

**Highways Act 1980 – Section 119**  
**Application for Public Path Diversion Order**  
**Public Footpath, Darwen No 30 (Pt)**

**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, Blackburn No 123 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, Blackburn No 123 is recorded on the Definitive Map and Statement for the area.
- 2.3 Blackburn with Darwen Borough Council intend to divert a section of the footpath as shown on the attached plan. The authority formed the view that the existing route is not convenient for the highway user and no longer follows the current route of Milking Lane as the lane has been historically realigned.
- 2.4 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 Footpath 123 Blackburn was the old line of Milking Lane, Blackburn, as demonstrated by the below 1949 OS map with the footpath overlaid in purple.



The Lane has been moved as part of the long-standing residential development consisting of approximately 300 houses and a school. Additionally the old line of milking lane runs through two front gardens and a fence line. These issues are on the council's enforcement list but this would remove the need to take action. The footpath was not diverted when Milking lane was moved. The path provided pedestrian access from lower Darwen to the Davy Field area.

- 4.3 The proposal is considered to be in the interests of some of the landowners because it will move the path from the gardens of number 80 and 82 Milking Lane, Blackburn.
- 4.4 It may also be considered that there are some public benefits to the proposal in so much that the proposed route will now start at the highway named Davy Field Road and remove the ambiguity around its current start point. It will move the footpath down the footway where it crosses Milking Lane and re-join its original route until it connects back to milking lane where it will terminate.

##### Termination Points

- 4.5 The termination point will remain on Milking Lane.

#### Convenience & Enjoyment 136, 166 85

- 4.6 The proposed diversion is approximately 50 metres shorter than the current route. In this particular case, the path is will be shorter and safer for the user as such considered not substantially less convenient.

#### Land Served by the Path and Compensation

- 4.8 The path is not used for the purposes of accessing any land, and the route will follow land already designated for public use. 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

- 4.9 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

- 4.10 It is not considered that there are any issues arising with regard to agriculture or forestry and there would appear to be no issues arising surrounding biodiversity.

### **5.0 Consultations**

- 5.1 Informal consultations has been undertaken with a range of user/interest groups in the area. This proposal incorporates the requests from the ramblers to keep the section of path that runs from opposite 77 Milking Lane to opposite the side of 1 Briarcroft.

### **6.0 Conclusion**

- 6.1 In conclusion, the criteria of the legislation appear to have been met and the proposal has not attracted any other 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, Blackburn 123 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.