

Regulatory Committee

Meeting to be held on 24 February 2016

Electoral Division affected: Ribble Valley North East
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Rimington Footpath 14, Ribble Valley Borough.

(Annexes 'B' and 'C' refer)

Contact for further information: Mrs R Paulson, 01772 532459, Environment Directorate. ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Rimington Footpath 14, Ribble Valley Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Rimington Footpath 14, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked C-B 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

An application has been received from Mr and Mrs M Jones, Belmil, Osbaldeston Lane, Osbaldeston, Blackburn, BB2 7LT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Rimington Footpath 14 in the vicinity of Mylah Cottage, Rimington Lane, Rimington, Clitheroe, BB7 4EB.

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 and the proposed alternative route is shown by a bold broken line and marked C-B.

The applicants are the owners of Mylah Cottage that is crossed by part of the existing footpath. They moved into the property in April 1988 and then added an

extension to the property consisting of a hall and garage. Unfortunately, the footpath wasn't legally diverted before the development was carried out and it has been obstructed since that time. An unofficial diversion is currently in place, providing a footpath for the public to use, leading up the driveway and across the field to link with the unaffected part of the footpath. The applicants thought that this was adequate until recently when they put the house up for sale and the discrepancy between the legal alignment and the route on the ground was identified as a problem. The proposal, if successful would enable the owners of the property to retain the buildings and garden in their current position and provide an improvement in privacy and security for the residents of Mylah Cottage.

Consultations

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

Rimington Parish Council, Ribble Valley Borough Council, the Ramblers' Association and Peak and Northern Footpath Society have been consulted and have not raised any objection to the proposal.

Advice

Points annotated on the plan:

Point	Grid Reference	Description
A	SD 8147 4681	Junction of Rimington Footpath 14 and Rimington Lane, immediately adjacent to the corner of the low stone garden wall in front of the property.
B	SD 8145 4674	Point immediately north of the metal field gate at the southern end of the track.
C	SD 8142 4678	Point in the stone wall to the east side of the wooden field gate where a kissing gate access is to be installed at the junction with the new footpath and Rimington Lane.

Description of existing footpath to be diverted

Part of Rimington Footpath 14 commencing at point A, running in a south south westerly direction for a distance of 75 metres to point B. At point A the footpath is obstructed by the residential property and a garden that adjoins the building. The

footpath then passes over the driveway, is crossed by a wooden post and rail fence then crosses a field to meet another fence and trees and shrubs at the corner of the field. There is then a change in ground levels of approximately 1 metre with no means of negotiating the slope to meet the track at point B. (All lengths and compass points given are approximate).

Description of new footpath

A footpath commencing at point C, running in a generally south south easterly direction for a distance of 50 metres to point B.

At point C the footpath passes through a kissing gate, crosses a grassed area then runs on a partially stone surfaced track. The width is 2 metres throughout. (All lengths and compass points given are approximate).

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

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006	Grid Reference SD 8142 4678 (Point C)

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 Rimington Footpath 14 to be amended to read as follows:

The 'Description of Route' column to read: "Footpath commencing at its junction with Rimington Lane County Road at SD 8142 4678. The footpath passes through a kissing gate and runs in a generally south south easterly direction for a distance of 50 metres to SD 8145 4674, initially on a grassed surface then on a partially stone surfaced track. From SD 8145 4674 the footpath continues in a southerly direction via Newby to its junction with Newby Lane County Road. (All lengths and compass directions are approximate)."

The 'Approximate length' column be amended to read: "0.93 km"

The 'Approximate width' column be amended to read: "4' 0" with the exception of the section of footpath between SD 8142 4678 and SD 8145 4674 that has a width of 2m"

The 'General' column be amended to read
 "No. 3 Field Gates; No. 3 Stiles; No direction signs; The only limitation on the section of between SD 8142 4678 and SD 8145 4674 is the right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006 at SD 8142 4678."

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 it would enable the owners of Mylah Cottage to retain the buildings in their current position and provide an improvement in privacy and security.

It is noted that the existing route is obstructed by buildings, a garden and the boundary fences on each side of the field. There is a nearby concessionary path that is available for the public to use running up the driveway, passing over a step stile and across the field to a ladder stile that leads down to the track.

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, disproportionate or not in the interests of the user and that the existing route can be inspected notwithstanding the obstruction. This is the case with this particular footpath and access is currently available on the nearby concessionary footpath route from where the existing route can be viewed.

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.

The proposed diversion will alter the northern point of termination of Rimington Footpath 14 and place it at another point on Rimington Lane being the same highway. It is noted that the diversion would move the footpath approximately 50 metres away from the footpath on the other side of the road, Rimington Footpath 12. In some instances that could be considered to be less convenient. However, in this case there is already the need to walk on the road between the two footpaths and the extra length is on a straight section of road where visibility is good. Furthermore, there is good visibility of the traffic coming in both directions from the proposed point of access from the footpath onto the road. It is suggested therefore, 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 Rimington Footpath 14, 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.

The applicants own the land crossed by approximately 20 metres of the existing route in the vicinity of point A, that being land that is within the curtilage of Mylah Cottage. The remainder of the existing route, the field to the south of Mylah Cottage and the land crossed by the proposed route C-B is in the ownership of Mr A and Mr J Hartley of Bridge End Farm, Rimington, Clitheroe, Lancashire, BB7 4EA. They are in

agreement with the proposal and have confirmed that they would not raise any objection in the event that a Diversion Order is made.

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.

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.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion. It is acknowledged that when walking north to south, the proposed route is less direct and would increase the walk by approximately 35 metres. However on a rural footpath such as this, the footpath will generally be used as part of a much longer walk, likely to be in excess of 5km if walking north to south. It is appears that the sole use of this footpath is for recreational purposes, rather than communicating between specific locations therefore in this instance the increase in length is likely to be considered to be insignificant given the rural location and overall length of the walk that would be required to reach this footpath.

With regards to the gradients, if walking north to south there is an increase in overall gradient as the road slopes down from point A to point C, then the proposed route on the track slopes up part of the way from point C. However, it is suggested that the proposed route has the benefit of a gradual change in gradient rather than the abrupt change in levels from the field to the track at point B.

Furthermore, the proposed route runs on land that is well drained and it will provide a firm surface to the path that will be safe and convenient for use throughout the year, whereas the part of the existing route that crosses the field can be wet underfoot in adverse weather conditions.

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 due to the footpath being diverted away from the house and garden and as a consequence some users may feel more comfortable and at ease. In addition, because the proposed footpath runs along a track, rather than a field there would be one less field boundary and therefore, requires one less stile or gate.

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). The alternative route will be of adequate width and the gate proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles 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

Paper	Date	Contact/Directorate/Tel
File Ref:		Megan Brindle County Secretary and Solicitors Group
File Ref: PRW-03-36-14		Mrs Ros Paulson Environment Directorate, 01772 533438
Reason for inclusion in Part II, if appropriate		
N/A		