

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 21 June 2019

Subject: Diversion of part of a non-definitive public footpath at the site of the former Cavalier Inn, 10 Ellerby Road, Cross Green, Leeds LS9 8LD

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Burmantofts and Richmond Hill	<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: Appendix number: Background Document C and 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 the granting of Planning Permission, in accordance with Section 257 of the Town and Country Planning Act 1990.

Recommendations

2. 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 non-definitive public footpath shown on the map 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 part of a non-definitive public footpath at the site of the former Cavalier Inn, Ellerby Road, following the granting of Planning Permission to demolish the public house and erect a five-storey block of 16 apartments with associated carparking and landscaping.

2 Background information

- 2.1 The Council received an application from a developer for the diversion of part of a non-definitive public footpath at the site of the former Cavalier Inn, 10 Ellerby Road. The developer's original application plan is Background Document B1 and a revised version more clearly showing the proposed new route is Background Document B2.
- 2.2 The developer has Planning permission (reference 16/01825/FU) for the re-development of the Cavalier Inn site by demolishing the existing building and erecting a five-storey block of 16 apartments.
- 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 footpath to be closed is shown in Background Document A by a red line. This section of path runs from Ellerby Road for 23 metres in a south-westerly direction.
- 3.2 The proposed replacement public footpath is shown in Background Document A by a green line. It will leave Ellerby Road at a point approximately four metres to the south east of the existing path, then run in a south-westerly direction for 22 metres, then turn north-westerly for 3 metres to re-join the existing path.
- 3.3 The new building and its associated service areas, vehicle access and landscaping, approved following Planning Application 16/01825/FU, would encroach on the existing non-definitive footpath. The development could not be constructed as planned without obstructing the path.
- 3.4 The stopping up of the affected section of the path and the construction of a replacement path is therefore necessary to enable the proposed development to be implemented while continuing to allow pedestrians to connect from Ellerby Road to the continuing footpath network to the west.
- 3.5 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 identification of any potential concerns and objections and where possible to resolve them at an early stage.
- 4.1.2 Consultation for this path order application was carried out in April 2019 with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, the adjacent landowner, Ward Members for Burmantofts and Richmond Hill and appropriate Council Departments.
- 4.1.3 No comments were received from Ward Councillors.
- 4.1.4 The Leeds Local Access Forum (LAF) questioned the safety of the change of direction where the diverted path meets the original path line. They also questioned the proposed surface for the diverted path. A copy of the relevant correspondence is in Background Document C.
- 4.1.5 The concerns about the change of direction at the western end of the diverted path relate partly to the fact that this was shown on earlier plans as being surrounded by 1.8-metre-high fences. The applicant has now confirmed that the fencing at the boundary treatments in the relevant area will be 1.5-metre-high hoop and post type fencing with no fixed panels. This will enable visibility and natural surveillance for path users.
- 4.1.6 The applicant's plans (Background Documents B1 and B2) describe the new path as being constructed of compacted hardcore having a surface of limestone chippings. The LAF questioned whether crushed limestone is appropriate in such an urban situation. This has been discussed with the applicant who has confirmed that a tarmac surface will be provided.
- 4.1.7 The Police Architectural Liaison Officer also raised queries about visibility but, having received further information about the railings, has confirmed that she has no objections. The relevant comments are in Background Document D.
- 4.1.8 The Ramblers Leeds Group supports the proposed diversion. They did raise a number of points and queries relating to timing of the consultation and to the location and condition of adjacent paths and the temporary diversion route. None of their comments are directly relevant to the criteria of whether a diversion is needed to enable the implementation of planning permission.
- 4.1.9 The owner of land immediately adjacent to the path also intends to develop their land and has submitted a planning application reference 19/02081/FU for 322 dwellings and ancillary flexible commercial space. Their site also includes public footpaths which will link to the proposed diverted route at the Cavalier Inn site. Their landscape plan has been designed to reflect this. Their planning application has not yet been determined.

4.1.10 One statutory utility provider responded with details of services located in or near the path to be closed. Northern Powergrid appear to have disused underground cables in the path. The relevant information has been shared with the applicant.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 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. This application was received on 17 January and consultations commenced in April 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. 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. This diversion recognises a non-definitive path and will assist in its protection and recording.

4.3.3 The protection and diversion of the footpath 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.states that 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.

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. 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.

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 The personal information in Background Document C and D of this report have 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 Sections 4.1.4 to 4.1.6. Therefore the public's interests in relation to the diversion have not been affected.
- 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.

In this case, concerns raised by consultees have been addressed and no known significant concerns are outstanding.

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 path shown in Background Document A.

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 non-definitive 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.

7 Background Documents¹

Background Document A – Proposed Diversion Plan

Background Document B1 – Application Plan - Proposed Site Plan

Background Document B2 – Revised Plan of Diversion Route

Background Document C – Leeds Local Access Forum Comments

Background Document D – Police Architectural Liaison Officer Comments

Background Document E - EDCI

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.