

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION

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

DATE: 14th September 2023

TITLE: Definitive Map Modification Order for Public
Footpath 253 Darwen

WARD: Darwen East **COUNCILLORS:** Katrina Fielding
Matt Gibson
Martin McCaughran

1.0 PURPOSE OF THE REPORT

The purpose of the report is to seek committee approval for a Definitive Map Modification Order (DMMO) for Public Footpath 253 Darwen.

2.0 BACKGROUND AND DETAILS

In 2021 the council dealt with a Stage 1 complaint regarding public rights of way and planning issues around developments along Commercial Road, Darwen.

The complaint centred round whether the route of Public Footpath 253 Darwen had been considered fully whilst granting planning permission for certain of the developments. In addition the actual route of the public right of way shown on the Definitive Map and other contemporary documents was brought into question.

There are two versions of the definitive map sheet for this area drawn on different OS base maps. Both maps showed FP 253 Darwen along the same general route but poor draughtsmanship on one of the copies appeared to show the route encroaching into the curtilage of the Anchor Bank property. The OS base plan of this copy also showed a footpath along the eventual line of Commercial Road rather than on the definitive line of the footpath along the western side of the boundary wall of Darwen Sewage Treatment Works. These discrepancies formed the basis for much of the Stage 1 complaint.

In addition to the above, FP 253 Darwen has been the subject of two diversion orders over the years; one in the late 90's to accommodate the building of the M65 and one in 2006 for security reasons at Crown Paints.

A DMMO is required to consolidate these diversions into the Definitive Map and Statement and to remove any lingering confusion with regard to the two definitive map records thus providing clarity of the records going forward.

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 Definitive Map Modification Order. 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 Wildlife and Countryside Act 1981, Section 53(3)(a)(i).

4.0 IMPLICATIONS

Customer	None
Financial	Advertising costs will be met from the PROW budget.
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 as outlined in Paragraph 6.1(a)&(b) of the attached report and authorise the Director of HR Legal & Governance to progress the necessary legal order.

6.0 BACKGROUND PAPERS:	Attached detailed report Order Plan
7.0 CONTACT OFFICERS:	George Bell
8.0 DATE PREPARED:	13 th July 2023

Wildlife and Countryside Act 1981 Section 53(3)(a)(i)

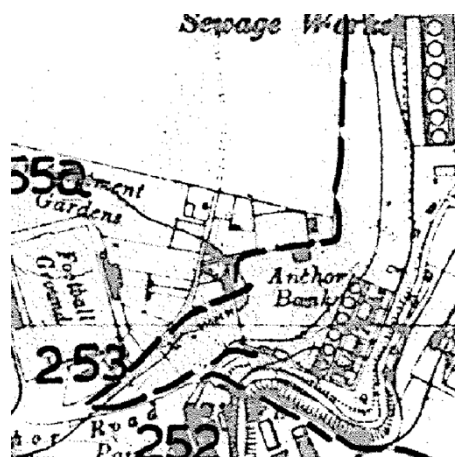
Definitive Map Modification Order for Public Footpath 253 Darwen

1. Introduction

- 1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of a request from officers to make a Definitive Map Modification Order (DMMO) to amend the Definitive Map and Statement of Public Footpath 235 Darwen under Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981.

2. Background

- 2.1 The Council is the Highway & Surveying Authority for the area within which the public footpath proposed for modification lies.
- 2.2 In 2021 the council dealt with a Stage 1 complaint regarding public rights of way and planning issues around developments along Commercial Road, Darwen.
- 2.3 The complaint centred round whether the route of Public Footpath 253 Darwen had been considered fully whilst granting planning permission for certain of the developments. In addition the actual route of the public right of way shown on the Definitive Map and other contemporary documents was brought into question.
- 2.4 There are two versions of the definitive map sheet for this area drawn on different OS base maps. Both maps showed FP 253 Darwen along the same general route but poor draughtsmanship on one of the copies appeared to show the route encroaching into the curtilage of the Anchor Bank property. The basis for much of the Stage 1 complaint was that the public footpath had never entered into the Anchor Bank property grounds.
- 2.5 The definitive map sheet which shows that FP 235 Darwen may encroach into the grounds of Anchor Bank was drawn on an OS base plan which showed a footpath along the eventual line of Commercial Road but with no record of a footpath on the actual definitive line along the western side of the boundary wall of Darwen Sewage Treatment Works.
- 2.6 On this base plan it is unclear which side of the northern boundary wall of Anchor Bank or the western boundary wall of the sewage works that FP 253 Darwen is shown to be running:



In addition it appears to show the line of the footpath crossing into Anchor Bank at its entrance.

2.7 This OS base plan, shown below without the definitive footpaths, was

Made and published by the Director General of the ORDNANCE SURVEY, CHESINGTON, SURREY, 1956.
 Reprinted with minor changes 1966.

i.e. although reprinted in the year the Definitive Map was produced the bulk of the information on it was from some ten years previous.



2.8 In contrast to the above, the OS base plan used in the 'second copy' of the definitive map clearly shows that line of the footpath has been moved from the line of Commercial Road to along the definitive line.



2.9 This OS base plan, shown below without the definitive footpaths, was published in 1972, however the survey diagram for the sheet shows that this area of the plan was based on the OS 1:1250 sheet dated 1954-66 (see highlighted below) which is in line with the publication of the Definitive Map in 1966.



SURVEY DIAGRAM

1968	1961	1954	1954-66	1954
1968	1968	1954-69	1960-68	1954-68
1968	1968	1954-68	1954-70	1954-68
1968	1968	1968	1954-70	1963-70
1968	1968	1968	1968	1954-68

The figures shown are the dates of the 1:1250 and 1:2500 scale surveys used in compiling this map. Subsequent changes from unpublished 1:1250 and 1:2500 revision dated 1970 have been incorporated. Contours surveyed 1970. Boundaries revised to 1-10-72.

This clearly shows the line of the footpath to be to the North of Acorn Bank's boundary and to the West of the Sewage Works boundary.

- 2.10 Whilst the initial base plan used for the Definitive Map correctly shows the definitive line of the footpath, the absence of any indication of a path on this definitive line together with the base plan still showing the original line of the path running in a northerly direction from the end of Anchor Road (along the line of what is now Commercial Road) was the cause of some confusion. The redrawing of the map on the second more up to date base plan goes a long way to clearing up this confusion and confirms that the path had been diverted along its present route before the publication of the Definitive Map.
- 2.11 In addition to the above, FP 253 Darwen has been the subject of two diversion orders over the years; one in the late 90's to accommodate the building of the M65 and one in 2006 for security reasons at Crown Paints.
- 2.12 Whilst both of these orders were confirmed, there is no record of DMMO's for either diversion in order to update both the Definitive Map & Statement.
- 2.13 This report seeks to address those matters being put before members of the Committee, namely the request from officers for the Definitive Map Modification Order to amend the Definitive Map and Statement for Public Footpath 235 Darwen as detailed below in this report.

It seeks to advise members of the Committee of the outcome of 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 Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the surveying authority to keep the definitive map and statement under continuous review. The section sets out 'events' which would require the surveying authority to promote a DMMO.
- 3.2 One such event is set out in Section 53(3)(a)(i) of the Act:
'.....the coming into operation of any enactment or instrument, or any other event,'
whereby
'..... a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended....'
- 3.3 As per paragraph 2.11 above, FP 253 Darwen has been the subject of two diversion orders over the years; one in the late 90's to accommodate the building of the M65 and one in 2006 for security reasons at Crown Paints. These constitute an 'event' under Section 53(3)(a)(i) of the Act
- 3.4 Under Section 53(2)(b) of the Act *'...the surveying authority shall...'* - *'....as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event....'*
- 3.5 A Definitive Map Modification Order promoted under these criteria seeks to amend the particulars contained in the map or statement without changing the recorded status of the way.

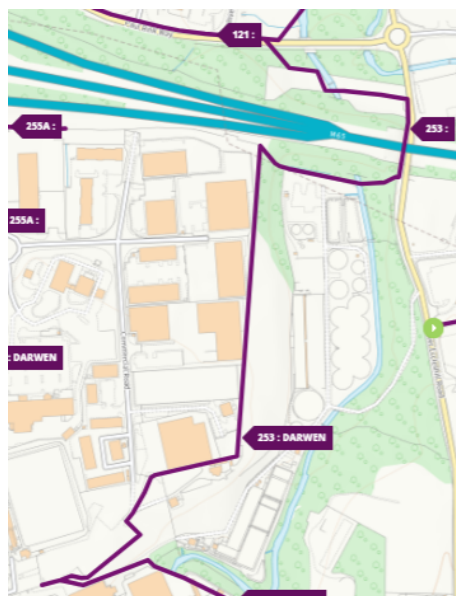
4. Assessment against the Legislative Criteria

- 4.1 Below is an extract from the Definitive Map showing FP253 Darwen running from Anchor Road in the south in a generally northerly direction via the northern boundary of Acorn Bank through to what was then the administrative boundary between Darwen and Blackburn.



As was appeared to be the norm when the map was published, the associated public rights of way definitive statement for the footpath is brief - *'Anchor Road via Anchor Bank to Boundary'*

- 4.2 Below is an extract from the council's current digital records showing FP253 Darwen running on the same route for the majority of its length but with the two confirmed diversion order routes clearly visible at the southern and northern ends of the footpath.



4.3 Considering the above it may be reasonable to conclude that the Definitive Map and Statement for FP 235 Darwen requires modification to better represent the route and extent of the path correctly.

4.4 Should the Committee be minded to approve the request for a DMMO then in addition to noting the route change on the Definitive Map, in order to correctly describe FP 235 Darwen, the existing definitive statement:

- Anchor Road via Anchor Bank to Boundary

needs modifying by the order to

- From Anchor Road in a generally north easterly direction circumventing a secure car park for a distance of 230 metres then in an easterly direction along and to the north of the boundary wall of Acorn Bank for a distance of 105 metres and then in a northerly direction along and to the west of the boundary wall of the sewage works for a distance of 375 metres then in an easterly direction for 182 metres to meet with Lower Eccleshill Road then in a northerly direction along Lower Eccleshill Road for 95 metres before heading in a generally westerly direction for 203 metres to meet with Paul Rink Way, a total distance of 1,190 metres.

5. Consultations

5.1 No consultation has been undertaken with regard to this proposal.

6. Decision Required

6.1 If, having considered all of the relevant information, Committee is minded to approve the request from officers to make a Definitive Map Modification Order (DMMO) to amend the Definitive Map and Statement of Public Footpath 235 Darwen under Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, they should resolve that:

a) A Definitive Map Modification Order (DMMO) to amend the Definitive Map and Statement of Public Footpath 235 Darwen as outlined in paragraphs 4.2 and 4.4 is made under Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981

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 request, officers should be advised of the reasons for the decision in order that any further action can be considered.

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'.