

**Report of Public Rights of Way Manager**

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**Report to Parks and Countryside Management Team**

**Date: 29 March 2019**

**Subject: Diversion of parts of two Non-Definitive Public Footpaths at Rathmell Road, Halton Moor under Section 257, Town and Country Planning Act 1990**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Temple Newsam	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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: Number 10.4 (1 & 2) Appendix number: Background Document C	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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**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.

**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 two non-definitive public footpaths at Rathmell Road, as shown on the plan attached as 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  - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 two non-definitive public footpaths between Rathmell Plantation and Rathmell Road following the granting of Planning Permission for the construction of 27 apartments and 15 houses.

## **2 Background information**

- 2.1 The Council received an application from a developer for the diversion of two non-definitive public footpaths near Rathmell Road. The developer's application plan is Background Document B.
- 2.2 The developer has Planning Permission (reference 16/07871/FU) for construction of 27 apartments and 15 houses.
- 2.3 Section 257 of the Town and Country Planning Act 1990 contains provisions to stop up or divert a public footpath, bridleway or restricted byway, where it is considered 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.

## **3 Main issues**

- 3.1 The existing footpaths to be closed are shown in Background Document A by two red lines running from Rathmell Road in a north-easterly direction and an easterly direction.
- 3.2 The first affected public footpath runs from Rathmell Road near house number 71, in a north-easterly direction for approximately 130 metres to a point on the Rathmell Plantation path between the rear of 33 Rathmell Road and the rear of 16 Lombard Street. The second path runs from Rathmell Road adjacent to house number 41, in an easterly direction for approximately 45 metres to its junction with the first path.
- 3.3 The replacement public footpath is shown by a green line on Background Document A. It starts from the Rathmell Plantation footpath at a point to the rear of 26 Lombard Street and continues in a westerly direction, through public open space between the two new access roads, for approximately 60 metres, to its junction with the proposed new road (shown as Rathmell Drive on Background Document B). This section of new path will be 2 metres wide and will have a crushed stone surface.
- 3.4 The new path then turns to run in a southerly direction for approximately 45 metres to join the existing Rathmell Road outside house number 71. This section will be on the adopted footway of the new section of Rathmell Drive. Access will also be available on adopted footways of Rathmell Drive to connect in a northerly direction to the existing section of Rathmell Road near house number 41.
- 3.5 The development, approved following Planning Application ref 16/07871/FU, includes the construction of 27 apartments and 15 houses. This will include the construction of houses and apartments on the line of the first path, and of property

boundaries on the second path. The development could not be constructed as proposed without obstructing these routes.

- 3.6 The stopping up of the two affected sections of path and construction of a replacement path is therefore necessary to enable the proposed development to be implemented while continuing to allow pedestrians to connect from the Rathmell Plantation path to Rathmell Road.
- 3.7 A Diversion Order under Section 257 of the Town and Country Planning Act 1990 is therefore necessary to enable the proposed development to proceed.

## **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.
- 4.1.2 Consultation for this path order application was carried out in February 2019 with prescribed rights of way organisations, local footpath and bridleway groups, landowners, Ward Members, relevant Council Departments and statutory utilities undertakers. This consultation was based on the plans in Background Documents A and B together with a letter or email explaining the background and process involved.
- 4.1.3 Part of the affected routes is outside the ownership of the developer. The sections from T3 and T6 to the site boundary as shown on Background Document B are on land in Council ownership managed by Parks and Countryside. The Council has been consulted as landowner. Comments received support the diversion because it will assist as the Council develops the public open space to the rear of the development site.
- 4.1.4 The Council's Housing Service manages properties to the immediate north of the paths to be closed. They have been consulted and no objections have been received.
- 4.1.5 No comments were received from Ward Councillors for the Temple Newsam Ward.
- 4.1.6 The Ramblers Leeds Group does not object to the proposed path order but provided comments regarding the timing of the application and the nature of the replacement routes. A copy of their comments is in Background Document C
- 4.1.7 The timing of the application for a public path order is the responsibility of the applicant. They are advised by the Council to submit such applications as early as possible.
- 4.1.8 The Ramblers comments regarding the nature of the replacement routes reflects national guidance in Defra's Rights of Way Circular 1/09, which discourages diversions on to estate road footways. This site has tight spatial constraints and it is not possible to achieve a totally segregated route for pedestrians. The

proposed diversion route will enable access to and from the Rathmell Plantation path from the new road via a footpath through open space. This avoids pedestrian conflict with moving, turning and parked vehicles on the new access roads, Rathmell Court and Rathmell View.

- 4.1.9 The Ramblers also expressed concerns regarding a possible change of levels at the eastern end of the new path. Examination of plans showing proposed finished levels associated with the Planning Application indicate that any change of levels will be minimal and gradual and should not be an impediment to construction or use of a public footpath.
- 4.1.10 Statutory Utility companies provided information about their apparatus in and adjacent to the existing and proposed routes but did not raise any objections.
- 4.1.11 There are no outstanding comments to challenge the grounds for making a public path diversion order under Section 257 of Town and Country Planning Act 1990.

## **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. This application was received in on 30 November 2018 and consultation commenced on 6 February 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. The diversion of these footpaths will facilitate their protection and improvement.
- 4.3.3 Statement of Action PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development. Within the constraints of the site, the new path to be provided is a suitable and appropriate alternative.
- 4.3.4 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 these non-definitive footpaths will facilitate their protection, and formal recording.
- 4.3.5 The protection and diversion of the footpaths affected by this development site maintains connectivity for pedestrians and makes a positive contribution to realisation of the walking aspects of strategies including The Local Transport Plan 3 2011-2026 proposal 22 which states that we will 'Define, develop and manage networks and facilities to encourage cycling and walking' and Leeds Vision 2030, which 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.

4.3.6 The Parks and Green Space Strategy proposal 19 states we will promote and develop green corridors for recreation, conservation and transport, and proposal 22 states we will contribute to the West Yorkshire Transport Plan by providing sustainable transport routes in our parks and green spaces. The proposed diversion contributes to these aims through the provision of a pedestrian links to Rathmell Plantation.

#### **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.

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 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 personal information referred to 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 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.

4.5.4 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.

4.6.2 In this case, no significant concerns have been raised by consultees.

## **5 Conclusions**

5.1 Consultation has been carried out for a proposed public path diversion order. Comments have been received but no objections were raised to challenge the grounds for making and advertising a public path diversion order under Section 257 Town and Country Planning Act 1990, for the two paths shown in Background Document A.

## **6 Recommendations**

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 two non-definitive public footpaths at Rathmell Road, as shown on the plan attached as 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 Documents<sup>1</sup>**

Background Document A – Proposed Diversion Plan

Background Document B – Application Plan - Proposed Site Plan

Background Document C – Ramblers Group Leeds Comments

Background Document D – EDCI

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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.