

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 26th August 2016

Subject: Diversion of Footpaths at Seacroft Hospital

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

Summary of main issues

1. To seek authority for the making of a Public Path Diversion Order following an application for Planning Permission, in accordance with Section 257 of the Town and Country Planning Act 1990 on land to the rear of Seacroft Hospital.

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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

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 definitive footpath and two claimed footpaths following an application for Planning Permission to for a residential development on land to the rear of Seacroft Hospital.

2 Background information

2.1 There are two Definitive Footpaths along the eastern and western boundaries of the land to the rear of Seacroft Hospital, Leeds City Footpath Nos. 73 and 74. They were added to the Definitive Map and Statement for the former excluded area in 2015 by Legal Event Modification Order and were originally diverted in 1902 by the railway company.

2.2 There are also three claimed footpaths across the land, two run east to west between Footpath Nos. 73 and 74 and a third runs from Poole Square on the eastern edge of the site, through a ginnel to Leeds City Footpath No. 74. There are also two ginnels which join Leeds City Footpath No. 73 on the western side of the site from Watson Road. There are also other wear lines across the site. There is very limited evidence for the east to west footpaths and the claims are based on members of the public making inquiries about them with no user evidence or Definitive Map Modification Order Application being submitted. There are also notices across the site stating there were no public rights of way and requesting that walkers stayed on the permissive footpaths which were marked with purple arrows.

3 Main issues

3.1 The proposed development is for house, new estate roads and public open space. A central spine road will cross the site and provide access from York Road on the western side of the Hospital and Bridle Path (a road) which will be realigned to join York Road to the eastern side of the hospital. The new housing will be on the line of the claimed footpaths. The developer is proposing to divert one of the claimed footpaths onto the new estate road and to divert the other through the public open space alongside the railway line on a two metre wide crushed stone surfaced path. Background Document B shows the proposed new development with the proposed diversions.

3.2 The developer is also proposing to improve Definitive Footpath No. 73 along the western side of the site with a two metre wide tarmac surfaced footpath to provide easy to use pedestrian links for the estate and for residents on the south side of the railway line. The current footpath is unsurfaced and runs along the rear boundary fences of the properties on Walton Road. Originally there was another fence line on the eastern side of the footpath but the majority of this is no longer in place. There is a lot of natural vegetation on this footpath which requires regular cutbacks to ensure that the footpath is easy to use. In order to improve the footpath and provide a tarmac surface while minimising the loss of trees the developer is proposing to divert the footpath slightly to the east through a landscaped area.

3.3 Additional links to the new estate road from Leeds City Footpath No. 73 will also be included in the Order as well as the extensions of the two ginnels from Watson Road to Leeds City Footpath No. 73. One of the new links will provide a step free alternative to Leeds City Footpath No. 73 which has steps at the northern end onto York Road.

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 Responses were received from The Ramblers and the Leeds Local Access Forum. These can be seen as Background Document C.
- 4.1.3 Both groups queried if the claimed footpaths to be diverted would be recorded on the Definitive Map and Statement or if they would remain as claims. Any footpaths diverted under the Town and Country Planning Act 1990 automatically become maintainable at public expense and are recorded on the Definitive Map and Statement by Legal Event Modification Order once the new paths are laid out on site and the Order made operative. The Order would also include the section of footpath that runs outside of the development site to Definitive Footpath No. 74 allowing this to also be recorded on the Definitive Map and Statement.
- 4.1.4 The Ramblers were also concerned about gardens creeping out over the footpaths, particularly for the stone surfaced footpath. The new footpaths will run through public open space and there will be estate roads, access roads or parking spaces between the gardens and the public open space, therefore encroachment from gardens is unlikely. The Public Rights of Way Section have a duty to assert and protect the public right of way, so in the unlikely event that the footpaths were obstructed enforcement action could be taken to reopen the footpaths.
- 4.1.5 The Ramblers queried the evidence available for the claimed footpaths, the existence of other worn lines across the site, the presence of private land and permissive path signs, how the definitive paths became definitive and why the other claims and wear lines were not added to the Definitive Map and Statement. The two Definitive Paths are historic routes shown in various maps and legal documents. They were diverted in 1902 by the North East Railway Bill and added to the Definitive Map and Statement in 2015 by Legal Event Modification Order. The remaining claimed footpaths and wear lines are not historic public rights of way and they are not currently recorded on the Definitive Map and Statement because there has never been a legal event such as a Diversion Order on these paths. These paths are not shown on historic maps and there is no documentary evidence for the majority of the routes. There has also not been any user evidence submitted for the claimed or worn paths across this site despite some initial inquiries being made by members of the public. Therefore, there is currently not sufficient evidence to make a Definitive Map Modification Order to record any of the claimed paths or worn lines. Furthermore, the presence of private land and permissive paths only signs which appear to have been on site for many years

would make it very difficult for a claim based on user evidence to succeed. There is also evidence from aerial photos that the lines used have varied over the years again reducing the likelihood of a claim being successful. The acceptance and diversion of the two claimed footpaths across the site by the developer is the only way these claimed paths are likely to be provided and recorded on the Definitive Map and Statement as public rights of way. The only claimed path that could successfully be recorded on the Definitive Map and Statement is the footpath from Poole Square to Leeds City Footpath No. 94. This appears to have been laid out and surfaced when Poole Square was built. It is not affected by the proposed development, but the developers have been advised that if this area is developed in the future they would need to make provision for this footpath.

- 4.1.6 The Ramblers also inquired about the trees on the site, if any of them had Tree Preservation Orders on them and what was being done to protect the trees on the site. The protection and preservation of the trees on site is considered as part of the planning application and is not relevant to the diversion of the footpath. However, as part of the planning application an Arboricultural Impact Assessment has been undertaken which assessed the value and condition of the trees and identified measure to protect the trees. New tree planting is proposed to compensate for trees that needed to be removed. The majority of the trees that require removal to provide the new line of Footpath No. 73 were poor or low quality trees. If the footpath were to remain on its original line, even if it were to remain unsurfaced, more trees would require removal, some of which would be trees that were assessed to be of good or high quality.
- 4.1.7 The Ramblers asked about the ownership of the land to the east of the development site. This land is in the same ownership but it is not affected by the current planning application. There are potential plans to develop this site in the future but no planning applications at the present time. The owners have been advised that they would need to retain or make alternative provision for Definitive Footpath No. 74 and the claimed footpath from Poole Square.
- 4.1.8 The Ramblers asked about a claimed bridleway to the north east of the site and why provisions were not made for this route. This claimed bridleway is outside of the development site and runs through the gardens of properties on the Mayfield Estate. It is also believe to have been extinguished when this estate was redeveloped.
- 4.1.9 Finally, The Ramblers queried if the new route of Definitive Footpath No. 73 would be too close to the new properties and if there the plans for ‘a tarred route with no proposals for retention or expansion of trees and other softening features, was the best future for this definitive footpath.’ They stated that the existing steps at the north end of the footpath ‘are discouraging to disabled users who might not know of the ginnels off Watson Road’. Although the new route is to be tarmacked the development plans show it running through a landscaped public open space, with some new tree planting. The new line also allows the retention of more trees that if it remained on its existing line. The new route will be overlooked by the new housing making it a more secure, safer feeling path that is less likely to be affected by anti-social behaviour. The surfacing of the footpath will provide a direct, convenient and easy to use footpath for the new and existing residents. Although the developers aren’t removing the four existing steps at the northern

end of the footpath onto York Road they are providing new step free links from the new estate road and these are to be included in the Order. The new footpath will be at least 10 metres from the new properties. This is considered to be the best option for the footpath and the public who use it.

- 4.1.10 The Leeds Local Access Forum asked if a claimed footpath on the southern side of the railway was part of the proposals and if it would become definitive. This is outside of the development site and not affected. It has been identified as a footpath to be investigated when the area is reviewed. The eastern and western end of this footpath are already recorded on the Definitive Map and Statement as they were part of the 1902 Diversion Order, it is shown on historic maps and there is evidence on the ground that it is well used. Therefore, there is very strong evidence that it carries public rights. It also runs over land owned by Leeds City Council Parks & Countryside which is a park. An evidential Definitive Map Modification Order or declaration is very likely to be made for this footpath when the area is reviewed.
- 4.1.11 The Leeds Local Access Forum also stated that ‘it is regrettable that the housing density and site layout are such as not to be able to accommodate more appropriate and better landscaped alternative routes. Diverting a route onto an estate road does fly in the face of advice given by DEFRA Circular 1/09.’ The Rights of Way Circular does advise against diverting onto estate roads where possible and states that paths through open space or landscaped areas is preferable. Of the three paths being diverted, only one is to be diverted onto an estate road; the other two are being diverted through Public Open Space. Unfortunately the confines of the site make it difficult to provide all the paths through Public Open Space. Two of the footpaths being diverted are claimed footpaths with limited evidence of public status, the developers could have chosen to ignore the claimed paths and make no provisions for them at all.
- 4.1.12 Both The Ramblers and the Leeds Local Access Forum were contacted about their comments and no additional comments have been made. The responses are shown as Background Document D.

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 to protect the rights of the public where they are affected by development. PA5 states that we will ensure that developers provide alternative routes for paths affected by development. PA6 states that we will seek to ensure that non-definitive routes are recognised on planning applications and provisions made for them. The diversion of the

definitive and non-definitive footpaths enables them to be protected and improved benefiting the public.

- 4.3.3 Statement of Action PI1 states that we will take a proactive approach to dealing with path maintenance issues. PI13 states that we will seek to improve path surfaces and drainage. The Diversion Order will allow for the improvement to Definitive Footpath No. 73.
- 4.3.4 Proposal 22 of the West Yorkshire Local Transport Plan aims to define, develop and manage networks of facilities to encourage cycling and walking. Parks and Green Space Strategy proposal 19 states we will promote and develop green corridors for recreation, conservation and transport. Proposal 22 of the Parks and Green Spaces Strategy states that we will contribute to the West Yorkshire Local Transport Plan by providing sustainable transport routes in parks and green spaces. The diversion of the footpaths through the public open space will provide a new and improved footpath links through green spaces.

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 applicant/ 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. 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 & Housing (tt).
- 4.5.2 Where it is consider 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 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 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 There is always the potential for objections to Diversion Orders. There have been no objections to the Diversion Order and the provision of alternative routes for the unrecorded footpaths should help minimise objections. The improvements to Leeds City Footpath No. 73 will reduce liabilities and maintenance cost on this footpath for the future.

5 Conclusions

- 5.1 The diversion of the footpaths will allow the development to go ahead while securing additions and improvements to the public rights of way network.

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 three footpaths 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 Documents¹

7.1 Background Document A: Proposed Diversion

7.2 Background Document B: Proposed Development and Diversion

7.3 Background Document C: Consultation Replies from The Ramblers and Leeds Local Access Forum

7.4 Background Document D: Replies to The Ramblers and Leeds Local Access Forum

7.5 Background Document E: 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.