

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 15th July 2016

Subject: Temporary Diversion of Rothwell Public Footpath No. 51

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Kippax & Methley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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? If relevant, Access to Information Procedure Rule number: 10.4 (1 & 2) Appendix number: D	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. To seek authority for the making of a Temporary Public Path Diversion Order following the extension of Planning Permission, in accordance with Section 257 and 261 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 Temporary Public Path Diversion Order in accordance with Section 257 and 261 of the Town and Country Planning Act 1990, in respect of part of Rothwell Footpath No. 51 as 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 Temporary Public Path Diversion Order under Section 257 and 261 of the Town and Country Planning Act 1990 to temporarily divert part of Rothwell Footpath No. 51 until the site is reinstated following the granting of Planning Permission to extend the quarry workings.

2 Background information

2.1 In 2006 a planning application was submitted for the extraction of sand and gravel off Green Lane, Methley. The application affected Rothwell Footpath No. 51. Planning permission was granted in August 2008 and extended in 2010.

2.2 An application was made to temporarily divert Rothwell Public Footpath No. 51 under Section 257 and 261 of the Town and Country Planning Act 1990. The Order was made on the 30th of January 2009 and confirmed on the 20th of March 2009. The Order was to divert the footpath for a period of six years. The 2009 Temporary Diversion Order is shown as Background Document B.

3 Main issues

3.1 Tarmac, who manage the quarry, have applied for planning permission for an extension of time for their quarry operations and the site restoration until November 2017. As the temporary diversion has expired it will need extending if planning permission is granted and an application has been made to remake the Temporary Public Path Diversion Order until the site is restored. The application form and map for the Temporary Public Path Diversion Order is shown as Background Document C.

3.2 The Public Rights of Way Section are not aware of any complaints about the existing temporary diversion route that is currently available to the public. On completion of the quarrying works the site will be restored and the line of the footpath restored to its original Definitive line.

3.3 An inspection has been made of the existing temporary diversion route and there were found to be some issues relating to the 2009 Temporary Diversion Order route and another section of un-diverted footpath through the quarry site. The section of the diverted footpath between C and D does not run inside the quarry site on the north side of the fence as shown in the 2009 Temporary Diversion Order and the application form. It would also not be possible to provide it here as there is an earth bund on the proposed diversion line. The access track to Dunford House could be used and a stile was provided from the quarry site onto the track at point D. It would appear that the original diversion route was incorrectly laid out on site with the footpath being provided along the track instead of inside the quarry site. There is no signage at point C to indicate to the public the route of the diverted footpath and this is required to ensure that those unaware of the diversion or unfamiliar with the area don't go the wrong way. There were stiles at point D, either side of the track at point B and at point A. None of these stiles are recorded in the Definitive Map and Statement or in the 2009 Temporary Diversion Order and they are not required for stock control. Furthermore, one of the stiles had a large gap to the side of it making it pointless. Finally the footpath between A and

B, which remains on its original line, has been fenced in to a width of 1.25 metres. The recorded width of the footpath here is 1.8 metres and this needs to be available to the public at all times.

3.4 The applicant was contacted about these issues. They were advised that all the stiles needed to be removed, that signage would be required at point C and that the section between A and B would need to be reinstated to a width of 1.8 metres. They have confirmed in writing that they are happy to remove the stiles, erect signage and reinstate the full width between A and B. The Public Rights of Way Section consider that the access track to Dunford House is an acceptable route for the footpath diversion instead of a footpath within the quarry site as shown on the application form. The landowners of the access track to Dunford House has confirmed in writing that they agree to the access track being used as the temporary diversion route until the footpath is reinstated on its original line. The responses from the applicant and the landowner are shown as Background Document D.

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. There were no objections to the proposed diversion.

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.

4.3.2 Statement of Action PA1 states that we will assert and protect the public's rights where they are affected by development and PA5 states that we will ensure that developers provide suitable alternative routes for paths affected by development. The temporary diversion of the footpath will ensure that the footpath is protected and a suitable alternative provided until the footpath can be reinstated on its original line.

4.4 Resources and Value for Money

4.4.1 The cost of making and advertising the necessary Temporary Public Path Diversion Order is to be met by the applicant.

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 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 and 261 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 When an order under Section 257 is required for the purpose of enabling minerals to be worked by surface working and the footpath bridleway or restricted byway can be restored after the mineral workings to a standard not substantially less convenient to the public, an order may provide for the diversion of the footpath, bridleway or restricted byway during a prescribed period and for its restoration at the end of that period.

4.5.4 The personal information in Background Paper C and D of this report have 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.

4.5.5 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 There is always potential for objections to Diversion Orders which could result in a Public Inquiry. However, there were no objections to the 2009 Temporary Diversion Order, there have been no complaints about the route provided under the 2009 Diversion Order and there have been no objections to the current application following consultations with user groups, ward councillors and other interested parties.

5 Conclusions

5.1 It is concluded that a new Temporary Public Path Diversion Order should be made for part of Rothwell footpath No. 51 to allow the continuation of quarry working that has been granted planning permission. The route should be varied slightly from the earlier Temporary Public Path Diversion Order and the application form so

that the footpath will run along the access track to Dunford House instead of on the north side of the fence within the quarry site as this was not provided on the ground following the original Order and it is not possible to provide a footpath here because of an earth bund.

6 Recommendations

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

(a) to make and advertise a Temporary Public Path Diversion Order in accordance with Section 257 and 261 of the Town and Country Planning Act 1990, in respect of part of Rothwell Footpath No. 51 as 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 Documents¹

7.1 Background Document A: Proposed Diversion Route

7.2 Background Document B: 2009 Temporary Diversion Order

7.3 Background Document C: Application for a Temporary Diversion Order

7.4 Background Document D: Response from the Applicant and Landowner

7.5 Background Document E: Completed EDCI Screening

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.