

## Regulatory Committee

Meeting to be held on 2 December 2020

### Part I

Electoral Division affected:  
Burscough and Rufford

**Highways Act 1980 – Sections 26 and 118**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Replacement (by Creation and Extinguishment) of Footpaths Rufford 9 and 18**  
**at Brick Kiln Farm, West Lancashire Borough**  
(Annexes 'B' and 'C' refer)

Contact for further information:

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#### Executive Summary

The proposed replacement of the routes of Footpaths Rufford 9 and 18 by Public Path Creation and Extinguishment Orders at Rufford, West Lancashire Borough.

#### Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 26 of the Highways Act 1980 to create new lines of Footpaths Rufford 9 & 18 as shown by bold broken lines and marked F-E and C-D on the attached map; and
- (ii) that a concurrent Order be made under Section 118 of the Highways Act 1980 to extinguish the old lines of Footpaths Rufford 9 & 18 as shown by bold continuous lines and marked G-H and A-B on the attached map.
- (iii) That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Planning Inspectorate and that the Authority seek confirmation of the Orders and if necessary promote them at public inquiry.
- (iv) That provision be included in the Orders such that they are 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 creation and extinguishment.

## Background

The county council has been in discussion with the owners of Brick Kiln Farm regarding a proposal to move a narrow and difficult public footpath from the northeast side of Rufford Boundary Sluice to an improved path on the southwest side and to remove a public footpath passing through the farm yard, replacing it with one along a farm track which is a continuation of Sluice Lane.

Footpath Rufford 9 on its current alignment on the northeast bank of Rufford Boundary Sluice is narrow and runs between the edge of the sluice and boundary fences. In places the footpath is not wide enough for two people to pass comfortably and it is not possible to see end to end to ascertain if someone is coming in the opposite direction before starting to walk the footpath. For many years the county council have considered ways to improve this path but it has not proved possible due to the restricted width and close proximity to the edge of the bank, sections of the footpath are eroding and falling away into the sluice; it will always be vulnerable to erosion.

The field to the southwest of the sluice is part of Brick Kiln Farm and the owners have agreed that the footpath can be moved onto their land, improving the safety and enjoyment for the users of the footpath.

As part of the improvement scheme, it is proposed to create a new route for Footpath Rufford 18 following a farm track continuing from Sluice Lane to link with Footpath Rufford 17 and to extinguish the current route of Footpath Rufford 18 that passes through the farmyard and the 'Fiddler's Lancashire Crisps' food production site.

The lengths of footpath to be created are shown by bold broken lines and marked F-E and C-D and the lengths of footpaths to be extinguished are shown by bold continuous lines marked G-H and A-B.

## Consultations

West Lancashire Borough Council and Rufford Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the West Lancashire 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

### Annotation points and descriptions of the routes on the attached map

(All lengths and compass points given are approximate).

Point	Grid Reference	Description
A	SD 4584 1517	Junction of current Footpath Rufford 9 with Sluice Lane.
B	SD 4568 1532	Junction of current Footpath Rufford 9 with Brick Kiln Lane.

C	SD 4584 1516	Junction of new Footpath Rufford 9 with Sluice Lane, 5 metres southwest of Sluice Lane Bridge.
D	SD 4567 1531	Junction of new Footpath Rufford 9 with Brick Kiln Lane near the southwest end of Brick Kiln Lane Bridge.
E	SD 4579 1511	End of adopted section of Sluice Lane and end of new Footpath Rufford 18.
F	SD 4520 1465	Junction of new Footpath Rufford 18 with Footpath Rufford 17.
G	SD 4518 1471	Junction of Footpaths Rufford 16, 17 and current Footpath Rufford 18.
H	SD 4563 1528	Junction of current Footpath Rufford 18 with Brick Kiln Lane.

**a) Description of new length of Footpath Rufford 9**

Footpath as described below and shown by a bold broken line C-D on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
C	D	NW	220	3 metres with the exception of SD 4577 1522 to SD 4574 1525 that will be 2.5 metres and a 0.5 metre length at point D that will be 1 metre wide	Compacted stone with grass margins  No limitations and conditions

**b) Description of existing footpath, Footpath Rufford 9 to be extinguished**

Footpath Rufford 9 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	NW	220	The entire width

**c) Description of new length of Footpath Rufford18.**

Footpath as described below and shown by a bold broken line F-E on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
F	E	E then NE	830	3	Compacted stone No limitations and conditions

**d) Description of Footpath Rufford 18 to be extinguished.**

Footpath Rufford 18 as described below and shown by a bold continuous line marked G-H on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
G	H	Generally NE	750	The entire width

**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) Rufford 9 be amended to read as follows:

"Kind of Path:  
Footpath

Position:  
From a junction with Sluice Lane southwest of Sluice Lane Bridge at SD 4584 1516 northwest for 220 metres along the southwest side of Rufford Boundary Sluice, the north east side of the footpath being 1 metre from the edge of the sluice, to the junction with Brick Kiln Lane at SD 4567 1531.

Length:  
0.22 km

Other Particulars:

No limitations. Width 3 metres with the exception of SD 4577 1522 to SD 4574 1525 that is 2.5 metres and a 0.5 metre length at SD 4567 1531 that is 1 metre wide."

b) Rufford 17 be amended to read as follows:

"Kind of Path:  
Footpath

Position:  
Junction with Footpath 16 to junction with Footpath 18 at SD 4520 1465

Length:  
0.07 km

Other Particulars:"

c) Rufford 18 be amended to read as follows:

"Kind of Path:  
Footpath

Position:  
From junction with Footpath 17 at SD 4520 1465 along a stone farm track east for 210 metres then north east for 620 metres to a junction with the adopted section of Sluice Lane at SD 4579 1511

Length:  
0.83 km

Other Particulars:  
No limitations. Width 3 metres"

d) Rufford 16 be amended to read as follows:

"Kind of Path:  
Footpath

Position:  
Curlew Lane to junction with Footpath 17

Length:  
0.72 km

Other Particulars:"

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

The realignment or replacement of the current line of a public path with a new line can only be achieved using a diversion order under S119 of the Highways Act 1980 where

there is a common 'pivot' point along the old and new routes. The same may be achieved where there is no such point using concurrent creation and extinguishment orders under S26 and S118 of the same Act. However the criteria under the legislation are not exactly the same and those for the relevant Sections must be met in order to make and confirm such orders. It should be noted that for concurrent orders the test can be applied taking into account the effect of the other order even though taken on its own such an order might fail.

Annex B of the Committee papers contains detailed guidance relating to the tests and criteria for orders to be made and confirmed under the provisions of the Highways Act 1980 Sections 26 and 118.

In summary, and with regards to this particular proposal, the relevant points to consider are that the Authority can make a public path creation order and public path extinguishment order where it appears to the Authority that it is expedient to create/extinguish them having regard to:

- a. To be satisfied that there is a need for the footpath i.e. the extent to which the paths to be created would add to the convenience or enjoyment of a substantial section of the public or to persons resident in the area;
- b. The extent to which the paths to be created would be in the interests of the public;
- c. The effect the creation would have on the landowners;
- d. Whether the paths to be extinguished are not needed for public use;
- e. The Rights of Way Improvement Plan;
- f. The needs of agriculture, forestry;
- g. The effect on the natural beauty or biodiversity of the area;
- h. Conservation of flora, fauna and geological & physiographical features;
- i. The needs of people with disabilities.

In considering that it is expedient to extinguish the routes A-B and G-H and whether they are needed for public use and the extent to which they are likely to be used, it is advised that regard may be taken with respect to the associated Creation Order that will provide C-D and E-F.

Considering A-B and C-D these routes are parallel, separated only by the sluice and connected at each end by highway, however the proposed route would be wider and able to be maintained to a higher standard making it substantially more convenient for walkers. The new route would be safer as walkers would not be squeezed between fences and hedges and the edge of the sluice bank and the new path, being set back 1 metre from the edge of the sluice, would be less susceptible to erosion. The distance would be virtually the same regardless of the walkers' overall route. The views of the sluice and across the fields would be almost the same. It is therefore concluded that the creation of C-D would be to public benefit with improved convenience and enjoyment and therefore, A-B would not be needed for public use.

Considering F-E and G-H both these routes take the walker from Curlew Lane via the same footpath (Rufford 16) in the west to the Rufford Boundary Sluice in the east and connect either directly or via the footpath alongside the sluice to both Brick Kiln Lane and Sluice Lane. Current use appears to be predominantly recreational, either to take exercise and enjoying the open countryside, or dog walking. The route via G-H is a

longer route than following Brick Kiln Lane and Tootle Lane to Curlew Lane and Curlew Lane itself suggests no likely start or end point for a journey. Although G-H forms part of a route which avoids walking along roads (Brick Kiln, Tootle and Curlew Lanes) these lanes are safe to walk with good sight lines, verges/footways and mostly no boundary hedges/fences. There is both visitor and commercial traffic to Fiddler's Lancashire Crisps on the eastern part of G-H. The alternative via F-E would form a longer route if using the path as a loop, such as for dog walking – which could be either an advantage or disadvantage according to preference but as a route from Curlew Lane it would be a slightly shorter route if heading into Rufford via Sluice Lane and slightly longer if heading into Rufford via Brick Kiln Lane. As a predominantly recreational route the distances are less important than the surfaces, especially for dog walking which has to be done in all weather conditions. Both the current and new routes are along good firm surfaces. A significant factor for dog walking is that there has been conflict between the needs of the owners to ensure hygiene in the food production area and the needs of dog owners in the neighbourhood to take their dogs out. Moving this path from the farm yard and access will improve convenience and enjoyment for the public by removing such conflict or unease as well as benefitting the farmer. It is therefore concluded that the creation of F-E would be to public benefit with improved convenience and enjoyment and therefore G-H would not be needed for public use.

The Rights of Way Improvement Plan (ROWIP) states (aim 1.0) that Lancashire County Council should consider the needs of reduced mobility, dexterity and sight impaired when delivering our services. Moving the path from the narrow northeast side of the sluice to a safer path on the southwest side and keeping the paths with no structures (stiles and gates) and on firm surfaces are the measures which best contribute to this aim and this proposal is in line with it. Another aim (3.0) in the ROWIP is to increase the provision of 20-30 minutes walks. If this new route was to be used in conjunction with a return leg via Curlew, Tootle and Brick Kiln Lanes or as a there-and-back route to avoid any road walking it would meet this length of walk for a good part of the residential area in Rufford. Although we hope the current situation, whereby we are encouraged to take exercise locally in order to restrict the spread of Covid19 virus, is temporary, awareness of the importance of exercise and numbers of people using the network of public rights of way, has increased and demand for such routes is likely to remain beyond the pandemic.

If Committee decide to make the proposed Orders and, subsequently, if no objections are received, or if the proposed Orders need to be submitted to the Planning Inspectorate for confirmation, it is considered that it is expedient to create and extinguish the public footpaths as described, having regard to the extent to which the creation and extinguishment would have as respects land served by the path. The county council are not aware that the footpath proposed to be extinguished are used as access to land. Furthermore, it is advised that the extinguishment would not have an adverse effect on land where the route runs at the moment.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present public footpaths, of which we are aware at the time of writing.

It is advised that the proposed Orders, 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.

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 the owners of Brick Kiln Farm have agreed to the proposal without compensation and any potential claim from elsewhere is unlikely and would be minimal.

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 or gates.

It is considered that having regard to the above and all other relevant matters, it would be expedient to confirm the Orders.

Should the Committee agree that the proposed Orders be made and, subsequently, should no objections be received to the making of the Orders, or should the Orders be submitted to the Planning Inspectorate for confirmation, it is considered that the criteria for confirming the Orders can be satisfied.

The whole of the routes to be created and extinguished are situated on unregistered land, however the new routes are considered to be within the boundary of Brick Kiln Farm. Notices will be erected on site directed at any owner or occupier of the land in case there is another owner.

The proposal is put forward by Lancashire County Council and so all advertising and administrative charges incurred by the county council in the order making procedures and any other costs incurred including in bringing the new footpaths into a fit condition for use for the public will be covered by existing budgets.

### **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 but it is suggested that in this instance the promotion of these orders to confirmation in the event of objections is undertaken by the county council.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee are 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 would be no significant risks associated with the decision-making process.



### **Alternative options to be considered**

To not agree that the Orders be made.

To agree the Orders be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To consider securing the dedication of the new routes (C-D and E-F) in a public path creation agreement pursuant to section 25 Highways Act 1980. However, because the owners of Brick Kiln Farm are agreed to the already proposed approach and the land being unregistered, it is suggested that to make concurrent Orders to create the new route and extinguish the old is best.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211-728		Planning and Environment Group
File Ref: 8-14-FP18		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A