

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION

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

DATE: 16 December 2021

TITLE: Diversion of Public Footpaths 185 and 226 Darwen

WARD: West Pennine **COUNCILLORS:** Jean Rigby
Julie Slater
Neil 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 185 and 226 Darwen

2.0 BACKGROUND AND DETAILS

On the 13th March 2018, the Council granted planning permission for the extension of one dwelling, the creation of an additional dwelling in the barn attached; erection of single storey extensions to the north facing elevation of both buildings, creation of associated residential curtilages and erection of boundary fencing at Cuckoldmans Farm Roman Road Eccleshill DARWEN BB3 3PP. (Application 10/17/1373)

A Public Footpath passes through the farmyard and in order that the development can be implemented as per the planning approval, it is necessary that it is diverted. In this respect, on the 13th July 2021 the Council received an application from the farm's owner to divert the section of the footpath affected.

Whilst processing this application for diversion, an anomaly was noted in the Definitive records that requires a Definitive Map Modification Order to correct. This is subject to a separate report on this committee. This Diversion Order cannot proceed until the anomaly is legally corrected.

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: 24th November 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 Footpaths 185 and 226 Darwen

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 185 & 226 Darwen 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 granted planning permission in 2018 for building works involving the extension of properties together with the creation of associated residential curtilages and erection of boundary fencing at Cuckoldmans Farm Roman Road Eccleshill DARWEN BB3 3PP. (Application 10/17/1373)
- 2.3 Alongside the planning application the Council also received an application requesting the diversion of Public Footpath 185 Darwen from the property owner dated 13th July 2021.
- 2.4 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.

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.

- 2.5 Notwithstanding the need for a DMMO as outlined in the previous report to this committee, FP 185 is currently shown on the records as running through the farmyard of Cuckoldmans Farm from Point A (SD 72044 20697) on the attached plan in a generally south-easterly direction to Point C (SD 72072 20682) and on to Point D (SD 72119 20612).
- 2.6 It is proposed to divert FP 185 from Point A in a southerly direction to Point E (SD 72036 20656) and then in a south-easterly direction to re-join the original route at Point D.
- 2.7 In addition to the diversion requested by the applicant, officers propose that FP 226 Darwen that currently joins FP 185 at Point C on the section proposed to be stopped up, be diverted from Point B (SD 72054 20721) in a southerly direction to Point A. This removes an unnecessary 'doubling back' of FP 226 to the proposed diversion route
- 2.8 The proposed diversions do not increase the lengths of any of the routes and it is considered that the routes will not be inconvenient to the user overall.

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 FP 185 Darwen is 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) Upon the confirmation of a DMMO to correct the Definitive record anomaly of FP 185 Darwen, a Public Path Diversion Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath Numbers 185 & 226 Darwen 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'.