

Regulatory Committee

Meeting to be held on 27 September 2023

Part I

Electoral Division affected:
Accrington West and
Oswaldtwistle Central

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

**Proposed Diversion of Part of Footpaths FP1101345, FP11013790, FP1101371
at Mount Carmel Roman Catholic High School, Accrington**

(Annexes 'B' and 'C' refer)

Contact for further information:

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Brief Summary

Application for the diversion of part of Footpaths FP1101345, FP11013790, FP1101371 at Mount Carmel Roman Catholic High School, Accrington.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths FP1101345, FP1101370, FP1101371 from the route shown by a bold continuous line and marked A-B, C-D-E and D-F to the route shown by a bold broken line and marked A-C, C-F and F-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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 Governors of Mount Carmel Roman Catholic High School, Wordsworth Road, Accrington, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP1101345.

The recorded alignment of this section of the footpath is from between nos. 37/39 and 41/43 Slaidburn Drive across the sports field of Mount Carmel Roman Catholic High School to Wordsworth Road. It is proposed that the footpath is diverted from the sports field onto open grassland running parallel to a second sports field to the south, before turning to run parallel to an unnamed stream and onto Fern Gore Avenue.

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

Consultations

The Local Member and Hyndburn Borough Council have been consulted and there are no adverse responses.

The Peak and Northern Footpaths Society and the Accrington 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 7507 2748	At the south-western corner of the northern school sports field.
B	SD 7519 2747	At the eastern side of the school sports field, adjacent to Wordsworth Road.
C	SD 7499 2739	On existing desire line on the open grassland, slightly to the west-south-west of the western corner of the southern school sports field.
D	SD 7503 2735	At a point on open grassland to the south of the southern sports field and 15 meters north of a narrow, visible, trodden path.
E	SD 7507 2730	At a point on the trodden desire line over open grassland to the south of the southern sports field and 30 meters north-west of its junction with Fern Gore Avenue.



F	SD 7503 2734	At a point on the trodden desire line over open grassland to the south of the southern sports field and 80 meters north-west of Fern Gore Avenue.
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Description of existing footpath to be diverted

That part of FP1101345 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	E	130	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	SW	120	2	Grass/stone
C	F	SE	70	2	Grass/stone
F	E	SE	50	2	Grass/stone

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 Accrington 345, 370, 371 (FP1101345 etc.) be amended to read as follows:

"No. of Path:
345

Kind of Path:
Footpath



Position:

From the footpath between nos. 37/39 and 41/43 Slaidburn Drive to the west and south of the school playing fields via junctions with footpath 370 at SD 7499 2739 and footpath 371 at SD 7503 2734 to an open junction with Fern Gore Avenue at SD 7508 2728.

(All compass points given are approximate).

Length:

0.28 km

Other Particulars:

There are no limitations on the section between SD 7507 2748 and SD 7508 2728.

The width between SD 7507 2748 and SD 7508 2728 is 2 metres."

"No. of Path:

370

Kind of Path:

Footpath

Position:

On the north side of the stream at the Oswaldtwistle/Accrington boundary is a visible trodden path up the slope to a flight of well-constructed timber steps set in the slope. Near to the top of the slope the steps turn to the east and continues up the slope to the south-east and follows a distinct trodden line through the open rough grassland to a junction with Footpath 345 at SD 7499 2739.

Length:

0.10 km

Other Particulars:

There are no limitations."

"No. of Path:

371

Kind of Path:

Footpath

Position:

From a junction with Footpath 345 at SD 7503 2734 the path runs southwards down to the side of the valley to the Oswaldtwistle boundary at the stream at SD 7503 2730.

Length:

0.04 km

Other Particulars:

There are no limitations."



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 safeguarding pupils, privacy and security. Mount Carmel Roman Catholic High School is an urban secondary school. Currently the public footpath runs across the northern sports field, in effect bisecting it.

The diversion will instead continue from between nos. 37/39 and 41/43 Slaidburn Drive in a south-westerly direction on open access land, and parallel to the north-western side of the southern sports field, on the line of a narrow, visible, trodden path. It will then turn to continue on the line of a narrow, visible, trodden path in a south-easterly direction to the south-west of the southern sports field and parallel to an unnamed stream and back onto the original line of FP1101370. This will significantly increase the privacy and security of the school, enabling the school to erect suitable security fencing and thus improving pupil safeguarding, whilst providing a route that is safe, convenient 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 highway or a highway connected to it and is substantially as convenient to the public. The proposed diversion will alter the southern point of termination of FP1101345 to divert it from its current termination point on Wordsworth Road to a point on FP1101370 240 meters to the south-west. 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 parts of FP1101345, FP1101370 and FP1101371 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 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.

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 Slaidburn Drive, Wordsworth Road and Fern Gore Avenue. Also, because the new footpath will be away from the sports field of Mount Carmel Roman Catholic High School, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Mount Carmel Roman Catholic High School than when walking through the school grounds.

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.

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
		Mr A Ibson, Planning and Environment Group 07773 135050

Reason for inclusion in Part II, if appropriate

N/A

