

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION
REPORT TO: BLACKBURN WITH DARWEN BOROUGH COUNCIL
PLANNING AND HIGHWAYS COMMITTEE
DATE: 15 September 2022
TITLE: Diversion of Public Footpath 5 Eccleshill (part)
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 Highways Act 1980, Section 119 to divert part of Public Footpath 5, Eccleshill

2.0 BACKGROUND AND DETAILS

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 Highways Act 1980, Section 119.

4.0 IMPLICATIONS

Customer	Improved Public Rights of Way
Financial	the Applicants will meet the cost of the diversions.
Anti-poverty	None
Crime and Disorder	None

5.0 RECOMMENDATION

If members are satisfied that the legislative criteria have been met, it is recommended 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: 17th August 2022

Highways Act 1980, Section 119

Wildlife and Countryside Act 1981 Section 53A

Application for Public Path Diversion Order

Diversion of Public Footpath 5 Eccleshill (part) at Pottery Farm, Eccleshill

1. Introduction

- 1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of an application to divert part of public footpath 5 Eccleshill under Section 119 of the Highways Act 1980.

2. Background

- 2.1 The Council is Highway & Surveying Authority for the area within which the public footpath proposed for diversion lies.
- 2.2 Each year public rights of way officers survey a random 10% sample of the PROW network to give an indication of the current state of the network. Several years ago FP5 Eccleshill was surveyed as part of this process and officers identified an obstruction of the route by gates at the entrance to Pottery Farm off Roman Road.
- 2.3 The then owner of the farm when approached by officers regarding this obstruction insisted that the definitive line of the footpath was not through the farmyard but around an outbuilding joining Roman Road through the gap between the farm and Eccleshill Cottages.
- 2.4 There then ensued a lengthy dialogue with the owner concerning the line of the footpath which was still unresolved when the farm changed hands in 2015.
- 2.5 During the dialogue with the previous owner a concessionary route was waymarked on the route around the farm which, although substandard in places, kept the route open for the public.
- 2.6 When the farm changed ownership in 2015 negotiations recommenced with the new owner who had bought the farm with the knowledge of the ongoing dispute. These negotiations culminated with the new owner accepting the council's position and, as a result, the Council received an application on the 12th January 2021 from the current owner of Pottery Farm requesting the diversion of Public Footpath 5 Eccleshill.
- 2.7 The initial application sought to formalise the concessionary route but, as mentioned above, this was substandard in places with no scope for improvement.
- 2.8 In addition, the new owner keeps and breeds alpacas which means that both the Definitive route and the proposed diversion were subject to significant limitations, i.e. gates and stiles, in order to control the stock within enclosures.
- 2.9 After further discussions the diversion route which is the subject of this report was agreed by all parties. This route is away from the area containing the alpacas which means there is less need for limitations on the route. The applicant has confirmed that the new path will be provided to a standard that is to the satisfaction of the Highway Authority.

- 2.10 This report seeks to address those matters being put before members of the Committee, namely the application for the public path order to divert part of 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.

- 2.11 Public Footpath 5 Eccleshill currently leaves Roman Road at Point A (SD 370031 423623) on the attached plan heading in a south-easterly direction via Point B (SD 370127 423549) to join Public Footpath 8 Eccleshill at Point C (SD 370276 423513).

- 2.12 The proposed diversion seeks to move the point where the footpath leaves Roman Road some 35 metres south to Point D (SD 370015 423590). The proposed diversion then heads in a generally easterly direction via Point B to Point C.

3. 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

- 3.4 The Wildlife and Countryside Act 1981 Section 53A gives the local Surveying Authority the powers to amend the definitive map and statement.

4. 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.

- 4.2 The proposal is considered to be in the interests of the landowner because it will move the path away from the immediate vicinity of his property. It is considered that the diversion of the path will give improved privacy and security compared to the path remaining on its

current alignment (e.g. it removes any excuse for members of the public to be within the direct curtilage of the property).

- 4.3 The proposed diversion is approximately 17 metres longer than the current route. Any increase in distance must however be taken in context to the nature of the route, and indeed the overall distance travelled by anyone using the path. In this particular case the path is in a rural location and only likely to be used for recreational purposes, and as part of a longer walk. In such circumstances it may be reasonable to conclude that, in terms of length, the alternative is not substantially less convenient
- 4.4 The new point of access from Roman Road (Point D) is from an area used for parking at a point where the road is wider. It is considered that this area of the highway off the traffic running line is a safer point of access for walkers and is at a safer crossing point of Roman Road.
- 4.5 With regard to other issues which may have an effect on the convenience of the route, the new path will have an improved surface to a standard acceptable by the Highway Authority. As explained in paragraph 2.9, the new path will have significantly less need for limitations along its length making it more accessible for walkers particularly those with a disability. There would not therefore appear to be any reason to suggest that the proposed alternative path will be less convenient than the current route.
- 4.6 The path is not used for the purposes of accessing any land, and is entirely within land owned by the applicant. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.
- 4.7 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.

5. Consultations

- 5.1 Non-statutory consultations have been undertaken with all user/interest groups, including Eccleshill Parish Council, and no objections have been received in respect of the proposals.
- 5.2 The local representative for the Ramblers did initially express some concerns regarding the route but following a site visit with officers these concerns were allayed and they have confirmed that they have no objection to the proposal.

6. Conclusion

- 6.1 In conclusion, it is the view of officers that the criteria of the legislation appear to have been met and the proposal has not attracted any objections during the pre-order consultation process

7. Decision Required

7.1 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 119 of the Highways Act 1980 to divert part of Public Footpath Number 5 Eccleshill 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.

7.2 If, having considered all of the relevant information, the Committee is 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. Recommendation

8.1 Whilst it is the view of officers that the legislative tests appear to be satisfied, the Authority (Members of the Planning and Highways Committee) must make its own decision **whether or not to promote** the requested Order.

8.2 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.