

**Report of Public Rights of Way Manager**

**Report to Parks and Countryside Management Team**

**Date: 3<sup>rd</sup> June 2016**

**Subject: Diversion of a Claimed Bridleway Between Leeds Bridleway No. 137 and Pontefract Lane**

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:		
Appendix number:	C and D	

**Summary of main issues**

1. To seek authority for the making of a Public Path Diversion Order following the granting of Planning Permission, in accordance with Section 257 of the Town and Country Planning Act 1990

**Recommendations**

2. Natural Environment Manager is requested to authorise the City Solicitor:
  - (a) to make and advertise a Public Path Diversion Order in accordance with Section 257 of the Town and Country Planning Act 1990, in respect of a claimed bridleway between Leeds Bridleway No. 137 and Pontefract Lane/ Leeds Bridleway No. 248 shown on 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  - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 257 of the Town and Country Planning Act 1990 to divert a claimed bridleway following the granting of Planning Permission for a business and industrial site on land off Pontefract Lane.

## **2 Background information**

2.1 Planning permission was originally granted for an estate development consisting of business, general industrial, finance, restaurant, hotel and crèche use in 2006 and was extended in April 2015. Further planning applications for reserved matters issues have also since been granted and the first 200 metres of the new access road and a unit have already been constructed. Background Document B shows the proposed development.

2.2 A claimed bridleway exists over part of this site from Leeds Bridleway No. 137 off Halton Moor Road through Skelton Grange Farm to Pontefract Lane. To allow the development to go ahead in accordance with the approved plans the claimed bridleway needs to be diverted to an alternative line. The Public Path Order Application proposes the diversion onto a shared foot/ cycleway and grass verge alongside the new spine road.

## **3 Main issues**

3.1 The claim is based on historical evidence which indicates that bridleway rights exist, therefore the developers were advised to divert the claimed bridleway to avoid issues at a later stage when the route was formally investigated. The claimed bridleway is 710 metres long and runs along an earth and stone track through Skelton Moor Farm from Leeds Bridleway No. 137 to Pontefract Lane. A shared foot/ cycleway and crushed stone surface bridleway runs alongside Pontefract Lane. Although bridleway rights are likely to exist it is mostly used by cyclists due to its connecting to the busy Pontefract Lane at the southern end.

3.2 The new route will run alongside the new spine road on a shared three metre wide tarmac foot/ cycleway and three metre wide grass verge. Horse riders and cyclists will also be able to use the carriage way if they prefer. The new route will be 758 metres long and will be built to adoptable standards and adopted by Highways. Although slightly longer, it will be easier to use for walkers and cyclists because of the tarmac surface.

## **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.

4.1.2 The Ramblers, Open Spaces Society local representatives and Leeds Local Access Forum all responded to the pre-order consultation with similar comments and concerns. Their responses are shown as Background Document C.

Reference is made to the guidance in the DEFRA Rights of Way Circular 1/09 which advises that 'any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open areas away from vehicular traffic'. There was also concern about the traffic using the estate road, particularly heavy goods vehicles and that there could be conflict between the bridleway users and vehicles especially when vehicles are turning into the units or side roads. All three asked if an alternative through the landscaped areas of the site is possible, with two suggesting a route along Wyke Beck/ the western boundary of the site to join Halton Moor Lane on the existing cycleway/ claimed bridleway to the north of your site. The Ramblers also believe that a route here would be preferable to the proposed route alongside the new road as they believe that the gradient is steeper on the road alignment than on the western side of the site.

- 4.1.3 Although public rights of way through landscaped area are preferable and estates roads should be avoided when possible sometimes this is not a viable option. The developers were asked to consider the feasibility of providing an alternative route alongside the Wyke Beck. The developers responded to explain that a route here was not viable because the ground here was extremely boggy and was within the flood plain. This would make it difficult to provide a suitably surfaced bridleway and because of flooding and ground conditions a bridleway here would be inaccessible during some periods of the year. During a site visit by the Public Rights of Way Section the ground was waterlogged and looked boggy. The cycleway to the north of the site along Halton Moor Road was also waterlogged in places due to springs alongside the route with mud and other debris washing onto the tarmac surface. If the bridleway was diverted to a line here the Public Rights of Way Section would be responsible for the maintenance of the route as diverted routes automatically become maintainable at public expense. Non-metalled surfaces are preferred for bridleways, particularly when they run through landscaped areas, but these are more prone the surface being damaged by water erosion or use in wet conditions. Therefore, a route in this location would become a maintenance liability for the council and would become difficult for the public to use.
- 4.1.4 The developers also explain that at the northern end of the route suggested by the user groups, the bridleway would need to curve around the drainage channel for the Wyke Beck. This would result in the bridleway running through a pinch point between one of the proposed units and the banking around the drainage channel. This would limit the available width for a route here and could be viewed as unattractive or unsafe by users due to the height of the fencing around the unit. The developers also believe that this would be a security and anti-social behaviour problem for their site and the adjoining unit. Their letter is shown as Background Document D.
- 4.1.5 The Ramblers, Open Spaces Society and Leeds Local Access Forum were contacted and explained why a diversion along the western boundary was not considered to be a viable option. The Ramblers and Leeds Local Access Forum accepted that this was the case and requested that we achieve the best possible line the keeps non-motorised users away from the immediate edge of the carriageway. The Open Spaces Society local representative stated that they

could not accept that it is proper to divert a bridleway onto a road with traffic. Although a route through a landscaped area is always preferable, a suitable route cannot be provided within this development and a provision of an alternative route along an estate road is preferable to the outright extinguishment of a route.

## **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 E.

## **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. DM7 states that we will continue to identify and record all Definitive Map anomalies, missing links and unrecorded paths. PA1 states that we will assert and protect the rights of the public where they are affected by planned developments. PA5 states that we will seek to 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. By diverting the claimed bridleway we are protecting the public's rights and ensuring an unrecorded path is recognised and alternative provision made ensuring it can be recorded on the Definitive Map and Statement.

4.3.2 Local Transport Plan 3 2011-2026 proposal 22 Define, develop and manage networks and facilities to encourage cycling and walking', Leeds Vision 2030 Leeds will be a city that has increased investment in other forms of transport such as walking and cycling routes to meet everyone's needs and people can have access to walking and cycling routes, Parks and Green Space Strategy proposal 22 we will contribute to the West Yorkshire Transport Plan by providing sustainable transport routes in our parks and green spaces including the development of cycling routes. The diversion route will provide a walking, cycling and riding route which will access the new development and link two existing bridleways and cycleways.

## **4.4 Resources and Value for Money**

4.4.1 The cost of making and advertising the necessary Public Path Diversion Order is 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 applicant. Public Inquiry will cost approximately between £4000 and £8000.

4.4.3 The diversion of the claimed bridleway will enable it to be recorded on the Definitive Map and Statement. If it was not diverted the claimed bridleway would have to be investigated when the area is reviewed and a Definitive Map Modification Order made to record it, if it was found to exist. The council would have to fund the research and Order making, therefore the council would be

saved the time and costs of researching and making a Modification Order if the claimed bridleway was diverted.

- 4.4.4 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 & Housing (tt).
- 4.5.2 Where it is considered necessary to divert 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 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 the granting of Planning Permission under Part III of the Act.
- 4.5.3 The personal information in Background Paper C and D of this report has been identified as being exempt under Access to 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 4.1, 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 Some of the user groups do have concerns about the proposed diversion and would prefer a route through a landscaped area which could lead to objections if a Diversion Order is made. However, it is not viable to divert the claimed bridleway to the western boundary of this site. A route here could lead to maintenance issues and liabilities for the council. There are likely to be periods when the route would not be available to the public due to weather conditions and where width is limited the route could be unattractive to users and lead to anti-social behaviour issues.

### **5 Conclusions**

- 5.1 The diversion of the claimed bridleway is required to enable the development to go ahead. Although a route through a landscaped area is preferable this is not possible on this site and the proposed diversion is seen as the best option for path users, the developer and the council.

## **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 257 of the Town and Country Planning Act 1990, in respect of a claimed bridleway between Leeds Bridleway No. 137 and Pontefract Lane shown on 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>1</sup>**

7.1 Background Document A: Map of the proposed diversion

7.2 Background Document B: Proposed development

7.3 Background Document C: User groups comments

7.4 Background Document D: Developers response to the users groups comments

7.5 Background Document E: EDCI

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<sup>1</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.