

Regulatory Committee

Meeting to be held on 27 July 2016

Electoral Division affected: Rossendale East

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Bacup Footpath 640, Rossendale Borough.

(Annexes B and C refer)

Contact for further information:

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Executive Summary

The proposed diversion of Bacup Footpath 640, Rossendale Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert Bacup Footpath 640, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority promote it to confirmation.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 a number of residents in Anderton Close and Hardman Close in Cowpe, near Bacup, Rossendale, for an Order to be made under Section 119 of the Highways Act 1980 to divert Bacup Footpath 640.

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 C-B.

The application has been received from the owners of 5 properties whose land is adjacent to the line of the existing footpath, namely 8 Anderton Close, 10 Anderton Close, 12 Anderton Close, 14 Anderton Close, and 7 Hardman Close. The applicants

have applied for the diversion so that they can extend their gardens into the land currently crossed by the existing footpath.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. Local rights of way user groups have also been consulted.

The footpath secretary of Rossendale Ramblers wrote to say that the footpath was obstructed by rubbish which had been thrown over the walls by the residents of Anderton Close and Hardman Close. Nevertheless, he indicated that he would not object to the proposals on condition that the footpath is properly signposted at each end.

The Chair of Rossendale Access wrote to say that she had researched some old maps which appeared to show that the existing path was part of the old road to Rochdale, inferring that the existing path carried higher rights than those recorded on the Definitive Map and Statement. She says the route appeared on the Yates map of 1786 and the Hennetts map of 1830 but suggests the route went out of use following the construction of the turnpike road through “the Glen” in 1826. Nevertheless, the route appears on the Cassini map of 1903-04 and on the old Finance Act maps.

Lancashire County Council’s Definitive Map Officer has looked very carefully at the historical mapping information which was available to her. She has concluded that whilst the route appears to have previously been used to give access to Tenter Heads (on the site of the current 9 and 11 Hardman Close) with a through route to Royds Road on foot, any vehicular rights are likely to have been private. It would appear that there is insufficient information to argue the case for A-B to carry public bridleway rights. The Chair of Rossendale Access subsequently indicated that they would be unlikely to object on these grounds in the event of an Order being made.

Advice

Description of existing footpath to be diverted

The whole length of Bacup Footpath 640 as described below and shown by a bold continuous line A-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 8367 2145)	B (SD 8376 2140)	ESE	95	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
C (SD 8368 2146)	B (SD 8376 2140)	Generally ESE	100	2	Grass surface
Total distance of new footpath			100		

There are no surfacing works or drainage works proposed on the diverted route of the footpath.

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

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the landowner to maintain a 1 metre wide gap that conforms to BS 5709:2006	Grid Reference SD 8368 2146 (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 Bacup Footpath 640 be amended to read as follows:

The 'Position' column to read: "Footpath commencing at its junction with Bacup Footpath 640 at SD 8368 2146. It passes through a gap in a stone wall and runs as a grassed surfaced footpath in a generally east south easterly direction for a distance of 100 metres to its junction with Bacup Footpaths 641 and 637 at SD 8376 2140. (The length and compass direction are approximate)."

The 'length' column be amended to read: "0.1 km"

The 'Other Particulars' column be amended to read "The width of the path is 2 metres wide. The only limitation is the right of the owner of the soil to maintain a 1 metre wide gap that conform to BS 5709:2006 at SD 8368 2146."

Criteria satisfied to make and confirm the Order

The County Council may make an Order under Section 119 of the Highways Act 1980 if it appears to the Committee that, in the interests of the owner, lessee or occupier of the land crossed by the path or of the public, it is expedient that the line of the path is diverted, subject to certain conditions.

In this case the application has been made by the owners of five properties on the adjoining land, not the recorded owner, lessee or occupier of the land crossed by the path. This means that the test of whether or not the diversion is expedient should not look at whether the proposed diversion is in the interests of the applicants, but whether it is expedient in the interests of the owner, occupier or lessee of the land. In other words the legislation does not allow us to make an Order in the interests of the applicants, because in this case they do not own the land.

The land is in fact owned by four registered owners who have not objected to the proposed diversion and it is apparent that there is an understanding between the landowners and the applicants that if the diversion takes place then the applicants will purchase the land crossed by the existing footpath in order to extend their gardens. Therefore, whilst it might be argued that the diversion would be in the interests of the owners of the land that the footpath is diverted so that the land can be sold at a price which exceeds its value as agricultural land, it conflicts with the current agricultural land use. This is because it would move a field edge path (as it is until the fence is moved and the gardens are extended), approximately 10 metres into the field, potentially having an adverse effect on farming operations.

The land is currently leased by a tenant farmer who also has not objected to the proposed diversion. There is no indication that it is expedient in his interests that the path be diverted.

It is however, suggested that an Order could be instead made on the grounds that it is expedient in the interests of the public,. The existing footpath runs up a wide gully with poor views, and it is poorly drained with the result that it is often very wet under foot. These natural problems are compounded by rubbish and rubble which have apparently been dumped on the land crossed by the path from some of the neighbouring properties but this could be addressed more appropriately by other means and is not a consideration for the merits of the proposed diversion. The proposed route runs along a ridge just above the gully, which by contrast it is well drained and offers excellent views across the Irwell Valley. It is advised that the public benefit of the proposed diversion, compared to the existing path, satisfies the expediency test outlined in Section 119(1) of the Highways Act 1980.

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 western point of termination of Bacup Footpath 640 (point A) and place it at another point on Bacup Footpath 642 (point C) being the same highway. It is suggested that the proposed termination point is substantially as convenient to the public. The short distance between points A and C relative to the length of the path makes the latter point substantially as convenient as the former. It is advised that the proposal therefore satisfies the criteria in Section 119(2) of the 1980 Act.

The work which appears to be necessary to bring the site of the new footpath into a fit condition for use by the public is the formation of a 1 metre wide gap in the wall at

point C, which the applicants will arrange with the farmer. Otherwise, the land crossed by the proposed diversion was in an acceptable condition for use by the public on the last occasion a site inspection was carried out. However, if during the diversion process, the condition of the surface of the new route is found to have deteriorated then the applicants will arrange for remedial works and the extinguishment of the existing path will not come into force until the County Council has certified that any work necessary to bring the alternative route into a fit condition for public use has been carried out.

The proposed diversion follows the line of an overhead power cable. Neither the existing, nor the proposed footpath will interfere with the power cable but it should be noted that the owners of the cable did not respond to the consultation on the proposals.

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 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. The alternative route is of a similar length to the existing and whilst the western part of the new path would climb a slightly steeper slope for a few metres, it is in keeping with the terrain of a walk in this location and would not cause inconvenience to the user of the path.

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 as a whole. As already mentioned, the proposed diversion runs over land that is better drained and allows much better views of the surrounding area than the existing path.

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 people who are elderly or disabled have been 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, passing over a better surface than the existing route and no gates or stiles will be installed across, only a gap that conforms to the minimum requirement suggested in the BS5709:2006.

Further, it is also advised that the effect of the proposed 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 gap 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.

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 rather than promoting it a different stance be taken regarding confirmation.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: PRW-14-01-640	07-07-2016	Mrs Ros Paulson Environment Directorate, 01772 533438

Reason for inclusion in Part II, if appropriate

N/A