

Regulatory Committee

Meeting to be held on 13 January 2016

Electoral Division affected: West Lancashire East
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Dalton Footpath 21, West Lancashire Borough.

(Annexes 'B' and 'C' refer)

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Executive Summary

The proposed diversion of part of Dalton Footpath 21, West Lancashire Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Dalton Footpath 21, from the route shown by a bold continuous line and marked A – B – C – D to the route shown by a bold broken line and marked A – E – F – G – D 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

Following discussions with the Area Network Officer investigating reported obstructions on this path a request has been received from Mr and Mrs P Worthington of Bangham's Farm, Long Heys Lane, Dalton, Lancashire, WN8 7RT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Dalton Footpath 21 in the vicinity of Bangham's Farm, Dalton.

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 broken line and marked A – E – F – G – D.

The applicants' property, Bangham's Farm, includes a residential farm house and a number of farm buildings used for farming and a small business. The proposed diversion, if successful, would move the footpath to the other side of the boundary fence which surrounds these buildings, removing the potential conflict between the public footpath and the vehicles on site. In addition, the diversion would provide the applicants with an improvement in privacy and security.

Consultations

The statutory undertakers have been consulted and no adverse comments on the proposal have been received.

In addition Dalton Parish Council, West Lancashire Borough Council, West Lancashire Footpath Group, the Peak and Northern Footpath Society and West Lancashire Ramblers have all been consulted.

The Chairman of the West Lancashire Footpath Group commented that the diversion route is currently in use and the group has no objection. They say that the proposed path passes through a pleasant meadow and that it would only be a problem if cropping or cattle were to encroach on this.

Dalton Parish Council responded that it has considered the detail of the application and has no objection to the proposed diversion.

West Lancashire Borough Council, West Lancashire Ramblers and the Peak and Northern Footpath Society did not respond within the given consultation period of six weeks.

Advice

The proposed Diversion Order to include the following details to describe the site of existing footpath, the site of the new right of way, the permitted structures on the new right of way (i.e. limitations to the public right of way) and the amended details to be shown in the Definitive Statement.

Description of the existing footpath to be diverted

Section of footpath as shown on the proposals map	Position (All distances and directions are approximate)	Width
Part of Dalton Footpath 21 marked by a bold continuous line and shown as A – B – C – D	Starting from a point south east of Bangham's Farm at grid reference SD 5096 0824 (Point A), the footpath runs for 60 metres in a generally north westerly direction to a field gate at SD 5092 0828 (Point B), continues for 45 metres in a west south westerly direction passing through the farmyard area to the farm track at SD 5087 0826 (Point C). The footpath then	The entire width

	follows the farm track for 60 metres running in a generally west north westerly direction on a stone track to a point west of Bangham's Farm at SD 5083 0829 (Point D). A total distance of 165 metres.	
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Description of the site of the new footpath

Section of footpath as shown on the Order map	Position (All distances and directions are approximate)	Width
A footpath marked by a bold broken line and shown as A – E – F – G - D	Starting from a point south east of Bangham's Farm at grid reference SD 5096 0824 (Point A), the footpath runs for 35 metres in a north westerly direction as a grass surfaced field edge path, to the corner of the field at SD 5093 0826 (Point E) continuing for 45 metres in a west south westerly direction to a point south of Bangham's Farm at SD 5089 0825 (Point F) then for 70 metres in a generally north westerly direction to a kissing gate at SD 5083 0828 (Point G). The footpath passes through the kissing gate and continues for 5 metres in a north north westerly direction to the farm track west of Bangham's Farm at SD 5083 0829 (Point D). A total distance of 155 metres.	2 metres

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

Limitation and Condition	Position of path or way to which limitations and conditions apply
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006	Grid Reference SD 5083 0828 (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 Dalton Footpath 21 to be amended as follows:

- The 'Position' column to be amended to read: "Stone Hall Lane west of footpath 20 to a point south east of Bangham's Farm at SD 5096 0824 and continuing to run for 35 metres in a north westerly direction as a grass surfaced field edge path, to the corner of the field at SD 5093 0826 then for 45 metres in a west south westerly direction to SD 5089 0825 then for 70 metres in a generally north westerly direction to a kissing gate at SD 5083 0828. The footpath passes through the kissing gate and continues for 5 metres in a north north westerly direction to the farm track west of Bangham's Farm at SD 5083 0829 and continues to Long Heys Lane at Bangham's Farm. (All lengths and compass directions given are approximate)."
- The 'Length' column to be amended to read "0.41km".
- The 'Other particulars' column to be amended to read "The width of the footpath between SD 5096 0824 and SD 5083 0829 is 2 metres. The only limitation between SD 5096 0824 and SD 5083 0829 is the right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006 at SD 5083 0828."

Officers' Assessment of the proposal against the Legislative Criteria for making and confirming the Order

The proposal is that a Diversion Order is made by the County Council under Section 119 of the Highways Act 1980. The Highways Act contains various criteria which must be satisfied for the County Council to make and subsequently confirm an Order. In the event of objections only the Secretary of State can confirm an Order.

The County Council has to be satisfied that it is expedient to divert the public right of way, in other words there has to be good reason for the diversion, either for the benefit of the public and/or the owner of the land. In this case the recorded line of the footpath runs along a farm track and passes adjacent to the farm house and through a farmyard area used for farming and other business interests. It is an area which the owners would quite reasonably wish to be kept private so that they can lock farm gates to keep the area secure.

If the footpath were to be diverted it would remove the potential conflict between the public footpath and the vehicles on site. The owners would also be able to allow their dog to be at large in the area outside unsupervised and enjoy their land without the type of disturbance which can arise from a footpath passing through. In their application to the County Council the applicants have said that the proposed diversion is a more pleasant route for the public. Therefore the County Council could consider making the Order in the interests of the owners and the public. However, it is considered that the main beneficiaries of the proposed Order are the applicants for the reasons of privacy and security. Therefore it is proposed that the Order should be made on the grounds that it is in the interests of the owners of the land.

It is noted that the part of the existing route is currently obstructed between points A-B-C by a fence at point A and various items of equipment between points B and C.

Under normal circumstances, the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed alternative route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances, the restoration of the route is considered to be impracticable or not in the interests of the user. This is the case with this particular footpath and although the route is obstructed, access is available on a track that is close to the legal alignment at point B, from where the existing route can be viewed. The landowner is aware that if the proposal is not successful the obstructions will need to be removed and existing route be made available for use by the public.

The proposed diversion does not alter the termination points of the footpath and therefore it is not necessary to consider the criteria contained in the legislation for proposals where the termination point of a footpath is proposed to be altered.

The Committee are advised that so much of the Order as extinguishes part of Dalton Footpath 21, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

The proposed Diversion Order can be made subject to limitations and conditions. In this case the proposed footpath passes through a field which is used for keeping livestock. The new footpath crosses an existing field boundary at point G and therefore it is reasonable to include a limitation in the proposed Order so that the landowners may keep their field stock-proof by including the right for them to maintain a kissing-gate at this point.

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.

The applicants own the land crossed by the footpath proposed to be diverted, and also in respect to the proposed alternative route.

The applicant has 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 path into a fit condition for use for the public.

Before an Order can be confirmed the County Council must be satisfied that the proposed diversion will not be substantially less convenient to the public. The relative convenience of the new path compared to the old path would include factors such as length, width, surface type, gradient, and the number and type of limitations (stiles or gates) which need to be negotiated. When considering these factors any unauthorised obstructions to the existing footpath should be disregarded. At Bangham's Farm most of the convenience factors for the proposed diversion are neutral (i.e. there is little or no change). The main factor which may make the new footpath less convenient is that it is entirely unsurfaced compared to the existing footpath which follows a surfaced route between points B and D. During two site visits carried out in connection with this application (in mid-March and late September) the line of the proposed diversion was firm under foot and no less convenient than the existing path.

The width of the existing footpath is unrecorded but it is reasonable to assume that the existing right of way occupies the full width of the track which the footpath runs on between points C and D, i.e. approximately 3 metres wide. The application for the diversion is for a 2 metres wide footpath in accordance with the County Council's minimum width requirements for footpath diversions and therefore this width should not be viewed as being unreasonable. However it is arguable that the new footpath will be slightly less convenient than the existing footpath by reason of it being narrower than 3 metres wide. Currently the new footpath is unenclosed on the field side so pedestrians on the new footpath would not feel constrained but there is nothing to prevent the landowner from erecting a fence to create a physical barrier which would demarcate the edge of the path at 2 metres wide.

The County Council is required to consider whether confirming the Order expedient is having regard to the effect which the diversion would have on public enjoyment of the footpath as a whole. In this case there seems to be no loss of public enjoyment, such as by the loss of views. The most commonly expressed view of walkers generally is that they prefer paths which avoid passing through gardens, farmyards and other areas which would ordinarily be private. It is therefore reasonable to take the view that it is expedient to confirm the Order with respect to public enjoyment.

Similarly the County Council must consider whether it is expedient to confirm the Order with respect to other land served by the public right of way and with respect to the effect on the land of the new footpath being created. In this case all the land served by the public right of way and the new footpath to be created is in the same land holding therefore it would be expedient to confirm the Order in this respect.

The County Council has responsibilities under The Equality Act 2010 with respect to people with disabilities and other protected characteristics. The County Council therefore needs to be satisfied that the proposed diversion will allow it to comply with this duty in the event that the Diversion Order is confirmed. The proposed kissing gate at point G may have some impact on accessibility for disabled people although it will be required to comply with the standard for kissing gates in the British Standard BS5709:2006. This would be accessible to the majority of disabled people although it would prevent access in mobility vehicles such as the off-road "Tramper".

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 this instance BS5709:2006 has been applied to the alternative routes and the least restrictive option of a kissing gate has been selected, reducing the limiting effect of structures.

The proposed Order, if confirmed, would 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.

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 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 County Council 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 Annexes B & C (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

Any one of the three following options represent a valid decision for the committee considering this report. However, in the event that the committee decides on a different course of action to Option 3 (i.e. in accordance to the officer recommendation on Page 1) then it should give sufficient information with the committee resolution to explain its decision.

Option 1 – To decide not to make the Order applied for.

Option 2 – To defer a decision to a future meeting pending further information, or a request that the applicant modifies his application in some particular way.

Option 3 – To decide that the Order should be made in accordance with the information contained in this report.

Local Government (Access to Information) Act 1985

List of Background Papers

None.

Paper

Date

Contact/Directorate/Tel

File Ref: R2/14/171

Ros Paulson

Environment, Planning and
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Reason for inclusion in Part II, if appropriate

N/A