

Highways Committee

11 June 2018

Public Bridleway No. 12 and Public Footpaths Nos. 13a, 13b and 14 Shadforth Parish and Public Footpath No. 20 Haswell Parish



**Highways Act 1980
Public Path Diversion, Creation and Extinguishment Orders**

Joint Report of Ian Thompson, Corporate Director of Regeneration and Local Services and Helen Lynch, Head of Legal and Democratic Services

1.0 Purpose of the Report

1.1 To consider an application to divert Public Bridleway No. 12 Shadforth, create Public Footpath No. 20 Haswell, and extinguish Public Footpaths Nos. 13a, 13b and part of 14 Shadforth. This will require three separate but related Orders. Under the Council's Constitution the decisions whether or not to make the Orders rest with the members of this Committee, as the application has attracted an objection.

2.0 Background

2.1 Public Bridleway No. 12 Shadforth Parish runs from a point on the C60 Shadforth to Ludworth road, running north to the farm buildings at Hill House Farm, then east and then north, passing around Crime Rigg Quarry to emerge onto the B1283, Durham Lane. It is isolated from other Public Bridleways, but is linked to a network of Public Footpaths in the area between the two roads. Public Footpaths Nos. 13a and 13b Shadforth Parish duplicate each other, while the short section of Public Footpath No. 14 Shadforth Parish south of Public Footpath No. 13 Shadforth Parish does not serve any obvious purpose. There are at present no connections between this network of paths and the wider network without using busy roads. An extract from the Definitive Map of Public Rights of Way is shown at **Document A**.

2.2 An application was received in November 2017 from Mr Barrass of Vickers and Barrass on behalf of L.G. Oliver and Partners, the owners of Hill House Farm, to divert Public Bridleway No. 12 away from the vicinity of the farm buildings and intensively used areas, to extinguish some of the duplicate Public Footpaths, and to provide a new Public Footpath No. Haswell parish to provide a connection for pedestrians into the Public Footpath network around

Ludworth and Haswell. The diversion is sought in the interests of the landowner who wishes to improve biosecurity and public safety at his expanding agricultural business. A statement as to the applicants' reasons for the proposals is shown at **Document F**.

- 2.3 The proposal would move Bridleway 12 from its current location to a more easterly route, following the current route of Public Footpath No 14 north from its junction with Footpath No. 13 and the C60 road. It would also extinguish Public Footpaths Nos. 13a and 13b, and the isolated section of Footpath No.14, and create a new Public Footpath No. 20 Haswell Parish running east from the unaffected section of Bridleway 12 to connect with Public Footpaths Nos. 5, 7 and 9 Haswell and 24 and 25 Shadforth.
- 2.4 All necessary gates, stiles and other works will be paid for by the applicant. A plan showing the proposal is shown at **Document B**.
- 2.5 Pre-order consultations have been carried out for this proposal. The Local Members, Shadforth and Haswell Parish Councils and the Ramblers Association did not raise any objections, and any responses are at **Document C**. An objection however was received from the British Horse Society, and despite further correspondence this objection was maintained. This correspondence can be seen at **Document D**.

3.0 Legal Framework

- 3.1 The briefing note at **Document E** describes the statutory framework.
- 3.2 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.
- 3.3 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. In this case ends of the diverted bridleway are on the same highway, and it is argued that there is no loss of convenience for pedestrian as Public Footpath No 13 remains to provide an off-road link. For equestrian users of Bridleway No.12 the length of off-road route is reduced, but it is argued that equestrian use of Bridleway No. 12 is already very limited due to its lack of connections with other bridleways or safe road routes, so in reality there is very little inconvenience. The diverted route would actually be closer to the only other Bridleway in the area; Bridleway No. 16 Shadforth which comes into Ludworth from the south.
- 3.4 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 the needs of agriculture are relevant, and will be expanded upon by the applicant's representatives.

- 3.5 Before a Diversion 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. Bridleway No. 12 runs between two roads, and does not connect with any other bridleways. The proposed route of Bridleway No. 12 would reduce potential conflict between the public and farm vehicles and stock.
- 3.6 The relevant statutory provision for the creation of a public path is Section 26 of the Highways Act 1980. A Creation Order can be made by the Council where it appears that there is a need for a public path, having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public or the convenience of local residents, and the effect any creation would have on the rights of the landowner. In this case the creation of Footpath No. 20 Haswell would add to the enjoyment and convenience of walkers by connecting the paths around Hill House Farm to the wider network to the east, and the creation has been offered by the landowner so has no detrimental effect on the landowner's rights, and therefore no compensation will be payable.
- 3.7 The relevant statutory provision for the extinguishment of a public path is Section 118 of the Highways Act 1980. An Extinguishment Order can be made by the Council where it appears that a path is not needed for public use. The confirming authority must also have regard to the extent to which the path would be likely to be used by the public if it were to be retained, and the effect of the extinguishment on the land served by the path. In this case Footpaths Nos. 13a and 13b duplicate each other and connect with the section of Bridleway No. 12 that is proposed to be diverted. If the diversion proceeds there will be no need for Footpaths Nos. 13a and 13b. Footpath No. 13 starts from the same point and is retained, providing the west-east link. The short isolated section of Footpath No.14 is not needed as Footpath No. 13 and the rest of Footpath No.14 (proposed as the new route of Bridleway No. 12) commence only a few metres away.
- 3.8 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.
- 3.9 The Council also has to have regard to the Equality Act in terms of the structures provided on new routes, and this will be addressed by ensuring that all new structures are in accordance with BS5709:2018, with gates where possible rather than stiles.

4.0 Comments on the objection

- 4.1 The objection from the British Horse Society can be summarised as follows; the diversion of Bridleway No. 12 will reduce the overall length of off-road riding

routes, with the local roads hazardous for equestrians; there are other options for diverting the bridleway or creating new bridleways; the proposed creation of Footpath No. 20 could be a bridleway creation; and the agricultural need for the proposals has not been clearly made.

- 4.2 The applicant has commented during the consultation period on the various points raised by the objector, and their comments are included at **Document D**.
- 4.3 In overall response to the issues raised by the objector, it can be commented that the location of Bridleway No. 12 means that use by and value to equestrians is very limited. It can only be reached by riding on busy roads, and does not connect with any other bridleways. It is only for those reasons that a reduction in the overall length of bridleway is felt to be acceptable. The applicant has put forward valid agricultural reasons why additional bridleways are not feasible at this location, given the large-scale and expanding operations planned for this farm. The applicant has agreed to an additional footpath that offers links into the wider network for walkers, and whilst making this route a bridleway was considered, the costs in fencing the route to separate cattle and horses would be prohibitive. The applicant does not require fencing for a footpath.
- 4.4 Opportunities to increase the number of bridleway routes are sought wherever they are practical, but at this particular location the value of any additional bridleways would be minimal given the difficulties in reaching the site by horse. In view of this, the additional footpath is felt to be a reasonable mitigation for the loss of some of the length of bridleway.
- 4.5 Members of the Committee are reminded that their decisions are on the proposals in the application, not any alternative proposals that might be suggested.

5.0 Assessment of application

- 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 Bridleway No. 12 Shadforth is diverted.
- 5.2 The applicant has provided at **Document F** a detailed case for the diversion, and the consequent extinguishments and creation, and it is considered that the diversion is expedient in the interests of the landowner.
- 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 The new route of the bridleway will have a better surface and be fenced off from the fields, reducing the risk of any potential conflict with cattle or farm vehicles.

The proposed entrance/exit on the C60 road is considered to be safer than the existing bridleway entrance/exit. Given the context and location of this bridleway 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 The Committee must then decide whether there is a need for the creation of Footpath No. 20 Haswell. By connecting the existing path network around Hill House Farm with the wider network to the east around Ludworth, the convenience and enjoyment of the public as pedestrians is enhanced.
- 5.6 The Committee must finally decide whether Footpaths Nos. 13a, 13b and a short section of 14 Shadforth are not needed for public use. If the rest of the proposals are approved, then these paths are not needed.

6.0 Recommendations and reasons

- 6.1 Therefore, for the reasons set out above, it is recommended that the Committee agrees to the making of a Diversion and Definitive Map and Statement Modification Order under the provisions of Section 119 of the Highways Act 1980, and that the Order shall subsequently be either confirmed or referred to the Secretary of State for determination.
- 6.2 For the reasons set out above, it is also recommended that the Committee agrees to the making of a Creation and Definitive Map and Statement Modification Order under the provisions of Section 26 of the Highways Act 1980, and that the Order shall subsequently be either confirmed or referred to the Secretary of State for determination.
- 6.3 Finally, for the reasons set out above, it is recommended that the Committee agrees to the making of an Extinguishment and Definitive Map and Statement Modification Order under the provisions of Section 118 of the Highways Act 1980, and that the Order shall subsequently be either confirmed or referred to the Secretary of State for determination.

Process after making a Diversion/Creation/Extinguishment Order (for information)

Should Members resolve that Orders be made in accordance with the recommendations above, this is merely the start of the legal process. In particular, once Orders are made, they must be publicised and the public will have an opportunity to formally object to them. Should objections be received, the Orders would have to be referred to the Secretary of State who would usually hold a Public Inquiry before making a decision upon whether or not to confirm the Orders.

Attached Documents to report

Document A	Definitive Map extract
Document B	Proposal plan
Document C	Consultation responses

Document D	Correspondence with objector
Document E	Briefing note
Document F	Applicants' case

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Appendix 1: Implications

Finance

The applicants will meet the costs of the new paths and have agreed to pay for the costs of the Orders.

Staffing

Not Applicable

Risk

Not Applicable

Equality and Diversity

Not Applicable

Accommodation

Not Applicable

Crime and Disorder

Not Applicable

Human Rights

The statutory procedures covering Orders made under s.119, s.26 and s.118 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.

Consultation

See paragraph 2.5 of the report

Procurement

Not applicable

Disability Discrimination Act

Not Applicable

Legal Implications

See paragraphs 3.0 – 3.9 of report