

Appendix 1



REPORT FROM: ENVIRONMENTAL SERVICES MANAGER

TO: HEAD OF LEGAL SERVICES

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PROPOSED DIVERSION OF PUBLIC FOOTPATH 57 AT RAIKES HILL, BARNOLDSWICK (R2/14/208)

PURPOSE OF REPORT

To enable an informed decision on an application to the Council to make a public path diversion order.

RECOMMENDATIONS

- (1) That the Council makes a public path diversion order under Section 119 of the Highways Act 1980 to divert part of public footpath 57 Barnoldswick as illustrated on the proposals map sent with this report.
- (2) That the order be confirmed as an unopposed order if there are no objections or if any objections made are subsequently withdrawn.
- (3) In the event of objections that a report be prepared for West Craven Committee for a decision on sending the diversion order to the Secretary of State to be determined.

REASONS FOR RECOMMENDATIONS

- (1) The proposed diversion satisfies the requirements of the legislation for making the order.
- (2) The proposal also satisfied the requirements in the legislation for confirming the order.
- (3) The powers delegated to the Head of Legal Services do not extend to referring an order with objections to the Secretary of State.

ISSUE

1. Public Footpath 57 is located near Rainhall Road in Barnoldswick as circled on the location map sent with this report. The proposals map, also sent with this report, shows the existing footpath with the bold line A – B and the proposed diversion as a bold dashed line running

C – D – E – B. It is proposed that the new footpath will be 2 metres wide and the section between points C and E will be constructed with a stoned-up surface to this width.

BACKGROUND

2. The Council made an order under the Town and Country Planning Act in 2018 to divert footpaths 57 and 58 which it subsequently confirmed in 2019. However, the diversion order has not taken effect because the new development took place over the line of part of the new footpath and the highway authority was unable to certify that the new footpath is fit for public use. Therefore this diversion order has never taken effect. A copy of the 2018 order has been sent with this report for information.
3. In order to resolve this problem the developer has made an application to the Council to make a new diversion order which is the subject of this report.

RESULTS OF INFORMAL CONSULTATION

4. We have written to consult on the proposals to Lancashire County Council, Barnoldswick Town Council, Pendle Council Ward Councillors, utility companies and representatives of The Ramblers and Peak and Northern Footpath Society. We have also written to all of the residents which have properties which are crossed by the line of existing footpath. Cadent Gas initially objected but then withdrew its objection. There have been no other objections.

ASSESSMENT OF THE APPLICATION FOR MAKING AN ORDER

5. Under Section 119 of the Highways Act the Council may make a diversion order if it appears expedient that a public footpath is diverted in the interest of the owner or occupier of the land or of the public. In this case the land crossed by the existing footpath crosses 10 or 11 different plots of land, including the new estate road which is owned by the applicant. The remainder is owned privately by the householders whose land crosses over the line of the existing footpath. It is in the interests of the owners of the land that the footpath is diverted so that so that the existence of the structures set up across the footpath, i.e the houses and fences, is not in direct conflict with the statutory duty placed on the Highway Authority to “assert and protect the rights of the public” to use this footpath (as set out in Section 130 of the Highways Act 1980). In other words, if the footpath were to be reopened in accordance with this statutory duty then the home owners interests would be seriously harmed by the removal on the fences, buildings and walls which have been set up over the line of the footpath. Even the presence of the footpath line on the map may create difficulties in selling individual properties.

ASSESSMENT OF THE APPLICATION FOR CONFIRMING AN ORDER

6. To confirm a diversion order, the Council would have to be satisfied that:
 - a. *the path will not be substantially less convenient to the public; and*
 - b. *that it is expedient to confirm the order having regard to the effect which:*
 - i. *the diversion would have on public enjoyment of the path as a whole; and*
 - ii. *the coming into operation of the order would have as respects other land served by the existing right of way; and*
 - iii. *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, account being taken of the provisions as to compensation.*
7. In order to make a fair comparison between the existing footpath and the new route then the structures set up across the existing footpath would need to be treated as if they were not there. Section 118 of the Highways Act includes the provision that “temporary

circumstances preventing or diminishing the use of the path or way by the public shall be disregarded". Although there is no direct read across to Section 119 the advice given by the Planning Inspectorate is that the convenience of the existing route is to be assessed as if the route were unobstructed and maintained to a standard suitable for those users who have a right to use it.

8. Accordingly, it can be seen that the proposed diversion is slightly longer than the existing footpath which would make it less convenient, but not substantially so. There appear to be no other factors such as gradient, width or surface condition which would make the new footpath any less convenient than the existing footpath. The route of the proposed diversion is better connected footpath 59 which could be seen in this respect as being more convenient than the existing footpath.
9. The public enjoyment of the footpath as a whole may be enhanced by the proposed diversion because the section C – D – E is through an area of woodland which is screened from the housing area by a hedgerow. Even if the houses and gardens set up over the existing footpath are disregarded the path would still be through an area of housing. Most people would find a path through the woods preferable.
10. There do not appear to be any negative effects in respects of paragraphs 6(b)ii and 6(b)iii above.
11. The Council is also required to have regards to the provisions of a rights of way improvement plan. We have consulted the Lancashire Rights of Way Improvement Plan 2015-2025 and there is nothing in the document which appears to have any bearings on these proposals.

A NOTE ABOUT PUBLIC FOOTPATHS 57, 58 AND 59

12. These footpaths as shown on the proposals map are not recorded on the definitive map for Lancashire. An application that they be added to the definitive map is currently pending. Lancashire County Council's Public Rights of Way Regulatory Committee has determined that on the balance of probabilities that these are public footpaths which should be added to the definitive map, but a Definitive Map Modification Order (DMMO) required for these additions to take effect has not yet been made. We understand that a DMMO is unlikely to be made until this diversion application has been decided and an order has been made, confirmed and come into operation.

IMPLICATIONS

- Policy:** None.
- Financial:** The applicant has agreed to pay the costs associated with this process.
- Legal:** There are a number of trees between points D and E which will need to be removed to create a 2m wide footpath. The wood is protected by a Woodland Tree Preservation Order. A separate application will need to be made under the appropriate legislation for consent to remove these trees. We have had informal contact with the Council's Tree Officer to discuss the arrangements for this.
- Risk Management:** None.
- Health and Safety:** None.
- Sustainability:** There will be a loss of 5 – 10 small trees.
- Community Safety:** None.

Equality and Diversity: The new footpath should be no less accessible to people with disabilities.

APPENDICES

- Location map dated 4th January 2023
- Proposals map dated 19th May 2022
- Diversion Order dated 20th February 2018

LIST OF BACKGROUND PAPERS

None.