

Town & Country Planning Act 1990, Section 257

Application for Public Path Diversion Order

Public Footpath Edgworth No 87

Lower Giles Farm, Broadhead Road, Turton

1.0 Introduction

1.1 This report seeks to assist Blackburn with Darwen Council in their determination of an application to divert part of Public Footpath, Edgworth No 87 as shown on plan 1 attached to the report.

2.0 Background

2.1 Blackburn with Darwen Borough Council is the Planning Authority for the area within which the paths proposed for diversion lie. They are also the Highway & Surveying Authority for the area.

2.2 On 27th February 2015 Blackburn with Darwen Borough Council received an application for planning permission for the erection of a new dwelling. This is registered under application reference 10/15/0144 and has been granted with conditions.

2.3 The proposed development has an impact on the alignment of Public Footpath, Edgworth No 87 which may be considered to necessitate its diversion.

2.4 The applicant also advises that in his opinion the current path is in a dangerous position with it being in close proximity to a steep drop in the adjoining valley. Whilst this is obviously a genuine concern, it is not a lawful reason for diverting the footpath under the provisions of the Town and Country Planning Act 1990.

2.5 This report seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on plan 1 attached to this report. It 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 Paragraph 7.2 of Rights of Way Circular 01/09 re-confirms that the effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.

3.2 The Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) provides that development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site, as part of the planning application process. This is entirely separate from any notices and advertisements required when making and confirming a subsequent extinguishment or diversion order.

3.3 Section 257 of the 1990 Act gives local planning authorities the power to make orders to extinguish or divert footpaths, bridleways or restricted byways where it is necessary to enable development for which planning permission has been granted or development by a government department to be carried out.

4.0 Assessment against the Legislative Criteria

4.1 The decision whether or not to promote a Public Path Diversion Order is discretionary, and does not follow on automatically from the granting of planning permission. There may however be a reasonable expectation, on the part of applicants, that if the Planning Authority has granted planning permission, having considered the impact that the development will have on rights of way across the site as part of that process, they will subsequently be supportive of an application to divert the paths concerned.

4.2 The effect of the proposed development on the public right of way is a material consideration in the determination of the planning application, and therefore should have been considered as part of this process. It is however possible that such matters, so far as they relate to the proposed diversion, may be re-opened, should any Order be subject to duly lodged objections as part of the statutory process.

4.3 For the purposes of determining the applications for the Public Path Diversion Orders the Authority must be satisfied that:

- a) there is a valid planning consent in place;
- b) in order to enable the approved development to take place, it is necessary to divert the public right of way

4.4 With regard to the first of the criteria, planning consent has been granted by the Planning Authority.

4.5 An assessment of the plans for the proposed development reveals that the current Definitive Map alignment of the path will be, in part built over. As a result it may be reasonable to conclude that the diversion of the path is necessary in order to allow the works to be lawfully undertaken.

5.0 Consultations

5.1 Consultations 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 in respect of the proposals.

6.0 Decision Required

6.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the footpath they should resolve that subject to planning consent being granted:

- a) a Public Path Diversion Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Edgworth Footpath No 87 as shown on Plan 1.
- b) if no objections are duly lodged, the Authority confirm the Orders; or

- c) if objections are duly lodged, and not subsequently withdrawn, the Orders be passed to the Secretary of State for confirmation.

6.2 If, having considered all of the relevant information, the Authority are minded to refuse the application, the applicant should be advised of this decision, and that there are no rights of appeal.

7.0 Recommendation

7.1 Whilst the Authority (Planning and Highways Committee) must make its own decision whether or not to promote the requested Order, it is Officer' view that the legislative tests appear to be satisfied, and therefore the Order may be promoted and 'made'.