

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 25th October 2019

Subject: Diversion of Claimed Public Footpath at South Park Mills, Hare Lane, Pudsey LS28 8DR

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Pudsey	<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 Documents C, D, E and F	<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 claimed public footpath as 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 - (b) to confirm the order, subject to there being no objections or, in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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

- 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 a claimed public footpath following the granting of Planning Permission to construct a residential development of 21 dwellings on the site of South Park Mills, Hare Lane, Pudsey.

2 Background information

- 2.1 The path shown in red on the plan in Background Document A was claimed as a public footpath in 2009 through an application to the Council for a Definitive Map Modification Order (DMMO). Previously, between 1982 and 2004, there had been a permissive footpath through the site. Permission to use the path was withdrawn in 2004 and it was blocked with gates and notices. This led to a member of the public submitting the DMMO application, supported by user evidence. The evidence alleged that the route had been used by the public on foot for many years prior to the Permissive Path Agreement, thus establishing a public right of way. The Council has not yet formally determined the DMMO application but the applicant for the current proposed diversion has accepted the route.
- 2.2 The claimed path links Hare Lane to the Leeds Country Way which runs on the route of Leeds Public Footpath No. 59 close to Pudsey Beck and is reported to be well used by walkers despite the gates and notices referred to above.
- 2.3 The application for diversion has been made by a developer who has Outline Planning Permission for residential development for up to 21 dwellings under planning reference 15/00169/OT. A further planning application has been submitted for reserved matters including Access, Appearance, Landscaping, Layout and Scale under planning reference 18/05373/RM.
- 2.4 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 applicant's plan showing the proposed layout for the development and the footpath is Background Document B. The formation of a new access road and construction of the new houses will involve changes to the alignment, levels, layout and gradient of the site. This would affect the route of the existing path, which would be at a lower level than the road for its southern section and within the centre of the vehicular road for part of its northern section.
- 3.2 It is therefore necessary to move the footpath to enable the proposed development to be implemented while continuing to allow pedestrians to safely walk from the end of Hare Lane to Pudsey Public Footpath No. 59. A Diversion Order under Section 257 of the Town and Country Planning Act 1990 is therefore proposed to enable the planned development to proceed.

- 3.3 The existing path is shown in Background Document A by solid red line. It runs for 172 metres through a mill yard from its junction with Hare Lane to its junction with Pudsey Public Footpath No. 59 near to Pudsey Beck. It has a hard surface for most of its length.
- 3.4 The proposed replacement footpath is shown in Background Document A by a solid green line. It will run from its junction with Hare Lane following the footway of a new estate road to the end of the road, then through open space to join Pudsey Public Footpath No. 59 near Pudsey Beck. The new path will be 180 metres long and two metres wide. It will have a tarmac surface.

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 or objections and, where possible, to resolve them at an early stage.
- 4.1.2 Consultation for this path order application was carried out in August 2019 with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, the DMMO applicant, landowners, Ward Members for Pudsey Ward and appropriate Council Departments.
- 4.1.3 Support of the proposed diversion were received from the Police Architectural Liaison Officer and the Leeds Group of the Ramblers.
- 4.1.4 Comments were received from Councillor Seary. His comments are in Background Document C. He is happy with the proposal as long as additional signage is added to the route. This has been clarified as being a request for appropriate "Public Footpath" signs and waymarks.
- 4.1.5 In this case, the council would provide a public footpath sign for the developer to attach to a post or lamppost where the segregated path leaves the new estate road. A way-marker would also be provided for the developer to attach to the fence or a post at the junction of the new path with Pudsey Footpath No. 59. The applicant has indicated that they are prepared to install these signs.
- 4.1.6 Comments were received from Leeds Local Access Forum (LAF) raising concerns and queries about aspects of the proposal. Their comments are in Background Document D. The application was also discussed at the LAF meeting on 17 September 2019 at which the Public Rights of Way Manager was present.
- 4.1.7 The LAF's first concern is that the new path will be on the footway of the new road rather than in a segregated route. They have suggested that either an alternative route could be along the eastern edge of the site or that the existing route should be retained on part of its original length at the southwestern end of the site.
- 4.1.8 The options for different alignments for the diverted path were considered by Public Rights of Way Officers and the developer prior to the diversion order application. This is a small site with constraints of gradient and space. The suggested route on the eastern side was considered but would have been located

in a narrow corridor without any overlooking properties for natural surveillance. In addition, the applicant has stated that, on the eastern edge of the site, as much as possible of the existing soft landscaping will be retained following discussions with the Council's Landscape and Ecology teams.

- 4.1.9 The arrangement of the new path to the north of Point B (in Background Document B) was proposed in the application as being the most logical route for people to follow. An alignment further west would place the path at a lower level, with risks of becoming waterlogged, and would result in pedestrians having to rise up steeper gradients to reach the road. The diverted route for the path as shown by the green line in Background Document A is therefore considered by the applicant and officers to be the best option on balance.
- 4.1.10 The LAF also noted that Hare Lane north of the development is not on the List of Streets Maintainable at Public Expense and asked whether this has any implications for the diversion.
- 4.1.11 The fact that Hare Lane is not adopted is being addressed through the development process and formal agreements are to be put in place to ensure its future maintenance. The new estate road and footways will be built to adoptable standards and may be adoptable by the Council. Even if the new road is not adopted, the footway over which the diverted path would run would be maintained by the Council as a consequence of the diversion order. The maintenance responsibility for the existing Hare Lane does not, therefore have any implications for the diversion order.
- 4.1.12 An objection was received from the DMMO applicant. The objection is in Background Document E. He comments that the path is the only access point connecting Hare Lane to the Leeds Country Way, which runs along Pudsey Footpath No. 59. He states that he objects to any change in the route of the path but does not provide any relevant grounds for his objection.
- 4.1.13 This objection does not challenge the grounds for a diversion order under Section 257 of Town and Country Planning Act 1990. As stated in paragraph 3.1, above, changes in gradient, levels and alignment of the access road would impact on the current walked route of the path and these mean that keeping the path on its existing route would be impracticable. If the proposed development goes ahead, part of the existing line of the path will be within the centre of the estate road rather than on the designated footway, and part will be at a lower level than the proposed new carriageway.
- 4.1.14 The DMMO applicant also emphasised the need to formally record the footpath for which he submitted the DMMO application.
- 4.1.15 The Public Rights of Way Section has a backlog of such applications and it has not yet been possible to carry out a full assessment of the evidence for this path. In applying for the diversion, the developer has demonstrated their acceptance of the public right of way. Formal recording of the route is not necessary before a diversion order proceeds. If the diversion order is successful, the diverted route will be a public footpath and the Council will then be able to use a Legal Event Modification Order to formally record the new path on the Definitive Map as a

public footpath. This would refer to the diversion order as evidence of a legal event creating the route and would secure preservation of access from Hare Lane to the Leeds Country Way.

- 4.1.16 The Leeds Group of the Ramblers have expressed their support for the proposed diversion, but they have also stated that they are opposed to any suggestion that there should be any temporary closure of the existing route during construction works on site. Their comments are in Background Document F.
- 4.1.17 Whether or not a path is temporarily closed during construction works is not a matter that should influence the decision on the application for a permanent diversion. It is not always possible to keep a route open during construction work. Public safety considerations relating to contractors' machinery, vehicles, material storage and working practices may mean that it is necessary for the developer to apply to the Council for a Temporary Traffic Regulation Order to exclude pedestrians from the working area. The developer's agent has stated that their client would look to avoid any temporary closure unless absolutely necessary.
- 4.1.18 Consultation with statutory utilities undertakers resulted in one objection, from Openreach. Their objection is on the grounds that they have apparatus in the area of the existing path which would have to be diverted. Their objection letter and plan are in Background Documents G1 and G2.
- 4.1.19 This objection has been passed to the developer's agent for further liaison with Openreach. Public Path Orders under Section 257 of the Town and Country Planning Act include a standard clause to protect access to the statutory undertakers' apparatus which should be sufficient to resolve this objection.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 A completed EDCI is attached at Background Document H.

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 application for this order was made in June 2019 and consultations commenced in August 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. A diversion order for this path will ensure that the non-definitive, claimed path is recognised and will assist in the paths protection and recording.
- 4.3.3 The protection and diversion of the footpath affected by this development maintains connectivity for pedestrians between Hare Lane and the Leeds Country Way on Pudsey Footpath No. 59. This makes a positive contribution to realisation

of the walking aspects of strategies including the Green Infrastructure Strategy, Best Council Plan 2015-20, and 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 Documents C, D, E and F of this report has been identified as being exempt under Access in Information Procedures Rule Number 10.4 (1 & 2) because they contain 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 Section 4.1 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 to be made when the order is formally advertised. The pre-order consultations detailed in Section 4.1 above 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 if necessary.
- 4.6.2 In this case, comments have been made but none of these challenges the need for an Order under the powers described in Paragraph 4.5.2 above.

5 Conclusions

- 5.1 It is necessary to move the footpath to enable the proposed development to be implemented while continuing to allow pedestrians to safely walk from the end of Hare Lane to Pudsey Public Footpath No. 59. A Diversion Order under Section 257 of the Town and Country Planning Act 1990 is therefore appropriate and necessary to enable the proposed development to proceed.
- 5.2 Consultation has been carried out for a proposed public path diversion order. Comments have been received but none challenge the grounds for making and advertising a public path diversion order under Section 257 of the 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 claimed public footpath as 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 – Diversion Plan

Background Document B – Applicants Site Layout Plan

Background Document C – Comments from Cllr Seary

Background Document D - Comments from Leeds Local Access Forum

Background Document E – Objection from DMMO Applicant

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.

Background Document F - Support and Comment from Leeds Group, the Ramblers

Background Document G – Objection from Openreach

Background Document H – EDCI