



Special Highways Committee

Date Monday 8 July 2013
Time 11.30 a.m.
Venue Committee Room 1B, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Declarations of interest, if any
4. Public Footpath No. 20, Bearpark Parish - Highways Act 1980, Public Path Diversion Order - Joint Report of Corporate Director Regeneration and Economic Development and Head of Legal and Democratic Services (Pages 1 - 22)
5. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Colette Longbottom

Head of Legal and Democratic Services

County Hall
Durham
28 June 2013

To: **The Members of the Highways Committee**

Councillor G Bleasdale (Chairman)
Councillor C Kay (Vice-Chairman)

Councillors J Allen, B Armstrong, D Bell, H Bennett, I Geldard,
O Gunn, D Hall, D Hicks, K Hopper, O Milburn, S Morrison,
R Ormerod, J Robinson, J Rowlandson, P Stradling, R Todd,
J Turnbull, M Wilkes and R Young

Contact: Michael Turnbull

Tel: 03000 269 714

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Highways Committee

8 July 2013

Public Footpath No. 20, Bearpark Parish



Highways Act 1980 Public Path Diversion Order

Joint Report of Ian Thompson, Corporate Director of Regeneration & Economic Development and Colette Longbottom, Head of Legal & Democratic Services

Purpose of the Report

- 1 To consider an application to divert part of Public Footpath No 20 Bearpark at Lodge Farm.

Background

- 2 Public Footpath No. 20 Bearpark Parish runs from Public Bridleway No. 3 in a generally northerly direction past Lodge Farm to the Lanchester Valley Railway Path. It forms part of a wider network of public rights of way which, together with the railway path, provide links between Bearpark, Langley Park, Witton Gilbert and beyond. An extract from the Definitive Map of Public Rights of Way is shown in **Document A**.
- 3 The proposal is to divert approximately 146 metres of the footpath where it runs adjacent to the buildings at Lodge Farm.
- 4 An application was received in August 2012 from Roger Copestake of IDPartnership – Northern on behalf of Mr John Holmes, the owner of Lodge Farm, on the grounds of security and to provide a more attractive and accessible route for the public.
- 5 The proposed diversion would move the footpath running north east from the junction with Bridleway No. 3 past the buildings to a more southerly and easterly route through agricultural land. Two new timber gates will be provided by the applicant where the new route crosses fencelines, the path will be provided with a suitable surface, and the bridge over the stream will be repaired to meet Durham County Council standards. All works will be paid for by the applicant. A plan showing the proposal is found in **Document B**.
- 6 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 both the landowner and of the public.

- 7 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 as the existing path.
- 8 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.
- 9 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.
- 10 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.
- 11 The Council also has to have regard to the Equality 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.
- 12 The briefing note in **Document C** describes the statutory framework.
- 13 Pre-Order consultations have been carried out for this proposal. The Local Members and the Ramblers Association did not raise any objections, and any responses are in **Document D**. An objection was however received from Bearpark Parish Council, and despite further correspondence this objection was maintained. Copies of correspondence are in **Document E**.
- 14 Bearpark Parish Council objects to the proposal. The reasons for objection were initially given in an email of 12 November 2012, and then detailed in their undated letter to Kevin Telford of the Access and Rights of Way Team. In summary they are that; 1) they want the path to remain unchanged, or any change to be minimal, due to the history of the path and its strategic importance as a link to Langley Park and Witton Gilbert; 2) a belief that the diversion application is linked to a planning application; and 3) the loss to the public view of a feature of historical and architectural interest. The Parish Council concludes that the proposed diversion would have a negative effect on 'the public enjoyment of the path or way as a whole'.
- 15 In response to this objection the following comments can be made; 1) most paths are historical in their nature, but that in itself is not a reason for rejecting proposals to change a path. The legislation is designed to allow changes provided the interests of the public are taken in to account. It is agreed that Public Footpath No. 20 forms part of a strategic network of paths, but it is submitted that this network will not be adversely affected by the proposed diversion. Path users will have an additional 55 metres to walk as a

consequence of the proposed diversion. This is not considered to be significant within the context of a walk of approximately 3 km between Bearpark and Langley Park; 2) an initial planning application for a development at Lodge Farm would have required the diversion of Footpath No. 20 under the provisions of the Town and County Planning Act 1990, but a revised application has now been approved with accommodates the path on its current line. There is therefore no link between the planning permission and the current diversion proposal; 3) Bull Hole Byre is a Grade II listed building, dating from the 17th century. As part of the approved planning permission, Listed Building Consent has been granted for works to consolidate this building. The public will still be able to view the Byre from the new route, albeit at a greater distance than at present. Any decision to allow public access to the building itself, as for Heritage Open Days, is not dependent on the location of the Public Footpath.

Recommendations and reasons

- 16 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. 20 Bearpark is diverted.
- 17 The landowner has stated that the diversion of the footpath would increase their security, and those of the new properties under development. It would provide a more attractive route for the public, away from the buildings and offering a greater variety of landscape, including a pond which will be dredged and improved.
- 18 If the Committee is satisfied that the proposed Diversion Order would be expedient in the interests of both the landowner and of the public, 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.
- 19 Whilst the existing path is a hard surface past the buildings at Lodge Farm, the proposed route will also be surfaced, will have gates rather than the existing stile, and offers a potentially attractive route past woodland and a pond. Whilst slightly longer than the current route, the additional distance is not felt to be significant in the context of a recreational route in the countryside. 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.
- 20 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 F:\Rights of Way\ Public Path Orders and Agreements\On going Orders\Bearpark 20

Contact: Mike Ogden 03000 265331
Neil Carter 03000 269722

Appendix 1: Implications

Finance

The applicant will meet the costs of the creation of the new path, and has agreed to pay for the costs of the Order.

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

The statutory procedures covering Orders made under s.119 of the Highways Act 1980 allow any person to make their views known, and for any such views to be considered by an independent Inspector.

Localities and Rurality

None

Young people

None

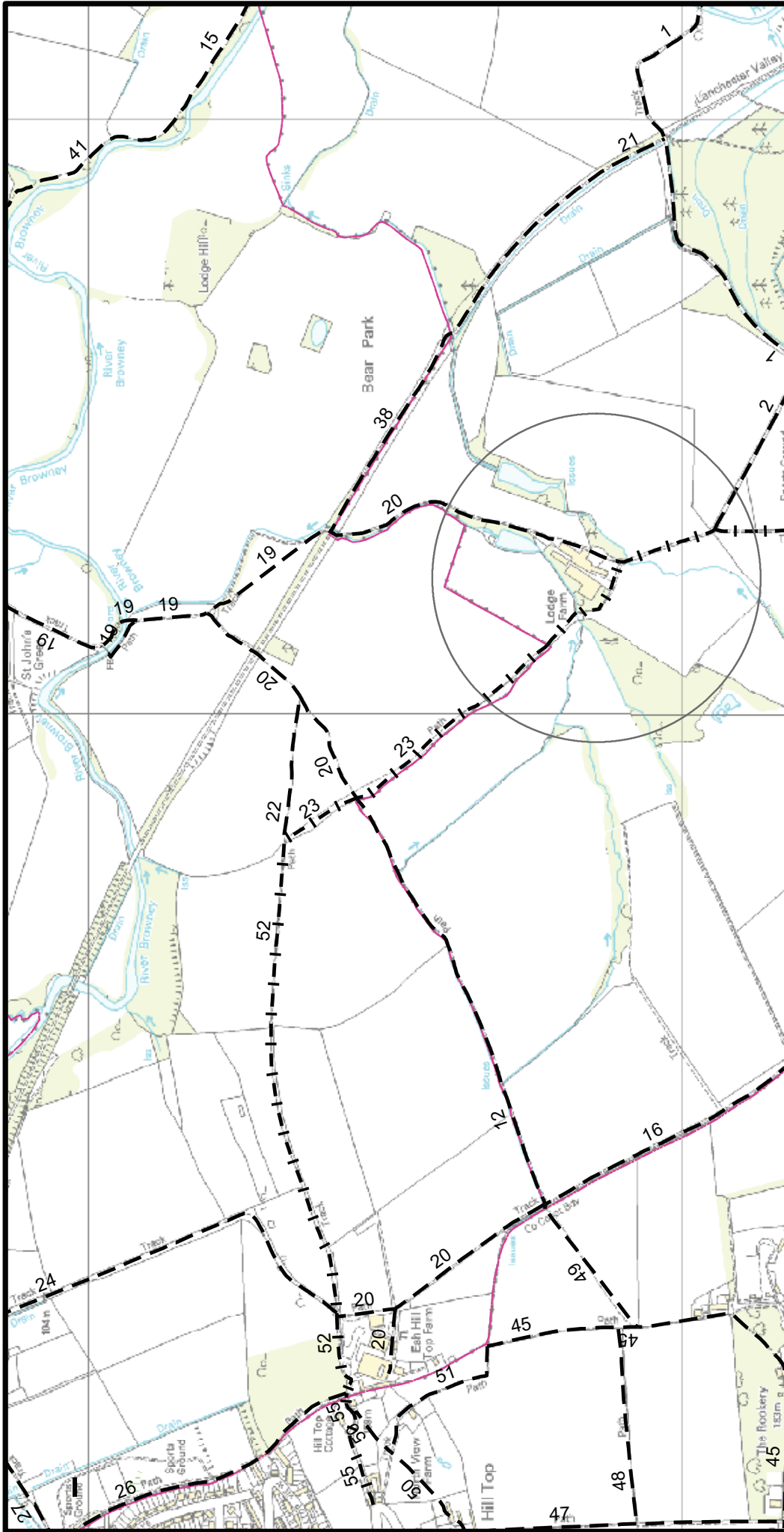
Consultation

A consultation has been carried out with Local Members, Bearpark Parish Council and user groups.

Health

None

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Comments	Drawn by:
	Date:
	Scale 1:8,975

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Public Rights of Way

- — — — — Footpath
- - - - - Bridleway
- ∨ ∨ ∨ ∨ ∨ Byway



Durham County Council

Access & Rights of Way Team
 Regeneration and Economic Development
 Durham County Council
 County Hall
 Durham
 DH1 5UQ
 Telephone 03000 265342

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IAN THOMPSON
CORPORATE DIRECTOR
REGENERATION AND
ECONOMIC DEVELOPMENT
DURHAM COUNTY COUNCIL
COUNTY HALL
DURHAM DH1 5UG

**PROPOSED DIVERSION OF
PUBLIC FOOTPATH NO 20
BEARPARK
LODGE FARM**

Footpath to be extinguished

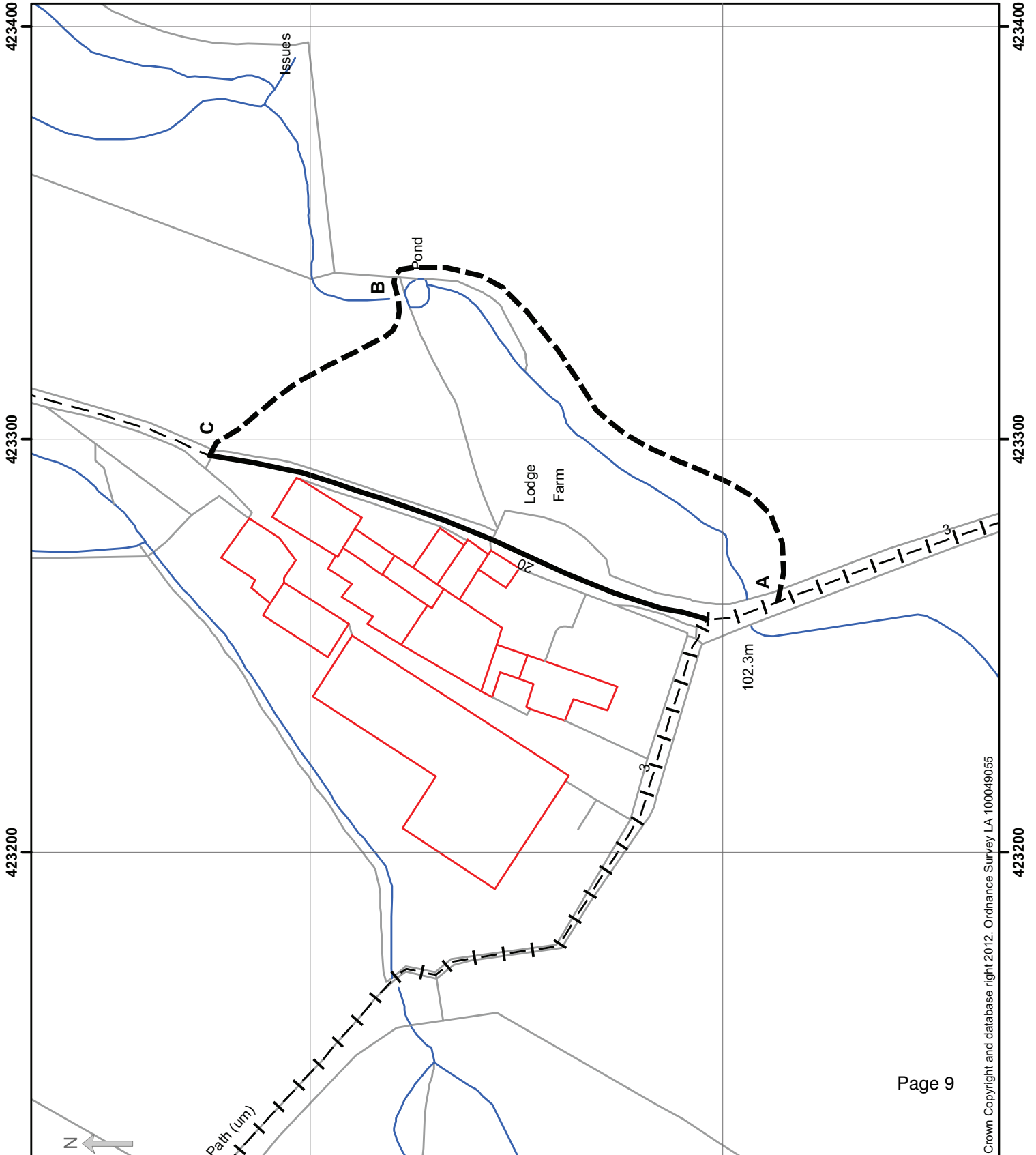
Footpath to be created

SCALE 1: 1250

DATE: 29 AUG 2012

**PUBLIC RIGHTS OF WAY
not affected by the proposals:**

- - - - Footpath
- | - | - | - Bridleway
- Λ V Λ V Λ V Byway



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BRIEFING NOTE FOR HIGHWAYS COMMITTEE

PUBLIC PATH DIVERSION ORDERS

Section 119 Highways Act 1980

The following briefing note sets out the criteria and considerations for the diversion of a public footpath or bridleway.

Section 119 of the Highways Act 1980 gives a discretionary power to the Council to divert a public path. A "Diversion Order" has the effect of extinguishing a path or length of path and creating an alternative path simultaneously.

The Council may make an Order where it appears to the Council that it is expedient to do so:-

- (i) in the interests of the owner, lessee or occupier of the land crossed by the path; and/or
- (ii) in the interests of the public

A Diversion Order shall not alter a point of termination of a path except to another point on the same highway or one connected with it and which is substantially as convenient to the public.

The Council (or the Secretary of State if the Order is opposed) may not confirm a Diversion Order unless satisfied that above criteria are met and that the path or way will not be substantially less convenient to the public as a result of the diversion and that it is expedient to confirm the Order having regard to the effect which:-

- (i) the diversion would have on the public enjoyment of the path as a whole:
- (ii) the diversion would have on land served by the existing path, and
- (iii) the new path would have on land over which the right of way is to be created.

A path which is diverted from land owned by one person onto land owned by another person may give rise to claims for compensation and this can be taken into account when considering points (ii) and (iii) above.

When deciding whether to confirm a Diversion Order regard should also be had to any material provision of a rights of way improvement plan prepared by the highway authority which includes the land over which the order would create and extinguish a public right of way. The Rights of Way Improvement Plan for County Durham 2007-2011 refers to diversion orders and states that 'We consider all applications on a case by case basis bearing in mind the

legal tests that need to be applied..... In considering the types of applications described above, we will ensure that we properly balance the interests of owners/occupier/lessee of land with those of the path users as required by the relevant legislation.'

The Council may require an applicant (or joint applicants) to defray or make a contribution to:-

- (i) any compensation payable;
- (ii) any expense to the Council in facilitating the convenient exercise of any new path.

In making a Diversion Order the Council is required under Section 29 and 121(3) of the Act to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. The Council is also required, under the Countryside Act 1968 to have regard to the desirability of conserving the natural beauty and amenity of the countryside.

NOTE

Section 119 of the Highways Act 1980 creates a two part test with different criteria at the order making and confirmation stage. In *Hargrave v Stroud District Council (2002)* it was confirmed that when deciding whether to make an order the Council is entitled to take into account the tests to be applied at the confirmation stage as it would be nonsensical if the Council made an order where it was clear the proposed diversion would not meet the criteria for confirmation.

Kevin Telford

From: Kevin Telford
Sent: 28 September 2012 14:34
To: [REDACTED]
Subject: RE: Consultation re footpath 20 Bearpark

Thanks Roger
Your comments have been noted.

Regards
Kevin

Kevin Telford (Public Rights of Way Officer) Access & Rights of Way Section Regeneration & Economic Development Durham County Council County Hall Durham
DH1 5UQ

Telephone no. 03000 265336

web site: <http://www.durham.gov.uk/prow>
online Definitive Map (working copy): <http://www.durham.gov.uk/definitivemap>
e-mail: prow@durham.gov.uk

-----Original Message-----

From: thecarpenters@tiscali.co.uk [REDACTED]
Sent: 28 September 2012 14:16
To: Kevin Telford
Subject: Re: Consultation re footpath 20 Bearpark

Dear Mr Telford

I have no objection to the proposed diversion of footpath 20 provided standard signage and gates are used on the route and there is adequate provision for the crossing of the watercourse.

Yours sincerely

Roger Carpenter
Footpaths Officer, Durham Group
Ramblers Association

>-----Original Message-----

>**From:** Kevin.Telford@durham.gov.uk
>**Date:** 28/09/2012 13:18
>**To:** [REDACTED]
>**Subj:** Consultation re footpath 20 Bearpark

>

>Dear Ramblers Association

>

>Re: Highways Act 1980. Section 119

>Proposed diversion of Public Footpath no. 20 Bearpark Parish (Lodge Farm, Bearpark DH7 7EA)

>

>I am considering a proposal under the provisions of the Highways Act 1980 s119 to divert the above named Public Right of Way, as shown on the enclosed plan. The diversion is requested by the owner of Lodge Farm to take the path further away from the buildings at Lodge Farm, and to provide a more attractive route for the public. It is proposed that the diverted footpath will be constructed to a width of 1.8 metres and provided with a surface in keeping with the local environment.

>

>I would be pleased to receive any comments or objections within 30 days of the date of this email. If there are no objections, the application may be determined by the Deputy Chief Executive (Corporate Services), in consultation with the Corporate Director of Regeneration and Economic Development, and if there are objections, it will be determined by the Highways Committee. If you need more time to consider the matter please let me know.

>

>Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally they may also be disclosable under the Freedom of Information Act 2000.

>

>Regards

>

>

>Kevin Telford (Public Rights of Way Officer)

>Access & Rights of Way Section

>Regeneration & Economic Development

>Durham County Council

>County Hall

>Durham

>DH1 5UQ

>

Kevin Telford

From: Kevin Telford
Sent: 31 October 2012 08:21
To: Cllr Mark Wilkes
Subject: RE: Consultation re footpath 20 Bearpark

Councillor Wilkes

Thanks for your email.

I can't find any previous response, however I can advise that our Bridge Liaison Engineer has inspected the culvert, and I have forwarded his recommendations to the applicant's agent.

We would not confirm the Diversion Order until we were happy with the condition of the culvert.

Hope this helps.

Regards
Kevin

Kevin Telford (Public Rights of Way Officer)
Access & Rights of Way Section
Regeneration & Economic Development
Durham County Council
County Hall
Durham
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online Definitive Map (working copy): <http://www.durham.gov.uk/definitivemap>
e-mail: prow@durham.gov.uk

From: Cllr Mark Wilkes
Sent: 30 October 2012 13:19
To: Kevin Telford
Subject: RE: Consultation re footpath 20 Bearpark

Kevin

I thought I had already responded to this as king to make sure that there was an adequate crossing over the small brook/stream put in place?

Mark

County Councillor Mark Wilkes

Framwellgate Moor Division - including Aldin Grange, Bearpark, Brasside, Framwellgate Moor, Kimblesworth Grange, Finchale Abbey Village, Hartside, Pity Me, Witton Gilbert & Witton Station.

mark.wilkes@durham.gov.uk
Blog: www.markwilkes.mycouncillor.org.uk
Tel: 01913725866 - 07500125325
Mob:07809377177

From: Kevin Telford
Sent: 29 October 2012 13:19

To: Cllr Mark Wilkes

Subject: Consultation re footpath 20 Bearpark

Councillor Wilkes

Re: Highways Act 1980. Section 119

Proposed diversion of Public Footpath no. 20 Bearpark Parish (Lodge Farm, Bearpark DH7 7EA)

I refer to my initial consultation dated 28 September concerning the above proposal.

I am anxious to progress this matter and would be grateful if you could confirm whether or not you have any comments or objection with regard to this proposal.

If I do not hear from you within 14 days I will assume that you have no objection.

Please note that if you do make representations, then by virtue of the Local Government (Access to Information) Act 1985, the County Council may make them available for public inspection. Additionally they may also be disclosable under the Freedom of Information Act 2000.

Regards

Kevin Telford (Public Rights of Way Officer)
Access & Rights of Way Section
Regeneration & Economic Development
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web site: <http://www.durham.gov.uk/prow>

online Definitive Map (working copy): <http://www.durham.gov.uk/definitivemap>

e-mail: prow@durham.gov.uk

Kevin Telford

From: Michael O'Hare [redacted]
Sent: 12 November 2012 16:41
To: Kevin Telford
Subject: Consultation re Footpath 20 Bearpark

Thank you for your emails concerning the above,

Marion Wilson (Chair Bearpark Parish Council) has just forwarded me the following:

"Bearpark Parish Council are objecting to the proposed footpath diversion as it feels that this will add time to walks. The path will not be as easy to walk in the dark as there is no lighting and the proposal takes a wider route than the original path. The original path is no nearer the house or proposed development than many houses in the village. The Parish Council wish the path to stay where it currently is. Any future development should be able to work around the existing Footpath"

Regards,

MJ O'Hare
Clerk to Bearpark Parish Council

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Kevin Telford

From: Kevin Telford
Sent: 10 December 2012 08:04
To: 'Michael O'Hare'
Subject: RE: Footpath 20 Diversion - Parish Objection
Attachments: Letter from IDPartnership Northern re fp20 diversion.pdf

Dear Mr O'Hare

I would be grateful if you could convey the following information to the Parish Council relating to their objection to the proposed diversion of footpath 20:

In accordance with the legislation under section 119 of the Highways Act 1980, we do not consider the diversion to be unreasonable or the proposed route to be substantially less convenient than the existing route.

We would respond to the reasons for your objection as follows:

"Bearpark Parish Council are objecting to the proposed footpath diversion as it feels that this will add time to walks".

The length of the diverted footpath will be approximately 55 metres longer than the existing path (201 metres as opposed to 146 metres). We do not consider this to be substantially less convenient to the public, in the context of a path used for recreational purposes, and do not consider this to be sufficient grounds to prevent the making of the diversion order.

"The path will not be as easy to walk in the dark as there is no lighting and the proposal takes a wider route than the original path".

Public Footpath 20 is a largely rural footpath. There is no publically maintainable street lighting on the existing footpath or on the access track to Lodge Farm. Indirect light overspill from Lodge Farm cannot be considered as either an intended or reliable means of lighting the path. We therefore do not consider the lighting issue to be valid grounds for objection.

"The original path is no nearer the house or proposed development than many houses in the village".

The location of other footpaths in the village and proximity to housing is irrelevant to the proposed diversion of Footpath 20, which is being sought for reasons specific to this location. The diversion is not being sought to enable development to go ahead; this would require an application under section 257 of the Town and Country Planning Act 1990. We therefore do not consider this aspect of the parish objection to be relevant to the diversion.

"The Parish Council wish the path to stay where it currently is".

The legislation exists to allow landowners to apply to divert public rights of way. The owner of Lodge Farm has provided specific reasons for wanting to divert the footpath, which we consider are not unreasonable. The applicant is perfectly entitled to seek to divert the path if they believe that moving it would be in their interests. He has satisfied us that it would be in his interests to divert the path. The test that then needs to be applied is the effect on the public of such a change, namely is it substantially less convenient to the public?

"Any future development should be able to work around the existing Footpath".

As stated above, the diversion is not being sought to enable development to go ahead; therefore we do not consider this aspect of the parish objection to be relevant to the proposed diversion. The potential future plans of the landowner are not relevant; the proposal must be looked at on its merits given the situation that currently exists.

In view of the above, we would request that Bearpark Parish Council reconsider their objection to the application to divert Footpath 20, and let me know accordingly.

The Parish Council are the only objectors to the proposed diversion. If the objection is not withdrawn we must present the proposals to the Council's Highways Committee. All parties can make representations to the Committee, which will either approve the making of a diversion order or decide to reject the proposal, in line with the requirements of the legislation.

Please also find attached a letter from Roger Copestake of IDPartnership Northern.

Regards

Kevin Telford (Public Rights of Way Officer)
Access & Rights of Way Section
Regeneration & Economic Development
Durham County Council
County Hall
Durham
DH1 5UQ

Telephone no. 03000 265336

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online Definitive Map (working copy): <http://www.durham.gov.uk/definitivemap>
e-mail: prow@durham.gov.uk

From: Michael O'Hare [mailto:Michael.O'Hare@durham.gov.uk]
Sent: 22 November 2012 10:12
To: Cllr Mark Wilkes; Marion Willson; Kevin Telford
Subject: Footpath 20 Diversion - Parish Objection

Good Morning Mark,
Your email of 15th November concerning the above topic was discussed in detail at last night's Parish Council Meeting.

I have been requested to thank you for the information you supplied but to inform you that the Parish Council have decided to continue with their objection to the proposed diversion of this footpath.

Regards,

MJ O'Hare
Clerk to Bearpark Parish Council

Dear Mr Telford,

I write in response to your e-mail correspondence of the 10th December 2012 regarding the proposed diversion of Footpath 20 at Lodge Farm, Bearpark. The Council notes your response to its initial concerns raised at its October meeting and appreciates your comprehensive response.

No Parish Council meeting was held in December 2012, however, I have spoke to the Chair and Vice Chair of the Parish Council and they have both agreed that it is in the best interests of the residents of Bearpark, and of the wider general public, that an objection is raised to the diversion of Public Footpath No.20. The council accepts that a number of its initial concerns regarding the proposal have been dealt with by your response but still has a number of principle objections which do not appear to have been dealt with adequately.

Firstly, the Parish Council have expressed a desire that the Footpath remain in its existing location or as close as practicable to it. As you will no doubt be aware, the public footpath has followed this route for an undefined, but almost certainly a period that extends for hundreds of years. Generations of the walking public have enjoyed this route during this period and have found it a convenient means of access to the closely linked villages of Langley Park and also Witton Gilbert. Indeed, many of the residents of these villages also use this Public Footpath and would no doubt be concerned at its diversion. It may also be useful to consult with the Parish Council's of Witton Gilbert and Esh to establish if they have any concerns regarding this footpath diversion. This public footpath also allows access to the nearby Lanchester-Bishop Auckland disused railway line that is of a great recreational asset to local people.

Secondly, the Parish Council believe that it is naive to state that the diversion is not being sought to enable a development to proceed. Clearly, the request for a public footpath diversion and the planning application to develop Lodge Farm are inherently linked together. After reviewing the initial plans for the proposed development of Lodge Farm it is absolutely clear that plans as proposed require diversion of footpath 20. Without diversion of the footpath then the land allocation of the housing plots would change requiring the plans to be substantially altered. It is the Parish Council's request that the proposal to divert footpath 20 be considered in light of the planning application for Lodge Farm.

Thirdly, the proposed new route would remove the path from a significant feature of local historical and architectural interest. That being the 16th century Bull Hole Byre that is located adjacent to the present route of footpath 20. Alteration of this route would prevent close observation of this structure and effectively remove an important feature of local history from public view. The Bull Hole Byre has recently been opened as part of the national 'Heritage Open Days', which enables members of the public to access this feature. The parish council is concerned that once the footpath is diverted, access to observe this feature will be lost and a significant local historical feature will be lost to the public.

The Parish Council therefore wish to object to the proposed footpath diversion on the grounds that this would have a negative effect on the 'public enjoyment of the path or way as a whole' as detailed in Section 119 of the Highways Act 1980.

The Parish Council is also concerned that its objection may be dealt with by the County Council's Highways Committee for determination prior to publication of the draft order. Objections to this Order are most likely to result in the matter needing to be dealt with by the Secretary of State.

I look forward to hearing from you in due course regarding this matter.

Regards,



Michael O'Hare
Clerk to Bearpark Parish Council