

## Highways Committee

23 April 2010

### Public Footpath No. 3 Hilton Parish

### 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 3, Hilton.

### 2.0 Background

2.1 Public Footpath No. 3 Hilton Parish runs from Hilton village in a generally north easterly direction, via West Leaside Farm where it intersects with Footpaths Nos. 7 and 11, before reaching a minor road west of Hindberries. The total length of the path is approximately 1.5km. The path is part of a network of rural paths south of West Auckland and west of the A68.

2.2 The proposal is to divert approximately 100 metres of the footpath where it runs through the yard of West Leaside Farm.

2.3 The diversion is sought by the owners of West Leaside Farm, Mr and Mrs Dedman, to benefit their safe operation of the farm, and for the security of their property and machinery, as described in **Document A**.

2.4 The proposed diversion would move the footpath running north east from its junction with Public Footpath No.11 through the farm yard and across a field corner to a more easterly route running north from Footpath No.11 through an orchard and onto a farm track. Gates will be provided where the new route crosses fencelines and a sleeper bridge will be installed to cross a ditch immediately south of the orchard. Plans showing the general location and the details of the proposal are found in **Document B**.

2.5 Consultations have been carried out for this proposal. The Local Members, Hilton Parish Meeting, the former Teesdale District Council and the Ramblers' Association did not raise any objections (though the Ramblers' did express some initial concerns about the geese), and any responses received are shown in **Document C**. An objection was however received from The Open Spaces Society (see **Document D** – contains 3 letters/emails).

### 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 that 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 the 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 that the Council will ensure that it deals with them in a balanced way as required by the legislation described.
- 3.6 The Council also has to have regard to the Disability Discrimination Act in terms of the structures provided on new routes, and has addressed this requirement in this case by securing the agreement for the installation of gates rather than stiles.
- 3.7 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 between March 2009 and August 2009. She submits that she wishes to retain the path through the farm yard, though she is happy for the section across the corner of the field to be diverted onto the farm track. She submits that the new route would be boggy, she is concerned about the structures on the new route, and also has concerns about the geese which can be found at the farm.

#### Response

*The diversion of the section of path through the farm yard is the most important part of the proposal for the applicants, as it is this section that brings the public closest to the farm buildings and to machinery. The provision of a sleeper bridge across the only obvious wet area will address the boggy ground, and gates rather than stiles will be provided through the fencelines. There are two geese at*

*the farm and they currently have access to the existing path, and have no history of causing any inconvenience to walkers.*

## **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. 3 Hilton be diverted.
- 5.2 The owners have stated that the diversion of the footpath would assist in the safer operation of the farm, and would increase their security. It would remove the path from the yard area where machinery operates and is stored. It would also avoid the need to have a short section of crossfield path, thereby assisting the agricultural management of the field.
- 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 a 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 Whilst part of the existing path is a hard surface through the farm yard, the proposed route is level, maintained and attractive through the orchard, and the farm track is a better surface than the crossfield section. 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.
- 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 6/18/20/3

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## **Appendix 1: Implications**

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### **Finance**

Administrative and advertising costs to be recovered from the applicants

### **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 the Highways Act 1980. The proposals may have a positive effect in reducing both crime and the fear of crime at this location.

### **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 that 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