



**REPORT FROM: ASSISTANT DIRECTOR OPERATIONAL SERVICES**

**TO: WEST CRAVEN COMMITTEE**

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**PROPOSED DIVERSION OF PUBLIC FOOTPATHS 20 AND 57 AT RAIKES  
WOOD CLOSE AND VICTORIA ROAD, BARNOLDSWICK**

**PURPOSE OF REPORT**

The Committee is asked to make a decision on whether to make a public path diversion order for two public footpaths.

**RECOMMENDATIONS**

- (1) That the Head of Legal and Democratic Services be authorized to make a public path order under Section 119 of the Highways Act 1980 to divert parts of public footpath 20 and public footpath 57 Barnoldswick as shown on the attached map.
- (2) That the Head of Legal and Democratic Services be authorized to confirm the order if there are no duly made objections, or in the case of objections being made and not withdrawn to send the order to the Secretary of State to be decided.
- (3) In the event that a Highways Act 1980 Section 38 Agreement has been completed at the time of making the proposed diversion order, that the Head of Legal and Democratic Services be authorised to make, and in the case of no objections, confirm an Extinguishment Order under Section 118 of the Highways Act 1980, in place of the diversion order for the section of footpath 57 not on the highway between points D and E, and alter the diversion proposals accordingly.

**REASONS FOR RECOMMENDATIONS**

- (1) The proposed diversion order will resolve the issues associated with housing having been built over footpath 57 and it will improve the convenience of the public for footpath 20.
- (2) The order must be confirmed before it can come into operation. In the event of any duly made objections the decision on confirming the order can only be made by an

inspector appointed by the Secretary of State for the Department for Environment Food and Rural Affairs.

- (3) If Raikes Hill and Raikes Wood Close are adopted as public highways then there is established case law that we cannot divert a footpath onto them. But we can extinguish rights of way which are not needed for public use, and this would be the correct way to proceed to achieve the same outcome.

## **BACKGROUND**

1. The Council made a diversion order for footpath 57 in 2018 under Section 257 of the Town and Country Planning Act in connection with the development . The diversion order was not confirmed because the new footpath was not constructed to the required width of 2.0 metres wide, as detailed in previous reports.
2. The Council made a diversion order for footpath 57 in January 2023 under the Highways Act 1980 and objections were received. At its meeting of 4<sup>th</sup> July 2023 this committee resolved not refer the order to the Secretary of State, but to invite the applicant to submit a revised application to incorporate part of public footpath 20.
3. The applicant has agreed to submit a revised application as requested by the Committee, but on condition that the new path (Section B -C – F – G) is constructed with hoggin rather than tarmac.

## **PROPOSALS**

4. The proposals map is attached as Appendix 1 to this report. The part of footpath 20 to be diverted is shown as the bold line A – C to be diverted to the bold dashed line A – B – C. The part of footpath 57 to be diverted is shown as the bold line C – D – E and this would be diverted to the line C – F – G – H – E. The new paths would have a minimum width of 2.0 metres wide. The length of new path B – C – F – G would be surfaced with hoggin. Several small trees between points F and G would be removed because they obstruct the route of the proposed diversion.

## **Informal Consultation**

5. We have not carried out any informal consultations on these proposals.

## **Assessment of the proposals for making an 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. For the occupiers of the land and houses crossed by footpath 57 the proposed diversion is in their interests, because until such time as the footpath is diverted the structures built across the footpath will remain unlawful obstructions and the highway authority can be seen to be failing in its duty to assert and protect the rights of the public. It is expedient to get this footpath diverted.
8. It is in the interests of the public for footpath 20 to be diverted because this is a more convenient route, being wider and less prone to encroachment by vegetation. Informal use of the diversion route for footpath 20 has started in recent years, and has entirely replaced the use of the existing right of way which is now completely overgrown. It is expedient to divert this section of footpath to formalize the change in the pattern of public use.

## Assessment of the proposals for confirming an order

9. 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.
10. The section of **footpath 20** being diverted from A-C to A-B-C is a few metres longer on an existing tarmac surface between points A and B and then through a wide gateway between points B and C along a well-trodden path. This is considered to be more convenient route even though it is a little longer because it is wider, it is less prone to becoming overgrown and it avoids a stile. The path can become muddy when wet but this would be addressed by the proposed surfacing.
11. With **footpath 57** the proposed new route C – F – G is only marginally longer than the obstructed section C – D, but it will have a recorded width of 2.0 metres wide. The proposed diversion is no steeper than the existing path and there are no proposed limitations (i.e. stiles or gates), nor other factors which may affect convenience such as a steeper gradient. In making this assessment we have to disregard the obstructions on the line of the existing path (i.e. the buildings and fences).
12. On the section D – E the proposed diversion is slightly longer, but the existing footways and road crossings provide an alternative route which is not substantially less convenient. This alternative route has been brought up to an adoptable standard and we are aware that the final engrossment of the statutory agreement is imminent for these to become adopted highways.
13. The diversion is clearly expedient because it will help to resolve the issue of housing being built across the footpath. It was the intention throughout the planning application process that the footpath would be diverted. The effect of these proposals on public enjoyment is to protect connectivity of these footpaths, so that there are good links between the new estate roads and the informal network of footpaths through the adjoining woods, but the proposals also keep the footpaths running through a natural environment as far as possible. The change to footpath 20 will enhance the network because of the added convenience to the new route.
14. The diversion order would not affect any other land served by the existing path, nor will the new rights of way created have an effect any land apart from the applicant's land.
15. The Council is 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 has any bearings on these proposals.

## The use of hoggins rather than tarmac

16. The construction of a tarmac path with concrete kerb edgings could have the effect of damaging the roots of the woodland trees. In addition, such materials are visually intrusive

in a natural environment. The proposed use of hoggin would create a high quality walking surface, suitable for everyday trips on foot, with a far more environmentally sympathetic appearance. A photograph of a hoggin path supplied by the applicant is included in Appendix 3.

## IMPLICATIONS

**Policy:** The Council's Public Rights of Way Enforcement policy has been considered. The circumstances in this case allow for the obstruction of the footpath to be resolved by a public path order being made and confirmed.

**Financial:** The costs associated with the proposed order will be met by the applicant. In the event of the order being referred to the Secretary of State the regulations for cost recovery on public path orders prevent the recovery of the Council's costs, such as for the preparation of documents or attending a hearing.

**Legal:**

- The powers for the Council to make an order are subject to prior consultation with Lancashire County Council and Barnoldswick Town Council. An order cannot be made until these consultations have taken place. If there are any adverse comments received then a further report will be prepared.
- There is a woodland TPO in the area marked on the proposals map as "LONG ING", and therefore the order would only be confirmed, or sent to the Secretary of State for confirmation when the applicant has obtained the necessary TPO consent to carry out the tree works in this area.
- There is case law that a Council cannot divert a footpath onto an existing highway. We would therefore need to adapt the diversion proposals and make an extinguishment order for the section of footpath between points D and E which is no longer needed for public use.

**Risk Management:** There is a significant risk of objections due to the requirement for the removal of a number of trees between points F and G. Therefore, we should anticipate that there will be costs in staff time which are non-recoverable, as outlined in the financial implications section above. However, the proposals appear to satisfy the legal criteria so we anticipate that the risk of the order not being confirmed are low. We have consulted the Council's tree officer who does not foresee any difficulty with the necessary TPO consent being given.

**Health and Safety:** None.

**Sustainability:** These proposals will necessitate the loss of several trees between points F and G on the proposals map.

**Community Safety:** None.

**Equality and Diversity:** None.

## APPENDICES

Appendix 1 – Location Map.

Appendix 2 – Proposals Map.

Appendix 3 – Photograph of a hoggin path surface.

## LIST OF BACKGROUND PAPERS

(available on request)

- Report to Head of Legal and Democratic Services dated 22<sup>nd</sup> January 2018.
- Report to Head of Legal and Democratic Services dated 5<sup>th</sup> January 2023.
- Report to West Craven Committee dated 28<sup>th</sup> March 2023.