

**REPORT FROM: NEIGHBOURHOOD SERVICES MANAGER**

**TO: HEAD OF LEGAL SERVICES**

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**Report Author: Tom Partridge**  
**Tel. No: 01282 661059**  
**E-mail: tom.partridge@pendle.gov.uk**

**PROPOSED DIVERSION OF PARTS OF PUBLIC FOOTPATHS 30 AND 32  
BRIERFIELD AT HIGH WITHEMS, LITTLE TOM'S FARM**

**PURPOSE OF REPORT**

The Democratic and Legal Manager is asked to determine a proposal to make a public path diversion order under powers delegated to him.

**RECOMMENDATIONS**

- 1) That the Democratic and Legal Manager, acting under powers delegated to him, makes an order under Section 119 of the Highways Act 1980 to divert part of Public Footpath 30 Brierfield and part of Public Footpath 32 Brierfield as detailed in this report and the map attached.
- 2) That if there are no objections the order be confirmed as an unopposed order.

**REASONS FOR RECOMMENDATIONS**

- 1) To allow the administrative arrangements for diverting the footpath to be made in accordance with the Council's scheme of delegation.

**ISSUE**

1. We have received an application to divert two public footpaths. The Council has powers to make a diversion order which are contained in Section 119 of the Highways Act. Under the Council's Scheme of Delegation, applications which meet certain criteria can be determined by the Democratic and Legal Manager.
2. The existing footpath is currently obstructed and therefore we also need to consider the Council's enforcement policy on public rights of way.

**THE PROPOSALS**

3. The 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.
4. The new footpath would be 2 metres wide. There are currently no proposals to carry out any resurfacing on the new footpath.

## **BACKGROUND INFORMATION**

5. 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 are well used by the numerous residents in the surrounding areas
6. 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. Whether or not the matter was investigated at the time there is no trace that the footpath was formally diverted and therefore the line of the path which is recorded on the Definitive Map passes through the building and consequently remains as a public right of way.
7. The application to divert the footpath has been made by one of the Executors of the legal owner of the property. The application will establish a new public right of way which avoids passing through the house and the garden which surrounds it.

## **DELEGATED POWERS TO THE LEGAL AND DEMOCRATIC MANAGER**

8. Under paragraph 12 of the Council's scheme of delegation the Democratic and Legal Manager has delegated authority to make a decision where:
  - a) Relevant local rights of way user groups, other local Councils, ward councilors, statutory undertakers, landowners and owners of neighbouring properties have been consulted on the proposals and no objections have been received
  - b) The proposals satisfy the legislative criteria and the local criteria for an order or orders to be made, and
  - c) The applicant (if one exists) has agreed to pay the full administrative cost for making the necessary public path order or orders.

## **THE RESULTS OF INFORMAL CONSULTATION**

8. We have written 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 have also consulted the beneficial owners of the property.
9. Virgin Media have identified a duct crossing the line of the proposed diversion carrying fibre optic/coaxial and or 240v power cables. Their comments are not being treated as an objection to the proposals and there have been no other objections.

## **ASSESSMENT OF THE PROPOSED ORDER AGAINST THE LEGAL CRITERIA**

10. Section 119(1) of the Highways Act 1980 states that:

*"Where it appears to a council as respects a footpath or bridleway in their area [...] that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—*

*(a)create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and*

*(b)extinguish, as from such date as may be in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

*An order under this section is referred to in this Act as a “public path diversion order”*

11. The proposals are in the interests of owners of the land so that the site of High Withens can be used lawfully as a residential property. In legal terms the highway authority has a duty to keep all rights of way open to the public and the legal mechanisms exist by which obstructions can be removed – including substantial obstructions such as a residential building. In practical terms anyone wishing to purchase a house would find it difficult to obtain a mortgage with a public right of way passing through it.

12. Section 119(2) states:

*“A public path diversion order shall not alter a point of termination of the path or way—*

*(a)if that point is not on a highway, or*

*(b)(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.”*

13. The termination point of footpath 30 will be altered by a few metres to a connecting point on footpath 32. We are satisfied that the new termination point is substantially as convenient.

14. Section 119(3) states:

*“Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—*

*(a)specify a date under subsection (1)(a) above, and*

*(b)provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.”*

15. We do not foresee that any work will be required on the site of the new footpath.

16. Section 119(4) states:

*“A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.”*

17. The new footpath will pass through a gap in an existing boundary just south of point C but the applicant told us that the gap would be the full width. This is at least as wide as the footpath and therefore it is not necessary to include this gap in the order as a limitation.

18. Section 119(5) states:

*“Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—*

*(a)any compensation which may become payable under section 28 above as applied by section 121(2) below, or*

*(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or*

*(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.”*

19. As part of the application the owner of the land has entered into an agreement with us in respect to Section 119(5) paragraphs (a) and (b). We act on behalf of the highway authority by agreement and therefore we do not consider that it is necessary to enter into an agreement with the applicant in respect to Section 119(5)(c).

## **ASSESSMENT OF THE PROPOSALS AGAINST THE TESTS FOR CONFIRMING AN ORDER**

20. If there are objections to the diversion order then the order may be passed to the Secretary of State for the Environment who would appoint an independent inspector to consider the above criteria and a number of other legal tests. If there are no objections then we may confirm the order, but we are required to consider same tests as the Secretary of State before confirming an unopposed order.

21. Section 119(6) of the Highways Act 1980 states that:

*“The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—*

*(a) the diversion would have on public enjoyment of the path or way as a whole,*

*(b) the coming into operation of the order would have as respects other land served by the existing public right of way, and*

*(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,*

*so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.”*

22. The proposed diversion is fractionally longer but with regards to the gradient of the path, the width, surface condition then the new path is no less convenient.
23. With regards to the public enjoyment of the path as a whole the diversion will have only minimal effect on the views which can be enjoyed.
24. With regard to the impact of the diversion on land served by the existing right of way we are not aware of any negative impact on the interests of any owner or occupier.
25. We must also consider the impact of the diversion on the land crossed by the new footpaths. The impact is minimal because the new footpaths do not go into any other land.
26. Section 6A states:

*“The considerations to which—*

*(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and*

*(b)a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*

*include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way”*

27. The Lancashire County Council, Blackpool Council and Blackburn with Darwen Borough Council Rights of Way Improvement Plan 2005 has been consulted. None of the policies in the plan has direct relevance to the circumstances of this diversion application.

## **CONCLUSIONS**

28. The proposal satisfies the legislative criteria and there have been no objections from the groups we have consulted.
29. With regards to making a diversion order rather than securing the removal of the obstruction the Council's Public Rights of Way Enforcement Policy means that a diversion is an acceptable to alternative to enforcement action where the obstruction is not a deliberate attempt by the current owner to interfere with the public's use of the route, the obstruction is of a scale and nature that there is no reasonable prospect it can be removed, and the proposal satisfies the criteria of the relevant legislation. The circumstances of this case satisfy the requirements and therefore the proposed diversion is an acceptable alternative to enforcement.
30. It is therefore recommended that a decision is made under delegated powers to make the order as set out in this report.

## **IMPLICATIONS**

**Policy:** None arising directly from the report.

**Financial:** If we receive objections to the proposed diversion order then there are additional costs in staff time associated with referring the diversion order to the Secretary of State. These costs cannot be lawfully recovered from the applicants. However we do not anticipate any objections.

**Legal:** None arising directly from the report.

**Risk Management:** There seems to be a low risk from this application of objections being received. If there are objections then the risk of the Secretary of State making a decision not to confirm the order seems to be equally low.

**Health and Safety:** None arising directly from the report.

**Sustainability:** We have considered the effect of the proposals on the flora and fauna of the site and we do not foresee any negative implications.

**Community Safety:** None arising directly from the report.

**Equality and Diversity:** None arising directly from the report.

## **APPENDICES**

Appendix 1: Proposals Map.

## **LIST OF BACKGROUND PAPERS**