

## Regulatory Committee

Meeting to be held on 24 February 2016

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| Electoral Division affected:<br>Chorley West |
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### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

### Proposed Diversion of Parts of Charnock Richard Footpaths 10 and 11, Chorley Borough.

(Annexes 'B' and 'C' refer)

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#### Executive Summary

The proposed diversion of parts of Charnock Richard Footpaths 10 and 11, Chorley Borough.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert parts of Charnock Richard Footpaths 10 and 11, from the routes shown by bold continuous lines to the routes shown as bold broken lines as shown on the plan. The effect would be as follows:
  - footpath 10 A-J-B-D would be diverted to the line A-S-R-Q-P-C-B,
  - footpath 10 G-H would be diverted to the line L-H,
  - footpath 11 E-D would be diverted to the line E-C,
  - footpath 11 D-G-F would be diverted to the line B-F, and
  - footpath 11 M-N would be diverted to the line M-L-O-N.
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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

Charnock Richard Footpath 10 starts from an un-adopted minor road (Alder Hall) about 1 mile east of Eccleston. The footpath crosses a bridge over the M6 motorway about 1 mile north of Charnock Richard Services. The footpath then runs in a generally

southerly direction across farmland to Crook Fold Farm. The footpath runs east for a short distance passing between the farmhouse and a barn, and then it continues generally south to a point near Yew Tree Villas on the A49 Preston Road. The footpath is currently impassable just south of point H on the map because a footbridge is missing, but this does not affect the diversion proposals. In 2014 the County Council removed the footbridge due to safety concerns resulting from its poor condition and it is currently awaiting the allocation of resources to fund a replacement structure.

Footpath 11 starts from a point on footpath 6, a short distance north of Charnock Richard Services. The footpath runs west to east and crosses over footpath 10 at Crook Fold Farm between the farmhouse and a barn and continues on the access drive for the farmhouse to join Brook Lane. Brook Lane is a short lane with residential properties on either side which joins the A49. There is a short section of the path (between points D and G on the map) where footpaths 10 and 11 are recorded as running on the same line.

The application for the footpaths to be diverted has been received from Mr C Turner who is a joint owner and resident at Crook Fold Farm (Crook Fold Farm, Brook Lane, Charnock Richard, Chorley, PR7 5LJ).

The diversion has been requested for the following reasons:

**Section A-J-B** of footpath 10 is owned by the applicant's neighbour at Woodside Farm. This element of the diversion has been included because the applicant's neighbour owns potentially dangerous dogs and he is concerned that they would pose a risk to walkers if they ever escaped from their secure compound. The proposed diversion would move the footpath to the opposite side of a fence and hedge and he believes that this additional barrier between his dogs and footpath users would thereby help to manage the risk. It is therefore in the interests of the landowner to enable use of the land which is more difficult because of the footpath. In addition it will naturally improve the privacy and security for the residents of Woodside Farm.

**Section B-D-G-H** of footpath 10 and **section E-D-G-F** of footpath 11 are proposed for diversion so that the footpaths would pass further away from the residential property at Crook Fold Farm, thereby providing greater privacy and security for the residents, including the applicant.

**Section M-N** is proposed for diversion because the footpath is currently gated by a large set of remotely controlled electric gates. These gates were set up across the footpath without lawful authority by a previous owner of the property. The proposed diversion would formalise the footpath running along a short bypass path to the side of the gates.

## **Consultations**

The statutory undertakers have been consulted and apart from National Grid no adverse comments on the proposals have been received.

National Grid wrote to object to the proposals because there is a gas supply pipe which runs underground along Brook Lane and continues underground roughly on the line of footpath 11 as far as Crook Fold Farm (i.e. it runs from point N to point G). The

reason for their objection was that the existence of the public right of way gives the company certain rights to access the land for maintaining its apparatus. If the footpath were diverted the company was concerned that it would no longer have those rights. National Grid requested that the applicant entered into a separate easement agreement with them (and pay a fee of £1000) so that they continue to have the same rights over the land. National Grid has since withdrawn its objection following an exchange of correspondence. The regulations for making public path orders mean that the County Council can state in a formal diversion order that any specified statutory undertaker may continue to have the same rights over the land after the diversion has come into operation, thereby making a formal easement unnecessary. It is advised that the relevant clause to this effect should be included in the proposed Diversion Order.

Electricity North West Limited wrote to advise that the proposed footpath crosses under a live low voltage overhead line. The company have provided information about safe working practices to protect both the electrical apparatus and any personnel working in its vicinity.

In addition, Chorley Borough Council, the Ramblers' Association and Peak and Northern Footpath Society have been consulted and have no objection to the proposal.

Charnock Richard Parish Council responded to the consultation with a request that the Diversion Order includes two conditions; namely that the new footpaths are maintained with regular grass cutting, and that the hedges at the side of the new path are similarly kept cut back. We have responded to the Parish Council that the provisions of the legislation for making a Public Path Order do not allow conditions of this nature to be included. Such matters are covered by Sections 41 and 154 of the Highways Act 1980 which make it the duty of the highway authority to maintain the surface of the path and of the hedge owner to keep the hedge cut back, respectively.

### Advice

The proposed Diversion Order would include the details given below to describe the site of the 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 modifications to the Definitive Statement.

### Description of the existing footpath to be diverted

| <b>Section of footpath as shown on the Committee Plan</b>  | <b>Position (All distances and directions are approximate)</b>  | <b>Width</b>     |
|--|---|------------------|
| Part of Charnock Richard Footpath 10 marked by a bold continuous line and shown as A – J – B – D | Starting from a point south of a pedestrian footbridge at Grid Reference SD 5479 1618 (Point A) the footpath runs for 175m in south south east direction on a grass surface to a field gate at SD 5485 1602 (Point J). The path continues for 195m in a south south westerly direction on a grass surface passing | The entire width |

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|  | over three stiles running on a field edge path to a further stile at SD 5483 1582 (Point B). The footpath continues for 45m over a grassed area and a car parking space to the junction with footpath 11 at SD 5482 1578 (Point D).   |                  |
| Part of Charnock Richard Footpath 10 marked by a bold continuous line and shown as G – H     | Starting from the junction with footpath 11 at SD 5485 1578 (Point G) the footpath runs for 50m in a southerly direction on a grass surface to a point 5m north of the abutment of a footbridge at SD 5486 1573 (Point H).  | The entire width |
| Part of Charnock Richard Footpath 11 marked by a bold continuous line and shown as E – D     | Starting from a point west of Crook Fold Farm at SD 5473 1577 (Point E) the footpath runs for 90m in an east north easterly direction on a grass surface to the junction with footpath 10 at SD 5482 1578 (Point D).  | The entire width |
| Part of Charnock Richard Footpath 11 marked by a bold continuous line and shown as D – G – F | Starting from the junction with footpath 10 at SD 5482 1578 (Point D) the path runs for 30m in an easterly direction on a tarmac surface to the junction with footpath 10 at SD 5485 1578 (Point G) and continues in the same direction for a further 40m on a tarmac surface to a point east of Crook Fold Farm at SD 5489 1578 (Point F). | The entire width |
| Part of Charnock Richard Footpath 11 marked by a bold continuous line and shown as M – N     | Starting from a point east of Crook Fold Farm at SD 5491 1578 (Point M) the footpath runs east on a tarmac surface for 5m passing through a set of metal gates to Brook Lane at SD 5491 1578 (Point N).   | The entire width |

### Description of the site of the new footpath

| <b>Section of footpath as shown on the Committee Plan</b>                      | <b>Position (All distances and directions are approximate)</b>   | <b>Width</b> |
|--|--|--------------|
| A footpath marked by a bold broken line and shown as A – S – R – Q – P – C – B | Starting from a point on footpath 10 just south of a footbridge at SD 5479 1618 (Point A) the footpath runs for 5m west through a hedgerow to SD 5479 1618 (Point S) and then runs for 190m south south east adjacent to the hedge and ditch running on a grass surface to SD 5485 1599 (Point R). The footpath continues for 75m in a southerly direction on a grass surface to SD 5484 1592 (Point | 2 m          |

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|  | Q) and then runs for 110m in a west south westerly direction on a grass surface to a field gate at SD 5474 1587 (Point P). The footpath passes through the gate and runs for 50m in a southerly direction on a grass surface and then turns east through a hedgerow (the site of a proposed gate) to the junction with the diverted route of footpath 11 at SD 5474 1582 (Point C) and runs for 90m in an easterly direction to footpath 10 at SD 5483 1582 (Point B). |     |
| A footpath marked by a bold broken line and shown as L – H         | The footpath starts from a point on the diverted route of footpath 11 at SD 5491 1578 (Point L). The footpath follows the edge of the garden on a grass surface running 35m south, 25m west, 15m south and then 15m west to re-join footpath 10 at SD 5486 1573 (Point H).   | 2 m |
| A footpath marked by a bold broken line and shown as E – C         | The footpath starts from footpath 11 at a point west of Crook Fold Farm at SD 5473 1577 (Point E) and runs for 65m in a northerly direction on a grass surface to the junction with the diverted route of footpath 10 at SD 5474 1582 (Point C).   | 2 m |
| A footpath marked by a bold broken line and shown as B – F         | The footpath starts from footpath 10 at SD 5483 1582 (Point B) and runs for 70m in a south easterly direction across a grass surface to join footpath 11 at SD 5489 1578 (Point F).  | 2 m |
| A footpath marked by a bold broken line and shown as M – L – O – N | The footpath starts from a point west of a set of gates at SD 5491 1578 (Point M). The footpath forms a bypass route south of the gates running 5m south to Point L, then 10m east to Point O and then 5m north east to Point N (still at SD 5491 1578).   | 2 m |

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

| <b>Limitations and Conditions</b>   | <b>Position of path or way to which limitations and conditions apply</b> |
|---|--|
| The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 | SD 5491 1578 (Point L)   |
| The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 | SD 5489 1578 (Point F)   |
| The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 | SD 5474 1582 (Point C)   |

|   |                        |
|---|------------------------|
| The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 | SD 5474 1587 (Point P) |
| The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 | SD 5479 1618 (Point S) |

### **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 Diversion Order should also specify that the Definitive Statement for Charnock Richard Footpaths 10 and 11 to be amended as follows:

- The 'Position' column for footpath 10 to be amended to read: “New Park Cottage via motorway bridge by Tunstead Cottage then from a point just south of a footbridge at SD 5479 1618 the footpath runs for 5m west through a hedgerow to SD 5479 1618 and runs for 190m south south east adjacent to the hedge and ditch running on a grass surface to SD 5485 1599. The footpath continues for 75m in a southerly direction on a grass surface to SD 5484 1592 and then runs for 110m in a west south westerly direction on a grass surface to a field gate at SD 5474 1587. The footpath passes through the gate and runs for 50m in a southerly direction on a grass surface and then turns east through a gate to the junction with footpath 11 at SD 5474 1582. Footpath 10 then resumes from a junction with footpath 11 at SD 5491 1578 and follows the edge of the garden on a grass surface running 35m south, 25m west, 15m south and then 15m west to SD 5486 1573 and then to A49 at March House.”
- The 'Length' column for footpath 10 to be amended to read: "1.77km"
- The 'Other particulars' column for footpath 10 to be amended to read: “The width of the footpath between SD 5479 1618 and SD 5474 1582 and between SD 5491 1578 and SD 5486 1573 is 2.0m wide. The only limitation between SD 5479 1618 and SD 5474 1582 and between SD 5482 1578 and SD 5486 1573 is the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2006 at SD 5479 1618, SD 5474 1587, SD 5474 1582 and SD 5491 1578.”
- The 'Position' column for footpath 11 to be amended to read: “From Footpath No. 6 at Dam Wood to a point west of Crook Fold Farm at SD 5473 1577 and runs for 65m in a northerly direction on a grass surface to a junction with Footpath 10 at SD 5474 1582. The footpath runs east to SD 5483 1582 then runs for 70m in a south easterly direction across a grass surface to SD 5489 1578 and continues to a point west of a set of gates at SD 5491 1578 and continues on a bypass route south of the entrance gates running 5m south, then 10m east and then 5m north east to join the road at Four Lane Ends.”
- The 'Length' column for footpath 11 to be amended to read: "0.53km"

- The 'Other particulars' column for footpath 11 to be amended to read: “The width of the footpath between SD 5473 1577 and SD 5489 1578 and around the bypass of the entrance gates at SD 5491 1578 is 2.0m wide. The only limitation between SD 5473 1577 and SD 5489 1578 and around the entrance gate bypass at SD 5491 1578 is the right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006 at SD 5489 1578.

### **Officers' assessment of the proposal against the legislative criteria for making and confirming an 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 authority 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 each section of public right of way which is affected by the proposals, in other words there has to be good reason for the diversion, for the benefit of the public and/or the owner of the land. In this case, the diversion proposals as a whole appear to be expedient in the interests of the owners of the land for the following reasons:

**Section A-J-B** of footpath 10 is proposed to be diverted to the opposite side of a hedge. This will help the owner of that land to implement the measures necessary to reduce the risk of his dogs attacking or alarming pedestrians. In addition it will naturally improve the owner's privacy and security for enjoying the area of land closest to his house.

**Section B-D-G-H** of footpath 10 and **section E-D-G-F** of footpath 11 which cross the applicant's land would pass further away from his house at Crook Fold Farm. Currently footpath users follow a route directly through the yard area outside his house and across the garden. Naturally the residents would prefer a much greater degree of privacy to enjoy these areas. The security of the property would be improved by the diversion because the owners could, if they wished, fence off the area around the house and garden to physically exclude potential intruders. Even without fencing the diversion would make the house feel safer and more private compared to the current situation in which people are entitled to walk along the footpath close to the house and through the garden at any time of night or day.

**Section M-N** is proposed for diversion because the footpath is currently gated by a large set of remotely controlled electric gates. The proposed diversion of this section of path is in the interests of the owners of the land so that the vehicular access to the property could be kept secure by retaining these lockable gates.

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 path or a path connected to it and is substantially as convenient to the public. In order to assess these proposals we need to look at the effect of the diversion on each link in the network which is affected.

The termination points of both Charnock Richard Footpaths 10 and 11 are not proposed to be changed.

The Committee are advised that so much of the Diversion Order as extinguishes parts of Charnock Richard Footpaths 10 and 11, 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 would be subject to a number of limitations and conditions. In this case gates are proposed across the new footpaths at points S, P, C, F and L. Gates are the least limiting to the public rights whilst enabling the owners to keep the land crossed by the new footpaths stock-proof, it is therefore considered reasonable to include the limitations in the proposed Diversion Order as applied for.

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, with the exception of National Grid who have given their consent, providing the wording of the Diversion Order states that any specified statutory undertaker may continue to have the same rights over the land after the diversion has come into operation.

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 paths compared to the old paths 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.

North to south (footpath 10):

The distance is approximately 200m greater, which in the context of a rural footpath of about 2km (Alder Hall to A49) adds about 10% (although in practice this 2km path will only be a part of a longer walk so the additional proportion will be less) and is less direct as it runs to the west at points P-C and follows the stream through a series of bends at H-L. However this will be offset to some extent by no longer having to climb numerous stiles (there will only be gates on the diverted section) and by having a 2m width (there is a narrow section on the existing route).

East to west (footpath 11):

The distance is approximately 50m greater which is relatively insignificant for a rural footpath route of at least 2km (the distance from Charnock Richard village to Park Hall Road near Camelot) and the proposed route is only slightly less direct and will have a width of 2m. This width is slightly less at the bypass of the entrance gates than along the main track through the entrance gates but not such that it will be significantly inconvenient for walkers.

The surface and gradients are similar on the existing and proposed routes.

It is therefore considered that the effects of the proposed Diversion Order are not substantially less convenient than the current route.



With regards to the effect on the public enjoyment of the path as a whole:

North to south (footpath 10):

The proposed route is less direct but has a more open aspect with better views of the surrounding countryside and also follows the stream between points L and H. Furthermore some members of the public feel uncomfortable walking close to residential properties or through domestic gardens and will feel more at ease on the proposed route which will alleviate this.

East to west (footpath 11):

The proposed route is slightly longer but will take walkers away from the current close proximity to the house and the centre of the garden, which will be preferable for some people. There will be no loss of views compared to the existing route.

On balance it is advised that that it would be expedient for the proposed Diversion Order to be confirmed having regard to public enjoyment of the path as a whole.

As a result of the consultations carried out we are unaware of anyone apart from the applicant and the neighbouring owner who have an interest in the land served by the existing footpaths. Neither of these owners rely on the footpath to serve their property: it is therefore advised that it is also expedient to confirm the Order with respect to other land served by the existing rights of way.

With regard to the effect on the land crossed by the new footpath there may be some impact on the land, in particular the diversion of footpath 10 to the line S-R-Q-P where the diversion will introduce the right of way to a field where there is currently no public access. Nevertheless it is advised that it would be expedient to confirm the Order because the relevant landowner has consented to the diversion across this area of land.

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 only limitations in the Diversion Order are for gates and these will each be required to comply with the standard for gates in the British Standard BS5709:2006.

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'.

The proposed Order, if confirmed, would not have any adverse effect on the needs of agriculture and forestry or the 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 at public expense every Order submitted to the Secretary of State where there is little or no public benefit. It is suggested that in this instance, in the event of objections and the

Order being submitted to the Secretary of State, the applicant would be asked to support and promote the confirmation of the Order, if necessary by employing a suitably experienced advisor to participate on their behalf at a public inquiry or hearing. It is suggested that the Authority should 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 represents 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: 888.187

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File Ref:  
PRW-09-08-FP10

Reason for inclusion in Part II, if appropriate

N/A