

## Regulatory Committee

Meeting to be held on 27 July 2016

Electoral Division affected: Great Harwood
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### Highways Act 1980 – Section 119

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

### Proposed Diversion of Part of Great Harwood Footpath 1, Hyndburn Borough. (Annexes B & C refer)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Great Harwood Footpath 1, Hyndburn Borough.

#### Recommendation

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event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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

A request has been received from Mr Andrew Thompson of Squires Farm, Allsprings Plantation, Great Harwood, Lancashire, BB6 7UL, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Great Harwood Footpath 1 in the vicinity of Squires Farm, Great Harwood.

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 dashed line and marked A-C-B.

The applicants' property, Squires Farm, is a residential property. The proposal, if successful would provide the owners of the property with an improvement in privacy and security.

## **Consultations**

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received except from National Grid who initially objected to the proposals.

National Grid have a gas pipeline which crosses beneath the line of the proposed diversion near point A. Their initial objection was on the grounds that “the level of protection currently afforded to the apparatus it has in the subject land may be diminished notwithstanding Paragraph 4, Schedule 12, Part II of the Highways Act,1980”. The organisation subsequently withdrew its objection because “it has identified that it has no record of apparatus in the immediate vicinity of your enquiry”. This reply was sent together with a map showing the line of a gas pipe crossing under the proposed diversion.

Hyndburn Borough Council has been consulted and has not raised any objection to the proposal.

The following organisations have also been consulted: Peak and Northern Footpath Society, the Hyndburn branch of the Ramblers Association and the North West regional branch of the British Horse Society. None of these have objected to the proposal.

## **Advice**

### **Description of existing footpath to be diverted**

That part of Great Harwood Footpath 1 as described below and shown by a bold continuous line A-B on the attached plan (All lengths and compass points given are approximate).

<b>FROM</b>	<b>TO</b>	<b>COMPASS DIRECTION</b>	<b>LENGTH</b>	<b>WIDTH</b>
A (SD 7374 3326)	B (SD 7373 3339)	NNW for 85 metres then NNE for 55 metres	140 metres	The entire width

### **Description of new footpath**

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 7374 332 6)	C (SD 7376 3333)	NNE	75	2	Grass surface
C (SD 7376 333 3)	B (SD 7373 3339)	NNW	70	3	Grass and compacted stone surface
Total distance of new footpath			145		

The applicant has agreed to provide a partially compacted stone surfaced path between C-B and also in the vicinity of the gateway at point B. It is the intention for the width of the stone surface between C-B to be 1.2 metres with the remaining width to be a grass verge on either side.

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

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 7374 3326 (Point A)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 7376 3333 (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 Order should also specify that the Definitive Statement for Great Harwood Footpath 1 to be amended to read as follows:

The 'Position' column to read: "Starts at F.G. and K.G. to SD 7374 3326 then:

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
SD 7374 3326	SD 7376 3333	NNE	75	2	Grass surface
SD 7376 3333	SD 7373 3339	NNW	70	3	Grass and compacted stone surface

Then to junction of paths 2 and 94. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.38 km"

The 'Other Particulars' column be amended to read "The width of the footpath between SD 7374 3326 and SD 7376 3333 is 2 metres and the width of the footpath between SD 7376 3333 and SD 7373 3339 is 3 metres. The only limitations on the section of footpath between SD 7374 3326 and SD 7373 3339 are the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2006 at SD 7374 3326 and SD 7376 3333."

### **Officers' assessment of the proposal against the legislative criteria for making and confirming an Order.**

The proposed diversion would have the effect of making a significant length of the access drive to the farm house and yard area private to the residents. This will improve privacy and will enable the residents to improve the security of their property, for example by installing lockable gates.

The applicants say they have been broken into twice and have provided details of police crime reference numbers. On one of the burglaries they reported that a roller shutter door was jammed up, resulting in a vast amount of property being stolen and major damage to a barn, where thieves attempted to drive a vehicle out.

The applicants are also concerned for the safety of footpath users because the footpath is shared with private vehicular use.

The applicants say that their privacy is affected by the public footpath because the area crossed by the footpath "is essentially our garden". Members of the public are not confined by fences on either side of the footpath and sometimes people, or their dogs, go onto the adjoining garden land which surrounds the property.

On a related theme, there are some occasions when the applicants report having been disturbed when the footpath is used by rowdy youths returning from the river which lies north of Squires Farm.

The issues which have been mentioned by the applicants provide suitable reasons which can be seen to satisfy the criteria that the proposed diversion is expedient in the interests of the owners of the land.

The proposed diversion will not alter the points of termination of Great Harwood Footpath 1, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Great Harwood Footpath 1, 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, with the exception of apparatus belonging to National Grid, who have provided a map showing

an underground gas pipeline which crosses beneath the existing path and beneath the proposed new footpath near point A. However, National Grid have now withdrawn their initial objection stating "National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry. National Grid therefore has no objection to these proposed activities".

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.

The applicants own a majority of the land crossed by the existing footpath proposed to be diverted, and all of the land crossed by the proposed alternative route. The Land Registry do not hold any documents that confirm the ownership of an approximately 50 metre length of the existing route. It is therefore proposed that additional notices will be posted on site and advertisements will be placed in the newspaper to publish the making and if appropriate, the confirmation of the Order to notify any unknown owners or occupiers, so they have the opportunity to submit representations to the Order.

It is advised however that the unregistered land comprises part of the driveway to Squires Farm and is included within the curtilage of the applicant's property. Therefore, it is not expected that any unknown owners or occupiers of this land will be forthcoming.

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.

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 of similar gradient and length.

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 the residential property. The proposal will divert the footpath to the east of the residential dwelling and as such, some users of the path may feel more comfortable and at ease. Furthermore, it will reduce the potential conflict between the public footpath and the vehicles on site.

The views which can be seen from the new route are little different from the views which can be seen from the existing route.

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 where necessary gates will be provided, rather than stiles.

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 gates has been selected, reducing the limiting effect of structures.

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 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 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 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**

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: PRW-11-04-01		Mrs Ros Paulson Environment Directorate, 01332 533438
Reason for inclusion in Part II, if appropriate		
N/A		