

Regulatory Committee

Meeting to be held on 17 December 2014

Electoral Division affected: Ribble Valley South West
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Billington and Langho Footpath 7, Ribble Valley Borough.

(Annexes 'B' and 'C' refer)

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Executive Summary

The proposed diversion of part of Billington and Langho Footpath 7, Ribble Valley Borough.

Recommendation

1. That subject to there being no adverse responses to the consultations from the Borough Council, Parish Council, the Ramblers or statutory undertakers, received by 16 December 2014 an Order be made under Section 119 of the Highways Act 1980 to divert part of Billington and Langho Footpath 7, from the route shown by a bold continuous line and marked A-B-C-D to the route shown by a bold dashed line and marked A-E-C-F on the attached plan.
2. 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. 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 Jonathan Turner, Development Officer, Great Places Housing Group, Southern Gate, 729 Princess Road, M20 2LT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Billington and Langho Footpath 7 in the vicinity of a development of affordable homes on land off Petre Wood Crescent, Langho, Blackburn, BB6 8FD.

In December 2012, before the development commenced the developer applied to Ribble Valley Borough Council for a Diversion Order to be made under the

provisions of the Town and Country Planning Act 1990 Section 257. Unfortunately that application didn't progress and the developer states that they were not made aware of the requirement to complete a diversion before the scheme was substantially complete. The development is now nearing completion and the footpath is obstructed by almost half of the properties on the site. Now that the development is substantially complete, it no longer meets the criteria for a diversion under the provisions of the Town and Country Planning Act 1990 legislation and when this was brought to the attention of the developer, they promptly applied to Lancashire County Council for a Diversion Order to be made under the provisions of Section 119 of the Highways Act 1980.

The obstruction of the footpath has only recently been brought to the attention of the County Council and it is acknowledged by both the County Council and the developer that this is not a satisfactory situation. It is the intention for the footways and estate roads to become adopted highways and the highway adoption process is expected to be completed in November 2015. Then it will not be feasible to divert the footpath onto the proposed alignment because it will already carry pedestrian rights. The diversion of the footpath will not affect the highway adoption process but the matter is being brought before Regulatory Committee at the earliest opportunity to ascertain whether it is considered appropriate to make a Diversion Order as a means of resolving the problem of the obstructed footpath.

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

The applicant, Great Places Housing Group is a social landlord with a long term stake in delivering an integrated and sustainable community. Therefore, rather than diverting just the section of footpath necessary for the development, they have requested that the diversion also includes the section that crosses the adjacent property 'Petre House Farm' and its neighbour 'Barnacre'.

The proposal, if successful would remove the public footpath from the affected dwellings and gardens enabling the handover of the development of affordable housing to progress and provide an improvement in privacy and security for the residents of Petre House Farm and Barnacre.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and at the time of writing, no objections or adverse comments to the proposal have been received.

Ribble Valley Borough Council and Billington and Langho Parish Council have been consulted. At the time of writing, the responses have not been received but have been requested by 16th December 2014. Any comments received from either Council will be verbally reported to Committee.

The Ramblers and the Peak and Northern Footpath Society have been consulted. The Peak and Northern Footpath Society has confirmed that they have no objection

to the proposal but they have requested that warning signs are be erected on either side of where the path crosses the A59 and that the path should be 2 metres wide along its entire length. The request for the signs has been passed to the applicant and the highways section and it is confirmed that the recorded width of the proposed alternative route is 2 metres.

At the time of writing, the consultation sent to the Ramblers has been acknowledged and they are currently considering the proposal.

Advice

Description of existing footpath to be diverted

That part of Billington and Langho Footpath 7 as described below and shown by a bold continuous line A-B-C-D on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)
A (SD 7093 3502)	B (SD 7089 3497)	SW	60
B (SD 7089 3297)	C (SD 7092 3496)	ESE	30
C (SD 7092 3496)	D (SD 7104 3489)	ESE	140
Total length			230

Description of new footpath

A footpath as described below and shown by a bold dashed line A-E-C-F on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 7093 3502)	E (SD 7095 3500)	generally SE	25	2	Tarmac surfaced path
E (SD 7095 3500)	C (SD 7092 3496)	generally SW	55	2	Tarmac surfaced path
C (SD 7092 3496)	F (SD 7090 3493)	generally SSW	35	2	Tarmac surfaced path
Total length			115		

A section of the route at point C is not to be extinguished, being a section of approximately 4 square metres where the new route crosses the old route. It is advised that this small sections is needed as part of the new footpath.

The proposed alternative routes will not be subject to any limitations or conditions

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 Order should also specify that the Definitive Statement for Billington and Langho Footpath 7 to be amended to read as follows:

The 'Position' column to read:-

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
(SD 7090 3493)	(SD 7092 3496)	generally NNE	35	2	Tarmac surfaced path
(SD 7092 3496)	(SD 7095 3500)	generally NE	55	2	Tarmac surfaced path
(SD 7095 3500)	(SD 7093 3502)	generally NW	25	2	Tarmac surfaced path

then:- "to Northcote Road (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.77 km"

The 'Other Particulars' column be amended to read "No limitations between (SD 7090 3493) and (SD 7093 3502)"

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be expedient in the interests of the owners of the land as would remove the public footpath from the affected dwellings and gardens enabling the handover of the development of affordable housing to progress and provide an improvement in privacy and security for the residents of Petre House Farm and Barnacre.

In addition, the diversion would be consistent with Secure by Design principles devised by the Association of Chief Police Officers, whereby the existing footpath provides an access that is not overlooked resulting in poor security for both users and residents.

The current entry of the footpath into the new housing development at the end of a cul-de-sac could attract anti-social behaviour or be used as a 'get away path' compromising the security of the site. In addition, it is suggested that the diversion would significantly improve the suitability of the south-east cul-de-sac of the housing development for families with young children as it would enable safe play in the front gardens and on the estate road that would otherwise have an access into Petre House Farm and then an access leading out on to Whalley Road.

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 should be noted that the proposed diversion will alter one of the points of termination of Billington and Langho Footpath 7 and place it at another point that is on the adopted section of Petre Wood Crescent, being the same highway or a highway connected and it is suggested that the proposed termination point is substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Billington and Langho Footpath 7, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

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.

A majority of the land crossed by the footpath proposed to be diverted and all of the land crossed by the proposed alternative route is in the ownership of the applicant. A short section of the section proposed to be diverted is in the joint ownership of A, M and A Bickerdike, of Barnacre, Whalley Road, Langho, Lancashire BB6 8AB and they have confirmed their agreement to the proposal.

The applicants have 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 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 overall of similar gradient to the existing route. In addition because the new route will be structure free, it will remove the requirement to pass through a gate at the junction of the footpath and Whalley Road.

It is noted that the length C-D is approximately 140 metres in length whereas to walk between the same places on the proposed alternative route and the adopted highways would require an additional 60 metres to be walked.

With regards to this increase in length, it is thought that there would be two distinct types of user of this footpath. One being someone going for a walk in the countryside and the other will be the residents that are yet to move into the northern part of the development of new houses. The former would be unlikely to notice an additional 60 metres required to be walked, because the minimum circular route that is likely to be walked that includes this footpath is 2.8km in length. With regards to the future residents of the properties, some might find the shorter length of the existing route appealing to use as a short cut to the pub, bus stop or garage. However, the improvement in security for the housing estate by having the footpath diverted might well outweigh any wish to retain the footpath as a short cut. It is suggested that this would apply in particular to the south east cul-de-sac section. In any event, it is suggested that it is the current use of the footpath that is required to be considered when assessing the tests and criteria of this proposal rather than the future use and this is thought to be solely recreational use to access the countryside to the north of the A59.

Furthermore the new route will be more accessible, providing a well drained sealed surface to walk on and as such is likely to be the route that would be chosen, rather than the existing route that crosses a lawn, car parking and turning area and driveways and as such, the alternative route is not substantially less convenient than the existing route.

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 path or ways as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the existing footpath runs through the curtilage of residential properties and as such some users of the path would feel more comfortable and at ease. The proposal will divert the footpath on to the estate roads and footways that are not yet adopted highways but are constructed to a high standard and will provide a surface that is more convenient underfoot in adverse weather conditions.

With regards to the views, it is suggested that rather than the enclosed views from the existing route where the route runs through the new development are similar from both the existing and the alternative routes. For the section that is proposed to be diverted from Petre House Farm and Barnacre the views are more open from the access track and the courtyard than they would be from the alternative route. However, this section of footpath is in an established residential setting and passes very close to the windows of the dwellings and across the lawn area. It is not the type of location where someone walking on the path would notice the views as the focus will in a majority of cases be on passing through the private properties causing as little disturbance to the residents as possible. In addition, it is suggested that the views from that section of path are incidental to the use of the public footpath and a user of the path out for a walk to enjoy the views of the countryside will be able to do so when they cross the main road onto the open countryside north of the A59.

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.

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) in providing route that is structure free and of adequate width with a firm tarmac surface.

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 addition it is compatible with the themes in particular the themes Community to Countryside Links (CCL) and Reduced Mobility and Visually Impaired (RMVI).

It is suggested that all the points raised in the consultation to date have been addressed above, therefore having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on submitting the Order (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 the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

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 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.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211/657	various	Megan Brindle County Secretary and Solicitors Group 01772 535604
File Ref: PRW-03-06-007		Mrs Ros Paulson Environment Directorate, 01772 533438

Reason for inclusion in Part II, if appropriate

N/A