

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 14th of July 2017

Subject: Diversion of Morley Footpath No. 90 and Creation of a New Footpath Link

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Morley South	<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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

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 for part of Morley Footpath No. 90.
2. To seek authority to create by agreement a public footpath over land at Morley between Morley Footpath No. 87 at Scott Lane and Morley Footpath No. 90 and thus adding a public footpath to the Definitive Map and Statement.

Recommendations

3. 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 Morley Public Footpath No. 90 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

and

- (c) to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to create a public footpath between Morley Footpath No. 87 and Morley Footpath No. 90 with a width of 2 metres as shown on Background Document B.

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 part of Morley Footpath No. 90 following the granting of Planning Permission to build a residential housing estate as shown on Background Document A.
- 1.2 To request authorisation to enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 with the landowner to create a public footpath between Morley Footpath No. 87 at Scott Lane and Morley Footpath No. 90 as shown on Background Document B.

2 Background information

- 2.1 As part of the Side Roads Order for the M62 Morley Footpath No. 87 was severed creating two cul-de-sac routes on either side of the motorway. On the south side of the motorway an alternative route is available through the wood, although this path is not legally recorded on the Definitive Map and Statement. On the north side the section from the end of Scott Lane to the motorway remained dead ended and largely unused.
- 2.2 Planning permission has been granted for a residential development in two phases on land off Bruntcliffe Road and Scott Lane, Morley. The second phase will require the diversion of part of Morley Footpath No. 90 to a new line running through an area of public open space.
- 2.3 During the construction of the first phase, Morley Footpath No. 90 was temporarily closed from Bruntcliffe Road to the southern boundary of the site. A temporary diversion was provided along the southern site boundary to Morley Footpath No. 87. The Public Rights of Way Service requested that this be dedicated by the developer to provide a new link for Morley Footpath No. 87 so that it would no longer be a dead ended path.

3 Main issues

- 3.1 Planning permission has been granted for land off Bruntcliffe Road for a residential development including several houses over the line of Morley Footpath No. 90, therefore the public footpath will require diverting to enable the development to go ahead. Background Document A shows the proposed diversion with the section of footpath to be extinguished in red and the new section of footpath in green.
- 3.2 Morley Footpath No. 90 currently runs through a field with a grass surface and a recorded width of 1.2 metres. The new line of the footpath will run through an area of public open space on a crushed stone surface having a width of two metres. Background Document C shows the proposed new development and the new footpath running through the public open space. The section of footpath to be closed is 184 metres long and the new length of footpath is 205 metres long. This is only considered to be a minor increase in length due to the overall length of footpath and its primary use as a recreation route.

3.3 As part of negotiations to improve the footpath network in the area the Public Rights of Way Service requested that the developer dedicate a footpath link between the dead ended Morley Footpath No. 87 and Morley Footpath No. 90. This route has been used as an alternative route whilst Morley Footpath No. 90 was temporarily closed during the first phase of the development and it has continued to be used since. Representatives from the Ramblers and ward councillors also requested that this footpath be dedicated by the developers during the planning consultations. The footpath will run along the southern boundary of the development, initially between the rear of properties and a wooded area alongside the motorway and then through a more informal area of open space. Because of the more informal open space, favourable ground conditions and the location of trees the surface will remain grassed. The provision of a surfaced path is likely to damage the tree routes and would long term require more maintenance than a natural surface. The developer has agreed to dedicate the route as a public footpath which will be included in the maintenance contract for the public open space and have also agreed to install bollards at the end of Scott Lane to prevent vehicles parking on Morley Footpath No. 87 thus improving safety for footpath users. The Section 106 Planning Agreement has included the funding of the Creation Agreement and Diversion Order. Background Document B shows the proposed line of the new footpath and Background Document D shows photographs of the proposed footpath.

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 concerning the diversion of the footpath. Councillors and representatives of the Ramblers also attended a site meeting with the developers about the creation of the new footpath.

4.1.2 There have been no objections to the proposed diversion of the footpath and the Ramblers and Ward Members have requested the new footpath be created.

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 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. PA1 states that we will assert and protect the rights of the public where there are affected by planned development. PA3 states that we will seek section 106 planning agreements for path Improvements in development sites. PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development. ML2 states that we will endeavour to seek new

links in the path network. The Diversion Order and Creation Agreement will achieve these Statements of Action by providing a suitable alternative route to Morley Footpath No. 90 and creating a new footpath link for the public to 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 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 developer. Public Inquiry will cost approximately between £4000 and £8000.
- 4.4.3 As soon as may be after the dedication of the way in accordance with the Public Path Creation Agreement the local authority shall give notice of the dedication by publication in at least one local newspaper. The cost of this is approximately £800 which is to be met by the applicant.
- 4.4.4 Should the Agreement be signed, minor maintenance may be required occasionally, the cost of which can be met through existing budgets.
- 4.4.5 There are no compensation costs or payments being claimed by the landowners entering into the Creation Agreement.
- 4.4.6 There are no additional staffing implications resulting from the making of the Order or Agreement.

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 Communities and Environment (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 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 and Housing (u).
- 4.5.4 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.

- 4.5.5 An Agreement under this section will be on such terms as to payment or otherwise as may be specified in the agreement and may, if so agreed, provide for the dedication of the way subject to limitations or conditions affecting the public right of way.
- 4.5.6 When such an agreement is made it shall be the duty of the local authority to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- 4.5.7 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 As is always the case, there could be objections to the Diversion Order. There have been no objections to the Diversion Order during the pre-order consultation stages.
- 4.6.2 The landowner has agreed to enter into the Creation Agreement. This avoids the need to make a Creation Order that can have claims for compensation associated with it.

5 Conclusions

- 5.1 The diversion of Morley Footpath No. 90 is required to allow development that has been granted planning permission to go ahead. The alternative route is only slightly longer than the existing path and will run through an area of public open space.
- 5.2 A Creation Agreement for a new footpath between Morley Footpath No. 87 and Morley 90 would create a path for a currently dead ended route benefiting the public and creating a new link in the network.

6 Recommendations

- 4. 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 Morley Public Footpath No. 90 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.

and

- (c) to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to create a public footpath between Morley Footpath No. 87 and Morley Footpath No. 90 with a width of 2 metres as shown on Background Document B.

7 Background Documents¹

7.1 Background Document A: Proposed Footpath Diversion

7.2 Background Document B: Proposed Footpath Creation

7.3 Background Document C: Proposed Development

7.4 Background Document D: Photographs of Proposed Path

7.5 Background Document E: Equality, Diversity, Cohesion and Integration

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.