

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date:

Subject: Diversion of Garforth Public Footpath No. 36 and Creation Agreement for a New Perimeter Footpath

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

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 Garforth Footpath No. 36 at Baildon Avenue as shown on Background Document A.
2. To seek authority to create by agreement a new public footpath around the proposed new development between the new estate road off Baildon Avenue and Garforth Footpath No. 22 off Sandgate Drive and thus adding a public footpath to the Definitive Map and Statement as shown on Background Document B.

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 part of Garforth Footpath No. 36 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the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 the new estate road off Baildon Avenue and Garforth Footpath No. 22 off Sandgate Drive 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 Garforth Footpath No. 36 off Baildon Avenue following the granting of Planning Permission for a residential development.
- 1.2 To consider entering into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 with the landowner to create a public footpath between the new estate road off Baildon Avenue and Garforth Footpath No. 22 off Sandgate Drive.

2 Background information

- 2.1 Planning permission (13/03846/FU) has been granted for a residential development which affects part of the line of Garforth Footpath No. 36 off Baildon Avenue, Kippax. The application was originally refused by Leeds City Council but was granted on appeal. Several new houses are proposed on the line of the existing footpath. A new perimeter footpath is also proposed around the development which the developer intends to make available for public use. There are several paths already being used on similar lines across the development site by the public which from the site visit, aerial photos and Ordnance Survey maps appear to have been well used for many years. Background Document C shows the proposed development.

3 Main issues

- 3.1 The existing footpath runs along a ginnel off Baildon Avenue and then runs to the rear of numbers 15 to 19 Baildon Avenue before crossing an area of scrub and woodland. It then enters into an adjoining agricultural field before entering a track and another scrub and wooded area. The existing footpath currently runs on an earth surface with a recorded width of 1.2 metres.
- 3.2 The proposed diversion would then take the footpath directly across the area to be developed from the end of the ginnel. This would eliminate the existing dog leg and make the footpath easier to follow.
- 3.3 The start of the footpath would run through a new area of public open space on a crushed stone two metre wide footpath. Where it enters the wood it will remain on a natural earth surface with a width of two metres. The existing surface here is suitable for use and the trees here are protected with Tree Preservation Orders. If a stone path were provided it is likely to cause damage to the roots of the trees and in turn the protected trees.
- 3.4 Originally the diversion proposed by the developers was to head west to re-join the existing line of the footpath either just before the wood or through the wood along the south edge of the boundary with the adjoining field. However, Leeds City Council prefers to avoid dog legs wherever possible as they make paths less direct and less appealing to the public. Furthermore, the developers are currently using part of the the proposed route through their site as a temporary diversion while they are undertaking preparation works. It was observed on a site visit that

the public have started to take a direct line through the wood and across the adjoining agricultural field instead of using the definitive line. If the public continued to do this it could lead to the establishment of a new footpath across the agricultural field leading to the landowner having two footpaths across her field and the loss of additional crops for the tenant farmer as the definitive line would still need to be reinstated. The landowner and tenant farmer were contacted to see if they would agree to the section of footpath across their field being diverted onto a more direct line. They were in agreement as the tenant farmer had found the public tended to establish a direct line across the field each year on the most direct route from the point where they exited the woods. For the last few years this had not been on the definitive line and had gradually moved east. The width of this section of footpath would remain at 1.2 metres. Background Document D is a letter from the tenant farmer confirming that he and the landowner agree to the diversion of the footpath across their land.

3.5 There are a number of wear lines across the development site which have come about through the public walking across the site for many years. They are visible on the Ordnance Survey maps and aerial photographs. To avoid a potential Definitive Map Modification Order Application to record these used footpaths and to provide additional recreational paths through the public open space for the development and existing residents the developers included a perimeter footpath around their new development from the new estate road off Baildon Avenue at the western end of the development to join the existing Garforth Footpath No. 22 off Sandgate Drive at the eastern end of the development. This path is shown on Background Document B and C. To ensure that it will be available for public use the developers have agreed to enter into a Creation Agreement so that the new footpath they will provide can be recorded on the Definitive Map and Statement.

3.6 The new footpath would provide additional links for the public joining two previously unconnected footpaths as well as providing access from the new estate to the wider footpath network. They would be either a natural earth surface through the wood or surfaced with crushed stone through the more open areas with a width of 2 metres.

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. No objections were received and the proposals were viewed favourably by the user groups and Local Access Forum.

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 D.

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 rights of the public where they are affected by planned development. Statement of Action PA2 states that we will raise the profile of public rights of way and the need for informal outdoor recreation facilities. Statement of Action PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development. Statement of Action PA6 states that we will seek to ensure that non definitive routes are recognised on planning applications and provision made for them. The Public Path Diversion Order and Creation Agreement will provide suitable alternatives for the Definitive and used footpaths across the development site as well as providing additional recreational facilities. The new route will also provide additional footpath facilities to encourage walking through green spaces in line with proposals and objectives in the Local Transport Plan, Leeds Vision 2030, the West Yorkshire Transport Plan and the Parks and Green Spaces Strategy.

4.4 Resources and Value for Money

- 4.4.1 The cost of making and advertising the necessary Public Path Diversion Order and Creation Agreement is to be met by the developer.
- 4.4.2 If the Diversion 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. 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 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 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 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 Communities & Environment (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 personal information in Background Document C 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 members 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. The comments relating to the diversion made in the exempt documents are considered in Section 3 therefore the public's interests in relation to the diversion have not been affected.
- 4.5.8 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 Public Path Diversion Orders, but there have not been any objections to the proposed diversion at the pre-order consultation stage.
- 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 proposed diversion will allow a development that has been granted planning permission to go ahead as proposed. In addition part of the footpath will have a new improved surface and width. The existing dog leg will be removed and the footpath will be a more direct line which will be easier for the public to follow.
- 5.2 The Creation Agreement will allow the new footpath to be provided by the developer to be recorded on the Definitive Map and Statement ensuring it will be available to the public and maintained for the future.

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 part of Garforth Footpath No. 36 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 the new estate road off Baildon Avenue and Garforth Footpath No. 22 off Sandgate Drive with a width of 2 metres as shown on Background Document B.

7 Background Documents¹

7.1 Background Document A: Proposed Diversion

7.2 Background Document B: Proposed Footpath Creation

7.3 Background Document C: Proposed Development

7.4 Background Document D: Letter from the Tenant Farmer and Landowner

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

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.