

Regulatory Committee

Meeting to be held on 27 September 2023

Part I

Electoral Division affected:
Wyre Rural East

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Footpath FP0205038 at Clarkson's Farm,
Barnacre-with-Bonds
(Annexes 'B' and 'C' refer)

Contact for further information:

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Brief Summary

An application for the diversion of part of Footpath FP0205038 at Clarkson's Farm, Barnacre-with-Bonds.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0205038 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 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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.

Detail

A request has been received from the owners of the residential property of Clarkson's Farm, Parkhead Lane, Barnacre-with-Bonds, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0205038.

The recorded alignment of this section of the footpath is across pasture onto the farm access track to Clarkson's Farm, adjacent to a number of outbuildings, and then into the gardens of Clarkson's Farm/Brookhouse Barn before joining Parkhead Lane. It is proposed that the footpath is diverted from the access track into a second pasture running parallel to but slightly to the east of the access track, to Parkhead Lane.

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.

Consultations

The Local Member, Wyre Borough Council and Barnacre-with-Bonds Parish Council have been consulted and there are no adverse responses.

The Peak and Northern Footpaths Society and the Wyre branch of the Ramblers have been consulted and there are no adverse responses.

The consultation with the statutory undertakers has been carried out and 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 5131 4584	On the access track at the south-eastern corner of the pasture to the north of Brookhouse Barn/Clarkson's Farm.
B	SD 5129 4572	At the south-eastern corner of the gardens of Clarkson's Farm.
C	SD 5131 4584	At a field boundary in the south-eastern corner of the pasture to the north of Brookhouse Barn/Clarkson's Farm.
D	SD 5131 4583	At the northern-western corner of the pasture to the east of Clarkson's Farm.
E	SD 5131 4572	At the south-western corner of the pasture to the east of Clarkson's Farm.



Description of existing footpath to be diverted

That part of FP0205038 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	S	110	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	E	5	2	Grass
C	D	E	5	2	Grass
D	E	S	100	2	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 (Grid Reference)</u>
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	SD 5131 4584 (point C)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	SD 5131 4583 (point D)

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 the Order should also specify that the Definitive Statement for Footpath Barnacre-with-Bonds 38 (FP0205038) be amended to read as follows:



"No. of Path:
38

Kind of Path:
Footpath

Position:
Junction of path Nos. 36 and 37 near All Saints Church to SD 5131 4584 north-east of Clarkson's Farm then via pasture to the east of Clarkson's Farm to open junction with Parkhead Lane at SD 5131 4572.
(All compass points given are approximate).

Length:
0.34 km

Other Particulars:
The only limitations on the section between SD 5131 4584 and SD 5131 4572 is the right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018 at SD 5131 4584 and SD 5131 4583.

The width between SD 5131 4584 and SD 5131 4572 is 2 metres."

Criteria satisfied to make and confirm the Order

The proposed diversion is considered expedient in the interests of the owners of the land for reasons of privacy and security. Clarkson's Farm is a private, residential property. Currently the public footpath runs along the access drive and through the private gardens of Clarkson's Farm immediately adjacent to the dwelling.

The diversion will instead continue from the south-east corner of the pasture to the north of Brookhouse Barn/Clarkson's Farm in an easterly direction into a pasture, to the east of Clarkson's Farm, alongside a field boundary, to meet Parkhead Lane, removing it entirely from the curtilage of the property. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and slightly more direct for public use.

The legislation requires that where 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 southern point of termination of FP0205038 to divert it from its current termination point to another point on Parkhead Lane 10 meters to the east. It is suggested that the proposed termination point is substantially as convenient to the public.

Committee is advised that so much of the Order as stops up part of FP0205038 is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out.

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



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 or amenity of the area.

The applicants own the land crossed by all of the existing route.

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

Should 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 alternative route is similar in length, runs over firm ground and has a similar gradient to the existing footpath and is considered to be expedient generally.

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. As the existing footpath connects to other parts of the public rights of way network via FP0205036/037 and Parkhead Lane. Also, because the new footpath will be away from the access track to Clarkson's Farm, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Clarkson's Farm than when walking through the private grounds of the residential property.

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. 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 as affected landowners have indicated agreement and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of the disabled 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 route will be of adequate width, firm and well drained underfoot and the gate proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles 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.

Other 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.

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 Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

Implications:

This item has the following implications, as indicated:

Risk management

Consideration has been given to the risk management implications associated with this application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annexes 'B' and 'C' included in the Agenda Papers, officers' presentation and discussion. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

There is a risk of cost to the Authority if the decision is made to pursue an opposed Order to confirmation on behalf of the applicant or owners but it is not a substantial amount. However, unless there are exceptional circumstances it would be unequitable to fund confirmation of this Order at public expense and not others which are not made for the public benefit.

Legal

There are no risks associated with following or not following the recommended course of action as long as the decision is made according to the criteria laid out above.

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



Paper

Date

Contact/Directorate/Tel

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Reason for inclusion in Part II, if appropriate

N/A

