

**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION  
**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE  
**DATE:** 15th February 2024  
**TITLE:** Diversion of Public Footpath 91 Darwen (part)  
**WARD:** Darwen South      **COUNCILLORS:** Kevin Connor  
Matthew Jackson  
Anthony Shaw

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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 Highways Act 1980, Section 119 to divert part of Public Footpath 91 Darwen

## 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

<b>Customer</b>	Improved Public Rights of Way
<b>Financial</b>	The Applicant will meet the cost of the diversions.
<b>Anti-poverty</b>	None
<b>Crime and Disorder</b>	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:** Lorraine Mellodey

**8.0 DATE PREPARED:** 26<sup>th</sup> January 2024

## **Highways Act 1980, Section 119**

## **Wildlife and Countryside Act 1981 Section 53A**

## **Application for Public Path Diversion Order**

## **Diversion of Public Footpath 91 Darwen (part) at Lords Hall, Duckshaw Road 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 part of public footpath 91 Darwen 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, FP91 Darwen was surveyed as part of this process and officers identified an obstruction of the route by gates at the entrance to Lords Hall and a retaining wall structure to the west of the grounds.
- 2.3 The then owner of Lords Hall when approached by officers regarding these obstructions insisted that the definitive line of the footpath was not through the grounds of the house but around the land lying to the south side of the entrance gates to Lords Hall.
- 2.4 The Property changed hands in 2016 and, at the time of the purchase, the new owner was made aware of the ongoing issue of obstructions on Footpath 91 Darwen through the Hall's grounds.
- 2.5 Following the change in ownership, negotiations were had with the new owner who accepted the Council's position and, as a result, the Council received an application on the 4<sup>th</sup> October 2022 requesting the diversion of Footpath 91 Darwen.
- 2.6 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.

- 2.7 The initial application sought to use a route further north of Lords Hall which the applicant felt gave walkers a more pleasant experience. A preliminary consultation on this route was carried out with users/interest groups to which objections were received. The predominant objection was with regard to the steep gradients with little scope for improvement.

- 2.8 After further discussions between the officers and the applicant, the diversion route which is the subject of this report was agreed by all parties. The applicant has confirmed that the new path will be provided to a standard that is to the satisfaction of the Highway Authority.
- 2.9 A further preliminary consultation with users/interest groups was undertaken for this new route to which no objections were received.
- 2.10 Public Footpath 91 Darwen currently starts on Duckshaw Road at Point A (SD 68480 20250) on the attached plan heading in a generally southerly direction to the access gates to Lords Hall at Point B (SD 68446 20035), through the grounds of the Hall to Point C (SD 68364 20049) and then in a generally westerly direction to via Point D (SD 68289 20146) to join Public Footpath 89 Darwen at Point E (SD 68126 20080).
- 2.11 The proposed diversion seeks to change the direction of the footpath at point B prior to the gates at the entrance to Lords Hall (SD 68446 20035) leaving Duckshaw Road in a southerly direction for some 42m metres south to Point F (SD 68419 20006). The proposed diversion then heads in a north westerly direction for 62m to rejoin the existing line of footpath 91 at Point C (SD 68364 20049)
- 2.12 There is evidence that this route has already been used by walkers during the years when the route through the grounds of Lords Hall has been obstructed

### 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 30 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, moorland 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 Also, whilst longer the proposed route results in a substantially gentler gradient to that which could be obtained were the applicant to remove the obstructions from the original route and open it up for use.
- 4.5 The new path will not require any limitations along its length making it more accessible for walkers with impeded/limited mobility. 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 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 Darwen Town Council, and no objections have been received in respect of the proposal before this committee.

## **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 91 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.

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.