

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 12th December 2014

Subject: Extinguishment of a Footpath between Chapel Yard and Chapel Street, Halton, Leeds

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Temple Newsam	
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4 (1 & 2)		
Appendix number: E, F, G & I		

Summary of main issues

1. To determine if a Public Path Extinguishment Order following the granting of Planning Permission, in accordance with Section 257 of the Town and Country Planning Act 1990 should be made for a footpath between Chapel Yard and Chapel Street, Halton, Leeds.

Recommendations

2. Having considered the Extinguishment Order Application the Natural Environment Manager is requested not to authorise the City Solicitor to make an Extinguishment Order under the Town and Country Planning Act 1990 for the footpath between Chapel Yard and Chapel Street, Halton for the following reasons:
 - (a) There is no physical building work to be carried out over the line of the footpath, only gardens and fences. Public rights of way can run through gardens, therefore it is not considered necessary for the footpath to be extinguished to allow the development to be carried out.
 - (b) Provision could also have been made to divert the footpath through the central courtyard and then down to and along the southern boundary of the site to join the existing footpath at the north western corner of the library. Diversions are always preferable to outright extinguishment.

- (c) The footpath provides a well-used link between the library and other local facilities for local residents including by nursery school children. The alternative route involves the use of a narrow pavement alongside a busy road where the width is reduced by a bus stop. The effects of the Order on those entitled to use it should be taken into account before confirming an Extinguishment Order.
- (d) The footpath provides the only access to an adjoining property's bin store and no attempt has been made to provide alternative access or provision. The effects of the Order on those entitled to use it should be taken into account before confirming an Extinguishment Order.
- (e) The applicant has already commenced work on site and is expected to complete the development by the end of November or beginning of December. Public Path Extinguishment Orders under the Town and Country Planning Act 1990 cannot be made or confirmed if the development is already substantially complete.

1 Purpose of this report

1.1 To consider the making of a Public Path Extinguishment Order under Section 257 of the Town and Country Planning Act 1990 to extinguish a footpath between Chapel Yard and Chapel Street following the granting of Planning Permission to build six houses on land including and adjoining the footpath. Background Document A shows the footpath proposed to be extinguished.

2 Background information

2.1 The site was originally owned by Leeds City Council but was sold to the applicant with an indicative plan for the construction of six residential dwellings. The footpath which was originally provided by the council and improved and re-surfaced in 2008 for public use but was included within the sale of the site.

2.2 In the Outline Planning Permission a footpath was to be provided on an alternative line and the applicant planned to retain the footpath on its current line. However, Planning advised that it was not practical to retain this in the layout of the site as it would limit the amenity and garden space for the properties abutting it. They considered that an existing route along Chapel Yard provided a suitable route which would not prejudice pedestrian safety and advised the applicant to close the footpath and submit revised plans to enclose the footpath in the adjoining gardens. They did not consult with the Public Rights of Way Section although they have placed a comment in their report suggesting that consultation occurred. An objection was received to the outline planning application because the objector felt that 'the scheme is very close to cutting off the footpath'. The response 'there was no intention of closing off this footpath. The scheme will maintain the link between Brooksbank Drive and Chapel Lane.'

3 Main issues

3.1 Under Section 257 of the Town and Country Planning Act 1990 a local authority may make and confirm an Order to authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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. An Order may make provision for the creation of an alternative highway for use as a replacement or improvements to existing highways.

3.2 Public rights of way can and do, run through private gardens. The development that has been approved only shows gardens over the line of the footpath; none of the proposed buildings are over the line of the footpath. Therefore, the Public Rights of Way Section does not consider that it is necessary to extinguish the public footpath to allow the development to be carried out. Background Document B shows the layout plans for the development.

3.3 Alternative provision could be made through the courtyard area and along the southern boundary of the site similar to that indicated in the Outline Planning Permission. A footpath here would provide a traffic free route to local facilities without needing to use the narrow pavement, particularly past the bus stop, along Chapel Street between Chapel Yard and the Library providing a safer route for pedestrians.

This would have less of an impact on the size of gardens for the properties as they are larger at this side of the development. No consideration appears to have been given to this option. Background Document C shows the outline planning permission layout and street scene. Background Document D shown Chapel Street and its narrow pavement.

- 3.4 The works approved under the Planning Permission are already well advanced on the site and the developer intends to finish before the end of the year. In *Ashby and Dolby v Secretary of State for Environment (1980)* it was held that diversion or extinguishment Orders could be made so long as some of the authorised development remained to be carried out, but if it had been substantially completed the powers could not be used. Works on site are likely to be completed before an Order is made and will be completed before an Order can be confirmed or sent to The Planning Inspectorate if there are objections making it impossible to confirm an Order made under the Town and Country Planning Act 1990.
- 3.5 In *K C Holdings (Rhyl) Ltd. v Secretary of State for Wales and Colwyn Borough Council (1989)* it was held that there was a discretion to consider the merits and demerits of the proposed closure of a footpath and in *Vasiliou v Secretary of State for Transport (1990)* the Court of Appeal held that the effect that an Order would have on those entitled to the rights which would be extinguished by the Order had to be taken into account, particularly as there were no provisions for compensation. Therefore, although it may be considered necessary to extinguish a footpath to allow permitted development, if the closure has an adverse effect on footpath users a Highway Authority can refuse to make an Extinguishment Order.
- 3.6 Pre-Order consultations were carried out with user groups, an adjoining property and a local nursery school. A number of objections were received to the proposed extinguishment.
- 3.7 The Ramblers produced a detailed report outlining their objections. They comment that the original planning decision makes it clear that there was an intention to retain the footpath so there is no good reason to remove it. They also spoke with footpath users, local residents and a local pre-school most of whom were unhappy with the proposed closure. One of the residents on Brooksbank Drive is disabled so the closure would result in a longer route to the shops and Halton Centre. The pre-school used the footpath to take groups of children to the library as it provided a safe route away from the main road. Using Chapel Yard instead would require the use of Chapel Street which is a busy road with a bus stop where passengers queuing often block the pavement. The library staff are aware that many of their customers used the footpath to access the library. The warden of Dial House, a refuge home for individuals in crisis, explained that their bin yard access is from the footpath so without it they would not be able to take their bins out. The Ramblers also considered that it would be possible to provide an alternative traffic free route instead of extinguishing the footpath. The Ramblers response is shown as Background Document E.
- 3.8 The Open Space Society object because the footpath appears to have been laid out to serve the buildings to the west for specific reasons. It is used and a user they met on their site visit was upset to hear that it might close. Therefore, this path is needed for public use, and although not a criteria for a Town and Country

Planning Act Order, it is an important factor. They feel it would be a waste of the council's money if this well-engineered path created by the council was removed. Furthermore, the Town and Country Planning Act 1990 is used to enable development to be carried out, but substantial development has already been carried out and the provision of amenity space is not development. The Open Spaces Society response is shown as Background Document F.

3.9 The director of Leeds Survivor Led Crisis Service who are based in Dial House objects to the extinguishment for the footpath because this is how they access their bin yard and it is the only way they can access it. They also state that it is widely used by the local community and provides a natural boundary between Dial House and the new development. They would withdraw their objection if the developer were to identify a way for them to have continued access to the bin yard. The Leeds Survivor Led Crisis Service response is shown as Background Document G.

3.10 If an Extinguishment Order was made there are likely to be significant objections to the Order which would require it to be submitted to The Planning Inspectorate for determination which would incur costs to the council of up to £8,000. As the developer intends to finish the development by the end of the year, by the time the Extinguishment Order was submitted to The Planning Inspectorate the development would be complete and the Order not capable of confirmation. Orders under the Town and Country Planning Act 1990 can only be made or confirmed to enable development; if the development is complete the Town and Country Planning Act 1990 cannot be used. Under the Highways Act 1980 public rights of way can only be extinguished if it can be shown that they are not needed for public use. As this footpath is clearly well used by local residents, a pre-school and an adjoining property this cannot be shown. Therefore, an Extinguishment Order under the Highways Act 1980 would also not be capable of confirmation.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Although consultation is only required with other local authorities consultation was also undertaken with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments. The relevant comments are discussed in section 3 above. None of the statutory undertakers objected to the extinguishment of the footpath as they do not have services within it.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 As the decision is not a Significant Operational Decision an EDCI impact assessment is not required. However a completed EDCI is attached at Background Paper H.

4.3 Council Policies and City Priorities

- 4.3.1 Statement of Action DM11 of the Rights of Way Improvement Plan states that we will determine all applications for Public Path Orders within 12 weeks of receipt. Statement of Action ON8 states that we recognise the importance of some urban ginnels as through routes and will endeavour to protect them for future use. PA1 states that we will assert and protect the rights of the public where they are affected by planned development. PA5 states that we will ensure that developers provide suitable alternative routes for paths affected by development. PA6 states that we will ensure that non-definitive routes are recognised on planning applications and provisions made for them.

4.4 Resources and Value for Money

- 4.4.1 The cost of making and advertising the necessary Public Path Extinguishment Order would to be met by the developer.
- 4.4.2 If the Order is opposed, referred to the Secretary of State and is taken to Public Inquiry, then the additional costs are incurred, not covered by the developer. A Public Inquiry will cost approximately between £4000 and £8000.
- 4.4.3 There are no additional staffing implications resulting from the making of the Order.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Natural Environment Manager has authority to take decisions relating to the diversion and extinguishment of public rights of way under Section 257 of the Town and Country Planning Act 1990 as set out in the Constitution under Part 3, Section 2C, Officer Delegation Scheme (Council (non-executive) functions), Director of Environment & Neighbourhoods (tt).
- 4.5.2 Where it is consider necessary to extinguish a footpath, bridleway or restricted byway affected by development a competent authority may by order, made in accordance with Section 257 of the Town and Country Planning Act 1990, authorise the stopping up of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with the granting of Planning Permission under Part III of the Act.
- 4.5.3 The personal information in Background Papers E, F and G of this report has been identified as being exempt under Access in Information Procedures Rule Number 10.4 (1 & 2) because it contains personal information about a member of the public. This information is exempt if and for so long as in all the circumstances of the case, the publics interest in maintaining the exemption outweighs the public interest in disclosing this information. The comments relating to the diversion made in the exempt documents are considered in Sections 3 and 4.1.1 therefore the public's interests in relation to the diversion have not been affected.

- 4.5.4 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

4.6 Risk Management

- 4.6.1 If an Extinguishment Order were made under the Town and Country Planning Act 1990 or under the Highways Act 1980 objections would be received and would require submission to The Planning Inspectorate for determination. As the development is almost complete and the footpath is affected only by garden space an Order under the Town and Country Planning Act 1990 would not be capable of confirmation. The path is needed for public use so it is also not possible for an Order to be made or confirmed under the Highways Act 1980. To make an Extinguishment Order for this path would be a waste of council time and resources.
- 4.6.2 The Planning Department have already received a complaint about the way the Planning Application has been handled and the advice given during the planning stages. The refusal to make an Extinguishment Order could lead to a complaint from the applicant. However, this is not sufficient reason to make an Order and would go against the duty to assert and protect the public's rights of access and the legislation for making Extinguishment Orders. Planning have already verbally advised that they would allow the developer to reduce the size of the gardens to allow the footpath to remain if the application to extinguish it was refused. The developer has also stated that he hadn't intended to close the footpath initially and would prefer not to.
- 4.6.3 Legal advice was also sought on the possibility of refusing to make an Extinguishment Order where planning permission has already been granted. They have advised that Defra Guidance on order making states that an order should not be made 'purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either to not make or not to confirm an 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 generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.' Legal state that 'In this case the detriment to users of the footpath from its extinguishment would appear to outweigh the desire for a small amount of additional amenity space for 1 or maybe 2 dwellings. Therefore I don't think it would be unreasonable for the Council to refuse to make the Order'. The advice from Legal is shown as Background Document I.

5 Conclusions

- 5.1 Only gardens are proposed over the line of the claimed footpath, therefore this is not considered to be development that requires the extinguishment of the footpath to enable the development to go ahead. Alternative provision could be made to divert rather than extinguish the footpath. It is a well-used link which avoids the busy road with a narrow pavement and provides the only access to the adjoining

property's bin store. The development is already advanced and it would not be possible to confirm an Order made under the Town and Country Planning Act 1990 if the development were substantially complete. An Order under the Highways Act 1980 is not possible as the path is needed for public use.

6 Recommendations

6.1 Having considered the Extinguishment Order Application the Natural Environment Manager is requested not to authorise the City Solicitor to make an Extinguishment Order under the Town and Country Planning Act 1990 for the footpath between Chapel Yard and Chapel Street for the following reasons:

- (a) There is no physical building work to be carried out over the line of the footpath, only gardens and fences. Public rights of way can run through gardens, therefore it is not considered necessary for the footpath to be extinguished to allow the development to be carried out.
- (b) Provision could also have been made to divert the footpath through the central courtyard and then down to and along the southern boundary of the site to join the existing footpath at the north western corner of the library. Diversions are always preferable to outright extinguishment.
- (c) The footpath provides a well-used link between the library and other local facilities for local residents including by nursery school children. The alternative route involves the use of a narrow pavement alongside a busy road where the width is reduced by a bus stop. The effects of the Order on those entitled to use it should be taken into account before confirming an Extinguishment Order.
- (d) The footpath provides the only access to an adjoining property's bin store and no attempt has been made to provide alternative access or provision. The effects of the Order on those entitled to use it should be taken into account before confirming an Extinguishment Order.
- (e) The applicant has already commenced work on site and is expected to complete the development by the end of November or beginning of December. Public Path Extinguishment Orders under the Town and Country Planning Act 1990 cannot be made or confirmed if the development is already substantially complete.

7 Background Documents ¹

7.1 Background Document A: Footpath Proposed to be Extinguished

7.2 Background Document B: Layout Plan of the Development

7.3 Background Document C: Outline Planning Layout and Street Scene

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

7.4 Background Document D: Chapel Street Pavement

7.5 Background Document E: Ramblers Objection

7.6 Background Document F: Open Spaces Society Objection

7.7 Background Document G: Leeds Survivor Led Crisis Service Objection

7.8 Background Document H: EDCI Impact Assessment

7.9 Background Document I: Advice from Legal