

**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION

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

**DATE:** 14<sup>th</sup> September 2023

**TITLE:** Diversion of Public Footpaths 80, 51 & 52 Blackburn

**WARD:** Little Harwood and Whitebirk      **COUNCILLORS:** Mustafa Desai  
Sonia Khan  
Abdul Patel

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## **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 Footpaths 80, 51 & 52 Blackburn.

## **2.0 BACKGROUND AND DETAILS**

On the 27<sup>th</sup> May 2022, the Council granted planning permission for the construction of a new 120,000 sq ft B2 / B8 warehouse unit with associated external works, car parking and service yards; construction of new dock leveller extension bays to existing warehouse building; change of use of existing 10,550 sq ft production building to form retail unit; construction of access road; and reconfiguration of existing access road on land to South East Lower Philips Road Whitebirk Industrial Estate Blackburn BB1 5UD. (Application 10/21/1345)

Three Public Footpaths are affected by the proposals and in order that the development can be implemented as per the planning approval, it is necessary that they are diverted. In this respect, early in the planning process, 7<sup>th</sup> December 2018, the Council received an application from the developer to divert the footpaths affected.

The council's public rights of way team have subsequently worked with the developer as to how to best incorporate the necessary diversions within his proposals.

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**

<b>Customer</b>	None
<b>Financial</b>	the Applicants will meet the cost of the diversions.
<b>Anti-poverty</b>	None
<b>Crime and Disorder</b>	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

**7.0 CONTACT OFFICERS:** George Bell

**8.0 DATE PREPARED:** 17<sup>h</sup> August 2023

## **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 80, 51 & 52 Blackburn**

### **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 80, 51 & 52 Blackburn 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 2022 for the construction of a new 120,000 sq ft B2 / B8 warehouse unit with associated external works, car parking and service yards; construction of new dock leveller extension bays to existing warehouse building; change of use of existing 10,550 sq ft production building to form retail unit; construction of access road; and reconfiguration of existing access road on land to South East Lower Philips Road Whitebirk Industrial Estate Blackburn BB1 5UD. (Application 10/21/1345)
- 2.3 In conjunction with the planning application the Council also received an application requesting the diversion of Public Footpaths 80, 51 & 52 Blackburn from the developer dated 7th December 2018.
- 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 paths 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 At present FP 80 Blackburn leaves Lower Philips Road at Point A (SD 70119 29885) on the attached plan, along an industrial access road to Point B (SD 70276 29800) and then through a development site to Point C (SD 70344 29817) where it joins FP 52 Blackburn. FP 52 then continues through the development site via Points D (SD 70317 29903) & E (SD 70489 29973) to Point F (SD 70524 30006) and then beyond to the borough boundary. FP51 Blackburn, which is routed down Lower Philips Road from Philips Road, leaves Lower Philips Road at Point G (SD 70310 30097) to go through the industrial site to join FP 52 at Point E.
- 2.6 The proposed diversion aims to close the sections of FP's 51, 52 & 80 which currently run through the both existing industrial developments and the area of proposed industrial development. It is proposed that FP's 51 & 80 will continue along Lower Philips Road from Points G & A respectively to join the new alignment of FP 52 at Point H (SD 70315 30071). FP 52 will commence at Point H from Lower Philips Road and be routed along the new access road to the site and then along a safe route between developments to Point F where it will continue along its original route to the borough boundary..

- 2.7 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 construction of a new 120,000 sq ft B2 / B8 warehouse unit with associated external works, 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 – see Plan 1 at end of report.
- 4.6 As a result, it may be reasonable to conclude that the diversion of the footpaths are 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 three objections were received in respect of the proposals.
- 5.2 The first objection related to the proposed route of FP 80 along an already adopted highway with the objector suggesting that a route to the south of the development between the proposed warehouse and the Leeds Liverpool Canal would be preferable.
- 5.3 Whilst officers agreed that an option which would allow the path to take a route to the south of the main development site and hence adjacent to the canal for a longer length would have been preferable, they drew the objectors attention to the element of the planning application whereby there were new Dock Leveller Extensions to existing production buildings, submitted as part of the overall planning application for the site.

The option suggested by the objector necessitated keeping the section of FP 80 along the access road between the new deck leveller extensions meaning that walkers would need to traverse an area where there were frequent vehicle movements of large articulated vehicles on either side of the access road.

- 5.4 The objector agreed with the officer's view that this wouldn't be an acceptable safe route through for walkers and subsequently withdrew their objection.
- 5.5 The second objection received related to issues with levels, gradient and surface of the proposed diversion route through the site. When it was explained that these issues would be resolved during the construction of the site, this objector also withdrew their objection.
- 5.6 The final objection came from Cadent Gas who have gas mains throughout the site. Whilst this objection has not yet been withdrawn, the developer will be in full discussion and liaison with Cadent Gas regarding their apparatus and how it will be affected during the construction of the development site and will be able to resolve any issues arising at that time.

## **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) a Public Path Diversion Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath Numbers 80, 51 & 52 Blackburn 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.

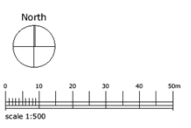
6.2 If, having considered all of the relevant information, the Committee is minded to refuse the application, the applicant should be advised of this decision, and that there are no rights of appeal.

## **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'.



19/05/2019  
 A. original issue  
 B. 04.05.21 issue proposed section line added  
 C. 04.11.21 update parking layout  
 E. 17.11.21 update dock leveler added  
 G. 09.03.22 planning slope parking / highway amendments  
 I. 07.02.23 MCH route amended following site meeting



**campbell driver partnership**  
 a joint venture between  
 banfield construction ltd  
 pets choice  
 whitwick ind. estate blackburn  
 proposed site plan  
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