

REPORT FROM: ASSISTANT DIRECTOR OPERATIONAL SERVICES

TO: BARROWFORD AND WESTERN PARISHES COMMITTEE

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PROPOSED DIVERSION OF PUBLIC FOOTPATH FP1315093 AT CHURCHILL WAY (EXTENSION), LOMESHAYE INDUSTRIAL ESTATE

PURPOSE OF REPORT

This report is intended to provide the information required for the Barrowford and Western Parishes Committee to make a decision for the Council to make and confirm a public path order to divert public footpath FP1315093.

RECOMMENDATIONS

- (1) That the Committee resolves that the Council shall make an order to divert public footpath FP1315093 under Section 257 of the Town and Country Planning Act 1990.
- (2) That the Committee resolves to confirm the order as an unopposed order in the event of no objections being received.
- (3) That the Committee resolves to refer the order to the Secretary of State to appoint an independent inspector for a decision on confirming the order in the event of any objections which are made and not withdrawn after the order has been made.

REASONS FOR RECOMMENDATIONS

- (1) The proposed diversion is necessary to allow a development with planning permission to be carried out.
- (2) The order can only take effect if it has been duly confirmed.
- (3) In the event of outstanding objections the order can only be confirmed by a decision taken by an independent inspector appointed by the Secretary of State at the Department for Environment Food and Rural Affairs.

ISSUE

1. The position of public footpath FP1315093 in the parish of Old Laund Booth can be seen on Ordnance Survey 1:25,000 mapping as a green dashed line as indicated by a bold arrow on

the location map sent with this report (Appendix A). Works to extend Lomeshaye Industrial Estate along the northern bank of Pendle Water have included the construction of a road. There is an industrial unit and associated car parking with planning permission under construction which requires the diversion of this public footpath.

2. The planning application reference number and title are as follows: “22/0131/FUL PROPOSAL: Full: Major: Erection of a B2 Industrial Building (2952 sq.m.), formation of 62 space car park and diversion of Footpath 13-15-FP-93. AT: Land To The South West Of Churchill Way Brierfield”. The decision to grant planning permission was taken in August 2022 and the application to divert the footpath was made the following December. The impact on the footpath was taken into account when the decision to grant planning permission was taken. This report deals with the application for a public path order which brings into effect the diversion of the footpath.
3. The proposals are outlined on the map dated 29th January 2024 and sent with this report as Appendix B. The existing footpath starts from a riverside path at point A on the map and runs in a south westerly direction through the site of the development, shown as a hatched area, then across the new estate road and then through an area which is included in the development as a car park, and continues to a stile at point B at the junction of public footpaths FP1315089 and FP1315090. The proposed diversion runs to the north of the proposed development starting from the riverside footpath FP1315114 at point C running west to a chicane type barrier at point D then crossing the new estate road to the footway at point E and running south to point F, then west to point B at a stile which marks the point at which the diverted path meets public footpaths FP1315089 and FP1315090.
4. Between points C and D there is a slope which will be re-graded as part of the diversion proposals, together with the construction of a 2m wide surfaced footpath and drainage works as required to prevent flooding from the adjoining land. Between points E and F the footway is not yet finished and therefore some additional works may be required to bring it up to an acceptable standard for public footpath traffic. Between points F and B there is an unmade surface just like the footpaths running west from here, and therefore no upgrading to this section of the proposed diversion is required.
5. The proposed diversion is over land owned by Pendle Borough Council.

Results of Informal Consultation

6. We consulted the Ward Councillor, Old Laund Booth Parish Council, Lancashire County Council, statutory undertakers, The Ramblers (formerly the Ramblers Association) and the Peak and Northern Footpath Society (PNFS). PNFS initially objected to an earlier version of the proposals but this objection has been withdrawn following the latest revision to the current proposals map (the line C – D was initially drawn as a line direct from A to D).
7. We have received a letter sent on behalf of the owners of Old Laund Hall Farm who own the land to the west of point B on the proposals map. They have not objected to the proposed diversion, but they have said that in their deeds they have right of way along the route of the public footpath to be diverted which extends from their property to the site of the original Nelson Corn Mills (these were once sited in the area of Victoria Park). A right of way mentioned in the deeds to a property is generally a private right of way, i.e. a right of way which the rights holder has over adjoining land, rather than a right of way open to the general public. The private right of way in the deeds to Old Laund Hall Farm may have been on foot only, or on horseback or with vehicles such as a horse and cart. When a Council makes a diversion order then these are public path orders, i.e. they are orders to divert public rights of way, and they have no effect on any private rights of way which exist, such as those mentioned by the owners of Old Laund Hall Farm. As a result, any private right of way which existed would continue to exist regardless of a public path order. Issues affecting private

rights of way can be resolved, but this would fall outside of the public path order process. It is essentially a matter which falls to be resolved between the person with the private right of way and the owner of the land over which that right of way runs.

Assessment of the proposals against the legal criteria

8. Under Section 257 of the Town and Country Planning Act 1990 Pendle Borough Council as the Planning Authority may authorise the diversion of a footpath if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with Part III of the Act. In this case planning permission has been granted for the construction of a building over the footpath and our conclusion is the diversion of the footpath is indeed necessary for the development to be carried out. The proposed diversion does not unnecessarily lengthen the footpath, it simply directs the footpath so that it avoids the area which is being developed.

IMPLICATIONS

Policy: None of the land in Pendle Borough Council ownership for the route of the proposed diversion has any other intended use that the author is aware of.

Financial: None. The costs of making an order can be re-charged to the applicant.

Legal: Work on the development has taken place but is not yet complete. The work which has been carried out has had the effect of obstructing the footpath for which there has been no lawful authority. There is case law in *Ashley & Dalby v Secretary of State for the Environment (1980)* that the Council may make an order under this legislation so long as some of the authorised development remains to be carried out.

Risk Management: None arising directly from this report.

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: There will be negligible impact on the accessibility along this footpath. The proposed diversion will be no less accessible than the existing footpath prior to construction work.

APPENDICES

Appendix A - Location map.

Appendix B - Proposals map.

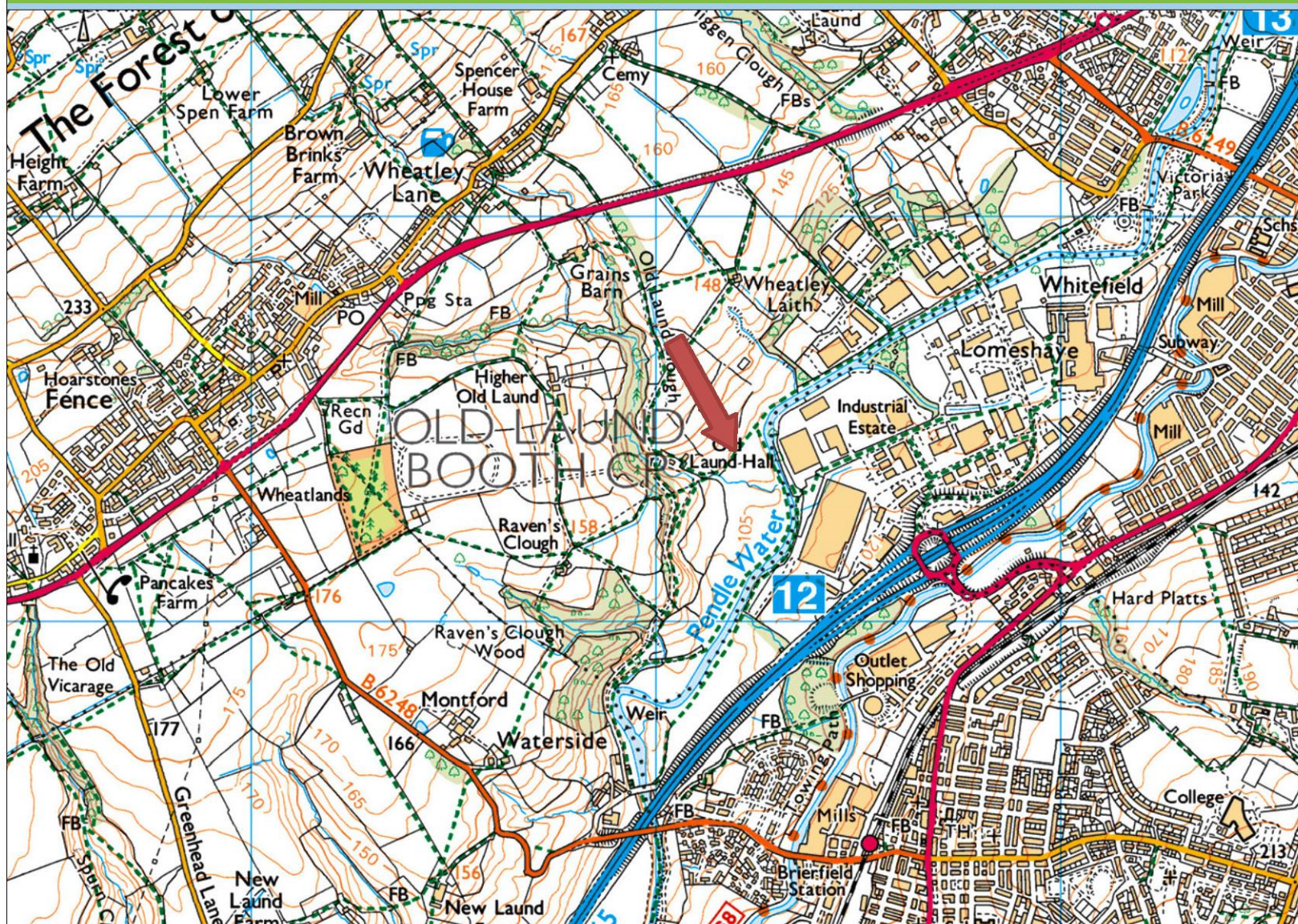
LIST OF BACKGROUND PAPERS: None.

FP1315093 Location Map

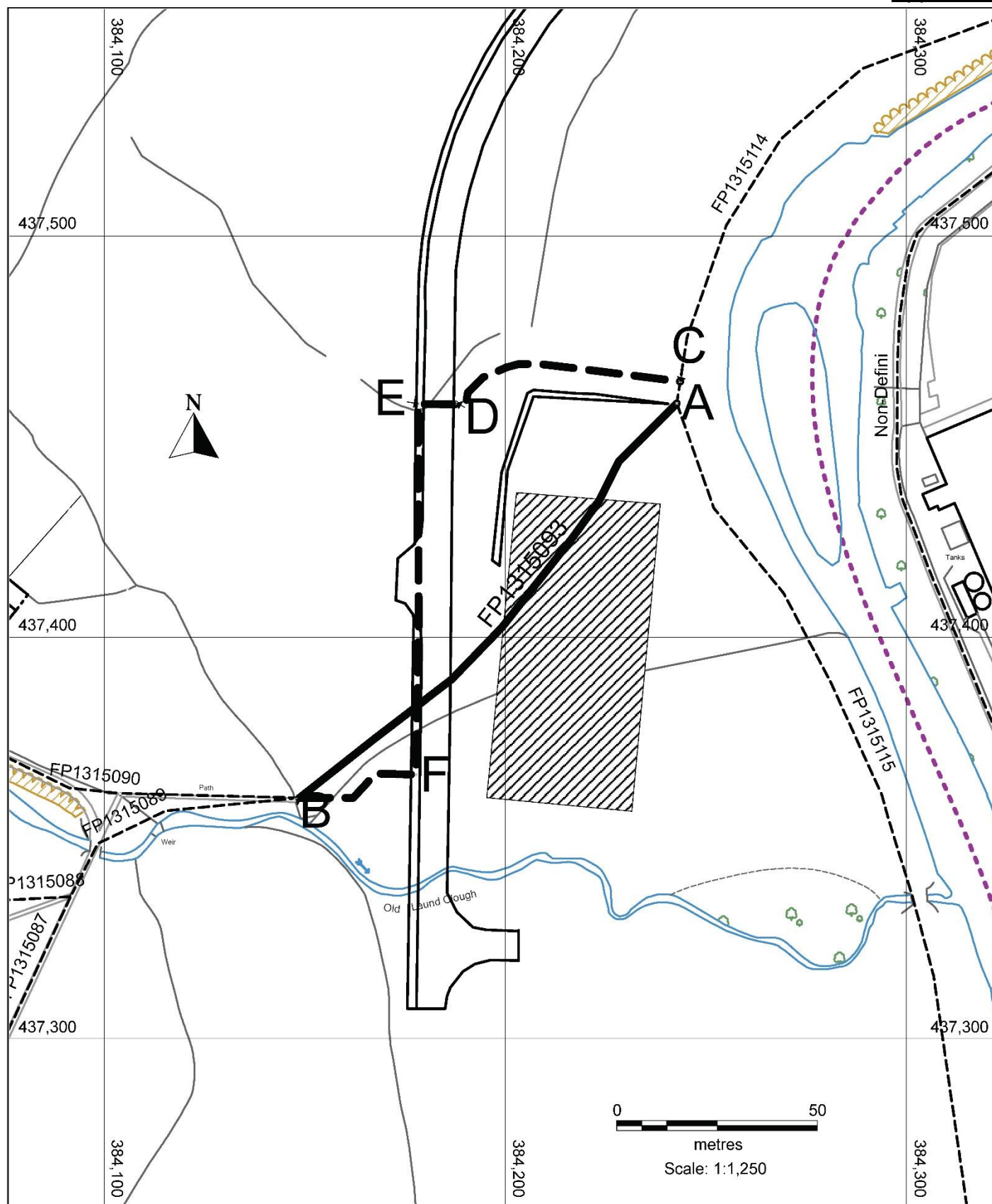
Author:

Date Created: 29/01/2024

Appendix A



Map Scale: 1:15,000
Map Centre: 384009E 437378N



Proposed diversion of public footpath FP1313093 at Lomeshaye Industrial Estate

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Scale 1:1250
File Reference: R2/14/219
Date: 29th January 2024
Drawn: T Partridge

To be diverted

Footpath to be created

Other footpaths

Proposed development

