

<b>Agenda Item</b> A11	<b>Committee Date</b> 22 July 2019	<b>Application Number</b> Associated with 18/00365/OUT
<b>Application Site</b> Public Footpath No.26 in association with development site at Land east of Scotland Road, Carnforth		<b>Proposal</b> To permanently divert a section of Public Footpath No.26 in Carnforth to enable the implementation of residential development pursuant to the proposals set out in application 18/00365/OUT
<b>Name of Applicant</b> Mr Richard Morton		<b>Name of Agent</b> Ms Helen Binns
<b>Case Officer</b>		Mrs Jennifer Rehman
<b>Summary of Recommendation</b>		<p>1) That, subject to outline planning permission being granted for planning application 18/00365/OUT, an Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.26 in Carnforth in the manner set out in the report to enable the development to be carried out in accordance with outline planning permission 18/00365/OUT, and in the event of no objections being received or any objections being received are withdrawn, the Order be confirmed.</p> <p>2) That the Head of Legal Services be granted delegated powers to take any action considered necessary in respect of the making and confirmation of the Order duly authorised to be made.</p>

## **1.0 The Site and its Surroundings**

- 1.1 Public Footpath No.26 is a public right of way that lies within the Carnforth and Millhead Ward. This footpath links Scotland Road with North Road (known as Carnforth Brow). Starting at Carnforth Brow, the footpath generally runs in a north westerly direction for approximately 50 metres through a newly developed estate and then across an uncontrolled level crossing, known as Brow Foot Level Crossing. The footpath then runs in a westerly direction for 95 metres along the top of the northern boundary of the railway cutting to a point located east of the Midland Units. From here, the footpath runs in a northerly direction for 65 metres and doglegs in a westerly direction over a stile, and runs along the northern boundary of the Midland Units. The footpath exits into the industrial estate (Midland Units) access and terminates at the junction with Scotland Road.
- 1.2 The condition, surfacing and width of the footpath varies along its length. Generally, the footpath is unmade and grassed with no defined edging – typical of rural public rights of way. The widest section of the footpath runs along the northern boundary of the Midland Units. The footpath is around 1 metre wide and finished in crushed stone either side of the uncontrolled level crossing. The gradient of the footpath either side of the level crossing is steep due to its location in the cutting.

## **2.0 Background**

- 2.1 On 15 October 2018, the Planning Committee resolved to approve a planning application for residential development on land off Scotland Road (18/00365/OUT). The development comprises 213 dwellings with an associated vehicular and cycle/pedestrian access to Scotland Road and cycle/pedestrian access to Carnforth Brow/Nether Beck, public open space, creation of wetlands area, construction of attenuation basins, erection of sub-station, installation of a pumping station

and associated earth works and land regrading and landscaping. At the time of compiling this report, the planning application is still pending. The Section 106 legal agreement is almost complete meaning the formal granting of the outline planning permission is imminent.

- 2.2 The scale, proximity and relationship of the development to the section of Footpath No.26 that crosses the railway line was highlighted at the pre-application stage as a key constraint to the development, mainly on the grounds of public safety. The footpath either side of the railway line steeply slopes down towards the crossing with no barriers or control systems to prevent pedestrians falling into the railway line. The applicant actively engaged with Network Rail, the Ramblers Association and Lancashire County Council's Public Right of Way officer in advance of their formal planning submission in light of the concerns. Positive engagement continued during the consideration of the planning application with potential alternative routes (to avoid the level crossing) fully explored. An amended indicative route for the diversion of Footpath No.26 formed part of the planning application and was accepted by the Ramblers Association, Network Rail and the Lancashire County Council's Public Right of Way Officer (subject to the formal diversion of the footpath under s257 of the Act). In order for the development to be acceptable in planning terms and to satisfy the concerns of Officers of the Council and consultees, the Council resolved to approve the development subject to a Grampian condition requiring Footpath No.26 to be diverted to avoid Brow Foot Level Crossing.
- 2.3 Section 257 of the Town and Country Planning Act 1990 (the Act) provides that the local planning authority authorised to grant planning permission may, by Order, authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of the Act.
- 2.4 When an Order is made by a local planning authority under Section 257, it is necessary for the local authority to give notice of the Order by publishing a notice in a local newspaper, displaying a notice on site and notifying specified persons and bodies. In the event that objections are made and not withdrawn, the Order will need to be referred to the Secretary of State for consideration and confirmation.

### **3.0 The Proposal**

- 3.1 Following the Council's resolution to approve the development, the applicant has applied to divert Public Footpath No.26. The application does not seek to divert the entire length of the footpath. The alternative footpath shall commence at a point south of the railway line at point A (SD 5063 7099), running in a westerly direction for 70 metres along the top of the southern boundary of the railway cutting to point B (SD 5056 7098), continuing in a westerly direction for 60 metres to point C (SD 5050 7098), then runs in a northerly direction across the existing accommodation bridge to Point D (SD 5050 7101) as indicated on the map appended to this report (all lengths and compass directions are approximate). From this point, the footpath will continue along its existing alignment towards Scotland Road.
- 3.2 The width of the section of the alternative footpath is as follows:  
A to B – 1.8 metres  
B to C – 2.0 metres  
C to D – 3.0 metres
- 3.3 The alternative footpath shall be constructed and finished in crushed stone with a minimum 1.1 metre high post and rail fence along the northern perimeter of the diverted route. The fencing is required for safety reasons due to position of the diverted route along the top of the railway cutting between points A and B. No stiles or gates are proposed or required along the diverted route.

### **4.0 Advice**

- 4.1 The existing footpath provides an important connection between Scotland Road and North Road/Carnfoth Brow. Its current state suggests it is not a heavily used public right of way, but nevertheless provides functional, circular route that can be enjoyed by the community. The proposals sought as part of the planning application would significantly increase pedestrian movements along with footpath and across the uncontrolled level crossing. Whilst planning policy and decisions seek to promote walking and sustainable travel, developing the site without an

appropriate diversion to this footpath would be unsafe and would potentially affect the safe and efficient operation of the railway line.

- 4.2 The alternative route for Footpath No.26 maintains a rural form and character and avoids the dangerous level crossing. The section between position A and B is marginally below the expected design requirements (of 2 metres). Its position alongside the rear of the recently developed housing off Carnforth Brow is not ideal either. However, when compared to the existing route of Footpath No.26 over Brow Foot Level Crossing it is far safer for existing future occupants of the development proposed pursuant to planning application 18/00365/OUT. This proposed alternative route has been designed in full consultation and collaboration with Network Rail (as part of the land was in their ownership) and the County's Public Right of Way Officer, whom are supportive of the proposed diversion.
- 4.3 Section 257 of the Act gives local planning authorities a power to change the route of a public footpath where a diversion is necessary to enable development to be carried out in accordance with a planning permission. It was clear when the Council resolved to grant outline planning permission for the redevelopment of the adjacent site for housing (under 18/00365/OUT) that Footpath No.26 would need to be diverted to make it acceptable in planning terms. In view of the circumstances set out above and the suitability and availability of an alternative route, it is considered that, subject to consultation of the Order, the test set out in Section 257 is satisfactorily met. Further, it is considered the applicant should pay the costs of closing that part of the existing footpath to be diverted and the cost of providing the alternative route.

## **5.0 Recommendation**

- 5.1 That, subject to outline planning permission being granted for planning application 18/00365/OUT, an Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Footpath No.26 in Carnforth as set out in the report and on the terms the developer pays the cost of closing that part of the existing footpath to be diverted and the cost of providing the alternative route, to enable the development to be carried out in accordance with outline planning permission 18/00365/OUT, and in the event of no objections being received or any such objections received being withdrawn, the Order be confirmed.
- 5.2 That the Head of Legal Services be granted delegated powers to take any action considered necessary in respect of the making and confirmation of the Order duly authorised to be made.

## **Background Papers**

Map showing the proposed Public Footpath diversion