

**Highways Act 1980 – Section 119**  
**Application for Public Path Diversion Order**  
**Public Footpath, Edgworth No 159 (Pt) - Lower Fold, Hawkshaw**

**1.0 Introduction**

1.1 This report seeks to assist Blackburn with Darwen Borough Council in their determination of an application to divert part of Public Footpath, Edgworth No 159 as shown on plan 1 attached to the report.

**2.0 Background**

2.1 Blackburn with Darwen Borough Council is the Highway Authority for the area within which the path proposed for diversion lies.

2.2 Public Footpath, Edgworth No 159 is recorded on the Definitive Map and Statement for the area.

2.3 On 10<sup>th</sup> June 2014 Blackburn with Darwen Borough Council received an application to divert a section of the footpath as shown on the attached plan. The applicant has advised that the application seeks to regularise the existing pattern of use of the footpath which has been in place for over 37 years. The applicant has also confirmed that he is willing to provide the new path to a standard that is to the satisfaction of the Highway Authority.

2.4 The application was originally submitted in connection with planning applications which, if approved would have necessitated the diversion of the footpath. These planning applications were refused therefore it would not be appropriate to proceed under the provisions of the Town and Country Planning Act 1990. Having confirmed this with the applicant, the proposal is being considered instead under the provisions of Section 119 of the Highways Act 1980.

2.5 This report seeks to advise the Council of the outcome of statutory and non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

**3.0 Legislative Criteria**

3.1 Section 119 of the Highways Act 1980 gives local authorities the powers to make orders to divert footpaths, bridleways or restricted byways where it is considered expedient to do so in the interests of either the owner/lessee/occupier of the land and/or the public.

3.2 Such an Order must not alter the termination point of a path or way if that point is not on a highway; or (where it is on a highway) otherwise to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

3.3 An Order made under Section 119 of the 1980 Act shall not be confirmed unless the Authority (or where appropriate the Secretary of State) is satisfied that it is expedient, as described above, and that the path will not be substantially less convenient as a consequence of the diversion. The Authority (or the Secretary of State) must also have regard to the effect to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

#### **4.0 Assessment Against the Legislative Criteria**

4.1 The decision whether or not to promote a Public Path Diversion Order is discretionary. If the criteria of the legislation are considered to be met, the Authority should reasonably be expected to state any grounds for refusal should it decide not to make an Order.

##### Landowner/Public Interest

4.2 The proposal is considered to be in the interests of the landowner because it will move the path away from the immediate vicinity of his property. It is considered that the diversion of the path will give (albeit perhaps a perception) improved privacy and security compared to the path remaining on its current alignment (e.g. it removes any excuse for members of the public to be within the direct curtilage of the property).

4.3 It may also be considered that there are some public benefits to the proposal in so much that the proposed new route has considerably shallower gradients than the existing one. As mentioned above it also appears to be the preferred used route, and has been for some 37 years or so.

##### Termination Points

4.4 There will be no change in the termination points.

##### Convenience & Enjoyment

4.5 The proposed diversion is approximately 32 metres longer than the current route. Any increase in distance must however be taken in context to the nature of the route, and indeed the overall distance travelled by anyone using the path. In this particular case the path is in a rural location and only likely to be used for recreational purposes, and as part of a longer walk. In such circumstances it may be reasonable to conclude that, in terms of length, the alternative is not substantially less convenient.

4.6 With regard to other issues which may have an affect on the convenience of the route, there is a significant but favourable change in gradients between those encountered on the existing route and those on the proposed new route. Furthermore, the new path will have an improved surface to a standard acceptable by the Highway Authority. There would not therefore appear to be any reason to

suggest that the proposed alternative path will be less convenient than the current route.

#### Land Served by the Path and Compensation

- 4.7 The path is not used for the purposes of accessing any land, and the agreement of all affected landowners has been provided. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.

#### Material Provisions within the Rights of Way Improvement Plan

- 4.8 There are no material provisions within the Rights of Way Improvement Plan for the area which would have an effect on the proposals. Furthermore, such a document may not fetter the discretion of the Authority when making its decision whether or not to promote the requested Order.

#### Agriculture and forestry; biodiversity; and Disability Discrimination Legislation

- 4.9 It is not considered that there are any issues arising with regard to agriculture or forestry and having carried out various consultations with interested parties there would appear to be no issues arising surrounding biodiversity. The proposed new path offers an improvement to gradients and surface in terms of access for people with disabilities.

### **5.0 Consultations**

- 5.1 Consultation have been undertaken with a range of user/interest groups in the area. The North Turton Parish Council has also been consulted. No objections have been received

### **6.0 Conclusion**

- 6.1 In conclusion, the criteria of the legislation appear to have been met and the proposal has not attracted any objections during the pre-order consultation process.

### **7.0 Decision Required**

- 7.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the path they should resolve that:
- a) a Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert part of Public Footpath, Edgworth No 159 as shown on the attached plan.
  - b) if no objections are duly lodged, the Authority confirms the Order; or
  - c) if objections are duly lodged, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- 7.2 If, having considered all of the relevant information, the Authority are minded to refuse the application (not to promote the application), the applicant should be advised of this decision, and that there are no rights of appeal.

## 8.0 Recommendation

- 8.1 Whilst it is your Officer's view that the criteria of the legislation have been met, Members must make their own decision **whether or not to promote** the requested Order. Any such decision is quasi-judicial in nature and must be made based upon the relevant evidence and facts of the case set against legislative criteria.