

Regulatory Committee  
Meeting to be held on 27 June 2012

Electoral Division affected: Skelmersdale East
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Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Public Footpath No. 9 Wrightington, West Lancashire Borough (Annex 'B' refers)

Contact for further information:

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## Executive Summary

The proposed diversion of part of Public Footpath No. 9, Wrightington, West Lancashire Borough.

## Recommendation

- i. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 9, in the Parish of Wrightington, from the route shown by a bold black line and marked A-B-C on the attached plan, to the route shown by a bold black dashed line and marked D-E-C on the plan.
- ii. That in the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
- 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.

## Background

A request has been received from Mr Houlgrave, Dwerry House Farm, Coopers Lane, Heskin, Chorley, Lancashire, PR7 5PU for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 9 Wrightington, in the vicinity of Dwerry House Farm, Wrightington.

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

## Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. West Lancashire Borough Council has also been consulted and raised no objection to the proposal.

The Peak and Northern Footpaths Society and Ramblers Association have also been consulted and have no objection to the proposal.

Wrightington Parish Council indicated that they would object to the proposal on two grounds. Firstly, that part of the proposed alternative route crosses a field between points D-E on the plan. They believe that to take a route around the edge of the field is far better than to go across the field as the edge of the field allows footpath users to get away from cattle or other livestock which it is not possible to do when crossing the middle of the field. They also state that if the footpath remains at the edge of the field there is a legal requirement not to plough the right of way whereas, the same guarantee is not always given, or adhered to, when the route goes across the field.

Secondly, the parish council believe that the surface of the proposed alternative route would be inferior to the existing route because it is not surfaced.

The West Lancashire Footpath Group have also objected to the proposal stating that they do not believe that the diversion is required to improve the privacy of the applicant's property, or that of his neighbour. They state that the footpath has previously been diverted further away from the house (onto its existing line) and that it is not necessary to divert it again.

The Footpath Group also object to the proposal because it would increase the distance required to be walked and because they are of the opinion that the proposed alternative is less attractive and that the surface would be more difficult to use.

## Advice

### Points annotated on the plan

Point	Grid Reference	Description
A	SD 5155 1334	Where Public Footpath no. 9 Wrightington leaves the access track south west of junction with Sanderson Lane, adjacent to the Coach House
B	SD 5158 1330	North west corner of Dwerry House
C	SD 5158 1324	Where Public Footpath no. 9 Wrightington crosses ditch and field boundary
D	SD 5148 1333	Boundary between access track and field approximately midway between Coach House and Halliwell's o' th' Hill
E	SD 5152 1324	Small stream and N-S field boundary just south of E-W field boundary

### Description of existing footpath to be diverted

The footpath proposed to be diverted runs from a point on Public Footpath no. 9 Wrightington (point A) in a generally south easterly direction down the side of the Coach House on a tarmac surfaced driveway and then a narrower stone surfaced passageway to the

north west corner of Dwerry House (point B). It then turns to continue along a stone surfaced path in a south westerly direction ascending a flight of steps bounded by a garden fence and then continues in a south easterly direction on a path surfaced with woodchip and bounded on one side by a hedge to a second set of steps and culvert to exit onto an agricultural field at point C; a total distance of 115 metres.

#### Description of new footpath

The proposed alternative route starts at point D which is a point on the access track to Halliwell's o' th' Hill along which runs Public Footpath no. 9 Wrightington approximately 67 metres west of point A. It passes through a pedestrian gate and continues in a south south easterly direction across a field to a pedestrian gate and footbridge at point E. It then continues in a generally easterly direction to the south of a field boundary and ditch to rejoin Public Footpath no. 9 Wrightington at point C; a total distance of 150 metres.

It is proposed that the public footpath to be created by the proposed Order 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 erect and maintain a pedestrian gate that conforms to BS 5709:2006 with the exception that the gate open one way only.	Grid Reference SD 5148 1333 (Point D)
The right of the owner of the soil to erect and maintain a pedestrian gate that conforms to BS 5709:2006 with the exception that the gate will open one way only.	Grid Reference SD 5152 1324 (Point E)

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

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that the Order should also specify that the Definitive Statement for Public Footpath No. 9 Wrightington be amended as follows:

The entry in the position column to read:

"Horrock Lodge, High Moor lane via Horrock Hill to SD 5148 1333 through a pedestrian gate to continue across a field in a south south easterly direction for a distance of 95 metres to a pedestrian gate and footbridge at SD 5152 1324. It then continues in an easterly direction along the northern edge of a field for a further 55 metres to SD 5158 1324 and continues to Coopers Lane. All lengths and compass directions given are approximate."

The entry in the other particulars column be amended to read: " Limitations and Conditions between SD 5148 1333 and SD 5158 1324: Pedestrian gates that conform to BS 5709:2006 with the exception that they open one way at SD 5148 1333 and SD 5152 1324".

The entry in the length column be amended to read: "2.49km"

The entry in the width column be amended to read: "The section of footpath between SD 5148 1333 and SD 5158 1324 is 2 metres wide".

## Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be in the interests of the owner of the land in that, if the proposal is successful, it will remove a length of public footpath away from Dwerry House, which is currently overlooked from the footpath, and from the Coach House to which the footpath is adjacent, providing the owners of both of the properties with an improvement in privacy and security.

The West Lancashire Footpath Group expressed concern that the applicant had previously diverted the footpath from passing directly past Dwerry house in 2005. That application was successful and diverted the path onto its existing route (between points A-B-C).

It is submitted that it is not unreasonable to divert the footpath further from the properties and that the new proposal must be considered with reference to the existing route of the public footpath, not the path that existed prior to the 2005 diversion.

The public footpath proposed to be diverted is fenced off from Dwerry House but still passes close to and overlooking it and through part of the garden. The applicant has stated that he has made the application because the existing line of the public footpath has a significant detrimental effect upon his use and enjoyment of the property. In particular he has explained that because the footpath runs through his garden he feels it necessary to have a fence in place to secure his property which means that his landholding is effectively split in two and has prevented him from making use of his garden to the west of the fence. In addition, he has illustrated that it is possible to look down into his property from the existing public footpath resulting in a loss of privacy and concern regarding the safety of his family and security of his property.

In addition, the existing public footpath proposed to be diverted passes directly down the side of his neighbours' property (the Coach House) with direct views into the property and easy access to the rear.

The proposed diversion will not alter the termination points of Public Footpath No. 9 Wriglington and it should be noted that the section of the existing route of Public Footpath no. 9 Wriglington between points D-A on the plan is to be retained to continue to provide access to Sanderson Lane.

The Committee is advised that so much of the Order as extinguishes part of Public Footpath no. 9 Wriglington, 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 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.

It is advised that the effect of 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 applicant owns all of the land crossed by the section of footpath proposed to be diverted, with the exception of the first 35 metres from point A towards point B. This land is owned by

Mr and Mrs Tomlinson, Coach House, Coopers Lane, Heskin, Chorley PR7 7PU who are in agreement with the proposal.

The applicant does not own any of the land crossed by the proposed alternative route. The section between point D and point E is owned jointly by William, Eileen and Richard Ainscough, Harrock Hall, High Moor, Wrightington WN6 9QA and they are in agreement with the proposal. The remainder of the proposed alternative route between points E-C is owned by Mr and Mrs Tomlinson, Coach House, Coopers Lane, Heskin who are also in agreement with the proposal.

The applicant has agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed 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 proposal can be satisfied.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It is suggested that many users might find a walk on the new route more enjoyable due to the footpaths being diverted away from the house and garden and as a consequence some users may feel more comfortable and at ease.

The West Lancashire Footpath Group expressed concern regarding an increase in distance that it is required to walk should the proposed diversion be implemented.

Public Footpath no. 9 Wrightington is a rural footpath, the primary purpose of which is recreational use rather than an urban 'short cut' or route to local amenities. As such members of the public using the route are likely to be using it as part of a reasonable length walk. They would not be using the path in isolation but would be using it to link to other public footpaths and quiet lanes.

It is acceptable for a diversion to increase the length of the public footpath - provided that the increase is not unreasonable in length. In this particular case the path will be being used as part of a much longer walk and it is submitted that any increase in distance would not substantially inconvenience the public. The increase in length depends on the route being taken, for example if approaching the path from Sanderson Lane (to the north east of the footpath) the proposed diversion would involve walking an increased distance of approximately 100 metres. However, if approaching from the south west the distance required to be walked would be reduced by approximately 100 metres.

Concern has also been expressed regarding the surface of the proposed alternative route. There is no requirement for the path to be surfaced and in a rural location across or along a field edge surfacing would be inappropriate. Whilst the existing route is surfaced the condition of the surface is not ideal and becomes waterlogged in places. In addition it is currently necessary to negotiate a flight of steps between point B and point C. The proposed

alternative route has been inspected on several occasions over the winter months and crosses well drained land which would have no adverse effect on the public's enjoyment of using the path as a whole.

Concern has also been expressed about the fact that the proposed alternative route could be ploughed. There is no history of the land crossed by the proposed alternative route being ploughed and the field crossed by the route D-E is currently grazed by sheep with no known future intention for this to change.

It is correct that the proposed route between point D and Point E could be ploughed in the future but if this was to happen there is a legal requirement for the route to be marked out and reinstated to a width of 2 metres within specific timescales. The section of the proposed alternative route between point E and point C is along the field edge and should not be ploughed.

The Parish Council have objected to the fact that part of the proposed alternative route would cross a field (as opposed to following the edge of the field). However, the route across the field is on well drained land – as opposed to parts of the edge of the field that can become quite boggy. By changing the proposed alternative route to follow around the edge of the field to exit through a field gate close to point A would not achieve the same benefits regarding an improvement in privacy to the owners of the Coach House. In addition, to gain access to the bridge at point E it is unlikely that members of the public would stay close to the field edge but would take the more direct route across the corner of the field which can become quite wet.

It is accepted that livestock could be present along the proposed alternative route, whereas they are very unlikely to be encountered on the existing route. However, livestock should not constitute a risk to the public (and if they did, they should not be present in the field). The section of footpath proposed to be diverted is part of a much longer route that crosses numerous fields which may be grazed by livestock and it is not considered that the inclusion of a further short section of cross field path in one additional field would have an adverse effect on the public's enjoyment of using the path as a whole.

It is felt that there would be no adverse effect on the land served by the existing routes or the land over which the new paths are to be created, together with any land held with it.

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 the two gates that are proposed to be installed on the route will conform to the British Standard for gaps gates and stiles BS5709:2006. In addition the diversion of the route will remove the need to negotiate a flight of existing steps.

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, in particular the theme Reduced Mobility and Visually Impaired (RMVI).

The proposed diversion is consistent with Policy RMV12-2 whereby the Local Authority "Aspire to meeting the British Standard for gaps, gates and stiles BS 5709, subject to consideration of landowners' requirements, the local character and the accepted practice at any location." In this instance BS5709:2006 has been applied and the least restrictive option of a pedestrian gate at points D and E has been selected.

## 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 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 according to the recommendation.

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

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

Paper	Date	Contact/Directorate/Ext
File Ref: PRW-08-17-09		Mrs Jayne Elliott, Environment Directorate, 07917 836626

Reason for inclusion in Part II, if appropriate

N/A