

Regulatory Committee

Meeting to be held on 15 November 2023

Part I

Electoral Division affected:
Hoghton with Wheelton

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Footpath FP0921004 at Brinscall Hall Barns,
Wheelton
(Annexes 'B' and 'C' refer)

Contact for further information:
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Brief Summary

Application for the diversion of part of Footpaths FP0921004 at Brinscall Hall Barns, Wheelton.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths FP0921004 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 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 4 The Shippon, Dick Lane, Brinscall, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0921004. The recorded alignment of this section of the footpath is from the pasture to the south of Brinscall Hall Barns in a north-north-easterly direction, through the grounds of the residential property of 4 The Shippon, to the access track to the north of 4 The Shippon. It is proposed that the footpath is diverted slightly away from the boundary wall of Brinscall Hall Barns, to continue in a broadly northerly direction to a point in the pasture to the west of the grounds of 4 The Shippon, to continue parallel to the boundary of the property to cross the access track and then continue on the existing line to Harbour Lane near Harbour Farm.

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

Consultations

The Local Member, Chorley Borough Council, Wheelton Parish Council and Withnell Parish Council have been consulted and there are no adverse responses.

The Peak and Northern Footpaths Society and the Chorley 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 6215 2100	At a point in pasture 5m to the north of the western corner of the boundary wall of the grounds of Brinscall Hall Barns.
B	SD 6220 2110	On the access track to the north of the residential property of 4 The Shippon.
C	SD 6216 2107	At the boundary between two pastures, to the south-west corner of 4 The Shippon.
D	SD 6218 2111	On the access track to the north-west of the residential property of 4 The Shippon.



Description of existing footpath to be diverted

That part of FP0921004 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	NW	110	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	Broadly N	80	2	Grass
C	D	Broadly NNE	40	2	Grass

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

Limitations and Conditions	Position (Grid Reference)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	SD 6216 2107 (point C)

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 Wheelton 4 be amended to read as follows:

"No. of Path:
4

Kind of Path:
Footpath

Position:
From the Parish Boundary near Blue Dye House to the western corner of the Parish Boundary by Brinscall Hall at SD 6215 2100, then north, around 4 The Shippon to cross the track at SD 6218 2111 and on to Harbour Lane near Harbour Farm.
(All compass points given are approximate).



Length:

0.12 km

Other Particulars:

The only limitations on the section between SD 6215 2100 and SD 6218 2111 is the right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018 at SD 6216 2107.

The width between SD 6215 2100 and SD 6218 2111 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. 4 The Shippon is a private, residential property. Currently the public footpath runs through pasture and then through the gardens and immediately adjacent to the dwelling of 4 The Shippon, to meet FP0921022.

The diversion will instead continue through the pasture on a line parallel to the current route but stepped away from the boundary wall of Brinscall Hall Barns, then turn to continue in a broadly northerly direction to the south-western corner of the grounds of 4 The Shippon, where it will pass through a gate to enter a second pasture and continue on a broadly north-north-easterly direction to meet FP0921022. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and as 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 point of its junction with FP0921022 to divert it from its current point to a different point on FP0921022 20 meters to the north-west. It is suggested that the proposed point is substantially as convenient to the public. This is not the termination point of the whole of FP0921004, which continues north of the track but the termination of the southern portion; the 2 sections being separated by 20m of FP0921022 following the track.

Committee is advised that so much of the Order as stops up part of FP0921004, 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 the FP0921022. Also, because the new footpath will be diverted out of the curtilage of 4 The Shippon, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of the property than when walking through the garden 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, 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.

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

Paper	Date	Contact/Directorate/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

