

Highways Act 1980 – Section 119

Application for Public Path Diversion Order

Public Footpath, Darwen No 30 (Pt)

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, Darwen No 30 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, Darwen No 30 is recorded on the Definitive Map and Statement for the area.

2.3 Blackburn with Darwen Borough Council intend to divert a section of the footpath as shown on the attached plan. The authority formed the view that the existing route is potentially unsafe and not convenient for the highway user. The existing footways maintained by the highway authority are to a standard that is superior to the right of way and provide a safer route to the same destination.

2.4 This report seeks to advise the Council of the outcome of statutory and 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 move the path away from highway verge (not intended for foot traffic), onto illuminated paths and out of residential property boundaries.

4.3 It may also be considered that there are some public benefits to the proposal in so much that the proposed new route has been well illuminated and the route moved from across the junctions of roads to around the junctions providing better sight lines. As mentioned above.

Termination Points

4.4 There will be no change in the termination point.

Convenience & Enjoyment 136, 166 85

4.5 The proposed diversion is approximately 30 metres longer than the current route and an additional 85 metres to remove a gap in the 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 will be marginally longer but safer for the user as such considered not substantially less convenient.

4.6 With regard to other issues which may have an affect on the convenience of the route, the new route is an improved surface compared to the previous route. There would not therefore appear to be any reason to suggest that the proposed alternative path will be less convenient than the current route.

Land Served by the Path and Compensation

4.7 The path is not used for the purposes of accessing any land, and the route will follow land already designated for public use. 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.

Agriculture and forestry; biodiversity; and Disability Discrimination Legislation

- 4.9 It is not considered that there are any issues arising with regard to agriculture or forestry and there would appear to be no issues arising surrounding biodiversity. The proposed new path offers an improvement to the surface in terms of access for people with disabilities.

5.0 Consultations

- 5.1 Consultations have been undertaken with a range of user/interest groups in the area. 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, Darwen 30 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.