

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 5th May 2017

Subject: Declaration of a Footpath at Fieldhead Carr Primary School Between Naburn Approach And White Laithe Approach, Whinmoor

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Cross Gates & Whinmoor
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: Appendix number:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary of main issues

1. To seek authority to declare a footpath over land owned by Leeds City Council between Naburn Approach and White Laithe Approach, Whinmoor and thus adding a footpath to the Definitive Map and Statement as shown on Background Document A.

Recommendations

2. The Natural Environment Manager is requested to authorise the declaration of the route as shown on Background Document A between Naburn Approach and White Laithe Approach as a public right of way which will result in the addition of a footpath to the Definitive Map and Statement.

1 Purpose of this report

- 1.1 To seek authority to formally dedicate a footpath between Naburn Approach and White Laithe Approach and add this to the Definitive Map and Statement as a public right of way as shown on Background Document A.

2 Background information

- 2.1 This office was contacted by the Projects Programmes & Procurement Unit in July 2016 seeking advice regarding footpaths running from Naburn Approach to the front of Fieldhead Carr Primary School to White Laithe Approach.
- 2.2 The Council as Highway Authority has a duty to assert and protect the rights of the public to the use and enjoyment of any highway regardless of whether it is recorded on the Definitive Map and Statement.
- 2.3 No definitive rights of way were found to affect the site. However, clear evidence of two paths being provided for public use was evident and as such it can be presumed that the landowner intended to dedicate the ways as highways. In such cases no minimum period of use is required. This appears to be the case here

3 Main issues

- 3.1 The proposed expansion of Fieldhead Primary School would affect part of one of the footpaths. The Projects Programmes & Procurement Unit were advised to divert the footpath under The Town & Country Planning Act 1990 (to allow development to occur).
- 3.2 The Projects Programmes & Procurement Unit enquired if it was possible to enter into a declaration rather than a diversion order as this would be the cheaper option to add the footpath to the definitive map and statement. It was advised that this was possible but only if the whole of the footpath was included in the declaration. Only a small portion of the footpath was affected by development and as such it was not possible to add the whole of the path to diversion order.
- 3.3 The footpath from Naburn Approach to the north east of the school is in good repair and laid out to adoptable standard. The footpath from White Laithe Approach to the north east of the school which is part of the planning application will be laid out and surfaced to adoptable standard with a definitive width of 2 metres. Once the declaration is completed The Public Rights of Way Section will take on the maintenance responsibility for the footpath surface and the costs would be met within existing budgets.
- 3.4 A Declaration would save time and money investigating these paths which would result in them being recorded on the Definitive Map and Statement. A map showing ownership is shown at Background Paper B.
- 3.5 Parks and Countryside as part of Communities and Environment directorate have agreed to the proposed declaration of the footpath with the Public Rights of Way Section and are willing to sign a Declaration. An email stating this is shown at Background Document C.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Consultation is not required but was undertaken with ward councillors. Councillor Gruen replied on 22 March 2017 that he was supportive of the proposal. No other comments have been received at this time.

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, but an EDCI screening has been undertaken and is shown as Background Document D.

4.3 Council Policies and City Priorities

- 4.3.1 Statement of Action DM1 of the Rights of Way Improvement Plan states that we continue to review the Definitive Map and Statement. Statement of Action DM7 of the Rights of Way Improvement Plan states that we will continue to identify and record all Definitive Map anomalies, missing links and unrecorded paths.
- 4.3.2 Statement of Action PA1 states that we will assert and protect the right of the public where they are affected by development, PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development and PA6 states that we will seek to ensure that non definitive routes are recognised on planning applications and provisions made for them. The relocation and declaration of this path will protect the path and the rights of the public to use it.
- 4.3.3 Statement of Action PW3 of the Rights of Way Improvement Plan states that we will seek to work in partnership with other services within the Council to achieve 'holistic' benefits for the path network, its users and the environment.

4.4 Resources and Value for Money

- 4.4.1 The public rights of way section will be responsible for maintaining the surface of the declared footpath. This can be carried out within existing budgets and staffing levels. If the the path was diverted under the Town and Country Planning Act 1990 the path would automatically be maintained by the Public Rights of Way Section. There would also be additional costs and staff time for the Projects Programmes & Procurement Unit and Public Rights of Way Section in making a Public Path Diversion Order and the public would have an opportunity to object which could lead to additional staff time and cost involved in a public inquiry.
- 4.4.2 There are no additional staffing implications resulting from the making of the Declaration.

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 creation of public rights of way under Section 25 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 (u).

- 4.5.2 Under Section 25 of the Highways Act 1980, a local authority can enter into a Creation Agreement with any person having the capacity to dedicate a footpath or bridleway in its area. However, an authority cannot enter into an agreement with itself. Therefore, where an authority owns the land over which a path crosses it is appropriate for the authority to recognise the status of a path by means of declaration.
- 4.5.3 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 Most of the path already exist over council owned land and is maintained by Communities and Environment. The additional length of footpath will be surfaced to adoptable standard with a width of two metres and as such there would be no increased liability from declaring the route as a footpath.

5 Conclusions

- 5.1 The footpaths are not recorded on the definitive map and statement. However, clear evidence of paths being provided for public use is evident and as such it can be presumed that the landowner intended to dedicate the ways as highways. In such cases no minimum period of use is required. This appears to be the case here. The Declaration would record the proposed new path on the Definitive Map and Statement. If the footpath is dedicated the Public Rights of Way Section will not have to investigate this claim, this would save the council time and money as well as having the potential for additional costs from a Public Inquiry.

6 Recommendations

- 6.1 The Natural Environment Manager is requested to authorise the declaration of the route as shown on Background Document A between Naburn Approach and White Laithe Approach as a public right of way which will result in the addition of a footpath to the Definitive Map and Statement.

7 Background Documents¹

- 7.1 Background Document A: Declaration route
- 7.2 Background Document B: Map showing ownership
- 7.3 Background Document C: Email-agreement to declaration
- 7.4 Background Document D: 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.