

Regulatory Committee

Meeting to be held on 16 September 2020

Part I

Electoral Division affected:
Pendle Rural

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Footpath Trawden 188 at Parson Lee Farm,
Wycoller Road, Trawden, Pendle Borough
(Annexes 'B' and 'C' refer)

Contact for further information:

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Executive Summary

The proposed diversion of part of Footpath Trawden 188, Pendle 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 Trawden 188, from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 owner of Parson Lee Farm, has applied to Lancashire County Council for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Trawden 188, Pendle Borough.

The current owner was not aware that the recorded route of the footpath is obstructed by an agricultural barn when she purchased the property.

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

Consultations

Pendle Borough Council and Trawden Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Pendle 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 9409 3861	Unmarked point in field, north east of the field boundary that is between the pasture field and the field that is located to the south of the barn at Parson Lee Farm.
B	SD 9413 3868	Point on the field boundary between the pasture field and the field that is located to the south of the barn at Parson Lee Farm.
C	SD 9420 3873	Junction of Footpath Trawden 188 and Keighley Road.
D	SD 9411 3873	Culvert crossing of the brook that is located to the west of Parson Lee Farm.
E	SD 9411 3873	Pedestrian gate in the field boundary between Parson Lee Farm and Keighley Road.

Description of existing footpath to be diverted

That part of Footpath Trawden 188 as described below and shown by a bold continuous line marked A-B-C on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally NNE	80	The entire width
B	C	Generally NE	80	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	D	Generally N	120	2	Grass and compacted stone
D	E	E	5	2	Compacted stone and grass

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 9411 3873 (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 Trawden 188 be amended to read as follows:

The 'Position' column to read:

"Dean House Farm to SD 9409 3861, generally north for 120 meters to SD 9411 3873 at a culvert crossing of the brook that is located to the west of Parson Lee Farm., then east for 5 metres to the junction with Keighley Road at a pedestrian gate in the field boundary between Parson Lee Farm and Keighley Road at SD 9411 3873.

(All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.25km"

The 'Other Particulars' column be amended to read:

"The only limitation on the section between SD 9409 3861 and SD 9411 3873 is the right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018 at SD 9411 3873. The width between SD 9409 3861 and SD 9411 3873 is 2 metres."

Criteria satisfied to make and confirm the Order

The proposed diversion is expedient in the interests of the owner of the land, as it would remove the footpath that runs through a farm building, a boundary fence and an area of rough ground, crossed by a deep ditch that has no provision of a bridge or ditch crossing to provide a safe and convenient crossing point.

With regards to the obstruction of the barn, 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 users it is suggested that not being able to see all of the existing footpath, due to the building on the 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 northern point of termination of Footpath Trawden 188 and place it at another point on Keighley Road, being the same highway. It is suggested therefore, that the proposed termination point is substantially as convenient to the public. This proposed diversion will not alter the southern point of termination of Footpath Trawden 188, therefore it is not necessary to consider the criteria concerning the alteration of that particular termination point.

The Committee are advised that so much of the Order as extinguishes part of Footpath Trawden 188, is not to come into force until the county council has certified that any necessary work to the new footpath 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.

All of the existing route and of the new route is in the ownership of the applicant.

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 that 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 new route is of similar length and gradient to the existing footpath. It is proposed that there will be one gate on the new footpath at the point where it crosses the field boundary at the roadside. The gate 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 was 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 will provide the similar open views of the countryside and avoid the need to negotiate the steep embankment and deep ditch. If the diversion is successful, it will provide an obvious, safe and convenient footpath away from the buildings at Parson Lee Farm. Therefore, users of the footpath are likely to find the new route easier to use and feel more comfortable than the existing route.

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. It is noted that all the land crossed by the existing and proposed alternative route are in the ownership of the applicant, therefore such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicant.

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. There is proposed to be one gate and that 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: 211-686		Planning and Environment Group
File Ref: PRW-13-7-188-		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A