

Regulatory Committee

Meeting to be held on 15 September 2021

Part I

Electoral Division affected:
Burnley Rural

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Briercliffe 163 at Musty Haulgh Barn, Granville Street, Burnley Borough

(Annexes 'B' and 'C' refer)

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Executive Summary

The proposed diversion of part of Footpath Briercliffe 163, Burnley 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 Briercliffe 163, 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-B 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 the residential and agricultural smallholding, Musty Haulgh Barn, Granville Street, Briercliffe 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 Briercliffe 163, Burnley Borough.

The recorded alignment of the footpath crosses a private garden, courtyard, a paddock and part of the footpath is obstructed by a barn that was erected before the current owners purchased the property. A footpath around the barn has been provided as a temporary measure to ensure that public access through the site, albeit not on the legal alignment.

It is proposed that the new route created by the diversion order A-C-B will have the status of public footpath in the first instance, then subsequently, it is proposed that Lancashire County Council will be asked to consider entering into agreements with the applicants and owners of adjacent land crossed by some of the connecting footpaths to dedicate a bridleway that will link to the highway network.

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-B.

Consultations

Burnley Borough Council and Briercliffe Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Burnley 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 8650 3442	Junction of Footpaths Briercliffe 152, 153, 163 and 164.
B	SD 8635 3425	Point on the track immediately west of the southern end of the strip of woodland.
C	SD 8635 3443	Point on the track immediately to the west of the strip of woodland, 20 metres west of the north west corner of the field.

Description of existing footpath to be diverted

That part of Footpath Briercliffe 163 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	Generally SW	220 metres	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	W	150	3	Grass
C	B	S	175	3	Stone surface

The public footpath to be created by the proposed Order will not be subject to any limitations and 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 Footpath Briercliffe 163 be amended to read as follows:

The 'Position' column to read:

"Junction of Footpaths Briercliffe 152, 153, 163 and 164 at SD 8650 3442, running west for 150 metres to SD 8635 3443 then south for 175 metres to SD 8635 3425 then to junction of footpath 166.

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

The 'length' column be amended to read:

"0.68km"

The 'Other Particulars' column be amended to read:

"There are no limitations between SD 8650 3442 and SD 8635 3425 and the width between those points will be 3 metres."

Criteria satisfied to make and confirm the Order

To make an Order under section 119 of the Highways Act 1980, the county council must be satisfied that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path, or part of, should be diverted.

All the land crossed by the existing footpath (A-B) and approximately half of the proposed new footpath (A-C) is in the ownership of the applicants. The remainder of the new route crosses land that is in the ownership of Burnley Borough Council. At the time of writing we have yet to receive confirmation in writing but it is anticipated that they will not raise any objection to the diversion proposal because whilst C-B is not currently recorded as a public right of way, the land is held by the Borough Council for the purpose of public access.

The proposed diversion is expedient in the interests of the owners of the land, as it would remove the footpath that runs across the garden, courtyard and agricultural building. The new footpath is proposed to run outside the residential and working area of the property, enabling the existing obstructions on the footpath to be retained and provide the residents with an improvement in privacy and security.

Currently parts of the footpath proposed to be diverted are obstructed and the owner of the land has provided an alternative route to provide public access around the obstructions.

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 such as this, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of users. It is suggested that due to the close proximity of the route that is available on the ground to the route proposed to be diverted does not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

In this case, the proposed diversion will not alter the points of termination of Footpath Briercliffe 163, 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 Footpath Briercliffe 163, is not to come into force until the county council has certified that any required 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.

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 as a public footpath.

If Committee decide to make the proposed Order and, subsequently, if no objections are received, or if the proposed Order needs to be submitted to the Planning Inspectorate 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 the path or way will not be substantially less convenient to the public in consequence of the diversion. The new route is approximately a third longer than the existing, however the increased width, the firm surface and reduced gradient of section C-B would be easier to negotiate than the unsurfaced length of the slope at the southern section of the existing route A-B. There will not be any gates on the new route.

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 similar views and provide a safe and convenient footpath away from the driveway, buildings and garden at Musty Haulgh Barn. Therefore, users of the footpath are likely to find the new footpath easier to use and feel more comfortable than if they were to use 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. No 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 gates 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 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 if objections prevent confirmation of the Order by the county council that the Order be submitted to the Planning Inspectorate 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: 12-3-FP 163		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A