

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION

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

DATE: 21st January 2021

TITLE: Diversion of Public Footpath 2 Yate & Pickup Bank

WARD: West Pennine **COUNCILLORS:** Colin Rigby
Jean Rigby
Julie Slater

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 footpath 2, Yate & Pickup Bank

2.0 BACKGROUND AND DETAILS

On the 4th March 2020 the Council granted planning permission for an extension link between the dwelling house and garage of The Coach House Woodhead, Belthorn Road, Belthorn. (Application 10/19/1113)

Public Footpath 2 Yate & Pickup Bank passes through the grounds of the Coach House crossing the line of the proposed extension link. In order that the development can be implemented as per the planning approval, it is necessary that this section of PF 2 Yate & Pickup Bank is diverted. In this respect, the Council has received an application from the owner of the Coach House to divert the section of the footpath 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 applicant. 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

Customer	None
Financial	the Applicants will meet the cost of the diversions.
Anti-poverty	None
Crime and Disorder	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: 6th January 2021

Town and Country Planning Act 1990, Section 257

Wildlife and Countryside Act 1981 Section 53A

Application for Public Path Diversion Order

Diversion of Public Footpath 2 Yate & Pickup Bank

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 footpath 2 Yate & Pickup Bank 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 footpath proposed for diversion lies.
- 2.2 The Council received an application for planning permission for an extension link between the dwelling house and garage of The Coach House Woodhead, Belthorn Road Belthorn Blackburn BB1 2NP. This is registered under application reference 10/19/1113 and planning permission was granted on the 4th March 2020.
- 2.3 Public Footpath 2 Yate & Pickup Bank currently runs between the dwelling house and garage and, consequently, the proposed extension link cuts across the alignment of Public Footpaths 2 Yate & Pickup Bank that would therefore necessitate its diversion if the development were to proceed.
- 2.4 The Council initially received an application requesting the diversion of Public Footpaths 2 Yate & Pickup Bank from the developer dated 26th November 2019 and subsequent to planning permission being granted received a revised application dated 29th January 2020.
- 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 path as shown on the plan attached to this report.
- 2.6 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 The plan for the proposed extension link shows that the current Definitive Map alignment of the FP2 will be crossed and, as such, totally cut off by its construction.
- 4.6 As a result, in order to enable the approved development to take place, it is safe to say that the diversion of FP2 is necessary.

5. Consultations

- 5.1 Non-statutory consultations have been undertaken with all user/interest groups and one objection has been received in respect of the proposals.
- 5.2 The one objection received was from the plant protection team at Cadent Gas.
- 5.3 The reason for the objection is that of right of access to gas apparatus for future maintenance works. In this regard, the gas records which the council has access to show that the gas main in this area runs along the line of footpath 97 which is unaffected by this proposed diversion.

As such, it is believed that the right of access to gas apparatus for future maintenance works will be unaffected by the proposed diversion with existing access rights remaining.

- 5.4 Much of the rest of the objection letter from Cadent relates to contractor responsibility for plant protection affected by the proposed activities. In this respect, there are no physical works being undertaken related to the proposed diversion, merely the removal of a public right of way that is to be subsequently rerouted over a diversion route that has been in place for some time. Any subsequent physical building works within the curtilage of the Coach House premises is not the subject of this proposed diversion order.
- 5.5 A response has been sent to Cadent Gas explaining that in the council's view their right of access is unaffected and therefore requesting that they withdraw their objection. At the time of writing this report there has, as yet, been no response from Cadent.
- 5.6 Notwithstanding the above, should members be minded to approve this application and approve proceeding with the formal legal process, Cadent Gas, together with all the other statutory consultees, would receive the formal statutory legal consultation which would give them the opportunity to formally object should they wish to do so.

6. Decision Required

- 6.1 If, having considered all of the relevant information, Committee is minded to approve the application to divert the public footpath 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 Number 2 Yate & Pickup Bank 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'.