

Report of Public Rights of Way Manager**Report to Parks and Countryside Management Team****Date: 5 may 2017****Subject: Diversion of Part of Rothwell Footpath No. 49**

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

Summary of main issues

1. To seek authority for the making of a Public Path Diversion Order to divert part of a footpath from behind 6 Longbow Avenue to 38 Balmoral Drive, and thus modify the Definitive Map and Statement of Public Rights of Way following an application under Section 119 of the Highways Act 1980 from the developer.

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 a footpath shown on Background Document Aand
 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 part of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert part of Rothwell Public Footpath No. 49 and thus modify the Definitive Map and Statement as shown on Background Document A.

2 Background information

- 2.1 To divert a right of way under Section 257 of the Town & Country Planning Act 1990 the right of way needs to be within the red line boundary of the development site and would need to be diverted to allow development to occur. This was not the case here as Rothwell Public Footpath No. 49 lies within the land owned by the developer but outside the area on which development is taking place. As such it was felt unnecessary to divert the footpath. The developer was therefore asked by this office to reinstate the footpath on its definitive line this had been blocked for some time by self-seeded vegetation creating a natural buffer behind the properties of 6 Longbow Avenue to 38 Balmoral Drive.
- 2.2 The reinstatement of the definitive line concerned these residents as their privacy would be affected if the vegetation was removed. The developer was therefore approached by the residents to see if it was possible to divert the footpath onto its walked line, rather than reinstate the path on its definitive line. After discussion with the Public Rights of Way Section, the planning officer and the developer it was proposed to divert part of the footpath onto its walked line under Section 119 of the Highways Act 1980 rather than reinstate the original definitive line.

3 Main issues

- 3.1 The existing footpath is 0.9 metres wide with a grass and earth surface. The new route will be two metres wide with a tarmac surface. This will be an improvement to the existing footpath and a more suitable surface for its increase in use once development is completed.

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 Local residents, Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments.
- 4.1.2 No objections have been received to the proposed diversion of Rothwell Footpath No. 49. However, some of the residents had concerns regarding the development site, and these have been directed to the planning officer.

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 B.

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 of the Rights of Way Improvement Plan states that we will assert and protect the rights of the public where they are affected by planning development. Statement of Action PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development.
- 4.3.3 Statement of Action PW4 states that where appropriate, we will seek to work with other organisations external to the Council to maximise the benefits which can be achieved for the path network, its users and the environment.
- 4.3.4 Various local, regional and national policies including the Rights of Way Improvement Plan, the West Yorkshire Local Transport Plan and the Leeds Strategic Plan contain policies for the improvement of local links for walking. The Diversion Order will improve the surface of part of the footpath and make it more suitable for its intended use.

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, Barratt Homes and David Wilson Homes Yorkshire West (Trading names of BDW Trading Limited).
- 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 landowner. 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 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).
- 4.5.2 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.
- 4.5.3 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 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.

- 4.5.4 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 Although no objections have been received at this time, objections may still be received within the 4 week consultation period. This could result in a Public Inquiry and would include any associated costs

5 Conclusions

- 5.1 The diversion will primarily benefit the residents. However, the public will also benefit from the diversion as the footpath will have an improved 2 metres wide tarmacked surface within a slightly larger landscaped area.

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 a footpath 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

- 7.1 Background Document A: Order Map

- 7.2 Background Document B: Equality, Diversity, Cohesion & Integration Screening