

**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION

**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE

**DATE:** 15<sup>th</sup> JULY 2020

**TITLE:** Diversion of Public Footpaths parts of 207, 211 & 212 Darwen and upgrade of Public Footpath 208 Darwen to a Bridleway

**WARD:** Darwen South      **COUNCILLORS:** Kevin Connor  
Lillian Salton  
Neil Slater

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## 1.0 PURPOSE OF THE REPORT

The purpose of the report is to seek committee approval for a public path order under

- the Highways Act 1980, Section 26, to create a bridleway along public footpath 208, and.
- the Highways Act 1980, Section 119, to divert public footpath 207 and parts of public footpaths 211 & 212.

## 2.0 BACKGROUND AND DETAILS

On the 6<sup>th</sup> April 2018 the Council granted planning permission for a residential development off Cranberry Lane in Darwen (Application 10/17/1313)

Public Footpaths 207, 211 & 212 Darwen cross the development site and in order that the development can be implemented as per the planning approval, it is necessary that sections of these public footpaths are diverted. Public Footpath 208 Darwen also crosses the development site but is unaffected by it.

The Council has received an application from the developer, McDermott Homes, to divert the footpaths affected and to upgrade the existing Public Footpath 208 Darwen to bridleway.

An application has also been received from an adjoining landowner for a short diversion of part of Public Footpath 211 around the immediate vicinity of their property.

Under the Council's Constitution this Committee has '*The power to create, divert, stop up, extinguish and reclassify footpaths and bridleways and the power to make orders and enter agreements in relation to the same*'

The Committee therefore has to consider whether, or not, to promote the Order requested by the applicants. In order to assist members in making this decision, officers have prepared a detailed report with the necessary information to enable an informed decision to be made.

### 3.0 LEGAL

The relevant legislation is the Highways Act 1980, Sections 26 and 119.

### 4.0 IMPLICATIONS

5.0

<b>Customer</b>	Improved Public Rights of Way
<b>Financial</b>	the Applicants will meet the cost of the diversions and upgrade to bridleway.
<b>Anti-poverty</b>	None
<b>Crime and Disorder</b>	None

### 5.0 RECOMMENDATION

It is the officer's recommendation that the legislative criteria have been met and that the committee should resolve to Promote the Order and authorise the Director of HR Legal & Governance to progress the necessary legal orders.

**6.0 BACKGROUND PAPERS:** Attached detailed report

**7.0 CONTACT OFFICERS:** George Bell

**8.0 DATE PREPARED:** 17<sup>th</sup> June 2020

**Highways Act 1980, Sections 26 and 119**

**Wildlife and Countryside Act 1981 section 53A**

**Application for Public Path Diversion and Creation Orders**

**Upgrade of Public Footpath 208 Darwen to bridleway and the diversion of Public Footpaths 207, 211 (part), 212 (part) Darwen**

## **1. Introduction**

1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of an application to upgrade public footpath 208 Darwen to bridleway under the Highways Act 1980, Section 26 and to divert public footpath 207 Darwen and parts of public footpaths 211 & 212 Darwen under the Highways Act 1980, Section 119.

## **2. Background**

2.1 The Council is both the Planning Authority and the Highway & Surveying Authority for the area within which the public footpaths proposed for upgrade and diversion lie.

2.2 The Council received an application for planning permission for the erection of 138 new dwellings on the site off Cranberry Lane, Darwen. This is registered under application reference 10/17/1313 and planning permission was granted on the 27<sup>th</sup> April 2018.

2.3 The proposed development has an impact on the alignment of Public Footpaths 207, 211 & 212 Darwen that may be considered to necessitate their diversion.

2.4 The Council subsequently received an application in February 2018 requesting the diversion of Public Footpaths 207, 211 & 212 Darwen and the upgrade of Public Footpath 208 Darwen to Bridleway.

2.5 In June 2020, the Council received a request from an adjoining landowner at Kirkhams Farm for a short diversion of part of Public Footpath 211 around the immediate vicinity of their property.

2.6 This report seeks to address those matters being put before members of the Committee, namely the application for the public path order to divert the paths as shown on the plan attached to this report and to upgrade the path shown to bridleway. It seeks to advise members of the Committee of an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

## **3. Legislative Criteria**

3.1 Paragraph 7.2 of 'Rights of Way Circular 01/09 - Guidance for Local Authorities', published by Defra (Department for Environment, Food and Rural Affairs), 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 Town and Country Planning Act 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.
- 3.4 Rights of Way Circular 01/09, paragraph 7.21, however states that:
- 'Where the development, in so far as it affects a right of way, is completed before the necessary order to divert or extinguish the right of way has been made or confirmed, the powers under sections 257 and 259 of the 1990 Act to make and confirm orders that are no longer available since the development, which the order is intended to enable, has already been carried out.....'*
- 3.5 Due to resource issues, there has been a delay bringing this diversion to Committee for consideration and as a result substantial development of the site has already taken place, to the extent that officers consider that Section 257 of the 1990 Act is no longer available, hence the diversions are being considered under Section 119 of the Highways Act 1980.
- 3.6 Section 119 of the Highways Act 1980 gives the council the power to divert public footpaths where *'...in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted.....'*
- 3.7 Section 26 of the Highways Act 1980 gives the local authority the power to create public rights of way having regard to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public and the effect it would have on the rights of persons interested in the land.
- 3.8 The Wildlife and Countryside Act 1981 Section 53A gives the local Surveying Authority the powers to add additional rights to the definitive map and statement.

#### **4. Assessment against the Legislative Criteria**

- 4.1 With regard to the residential development, 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 Had there not been a delay in bringing the report to Committee for a decision then, under Section 257 of the 1990 Act, 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; and
  - 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, as indicated above, 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.
- 4.6 As a result, it may be reasonable to conclude that the diversion of the paths are necessary and that, under Section 119 of the Highways Act 1980, in the interests of the owner of the land, it is expedient that the line of the paths should be diverted.
- 4.7 The upgrade of public footpath 208 Darwen to bridleway has been agreed by the developer and provides an integral link on the West Pennine Moors Bridleway loop. Under Section 26 of the Highways Act 1980, the upgrade therefore would add to the convenience or enjoyment of a substantial section of the public and will have no effect on the rights of persons interested in the land.
- 4.8 With regard to the proposed diversion at Kirkhams Farm, the current line of the footpath goes through what was the yard or working area of the farm. Kirkhams Farm is however no longer a working farm but is a private residential property. The proposed short diversion reroutes the public footpath along the edge of a green field adjacent to what is now a garden area.
- 4.9 Again, it may be reasonable to conclude that in the interests of the owner of the land, it is expedient that the line of the path should be diverted.

## **5. Decision Required**

- 5.1 Whilst it is expedient to combine both applications into a single Public Path Diversion Order, Committee should consider the merits of each application independently and in any resolution make it clear which applications have been approved or refused.
- 5.2 If, having considered all of the relevant information, Committee is minded to approve the applications to divert and upgrade the public footpaths shown on the plan, they should resolve that:
- a) A Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert Public Footpath Numbers 207, 211 and 212 Darwen as shown on the attached plan.  
A Public Path Creation Order to be made pursuant to section 26 of the Highways Act 1980 to upgrade footpath 208 Darwen to bridleway
  - 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.

5.3 If, having considered all of the relevant information, the Committee is minded to refuse the applications, the applicants should be advised of this decision, and that there are no rights of appeal.

## **6. Recommendation**

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