



REPORT FROM: ENVIRONMENTAL SERVICES MANAGER
TO: BARROWFORD AND WESTERN PARISHES COMMITTEE
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**PROPOSED DIVERSION OF PUBLIC FOOTPATH 25 GOLDSHAW BOOTH AT
CAPPERS FARM, NEWCHURCH-IN-PENDLE**

PURPOSE OF REPORT

A decision is required on whether to make a Diversion Order for part of Footpath 25 following an application which has been made to divert the footpath.

RECOMMENDATIONS

- (1) That Members decide either to approve or refuse the application.
- (2) In the event that the Committee approves the application that the Head of Legal Services be authorised to make a Diversion Order as illustrated on the proposals map.
- (3) If an Order is made and there are no objections that the Head of Legal Services be authorised to confirm the Order, or in the event of objections being duly made and not withdrawn be authorised to refer the Order to the Secretary of State to be decided.

REASONS FOR RECOMMENDATIONS

- (1) We are asking Members to consider the report and to make a decision one way or the other on whether the Council should make the Diversion Order applied for.
- (2) Committee authorisation is required to sign and seal a Diversion Order where there have been objections at the informal consultation stage.
- (£) A Diversion Order can only come into effect if it has been confirmed either by the Council or by the Secretary of State.

ISSUE

1. The Council has received an application to divert part of Public footpath 25 Goldshaw Booth at Cappers Farm near Sabden Fold. Public footpath 25 runs from a point on Well Head Road near Sabden Old Hall Farm and runs east passing Cappers Farm, Meadow Top and Lower Well Head before rejoining Well Head Road near Faughs Farm, as can be seen on the location map. The existing footpath which it is proposed to divert is shown on the proposals map by the solid line A – B and the proposed diversion is shown by the bold dashed line A – C – D – E – B. The site of the existing footpath and the proposed diversion can also be seen in a photographs document which has been prepared to be read alongside this report. The applicant owns all of the land crossed by the existing path and the proposed diversion.
2. The existing footpath crosses a short section of field from Point A to a poor quality, unauthorized stile where it joins the vehicular access road to Cappers Farm. There is an unauthorized field gate across the drive, and at the buildings the footpath passes through two gates, both unauthorized to enter and leave a penned area which encloses a small pond. The path goes through a car parking near a stable block and the farmhouse, and then crosses a low stone stile which we would recognize as a lawful limitation on the public right of way, before reaching point B at the far end of the buildings.
3. The proposed diversion route is across fields to the south of Cappers Farm with 1m wide pedestrian gates in the dry stone walls at points C and D. The footpath passes along the eastern edge of the garden through a point where a telephone pole stands leaving pedestrian access of 1.1m on one side and 1.3m on the other (so the overall width will be about 2.6m at this point. There will be a narrowing between the building and a tree stump at point E. Apart from these narrowings the new footpath would have a recorded width of 2 metres wide. The section between points D and E are likely to require surface improvements of stoning up to being the new footpath into a fit condition for public use.

Informal Consultation

4. We have consulted Lancashire County Council, Goldshaw Booth Parish Council, The Ramblers, the Peak and Northern Footpath Society and utility companies (gas, water electricity etc.).
5. Goldshaw Booth Parish Council has objected to the proposed diversion on the following grounds:
 - The current path is along firm (hard-standing) ground which is accessible all year round whereas the proposed diversion would be across boggy ground making the footpath difficult to traverse (often even in warmer seasons).
 - It is felt that the diversion would help set a precedent which would invite other property owners to do the same.
 - The diversion (and potential future diversions) would contribute to the disruption of the local historical footpath network.
 - A number of our Councillors do have land which footpaths cross so they understand the inconvenience of walkers etc. coming close to their homes (and the temptation to simply move the path) but they feel quite strongly that this is unnecessary and unfair to others.
6. The Peak and Northern Footpath Society (PNFS) has indicated that it would not object to the proposed diversion, but their Footpath Inspector who looked at the proposals made the following comments:
 - FP25 has been diverted twice in recent years - once in October 2011 (Meadow Top) and secondly in April 2017 (Lower Well Head farm). A further diversion would in my

opinion further erode the historical context of FP25 connecting these old buildings together and would result in a cumulative loss of historical character if three of the four farms have diversions from the line of the old footpath.

- The proposed route might expose a walker to the added risk of livestock. At the time I inspected the field was empty but there are fields around the vicinity containing cattle.
- The proposed route from point A to point C would be across a level field. The field, along with the second field (C to D) is already infested with rushes and these multiply very quickly causing difficult walking conditions if not properly managed – there is currently no evidence of any management of the rushes. Over time this could become a much more difficult terrain than the existing route and is a problem in other areas of the parish. The proposed route from D to B requires further clarification. There are in fact two tree stumps whereas the [Pendle BC] covering email refers to one. At point E there is a large hump on the proposed FP line which is caused by an old tree stump cut to just above ground level. This is an added hazard and if the proposal is to go ahead it needs to be professionally "stump grounded" out and that section levelled. The tree stump I assume [Pendle BC] are referring to is actually in the passageway between E and B and looks like it is outside the property boundary. Whilst the gap at waist height is around 1200mm the gap at ground level is nearer 1,000mm. Additionally, the route from D to E seems to be currently obstructed by a large evergreen tree and a telegraph pole so the line of the path remains unclear. As it stands without clarification the route from D to B requires further details to ensure the proposed FP isn't impeded in any way. What, if any, fencing / signposting is going to be installed in order to identify the FP line?
- This section of current FP25 is fine as it is (the reported stile excepted), good to walk and the only reason for this diversion it seems is to afford the landowner more privacy.

7. Since receiving these comments (i.e. in paragraph 6) the applicant has removed the vegetation near point D which means that we can clearly see the proposed new line of the footpath. The applicant has also completely removed a tree stump sited just south of the building at point E and has reduced a second tree stump so that a gap of 1.6m wide for the footpath is available. The applicant has also cut the rushes on the line of the footpath between points A and D. However, there is no obligation on owners to maintain the surface of a public footpath, so in the long term the footpath may be affected rushes or other vegetation and any maintenance requirements would be the responsibility of the highway authority (i.e. Lancashire County Council).
8. Electricity North West has power lines in the area of the proposed diversion but they have no objection to the proposals.
9. Openreach also has apparatus in the area of the existing footpath and the proposed diversion but they have not objected to the proposals.

Assessment of the proposals

10. The Council may make an order under Section 119 of the Highways Act 1980 to divert a public footpath. This is a power not duty and therefore we are not under any obligation to make a Diversion Order, even for proposals which meet the tests which are described in the legislation.
11. A diversion order may be made "where it appears to a council as respects a footpath [...] that in the interests of the owner [...] of the land crossed by the path [...] it is expedient that the line of the path [...] should be diverted...".

12. The existing footpath passes close to a stable block and the farmhouse, and it passes through the small pond enclosure area and a farmyard/ parking area. The diversion would provide greater security and privacy for the owners and would avoid possible problems from walkers and their dogs coming into close contact with the owners' horses, pets, family, friends and so forth. The proposals therefore appear to meet the test contained in the legislation of being expedient in the interests of the owners of the land.
13. When we assess any diversion proposals we have to disregard certain "temporary circumstances preventing or diminishing the use of the path", i.e. things present in the existing footpath which shouldn't be there. In this case we need to disregard the effect on the path of the poor timber stile near point A, the field gate across the drive when it is closed and the high pedestrian gates into and out of the pond area. These are all unauthorised, although with respect to the stile at Point A there is little doubt that a 1m wide pedestrian gate could be authorized for the purpose of stock control. It should be noted that owners of the land are not entitled to set up new gates and stiles across an existing footpath without the proper authorization which can only be granted in certain limited circumstances in connection with farming, forestry or the breeding and keeping of horses.
14. The existing footpath runs as a direct line between points A and B, the gradient is level, the surface is mostly a sealed surface with a good width available for public access. The width is not recorded and therefore if the need arose to protect the path from encroachment on either side then proving an adequate width could prove difficult. One of the advantages of any diversion is that we always record a width for the new path which then can be protected. The convenience of the existing path is affected by the stone stile near the farmhouse which we believe the owners are entitled to keep in the footpath. Some people find stiles difficult to use and for some people with disabilities stiles can present an absolute barrier.
15. The convenience factors affecting the proposed diversion are that the new path would be slightly longer and the surface would be entirely unmade which may indeed lead to poor conditions underfoot at wetter times of year. The Countryside Access Officer visited the site of the new path in May and October 2021, i.e. at times of year when the land would not be expected to be particularly wet, and when conditions were indeed good underfoot on both occasions. In the context of the footpath as a whole the majority is across unmade land, which is the most typical surface type for rural footpaths such as this.
16. Between points E and B there would be a slight reduction from the 2m width which we would usually consider as a minimum for a diversion.
17. There would be two gates across the new footpath, but these would represent a minimal inconvenience to people because the order would require that they are maintained to a high standard.
18. The Council can also assess the proposals according to the impact of the diversion on people's enjoyment of using the footpath. Cappers Farm, although not listed, is hundreds of years old and some people enjoy passing close to historic buildings such as this. The comments from Goldshaw Booth parish Council and PNFS have mentioned protecting the line of old historic rights of way for its own sake. However, with the footpath passing close to the house and areas which are normally private in large detached properties such as this, some people may find that the closeness to the property affects their enjoyment because they feel uncomfortable walking through these otherwise private areas.

19. The diversion will not adversely affect the countryside views which people can enjoy and some people may find it more enjoyable walking across the open land between points A and D compared to the existing path.
20. In terms of setting a precedent the Council routinely makes diversion orders in response to applications from landowners. We welcome applications and each is considered on its merits.
21. The telecoms and electricity apparatus in the area of the diversion appear not to be affected but utility companies sometimes rely on public rights of way for the right to dig up their equipment if they don't have a separate easement for this purpose. This is why we consult them and there is a risk of objections if diverting the footpath affects their rights to maintain underground apparatus. In order to minimize this risk we can include a clause in the order which protects any rights they may have on the line of the existing public footpath.

Conclusions

22. The Council may make the order because it is expedient in the interests of the owners but we also need to give careful consideration to the likely impact of the changes for footpath users in terms of convenience and enjoyment. If the Committee considers that the changes will not be substantially less convenient then a decision to make the order as applied for would be consistent with diversion orders made in many other cases. The Council is under no obligation either way and it would be entirely acceptable consider the objection from Goldshaw Booth Parish Council as grounds for refusal. However the reasons for refusal should be stated so that we can pass on this information to the applicant.

IMPLICATIONS

Policy: The policy implications are set out in the body of the report.

Financial: The applicant has agreed to pay the costs associated with making and confirming the diversion order applied for. However, in the event of an objection being received after making the order then the Council is not entitled to recover any costs in staff time associated with referring the order to the Secretary of State to be decided. This could amount to several hours' worth of staff time.

Legal: The Council may only make a Diversion Order if it is satisfied that the test set out in paragraph 11 of this report is met. If a Diversion Order is made, then should there be no objections the Council may confirm the order, but only if it is satisfied that the diversion is not substantially less convenient to the public and that it is expedient to confirm the order with respect to the effect on the public's enjoyment of the path as a whole, and the effect on anyone with an interest in the land crossed by the existing path or the diversion route. The Council is under a duty to have due regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features.

If one or more objections are received then the Council is not empowered to confirm the order but it may refer it to the Secretary of State to be decided. This would involve the preparation of written statements explaining why the Council believes the order should be confirmed and comments on the objections received.

Risk Management: There is a risk that this application will attract objections which has cost implications in staff time which cannot be re-charged to the applicant, as already mentioned.

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: The proposed gates on the route of the diversion may make the path slightly more accessible for people with limited mobility compared to the existing footpath, notwithstanding other existing stiles on the sections of the footpath which are not being diverted.

APPENDICES

Appendix 1	Location map
Appendix 2	Proposals map
Appendix 3	Photographs of the existing footpath and the proposed diversion

LIST OF BACKGROUND PAPERS: None.