.

Reason why the business is considered to be urgent

Nan's Nook Footbridge carried Footpath Forton18, which is also part of a regional trail, promoted as the 'Wyre Way'. Due to safety concerns Highways England have recently dismantled and removed the bridge and this diversion proposal, if successful will provide the public with a safe and convenient means of crossing the M6.

County council officers and Highways England have been working together with the landowners to reach agreement on a diversion proposal, the details of which have only recently been finalised.

Due to the popularity of the network of public rights of way in this area, it is considered that the proposed diversion be progressed as a priority. However, due to the election timetable, there will not be another Regulatory Committee meeting until 24 June 2020.

The special circumstances of this is diversion proposal are such that it is considered at this meeting as a matter of urgency.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths Forton 18 and 24, parts of Footpath Forton 27 and Footpaths Ellel 46 and 47 from the routes shown by bold continuous lines and marked A-B, H-B, K-L-M-N and P-M, to the routes shown by bold broken lines and marked A-C-D-E-F-G, H-J-C, K-O-L and P-L on the attached maps.
- (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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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

In August 2016 the jib of an excavator being carried on a low-loader hit a footbridge over the M20 in Kent. The impact caused the footbridge to collapse. A review of bridges following that incident had identified Nan's Nook Footbridge as a potential hazard and that it needed to be removed. Although there are many bridges between junctions 32 and 33, the Kent incident highlighted the greater danger of footbridges, rather than roadbridges being struck because a footbridge is more likely to collapse in such circumstances. The particular risk in this case, amongst other factors, being that the height of a load could be adjusted in the Lancaster Service Station and the Nan's Nook Footbridge is the 2nd bridge southbound. The northbound carriageway is of less concern because of the many bridges that precede this one in that direction.

Highways England have therefore recently dismantled and removed the Nan's Nook Footbridge that carried Footpath Forton 18 that is part of a regional trail, promoted as the 'Wyre Way'.

Officers from both Wyre Borough Council and Lancashire County Council accepted Highways England's view that the removal of the bridge was necessary and carried out a consultation exercise to consider the various options to change the recorded alignment of Footpath Forton 18 and the public rights of way that link to that footpath. It is accepted that formally this should not have pre-empted the extinguishment of the footpath but there were pressing safety and operational reasons for the work being done at that time and agreement in principle with local representatives had already been reached.

The outcome of the consultation was that the preferred option would be to divert the footpaths onto a new alignment to the south, going under the M6, via an existing underpass, adjacent to the River Wyre.

The lengths of existing footpaths to be diverted are shown by bold continuous lines and marked on the attached maps as A-B, H-B, K-L-M-N and P-M and the proposed alternative routes shown by bold broken lines and marked A-C-D-E-F-G, H-J-C, K-O-L and P-L.

Consultations

Lancaster City Council, Wyre Borough Council, Ellel Parish Council, Forton Parish Council, the Peak and Northern Footpaths Society and the Ramblers have been consulted and at the time of writing, their responses are awaited.

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

The footpath references shown on the attached maps are as follows:-

Footpath Forton 18 (2-11-FP18)

Footpath Forton 24 (2-11-FP24)

Footpath Forton 27 (2-11-FP 27)

Footpath Ellel 46 (1-13-FP 46)

Footpath Ellel 47 (1-13-FP47)

Points annotating the routes on the attached maps

Point	Grid Reference	Description
A	SD 5051 5101	Unmarked point on Footpath Forton 24 on a woodland footpath.
B	SD 5070 5125	Unmarked point in the field at the District/Parish boundary at the junction of Footpath Forton 47 and Footpath Ellel 27.
C	SD 5075 5112	Gap in the fence providing access to the motorway underpass at the west side of the M6.
D	SD 5082 5116	Kissing gate in the fence providing access to the motorway underpass at the east side of the M6.
E	SD 5107 5134	Point at the south east corner of the field that is accessed by the kissing gate at point F
F	SD 5102 5143	Kissing gate in the fence, 65 metres south south east of the mature tree that is located to the north of the vehicular access to the field.
G	SD 5096 5155	Western end of Footpath Ellel 38 near Guys Farm.
H	SD 5071 5127	Point on west side of the M6, where Footpath Forton 27 changes direction from running parallel to the M6, to run in the field.

J	SD 5074 5116	Point on west side of M6 at a manhole access cover.
K	SD 5071 5130	Unmarked point on field edge 15 metres north of the kissing gate on west side of M6
L	SD 5070 5134	Unmarked point on the edge of the field, on the slope on the west side of the M6.
M	SD 5068 5139	Junction of Footpaths Forton 18 and 27, 15 metres east of the western fence of the M6.
N	SD 5087 5159	Junction of Footpath Ellet 46 and the access track to Guys Farm Outdoor Centre adjacent to the entrance to Nan's Nook.
O	SD 5071 5133	Point on west side of the M6, at the apex of the bend in the motorway fence.
P	SD 5067 5138	Point on the west side of the M6 on Footpath Forton 18 immediately west of the motorway fence.

**Description of existing footpaths to be diverted
(Lengths and compass points given are approximate)**

a) Part of Footpath Forton 24 and Footpath Ellet 47 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 NE	305	The entire width

b) Part of Footpath Forton 27 as described below and shown by a bold continuous line marked H-B on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
H	B	SW	25	The entire width

c) Part of Footpath Forton 27, part of Footpath Forton 18 and Footpath Ellel 46 as described below and shown by a bold continuous line marked K-L-M-N on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
K	L	NNW	45	The entire width
L	M	NNW	50	The entire width
M	N	Generally NE	320	The entire width

d) Part of Footpath Forton 18 as described below and shown by a bold continuous line marked P-M on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
P	M	ENE	15	The entire width

**Description of new footpaths
(Lengths and compass points given are approximate)**

a) A public footpath as described below and shown by a bold broken line A-C-D-E-F-G on the attached map

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH	SURFACE
A	C	Generally ENE	265	2 metres	An unsurfaced woodland path, a 10 metre length of steps and boardwalk over a stone groyne structure and grass.
C	D	Generally ENE	80	2 metres, except for a 0.2 metre length (a gap in the fence) at SD 5075 5112 where the width is 1.4 metres and for a 55 metre length (the underpass) between SD 5076 5113 and SD 5082 5115 where the width is 1.5 metres	Unsurfaced path, concrete and compacted stone.
D	E	Generally NE	325	2 metres	Grass and compacted stone
E	F	Generally NNW	105	2 metres	Grass
F	G	Generally NNW	130	2 metres	Grass

b) A public footpath as described below and shown by a bold broken line H-J-C on the attached map

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH	SURFACE
H	J	SSE	115	2 metres curving around a manhole access cover at point J	Compacted stone, ditch crossing and grass
J	C	SSE	40	2 metres	Grass

c) A public footpath as described below and shown by a bold broken line K-O-L on the attached map

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH	SURFACE
K	O	N	30	2 metres	Compacted stone and grass
O	L	NW	15	2 metres	Grass

d) A public footpath as described below and shown by a bold broken line P-L on the attached map

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH	SURFACE
P	L	Generally SE	50	2 metres	Grass

It is proposed that the footpath to be created by the Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the landowner to maintain a kissing gate that conforms to BS 5709:2018	SD 5102 5143 (point F) SD 5082 5116 (point D) SD 5071 5132 (15 metres north of point K)

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:

a) Statement for Footpath Forton 18, Wyre Borough be amended as follows:

The 'Position' column to read: "Stoney lane to the junction with Footpath Forton 27 at a point immediately to the west side of the M6 at SD 5067 5138.

The 'length' column be amended to read: "0.27 km"

No changes to the 'Other Particulars' column.

b) Statement for Footpath Forton 27, Wyre Borough be amended as follows:

The 'Position' column to read: "Lancaster RD boundary at SD 5072 5124, then runs generally north north west for 155 metres to the junction with Footpath Forton 18 at a point immediately to the west side of the M6 at SD 5067 5138.

The 'length' column be amended to read: "0.15 km"

The 'Other Particulars' column be amended to read: The width between Lancaster RD boundary at SD 5072 5124 and SD 5071 5127 and SD 5071 5130 and SD 5067 5138 is 2 metres.

c) Statement for Footpath Forton 24, Wyre Borough be amended as follows:

The 'Position' column to read: "Nether Wyresdale path 44 to SD 5051 5101.

The 'length' column be amended to read: "0.29 km"

No changes to the 'Other Particulars' column.

d) Statement for Footpath Ellel 47, Lancaster City be deleted.

e) Statement for Footpath Ellel 46, Lancaster City be deleted.

f) Footpath Ellel 54, Lancaster City be added to the Statement to read:

The 'Position' column to read: " From Footpath Forton 24 at SD 5051 5101, running generally east north east for 0.13km to SD 5107 5134, then generally north west for 235 metres to SD 5096 5155.

The 'length' column to read: "0.88. km"

The 'Other Particulars' column to read: The width between SD 5051 5101 and SD 5107 5134 is 2 metres, except for a 0.2 metre length (a gap in the fence) at SD 5075 5112 where the width is 1.4 metres and for a 55 metre length (the underpass) between SD 5076 5113 and SD 5082 5115 where the width is 1.5 metres

g) Footpath Ellel 55, Lancaster City be added to the Statement to read:

The 'Position' column to read: "From Lancaster RD boundary at SD 5072 5124 then runs generally south south east for 125 metres, curving around a manhole access cover at SD 5074 5116 continuing to the junction with Footpath Ellel 54 at SD 5075 5112.

The 'length' column to read: "0.12km"

The 'Other Particulars' column to read: The width is 2 metres.

Criteria satisfied to make and confirm the Order

The proposed diversion is expedient in the interests of the owners of the land. It will remove the obligation for Highways England to provide a replacement crossing of the motorway on the existing alignment of Footpath Forton 18. It will also remove the footpath from the industrial premises at Nan's Nook, proving an improvement in safety and security for the owner. In addition, the diversion will be of benefit the owners of the farmland, enabling them to manage their land more effectively because the proposed new footpaths will run around the edge of the fields, rather than across them and in one of the fields, to the west of the motorway the footpaths will be separated from the livestock by a fence.

The proposed diversion will alter the termination point of Footpath Forton 18, Footpath Forton 24 and Footpath Forton 27 and place them at another point on the same highway or a highway connected to it and it is suggested that the new termination points will be substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Footpaths Forton 18 and 24, parts of Footpath Forton 27 and Footpaths Ellel 46 and 47, will not come into force until the county council has certified that any 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 routes, 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 applicant (Highways England) own the land crossed by the existing route over the motorway and the proposed alternative route under the motorway underpass. Part of the existing and alternative routes is in the ownership of neighbouring landowners and they are in agreement with the proposed diversion. Part of the land crossed by the alternative routes is not registered with the Land Registry. Therefore, notices will be erected on site directed at any owner or occupier of the land.

The applicant has 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 suggested that the path or way will not be substantially less convenient to the public in consequence of the diversion. It is noted that there would be 500 metre increase in the length of footpath to be walked between Guys Farm and the continuation of Footpath Forton 18 on the west side of the motorway. The increase in length could be considered less convenient in some circumstances but in this instance, the use of the footpath in that particular direction would be part of a much longer rural walk. Any inconvenience that might result from the increase in length would be offset to some extent by removing the need to climb steps, up and down the motorway bridge, negotiate stiles (there would only be gates on the new footpaths) and also removing the footpath from the industrial premises and thereby improving public safety.

It is however, envisaged that a vast majority of walkers would be following the 'Wyre Way' that runs between Guys Farm and Cleveley Woods and that route would be of similar length.

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 will provide a motorway crossing that goes under M6, and alongside the River Wyre, where traffic noise is less intrusive and has a reduced visual impact of the motorway. It will provide an additional 660 metres of footpath alongside the River Wyre, with pleasant views of the river.

In addition, the proposed diversion will remove that part of Forton Footpath 24 that is located in a wet and boggy part of the field and provide footpaths that will have a firmer surface that is safe and convenient for use in all weathers. It will also provide a greater length of scenic riverside walk and avoid shared space with vehicles manoeuvring in the working yard at Nan's Nook.

Flooding does occur on many parts of the 'Wyre Way' where it follows the river as it is on other riverside path, however this is relatively infrequent and tends to be not at the most popular times for walking. The proposed route is at the level of the fields which is above the lower point on the existing route (at Cleveley Woods). Therefore the proposed diversion would not make the route more likely to be impassable more often, than it is currently.

The underpass is the highest point and so is not prone to flooding and there is no safety issue. It was constructed not only as a walkway for maintenance access but as a cattle creep so it is sufficiently robust. There is a substantial concrete edging to the underpass and has good headroom.

It is felt that there would be no adverse effect on the land served by the existing routes 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 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 routes will be of adequate width, firm and well drained underfoot with no stiles and the gates will conform to BS5709:2018.

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.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211-723		Planning and Environment Group
File Ref:		Mrs R J Paulson, 07917 836628
Reason for inclusion in Part II, if appropriate		
N/A		