

**Report of Public Rights of Way Manager**

**Report to Parks and Countryside Management Team**

**Date: 1 March 2019**

**Subject: Creation Agreement and Diversion Orders for Paths Morley Path Nos. 75 and 112 and Creation Order for new bridleway on route of Morley Footpath No. 113**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): <b>Ardley and Robin Hood Ward</b>	<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: Background Document D, F and G	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

1. To seek authority to create by agreement a public bridleway over land between Bradford Road and New Lane, East Ardsley, thus upgrading a public footpath to bridleway and enabling it to be recorded on the Definitive Map and Statement.
2. 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.
3. To seek authority to for the making of a Public Path Creation Order under Section 26 of the Highways Act 1980, to create a public bridleway over land in unknown ownership between, the rear of 102 New Lane and Morley Public Bridleway 145, and thus enabling the recording of a public bridleway on the Definitive Map and Statement of Public Rights of Way.

**Recommendations**

4. Natural Environment Manager is requested to authorise the City Solicitor:
  - a) to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to upgrade the whole of Morley Public Footpath No. 112, and part of Morley Public Footpath 75 to bridleway, shown A-B and C-D on the applicants "Plan 2" (Background Document A); and to create a new public bridleway, with a width of three metres, between points E and F on Plan 2,
  - b) 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 bridleway shown on the applicant's "Plan 3", (Background Document B), and

to include three lengths of new public footpath linking to New Lane, as shown in Background Document C,

- c) to make and advertise a Public Path Creation Order in accordance with Section 26 of the Highways Act 1980 to create a public bridleway between the rear of 102 New Lane and Morley Public Bridleway 145, between Points G and H to a width of 3 metres shown on Plan 2 in Background Document A, and as shown in detail on the revised layout in Background Document C),

and

- d) to confirm the Orders, subject to there being no objections or in the event of objections which cannot be withdrawn, for the relevant order or orders 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 request authorisation to enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 with the landowner to upgrade the whole of Morley Public Footpath No. 112, and part of Morley Public Footpath 75 to bridleway, as shown A-B and C-D on Plan 2 in Background Document A; and to create a new public bridleway between points E and F on Plan 2, and as shown in detail on the amended layout in Background Document C,
- 1.2 To consider the making of a Public Path Diversion Order under Section 257 of the Town and Country Planning Act 1990 to divert the newly created public bridleways on the routes of Morley Public Footpath No. 112 and part of Morley Public Footpath No. 75, and to include three lengths of new public footpath linking to New Lane, as shown in Background Document C following the granting of Planning Permission to construct 299 dwellings.
- 1.3 To request authorisation to make a Public Path Creation Order under Section 26 of the Highways Act 1980. This will add a public bridleway along the route of part of the existing Morley Public Footpath No. 113 from point G (Plan 2 in Background Document A) to existing Morley Public Bridleway No. 145 at Point H.

## **2 Background information**

- 2.1 The Council received an application for a combined group of orders affecting routes recorded on the Modified Definitive Map as Morley Public Footpaths Nos. 112, 75 and 113, between Bradford Road and New Lane, East Ardsley. The application was made by a developer who has planning permission (13/05423/OT) for the construction of 299 dwellings which would necessitate the diversion of Morley Footpath Nos. 112 and 75. Further applications for reserved matters (17/08357 and 18/03719/RM) are also pending.
- 2.2 Prior to this, in 2017, the Council had received an application for a Definitive Map Modification Order (DMMO), which would upgrade Morley Footpath No. 112 and part of Morley Footpath No. 75 from footpath to bridleway status. Public bridleways may be used by pedestrians, people riding or leading horses and by pedal cyclists. Public footpaths may be used by pedestrians only.
- 2.3 The DMMO application was made under Section 53 of the Wildlife and Countryside Act 1981 and contains evidence which purports to demonstrate that these routes had been used by the general public on horseback for at least 20 years, thus alleging that a public right of way as bridleway has been established. Government guidance in Defra Circular 1/09 states that Councils should take care that routes are diverted at correct status.
- 2.4 The DMMO application has not yet been determined by the Council, but its existence was brought to the attention of the landowners and the developer.
- 2.5 Following discussions and negotiations between the Council, the developer and the landowner, a consensus was reached which would confirm and record the status of these routes as bridleways while diverting them and also creating a new link to New Lane. If confirmed, this would acknowledge and accommodate the

claimed bridleway status while enabling the development to proceed and providing good quality public bridleway links, largely though a landscaped area.

### **3 Main issues**

- 3.1 A detailed description of the proposal is given in the Supporting Statement (Background Document D) and Plans 1, 2 and 3 (Background Documents E, A and B) submitted by the applicant. To summarise, the following is proposed:
- 3.2 The owner of the development land has agreed to enter into a Public Path Creation Agreement with the Council under Section 25 of the Highways Act 1980, to formally upgrade to public bridleway the routes claimed in the DMMO application. (A-B, and C-D on Plan 2, Background Document A). The landowner will also dedicate an additional length of bridleway. (E-F on Plan 2). These elements are to be covered by a Public Path Creation Agreement to be signed before the public path diversion order is confirmed. The creation of these bridleways will allow them to be taken into consideration when the paths are diverted. A copy of the final draft Creation Agreement for the bridleway is Background Document F.
- 3.3 Consultation comments indicated that there is also a desire to retain connections for pedestrians from the new estate into the existing east-west route of New Lane. Three public footpath links are proposed to be included as new routes in the Diversion Order. These are shown on the revised site plan in Background Document C. The first runs from the new estate roads to New Lane at the north eastern corner of the site, near Plot 29. The second is between plots 47 and 48 and the third is between plots 58 and 59.
- 3.4 The new housing development includes the construction of several houses which would be on the route of the bridleway. The development cannot be completely constructed unless the bridleway is stopped up and diverted. A Diversion Order under Section 257 of the Town and Country Planning Act 1990 is therefore necessary to enable the development to proceed. This would be made and advertised and, if confirmed, would divert the newly created bridleway onto a new alignment to enable the developer to implement the housing development. (Plan 3 in Background Document B).
- 3.5 To achieve a continuous link to the unaffected bridleway on New Lane, it is also necessary to upgrade the status of part of Morley Footpath 113 from footpath to bridleway. (G – H on Plan 2 in Background Document A). This section of path has no recorded ownership, therefore, the owner of the development land cannot dedicate this section of route. The proposal is for the upgrade to be achieved by means of a Public Path Creation Order under Highways Act 1980, Section 26.
- 3.6 The upgrade of part of Morley Public Footpath No. 113 from footpath to bridleway would create a connection for horse riders and cyclists, linking the diverted bridleway and the new housing, to the road network at New Lane and to the existing bridleway network at Morley Public Bridleway No. 145. This therefore has the potential to considerably add to the convenience and enjoyment of members of the public both currently residing in the area and those who will live in the new estate.

- 3.7 The DMMO application for bridleway status on paths 75 and 112 demonstrates that people currently using the area have a desire to use routes in this location as public bridleways.
- 3.8 The original line of the affected parts of Morley Footpath Nos. 75 and 112 is a total of 708 metres long and 1.2 metres wide and is shown lines A-B and C-B-D on Plan 2 in Background Document A
- 3.9 When the proposed Public Path Agreement, Diversion and Creation Orders have been implemented, the new line of the bridleway would run from the same point on Bradford Road, for approximately 740, metres through landscaped public open space, connecting via the upgraded section of Morley Path No. 113, to join Morley Bridleway No. 145 on New Lane at a point approximately 130 metres to the east of the existing junction of Morley Footpath No. 75 with Morley Bridleway No. 145. The new bridleways will have a 3 metre wide surface of rolled and compacted stone.
- 3.10 The three new link footpaths paths, to be included in the Diversion Order will have lengths of 13 metres, for the path near Plot 29, 28 metres for the path between Plots 47 and 48 and 40 metres for the path between plots 58 and 59. They will all be two metres wide.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Although consultation is only required with other local authorities, good practice advocates wider pre-order consultation to enable potential concerns and objections to be identified and if possible resolved at an early stage. Consultation on the package of Orders and Agreements was carried out in October 2018 with prescribed rights of way organisations, local footpath and bridleway groups, adjacent landowners, Ward Members and relevant Council Departments. These consultees were sent the documents in Background Documents, A, B, D and E, together with a letter or email explaining the background and processes involved.
- 4.1.2 The applicant for the DMMO, referred to in paragraph 2.2 above, who represents a bridleway user organisation was included in this consultation.
- 4.1.3 Statutory Utility Undertakers were also consulted with copies of the relevant plans.
- 4.1.4 The consultations resulted in a number of comments from user groups, adjacent landowners, officers and utilities.
- 4.1.5 The table in Background Document G summarises the comments and objections received. These have been discussed with the developers' representatives. The developers then provided additional information including a revised layout, cross-sections of the proposed Creation Order route, topographical survey, drainage statement and Arboricultural Method Statement. The relevant documents are in Background Document H.

- 4.1.6 The relevant additional information was sent to the consultees who had raised concerns and their final comments are in the final column of Background Document G.
- 4.1.7 Diversion Order – The comments, objections and concerns which relate to the proposed diversion order are comments 1, 2, 3, 4 10 and 12 in Background Document G.
- 4.1.8 Comments 1 and 2 relate to a perceived conflict between the diverted bridleway and the alleged possible construction of other elements of the development. The developers have stated that the Emergency Vehicle Access is not planned, so this conflict will not occur. The location of the junction of the bridleway with Bradford Road is intended to be the same as the existing footpath and claimed bridleway, so there is no change from the existing situation at this point.
- 4.1.9 Comments 3 and 4 relate to a desire to maintain and enhance connectivity through the site for pedestrians. The developer has now agreed to provide the three link paths referred to in Comment 4 as public footpaths under in the Diversion Order, thus ensuring that they will in due course be formally recorded on the Definitive Map.
- 4.1.10 Comments 10 and 12 appear to be based on perceptions of problems with illegal motorised vehicles on the bridleway, which may or may not arise. In addition, comment 12 assumes that there will be vehicular access at the junction of the bridleway with Bradford Road. This is not the intention. The developer and Public Rights of Way Officers have provided information about steps to be taken to prevent and respond to any such problems.
- 4.1.11 Creation Order – The comments, objections and concerns which relate to the proposed creation order are comments 5, 6, 7, 8, 10 and 14 in Background Document G.
- 4.1.12 Comment 5 has been resolved.
- 4.1.13 The developer provided information to try to resolve comments 6, 7, 8, 9 and 14. Further comments received from one of the house owners adjacent to the Creation Order Route indicate that he is still considering objecting to a Creation Order if it is made. No further comments have been received from other householders adjacent to this section.
- 4.1.14 Creation Agreement – There is no process for consultees to formally object to the making of a Creation Agreement, but the decision maker for the Diversion Order and Creation Order may wish to take these comments into account when considering the effect of the whole package of orders and agreements.
- 4.1.15 The comments, objections and concerns which relate to the proposed creation agreement are comments 6, 8, 9, 10, 11, 13 and 15 in Background Document G.
- 4.1.16 The developer provided information to try to resolve these comments. However, two of the property owners on Forsythia Avenue, whose properties are adjacent to part of the Creation Agreement route remain unsatisfied.

4.1.17 Statutory Utilities responses raised no objections.

## **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 completed EDCIs are attached at Background Document I.

## **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. This application was received on 28 September 2018. Discussions with the developer were ongoing at the time of the application and the consultation commenced on 29 October 2018. Due to the complexity of the interlinked orders and agreements and the comments received from consultees, discussions between the Council and the developer's representatives, and the provision of additional and updated information continued through to the end of January 2019.

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. The proposed package of orders and agreements would protect both existing pedestrian rights and claimed bridleway rights by diverting them onto a suitable alternative route that is compatible with the development.

4.3.3 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 claimed bridleway, which is subject to a DMMO application can be treated as a non-definitive route as far as the potential bridleway status is concerned.

4.3.4 Statement of Action ML4 states that we will concentrate on creating new links to join up the fragmented bridleway network. The creation of new bridleway rights will contribute to the implementation of this Action.

4.3.5 The Local Transport Plan 3 2011-2026 proposal 22 states we will define, develop and manage networks and facilities to encourage cycling and walking'. Leeds Vision 2030 states that 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. The Parks and Green Space Strategy proposal 19 states we will promote and develop green corridors for recreation, conservation and transport, proposal 22 states 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. The provision of new bridleway links into and through this site, largely within landscaped areas creates increased connectivity to the existing network and helps to provide walking, cycling and horse riding routes for both recreation and transport use. These proposals therefore make a positive contribution to the realisation of these strategies.

#### **4.4 Resources and Value for Money**

- 4.4.1 The cost of making and advertising the necessary Public Path Creation Agreement, Public Path Diversion Order and Public Path Creation Order is to be met by the applicant.
- 4.4.2 If one or both of the Orders is opposed, referred to the Secretary of State and 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 Should the Creation Order be confirmed as made, minor maintenance may be required occasionally, the cost of which can be met through existing budgets.
- 4.4.4 Compensation can be claimed by the owner of land affected by the making of Creation Orders, under section 28 of the Highways Act 1980. There is no recorded owner for the land affected by the Creation Order, but there is a possibility that someone could claim ownership. The applicant has stated that they intend to seek insurance to cover the cost of any claim for compensation from a landowner.
- 4.4.5 The Council does not have to confirm the Creation Order if it is made.
- 4.4.6 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 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).
- 4.5.2 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).
- 4.5.3 The Natural Environment Manager has authority to take decisions relating to the creation of public rights of way under Section 26 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 (v).
- 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 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.
- 4.5.7 The Council has a duty under Schedule 14 of the Wildlife and Countryside Act 1981 to determine the DMMO application. This report does not seek to determine that application. If the Orders are successful and are subsequently confirmed, the DMMO application would be determined in the light of these agreements and orders.
- 4.5.8 Section 26 of the Highways Act, 1980 provides compulsory powers for the creation of footpaths, bridleways and restricted byways where it appears to a local authority that there is a need for footpaths, bridleways or restricted byways in their area and that they are satisfied that having regard to:-
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons residing in the area, and;
  - (b) the effect which the creation of the path or way would have on the rights of persons having a legal interest in the land, account being taken of the provisions as to compensation, it is expedient that the path or way should be created.
- 4.5.9 Section 28 of the Highways Act 1980 provides for compensation to be paid for loss caused by the making of any Public Path Creation Order where it can be shown that the value of any interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order.
- 4.5.10 The personal information referred to in Background Document D, F and G 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 proposed orders 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.
- 4.5.11 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 and Creation 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.
- 4.6.2 In this case, the relevant concerns have been addressed with further information from the Council and the developer, thus reducing the likelihood of objections when the orders are made and advertised.
- 4.6.3 No response to the further information has been received from some of the consultees, therefore their final opinion of the proposals is unknown.
- 4.6.4 There are no known persons having a legal interest in the land to be crossed by the Creation Order route, so no person claiming to own land crossed by the route has made any comment during the pre-order consultation. The applicant has stated that they intend to seek insurance to cover the cost of any claim for compensation from a landowner.
- 4.6.5 The lack of known ownership of this area of land also means that it will not be possible for the Council to serve notice of the Creation Order directly on the owner, as required by Highways Act 1980, Schedule 6, Part 1, 1 (3)(b)(i). There is provision in the Act for the Secretary of State to direct that notice be served in such circumstances by fixing a copy of a notice addressed to "the owners and any occupiers" of land, in a conspicuous position on the land. Council officers have received dispensation from the Secretary of State, enabling notice to be served in this manner.

## **5 Conclusions**

- 5.1 The proposed Creation Agreement will allow the recording of the routes claimed in the Definitive Map Modification Order application and an additional length of bridleway, so that these can be diverted with bridleway status prior to the development occurring. The proposed diversion will enable the construction of a development which has been granted planning permission. The proposed Creation Order will allow the diverted bridleway to connect to the wider network and thus add to the convenience and enjoyment of bridleway users.
- 5.2 Consultation has been carried out for a proposed public path diversion order and a proposed public path creation order. Comments have been received and further information has been provided to consultees to attempt to resolve the concerns. Although there are outstanding concerns, none of these are relevant objections which would substantially challenge the grounds for making either of the proposed orders.

## **6 Recommendations**

- 6.1 The Natural Environment Manager is requested to authorise the City Solicitor:

- a) to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to upgrade the whole of Morley Public Footpath No. 112, and part of Morley Public Footpath 75 to bridleway, shown A-B and C-D on “Plan 2” (Background Document A); and to create a new public bridleway between points E and F on Plan 2, with a width of three metres as shown on Background Document C.
  - b) 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 bridleway shown on the applicants “Plan 3” (Background Document B) and to include three lengths of new public footpath linking to New Lane, as shown in Background Document C,
  - c) to make and advertise a Public Path Creation Order in accordance with Section 26 of the Highways Act 1980 to create a public bridleway between the rear of 102 New Lane and Morley Public Bridleway 145, between Points G and H to a width of 3 metres shown on Plan 2 in Background Document A, and as shown in detail on the amended layout in Background Document C.
- and
- d) to confirm the Orders, subject to there being no objections or, in the event of objections which cannot be withdrawn, for the relevant order or orders to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

## 7 Background Documents<sup>1</sup>

Background Document A:	Applicant’s “Plan 2” of Creation Agreement and Creation Order routes.
Background Document B:	Applicant’s “Plan 3” of bridleway Diversion Order
Background Document C:	Applicant’s revised site layout. (Plan ref P12-4567-1001 Rev F)
Background Document D:	Applicant’s Supporting Statement
Background Document E:	Additional documents sent to consultees:
	E1: Applicant’s “Plan 1” showing land ownership
	E2: Bridleway Construction Detail
	E3: Plan of Existing Routes
Background Document F:	Draft Creation Agreement
Background Document G:	Summary of Consultation Responses

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<sup>1</sup> 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.

Background Document H: Additional Documents received from the Applicant,  
January 2019:

H1: Revised Site Layout – as Background Document C

H2: Arboricultural Method Statement

H3: Current cross sections

H4: Proposed cross sections A-A

H5: Proposed cross section B-B

H6: Topographical survey of Creation Order Route

H7, H8 and H9 – photographs of Creation Order Route

Background Document I: EDCIs