

Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
Lancaster Rural East

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Diversion of Footpaths FP0113036 and FP0113037 at Ellel Quarry
(Annexes 'B' and 'C' refer)

Contact for further information:
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Brief Summary

Application for the diversion of Footpaths FP0113036 and FP0113037 at Ellel Quarry.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert parts of FP0113036 and FP0113037 from the route shown by a bold continuous line and marked A-B-C and D-E and F-B to the route shown by a bold broken line and marked A-F and D-G and 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its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 Ellel Quarry, Bay Horse Road, Ellel, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of FP0113036 and FP0113037.



The recorded alignment of the footpath FP0113036 is on the concrete surfaced access road of the quarry, before turning south east into a wooded area close to the perimeter of the quarried site, continuing broadly south to join an existing track, to continue in a broadly south south easterly, then easterly direction through the unnamed woods. At the eastern edge of the woods the path turns to continue in a broadly north north easterly direction (across part of the quarried site) before turning east to continue past the derelict property named Ellel Crag and onto the corner of unclassified road Starbank (U49103). This footpath is joined by another, FP0113037, in the woods at point B. It is proposed that parts of the footpaths (A-B-C and F-B) are diverted to run through the wooded area to the south of the access road and to the north of the boundary of the adjacent pasture to meet an existing track which it follows in a broadly south south easterly direction to meet the existing route to the west of the quarried site (now being infilled) (A-F-C). Continuing on the existing route to the eastern edge of the unnamed woods, the section (D-E) is proposed to be diverted to continue in an easterly direction through the pasture (D-G) to meet Starbank at a point 130 meters south of the corner.

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 D-E and F-B, and the proposed new route is shown by a bold broken line and marked A-F and D-G and F-C.

Consultations

The Local Member, Lancaster City Council and Ellel 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 5018 5498	At the southern corner of the junction of the access road with Bay Horse Road
B	SD 5035 5480	In the unnamed woods immediately to the south of the eastern edge of Ellel Crag Cottage
C	SD 5036 5473	On the track to the south south east of Ellel Crag Cottage
D	SD 5056 5461	Inside the eastern edge of the unnamed woods to the south of the quarried site



E	SD 5068 5472	To the south of the property 'Ellel Crag' on the western side of Starbank
F	SD 5033 5480	On the track immediately to the south west of Ellel Crag Cottage
G	SD 5069 5459	Field-gate at junction with Starbank at the eastern edge of the pasture

Description of existing footpath to be diverted

That part of FP0113036 AND FP0113037 as described below and shown by a bold continuous line marked A-B-C, D-E and F-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	ESE then SSE	280	The entire width
B	C	SSE	60	The entire width
F	B	E	20	The entire width
D	E	Generally NNE, then E	180	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	F	ESE then SSE	270	2	Compacted stone
D	G	E	130	2	Compacted stone
F	C	SSE	70	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 gate that conforms to BS 5709:2018	Grid Reference SD 5057 5461 (just east of point D)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	Grid Reference SD 5069 5459 (point G)

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 Footpaths Ellel 36 and 37 be amended to read as follows:

"No. of Path:
36

Kind of Path:
Footpath

Position:
Bay Horse Road at SD 5018 5498 generally east south east through woodland curving south south east on track, past Ellel Crag Cottage and junction with Footpath 37, continuing south south east then east through unnamed woods to eastern edge of woods at boundary with pasture, then east across pasture to Starbank (U49103) at SD 5069 5459.

Length:
0.75 km

Other Particulars:
Between SD 5018 5498 and SD 5036 5473 and between SD 5056 5461 and SD 5069 5459:
Width: 2 metres.
Limitations: Gate at SD 5056 5461, Kissing gate at SD 5069 5459"

"No. of Path:
37

Kind of Path:
Footpath

Position:
Bay Horse Road opposite Barbles Farm to junction with Footpath 36 on a track near the south west corner of Ellel Crag Cottage at SD 5033 5480.

Length:
0.26 km"



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, security and safety. Ellel Quarry is an active quarry site. Currently the public footpath runs on the only access road to the quarry, then along the perimeter of the quarried site (now being infilled), through woods and then across part of the quarried site, before going through the grounds of Ellel Crag.

The diverted footpath will start at the same point but enter woods adjacent to the access track, then will divert onto an existing track away from the perimeter edge of the quarried site, before returning to the existing route, to then divert across pasture, removing it from the vicinity of the quarried site and property. This will significantly increase the privacy, security and safety of the quarry, 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 highway or a highway connected to it and is substantially as convenient to the public. The proposed diversion will alter the north-eastern point of termination of FP0113036 to divert it from its current termination point to another point on Starbank, the same highway, 130 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 FP0113036 and FP0113037 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 Bay Horse Road and Starbank 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 vicinity of working areas of the quarry, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Ellel Quarry.

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, with improved gradients and the gates 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

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
None		
Reason for inclusion in Part II, if appropriate		
N/A		

