

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 Dog and Gun Public House, York Road, Leeds LS9 6NW

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Gipton and Harehills Ward	<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. 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 - (b) to confirm the Order, subject to there being no objections or, in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

1 Purpose of this report

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 Dog and Gun public house, York Road, Leeds, following the granting of Planning Permission for partial demolition of the existing buildings and change of use to form 15 flats with the construction of 12 houses, access road and associated works.

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 Dog and Gun public house 601 York Road, Leeds LS9 6NW. The developer has Planning Permission (reference 18/00777/FU) for partial demolition of the existing buildings and change of use to form 15 flats including two- and three-storey extensions, and the construction of 12 houses, access road and associated works. The proposed site layout and applicant's Statement of Case are Background Documents B1 and B2.
- 2.2 A claimed non-definitive public footpath runs along the north-western boundary of the development site, connecting York Road to a playing field to the north east of the site and then on to Gipton Square.
- 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 York Road for 154 metres in a north-north-easterly direction. The proposed replacement public footpath is shown in Background Document A by a solid green line. It will be 170 metres long. The first 112 metres from York Road to the north-eastern boundary of the development will be two metres wide on the footway of the new estate road. This will be surfaced to adoptable standards. From the boundary of the housing development, the new path will be two metres wide within a wider corridor with a surface of road planings. It will run down a ramped access for 58 metres to merge with the existing path.
- 3.2 The gardens of the new houses, including their associated boundaries would encroach on the existing non-definitive footpath. The development could not be constructed as approved without obstructing the path. The developer's Statement of Case (Background Document B2) explains their reasons for applying for the public path diversion. 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 York Road to the playing field and onward to Gipton Square. 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 to May 2019 with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, adjacent landowners and occupiers, Ward Members for Gipton and Harehills Ward and appropriate Council Departments. No comments were received from Ward Councillors.
- 4.1.3 The playing field to the north-east of the development site is owned by Wades Charity and leased to Leeds City Council. The Parks and Countryside Service manage and maintain the playing field. Access for management purposes has previously been via the public footpath. Separate arrangements are being made between relevant parties for replacement maintenance access on the same alignment as the diverted public footpath. Both Wades Charity and representatives of Parks and Countryside Service have been consulted about the proposed public path diversion and have raised no objections.
- 4.1.4 The Leeds Local Access Forum (LAF) commented that they are disappointed that the diversion is onto estate roads, but raised no objection (Background Document C). This comment reflects national guidance in Defra's Rights of Way Circular 1/09 which discourages diversions on to estate road footways. However, the small size of the site and the garden sizes required by planning have constrained the options for diverting this path. The applicant's Statement of Case (Background Document B2) explains the reasons for this. The LAF does not appear to have made any comments on this aspect at the time that the relevant Planning Application was advertised. The diversion to the front of the properties on the footway of the estate road does enable good visibility and avoids the development of an enclosed tunnel at the rear of properties.
- 4.1.5 The Police Architectural Liaison Officer supports the diversion to the front of the properties as it will increase natural surveillance and be better from both crime and personal safety aspects. (Background Document D).
- 4.1.6 Owners and occupiers of properties adjacent to the existing path were consulted. Thirteen houses on Gipton Approach have gardens which back on to the path. Some are privately owned while others are owned by Leeds City Council and managed by Housing. No comments or objections were received from owners or occupiers of these properties.
- 4.1.7 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 or near the path to be closed. They have not objected to the diversion and the relevant information has been shared with the applicant.

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 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. The final version of this application was received in April 2019 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. This 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 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 Sections 4.1.5 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 – Proposed Site Plan

Background Document B2 – Applicant’s Statement of Case

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.