

Regulatory Committee

Meeting to be held on 28 September 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 Parts of Rimington Footpath 23, Ribble Valley Borough. (Annexes B and C refer)

Contact for further information:

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Executive Summary

The proposed diversion of parts of Rimington Footpath 23, Ribble Valley Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert parts of Rimington Footpath 23, from the routes shown by bold continuous lines and marked A-B and C-D-E-F to the routes shown by bold dashed lines marked A-G and H-J-K-F 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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 the owners of Rimington Hall, Rimington Lane, Rimington, Clitheroe, BB7 4DP for an Order to be made under Section 119 of the Highways Act 1980 to divert parts of Rimington Footpath 23.

The lengths of the existing paths proposed to be diverted are shown by bold continuous lines marked on the plan as A-B on the south side of Rimington Lane and C-D-E-F on the north side of Rimington Lane. The proposed alternative routes are shown by bold dashed lines and marked A-G on the south side of the lane and H-J-K-F on the north side of the lane.

The footpath proposed to be diverted runs across a field, crosses Rimington Lane then runs along a driveway and crosses the garden of the residential dwelling of Rimington Hall. The proposed diversion, if successful, would move the footpath to the west of the residential property, providing the applicants 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.

Ribble Valley Borough Council, Rimington Parish Council, Ribble Valley and Clitheroe Ramblers and Peak and Northern Footpath Society have also been consulted.

The footpath secretary of the Clitheroe Ramblers has commented that they were generally in support of the proposal, provided the new route is properly gated and surfaced. Initially he expressed concerns about the section of path between point J and K, suggesting that there might be a spring or watercourse which makes the ground waterlogged in poor weather. The group has subsequently revisited the site and confirmed that they have no objection to the proposal as the ground condition of the proposed diversion is comparable to other paths in wet weather. They are satisfied that if the Order is successful, the County Council need not insist on changes to the drainage.

There have been no other objections or adverse comments to the proposals.

Advice

Description of existing footpaths to be diverted

The parts of Rimington Footpath 23 as described below and shown by bold continuous lines A-B and C-D-E-F on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 7942 4525)	B (SD 7945 4539)	NNE	150	The entire width
C (SD 7946 4540)	D (SD 7942 4546)	NNW	75	The entire width
D (SD 7942 4546)	E (SD 7947 4556)	NE	105	The entire width
E (SD 7947 4556)	F (SD 7942 4566)	Generally NNW	125	The entire width

Total distance of existing footpaths	455	
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It will be noted from the plan that approximately 5 metres of Rimington Footpath 23, located between points B and C, extends across the tarmac carriageway of Rimington Lane. As this section is within the highway boundary, the footpath rights have effectively been subsumed within the vehicular highway. This section of Rimington Footpath 23 does not therefore have footpath status and is not therefore proposed to be included in this Order. In the future, this recorded section of Rimington Footpath 23 will be deleted from the definitive map by a Legal Order recognising that it ceased to be a public footpath on becoming part of the vehicular highway.

Description of new footpaths

Footpaths as described below and shown by bold dashed lines A-G and H-J-K-F on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 7942 4525)	G (SD 7938 4537)	NNW	120	3	Tarmac
H (SD 7938 4537)	J (SD 7934 4546)	NNW	85	2	Grass
J (SD 7934 4546)	K (SD 7930 4562)	Generally NNW	210	2	Grass
K (SD 7930 4562)	F (SD 7942 4566)	ENE	130	2	Grass
Total distance of new footpaths			545		

The applicants are not proposing to carry out any surfacing or drainage works on the diverted route of the footpath, apart from works in connection with providing a kissing gate at point H.

It is proposed that the footpaths 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 kissing gate that conforms to BS 5709:2006	Grid Reference SD 7938 4537 (Point H)

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 Rimington Footpath 23 be amended to read as follows:

The 'Description of Route' column to read: "Footpath commencing at Lancashire County Boundary at Hell Hole Plantation and proceeding in a westerly direction to the Wood thence northward to SD 7942 4525 then north north west for 120 metres on a tarmac surface to Rimington Lane at SD 7938 4537. The footpath continues on the north side of Rimington Lane at SD 7938 4537 passing through a kissing gate then skirts round the outside of the boundary of Rimington Hall initially north north west on a grass surface for 85 metres to SD 7934 4546. The footpath then runs generally north north west on a grass surface for 210 metres to SD 7930 4562, and continues in an east north easterly direction for 130 metres on a grass surface to SD 7942 4566 from where the footpath runs north eastward towards Rimington Station."

The "Nature of Surface" Column to read "Pasture, meadow and tarmac".

The "Approximate Length" column to read "2.23km."

The "Approximate Width" Column to read: "4' 0" with the exception of SD 7942 4525 to SD 7938 4537 where the width is 3 metres, and SD 7938 4537 to SD 7942 4566 where the width is 2 metres.

The "General." Column to read "No.1 Footbridge, No.1 Stile, No.1 Field Gate, No.2 Fences (No.2 barbed wire obstructed). The only limitation between SD 7942 4525 and SD 7942 4566 is the right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006 at SD 7938 4537."

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.

Rimington Hall is a large residential dwelling surrounded by gardens and a wooded copse. The entrance to the property is currently controlled by a pair of electronically operated gates. The public footpath to the north of Rimington Lane runs through the gated entrance and along the main driveway close to the house. It then crosses the garden, running through the copse of trees and continuing within the eastern boundary of the property.

In this case, the diversion proposal appears to be expedient in the interests of the owners of the land in that, if the proposal is successful, it will remove the public footpath away from Rimington Hall and enable the electronic gates to be retained in their current position, providing the owners with an improvement in privacy and security.

The proposed diversion of the section of path on the south side of Rimington Lane between points A and B is not thought to be in the interests of the applicants, but its inclusion makes the diversion proposals as a whole more cohesive (i.e. by making the proposed diversion more direct). Nevertheless this element of the diversion is expedient in the interests of the owners of the land to the south of Rimington Lane who are not objecting to same.. This land is in separate ownership. The existing path crosses a meadow, and it is reasonable to conclude that the right of way may have some negative impact on agricultural use of the land. The diversion would remove all public access from the field in question which would be in the interests of the owners and occupiers of the land.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make an 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 this case it is suggested that the proposed diversion will alter the points at which Rimington Footpath 23 terminates either side of Rimington Lane (points B and C) and place them at other points on Rimington Lane (points G and H) being the same highway. There is good visibility of the traffic coming in both directions from the proposed points of access and it is suggested therefore, that the proposed termination point is substantially as convenient to the public.

A matter which the County Council must consider is whether work needs to be done to bring the site of the new footpath into a fit condition for use by the public. At point H the site of the new footpath is currently blocked by a section of hedgerow. This would need to be removed, and a kissing gate installed in accordance with BS 5709:2006 in its place. In addition stone surfacing in the immediate vicinity of the kissing gate would be required.

With regards to the surface of the section of new footpath between points J and K, this can be muddy during the winter months and was observed as such during an officer site visit in December 2015. The comments made by the representative of the Ribble Valley Ramblers Association mentioned this and they initially suggested that the path should be surfaced. The issue to consider is whether it is reasonable and proportionate to require extensive footpath construction work on a footpath across farmland which is unlikely to be used more than any more than a minimal amount during the wet winter months.

The path is only used infrequently because the continuation of the path to the north of the proposed diversion stops just short of what was once Rimington Station. Passenger services stopped running from the site of the station many years ago, and now Rimington Footpath 23 finishes at a dead end with no onward access rights at its northern end. There is however thought to be some residual use of the footpath because it offers excellent views, and this makes it a valuable location for rail enthusiasts who come to photograph the steam trains which occasionally use the line.

Based on present information and on this particular location it is advised that the only work which is reasonably proposed to be carried out to bring the site of the new path

into a fit condition is the work needed in connection with the proposed kissing gate at point H. The Committee are advised that so much of the Order as extinguishes parts of Rimington Footpath 23, 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 the existing route to the north of Rimington Lane, that being land that is within the curtilage of Rimington Hall. The owners of the land crossed by the existing route south of Rimington Lane and the land crossed by the proposed footpaths have, together with the tenant of the land confirmed that they are in agreement with the proposal and would not raise any objection in the event that an Order is made.

In considering the proposals the County Council has a duty to have regard to agriculture, forestry and nature conservation. With regards to agriculture the proposals introduce a public right of way to a field which is used for grazing livestock (i.e. the section of path H-J-K-F). Rights of way can affect grazing land as a result of dogs which accompany pedestrians but which are not kept under proper control and thereby are allowed to worry livestock. Similarly, some livestock can pose a risk to pedestrians and therefore the tenant farmer would be ill advised to keep animals which are known to have dangerous characteristics on the land. However, given the information about use and its location it is not anticipated that there would be any particular issues between the use of the footpaths and agricultural use of the land. Furthermore, the diversion of the public footpath to the south of Rimington Lane would remove a section of cross field footpath, enabling better land use by the tenant. It is therefore advised that 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 physiological features.

The applicants have agreed to bear all advertising and administrative charges incurred 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 suggested that the new path would not be substantially less convenient to the public in consequence of the diversion. The gates on the existing route should be disregarded in considering this. The alternative route is slightly longer, and in places, the terrain across farm land may be slightly less convenient underfoot than the existing footpath, but the route of the new footpath would be easier to follow because it runs down a tarmac path, from point A to G and then around the edge of a field, from point H-J-K-F.

It is advised that that it would be expedient for the proposed Order to be confirmed having regard to public enjoyment of the path as a whole. Rimington Hall has no historical interest, as it is a recent development on the site of a previous dwelling known as Denis Field. The proposed routes are of similar length and gradient to the existing and the proposed diversion enjoys excellent views of the surroundings, better than those which can be seen from 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. The existing routes do not serve as vehicular access to the adjacent land.

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, and no gates or stiles will be installed across, only a gate 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.

Stance on Submitting the Order for Confirmation (Annex C refers)

The above tests are relevant to the making or confirmation of the Order but Committee is also asked to consider the overall balance of advantages and disadvantages of this change to the network to assess whether resources should be put into the promotion to confirmation.

The Committee is aware that the County Council does not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit.

It is suggested that in this instance, looking at the proposal as a whole and the relative comparison of the present and alternative routes there is no or only slight public benefit and the Committee may therefore consider that the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicants, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicants can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is therefore 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 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 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 applicants 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-03-36-023		Mrs Ros Paulson Planning and Environment, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A