

**REPORT FROM: ENVIRONMENTAL SERVICES MANAGER**

**TO: BRIERFIELD AND REEDLEY COMMITTEE**

**DATE: 2<sup>ND</sup> JULY 2019**

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**PROPOSED DIVERSION OF PARTS OF PUBLIC FOOTPATHS BRIERFIELD 30  
AND 32 AT HIGH WITHENS (LITTLE TOM'S FARM)**

**PURPOSE OF REPORT**

The Committee is invited to make a decision on whether a diversion order which has been made by the Council should be sent to the Secretary of State to be confirmed.

**RECOMMENDATION**

That the Borough Council of Pendle Part of Public Footpaths 30 and 32 Brierfield Public Path Diversion Order 2019 be sent to the Planning Inspectorate with all accompanying documentation required including the objection which has been received.

**REASONS FOR RECOMMENDATION**

The Council is not legally entitled to confirm a diversion order if any objections have been made. Nevertheless, there are good reasons why the footpath should be diverted and therefore we have made the recommendation in order that an independent inspector on behalf of the Secretary of State should make a decision on whether to confirm the order.

**ISSUE**

1. When an objection has been received to an order there are two possible decisions which the Council can take. It can either refer the order to the Secretary of State as recommended by this report, or it can decide not to confirm the order, in which case the recorded rights of way network would not be altered.

**BACKGROUND INFORMATION**

2. High Withens was built in the early 1970's as a new house attached to the existing buildings at Little Tom's Farm. The buildings are located just inside Pendle's boundary with Burnley District and the nearest road access is Little Tom's Lane off Hillingdon Road in the Briercliffe area of Burnley. The site is within an area open land with urban settlements to the

north, west and south. The area is crisscrossed with public rights of way, including footpaths 30 and 32, which notwithstanding a small detour around the obstructed section of path, are well used by the numerous people, including the residents of the surrounding areas.

3. High Withens was evidently built across the public footpath and consequently the public have had to find alternative routes to avoid the obstruction. The circumstances surrounding the original building work which took place have not been investigated in connection with this application. There is no documentary evidence that the footpath was formally diverted at the time of the building work, and therefore the line of the path which is recorded on the Definitive Map, and which has been built over, is still a public right of way.
4. The application to divert the footpath was made by two of the Executors of the legal owner of the property. The application would establish new public rights of way which avoid passing through the house, and the garden which surrounds it. Otherwise it would clearly prove difficult to sell a property where a public right of way exists to walk through the property.

## **THE PROPOSALS**

5. The diversion proposals are shown on a map which is included as Appendix 1 to this report. The proposal is that part of the existing line of footpath 30 shown as a solid bold line A – B is diverted to a new line shown by bold dashes on the line A – C and that part of footpath 32 shown by the solid line C - B – D is diverted to the dashed line C - D.
6. The new footpath would be 2 metres wide. There are currently no proposals to carry out any resurfacing on the new footpath.

## **THE RESULTS OF INFORMAL CONSULTATION**

7. Before making the order we wrote to consult various bodies on the proposals including local walking groups, Brierfield Town Council, Lancashire County Council, the ward councilors and various public utility companies. We also consulted the beneficial owners of the property.
8. Virgin Media have identified a duct crossing the line of the proposed diversion carrying fibre optic/coaxial and or 240v power cables. Their comments were not treated as an objection to the proposals and there were no other objections.

## **THE DECISION TO MAKE A DIVERSION ORDER**

9. The Council has powers to make a diversion order which are contained in Section 119 of the Highways Act. Under the Councils Scheme of Delegation, applications which meet certain criteria can be determined by the Legal Manager.
10. A report on the case was prepared for the Councils Legal Manager who made a decision on the Council's behalf to make a diversion order as per the proposals (see Appendix 2). The order was subsequently made and advertised in accordance with the relevant regulations.

## **THE OBJECTION TO THE ORDER**

11. The following objection was received during the statutory 4 week period. Some details from the letter have been excluded.

“Dear Sir/Madam, On behalf of ....I .....strongly object to the proposed footpath diversion at Little Tom's Farm (grid reference SD85923552). This long standing footpath and right of way does not transverse any buildings or gardens as claimed in the application, as we

understand this land is common land which is registered under Section 4 of the Countryside and Rights of Way Act 2000.”

“The declared intention is simply to redirect foot traffic and a land grab exercise to facilitate access to new buildings to the rear and front of the property which foundations have already been laid, enclosure of common land is illegal under the Countryside and Rights of Way Act 2000. We trust that Pendle Borough Council will refuse this application. [excluded paragraph]...Yours sincerely, [12 names]”

## COMMENTS ON THE OBJECTION

12. Our comments on the objection are given in the following reply which was sent to the objector on 24<sup>th</sup> April 2019.
13. “Dear....I refer to your letter of 5th April 2019 in which you object to the above order. As far as I am aware, there have been no other objections and therefore I am writing to explain what happens next and to respond to the specific points raised in your letter.”
14. “When a duly made objection to a diversion order has been received then the Council is not legally entitled to confirm the order (i.e. it cannot complete the diversion process). Either we can make a decision to go no further with the process, or we can refer the order to the Secretary of State who would appoint an independent inspector to make a decision on whether to confirm the order. The inspector would either hold a local hearing to consider the arguments for and against before making a decision, or the parties involved (i.e. the Council as the order making authority and yourself as the objector) would be invited to make submissions in writing.”
15. “The background to the case is that High Withens was built on the end of Little Tom’s Farm in the early 1970s. If you look at the roof slates you can clearly see where the old building ended. Unfortunately, the house was built directly on the line of the public footpath as recorded on the Definitive Map for Lancashire. The Definitive Map is conclusive as to the position and status of the public rights of way which are shown on it, and therefore I can say with complete confidence that High Withens is an unlawful obstruction to the footpath. The Council’s policy on long standing obstructions of this nature provides for the current owner to apply formally to divert the footpath so long as there is a suitable alternative route nearby. The aim of the diversion in this case is simply to resolve this legal situation which arose in the 1970s. There have never been any complaints about the obstruction and there are no plans for any changes on the ground to take place.”
16. “In relation to your letter I can assure you that before making a diversion order we checked the position of the buildings and gardens at High Withens very carefully to determine that they do in fact obstruct the recorded line of the public footpath. We also examined older Ordnance Survey maps to confirm that the footprint of the buildings at Little Tom’s Farm originally excluded the site of High Withens.”
17. “Further to your letter I checked Section 4 of the Countryside and Rights of Way Act 2000 which you referred to. Section 4 refers to the duty of the Countryside Agency to prepare maps showing registered common land. The successor body to the Countryside Agency which has taken over this duty is Natural England, and the maps showing registered common land are available on its website. I have checked the maps and none of the land near Little Tom’s Farm is shown as registered common. Therefore, there doesn’t appear to be any impact of the proposed diversion on any common land.”
18. “You mention in your letter that foundations had been laid in the vicinity of the property. I am not aware of any development proposals and I have not seen the foundations you referred

to, but if you believe that there is unlawful development taking place then this should be reported separately to the Council's Planning department to investigate."

19. "I also note that in your final paragraph that you have requested that your name, and the names of the other people in your letter are not made publicly accessible. Unfortunately, your letter of objection is an important document associated with this order and as such, it would be available for public inspection at the Council's offices if the order is sent to the Secretary of State to be determined. Furthermore, as far as I am aware your letter cannot be substituted with a new letter because the statutory period for making objections has ended."
20. "If you decide to maintain your objection then I suggest that you contact the other people named in your letter to let them know that we cannot keep your letter of objection confidential. If you or any of the other people named have not given you consent for their personal information being shared in this way then I suggest that you should withdraw your objection."
21. "We always give careful consideration to any objections received to ensure that proposals to divert public rights of way do not significantly inconvenience the public. In this case the legal process of diverting the footpath is being carried out decades after the changes on the ground took place. The route of the new path is already in regular use and I cannot see how anyone is inconvenienced by using of the new route compared to the recorded footpath. Unfortunately, I don't see the merit or relevance of the arguments you have put forward for the reasons explained elsewhere in this letter, and therefore I would respectfully ask you to give serious consideration to withdrawing your objection. By withdrawing your objection, the Council would be able to avoid the time consuming (and therefore expensive) process of referring the matter to the Secretary of State. We would also be able to keep your personal details confidential."
22. "If you wish to discuss any aspect of the case then you can find my contact details at the top of this letter. If you decide to withdraw your objection then please do so in writing. If we have not heard from you by Friday 17th May then I will refer this matter to the relevant Council officer or Committee to make a decision on sending the order to the Secretary of State for determination. Yours sincerely, Tom Partridge, Countryside Access Officer"
23. There has been no response to this letter.

## IMPLICATIONS

- Policy:** The proposals to divert this footpath are in accordance with the Council's Public Right's of Way Enforcement Policy whereby a public path diversion order is seen as an acceptable alternative to securing the removal of an obstruction if the obstruction was not caused by the current owner, the obstruction is of a scale and nature that there is no reasonable prospect of removing it, and the proposed diversion safely satisfies the requirements of the relevant legislation.
- Financial:** Government guidance to local authorities is that the costs in staff time associated with referring a disputed order to the Secretary of State cannot be recovered from the applicant. If we decide not to refer the order to the Secretary of State then under the same guidance we would forfeit the costs in staff time and the advertising expenses which have already been incurred.
- Legal:** If the Council decides not to refer the diversion order to the Secretary of State then public footpath 32 will remain obstructed. This will have significant implications for the owners of the property who have been unable to sell it. There are also

implications for the highway authority, i.e. Lancashire County Council, which has a legal duty to keep public rights of way free of obstruction.

**Risk Management:** None directly as a result of this report.

**Health and Safety:** None directly as a result of this report.

**Sustainability:** None directly as a result of this report.

**Community Safety:** None directly as a result of this report.

**Equality and Diversity:** None directly as a result of this report.

## **APPENDICES**

Appendix 1 Proposals Map

Appendix 2 Report to the Democratic and Legal Manager dated 15<sup>th</sup> February 2019

## **LIST OF BACKGROUND PAPERS**

- Report to the Democratic and Legal Manager dated 15th February 2019
- The Borough Council of Pendle Part of Public Footpaths 30 and 32 Brierfield Public Path Diversion Order 2019