
Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 18 May 2018

Subject: Diversion of Non-Definitive Public Footpath at Wortley Low Mills

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Farnley & Wortley Ward	<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: 10.4 (1 & 2) Appendix number: D	<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.

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 public footpath shown on the map attached (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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 the public footpath at Wortley Low Mills following an application for Planning Permission to develop a builders merchant unit and two detached industrial units on the Wortley Low Mills site, under planning application ref 17/06923/FU.

2 Background information

- 2.1 A claimed public footpath between Hales Road/Lower Wortley Road and Whitehall Road exists in the Council's records on the route shown by dark green dashed line on the plan in Background Document A. The route is not formally recorded on the Modified Definitive Map and Statement for the area but the developer accepts that a footpath exists.
- 2.2 In the past twenty years, the site has been owned and occupied by two chemical companies who have acknowledged the existence of the claimed public footpath and have discussed potential temporary and permanent diversions with Rights of Way Officers.
- 2.3 When part of the site was demolished, some years ago, a temporary alternative route for the path was created shown by the pink dashed route, C-D-E on the plan in Background Document C - 1.
- 2.4 As an accepted public right of way, any proposed development may not be built to obstruct the route unless a public path diversion order is made and confirmed by the Council.

3 Main issues

- 3.1 The proposed development, under application 17/06923/FU, is for construction of a builders merchant unit and two detached industrial units. Background Document B shows the proposed layout of the new development.
- 3.2 The development will involve regrading of the site to provide level areas, and the construction of buildings, one of which would be across the line of the existing path between points B and C on the plan in Background Document C -1. The line and levels of the existing path between points B and E would be affected by the development, which cannot be constructed as planned without obstructing the footpath.
- 3.3 An earlier diversion order application on this site, made in February 2016, proposed a diverted route to the east of the new development. This route would have been partly along the new access road. However, comments received at that time did not support that proposed new route. The current proposal takes into account comments received at that time and is for the new route to run to the western side of the site.
- 3.4 The developer and officers have considered options for the diverted route for the public footpath. Discussions and site meetings have explored alternative options, resulting in the final version of the proposed new route as shown by blue dashed

line on the plans in Background Document A and a blue dotted line on Background Document B.

- 3.5 The new route would be two metres wide, through a landscaped area, with a crushed stone surface where it runs within the development site. Where the new route runs outside and to the south of the site boundary, it would retain the existing tarmac surface.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Although consultation is only required with other local authorities, consultation was also undertaken, in December 2017, with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments. This consultation was based on the plans submitted by the applicants in October 2017 (Background Document C 1 and 2). Responses were received from West Yorkshire Police, Solvay plc, The Ramblers, Pendragon plc, and several statutory undertakers. The substantive responses are included in background Documents D and E.
- 4.1.2 West Yorkshire Police designing out Crime Officer/Crime Prevention Design Adviser/Architectural Liaison Officer stated that there are no foreseen problems with the proposed diversion.
- 4.1.3 Solvay are former owners of the Wortley Low Mills site, trading as Rhodia Ltd. They confirmed that they have no further interest in the site.
- 4.1.4 The Ramblers Leeds Group comments are in Background Document D. They summarised this as being largely in support of the proposal to divert but suggesting a different line for the southern portion of the path. They highlight the fact that the southern part of the proposed diversion is outside the applicants' boundary and would follow a route where there are many parked and moving vehicles. They propose that the diverted line should continue within the developer's land as far as possible, re-joining the existing path at point E on Consultation Plan (Background Document C-1).
- 4.1.5 The Ramblers also suggested that the unaffected continuation of the path from the site boundary to Whitehall Road should be demarcated to identify the route through the car dealership site.
- 4.1.6 The Ramblers made a number of other suggestions regarding the colouring of maps, maintenance and management of vegetation on and surrounding the path and future use of an adjacent area of land to the west, which they consider has potential for use as a natural area/greenspace for the benefit of wildlife.
- 4.1.7 Pendragon plc are owners of adjacent land which is in use as a Citroen car dealership. Their comments are in Background Document E. They commented that part of the proposed diversion would cross the main access to the car dealership where there is no room to provide a dedicated footpath and will expose pedestrians to significant traffic (D-E-F on plan 1 in Background Document C-1).

They suggested an alternative option for the diverted route to keep it more closely within the applicants site.

- 4.1.8 Three responses were received from statutory undertakers. Virgin Media have no plant affected. Cadent have no record of apparatus in the immediate vicinity of the path. Northern Powergrid sent plans with electricity supplies appearing to cross the existing path but no objection was made to the order.
- 4.1.9 The suggestions for alternative routes, made by Pendragon (4.1.7) and The Ramblers, (4.1.4) have been discussed with the applicant, resulting in an amended version of the proposed diversion as shown on the final plans in Background Documents A and B. This brings the diverted route closer to that suggested by the Ramblers and removes much of the diverted route from the car dealership site.
- 4.1.10 The car dealership site is run by Evans Halshaw Citroen Leeds, which is part of the Pendragon group.
- 4.1.11 The final 10 metres of the diverted route will be on land within the car dealership site and outside the applicant's ownership. The applicants are understood to have a right of access over this land and the applicant's agent has been in correspondence with representatives of the car dealership regarding the public path diversion. They have confirmed that the car dealership have no concerns regarding the amended proposal and will make no objections. Copies of relevant correspondence between the path order applicant, a representative of Evans Halshaw Citroen Leeds and the Council's Public Rights of Way Manager is copied in Background Document F.
- 4.1.12 The Ramblers request for demarcation of the continuation path to Whitehall Road is outside the control of the applicant, but Rights of Way Officers will aim to seek improvements in this area.
- 4.1.13 The Ramblers concerns regarding vegetation on the continuation of the path to the north and on adjacent land are outside the scope of this order.

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 G.

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. Work commenced on this order application 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 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 provisions made for them. The diversion of this non-definitive path will facilitate its protection, improvement and formal recording.

- 4.3.3 Green Strategy, Best Council Plan 2015-20, Local Transport Plan 3 2011-2026 proposal 22 Define, develop and manage networks and facilities to encourage cycling and walking', Leeds Vision 2030 Leeds will be a city that has increased investment in other forms of transport such as walking and cycling routes to meet everyone's needs and people can have access to walking and cycling routes, Parks and Green Space Strategy proposal 19 we will promote and develop green corridors for recreation, conservation and transport, proposal 22 we will contribute to the West Yorkshire Transport Plan by providing sustainable transport routes in our parks and green spaces including the development of cycling routes. It has been stated (by The Ramblers) that this path is used by pupils going to and from school. The diversion and consequential surfacing of the path will improve the condition and definition of the route for pupils and all members of 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 applicant. 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 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 In this case a planning application has been made (application ref 17/096923/FU), for a development which includes a building to be used as a builders merchant. This building will be across the line of the path. There will also be significant changes to the levels of the land over which the current path runs. The diversion

of the path is therefore necessary to enable the proposed development to proceed.

4.5.4 The personal information in Background Documents 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 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 4.1 therefore the public's interests in relation to the diversion have not been affected.

4.5.5 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 when formally advertised. The pre-order consultations detailed in Section 4.1 are intended to help identify potential objections and to enable the Council and the applicant to address concerns raised through appropriate amendments to the proposal. In this case, the relevant concerns raised by the adjacent landowner and The Ramblers have been addressed by adjusting the proposed new path line, thus reducing the likelihood of objections when the order is made and advertised.

5 Conclusions

5.1 The diversion of the footpath meets the tests required for an order to be made under Section 257 of the Town and Country Planning Act 1990. Comments from potential objectors have been addressed in the final proposal and a diversion order will allow the development to proceed while accommodating the claimed footpath on a new line that will become a recorded public footpath.

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 footpath shown on the maps attached (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 – plan showing final version of diversion route.
- 7.2 Background Document B: Site Plan A980 P400 D Proposed development.
- 7.3 Background Document C-1 and C-2: Copy of plans sent with consultation letter, December 2107, showing applicants initial proposed diversion and development.
- 7.4 Background Document D: Consultation Reply from The Ramblers
- 7.5 Background Document E: Consultation Reply from adjacent landowner - Pendragon plc.
- 7.6 Background Document F: Adjacent landowner correspondence with the applicant and the Council regarding section of diverted route outside applicant's ownership.
- 7.7 Background Document G: 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.