



Date of Meeting	16 th October 2018
Portfolio	Cabinet Member for Neighbourhoods, Community & Culture
Report Author	Julie Simpson
Public/Private Document	Public

Permanent Diversion of Part of Definitive Footpaths MilFp211, MilFp212 and MilFp213

Executive Summary

1. A landowner/developer, Brackenhouse Properties LLP applied to the Council's Planning Service to develop the area of Birchinley Hall Farm, within that application was the proposal to divert part of the rights of way that would be affected by the development.

During the early stages of the consultation regarding the diversion of part of the footpaths the development began and it was deemed "to substantial" to continue to divert the footpaths under the Planning legislation and the developer was forced to apply under the Highways Act 1980.

A number of Council Officers dealt with this application over the years but had not brought the matter to a conclusion and I now seek to conclude the matter and proceed with an order to legally divert the footpaths and show their new locations on the definitive map.

The developer/landowner will pay all costs in respect of the order and ensure that all the rights of way are to a suitable standard and fit for purpose.

Recommendation

2. I recommend that the Council proceed with the modification order and Legal Services complete the process under section 119 Highways Act 1980 should the Council not receive any objections to the order.

Should the Council receive any objections that cannot be resolved the matter be referred to the Secretary of State for a final decision.

The Council proceed with an Event Order to alter the definitive map and statement following completion of the modification order.

Reason for Recommendation

3. Under Section 130 Highways Act 1980 the Council has a duty to protect and assert the rights of the public to the use and enjoyment of any highway; definitive rights of way are highways. The Council are also required to maintain and keep under review a map, the definitive map, and statement showing the public footpaths and bridleways in its area.

One of the circumstances in which the map can be modified is with an application from a landowner, lessee or occupier of land to divert a right of way. The landowner/developer who owns the land has satisfied the council that the land is secured for occupation and therefore meets the criteria set out in S.119 Highways Act 1980.

The diversion of part of the footpaths will not affect the rights of the general public they will continue to have the same rights of use over the diverted sections of the footpaths when an order has been completed.

Key Points for Consideration

4. The Council are obliged to keep the definitive map and statement under review, this diversion assists the Council in meeting this criterion set out in legislation.

The Council has already provided Planning Permission in the knowledge that the footpaths ran over the land to be developed. Due to time constraints within Planning Law and advancement of the development prior to the routes being diverted the routes are currently obstructed by domestic dwellings, this proposal will ensure the routes are diverted to usable locations.

It is a reasonable application from a landowner who has met the criteria under Section 119 Highways Act 1980 for diverting legally recorded rights of way.

The landowner/developer will pay all associated costs.

As part of the Legal Process the Council are obligated to advertise the order and members of the public may submit relevant objections, in the event any objections are received the matter is referred to the Secretary of State who will make the final decision.

4.1 Alternatives Considered

The Council may refuse to make the order this could be detrimental in monetary terms with Court Fees having to defend our decision as Enforcement action and the demolition of domestic dwellings would be required to ensure the rights of way are fully available for use by the general public.

Costs and Budget Summary

5. The landowner/developer will pay all costs involved with the diversion this includes all associated Council Fees.

The landowner/developer is required to create the diverted sections to a standard agreeable to the Council (Rights of Way Officer) to ensure ease of use by the general public.

The Council will continue to maintain the full route of the footpaths when the order has been completed and the routes are created on the ground and are open and available for public use.

Risk and Policy Implications

6. The risks associated to this matter relate mainly to the Council having already given permission to develop the land in the form of Planning Permission knowing at the time that it does affect a network of footpaths in the area.

A failure on the Council of ensuring the footpaths had been diverted prior to allowing any development to proceed on site, the risk of enforcing any planning conditions or seeking removal of the domestic dwellings to ensure the current definitive routes are available. The risk to the reputation of the Council should we be in this position.

Consultation

7. The local representatives who attend the rights of way Forum have been consulted and have not raised any objection.

The report will be reviewed by the Council's Legal Service, Financial Services and Senior Management within environmental Management.

The report will be presented at the Pennines Township Committee to ensure the members for the area are aware of the proposal.

Background Papers	Place of Inspection
8. File 8987	Environmental Management, Green Lane, Heywood, OL10 2DY
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