

## Regulatory Committee

Meeting to be held on 16 September 2020

### Part I

Electoral Division affected:  
Hoghton-with-Wheelton

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath Wheelton 19 at Clovian House and**  
**Miry Fold Farm, Briers Brow, Wheelton, Chorley Borough**  
(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

07917 836628, [ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

#### Executive Summary

The proposed diversion of part of Footpath Wheelton 19, Chorley Borough.

#### 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 Footpath Wheelton 19, 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-E-F 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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

The owners of Clovian House and Miry Fold Farm, Briers Brow, Wheelton have applied to Lancashire County Council for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Wheelton 19, Chorley Borough.

Clovian House and Miry Fold Farm are residential dwellings that were part of a small development on the site that was granted planning permission in 2015. Whilst the development was ongoing, for safety reasons the footpath was temporarily diverted to the edge of the site, onto the alignment of the proposed new route A-C-D-E-F.

The current owners were not involved in the original planning application and have only recently become aware that the necessary order has not been made to permanently divert the footpath onto the alternative route that is available to be walked on the ground. Now that the current owners are aware of this, they wish to regularise the situation. If the diversion is successful it will remove the footpath that runs through the building, boundary fence, hedge and boundary wall of one of the houses and also across the gardens.

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 new route is shown by a bold broken line and marked A-C-D-E-F.

### Consultations

Chorley Borough Council and Heapey and Wheelton Parish Councils have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers have been consulted and at the time of writing, their responses are also 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

#### Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6091 2091	Point west of the footpath ditch crossing, at the south east boundary of Clovian House.
B	SD 6083 2097	Junction of Footpaths Wheelton 16 and 19.
C	SD 6091 2092	Point at the south corner of the field adjacent to Clovian House.
D	SD 6087 2095	Gate in the field boundary fence between Clovian House and Miry fold Farm at the south west edge of the field.
E	SD 6084 2097	Gate in the field boundary fence at Miry fold Farm at the south west edge of the field.

F	SD 6083 2097	Point on the access track, approximately 5 metres north east of the current junction of Footpaths Wheelton 16 and 19.
---	--------------	---

### Description of existing footpath to be diverted

That part of Footpath Wheelton 19 as described below and shown by a bold continuous line marked A-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	NW	90	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	NNE	10	2	Compacted stone
C	D	NW	50	2	Grass
D	E	NW	30	2	Grass
E	F	Generally WNW	10	2	Compacted stone

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 5709:2018	Grid Reference SD 6087 2095 (point D)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6084 2097 (point E)

## **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 Footpath Wheelton 19 be amended to read as follows:

The 'Position' column to read:

"From Footpath Wheelton 16 at Miry Fold Farm SD 6083 2097, running generally east south east for 90 metres as a stone then grass surfaced footpath to SD 6091 2092 then south south west for 10 metres as a stone surfaced footpath to SD 6091 2091, then continuing to join Footpath Wheelton 21 near Logwood Mill Farm. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.80 km"

The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6083 2097 and SD 6091 2091 is the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2018 at SD 6085 2097 and SD 6087 2095. The width between SD 6083 2097 and SD 6091 2091 is 2 metres."

## **Criteria satisfied to make and confirm the Order**

To make a Diversion Order under section 119 of the Highways Act 1980, the county council must be satisfied that it appears expedient, in the interests of the owner, lessee or occupier of land crossed by the footpath or of the public, to divert the said footpath or part thereof (whether or not on to land of the same or different owner, lessee or occupier).

The majority of the existing route and of the proposed new route is in the ownership of the applicants. A small length of both the existing footpath and the new route crosses land that is in different ownership. The owner of that land has been consulted and has confirmed that they will not raise any objection to the diversion proposal.

The proposed diversion is expedient in the interests of the owners of the land crossed by the existing route, as it would remove the footpath that runs through the building, boundary fence, hedge and wall of one of the houses and across the gardens. The new footpath is proposed to run outside the residential areas, enabling the existing obstructions on the footpath to be retained and provide the residents with an improvement in privacy and security.

With regards to the obstructions on the footpath, 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 new 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. In this case, due to the boundary fence, hedges and walls of Clovian House, it is not possible to see the existing route in its entirety but it is obvious that it is a house and garden and it is suggested that not being able to see all of the existing footpath will not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

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 alter the western point of termination of Footpath Wheelton 19 and place it at another point on Footpath Wheelton 16, being the same highway approximately 5 metres north east of the existing termination point. It is suggested therefore, that the proposed termination point is substantially as convenient to the public. This proposed diversion will not alter the eastern points of termination of Footpath Wheelton 19, therefore it is not necessary to consider the criteria concerning the alteration of that particular termination point.

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 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 that are incurred in bringing the new site of the footpath into a fit condition for use for the public.

The Committee are advised that so much of the Order as extinguishes part of Footpath Wheelton 19, is not to come into force until the county council has certified that any necessary work to the new footpath has been carried out.

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, if the Order were to be confirmed, the new path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be two gates on the new footpath at the points where it crosses the field boundaries of two separate paddocks. The gates will conform to the British Standard for gates, gaps as stiles (BS 5709:2018) and as such will be easy to use.

It is suggested that, if the Order were to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. The new footpath, being located on the field edge will provide open views of the countryside, whereas the current footpath runs over gardens and through the one of the properties. It is suggested, therefore that the footpath would be more in keeping with a walk in the countryside, provide improved views and as it does not cross the residential areas of the site, users of the footpath will feel more comfortable walking on the new footpath.

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 new route will be of adequate width, firm and well drained underfoot with no stiles. The two 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 and C 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- 725		Planning and Environment Group
File Ref: PRW-9-21-19		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A