

## Regulatory Committee

Meeting to be held on 16 November 2016

Electoral Division affected: West Lancashire West
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### Highways Act 1980 – Section 119

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

### Proposed Diversion of Part of Scarisbrick Footpath 6, West Lancashire Borough.

(Annexes B and C refer)

Contact for further information:

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#### Executive Summary

The proposed diversion of part of Scarisbrick Footpath 6, West Lancashire Borough.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Scarisbrick Footpath 6, from the route shown by a bold continuous line and marked A-B-C-D to the route shown by a bold dashed line marked E-F-D 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.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 owner of Hooton's Farm, 95 Jacksmere Lane, Scarisbrick, L40 9RT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Scarisbrick Footpath 6.

The length of the existing path proposed to be diverted is shown by a bold continuous line marked on the plan as A-B-C-D. The proposed alternative route is shown by a bold dashed line and marked E-F-D.

The footpath proposed to be diverted runs along a driveway to Hooton's Farm and around the curtilage of the property. The proposed diversion, if successful, would move the footpath to the south of the small field and the garden, providing the applicant 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 apart from National Grid and Electricity North West.

National Grid originally objected on the grounds that it has apparatus in the vicinity of the proposed diversion but it subsequently withdrew its objection on the grounds that its apparatus would be unaffected.

Electricity North West commented that it has considered the proposals and found that they could have an impact on its infrastructure. In this case there is a high voltage overhead line which crosses the route of the proposed footpath between points E and F. There is also an underground electricity cable on the line of the path to be diverted from point A to B. An email was sent to Electricity North West on behalf of the County Council to clarify that no works were planned on the line of the proposed diversion and to explain that the diversion would simply introduce a right for pedestrians to walk beneath the overhead line. Electricity North West have responded that they have no objection in principle to the diversion going ahead, but have advised that there is an underground cable within the footpath to be diverted. It is therefore advised that a clause be included in the proposed Order which would give Electricity North West the same rights in the existing footpath (Section A-B) after the Diversion Order has come into operation as it had before.

West Lancashire Borough Council, Scarisbrick Parish Council, the West Lancashire Footpath Group, West Lancashire Ramblers and the Peak and Northern Footpath Society have also been consulted.

The chairman of the West Lancashire Footpath Group commented that for people travelling east to west or vice versa the proposed diversion is "more convenient and quite pleasant". He also mentioned that for people coming off Jacksmere Lane (i.e. from a point north of the proposals map using the track north from point A which is not recorded as a public right of way) people would be slightly inconvenienced. He indicated that his group does not intend to object if an Order is made.

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

## **Advice**

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

Part of Scarisbrick Footpath 6 as described below and shown by a bold continuous line A-B-C-D on the attached plan (All lengths and compass points given are approximate).

POINT	GRID REFERENCE	DESCRIPTION
A	SD 3702 1324	Junction of driveway to Jacksmere Barn, Jacksmere Farm and Hooton's Farm
B	SD 3709 1321	Entrance to Hooton's Farm where enclosed grass path leaves tarmac drive
C	SD 3708 1316	Exit from enclosed route outside the western corner of Hooton's Farm garden
D	SD 3713 1314	Adjacent to southern corner of Hooton's Farm garden
E	SD 3696 1319	Adjacent to south-western corner of Jacksmere Farm's garden
F	SD 3697 1313	A few metres to the south-west of the south-west corner of Hooton's Farm front paddock

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally ESE	80	The entire width
B	C	SSW	50	The entire width
C	D	ESE	60	The entire width
Total distance of footpath to be diverted			190	

### Description of new footpath

The new footpath is as described below and shown by the bold dashed line E-F-D on the attached plan (All lengths and compass points given is approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
E	F	Generally SSE	70	3	Stone surface
F	D	Generally E	155	3	Stone and grass surface
Total distance of new footpath			225		

The applicant is not proposing to carry out any surfacing or drainage works on the diverted route of the footpath.

The footpath to be created by the proposed Order will not be subject to any limitations and conditions.

### 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 the Order should also specify that the Definitive Statement for Scarisbrick Footpath 6 be amended to read as follows:

The 'Position' column to read: "Junction of 4 and 5 to SD 3713 1314 then generally west for 155 metres to SD 3697 1313 then generally north north west for 70 metres to Scarisbrick Footpath 7 at SD 3696 1319."

The "Length" column to read 0.51km.

The "Other Particulars" column to read "Between SD 3713 1314 and SD 3696 1319 the footpath has a stone and grass surface, is 3 metres wide and has no limitations".

### **Criteria to be 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.

The applicant is concerned about the security of his property and says that he has experienced a number of problem associated with the public footpath. These include:-

- Being woken in the early hours of the morning by "dog men" who sometimes use the footpath to access the fields near the property.
- Attacks by walkers' dogs on the horses he keeps in the small paddock just west of the section of path between points B and C.
- People removing signs requesting that dogs are kept under control
- A family using a hole in a hedge and walking in front of the applicant's house.
- The applicant's dogs and his neighbour's dogs being woken on a regular basis causing disturbance to the residents of the two properties.

The proposed diversion would have the effect of moving the footpath further away from the applicant's house. This would undoubtedly have a positive effect on reducing any disturbance from footpath users which currently affects his enjoyment of the land. It is therefore reasonable to conclude that the proposed diversion is in the interests of the owner 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. It is advised that the western end of Scarisbrick Footpath 6 terminates at point A on Scarisbrick Footpath 7 and this will be diverted to a new termination point at point E on Scarisbrick Footpath 7. Scarisbrick Footpaths 6 and 7 form a continuous footpath and therefore the altered termination point will not have any negative impact on people following the line of the recorded footpath. In fact the new termination point at E is likely to be more convenient.

It should be noted that the section of Scarisbrick Footpath 7 between points A and E is not due to be diverted as part of these proposals. As a result of the diversion Scarisbrick Footpath 7 would terminate at point A which appears to be a dead-end with no connecting public right of way. The reason for not including this part of Scarisbrick Footpath 7 in the proposed Order is because of the existing access track at point A which leads in a north north easterly direction from point A to Jacksmere Lane. There is some indication that this access track is used by the public as a footpath, and therefore it is possible that the track is deemed to have been dedicated as a highway by virtue of Section 31 of the Highways Act 1980. Section A to E will be retained so that if evidence emerges of a connecting footpath it can be connected to the existing rights of way network. Therefore the applicant was advised not to apply to divert the relevant part Scarisbrick Footpath 7 because it would be prejudicial to any future claim to add a connecting footpath to the Definitive Map. Alternatively it may be that such use is permissive but it is still appropriate that the connection via A-E is retained.

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. A site visit has been carried out and the proposed diversion follows an existing track constructed in stone, which in places has grassed over. This represents a good surface for a new right of way which forms part of a rural rights of way network. Therefore, apart from signposting the new route, it is not expected that any work would be required to provide the new route.

There are currently no stiles, gates or other limitations on the existing footpath and none are proposed on the proposed diversion.

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, or they have given their consent.

The applicant jointly owns the land crossed by a majority of the existing route. The consent of the joint owner is expected to be forthcoming and at the time of writing this report, their written agreement is awaited. The owners of the remainder of the existing route and all of the alternative route are a large horticultural company and the land is used for growing turf. They have confirmed that they are in agreement with the proposal and would not raise any objection in the event that a Diversion Order is made.

In considering the proposals the County Council has a duty to have regard to agriculture, forestry and nature conservation. The proposed footpath runs along a wide track and does not introduce the footpath to land not already crossed by the same path. 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 applicant has agreed to bear all advertising and administrative charges incurred in the Order making procedures and to defray the costs of any compensation which becomes payable. The applicant has also agreed to pay any costs which are incurred in bringing the new site of the path into a fit condition for use for the public.

With respect to the costs of compensation the proposed diversion crosses land not owned by the applicant. The owner of the land, a large horticultural company, has written to say that it will not object to the proposed Order. The company has given no indication that it will claim compensation for any loss in value of its land, but if it does the Council would be able to recover any compensation costs which become payable from the applicant by virtue of the agreement referred to in the paragraph above.

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 as described in the following paragraphs.

Under the criteria for confirming an Order the Council must be satisfied that the new path is not substantially less convenient to the public. In this case the proposed diversion is more convenient for people following the recorded rights of way because it is a more direct route than the existing.

In addition, the Council must have regard to the effect on public enjoyment of the footpath as a whole before it may confirm an Order. The diversion has the effect of making Scarisbrick Footpath 6 more coherent by following the line of an existing track along its whole length, rather than taking a more circuitous route via Hooton's Farm. There are good views from the proposed diversion over the large fields which are used for growing turf. There appears to be no reason to believe that there will be any loss of public enjoyment as a result of the diversion.

The Council must also consider the effect of confirming an Order on land served by the existing right of way. In this case a property known as The Barn is served by the existing right of way in addition to Hooton's Farm, but it is believed that both properties have private vehicular rights over the section of footpath A-B. These private rights are not affected by the proposed diversion. The owners of The Barn have been consulted and have not raised any objection.

Similarly, before confirming an Order the Council must consider the effect which the proposed would have on the land over which the new footpath is created. Any effect of the new footpath is likely to be negligible because the land is currently used as an access track for horticultural machinery. It is not expected that there will be any conflict between the use of the track for pedestrian traffic, which is likely to be infrequent and the owners vehicular use of the track. There is the possibility that the right of way brings with it some problems such as people allowing their dogs to roam free over the land and dog fouling. However, the unaffected part of Scarisbrick Footpath 6 crosses the field and therefore any negative effects by increasing the length of the path through the field would only be marginal. The proposed footpath could affect alternative uses of the land but the owners have been consulted and have not raised any objection to the existing track being used as a footpath.

It is 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 there will be no gates or stiles installed across the new path.

Further, it is advised that the effect of the proposed Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'.

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 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 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-08-15-06		Mrs Ros Paulson

Reason for inclusion in Part II, if appropriate

N/A