

## Report of Public Rights of Way Manager

### Report to Parks and Countryside Management Team

**Date: 20 March 2015**

**Subject: Diversion of Public Footpaths Harewood Nos. 9 and 28, Kearby with Netherby No. 10b and East Keswick No. 10**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Harewood, Kearby with Netherby & East Keswick		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" 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: B & C		

### Summary of main issues

1. To seek authority for the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths Harewood Nos. 9 and 28, Kearby with Netherby No. 10b and East Keswick No. 10 onto more convenient and safer routes and thus modify the Definitive Map and Statement of public rights of way.

### Recommendations

2. The Natural Environment Manager is requested to authorise the City Solicitor:
  - (a) to make and advertise a Public Path Diversion Order in accordance with Section 119 of the Highways Act 1980, in respect of three sections of public footpath shown on the maps attached (Background Document A)

and

  - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

## **1 Purpose of this report**

- 1.1 To consider the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths Harewood Nos. 9 and 28, Kearby with Netherby No. 10b and East Keswick No. 10 onto more convenient and safer routes.

## **2 Background information**

- 2.1 The affected public footpaths are recorded on the Definitive Map and Statement for the Leeds Metropolitan District and all subsist to the south of the River Wharfe in the parishes of Harewood and East Keswick in north Leeds. Public Footpath Kearby with Netherby No. 10b was formerly located within North Yorkshire but now lies within the Leeds Metropolitan area following boundary changes in the 1990s.
- 2.2 Following water safety survey work the legal lines of the affected sections of path were found to be either within the River Wharfe or dangerously close to it. This is believed to be as a consequence of the lateral southerly movement of the river over a number of years and associated bank erosion.
- 2.3 Public Footpaths Harewood No. 28, Kearby with Netherby No. 10b and East Keswick No. 10 are strategically important and all carry the nationally recognised Ebor Way, which runs between Helmsley and Ilkley.
- 2.4 These footpaths are linked by Public Bridleway Kearby with Netherby No. 9, which forms part of a longer track carrying Bridleways Harewood No.15 and East Keswick No.8, from the A659 (Harewood Avenue) southwards to the River Wharfe.
- 2.5 The footpaths in question have been identified as being eligible for water safety capital funding following initial survey work in 2007. A total of £14,700 was allocated for works to implement control measures make the paths safer. In 2012, £10.2 k was spent on the purchase and installation of a 10 metre footbridge, near to where Public Footpath Harewood No. 9 leaves the A61 at Harewood Bridge, in order to mitigate the risk to the public where the path dropped into a ravine that was susceptible to flooding.

## **3 Main issues**

- 3.1 The River Wharfe is fast flowing and subject to fluctuations in level. The affected sections of footpath measure approximately 900 metres in total. It is not practical or affordable to reinstate this length of public footpath which is within the river.
- 3.2 In order to eliminate the risk to members of the public, who may stray too near to the edge of the river to attempt to use the existing legal lines, it is proposed that the City Council promotes a Public Path Diversion Order to permanently move the legal line of the affected sections of path a safe distance away from the river onto safer and wider routes.

- 3.3 The current legal routes are considered to be necessary for public use and their extinguishment by Order is neither justified nor practical. In circumstances where the public are unable to use the legal line of a public path they are entitled to deviate their route in order to continue with their journey. The resort to another route is thus temporary in nature.
- 3.4 The public have been able to use alternative routes where parts of the affected public footpaths are unavailable but these alternative routes are not recorded on the Definitive Map as public footpaths. It is not known how long these routes have been used for or whether they have varied in location over time. Consequently it is not clear that public rights have been acquired through usage and the routes are not subject to an application to be added to the Definitive Map.
- 3.5 Following survey work diversionary routes for the affected sections of public footpath have been identified. The current legal lines of the affected public footpaths are shown in solid black line on Background Document A and the proposed diversionary routes are shown in black dashes.
- 3.6 It is proposed that Public Footpath Harewood Nos. 9 is diverted for a distance of approximately 271m onto a line 5 metres to the south of the existing line and running parallel to it and being 274m long. Public Footpaths Harewood No. 28 and Kearby with Netherby 10b are proposed to be diverted up to 20 metres southwards from the edge of the river where these public footpaths cross from fields into Carthick Wood. The section of footpath to be diverted is 318m and the proposed new section of footpath would be 342m. East Keswick No. 10, which lies further to the east needs to be diverted in a generally westerly direction away from the river. Here the new section of footpath would be 324m whereas the current distance of the affected section of footpath is 289m.
- 3.7 The footpaths all have a recorded width of either 3 feet (0.9 metre) or 4 feet (1.2 m) but they would be provided to 2 m in the Order in a natural surface.
- 3.8 As Highway Authority the City Council is responsible for the maintenance of public rights of way. The sections of footpath referred to are effectively out of repair and the alternative lines being used are not currently legally enforceable. The making and confirmation of a Diversion Order will remedy this situation.
- 3.9 The respective landowners have been consulted and have agreed to the proposed Diversion Order. Details of this are shown at Background Document B. The owners have been contacted again, as it is some time since they were first contacted, but no response has been forthcoming. It is therefore assumed they are still in agreement with the proposed Order.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Although consultation is only required with other local authorities in the area consultation was also undertaken with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments. Consultations have occurred with regard to both a Public Path

Diversion Order, under S.119 of the Highways Act 1980 and secondly, regarding the use of S.26 and S.118 of the 1980 Act, to create and extinguish the affected paths section. This follows comments from the Peak and Northern Footpaths Society, in which they question the merits of a Diversion Order.

- 4.1.2 Peak and Northern have raised concerns on the basis that they do not consider that a footpath can be diverted legally if it has physically ceased to exist and neither do they believe that an extinguishment can apply to a section of footpath that no longer exists. Peak and Northern were contacted by email in February 2015 and have indicated that they will await the making of an Order and then decide what their response is afterwards. This further response is shown at Background Document C.
- 4.1.3 The proposed diversion of parts of the footpath alongside the River Wharfe was also reported to the Leeds Local Access Forum meeting in September 2012 and was broadly supported. The Ramblers Association have made no adverse comments.

## **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 Document D.

## **4.3 Council Policies and City Priorities**

- 4.3.1 Statement of Action DM12 of the Rights of Way Improvement Plan states that we will negotiate with landowners to realign paths that have been effected by natural erosion.
- 4.3.2 Statement of Action PI1 of the Rights of Way Improvement Plan states that we will take a proactive approach to deal with path maintenance.
- 4.3.3 Statements of Action KR1, & ML2 of the Rights of Way Improvement Plan relate to the maintenance, improvement and linkages concerning Key Recreational Routes. The proposed Diversion Order affects public paths carrying the Ebor Way and accords with these aims.
- 4.3.4 Leeds Countryside Strategy provides a framework for the stewardship of a better countryside for current and future generations to enjoy. It identifies access to the countryside as part of its core strategy and sets out policy to co-ordinate, balance and where possible, reconcile conflicting interests and changes in the countryside through positive and sustained action.

### **4.3.5 Resources and Value for Money**

- 4.3.6 The cost of making and advertising the necessary Public Path Diversion Order can be met from capital funding. There is £4.5 k in the relevant budget which is sufficient for this purpose.
- 4.3.7 Some small scale clearance works would be required and new structures and waymarks would need to be installed in some locations to provide for the new

footpaths. The cost of this work can be kept to a minimum by using volunteer assistance.

- 4.3.8 If the Order is opposed, referred to the Secretary of State and is taken to Public Inquiry, then additional costs will be incurred, not covered by the landowner. A Public Inquiry would cost approximately between £4000 and £8000. However, if action is not taken the affected routes will become effectively lost as the public rights they carry will be deemed to have been extinguished.
- 4.3.9 Compensation can be claimed under section 28 of the Highways Act 1980<sup>1</sup> for loss caused by the making of any Public Path Order where it can be shown that the value of any interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of the Order. The Council does not have to confirm the Diversion Order.
- 4.3.10 The owner of land crossed by East Keswick Footpath 10 has enquired as to possible compensation where the new path section is required to be taken onto a track at the edge of a field. An estimate of the cost has been provided by Property Services Asset Management based on a land value of £6000 per acre. Based on a new path length of 329 metre and at a width of 2 metres a total area of 658 m<sup>2</sup> of land (0.16 acre) would become public footpath. This equates to £960 in compensation.
- 4.3.11 The total cost of reinstating the affected sections of footpath would be likely to run into tens of thousands of pounds, given that new bridges and associated works would be required. A diversion is much more cost effective, even with the likely cost of compensation and can largely be met from water safety capital funding.
- 4.3.12 There are no additional staffing implications resulting from the making of an Order

#### **4.4 Legal Implications, Access to Information and Call In**

- 4.4.1 The Natural Environment Manager has authority to take decisions relating to the diversion of public rights of way under Section 119 of the Highways Act 1980 as set out in the Constitution under Part 3, Section 2C, Officer Delegation Scheme (Council (non-executive) functions), Director of Environment & Housing (aa).
- 4.4.2 Section 119 of the Highways Act 1980 enables a Council as respects to a footpath, bridleway or restricted byway in their area that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted, to make a Diversion Order.
- 4.4.3 The Secretary of State shall not confirm a Diversion Order and the Council shall not confirm an unopposed Diversion Order unless they are satisfied that the diversion is expedient in the interests of the owner, lessee or occupier of the land or the public and further that the path or way will not be substantially less

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<sup>1</sup> Section 121(2) of the Highways Act stipulates that Section 28 of the Act (compensation for loss caused by Public Path Creation Order) applies in relation to Public Path Diversion Orders as it applies in relation to Public Path Creation Orders.

convenient to the public and that it is expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole, the coming into operation of the order would have as respects other land served by the existing public rights of way and the new public right of way by the order would have as respect to the land over which the right is so created and any land held with it taking into account any compensation.

- 4.4.4 The personal information in Background Papers B and C 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 public's 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 therefore the public's interests in relation to the diversion have not been affected.
- 4.4.5 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

## **4.5 Risk Management**

- 4.5.1 Peak and Northern Footpaths Society have raised concerns about the making of a Diversion Order and they have indicated that they will consider matters further when an Order is made. Objections may still be received within the 4 week consultation period if an Order is made. This could result in a Public Inquiry and would include any associated costs.
- 4.5.2 Currently the affected sections of public footpaths are either impassable or dangerously close to the river's edge. If action is not taken they will be lost for all time and the only way to create new rights would be by a Creation Order for which the Council would be liable for compensation and possibly costs. The landowners are currently agreeable to the Council's proposals but this situation could change and objections could be received.
- 4.5.3 The sections of public footpaths referred to are effectively out of repair and the Council, as highway authority, has a responsibility to take action now that it is aware of this situation.

## **5 Conclusions**

- 5.1 The diversion of the affected sections of footpaths are in the public interest as it will provide safer, useable routes and protect access for the public. The landowners will also benefit from the diversion as the provision of way marked routes for the public to follow will save the public straying onto private land.
- 5.2 Diversionary routes for the affected sections of footpath which are safer and more accessible have been identified. In places the identified routes will coincide with alternative routes but it is considered reasonable to take this approach given that the routes are not subject to proven public rights and are not recorded on the Definitive Map.

5.3 There are arguments in either diverting the affected public footpaths by Order or extinguishing and creating legal lines by processing two Orders. This latter approach would be more expensive though as two Public Path Orders would be required and it is not certain that an Extinguishment Order can be justified.

5.4 The making of a Diversion Order would safeguard a key recreational route and would be in accordance with the Council's Rights of Way Improvement Plan.

## **6 Recommendations**

6.1 The Natural Environment Manager is requested to authorise the City Solicitor:

- (a) to make and advertise a Public Path Diversion Order in accordance with Section 119 of the Highways Act 1980, in respect of three sections of public footpath shown on the maps attached at Background Document A.

and

- (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

## **7 Background Documents <sup>2</sup>**

7.1 Background Document A: Proposed Public Path Diversion Order

7.2 Background Document B: Landowners consent

7.3 Background Document C: Comments from Peak and Northern Footpaths Society

7.4 Background Document D: EDCI Screening report

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<sup>2</sup> 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.