

Regulatory Committee

Meeting to be held on 27 September 2023

Part I

Electoral Division affected:
Wyre Rural Central

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Footpath FP0124015 at Castle View Caravan
Park, Capernwray
(Annexes 'B' and 'C' refer)

Contact for further information:

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Brief Summary

Application for the diversion of Footpath FP0124015 at Castle View Caravan Park, Capernwray.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of FP0124015 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 D-E-F-C 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 holiday park of Castle View Caravan Park, Borwick Road, Capernwray, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of FP0124015.

The recorded alignment of the footpath is on the outfields of the caravan park, a surfaced access track for holiday homes, and across five pastures to Gamekeeper's Tower. It is proposed that part of the footpath (A-B-C) is diverted to run through four pastures to meet the existing footpath 25m north-west of Gamekeeper's Tower.

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 D-E-F-C.

Consultations

The Local Member, Lancaster Borough Council and Over Kellet Parish Council have been consulted and at the time of writing, there was no adverse response.

The Peak and Northern Footpaths Society and the Lancaster branch of the Ramblers have been consulted and there was no adverse response.

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 5432 7177	Western boundary of Borwick Road, 50m north of the entrance to Castle View Caravan Park.
B	SD 5391 7163	South of the field boundaries in pasture to the west of Hobsons House.
C	SD 5408 7137	25m north-west of Gamekeeper's Tower.
D	SD 5446 7159	Western boundary of Borwick Road at northern corner of the pasture to the south of Park Lot Wood.
E	SD 5437 7151	Field boundary in the pasture to the south of Park Lot Wood.



F	SD 5420 7131	Culvert in pasture
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Description of existing footpath to be diverted

That part of FP0124015 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	NW then WSW	495	The entire width
B	C	S then SE	370	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
D	E	SW	120	2	Compacted stone
E	F	SW	290	2	Compacted stone
F	C	NW	120	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</u>
The right of the owner of the soil to erect and maintain a Kissing gate that conforms to BS 5709:2018	Grid Reference SD 5446 7159 (point D)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	Grid Reference SD 5437 7151 (point E)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	Grid Reference SD 5420 7131 (point F)



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 Over Kellet 15 be amended to read as follows:

"No. of Path:
15

Kind of Path:
Footpath

Position:
Borwick Road at SD 5446 7159 generally south-west across the northern edge of the pasture to the south of Park Lot Wood passing through gates at SD 5437 7151 and SD 5420 7131 then generally west-north-west curving north-east to a point 25m north-west of Gamekeeper's Tower then south-east to Gamekeeper's Tower.

Length:
0.60 km

Other Particulars:

The only limitations are the right of the owner of the soil to erect and maintain the following that conform to BS 5709:2018:

- a kissing gate at SD 5446 7159
- a two-way gate at SD 5437 7151
- A two-way gate at SD 5420 7131

Width 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. Castle View Caravan Park is a holiday park. Currently the public footpath runs on the outfields of the caravan park, on a surfaced access track for some holiday homes, and across five pastures to Gamekeeper's Tower.

The diversion will instead start further south on Borwick Road and continue in a broadly south-westerly direction in the pastures to the south of Park Lot Wood, and into a further pasture to Gamekeeper's Tower, removing it entirely from the curtilage of the holiday park. This will significantly increase the privacy and security of the holiday park, whilst providing a route that is safe, convenient and more direct for public use.

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



FP0124015 to divert it from its current termination point to another point on Borwick Road, the same highway, 280 meters to the south. 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 diverts part of FP0124015 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 of which we are aware 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 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 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 alternative route is slightly more direct, runs over firm ground and has a similar gradient to the existing footpath.

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 Borwick Road it is suggested that many users might find a walk on the new route to be more convenient. Also, because the new footpath will be away from the outfields and access track to Castle View Caravan Park, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Castle View Caravan Park than when walking through the holiday park.

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. However, such loss is not expected, 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 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
		Contact for further information: Mr A Ibison, Planning and Environment Group 07773 135050

Reason for inclusion in Part II, if appropriate

N/A

