

## **DEPARTMENT OF RESOURCES**

**ORIGINATING DIVISION: Highways and Transportation (PROW)**

**REPORT TO: Blackburn with Darwen Borough Council**  
**Planning and Highways Committee**

**COMMITTEE DATE: 15<sup>th</sup> November 2018**

**TITLE : Diversion of Public Footpath 1 Livesey (part)**

**WARDS: Livesey With Pleasington**

**COUNCILLORS: Derek James Hardman, John Pearson and Paul David Marrow**

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### **1. PURPOSE OF THE REPORT**

1.1 To seek committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of public footpath 1 Livesey at the entrance of the development from Livesey Branch road in Blackburn.

### **2. BACKGROUND**

2.1 On 18/10/16 Blackburn with Darwen Borough Council received an application for planning permission for the erection of 167 No. residential units with associated vehicular access and car parking” This is registered under application reference 10/16/1132 and has been granted.

2.2 The proposed development has an impact on the alignment of Public Footpath, 1 Livesey which may be considered to necessitate its diversion.

2.3 On the 2th January 2017 Blackburn with Darwen Borough Council (PROW) subsequently has received an application to divert footpath 1 Livesey

2.4 A report has been prepared which seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on the plan attached to this report and enabling them to consider whether, or not to promote the Order requested.

### **3. LAW**

3.1 The relevant legislation is the Highways Act 1980, Section 119 to divert part of public footpath. Please see attached report for further details.

### **4. DETAILS**

4.1 Please refer to accompanying report.

### **5. FINANCIAL IMPLICATIONS**

5.1 The cost of the diversion of the new path will be met by the Applicant.

### **6. RECOMMENDATION**

The committee may *either* decide to 'Promote the Order' or 'Not to Promote the Order'

6.1 **It is the officer's recommendation that the legislative criteria have been met and the committee should resolve to Promote the Order.**

**BACKGROUND PAPERS**  
**CONTACT OFFICER**  
**DATE**

Plan and Report  
Lorraine Mellodey 01254273525  
**5/10/2018**

**Highways Act 1980 – Section 119**  
**Application for Public Path Diversion Order**  
**Public Footpath, Livesey 1 (Pt) – Livesey Branch road Blackburn**

**1.0 Introduction**

1.1 This report seeks to assist Blackburn with Darwen Borough Council in their determination of an application to divert part of Public Footpath, Livesey No 1 as shown on plan 1 attached to the report.

**2.0 Background**

2.1 Blackburn with Darwen Borough Council is the Highway Authority for the area within which the path proposed for diversion lies.

2.2 Public Footpath, Livesey No 1 is recorded on the Definitive Map and Statement for the area.

2.3 On 4<sup>th</sup> January 2017 Blackburn with Darwen Borough Council received an application to divert a section of the footpath as shown on the attached plan. The applicant has advised that the application seeks to allow users continued access, whilst separating pedestrians from vehicles.

2.4 The diversion application was originally submitted in connection with a planning application. This application was granted on 15/12/16 and this diversion is being processed under the Highways Act 1980 as the works over the Right of Way are complete. The completed works have not interfered with the use and enjoyment of the Right of way and the applicant is seeking to protect the pedestrians by providing a dedicated footway.

2.5 This report seeks to advise the Council 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.

**3.0 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

#### **4.0 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.

##### Landowner/Public Interest

4.2 The proposal is considered to be in the interests of the landowner because it will facilitate the approved planning application to build 167 dwellings.

4.3 It may also be considered that there are some public safety benefits to the proposal in so much that the proposed new route will be a main entrance to 167 dwellings and the diversion seeks to move the route from the centre of a carriageway to a dedicated footway.

##### Termination Points

4.4 There will be no change in the termination points.

##### Convenience & Enjoyment

4.5 The proposed diversion is approximately 3 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 an urban location and is a link to the wider Rights of way network. In this case the path will be substantially more convenient than the original line as the pedestrians have been moved from a shared use track on to a footway dedicated for pedestrians.

4.6 With regard to other issues which may have an affect on the convenience of the route, the new path is a metalled surface .

##### Land Served by the Path and Compensation

4.7 The applicant is the land owner over the affected route. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.

Material Provisions within the Rights of Way Improvement Plan

4.8 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.

**5.0 Consultations**

5.1 Consultations have been undertaken with a range of user/interest groups in the area. The Councillors have also been consulted. No objections have been received

**6.0 Conclusion**

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

**7.0 Decision Required**

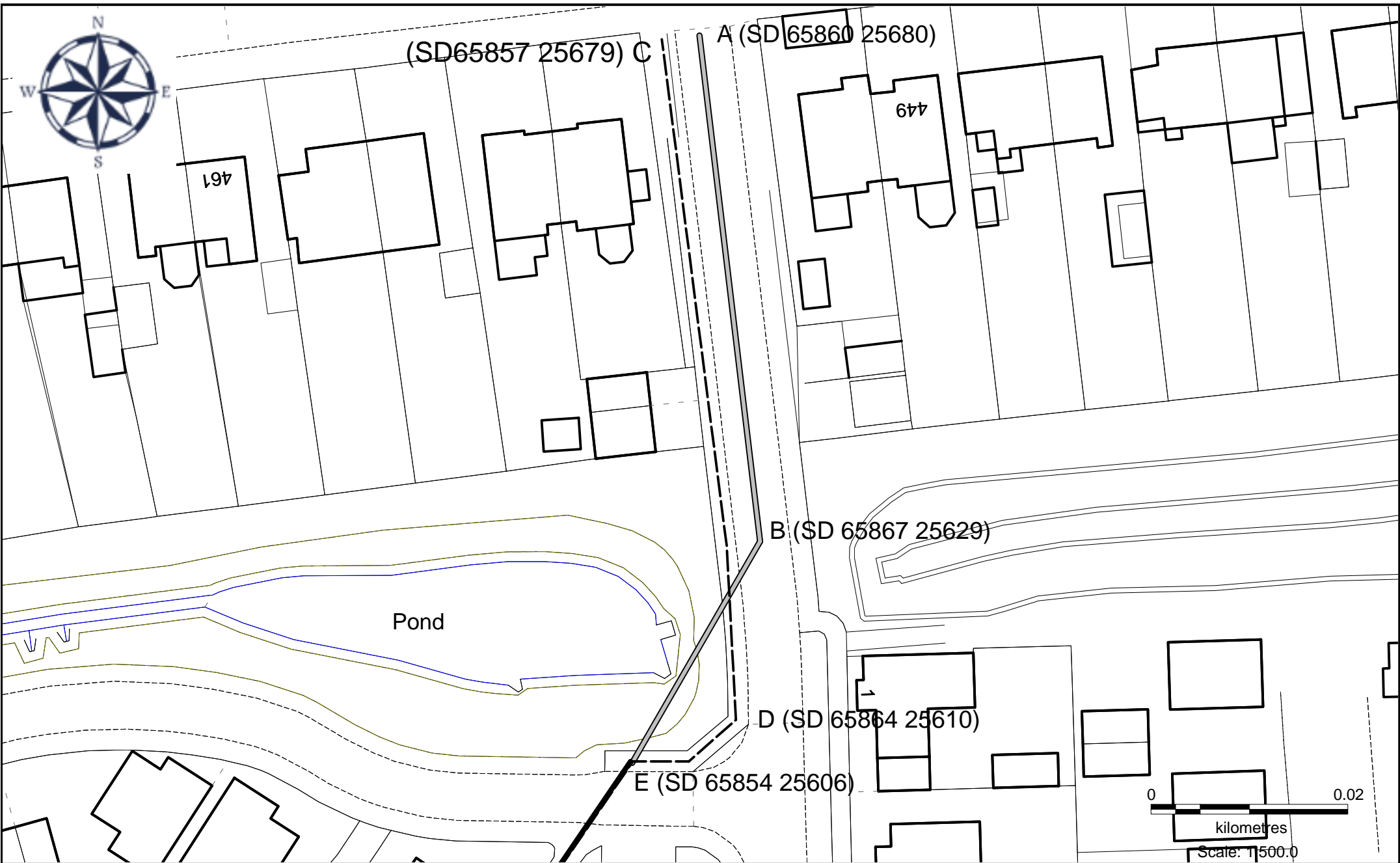
7.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the path they should resolve that:

- a) A Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert part of Public footpath Livesey No 1 as shown on the attached plan.
- b) If no objections are duly lodged, the Authority confirms the Order; or
- c) If objections are duly lodged, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

7.2 If, having considered all of the relevant information, the Authority are 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.

**8.0 Recommendation**

8.1 Whilst it is your Officer's view that the criteria of the legislation have been met, Members must make their own decision **whether or not to promote** the requested Order. 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.



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**Title: Footpath 1 Livesey (part) Public Path Diversion  
 Order 2018**

Legend  
 — Unaffected Rights of Way    - - - Closed Right Of Way  
 — New Route     Closed Right Of Way