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| **Order Decision** |
| Site visit made on 29 July 2025 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 05 September 2025** |

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| **Order Ref: ROW/3350914** |
| * This Order is made under section 257 of the Town and Country Planning Act 1990 and is known as the Borough of Blackburn with Darwen (Footpaths 185 (part) and 226 (part) Darwen Public Path Diversion Order 2023. |
| * The Order is dated 29 June 2023 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection and one representation outstanding when Blackburn with Darwen Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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###### Procedural Matters

1. I made an unaccompanied site visit on 29 July 2025 where I walked the existing and proposed footpaths.
2. I will refer to various points shown on the Order map in my decision. For ease of reference, I have appended a copy of the Order map to the end of my decision.

**Preliminary Matters**

1. The objector states they were not notified about the provision of the lane as a public footpath so did not have an opportunity to object. However, they have objected to the Order so clearly did, even if they were not directly served with a notice of the making of the Order.
2. The Peak and Northern Footpaths Society (PNFS) has no objection to the Order. However, they are concerned that the Order states it ‘*shall have effect upon confirmation of the Order’* and *‘all works will be undertaken by the landowner’*. They consider it should state it *‘only comes into effect on the date the OMA has certified that the relevant works on the new section of footpath are fit for purpose’*. Because it does not, it could lead to issues if the path is not satisfactorily provided, and the Council would not be able to enforce its provision. The PNFS also raise concerns about there being no paragraph about continued rights for statutory undertakers to access their apparatus on confirmation of the Order.
3. The Town and Country Planning (Public Path Order) Regulations SI 1993 No. 10 (the 1993 Regulations) set out the form of Orders made under the Town and Countryside Planning Act 1990 (the 1990 Act). The 1993 Regulations include a note stating, *‘insert or omit words in square brackets as appropriate’*. There are options in square brackets for the diversion to come into effect on confirmation of the Order or when the Council certify the new highways in the Order are created to their reasonable satisfaction.
4. The Council has confirmed the new paths have already been provided and are ready for use. The Ramblers state in their pre-order consultation response that the new path had been constructed to an acceptable standard. The new path was available to a suitable standard at the time of my site visit.
5. The paragraph regarding access to apparatus is also in square brackets in the 1993 Regulations so can be omitted if not required. The pre-order consultation letters indicate no statutory undertakers have apparatus in the vicinity and the Council have confirmed that no apparatus is affected. Therefore, this paragraph appears to be unnecessary.
6. Because the 1993 regulations include an option for Orders to be confirmed on completion and allow for the access to apparatus paragraph to be omitted, I do not consider the Order to be defective and do not intend to modify these sections if I confirm it.
7. The descriptions of the paths to be diverted under PART 1 and PART 2 of the Order include existing sections of footpaths which are not being diverted and are not fully shown on the Order map. As these sections already exist and do not need to be diverted, they should not have been included in the Order. Therefore, If I confirm it, I will delete the references to the unaffected sections of footpaths.
8. No widths are included in Parts 2 of the Order for the new paths. Defra Circular 1/09 makes it clear that widths should be included in Orders. Widths are included in PART 3 of the Order, and I shall add these widths to PART 2 of the Order if I confirm it. As widths are included in PART 3 of the Order, this modification will not require advertising.
9. I also note that the Limitations and Conditions section is labelled PART 3 Modification of the Definitive Statement rather than PART 4 as stated to in paragraph 6 of the Order. As this is a minor typographical error, I will amend it.

The Main Issues

1. Section 257(1) of the 1990 Act provides for an Order to be made authorising the stopping up or diversion of a footpath, bridleway, or restricted byway if it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
2. The merits of the planning permission granted for the development are not matters that are before me in respect of this Order Decision. However, the grant of the planning permission does not mean that a public right of way will automatically be stopped up or diverted. In considering the confirmation of the Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public or persons whose properties adjoin or are near to the existing highway should be weighed against the advantages of the proposed Order. There are effectively two issues that must be considered, the necessity test and the merits test. Confirmation of the Order requires that both are satisfied.

Reasons

***Whether the diversion is necessary to allow development to be carried out in accordance with planning permission***

1. The proposed development is for the diversion of Footpath 185 Darwen (FP185), to enable the extension of one dwelling, the creation of an additional dwelling in the attached barn, the erection of a single storey extension on the north side of both buildings, the creation of residential curtilages, and the erection of boundary fencing. The proposed site plan shows part of both new dwellings over the line of the existing FP185. The new boundary fencing will also obstruct the existing line of FP185 at three points.
2. The objector claims the planning application quoted in the Order has been superseded by other planning applications, one of which does not require the diversion of the footpaths. Although additional planning permissions may have been granted, the planning permission referred to in the Order is still valid and can be proceeded with.
3. I am satisfied that the proposed diversion is necessary to allow development to be carried out in accordance with the planning permission granted.

***Disadvantages of the proposed order***

1. The objector states the proposed diversion *‘is for the convenience of the farmhouse only, with complete disregard to the other residents’*. Furthermore, the proposed footpath is elevated above the rear of the existing properties allowing views into the garden and rear bedroom windows invading their privacy.
2. The existing FP185 runs past the front of several existing residential properties as well as the two proposed dwellings. There are small gardens at the front of two of the existing dwellings, which have opaque windows downstairs preventing views in. However, FP185 runs directly in front of other existing properties and a static caravan, and it is easy to see into the downstairs windows of these properties. It is also possible to see into the first floor bedrooms of some of the properties including the two with front gardens.
3. The proposed FP185 is further from the residential properties than the existing footpath. Although it is possible to see into the rear windows, the increased distance limits what can be seen. It is also possible to see into the rear gardens of the properties. However, vegetation has been planted along the rear boundary fences and is proposed for the new dwellings. As this planting becomes established it will reduce the views into the gardens and properties.
4. Parking for the existing and proposed dwellings is to the front alongside the existing FP185 and there are also outbuildings and a static caravan alongside it. Some of the outbuildings are proposed to be demolished but others will remain. I consider the current line of FP185 is likely to affect the security of the outbuildings and parking areas.
5. As the proposed FP185 is not directly alongside windows, is further away from the properties, and is not alongside the outbuildings, static caravan, and parking areas, I consider this will reduce views into the properties and improve privacy and security.

***Advantages of the proposed order***

1. The existing FP185 provides vehicular access to the existing dwellings and the two new properties. Vehicles accessing the dwellings and parking spaces will need to drive along and reverse across the existing line of FP185. There is no vehicular access to the rear of the dwellings from the proposed FP185. There are two agricultural storage areas off the proposed FP185, but one of these appears unused. I consider there is likely to be less vehicular movements over the proposed FP185 than the existing one. Therefore, this would improve the safety of the public using the Order route.
2. Some walkers may find a path to the rear of the properties along a separate track more enjoyable and less intrusive than the existing line of FP185 past the front of dwellings, parking areas, and outbuildings.
3. The proposed diversion also diverts a short section of Footpath 226 Darwen (FP226) although there is no development proposed along it. However, it connects to the existing FP185 which is proposed to be extinguished. If section B to C of FP226 is not diverted this would result in a cul-de-sac route which is not in the interests of the public.
4. Alternatively, section A to C of FP185 could be left to provide a connection between the existing terminus of FP226. However, this would require walkers to double back on themselves increasing the distance travelled. I consider the diversion of a short section of FP226 is in the interests of the public to ensure the convenience of the footpath network. It also takes both footpaths away from the static caravan and front of two properties improving their privacy and security.
5. The existing section of FP226 north of C runs over uneven ground with planting which makes it difficult to use. The proposed section between A and B is easier to use than section B to C.
6. At the time of my site visit there was a stone stile on FP185 near point E which I did not find convenient to use. There are no structures proposed on the new section of FP185 adding to the convenience of the public. There is a kissing gate proposed just north of point A on the new section of FP226 which has already been installed and was easy to use. I could not find an access control in the fence on the existing line of FP226, but one would be needed to use it.

***Whether the development is substantially complete***

1. At the time of my visit, scaffolding had been erected and limited work appeared to have been undertaken on the proposed development. There was no building or fencing work on the line of the existing footpath. I am satisfied that the development is not substantially complete.

***Conclusions on the relevant tests***

1. I have concluded above that it is necessary to divert the Order routes to allow development to be undertaken in accordance with the approved planning permission.
2. I consider there is a slight improvement in convenience to the public of the proposed diversion, and the proposed footpaths are likely to be safer due to less vehicle movements. The proposed diversion also takes both footpaths away from the front of residential properties, residents parking, and outbuildings. The proposed FP185 runs to the rear of residential properties, but it is further from the buildings and there is a boundary fence and planting between the properties and the footpath. Therefore, I consider the proposed diversion will improve privacy and security for residents. Path users may also find the new footpaths more enjoyable and less intrusive than the existing footpaths. I am satisfied the Order should be confirmed.

***Other Matters***

1. The objector claims they own part of the land that the proposed FP185 runs over. The Council has confirmed that the applicant owns all of the land affected by the proposed diversion. The ownership of the land is not for me to determine. However, the Land Registry Transfer form, provided by the objector, appears to show that the track over which the proposed FP185 will run was not transferred with the dwelling. From the documents before me, I am satisfied that the applicant owns all of the land over which the existing and proposed footpaths run.
2. The objector states the track to the rear of their property was not in place when they purchased it. This is not a matter that can be taken into consideration when making my decision.
3. It has also been suggested that other routes could have been provided away from the dwellings. I am only able to take into consideration the Order routes before me.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with the modifications proposed below.

Formal Decision

1. I confirm the Order subject to the following modifications:

In PART 1 of the Schedule:

* Under Footpath 185 Darwen delete ‘the junction with FP’s 186 & 187 Darwen (SD 71761 20822) in a general south easterly direction via’
* Replace ‘and’ with ‘to’
* Delete ‘to Far Hillock (SD 72127 20501), approximate length 570 metres, with a fork from Point E south of Cuckoldman’s in a general south easterly direction to connect with FP67 Edgworth (SD 72322 20546)’
* Replace ‘220’ with ‘124’
* Under Footpath 226 Darwen delete ‘Middle Scotland Farm (SD 71900 21452) in a general southerly direction via’
* Replace ‘808’ with ‘35’

In PART 2 of the Schedule:

* Under Footpath 185 Darwen delete ‘at the junction of FP’s 186 & 187 Darwen (SD 71761 20822) in a general south easterly direction to’
* Delete ‘to connect with FP67 Edgworth (SD 72322 20546), approximate length 672 metres, with a fork from Point E south of Cuckoldman’s in a general southerly direction to Far Hillock (SD 72127 20501)’
* Replace ‘128’ with ‘134’
* Add ‘and having a width of 1.8 metres’
* Under Footpath 226 delete ‘Middle Scotland Farm (SD 71900 21452) in a general southerly direction via’
* After (SD 72054 20721) add ‘in a generally southerly direction’
* Replace ‘797’ with ‘24’
* Add ‘and having a width of 1.8 metres’

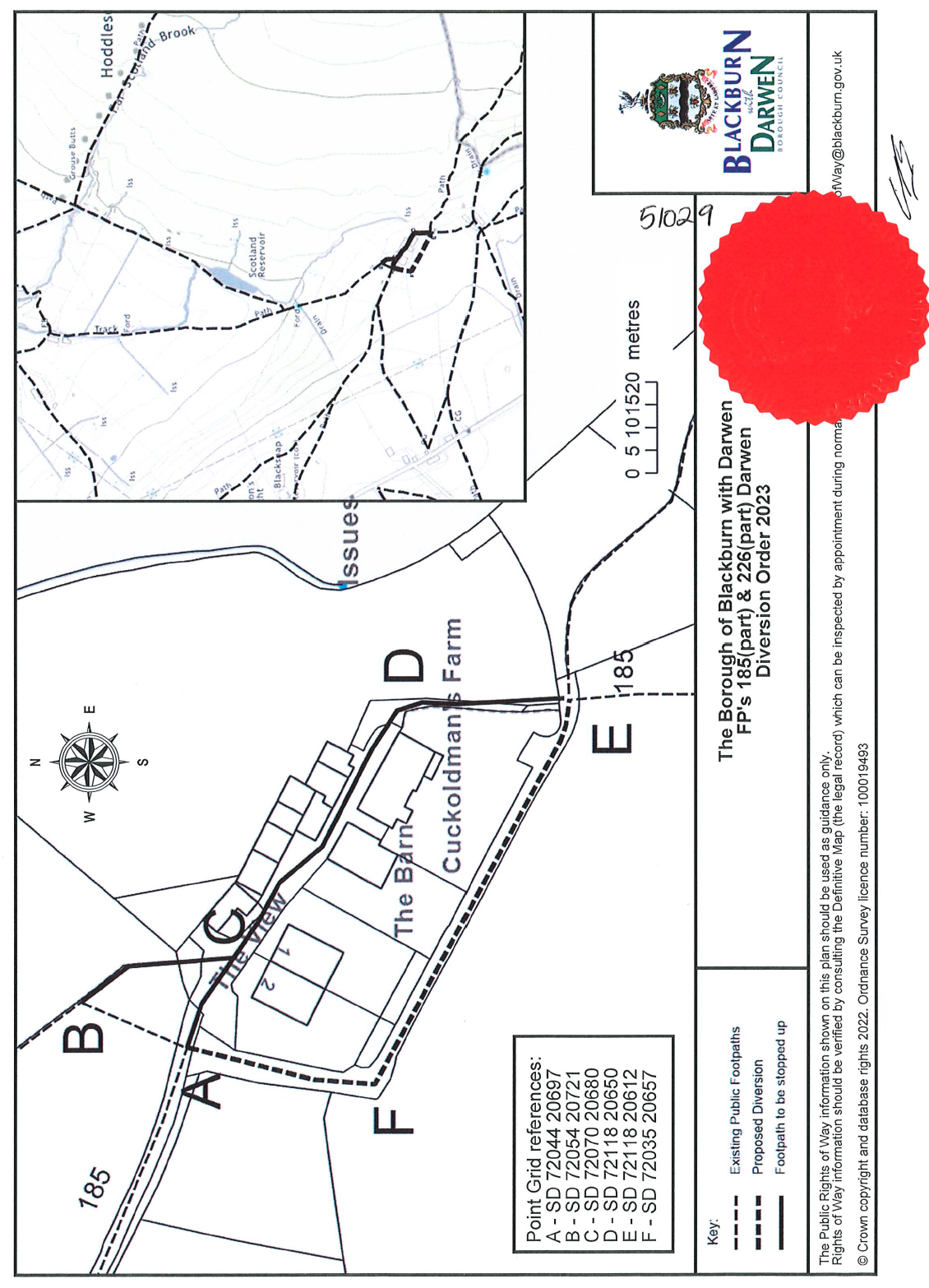
In the second PART 3 Limitations and conditions header

* Replace ‘3’ with ‘4’

Claire Tregembo

INSPECTOR

**Order Map**

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