

**REPORT FROM:** ASSISTANT DIRECTOR OPERATIONAL SERVICES  
**TO:** NELSON, BRIERFIELD, REEDLEY AND COMMITTEE  
**DATE:** 4<sup>TH</sup> SEPTEMBER 2023

**Report Author:** Tom Partridge  
**Tel. No:** 01282 661059  
**E-mail:** [tom.partridge@pendle.gov.uk](mailto:tom.partridge@pendle.gov.uk)

**PROPOSED DIVERSION OF FOOTPATH 15/16 REEDLEY HALLOWS AT  
MONKHEY FARM, REEDLEY**

**PURPOSE OF REPORT**

Part of a riverside footpath has become unusable because of the collapse of the banking. It is proposed to divert the footpath to a safe route for public access.

**RECOMMENDATIONS**

- (1) That the Head of Legal and Democratic Services be authorised to make a diversion order under Section 119 of the Highways Act 1980 to implement the change.
- (2) That the Head of Legal and Democratic Services be authorised to confirm the order if there are no objections, or in the case of objections to refer the order to the Secretary of State to be confirmed.

**REASONS FOR RECOMMENDATIONS**

- (1) It is in the public interest to divert the footpath.
- (2) The proposed order meets the legal criteria a diversion order to be confirmed. In the event of objections this decision can only taken by an inspector appointed by the Secretary of State of Environment Food and Rural Affairs.

**ISSUE**

1. Monkhey Farm is located at the bottom of the Robinson Lane and public footpath 15 bypasses the farm buildings to a footbridge over Pendle Water. This report relates to a footpath starting at the southern end of the footbridge running on the southern side of the river towards Barden Lane. The footpath is part of the Pendle Way – a 45 mile walk around Pendle District which is promoted by the Council. A location map is included as Appendix A to this report.

2. The proposals map (Appendix B) shows the section of footpath which it is proposed to divert as the solid bold line A – B – C. The section A – B is part of footpath 16 and the section B – C is part of footpath 15. The path numbering changes at point B because the original footbridge crossed the river from this point. The proposed diversion is to the southern side of the existing footpath as shown by the bold dashed line A – C.
3. The issue which has arisen is that the section of footpath A – B – C has fallen into disuse due to the path being narrowly fenced between barbed wire fences, encroachment by vegetation, and uneven ground conditions where the land has slipped. It is thought that the reason for the relocation of the bridge many years ago was due to the landslide. The owners of the land have informed us of their intention to erect fencing which would keep walkers strictly to the line of the recorded footpath, because there is no benefit to them for the public to avoid this section of footpath. This would result in difficult conditions underfoot due to the landslide, even after work is carried out to deal with other issues affecting the footpath, such as the encroachment from vegetation.
4. We have advised the owners that we are considering the formal diversion of the footpath to a more suitable line, and that this means that they would be entitled to claim compensation for any loss in the value of their land. The effect would be to protect a 2m wide strip of land for the public footpath. We have advised the landowners that we are dealing with this as an urgent matter so that they can have certainty about whether or not the Council has decided to make the proposed diversion order as outlined in this report. This may influence where they position their fence – hopefully this will be positioned to avoid the diversion route which would avoid the need for the fencing to be altered on the confirmation of a diversion order.
5. The effect of the diversion is unlikely to have any negative impact for public access, and due to the urgency of this matter we have not carried out any informal consultation with groups such as the Ramblers Association.

### **Assessment against the legal criteria for making a diversion order**

6. 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**.
7. The effect of the proposed diversion will be to establish a 2m wide replacement footpath on level ground. In our assessment this is expedient in the interests of the public for the reasons set out in the paragraphs above.

### **Assessment of the proposals for confirming an order**

8. 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.

9. There is very little difference between the line of the existing footpath and the proposed diversion. But there is little doubt that the proposals satisfy the test set out in paragraph 8a because the new footpath will have a recorded width of 2m wide, it will be free of any limitations such as stiles or gates, and it runs along a level surface.
10. Similarly, there are no negative effects which can be foreseen on the public's enjoyment of the footpath as a whole as a result of this minor change to the route.
11. There is no other land served by the existing footpath and the landowners would still have a right of access, as they do to all of their land.
12. The proposed diversion would have an effect over the land which is created, but our assessment is that it is expedient to make a diversion order because this effect is minimal. The landowner would not be able to maintain a fence line within the strip of land A – B – C but this represents small fraction of land at the edge of a larger field. The owners will be entitled to claim compensation for any loss in value of their land or if they suffer damage by being disturbed in their enjoyment of the land as a result of the footpath running on a slightly altered alignment. In this case we are not introducing a public right of way into a field where none previously existed, and we are not re-routing the footpath across the middle of a field. In this case the effect on the owners of the land will be minimal, but they can nevertheless be compensated for the effects that the diversion may have.

## **IMPLICATIONS**

**Policy:** None

**Financial:**

- Any offer of compensation is based on the value of the land which has had a footpath diverted over it. The land affected in this case is a small area and any costs for compensation are likely to be small. Provision will be made within the countryside access budget to meet any compensation costs which arise.
- With a diversion order made in the public interest there is no applicant from whom to recover the costs. In addition there are advertising costs of approximately £500 which would be met by the countryside access budget.

**Legal:** The relevant legislation provides for any dispute over a claim for compensation to be settled by the Lands Tribunal. The legal tests for making a diversion order are set out in the body of this report.

**Risk Management:** We consider that the proposed diversion safely meets the criteria set out in Section 119 of the Highways Act, and that the risk of the diversion not succeeding we consider to be low.

**Health and Safety:** Without a diversion then the existing footpath on the line A – B – C may not be safe for public use even after the clearance of vegetation and other obstructions due to the slippage of the land.

**Sustainability:** None.

**Community Safety:** None.

**Equality and Diversity:** None.

**APPENDICES:**

Appendix A	Location Map
Appendix B	Proposals Map

**LIST OF BACKGROUND PAPERS:** None.