



Date of Meeting	6 <sup>th</sup> December 2022
Portfolio	Cabinet Member for Highways and Housing
Report Author	Julie Simpson
Public/Private Document	Public

## Diversion of Definitive footpath MilFp329

### Executive Summary

1. Definitive footpath MilFp329 shown by a solid black line on the map accompanying the report is identified on Council records (the definitive map and described in the related statement) as running from the rear of 70 Craiglunds/Badger Lane to a junction with footpaths MilFp330 and MilFp331.

Taylor Wimpey Manchester has requested a diversion of this footpath to run over the highway instead of over the gardens to the new properties recently erected. It is proposed to divert the full route from Badger Lane to the junction with MilFp330 and MilFp331. The diverted route is shown as a dotted black line on the associated map.

The legislation to be applied is section 119 Highways Act 1980 that confirms:

- The Council may divert a right of way should the relevant legislation be complied with and if it is expedient to do so, and
- Should the order be opposed in the form of a written objection the Council may not confirm the order.
- The Council will submit the opposed order to the Secretary of State to decide whether the footpath can be diverted or not. The methods considered are:
  - Written representations from both parties,
  - Hold a public inquiry, or,
  - To make a decision from the evidence before him/her.

The associated costs for Officer/Legal time and advertising costs will be paid by the Taylor Wimpey. The Council will be responsible for Council costs associated with a public inquiry.

### **Recommendation**

2. That the Council proceed with a Diversion Order under section 119 Highways Act 1980 to divert the footpath MilFp329.

That the Pennine Township Committee authorised to execute the Change of Control Notice and enter into any legal agreements necessary to give effect to this decision in accordance with the Council's constitution.

In the event the Council receive objections to the order the matter is referred to the Secretary of State for their consideration and decision.

### **Reason for Recommendation**

3. Under section 130 Highways Act 1980 the Council have a duty to assert and protect the rights of the general public to the use and enjoyment of any right of way shown on the definitive map and statement.

Under Section 53 of the Wildlife and Countryside Act 1981 the Council should keep the definitive map and statement under continuous review and one method is to permanently alter a definitive footpath either by extinguishment and/or diversion.

The general public are currently using the new highway created to access the new properties. The route will probably be an adopted highway however there is no other option to divert the footpath. The diversion will protect the definitive network continuity to connect to other routes in the area.

### **Key Points for Consideration**

4. Whilst the Council have a duty to protect the rights of the general public and consider their safety and manage the risks when using the definitive network we have also to consider the location, networking and transport.

The footpath that currently exists and shown on the definitive map and statement cannot be used due to the creation of gardens, it is not possible to alter the land. It is deemed expedient to divert the footpath affected by the gardens.

The Council have received a request to divert MilFp329 from Taylor Wimpey to provide a more commodious route under section 119 Highways Act.

The Council deem it expedient to divert the section of footpath MilFp329, a more commodious route will be provided this will also provide a link to the network of rights of way in the area.

The order may not be confirmed by the Council should any relevant (points of law) objections be submitted, the matter is considered and decided by the Secretary of State either by written representations or Public Inquiry.

All costs associated with the order will be paid by Taylor Wimpey, the Council will however be responsible for their own costs in the event a public inquiry is necessary.

### **Alternatives Considered**

- 4.1 There are no other alternatives that the Council may decide upon, the footpath is recorded on a definitive map and described in a related statement. It is not currently fully accessible, causing the general public to find an alternative route, the route being used does not have any definitive status.

The Council could consider a permanent closure of the full route however it would be difficult to prove the footpath is not needed for public use, we would not be able to meet the legal criteria for closure of this right of way.

### **Costs and Budget Summary**

5. Taylor Wimpey will bear the associated costs for the order, the costs relate to Officer/Legal time and Advertising costs.

The Council will be required to stand their own costs should a public inquiry be necessary.

### **Risk and Policy Implications**

6. There are no risks associated with this proposal, the legislation is in place to allow Council's to consider this action for rights of way.

The general public may legally walk through many gardens to exercise their rights using the right of way, this order will remove this risk to owner/occupiers.

This proposal meets the Council's obligations in respect of continually reviewing the definitive map and statement.

<b>Consultation</b>
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7. The formal consultation is in the form of a report to local ward members and if they agree with the recommendation to proceed with an order a formal public objection period is carried out as part of the order procedure.

There is also a formal consultation with the Statutory Consultees during the formal order stage, during this objection period any member of the public may submit a written objection to the diversion, the Council will decide whether these are relevant and a point of law, and any relevant objections received will result in the matter being referred to the Secretary of State.

<b>Background Papers</b>	<b>Place of Inspection</b>
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8. File Diversion of part of MilFp329	Environmental Management, Green Lane, Heywood, OL10 2DY
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Map showing MilFp329 proposed to be diverted and the location of the diversion.



