

Highways Committee

13 September 2018

Public Footpath No. 39 Evenwood and Barony Parish



Highways Act 1980 Public Path Diversion Order

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 Footpath No. 39 Evenwood and Barony. Under the Council's Constitution the decision whether or not to make the Order rests with the members of this Committee, as the application has attracted an objection.

2.0 Background

- 2.1 Public Footpath No. 39 Evenwood and Barony Parish runs from a point on Toft Hill Lane (B6282), running west past the buildings at High Toft Hill farm then on to a point on Nettlebed Lane (C32). It forms part of a wider network of Public Footpaths in the rural area to the west of Toft Hill. An extract from the Definitive Map of Public Rights of Way is shown at **Document A**.
- 2.2 An application was received in May 2018 from Mr Todd of High Toft Hill farm to divert Public Footpath No. 39 away from the vicinity of the farm buildings and farmyard areas. The diversion is sought in the interests of the landowner, who is planning to construct a number of new agricultural sheds over the next few years and wishes to ensure that a safe and long-term route for the public is provided, minimising any potential conflicts between the public and farm machinery and animals.
- 2.3 The proposal would move Footpath 39 from its current location to a more southerly route, following the field edge from the eastern end of the path round to its junction with Public Footpath no. 38 to the west of the farm. An additional stile would be provided to enable alternative access to and from the footpath, as indicated on the proposal plan, shown at **Document B**.
- 2.4 Pre-order consultations have been carried out for this proposal. The Local Members and Evenwood and Barony Parish Council did not raise any objections, and the Ramblers Association objected initially but withdrew their objection following further discussion. Any responses are at **Document C**.

An objection however was received from the Open Spaces 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 the ends of the diverted footpath are on the same highway, and it is argued that there is no real loss of convenience for pedestrians as although the diverted route would be longer, and involve some loss and gain of altitude, these are not significant in the context of a path used for recreational countryside walking. The avoidance of potential conflict and confusion for users in the proximity of a working farmyard can also be seen as adding to the convenience of walkers. The provision of an access point onto the diverted path adjacent to the road junction helps to balance any inconvenience caused by the extra distance.
- 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, as mentioned in paragraph 2.2.
- 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. Footpath No. 39 is part of a wider network of rural footpaths, used primarily for recreational purposes, and it is submitted that the public enjoyment of the path as whole would not be adversely affected, making the confirmation of an Order expedient. The proposed route of Footpath No. 39 would reduce potential conflict between the public and farm vehicles and stock.
- 3.6 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.
- 3.7 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 the only new stile will be in accordance with BS5709:2018.

4.0 Comments on the objection

- 4.1 The objection from the Open Spaces Society can be summarised as follows; the diversion of Footpath No. 39 is circuitous and inconvenient for the public, it is excessive in relation to the area of concentrated agricultural activity; a diversion should be sought under the provisions of the Town and Country Planning Act 1990 in respect of any planned new building; the agricultural need for the diversion has not been clearly made; the new path might be fenced off and become a narrow corridor, and there is no inconvenience to the public in walking close to stock sheds and a working farmyard.
- 4.2 Correspondence with the objector (at **Document D**) seeks to address these matters, but in overall response to the issues raised by the objector, it can be commented that the additional distance resulting from the diversion is not felt to be significant in the context of a recreational walk in the countryside. The diversion will add approximately 190 metres to the length of Footpath No. 39. The applicant has put forward valid agricultural reasons why it is in his interests, and those of the public, to have the footpath away from the area of his existing and proposed sheds, given the expanding operations planned for this farm.
- 4.3 It is accepted that the applicant could apply under s.257 of the Town and Country Planning Act 1990 for a diversion around a proposed new shed, and could repeat that exercise for each subsequent new building as and when they come forward. However, this would result in a less acceptable solution given the potential confusion for the public and a route that made a series of right-angled turns to get round the buildings, whilst still being in close proximity to vehicle and animal activity.
- 4.4 The applicant has confirmed that he does not intend to enclose the proposed route with a fence or other boundary (at **Document F**)
- 4.5 Members of the Committee are also reminded that their decisions are on the proposal in the application, not any alternative proposal that might be suggested and that the applicant is entitled to make and have the Section 119 application determined.

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 Footpath No. 39 Evenwood and Barony is diverted.
- 5.2 The applicant has provided a credible case for the diversion, 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 footpath will be away from the farm buildings and farmyard area, reducing the risk of any potential conflict with animals or farm vehicles, and will be easy to follow around the field edge. The additional distance and change of height are not considered to be significant in the context of a country walk. The additional entrance/exit on the B6282 road is considered to be a useful option for walkers. Given the context and location of this footpath 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.

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 by the Council as an unopposed order or in the event of objection (s), referred to the Secretary of State for determination.

Process after making a Diversion Order (for information)

Should Members resolve that an Order be made in accordance with the recommendation above, this is merely the start of the legal process. In particular, once an Order is made, it must be publicised and the public will have an opportunity to formally object to it. Should objections be received, the Order 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 Order.

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	Statement from applicant

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Appendix 1: Implications

Finance

The applicants will meet the costs of the new path and have agreed to pay for the costs of the Order.

Staffing

Not Applicable

Risk

Not Applicable

Equality and Diversity

the new still will be in accordance with the relevant British standard

Accommodation

Not Applicable

Crime and Disorder

Not Applicable

Human Rights

The application engages the Applicant's rights under article 1 of the first protocol of the ECHR (peaceful enjoyment of property) and article 8 (right to respect for family, private life, home and correspondence). Article 6 is also engaged (right to a fair hearing). Article 1 and Article 6 are qualified rights which are addressed as part of the balancing exercise required by Section 119 of the Highways Act and Article 6 is fulfilled by both the Applicant and any objectors being afforded an opportunity to make representations and to speak at the Committee meeting as well as for such representations to be considered by an independent Inspector should the Order be opposed.

Consultation

See paragraph 2.4 of the report

Procurement

Not applicable

Disability Discrimination Act

Not Applicable

Legal Implications

See paragraphs 3.1 – 3.7 of report