

REPORT FROM: ENVIRONMENTAL SERVICES MANAGER

TO: NELSON COMMITTEE

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**THE PROPOSED DIVERSION OF PUBLIC FOOTPATH 70 NELSON AT
MARSDEN HALL ROAD SOUTH, NELSON**

PURPOSE OF REPORT

The purpose of this report is to seek the Committee's authorisation to make an order to divert part of public footpath 70 in connection with the planning permission which has been granted for the construction of 98 houses at Further Clough Head, with access from Marsden Hall Road South.

RECOMMENDATIONS

- (1) That the Head of Legal Services be authorised to make an order under Section 257 of the Town and Country Planning Act 1990 to divert part of public footpath 70 in accordance with the details set out in this report.
- (2) In the event that there are no objections to the making of the order and on the completion of works on the new path to a satisfactory standard that the Head of Legal Services be authorised to confirm the order.
- (3) In the event of duly made objections being received and not subsequently withdrawn that the Head of Legal Services be authorised to send the order to the Secretary of State to be determined.

REASONS FOR RECOMMENDATIONS

- (1) There are good grounds for making a diversion order in accordance with the criteria in the legislation, as set out in the body of this report.
- (2) The proposed diversion order can only come into effect if it has been confirmed. If there are no objections then the Council is entitled to confirm the order. The recommendation is that this process is delayed until completion of works on the new footpath in order that the advertising of confirmation can include the date on which the diverted footpath will be opened.

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| (3) | If an objection is made within 28 days of the order being advertised, then it cannot be confirmed by the Council unless the objector withdraws their objection. In the event of objections which are not subsequently withdrawn, the order would need to be sent to the Secretary of State to decide if the diversion should go ahead. |
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ISSUE

1. Planning permission has been granted for the extension of Marsden Hall Road South for an extensive housing development at Further Clough Head.
2. The proposed extension of Marsden Hall Road South is on a different alignment to public footpath 70 which runs along Marsden Hall Road South and continues into the fields beyond. The extensive earth works which are proposed for the new road mean that the footpath would no longer exist as a walkable route. It would be up and down the steep embankments which are needed either side of the new road. Therefore, the footpath will have to be diverted for the development to be carried out. Otherwise, it would be unlawful to carry out work which disturbs the surface of the footpath so as to make it inconvenient for public use.
3. The planning permission for the development does not give lawful authority to divert a public right of way, but the Town and Country Planning Act includes the necessary provisions for the Council to make a diversion order to allow this to happen.
4. The Council's Housing, Health and Engineering Services has applied for the diversion.
5. A diversion order made under the Act provides for matters such as the route of the diverted footpath, its width and the construction specification. The diversion order process does not include looking again at the merits of the planning permission which has been granted.

BACKGROUND

6. Public footpath 70 runs along the footway of Marsden Hall Road South. Where the road currently ends it continues as a tarmac footpath along the edge of a wide strip of land which was left vacant for the future extension of the road. After a metal kissing gate at the end of this strip of land the footpath enters farmland. It crosses an access causeway over Clough Head Beck, where there are steep slopes down on either side of the footpath, with the beck running through a culvert beneath. After crossing the causeway the footpath turns and starts up hill. The footpath continues over farmland heading away from Nelson and towards Southfield. The path is well connected with other public rights of way. It is therefore an important route for local people, particularly in the Marsden Hall Road South area, to be able to access to the countryside and nature.
7. Outline planning permission reference 17/0427/OUT was granted for the erection of up to 200 dwelling houses, with open space provision, estates roads, landscaping and emergency access road with access from Marsden Hall Road.
8. Reserved matters planning permission reference 19/0740/REM was granted for the erection of 98 dwelling houses (Phases 1-3), with open space provision, estate roads, landscaping and emergency access road with access from Marsden Hall Road (Appearance, Layout, Landscaping and Scale).
9. At the time the reserved matters planning application was made it was clear that the footpath would need to be diverted for the development to be carried out because of the extent to which the land crossed by the footpath would be re-formed to construct the new road.

PROPOSALS

10. The proposals are shown on the map in Appendix A.
11. The proposed diversion order will provide for a section of the existing footpath to be stopped-up (i.e. closed) between an existing metal kissing gate at point A on the map, and a point south of this marked by the letter B. This is the section of footpath which would be made impractical for public use by constructing the extension of Marsden Hall Road South in accordance with the planning permission.
12. The diversion order would create a new footpath from point A, crosses over what will be the new road to point C and then runs on what will be the new footway to rejoin the existing footpath at point B.
13. Part of the footpath between points B and D will not be diverted, but would nonetheless be affected by the intended construction work. It is proposed that this part of the footpath is improved as provided for in the legislation by the formation of a constructed footpath with the appropriate level of drainage to ensure that surface rain water is not channeled down the path.
14. The new footpath will be 2m wide. The section running on the footway of the new road will be constructed with a tarmac surface. Where the footpath leaves the new road and resumes as a countryside footpath it will be constructed as a 2m wide footpath with compacted stone chippings to a depth of at least 150mm. The specification will include any drainage which is required.

INFORMAL AND STATUTORY CONSULTATION

15. The Council usually carries out an informal six-week consultation process with footpath user groups, ward councillors, town, parish and county councils, and utility companies. The purpose of the consultation is to identify any potential issues with diversion proposals at an early stage.
16. We have not carried out the informal consultation process with regards to this application because the applicant wishes to start work as soon as possible on the new road, and the 6 week period for this consultation to take place would result in an unacceptable delay.
17. If the Council makes the diversion order as applied for there is a statutory 28 day period when the order is advertised in the Nelson Leader, site notices are displayed at either end of the footpath to be diverted and statutory consultees are notified of the diversion proposals.
18. There has already been wide public consultation on the planning proposals to construct the new road, but the impact on the footpath may not have been highlighted.

ASSESSMENT OF THE PROPOSALS AGAINST THE LEGAL CRITERIA

19. Under Section 257 of the Town and Country Planning Act 1990 the Council may make an order to authorise the diversion of a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission which has been granted.
20. The proposed estate road could not be built in accordance with the planning permission which has been granted without diverting the footpath because of the proposed embankments on either side of the road. This would make the line of the existing footpath very inconvenient for public use, which without the diversion would make it unlawful to carry out the work.
21. The proposed diversion will not significantly increase the length of the footpath and the plans submitted indicate that the construction of the new footpath will include a reasonably

gentle gradient of path where the proposed diversion leaves the proposed estate road to rejoin the existing right of way.

THE COMING INTO OPERATION OF THE PROPOSED DIVERSION

22. The usual procedure after a diversion order has been made and advertised is, if there are no objections, that the existing footpath stays open whilst construction starts on the new footpath. The diversion would only come into effect when the new footpath has been built, and in this way there is no interruption for pedestrians.
23. In this case it is not practically feasible to construct the new footpath whilst the existing footpath is kept open. The new road and the new footpath are all part of the same engineering project and inevitably the initial earth moving works will have to take place at the same time. Therefore the project start date will be dependent on Lancashire County Council making an order to temporarily close the existing footpath to enable the construction work to be carried out.
24. The timing of any temporary closure is important because the construction work will involve the physical destruction of the causeway which the footpath runs on. After making the diversion order there is the 28 day formal consultation period as referred to above. The temporary closure and the start of work can only be expected to take place at the earliest, after the formal 28 day notice period has been completed.
25. If there are objections during this period then there would still be some uncertainty as to whether the diversion could be confirmed until the objections are heard (unless they are subsequently withdrawn). In this case any temporary closure of the footpath, and the proposed construction work for the new road would need to be delayed until a decision on confirming the diversion order is made by an inspector on behalf of the Secretary of State.
26. It is intended that as soon as possible the new footpath on the line A-C-B-D could be opened safely even while development work on the remainder of the site continued.

CONCLUSIONS

27. Once a planning application has been made, then on receipt of a separate diversion application, the Council can make a diversion order under Section 257 of the Town and Country Planning Act 1990 if the footpath needs to be diverted for the development to be carried out.
28. In this case the footpath would be physically destroyed by the construction of a new road and therefore the proposals satisfy the criteria because the path needs to be diverted for the development to be carried out.
29. We generally advise applicants that it takes between 18 months and 2 years for an application to divert a footpath. In this case the application was made very late (on 26th June 2020) considering that the applicant intends for work on the new road this August.
30. As a result of wishing to help with this significantly reduced timescale this report has been prepared without the benefit of any comments which may have been received by carrying out our normal informal consultation with a number of potentially interested groups. However, the proposals represent a minor alteration to the line of the footpath and the proposals are completely in line with the legislative criteria. In the circumstances it is unlikely that the informal consultation would have provided any useful additional information. The public are not disadvantaged because the formal consultation which has yet to take place will provide the opportunity for anyone with any comments to be heard.

31. The majority of organisations which we would have consulted during the informal consultation stage are also statutory consultees. Therefore the proposals will still be subject to full scrutiny by all interested parties.
32. Furthermore, the footpath will be constructed to a high specification, it will be graded to establish as gentle an incline as possible as it rises to join the unaffected part of the footpath, and it will be 2 metres wide which will allow people walking in opposite directions to pass each other comfortably, with just enough room to allow for 1 metre social distancing.
33. As a result we have recommended that the Committee approved the proposed diversion order.

IMPLICATIONS

Policy: None directly related to this report.

Financial: The costs associated with dealing with an application to divert the footpath, and the costs of making and confirming a diversion order will be re-charged to the applicant. The order will specify that the work required to construct the new path will be carried out by the applicant. The Council's Housing, Health and Engineering Services has secured a substantial grant from Homes England for the construction of the road. The grant will cover the staff and administration costs of the diversion.

Legal: Public rights of way are protected by law from obstruction and from any disturbance to the surface which would make using them inconvenient. Therefore, any proposal to divert a footpath must follow a legal process which allows for the public to be consulted formally on the proposals, to raise any objections, and for those objections to be heard by an independent inspector. The proposals are in accordance with the legislation and therefore we anticipate that the order would be confirmed in the event of objections.

Risk Management: None directly related to this report.

Health and Safety: We would generally require that the applicant carries out construction work on the new footpath so that this may be opened to the public before the old footpath is closed. In this case the new road which will affect the line of the old footpath and the new footpath are in close proximity and the construction of both will necessarily take place at the same time. The operation of heavy plant machinery could pose a health and safety risk to pedestrians. To mitigate this risk it is anticipated that the existing footpath will be closed by a temporary closure order to enable the work to be carried out safely.

Sustainability: None directly related to this report

Community Safety: None directly related to this report.

Equality and Diversity: People with disabilities such as limited mobility or visual impairments can be affected by poor footpath design. The proposed diversion will maintain the highest design standards to prevent anyone from being disadvantaged as a result of these proposals.

APPENDICES

Appendix 1 – Proposals Map

LIST OF BACKGROUND PAPERS

None.