

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

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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