

BURNLEY BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE

8th February 2023

PART III

**Application for Public Footpath Diversion Order under section 257
of the Town and Country Planning Act 1990**

Application Reference: FDO/2022/0611

Date of Application: 15th October 2022

**Proposal: Proposed diversion of part of Public Footpath No. 12 (Hapton)
(under section 257 of the Town and Country Planning Act 1990)**

At: Land at Accrington Road, Hapton, Burnley

1. Purpose of report

To seek authorisation to make an Order for the diversion of part of Public Footpath no.12 (Hapton) at the above site in connection with an Outline Planning Permission (OUT/2020/0366) granted on 20th September 2022 for up to 50,000sqm of Class B1b&c, B2 and B8 industrial units and subsequent applications for the approval of Reserved Matters (REM/2022/0568, REM/2022/0683 and REM/2022/0707) which are currently being considered by the Council.

2. Background

The proposal is to stop up the part of Public Footpath nos. 12 shown by the solid line on the map below and in substitution form an alternative route indicated by the bold dashed line.

Section 257 of the Town and Country Planning Act 1990 (the Act) allows a Local Planning Authority as “competent authority” to make an Order authorising the stopping up of any highway if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission whether an application has already been approved or has been submitted.

In considering an application under s257 of the Act, the Council must have regard to:

- the need for an alternative highway to be provided; and
- the disadvantage or loss likely to arise to members of the public generally, to persons whose properties adjoin or are near the existing highway, as a result of the stopping up or diversion weighted against the advantages of the proposed stopping up or diversion.

Where the Council resolve to make an Order, a draft Order would be prepared by the Head of Legal and Democratic Services which sets out the requirements for the diversion.

A formal process of consultation and advertisement by press and site notice will take place once an Order is made. Consultation for a statutory period of 28 days will include statutory undertakers, Hapton Parish Council, the Ramblers Association and neighbouring residents. In the event that there are no objections to the Order then the Order would be Confirmed unopposed. However, should there be any objections and these objections are not subsequently withdrawn then the Order would be referred to the Secretary of State for determination. The costs for making the Order and any subsequent referral (which would be dealt with by written representations, a hearing or public inquiry) would be borne by the applicant.

3. Assessment

Part of Public Footpath no.12 (Hapton) is located within the development site approved in outline form (with all matters reserved) and which is now subject to three separate applications for the approval of Reserved Matters to construct the access road, internal access road, an alternative Footpath and erect two industrial units (Units 1 and 2). Further applications are expected for the remainder of the site in due course.

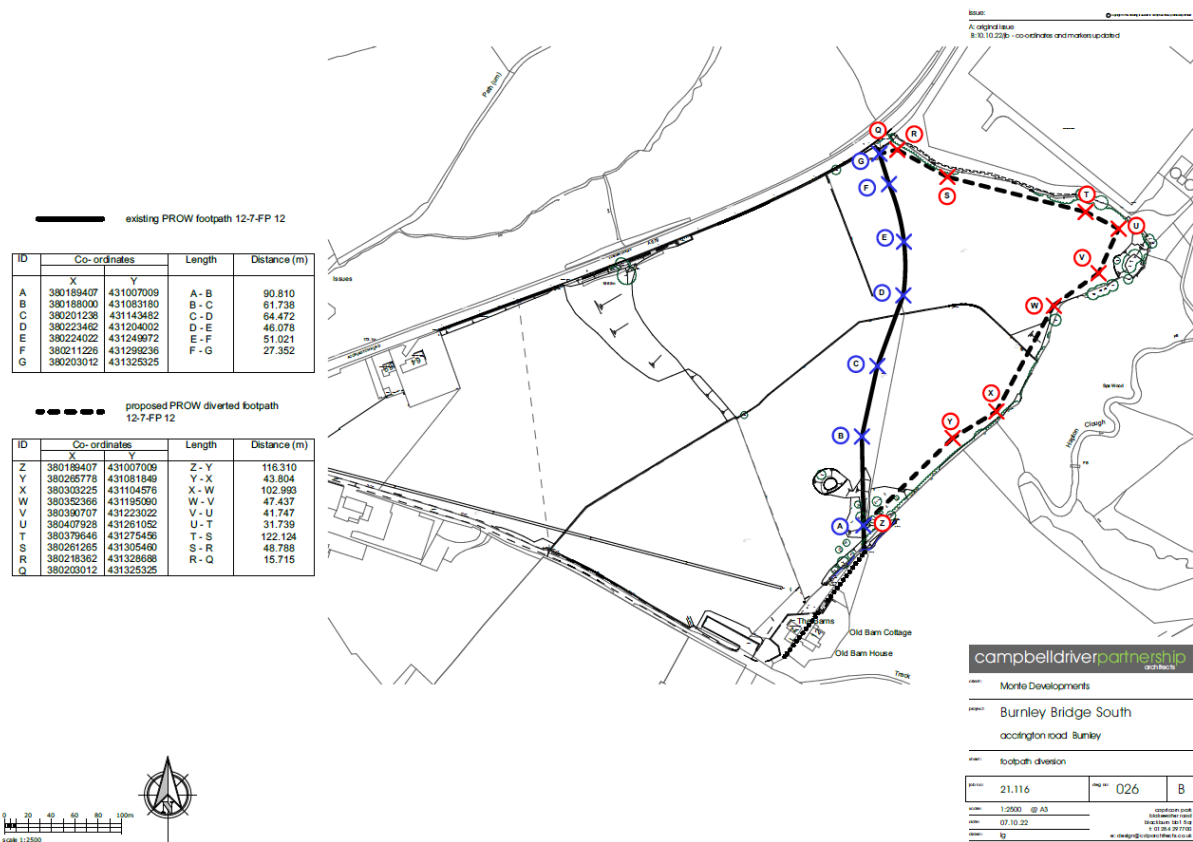
Public Footpath no. 12 (indicated by a solid black line on the map below) crosses the fields of the application site in a southerly direction - from the site's boundary with the A679 at the north to a footbridge just beyond the southern boundary of the application site, from where it passes through Old Barn Farm (a group of five dwellings) and intersects with Public Footpath nos. 11 and 13 (Hapton). Where the north point of Public Footpath no. 12 bounds the edge of Accrington Road (the A679), there is no direct continuation of the public footpath network.

The applicant who is the owner/developer of the site states that there is a need to divert the current line of Public Footpath no. 12 in order to develop the site with the buildings, roads and infrastructure that is proposed. The current Reserved Matters application (REM/2022/0707) is for Unit 1 which would be sited over the current public footpath. It is accepted that this would be very difficult to avoid due to the position of the footpath through the heart of the site and due to the nature and size of industrial units. The siting of internal roads that form part of application REM/2022/0568 is designed to make efficient use of the land and would not follow the route of the public footpath. The proposed Unit 2 is located to the west of the public footpath and would not directly affect the footpath. The fact however that Unit 1 in particular would not be able to be constructed without diverting the route of the footpath, indicates that there is a need for a diversion. Minor re-siting of Unit 1 would not change this situation and it is accepted therefore that the test of necessity has been met.

The second consideration is the disadvantage or loss to the public or persons living on or near to the public footpath that would occur set against the advantages of the proposed diversion. The proposed alternative route is indicated by a hatched line on the map below. The alternative route is around the site's perimeter to its eastern and southern sides. The northerly point of the current footpath and the southerly point of the public footpath would remain the same. The proposed alternative footpath would

be 3m wide and constructed with a dust aggregate surface and set in landscaping which is to consist of trees, shrubs and meadow grasses.

Proposed Footpath Diversion Plan



Solid black line = Existing route of Public Footpath no. 12 (Hapton)

Bold dashed line = Proposed Alternative route

There is a potential disadvantage to the nearest neighbours and members of the public as a result of a longer distance to walk along the alternative route. This would be an increase in length from approximately 340m to 570m (an increase of 230m). Most users of the public footpath are likely to be walkers for whom the additional length on an improved footpath would not be a significant disadvantage. An improved footpath may also promote its use by neighbours. Given that the site will change from fields to an urban development, the siting of the proposed alternative footpath in a landscaped setting is likely to be a better experience than the retention of the current line of the footpath. The level of disadvantage to users for the footpath from the proposed diversion is therefore likely to be minimal.

The applicant states that the development of the site would effectively be prohibited without the diversion. A key advantage of the proposed diversion would be to permit an effective and efficient layout of the development to achieve the benefits for employment from the development of this site that is allocated for employment use development in Burnley's Local Plan.

On this basis, the proposed footpath diversion satisfies the tests in the Act which would indicate that an Order can be made.

The Public Rights of Way Officer at Lancashire County Council has been informally consulted on the proposed Order and has confirmed that the proposal would be acceptable and has some suggestions for technical changes to the submitted plan to make it suitable for a diversion order map.

Whilst detailed planning permission (through the approval of reserved matters applications under consideration) has not at this stage been granted for the development, the applicant will need to proceed as early as possible with making an Order due to the timescales that can be involved in doing this

In the event that an Order is made and confirmed (without subsequent challenge) then the Order would still not come into effect until the associated detailed planning permission (REM/2022/0707) has been granted.

4. Recommendation

To authorise the Head of Legal and Democratic Services to make an Order under section 257 of the Town and Country Planning Act 1990 to divert public footpath no.12 (Hapton) as indicated on the submitted plan and in the event that there are outstanding objections following a period of consultation and negotiation, to refer the Order to the Secretary of State for determination.

5. Reasons for Recommendation

Subject to the approval of Reserved Matters subsequent to an outline planning permission to develop this site, to allow the carrying out of development on an allocated employment site where the alternative route would provide a reasonable and practical diversion.

6. Financial implications

The costs of making the Order, advertisement and any subsequent costs associated with referring the Order to the Secretary of State will be met by the applicant.

7. Background Papers

Outline Planning application OUT/2020/0366.
Reserved Matters application REM/2022/0568
Reserved Matters application REM/2022/0683
Reserved Matters application REM/2022/0707

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