

**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION  
**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE  
**DATE:** 15<sup>th</sup> OCTOBER 2020  
**TITLE:** Diversion of Public Footpath's 25,26,27,28 and  
31(part) Blackburn  
**WARD:** Roe Lee                      **COUNCILLORS:** Sylvia Liddle  
Phil Riley  
Ron Whittle

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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 Town & Country Planning Act 1990, Section 257 to divert public footpaths 25,26,27,28 and 31(part) Blackburn

## **2.0 BACKGROUND AND DETAILS**

On the 14<sup>th</sup> February 2019 the Council granted planning permission for a residential development off Ramsgreave Drive in Blackburn (Application 10/18/0895)

Public Footpaths 25,26,27,28 and 31 Blackburn 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. The Council has received an application from the developer, Persimmon Homes, to divert the footpaths affected.

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 Town & Country Planning Act 1990, Section 257.

## **4.0 IMPLICATIONS**

<b>Customer</b>	Improved Public Rights of Way
<b>Financial</b>	the Applicants will meet the cost of the diversions.
<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:** 24<sup>th</sup> September 2020

## **Town and Country Planning Act 1990, Section 257**

## **Wildlife and Countryside Act 1981 Section 53A**

## **Application for Public Path Diversion Order**

## **Diversion of Public Footpaths 25,26,27,28 and 31(part) Blackburn**

### **1. Introduction**

- 1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of an application to divert public footpaths 25, 26, 27 and 31(part) Blackburn under Section 257 of the Town and Country Planning Act 1990.

### **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 diversion lie.
- 2.2 The Council received an application for planning permission for the development of 155 dwellings and associated landscaping and highways works on land at Roe Lee off Ramsgreave Drive Blackburn. This is registered under application reference 10/18/0895 and planning permission was granted on the 14<sup>th</sup> February 2019.
- 2.3 The proposed development has an impact on the alignment of Public Footpaths 25, 26, 27 and 31(part) Blackburn that may be considered to necessitate their diversion.
- 2.4 The Council subsequently received an application from the developer dated 19<sup>th</sup> February 2019 requesting the diversion of Public Footpaths 25, 26, 27 and 31(part) Blackburn.
- 2.5 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 plans attached to this report – one plan shows the proposed housing layout to assist members with their deliberations as to how the development will affect the public rights of way network.

It seeks to advise members of the Committee of the outcome of 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. 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 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 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 paths 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 in order to enable the approved development to take place.

#### **5. Consultations**

- 5.1 Non-statutory consultations have been undertaken with all user/interest groups and no objections have been received in respect of the proposals.

#### **6. Decision Required**

- 6.1 If, having considered all of the relevant information, Committee is minded to approve the application to divert the public footpaths shown on the plan, they should resolve that:

- a) A Public Path Diversion Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath Numbers 25, 26, 27 and 31(part) Blackburn as shown on the attached plan.
  - 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 Committee is minded to refuse the application, the applicant should be advised of this decision, and that there are no rights of appeal.

## **7. 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 the view of officers that the legislative tests appear to be satisfied, and therefore the Order may be promoted and 'made'.