

Appendix 2



REPORT FROM: ENVIRONMENTAL SERVICES MANAGER

TO: WEST CRAVEN COMMITTEE

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PROPOSED DIVERSION OF PUBLIC FOOTPATH 57 AT RAIKES HILL, BARNOLDSWICK

PURPOSE OF REPORT

The Council has made a diversion order to divert a public footpath. Two objections have been received and the Committee are therefore asked to consider the issues and make a decision on whether the diversion order should be referred to the Secretary of State to be determined.

RECOMMENDATIONS

- (1) That the diversion order is sent to the Secretary of State for Environment, Food and Rural Affairs to be determined.

REASONS FOR RECOMMENDATIONS

- (1) Only an inspector appointed by Secretary of State can determine an order if there are objections which remain outstanding.

ISSUE

1. The Council has now made two orders to divert footpath 57. The first order was confirmed but did not come into operation because the new footpath was not brought into a fit condition for use by the public, as a result of it being built to less than the width stated in the order.
2. This report concerns the second diversion order which has been made in January 2023, but which has attracted 2 objections from members of the public. The decision to make the diversion order was taken under delegated powers based on a report to the Head of Legal Services which is included as Appendix 1. This includes the order map, a location map and background information, which is not repeated here.
3. The two objections received are as follows:

Objection 1

I am resident in the area affected by the proposed footpath changes outlined on your notice and map which are displayed locally and adjacent to the footpath.

These footpath changes are a result of a housing development which built over the original and existing footpath which you have outlined as your proposal to be re-directed.

My question and overall objection is as follows-:

Why was the footpath removed (or at least rendered inaccessible by Pendle Borough Council) in the first place and what measures (if any) are available to residents and tax payers to prevent established footpaths being removed or re-directed in the future?

4. Our reply to this objection is included as Appendix 2.

Objection 2

I would like to offer the following objection to the proposed diversion of the footpath at "Silentnight Wood", Barnoldswick, footpath 57.

The existing footpath is perfectly usable and I fear that the change will lead to trees being cut down or cut back, that it will be an encroachment upon the wood, which is a valuable green space enjoyed by the whole community, especially children of the local nursery and school.

5. Our reply to this objection is included as Appendix 3. This elicited the following response:

There seems to be a simple solution; the western half of the footpath can be diverted onto the driveway between the houses, as per the proposed plan. The other half can be diverted onto the tarmac path that was built along where the houses and the side of the wood meet, which was presumably intended as the replacement footpath anyway (highlighted in green on the photo of the map attached to this email). The footpath will be diverted and the wood will be untouched.

DISCUSSION

6. The diversion order made by the Council which has now attracted these objections, appears to meet the criteria which would enable the order to be confirmed. The Council is not obliged to refer an order with objections to the Secretary of State; it could equally make a decision not to do this, but we would then need to consider a further course of action to resolve the issue with the houses and gardens which have been built across the footpath.
7. The suggestion outlined in paragraph 5 could be implemented by making a further diversion order to divert the footpath up the 1.2m wide passage at the rear of 6 – 12 Raikes Wood Close, i.e. as per the initial diversion order but allowing for a narrower footpath. However, this would bake in the problems of an overly narrow footpath into the long term. There is already considerable encroachment from vegetation on the woodland side for a footpath which has already started narrow. We ask for a minimum width of 2m wide for all diversion applications and therefore making a new diversion order which specifies a width less than this may result in objections which are be difficult to overcome if we consider the impact this has on convenience for path users.
8. The proposed diversion in this case will indeed result in the loss of a small number of small trees in order to create a link between the existing informal path through the woods to Raikes Wood Close. This is shown as the section D to E on the diversion order map. This area is covered by a woodland TPO and we are aware that implementing these diversion proposals will be conditional on receiving the necessary TPO consent. After informal discussion with the Council's Tree Officer we do not foresee this consent being withheld if the order is confirmed.

9. In our view the diversion order which this report relates to is the preferable option for resolving the issues affecting the line of the existing footpath, because it will formalize an attractive 2m wide footpath through the woodland area, which emerges into an open area of Raikes Wood Close. Therefore, we recommend that the order should be referred to the Secretary of State to be determined.

IMPLICATIONS

Policy: None.

Financial: There are financial implications whichever course of action is taken. The cost recovery rules for public path orders do not allow us to recover the staff costs involved in referring an order to the Secretary of State, this will require the preparation of several detailed documents. The same rules require that if we make a diversion order which attracts objections, and then we decide not to refer it to the Secretary of State, then the applicant should be reimbursed for the costs which they have already paid, in this case £1,243.09.

Legal: These are detailed in the relevant section of Appendix 1.

Risk Management: None.

Health and Safety: None.

Sustainability: As per Appendix 1.

Community Safety: None

Equality and Diversity: None.

APPENDICES

Appendix 1 – Report to Head of Legal Services dated 5th January 2023, including order map and location map.

Appendix 2 – Letter of response to objection 1 (with personal details removed).

Appendix 3 – Letter of response to objection 2 (with personal details removed).

LIST OF BACKGROUND PAPERS

Report to Head of Legal Services dated 22nd January 2018 concerning the first diversion order made with respect to this footpath (available on request).