

## Highways Committee

13 October 2009

**Public Footpath No 21 West Auckland,  
Wear Valley**



## **Proposed Public Footpath Diversion Order**

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### **Report of Ian Thompson, Corporate Director, Regeneration and Economic Development**

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#### **1.0 Purpose of the Report**

1.1 To consider an application to divert part of Public Footpath 21, West Auckland.

#### **2.0 Background**

2.1 Public Footpath No 21 West Auckland runs from a point at the western end of the West Auckland bypass (A688) in a northerly direction across a field and then over the Oakley Cross Beck to meet Oakley Green, a residential area to the south side of West Auckland. The total length of the path is approximately 420 metres. It is joined at a point close to its northern end at the Beck by Public Footpath No 22.

2.2 The proposal is to divert the 380 metres of the footpath which crosses the field adjacent to the bypass. The field is currently in grass which is primarily used for making silage. The footpath enters and exits the field via stiles at each end.

2.3 The diversion is sought by the owner of the field, Mrs Harris, to benefit its agricultural management by moving the path from across the middle of the field to the edge. It is stated that a strip around the boundary would be far easier to maintain on a permanent basis as described in **Document A**.

2.4 The proposed diversion would move the footpath to a 290 metre long parallel route. Entrance and exit points are in place for this proposed footpath with a kissing gate at its southern end which joins up with a surfaced path to the bypass (40 metres west of the stile on the existing route) and a stile at the northern end where it joins Footpath No 22 (120 metres south west of the existing exit point). Plans showing the general location and the details of the proposals are found in **Document B**.

2.5 Consultations have been carried out for these proposals. The Local Members, the Parish Council, former District Council and the Ramblers Association have all stated that they have no objections to the proposals and these are shown in **Document C**. An objection has however been received from The Open Spaces Society (see **Document D** – contains 7 emails/letters).

2.6 The southern end of the field through which the footpath passes was truncated when the West Auckland bypass was built. The stile and kissing gate at this end, in the highway fencing, were constructed as part of the bypass scheme.

### **3.0 Legal Framework**

3.1 The relevant statutory provision for the diversion of a public path is Section 119 of the Highways Act 1980. A Diversion Order can be made by the Council if it appears it is expedient to do so in the interests of the owner/occupier of land or in the interests of the public, or both. In this case the Order would be in the interests of the landowner.

3.2 The Council must also be satisfied in making a Diversion Order that the ends of the diverted path are on the same or a connected highway and are substantially as convenient to the public.

3.3 The Council also has a duty to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. In this case agriculture is relevant.

3.4 Before an Order is confirmed, the Council or Secretary of State must, in addition to considering the above criteria, also be satisfied that the path will not be substantially less convenient to the public as a result of the diversion and that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the path as a whole, and on land crossed by the existing path or to be crossed by the new one.

3.5 The confirming authority should also have regard to any material provisions of the Rights of Way Improvement Plan (ROWIP). The ROWIP for County Durham does not make specific reference to proposals of this kind other than to state the Council will ensure that it deals with them in a balanced way as required by the legislation described.

3.6 The briefing note in **Document E** describes the statutory framework.

## 4.0 Objections

- 4.1 The Open Spaces Society (OSS) objects to the diversion and its local correspondent, Jo Bird, details the reasons in correspondence submitted between January and June 2009. She submits that the diversion would result in the loss of a well used path, that there are a number of well used paths around and across the field already and that the diversion will have no effect on these routes, the proposed route has probably acquired public rights already through usage (a footpath cannot be diverted onto an existing footpath) and that the diversion is not in the interests of the landowner.

### Response

*The proposal only considers the diversion of the existing public footpath and although it is not possible to divert a footpath onto an existing public right of way, no evidence has been submitted to support Miss Bird's assertion that public rights have already been acquired on the proposed route.*

*It is considered that the diversion would be in the interests of the owner of the land. Not only would it be easier for a strip along the edge of the field to be kept defined as described by the applicant but the more direct line of the proposed diversion running parallel and close to the field boundary would assist in the management of the field as it is an easier line for walkers to distinguish and follow, meaning less likelihood of trampling over a wider area.*

## 5.0 Recommendations and Reasons

- 5.1 The Committee must firstly decide whether it appears that, in the interests of the landowner, the public or both, it is expedient that part of Footpath No 21 West Auckland be diverted.
- 5.2 The owners have stated that the diversion of the footpath would assist with easier management of the field. It is considered that there are benefits to farming the field if the footpath was located along its edge, despite the Open Spaces Society's questioning of this. The footpath can be kept as a permanent strip around the edge of the field with fertilisers kept to a minimum when compared to a cross field route which is prone to greater damage by walkers (no permanent route across and difficult to accurately follow) who are more likely to trample a wider area and cause more damage to the crop. It is also easier to re-cultivate a field if a footpath follows along its edge rather than across the middle.
- 5.3 If the Committee is satisfied that the proposed Diversion Order would be expedient in the interests of the landowner, then it should next form a judgement on the convenience of the path as result of the diversion and the expediency of the proposals having regard to the effect the diversion would have on the public's enjoyment of the path as a whole and on the land crossed by the path.

- 5.4 Given the similarity of the terrain crossed by both paths, the shorter length of the proposed path and it joining up with a surfaced path to the bypass it is not felt that the diversion route is substantially less convenient nor would it affect the public's enjoyment of the path as a whole. Indeed it is reasonable to suggest that the more direct route along the edge of the field is more convenient for the public to follow.
- 5.5 Therefore, for the reasons set out above, it is recommended that the Committee agrees to the making of a Diversion Order under the provisions of Section 119 of the Highways Act 1980.

### **Background Papers**

Correspondence and consultations – File 3/18/11

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## **Appendix 1: Implications**

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### **Finance**

Administrative and advertising costs to be recovered from the A688 West Auckland Bypass Stage 2.

### **Staffing**

Not Applicable

### **Equality and Diversity**

Not Applicable

### **Accommodation**

Not Applicable

### **Crime and Disorder**

This is not contained in any of the substantive tests under Section 119 of Highways Act 1980. The proposals will not have a detrimental effect on crime and disorder in the area.

### **Sustainability**

Not Applicable

### **Human Rights**

Articles 6, 8 and Article 1 of the First Protocol of the European Convention on Human Rights (right to a fair trial, respect for private and family life and protection of property) may be relevant. Article 6 stipulates there should be a fair procedure for reaching any decision and this is in place.

As this application is made by the landowner and relates to an existing public right of way, it is unlikely that Article 8 and Article 1 of the First Protocol will be breached in reaching a decision.

### **Localities and Rurality**

As detailed in the report.

### **Young People**

Not Applicable

### **Consultation**

As detailed in the report.

### **Health**

Not Applicable