

REPORT FROM: ENVIRONMENTAL SERVICES MANAGER

TO: NELSON, BRIERFIELD AND REEDLEY COMMITTEE

DATE: 29th NOVEMBER 2021

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

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

PURPOSE OF REPORT

To seek the Committee's approval for the Council to abandon an order made under the Town and Country Planning Act and to make a new order under the Highways Act 1980.

RECOMMENDATIONS

- (1) That the Committee resolve to abandon the Borough Council of Pendle Part of Public Footpath 70 Nelson Public Footpath Diversion Order 2020 made on 13th July 2020 under Section 257 of the Town and Country Planning Act 1990.
- (2) That the Head of Legal Services be authorised to make an order under Section 119 of the Highways Act 1980 to divert part of Public Footpath 70, Nelson.
- (3) In the event that there are no objections to the making of the order that the Head of Legal Services be authorised to confirm the order. In the event of objections which are made but not subsequently withdrawn, that the order be sent to the Secretary of State to decide if the diversion should go ahead.

REASONS FOR RECOMMENDATIONS

- (1) The order made on 13th July cannot be confirmed because the new footpath constructed on the site is not on the line shown on the diversion order map.
- (2) The existing order cannot be altered because the development, i.e. the construction of a new road, is substantially complete. However, the Council can make a new order under different legislation and this is what we recommend.
- (3) The Council can confirm the order if there are no objections. Otherwise it can only be decided by an independent inspector appointed by the Secretary of State

ISSUE

1. The Council has built a new road which extends from Marsden Hall Road South to the site of a proposed housing development.
2. The project involved substantial engineering operations which have significantly altered the topography of the site. We could see that the footpath would be affected by the construction of the road, so during the planning stage a diversion order was made to divert the footpath to what was considered the best position for it to run. However, on completion of the earth moving operations it became clear that the footpath would be better diverted to a different position. Once a development affecting a public right of way has been substantially completed the Council can no longer make a diversion order under the Town and Country Planning Act. However, we can use the provisions of the Highways Act 1980 to divert a footpath. This report is required for the Committee to authorise that an order be made under the Highways Act so that the footpath can be legally diverted onto the line of the “new” footpath as already constructed.

BACKGROUND

3. Public footpath 70 runs along the footway of Marsden Hall Road South. It continues along the new extension of the road and crosses Clough Head Beck, after which the footpath continues over farmland heading uphill 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.
4. The recorded line of the public footpath is now very steeply uphill due to the work associated with the construction of the new road. An alternative footpath has been constructed on the site which follows a more gentle gradient.

PROPOSALS

5. The proposals are illustrated on the map in Appendix A.
6. The proposal is that the section of footpath shown as a solid bold line A – B would be diverted to the bold broken line, also between points A – B. The new footpath already exists as a stone surfaced path. In the diversion order the new footpath will have a recorded width of 2.0m wide.

INFORMAL AND STATUTORY CONSULTATION

7. The Council usually carries out an informal six-week consultation process with footpath user groups, ward councilors, 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. We have not carried out the informal consultation process with regards to this proposal because it would seem to serve little purpose considering that the new footpath has already been built.
8. If the Council makes the diversion order as applied for there is a statutory 28 day period when the order is advertised in the local press, site notices are displayed at either end of the footpath to be diverted and statutory consultees are notified of the proposals.

ASSESSMENT OF THE PROPOSALS AGAINST THE LEGAL CRITERIA

9. The Council can make an order under Section 119 of the Highways Act 1980 if it is expedient in the interests of the owner or occupier of the land, or of the public. In this case the Council owns the land and it is in its interests that the footpath be diverted so that the section of site crossed by the footpath does not have to be restored to how it stood previously.
10. If the Council makes a diversion order and there are no objections then before we can confirm an order we are required by the legislation to consider:
 - a. whether the new footpath will not be substantially less convenient to the public

- b. the effect on public enjoyment of the path as a whole
 - c. the effect on land served by the existing footpath, and
 - d. the effect on the land crossed by the new footpath
11. The Council is also required to consider the proposals in relation to:
- a. any material provision of a rights of way improvement plan
 - b. the needs of agriculture and forestry, and
 - c. the desirability of conserving flora, fauna and geological or physiographical features.
12. The proposed diversion is longer than the existing footpath, but only slightly so by virtue of the curved layout which has been used to keep the gradient to a minimum. The line of the existing footpath before the construction work started was quite steeply uphill, and the new footpath is similarly uphill, but probably no steeper than the original footpath. There is no loss of convenience in the width of the footpath which will have a defined 2m width, compared to the original width which was undefined. The new footpath is surfaced and this many users may find this more convenient than the original unsurfaced footpath across grass. Overall, it seems reasonable to conclude that the route of the proposed diversion will not be substantially less convenient for footpath users.
13. The impact on public enjoyment of the footpath as a whole can be an important consideration if the views from the proposed diversion are much less enjoyable than the views from the existing footpath. For example, if there is an excellent view of open countryside from an existing footpath, but not the diversion. In this case the views from the proposed diversion are much the same as those which can be enjoyed from the original footpath. So this factor should not affect the Council's decision on whether to confirm the order when the time comes.
14. There seems to be no potential negative effect on the land served by the existing footpath (see paragraph 10c above), or on the land crossed by the new footpath (see 10d above).
15. There are no relevant provisions in Lancashire County Council's rights of way improvement plan. The land is not agricultural or forestry land, and nor does the land have any special designation for flora, fauna or geological features.

CONCLUSIONS

16. The Council knew that footpath 70 would need to be diverted in order for the construction of the new estate road to take place. We ensured that the necessary diversion order was made and advertised before any work which affected the footpath took place. There were no objections from the statutory consultees or in response to the public notices in the press or on site. As a result the footpath was temporarily closed for the work to take place, with the expectation that when the work was completed, the new footpath would have been created as envisaged by the original diversion order, in which case the order would have been confirmed. Unfortunately, this didn't work out because the engineering work did not achieve a slope with a gradient on which we could build the new footpath on the line shown in the diversion order.
17. The result is that we proposed to abandon the original diversion order, which has not come into effect, and to make a new diversion order as outlined in this report.
18. As far as we are aware there have been no complaints about the line of the new footpath as constructed and therefore we do not foresee any objections by making a new diversion order under the provisions of the Highways Act 1980. The proposed diversion will retrospectively formalize the changes which have already taken place on the ground. But this is a legal process and should objections be received then the proposals would be looked at closely by an independent inspector to decide whether the diversion should go ahead.

19. Our advice is that the proposals satisfy the criteria set out on the legislation and therefore our recommendation is that the Council should make the order as set out in this report.

IMPLICATIONS

Policy: None arising directly from this report.

Financial: The costs of the proposed diversion are being met by funding received from Homes England for the construction of the new road.

Legal: The highway authority has a duty to assert and protect the rights of the public. If the footpath is not diverted it could take legal action against the Council if it considered that the work which has affected the existing footpath causes an obstruction or has had the effect of making the path inconvenient for users. It is therefore in the Council's interest to formalize the new route.

Risk Management: By formally diverting the footpath the maintenance responsibility will be transferred from the route of the existing footpath to the route of the new footpath. Thereby any liability which arises if the route falls into disrepair would be Lancashire County Council's liability, rather than Pendle Council's liability as landowner as it is currently.

Health and Safety: None arising directly from this report.

Sustainability: None arising directly from this report.

Community Safety: None arising directly from this report.

Equality and Diversity: None arising directly from this report.

APPENDICES

Appendix 1 – Proposals Map

LIST OF BACKGROUND PAPERS

- Report to Nelson Committee of 6th July 2020
- The Borough Council of Pendle Part of Public Footpath 70 Nelson Public Footpath Diversion Order 2020 made on 13th July 2020