

**Report of Public Rights of Way Manager**

**Report to Parks and Countryside Management Team**

**Date: 19 July 2019**

**Subject: Diversion of Wetherby Bridleway No. 9**

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|--|---|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>Wetherby |
| 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?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |

**Summary of main issues**

1. To seek authority for the making of a Public Path Diversion Order to divert part of a public bridleway off the B1224 York Road at Swinnow Hill, and thus modify the Definitive Map and Statement of Public Rights of Way following an application under Section 119 of the Highways Act 1980 from the landowner.

**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 119 of the Highways Act 1980, in respect of a public bridleway shown on 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  - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 119 of the Highways Act 1980 to divert part of Wetherby Bridleway No. 9 at Swinnow Hill

## **2 Background information**

- 2.1 Wetherby Bridleway No. 9 runs from the B1224 York Road near the roundabout at the Wetherby Race Course to Sandbeck Lane, Wetherby Bridleway No. 6 at Ingmanthorpe Park. Part of it was previously diverted in 1985 to remove the crossfield section and to move it further away from the house at Swinnow Hill. The original line of the bridleway is shown on Background Document B. The section now proposed to be diverted has not previously been diverted and is its original line.

## **3 Main issues**

- 3.1 The section of Wetherby Bridleway No. 9 proposed for diversion runs along the tarmacked access track to a house called Swinnow Hill. The new owner of the property would like to divert the bridleway off the access track and has suggested an alternative route that he believes will be more attractive to users of the public bridleway.
- 3.2 The proposed diversion would take the bridleway off the access track along the edge of Turner Woods then looping around the south western corner of the woods and along a wide grass track alongside a drainage ditch and then crossing the ditch on the culvert access. It would be at least three metres wide and have an earth surface.
- 3.3 The section to be closed would be 220 metres long with the new section of bridleway having a length of 424 metres. Although the new section of bridleway would be almost twice as long it would join York Road only 35 metres from Wetherby Bridleway No. 17 which runs across Wetherby Racecourse grounds and the verges on both sides here are fairly wide. Wetherby Bridleway No. 9 currently joins York Road 220 metres from Wetherby Bridleway No. 17 so involves a much longer walk along the roadside than it would be on the proposed diversion route. Therefore, the overall distance for users of the bridleway network would only be 19 metres further on the proposed diversion than the existing routes and would involve 195 metres less travel alongside the road making it a safer route overall.
- 3.4 The nearest bridleway to the east is within North Yorkshire and is over 1.5 kilometres from the existing Wetherby Bridleway No. 9 making it less likely that horse riders would be traveling in this direction and therefore, the increase in distance from this bridleway to the new line of Wetherby Bridleway No. 9 would have less of an impact on bridleway users.
- 3.5 Wetherby Footpath No. 26/ Thorpe Arch Footpath No. 1 is 500 metres to the east of the existing Wetherby Bridleway No. 9 meaning that walkers would have an increase in distance to travel along the road side if they wished to use this footpath. However, this footpath joins Wetherby Bridleway No. 17 627 metres south of York

Road and provides no access to any other recorded public rights of way. Anyone wanting to use Wetherby Footpath No. 26/ Thorpe Arch Footpath No. 1 to reach the same point would be travelling 2,344 metres instead of 662 metres meaning that walkers using Wetherby Bridleway No. 9 are unlikely to choose this route.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 Although consultation is only required with other local authorities consultation was also undertaken with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments.

4.1.2 The Leeds Local Access Forum were overall happy with the proposed diversion and the new route being closer to the bridleway through the racecourse. One member did say it was a shame that the bridleway could not come out directly opposite but felt that the Environment Agency would not grant permission for this. As well as the difficulty in gaining approval the verge in this location is narrower and the cost of doing this would not make the diversion feasible for the landowner or the council.

4.1.3 The local Rambler representative commented that although the section to be closed was an excellent track, it ended on the busy York Road where there is no parking so anyone using it would need to walk or ride along a significant length of busy road to link to other public rights of way. The main advantage of the new route is that it would bring the path much closer to the bridleway on the other side of the road through the race course. As they felt most path users would be coming from Wetherby there would be no significant difference in length.

4.1.4 Both the Leeds Local Access Forum and Rambler felt that the natural surface could require maintenance from mud patches and vegetation. The new path has been recently cleared of vegetation using machinery and due to recent weather ground conditions are soft leading to some muddy patches. However, as confirmed by the Rambler, vegetation is starting to grow back and it is believed that once the vegetation has re-established itself, the amount of use will keep the vegetation low without leading to adverse ground conditions. The rest of the bridleway has a natural surface and is in a good condition.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 A completed EDCI is attached at Background Document C.

### **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. Statement of Action ML4 states that we will concentrate on creating new links to join up the fragmented bridleway network. Statement of Action PI13 states that we will seek to improve path surfaces and drainage but there will be a presumption against using tarmac to resurface bridleways. Although the proposed diversion is not a new link it does reduce the distance of roadside use

between two bridleways improving the network for both horse riders and walkers and also removes a length of tarmacked bridleway which horse riders find less appealing and which can be slippery for horses.

#### **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 landowner. Public Inquiry will cost approximately between £4000 and £8000.

4.4.3 Compensation can be claimed for the making of Diversion Orders under section 28 of the Highways Act 1980. The landowner has agreed not to claim for compensation and the diversion is in his interests. We do not have to confirm the Diversion Order.

4.4.4 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 of public rights of way under Section 119 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 (aa).

4.5.2 Section 119 of the Highways Act 1980 enables a Council as respects to a footpath, bridleway or restricted byway in their area that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted, to make a Diversion Order.

4.5.3 The Secretary of State shall not confirm a Diversion Order and the Council shall not confirm an unopposed Diversion Order unless they are satisfied that the diversion is expedient in the interests of the owner, lessee or occupier of the land or the public and further that the path or way will not be substantially less convenient to the public and that it is expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole, the coming into operation of the order would have as respects other land served by the existing public rights of way and the new public right of way by the order would have as respect to the land over which the right is so created and any land held with it taking into account any compensation.

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 Although no objections have been received at this time, objections may still be received within the four week consultation period. This could result in a Public Inquiry and would include any associated costs.

## **5 Conclusions**

- 5.1 Although primarily in the interest of the landowner to remove the bridleway from his access track, the diversion of the bridleway does make it more appealing to walkers and riders as it provides a more natural surface through a wooded area and brings the bridleway out almost directly opposite another bridleway significantly reducing the amount of roadside walking or riding along a busy road.

## **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 119 of the Highways Act 1980, in respect of a public bridleway shown on 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>**

- 7.1 Background Document A Proposed Diversion
- 7.2 Background Document B Original Line of the Bridleway
- 7.3 Background Document C 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.