

REPORT FROM: ASSISTANT DIRECTOR – OPERATIONAL SERVICES

TO: COLNE AND DISTRICT COMMITTEE

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Report Author: Tom Partridge
Tel. No: 01282 661059
E-mail: Tom.partridge@pendle.gov.uk

**Proposed diversion of part of public footpath FP1304189 at Lenches Fold,
Colne**

PURPOSE OF REPORT

Information is presented within this report for the committee to make an informed decision for the Council to make a public path diversion order.

RECOMMENDATIONS

- (1) That the Head of Legal and Democratic Services be authorised to make an order under the Highways Act 1980, Section 119 to divert part of public footpath FP1304189 at Lenches Fold, Colne
- (2) That the order be confirmed if there are no objections, or if any objections are later withdrawn.
- (3) In the event of objections which are not withdrawn, that the order be sent to Department of Environment, Food and Rural Affairs (DEFRA) to be decided.

REASONS FOR RECOMMENDATIONS

- (1) The diversion of the footpath would have the effect of resolving issues with the existing footpath which are set out in the body of this report.
- (2) The proposed diversion appears to satisfy all legislative requirements meaning that the Council is empowered to confirm an order if there are no objections.
- (3) If we receive objections then the legislation means that a decision on confirming a diversion order cannot be made by the Council, but we may send the relevant documents to the Planning Inspectorate for an independent inspector to make a decision on behalf of the Secretary of State at DEFRA.

PROPOSALS

1. The proposals map is included in Appendix 1 to this report. It is proposed that a section of public footpath FP1304189 shown by the solid bold line A – B is diverted to the alternative line A – C – B as shown by solid bold dashes.
2. The new footpath would require improvements to an existing set of concrete steps, the installation of a replacement handrail and waymark posts indicating the position of the footpath. The width of the new footpath would be recorded as 2.0m wide.

BACKGROUND INFORMATION

3. Public footpath FP1304189 is located to the south of Colne and runs from the south side of Colne Water uphill in a southerly direction to Knotts Lane. Initially the path runs between old industrial buildings, then up a wooded clough and then farmland. The footpath is shown as a green dashed line on the location map at Appendix 2, and a large arrow indicates the section of the footpath which the diversion proposals relate to.
4. The existing footpath running on the line A-B was effectively destroyed many years ago as part of the industrial complex at the former Spring Gardens Mill. The area crossed by the footpath has been excavated away and a large circular tank, like a small gas holder, was sited where the path crossed. The footpath was moved to a new line, but there is no record that the footpath was ever formally diverted. In other words, the moving of the footpath appears to have been carried out unlawfully. However, the alternative path has been physically constructed with concrete steps and a handrail. The old line of the footpath has been fenced off but even if the fence were removed it would be completely unusable because the ground drops away very steeply.
5. We discovered this issue in 2022 following a request for better signage along the footpath. We found that the official route of the footpath was completely obstructed and that the alternative line of the path was in disrepair due to crumbling steps and a rotten wooden handrail.
6. As in all cases of obstruction we consider possible courses of action for the removal of obstructions. In this case the obstruction is formed of a fence which crosses the footpath in two places and a deep excavation. The removal of the fences could be secured by serving a notice on the owner of the land, which would empower the highway authority to carry out the work and recover any costs involved, but the deep excavation is not something which the current owner is responsible for. And there is no viable way of restoring the footpath along its recorded line apart from carrying out substantial engineering works at public expense. Clearly, there is no purpose which can be served in enforcing the removal of the fences with the footpath being affected by a deep drop to a lower ground level – in fact this would expose the public to a danger from falling.
7. Our conclusion in this case was that the footpath would have to be formally diverted. We knew that we could not enforce the reopening of the footpath for the reasons explained, which placed us in a significantly weakened position to require the owner of the site to pay the costs of a diversion. We contacted the owner and secured his agreement to a maximum contribution of £1000 towards the costs of diverting the footpath. This will not cover all of the staff time involved, nor the costs in the physical improvements but it would cover the advertising costs. But in our view doing nothing would not be a satisfactory outcome because footpath users would still be using a sub-standard path and handrail.

8. There have been no objections to the proposals at the informal consultation stage, and therefore the reason for this application coming to committee rather than being decided through delegated powers is due to the cost implications.

INFORMAL CONSULTATION

9. We have consulted all affected landowners, the statutory utility companies, Colne Town Council, Lancashire County Council, Pendle Borough Council ward councilors, the Peak and Northern Footpath Society (PNFS) and the Ramblers Association.
10. Openreach have a duct located in the diversion route but commented that this will be at the correct depth and therefore not affected by the proposals.
11. Cadent Gas Limited, Colne Town Council, Lancashire County Council and PNFS all responded that they had no objections to the proposed diversion. There were no other comments received.

ASSESSMENT OF THE PROPOSALS AGAINST THE LEGAL CRITERIA

12. The Council may make a diversion order if it is expedient in the interests of the owner of the land, or the public or both. Our assessment is that the diversion is in the interests of the owner of the land where it runs between points A and B. The part of the land nearest point A is not currently being used, but for the purpose of any future development, or the sale of the land then the recorded line of the public footpath would inevitably come up as an issue which would need to be addressed. The proposed diversion would resolve any such issues, and this in our view is sufficient for a diversion order to be made in the interests of the owner of the land.
13. For a diversion order to be confirmed then the Council, or the Secretary of State in the event of objections, would need to be satisfied that the new path, i.e. the line A – C – B is not substantially less convenient to the public having regard to the effect which the diversion has on public enjoyment, the effect on other land served by the existing right of way and the effect on the land crossed by the new footpath. Our assessment in this respect needs to be carried out assuming that the existing footpath were not obstructed. Aerial photographs from the 1960s appear to show the footpath as a well-trodden route across unmade land, so it should be assumed that this is how the footpath would be if it had not been developed in the years since then, and we need to consider the impact of the proposals accordingly.
14. The diversion would have the effect of slightly lengthening the public right of way, but only by a few metres, so the increase in distance should not be considered as being substantially less convenient. The section A – C is likely to be slightly steeper than the original path but the provision of a made surface, steps and a handrail should serve to minimise any such inconvenience, added to which the footpath is generally uphill and the effect of the diverted section being slightly steeper will have minimal effect on public enjoyment when considering the path as a whole. We don't consider that the new footpath will be any less convenient to the public in any other respect.
15. The part of the footpath being diverted does not serve any other land. And the new footpath is all within the same land holding on a route which is already in use by the public. There are no negative effects in these respects which we can foresee as a result of the proposed diversion order being confirmed.

CONCLUSIONS

16. In its current condition the proposed diversion route is very poor for public use, but we are naturally hesitant to spend public money on a footpath which has been unlawfully diverted. But we have not identified a mechanism whereby we can get the recorded line of the footpath reopened and recover the costs of doing so. At most we could require the removal of two fences across the footpath, but this would only expose the public to a dangerous drop to ground at a much lower level. The proposed diversion is a pragmatic way of improving the footpath for public use, and it means that the diversion route would be properly recorded as the public right of way. The recommendation is that the Council should make an order to divert the footpath and for the order to be confirmed, or for it to be sent to the Secretary of State for confirmation.

IMPLICATIONS

Policy: None.

Financial: The landowner has agreed £1000 towards the cost of the diversion. This will more than cover the cost of advertising (of about £600) but not the full cost of staff time involved which can be charged up to a maximum of £2400 according to the time taken, nor the costs of the refurbishing the steps, the provision of a handrail and waymark posts for the new footpath. These practical implementation costs are estimated at £1500. As a result, the majority of the staff time involved would be unfunded and the costs of implementation would need to be from existing revenue budgets for public rights of way maintenance. Lancashire County Council generally re-imburses Pendle BC for public rights of way maintenance expenses. Repairing the existing footpath would require importing a large volume of stone to build up ground levels, and could cost tens of thousands of pounds. This is not financially viable compared to the cost of formalizing the diversion.

Legal: The Council is required to act in accordance with the provisions of the Highways Act 1980 for any proposal to divert a public footpath. The assessment of the proposals against this legislation is set out in the body of the report.

Risk Management: There are no risk implications for Pendle Borough Council, but in its current condition the footpath diversion route is in poor condition and a claim could arise from any slip or trip injury. We would direct any such claimant to the owner of the land since this is not currently the recorded public right of way, or to Lancashire County Council which is responsible for the recorded footpath. The effect of the proposed diversion to the public is to minimize the risk of injury by carrying out the proposed works. LCC would be responsible for the ongoing maintenance of the new footpath, and would be liable for any risks arising from the diverted footpath falling into disrepair.

Health and Safety: As per risk management.

Sustainability: This would be a small improvement in the local footpath network for non-motorised trips

Community Safety: None.

Equality and Diversity: None.

APPENDICES

Appendix 1 – Proposals Map

Appendix 2 – Location Map

LIST OF BACKGROUND PAPERS

None.