

## Regulatory Committee

Meeting to be held on 26 March 2014

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| Electoral Division affected:<br>Lancaster Rural East |
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### **Highways Act 1980 – Sections 26 and 118 Proposed Creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4, Burrow- with-Burrow Parish, Lancaster City.**

(Annex 'B' refers)

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#### **Executive Summary**

The proposed creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4 Burrow-with-Burrow, Lancaster City.

#### **Recommendation**

1. That an Order be made under Section 26 of the Highways Act 1980 to create a new length of footpath shown by a bold dashed line and marked D – B – E – F – G on the attached plan.
2. That an Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No. 4 Burrow-with-Burrow shown by a bold continuous line and marked A – B – C on the attached plan.
3. That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
4. That provision be included in each Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement in consequence of the coming into operation of the creation and extinguishment.

## **Background**

Public Footpath No. 4 Burrow-with-Burrow has been the subject of a temporary closure for a number of years because of the condition of a brick arch bridge that carries a disused railway that the footpath passes under. An investigation carried out by the Bridges Section identified that significant works were required to bring the structure up to a standard that would allow the public to safely walk underneath the structure. Furthermore near to point A, the public footpath on the east bank passes along the top of a vertical drop into Leck Beck. A substantial footbridge would be required to reach point A and it is understood that the bridge has been missing since the 1960s. The river crossing is currently impassable. In 2004 Bridges Team advised the cost of a new footbridge to be in the region of £100,000.

Any diversion of Public Footpath No. 4 Burrow-with-Burrow would require the installation of a substantial footbridge and would run parallel or nearly parallel to the length of Public Footpath No. 5 Burrow-with-Burrow. It is proposed that an Extinguishment Order be made for Public Footpath No. 4 Burrow-with-Burrow and a concurrent proposal to secure a length of footpath running parallel to the A65 that will provide pedestrians with a route out of Cowan Bridge that avoids a narrow section of the A65 that has no pavement or verge.

The proposed length of footpath to be created is not currently available for public use and works would be required to make the route available, notably the provision of two kissing gates, a pedestrian gate and a timber kit footbridge.

## **Consultations**

An initial consultation was carried out and objections received from the Ramblers Association and Ireby and Leck Parish Council. The objection from the parish council was supported by County Councillor Charles. Objections were also received from local residents. It was clear that there was a local aspiration for a cycle track from Cowan Bridge to Long Level along the disused railway line. This scheme would require substantial works in addition to the repair of the brick arch railway bridge, a further bridge that takes Eller Beck under the disused railway line and the repair of a substantial structure over Leck Beck. The scheme would also rely on a number of different landowners.

Following further discussions with the Ramblers Association, Ireby and Leck Parish Council, local residents and the landowner a further round of consultations took place for a proposal that included the creation of a length of public footpath to the junction of Long Level and the A65.

The current proposal has received letters of support from the Parish Councils, local residents and the Ramblers Association. The Peak and Northern Footpath Society and statutory undertakers have raised no objection to the proposal.

## Advice

Points annotated on the plan

| Point | Grid reference | Description  |
|-------|----------------|--|
| A     | SD 6393 7684   | Junction of Public Footpath Nos. 4 and 5 Burrow-With-Burrow    |
| B     | SD 6325 7682   | Junction of Public Footpath No. 4 with proposed creation route |
| C     | SD 6325 7682   | Junction of Public Footpath No. 4 with A65                     |
| D     | SD 6341 7666   | Junction of proposed creation path with A65                    |
| E     | SD 6323 7683   | Proposed bridge crossing over Eller Beck                       |
| F     | SD 6323 7684   | Point on field boundary  |
| G     | SD 6299 7712   | Field boundary adjacent to A65 verge                           |

### Description of the existing footpath to be extinguished

The length of the footpath proposed to be extinguished commences at its junction with Burrow-with-Burrow Footpath 5, Point A, running generally north across Leck Beck for a distance of approximately 30 metres, then generally west above a steep drop into Leck Beck to the driveway that leads to Fairthwaite Park and then continuing in a generally westerly direction through a woodland before entering two open fields to pass under a brick arch bridge that supports the disused railway line before continuing across a further open field to point C at the junction of the A65, a total distance of approximately 800 metres. The proposed extinguishment is shown by a bold continuous line on the attached plan and marked A – B – C.

### Description of footpath to be created

From point D running generally north west as a field edge path for a distance of approximately 250 metres to Eller Beck at point E. Beyond Eller Beck the proposed public footpath continues approximately 10 metres in a north west direction to a dry stone wall at point F. The proposed creation routes continues in a north west direction as a field edge footpath for a distance of approximately 365 metres through the field boundary to the verge of the A65 at point G. The total length of the proposed public footpath is approximately 625 metres.

The width of the footpath will be 2 metres and will be subject to the following limitations and conditions:

| Limitations and Conditions   | Position on path to which limitations and conditions apply |
|--|--|
| The right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006 except 4.1.6 (distance from the carriageway) | Grid reference SD 6341 7666 (point D)                      |
| The right of the owner of the soil to maintain a pedestrian gate that conforms to BS 5709:2006   | Grid reference SD 6323 7684 (point F)                      |
| The right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006  | Grid reference SD 6299 7712 (point G)                      |

## **Variation to the particulars of the path recorded on the Definitive Statement**

If the application is approved by the Regulatory Committee, The Executive Director for the Environment suggests that the Order should also specify that the Definitive Statement be amended:

Public Footpath No. 4 Burrow-with-Burrow be deleted from the Definitive Statement.

A Public Footpath to be added to the Definitive Statement as follows:

The 'Position' column to read: "From the verge of the A65 at SD 6341 7666 immediately passing through a kissing gate running generally north west as a field edge path for 250 metres to Eller Beck at SD 6323 7683, then in a north west direction for 10 metres to pass through a pedestrian gate at SD 6323 7684 before continuing as a field edge path for a further 365 metres in a north west direction to a kissing gate at SD 6299 7712, finishing at the junction of Long Level and the A65. (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.63 km"

The 'other particulars' column be amended to read "The width is 2 metres. The only limitations are the right of the owner of the soil to erect and maintain gates that conform to BS5709:2006 at SD 6323 7684 and SD 6299 7712. The right of the owner of the soil to erect and maintain a gate at SD 6341 7666 that conforms with BS5709:2006 except 4.1.6."

## **Criteria satisfied to make and confirm the Creation Order**

It is advised that the proposal meets the criteria for the creation of a public footpath under section 26 Highways Act 1980, i.e. that it appears to Lancashire County Council that there is a need for a footpath over land in their area and they are satisfied that it is expedient that the path should be created, having regard to:

1. The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
2. The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of provisions as to compensation contained in section 28.

Currently the only direct route available for pedestrians wanting to walk between Cowan Bridge and Kirby Lonsdale (High Casterton) is to walk along a narrow section of the A65 for approximately 260 metres where there is no verge or refuge area for pedestrians. The proposed footpath would provide a route adjacent and parallel to the A65 but was segregated from traffic as far as the junction with Long Level and the A65. The proposed creation route provides fine views of the surrounding countryside. Furthermore it would add to the public footpath network whereas the recorded route that is subject to the proposed extinguishment is partly isolated from the surrounding public footpath network by the narrow section of the A65 and currently exits onto the A65 at a narrow section of the road where there is no refuge

for walkers. Access to the road from the footpath is by climbing a steep wall stile (point C).

The land owners are in agreement with the proposed Creation Order and no claim for compensation is anticipated.

### **Criteria satisfied to make and confirm the Extinguishment Order**

It is advised that the proposed Order meets the criteria for an extinguishment Order to be made under section 118 of the Highways Act 1980, i.e. that it is expedient that Public Footpath No. 4 Burrow-with-Burrow should be stopped up on the grounds that it is not needed for public use.

Should Committee agree that the proposed Order be made and, subsequently, should no objections be received, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that it is expedient to extinguish that part of Public Footpath No. 4 Burrow-with-Burrow, marked A – B – C on the plan, having regard to the extent that the path would, apart from the Order, be likely to be used by the public and the extent to which the extinguishment would have as respects the land served by the path.

It is suggested that the footpath to be provided by the Creation Order will be a pleasant rural footpath with fine views and will provide walkers with a route segregated from vehicular traffic on the A65, thus enabling walkers to avoid the section with little or no verge.

In considering that it is expedient to extinguish the route A – B – C, whether it is needed for public use and the extent to which it is likely to be used, it is advised that regard may be taken with respect to the route provided by the Creation Order, as a concurrent proposal. It is noted that the route to be created provides an alternative to walking along a narrow section of the A65. The proposed creation route is therefore more likely to be used by the public as a footpath than Public Footpath No. 4 Burrow-with-Burrow and although that has not been available for use for some time and part of which is along a vertical drop, the lack of a bridge crossing over Leck Beck should be regarded as a temporary problem. Public Footpath No. 4 Burrow-with-Burrow exits onto the A65 at a narrow section and does not connect easily with other footpaths shown on the Definitive Map.

### **Both Orders**

Should the Committee agree that the proposed Orders be made and, subsequently, should no objections be received to the making of the proposed Orders, or should the proposed Orders, or should the proposed Orders be submitted to the Secretary of state for Environment, food and rural Affairs for confirmation, it is considered that the criteria for confirming the Orders can be satisfied.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they have given their consent.

The effect of the proposed Orders, if confirmed, would not have any adverse effect on biodiversity, the natural beauty of the area, the needs of agriculture and forestry or on the conservation of flora, fauna and geological and physiological features.

The land crossed by the route to be created and the route to be extinguished is in the ownership of Mr and Mrs Robinson, Fairthwaite Park, Cowan Bridge, Carnforth, LA6 2HX and they are in agreement with the proposal. A section of dry stone wall at point D needs to be altered to make room for a kissing gate and the owner of the wall has given their consent to the proposal.

If this proposal is successful it would be an expedient method of recording a public footpath leading generally west out of Cowan Bridge and resolving a number of issues with the current route of Public Footpath No. 4 Burrow-with-Burrow. Therefore, it is suggested that the administrative charges incurred by the County Council in the order-making procedures should be waived and the advertising costs be borne by the County Council. The applicant has agreed to carry out works to dismantle the dry stone wall at point F but it is proposed that the County Council install 2 kissing gates, 1 pedestrian gate and a timber footbridge.

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 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and two gates that are proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles BS5709:2006. A third gate will meet the required standard apart from its proximity to the A65.

Further, it is also advised that the effect of the Orders is compatible with the material provisions of the County Council's Rights of Way Improvement Plan, in particular the themes Reduced Mobility and Visually Impaired (RMVI), Definitive Map and Statement (DM 4 and 5) and Community to Countryside Links (CCL 2).

It is considered that, having regard to the above, it would be expedient to confirm the Orders.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

### **Alternative options to be considered**

To not agree that the Orders be made

To agree the Orders 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 Orders be made and promoted to confirmation according to the recommendation.

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

| Paper   | Date | Contact/Directorate/Tel  |
|---|------|--|
| File Ref: 211/ PRW-01-08-04                     |      | Mr S D Williams, Environment Directorate, 01772 533886               |
| File Ref: 211/645                               |      | Miss M Brindle, County Secretary and Solicitor's Group, 01772 535604 |
| Reason for inclusion in Part II, if appropriate |      |  |
| N/A   |      |  |