

Highways Committee

23 November 2018



Public Footpaths No. 10 Barnard Castle Parish and No. 21 Marwood Parish and new Bridleway and Footpath Streatlam & Stainton, Marwood and Barnard Castle Parishes

Highways Act 1980 Public Path Diversion and Creation 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 Footpath No. 10 Barnard Castle and No. 21 Marwood and a proposal to create a new Public Bridleway and a new Public Footpath. Under the Council's Constitution the decision whether or not to make the Orders rests with the members of this Committee, as the application and proposal has attracted objections.

2.0 Background

Proposed Creation

- 2.1 Durham County Council owns most of the former railway line running north-east from Barnard Castle towards Bishop Auckland. In recent years the Teesdale Area Action Partnership has funded physical works to open up sections of the former railway to walkers, cyclist and horse-riders, and wheelchair access where possible, with a view to formally recording the route as a Public Bridleway. Works have been carried out on the section of line running south from Dent Gate Lane, but the final section of the railway is in private ownership and agreement to record a Public Bridleway over that land was not achieved. Connecting the railway line through to another public highway requires the creation of a Bridleway over that private land and land in the control of Teesdale School, part of the North East Learning Trust.
- 2.2 The proposal would create a Public Bridleway from Dent Gate Lane along the former railway line to the junction with Public Footpath No. 21, then south along the existing tarmac path then west past Teesdale Leisure Centre and through to join Strathmore Road. It would also create a new Public Footpath

up a flight of steps to connect the new Bridleway with Public Footpath No. 4 Streatlam and Stainton Parish, as indicated on the proposal plan, shown at **Document A**.

Proposed Diversion

- 2.3 The managers of Teesdale School have had concerns for many years about the location of Public Footpath No. 10 Barnard Castle/21 Marwood Parish, which runs from a point on the A688 north between the school buildings and the car park, then continues north within the school playing fields. The presence of a Public Footpath, which has to be open and available for the public to use 24 hours a day, 365 days a year, creates security and pupil safeguarding issues for the School, and prevents the secure enclosure of the school grounds. There is a history of unregulated public use of the school playing fields for dog walking and other activities, which requires the school grounds to be enclosed. Public Footpath No 10 Barnard Castle/No 21 Marwood forms part of a wider network of Public Footpaths to the north of Barnard Castle. An extract from the Definitive Map of Public Rights of Way is shown at **Document B**.
- 2.4 As a result of discussions with Teesdale School an application was made to divert Public Footpath No. 10 away from the school buildings and grounds. The diversion is sought in the interests of the landowner, to enable improvements in school security and pupil safety.
- 2.5 The diversion proposal would move Footpath No. 10 and part of Footpath no. 21 from its current location to a more easterly route, following the access road north to The Hub from the A688 and then west on existing tarmac paths to re-join Footpath No. 21 adjacent to the former railway. These proposals are indicated on the proposal plan, shown at **Document A**.
- 2.6 Pre-order consultations have been carried out for this proposal. The Local Members, Marwood Parish Council and Streatlam and Stainton Parish Council did not raise any objections, and the British Horse Society and Barnard Castle Walkers are Welcome made statements in support. All responses are at **Document C**. Objections were however received from the Open Spaces Society, The Ramblers Association and Barnard Castle Town Council, and despite further correspondence between officers and the objectors, and discussions between the School and the objectors, these objections were 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.

Diversion Order

- 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 occupier of the land, Teesdale School, and their pupils.
- 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 that they 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 on balance it is my view that there is no significant loss of convenience for pedestrians resulting from an end point where the access road to The Hub leaves the A688, as there is a footway alongside the main road. The other end of the diverted path at the north end of the school fields is no less convenient. Although the diverted route would be longer, particularly for anyone using the path to access the leisure centre, and there are concerns that numbers using the leisure centre might be adversely affected, there are alternative routes to the leisure centre via the road network, and for anyone using the path to access the wider countryside the increase is not significant in the context of a path used for recreational countryside walking.
- 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 physiological features. None of these issues are relevant in this case.
- 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. 10 can be argued to serve two functions. It 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. It is also used by some people as a pedestrian access to the leisure centre, and is reported to be used as a route to work for some people at Glaxo. It is not the only route to either location, and such access is not currently legally recorded, so whilst some people may find the new path less convenient it is submitted that for the public as a whole it is not substantially less convenient. The diversion would have a positive effect on the land crossed by the existing path as it would enable school security and pupil safety to be enhanced, and the new path follows existing hard surfaced paths throughout. The Teesdale Community Resources Hub have some concerns about the proximity of the new path to their building and car park, but these are matters that can be addressed with physical works on the ground if required.

Creation Order

- 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 a Public Bridleway along the former railway line and through to the leisure centre would secure safe and legally protected public access for walkers, cyclists and horse-riders between the town and the wider countryside, with all the attendant benefits for health and well-being. It would add to the enjoyment and convenience of a substantial section of the public, with the linking public footpath onto Footpath No. 4 Streatlam and Stainton creating opportunities for connections to Stainton and a variety of walk options. Durham County Council is the main landowner and has no objection to the Creation Order, and Teesdale School have also agreed as the bridleway will follow an existing surfaced path and not compromise their plan for school security. There have been consultations and negotiations with the private landowner of the western end of the railway line over several years, and he has not objected at this stage, though he has the right to object to an Order if made and seek compensation. The landowner for the short link footpath to Footpath No. 4 has given his agreement. Although one private landowner has agreed, this does not prevent the use of a Section 26 Order rather than a Section 25 Agreement.
- 3.7 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.
- 3.8 The Council also has to have regard to the Equality Act in terms of the structures provided on new routes. Any structures that might be required on the new routes will be in accordance with British Standard 5709:2018.

4.0 Comments on the objections

- 4.1 The objection from the Open Spaces Society can be summarised as follows; the diversion of Footpath No. 10 is circuitous and inconvenient for the public, the section of footway alongside the A688 between the old and new starting points is unpleasant and dangerous for pedestrians and there are alternative diversions that might be more acceptable.
- 4.2 The objection from the Barnard Castle Ramblers is similar, with concerns about the A688 footway and particular mention of the inconvenience for people visiting the leisure centre and going to work at Glaxo.

- 4.3 The objection from Barnard Castle Town Council also focuses on the impact on people visiting the leisure centre and Glaxo.
- 4.4 It is noted that there are no objections to the creation of the Public Bridleway or the Public Footpath linking to Footpath No. 4 Streatlam and Stainton. All the objections relate to the diversion of the Footpath at Teesdale School.
- 4.5 Correspondence with the objectors (at **Document D**) seeks to address these matters, but in overall response to the issues raised by the objectors, 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 or when alternative routes to the leisure centre and Glaxo are taken into consideration, though the potential impact on numbers using the leisure centre is noted. For those taking a recreational walk the diversion would offer a more pleasant route than the narrow fenced corridor past the school. The condition of the footway alongside the A688 has been inspected by Highways Officers and they have no concerns about its condition and suitability for pedestrian usage. It is within the 30mph zone.
- 4.6 The objectors have not questioned the School's grounds for diverting the path away from the school premises and fields.
- 4.7 Although the objections are solely concerned with the proposed diversion, the creation and the diversion are being looked at together and need to be seen in terms of the overall effect on public access in this location.
- 4.8 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/proposal

- 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 Footpath No. 10 Barnard Castle and part of Footpath No 21 Marwood 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 school buildings and playing fields, reducing the risk of any potential safety issues for the school pupils, and will be easy to follow on existing surfaced paths. The additional

distance are not considered to be significant in the context of a country walk, though it is accepted that some visitors to the leisure centre may have to walk further. Given the context and location of this footpath, and the alternative routes available to the leisure centre, it is not felt that the diversion route is substantially less convenient, nor would it adversely affect the public's enjoyment of the path as a whole.

- 5.5 The Committee must also decide if there is a need for the creation of a new bridleway and a linking footpath. There is a lack of bridleways in this area, and whilst there is evidence that the public have been using the old railway line on foot, this is not currently recorded as a public right of way and therefore has no legal protection or maintenance. The addition of the linking footpath again reflects a route that the public have been using on an unofficial basis, providing a link into the wider network of public footpaths. The creation of a new bridleway and a linking footpath would therefore record and protect routes for which a public need has already been shown, and enhance the recreational opportunities to the north east of Barnard Castle, which I am satisfied would add to the convenience and enjoyment of a substantial section of the public.

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 for Public Footpaths Nos. 10 Barnard Castle and 21 Marwood, and that the Order shall subsequently be either confirmed or referred to the Secretary of State for determination, and
 - the making of a Creation and Definitive Map Modification Order under the provisions of Section 26 of the Highways Act 1980 for Public Bridleways Nos 34 Marwood, 13 Streatlam and Stainton and 18 Barnard Castle and Public Footpath No. 4a Streatlam and Stainton, and that the Order shall subsequently be either confirmed or referred to the Secretary of State for determination.

Process after making a Diversion Order and Creation 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	Proposal plan
Document B	Definitive Map extract
Document C	Consultation responses
Document D	Correspondence with objectors
Document E	Briefing note

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Appendix 1: Implications

Finance

The applicant will contribute to the costs of the diverted path and the costs of the Diversion Order. The costs of the new bridleway and linking footpath will be met from AAP funds.

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 and s.26 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 2.6 of the report

Procurement

Not applicable

Disability Discrimination Act

Not Applicable

Legal Implications

See paragraphs 3.1 – 3.8 of report. The making of a Creation Order will trigger compensation provisions in favour of landowners.