

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 14th February 2020

Subject: Diversion of Public Footpaths from Baileys Lane to Seacroft Crescent and to the rear of Queensview, Seacroft

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Killingbeck and Seacroft	<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 D, E1, E2, F and G	<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 two unrecorded public footpaths, 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 - (b) to confirm the order, subject to there being no objections or, in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 two public footpaths following the granting of Planning Permission to construct 49 dwellings, new public open space and associated highway improvements on a site between Seacroft Crescent and Baileys Lane, Seacroft.

2 Background information

- 2.1 The application for diversion has been made by a developer who has Planning Permission for development of 49 dwellings, new public open space and associated highway improvements under planning reference 16/07382/FU.
- 2.2 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 A. The formation of new access roads and construction of the new houses, as proposed under the planning approval, will involve changes to the alignment and levels of the site and would result in 13 of the proposed houses being constructed on the line of the existing paths.
- 3.2 Implementation of this approval cannot be achieved without obstructing parts of the public footpaths and changing the levels and gradients of other parts of them. It is therefore necessary to move the footpaths to enable the proposed development to be implemented while continuing to provide pedestrian routes from Baileys Lane to Seacroft Crescent and to the access road at the rear of Queensview. A Diversion Order under Section 257 of the Town and Country Planning Act 1990 is proposed to enable the planned development to proceed.
- 3.3 The existing path is shown in Background Document A by a blue line. It runs from Seacroft Crescent to Baileys Lane for approximately 170 metres with a branch path running for approximately 30 metres to connect with an access road at the rear of Queensview flats. The access road leads to Brooklands Avenue. The existing paths have a mainly tarmac surface with one section of approximately 25 metres of concrete flags.
- 3.4 The proposed replacement footpaths are shown in Background Document A by a solid pink line. The main path will run from its junction with Seacroft Crescent for approximately 195 metres to Baileys Lane, with a link path for 55 metres to the access road at the rear of Queensview. The new paths will be surfaced to adoptable standards and will run partly through landscaped open space and partly on tarmacked and block paved footways of new access roads.
- 3.5 The changes in levels and gradients on site will result in the western end of the new path having to traverse a steeper slope than the existing path. This will be

accommodated with two flights of steps on the direct route. An additional ramped route will also be provided to the south of the steps as shown in Background Document A.

3.6 All the sections of new path will be 2 metres wide.

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 October 2019 with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, the DMMO applicant, landowners, Ward Members for Killingbeck and Seacroft Ward Queens View Tenants Association and appropriate Council Departments.

4.1.3 The consultation, based on information from the applicant and planning application approved plans, indicated that the slope at the western end of the new path would be accommodated with two flights of steps. At that stage there was no reference to any alternative ramp. The consultation plans used are in Background Documents B and C.

4.1.4 Several consultees were concerned about the inclusion of the steps on the replacement path. Relevant comments include those from Ward Cllr David Jenkins (Background Document D), Sustrans, (Background Documents E1 and E2), and Leeds Local Access Forum (Background Document F). Consultees considered that the steps would inhibit use by people with prams, wheelchairs and other mobility concerns. Some of the comments from Sustrans consultees also stated that steps would prevent access by cycle. As a footpath, the new route is not intended for use by cyclists, however the other accessibility concerns are relevant.

4.1.5 Further information and comments received from Council Officers in Highways indicated that a ramped access is planned in addition to the steps. The applicant has supplied a new plan of the diversion as shown in Background Document A and described in paragraphs 3.3 to 3.6. The revised plan was shared with those consultees who had expressed concern about the steps with an extended period of consultation for any further comments to be made.

4.1.6 No further comments relating to the steps or ramp were received.

4.1.7 In addition to the comments about the steps, Cllr Jenkins raised queries about the type of lighting to be used and the potential for the new paths to be used by motorbikes.

4.1.8 The type of lighting to be provided on the new paths is not a factor which is directly relevant to a decision on the diversion order application. The applicant has however been asked to provide information which can be passed on to the Councillor.

- 4.1.9 Cllr Jenkins suggested that barriers or chicanes may be appropriate to prevent motor cycle access. No motorcycle barriers are provided on the existing paths and none are currently shown on plans for the diverted paths. It is not clear whether the Councillor's concern is related to any existing problems on the site or a concern about as yet unrealised potential issues. The overall character of the site is changing from a large grassed open space to a residential area with smaller open spaces. There will be a much greater degree of natural surveillance by residents and pedestrians on and around the footpaths in the area, which is likely to act as a deterrent to any miss-use. Installation of barriers where there is no known problem could be an impediment to some legitimate users of the paths. If miss-use of the paths by motorcycles does occur in the future, the Council and the Police have powers to take preventative or responsive action once the nature, intensity and location of the problem is known.
- 4.1.10 Two consultees raised concerns about the development having commenced before the consultation about the public path diversion was carried out. (Background Documents F and G). The Public Rights of Way Section has been involved in discussions with the developer about this site since the early stages of plans for its development. They successfully negotiated for part of the proposed route to be placed through Public Open Space. The developer did apply for the Public Path Diversion Order at an early stage but the application had to be put on hold for several months as there was uncertainty about the final layout due to gradient restrictions. Consultation on the path diversion commenced once the developers were sure there would be no further changes to the layout.
- 4.1.11 Positive comments about the diversion were received from Leeds Local Access Forum in addition to their comments referred to in paragraph 4.1.4. They welcome the use of green space through which one section of the new path passes.
- 4.1.12 Two of the statutory utilities undertakers consulted returned plans showing apparatus on or near the paths. Neither objected to the proposal or raised any concerns about future access to their apparatus.

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 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 November 2018 but was put on hold at the request of the developer while other issues on the site were resolved. Consultations eventually commenced in October 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 these paths, as shown in Background Document A, will provide suitable alternative routes, will ensure that these non-definitive paths are recognised and will assist in the paths' protection and recording.

- 4.3.3 The protection and diversion of the footpaths affected by this development maintains connectivity for pedestrians between Seacroft Crescent and Baileys Lane and Brooklands Avenue. 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 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 in Background Documents D, E1, E2, F and G, 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 and the proposals updated and clarified. There are no remaining comments which challenge the need for an Order under the powers described in Paragraph 4.5.2 above.

5 Conclusions

- 5.1 It is necessary to divert these footpaths to enable the proposed development to be implemented while continuing to allow pedestrians to provide a pedestrian route from Seacroft Crescent to Baileys Lane and to the access road at the rear of Queensview. 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 paths 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 two unrecorded 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 – Updated Existing and Proposed routes

Background Document B – Site Layout as sent with October 2019 consultation

Background Document C – Diversion Plan as sent with October 2019 consultation

Background Document D - Comments from Cllr Jenkins

Background Document E1 – Comments from Sustrans consultee 1

Background Document E2– Comments from Sustrans consultee 2

Background Document F – Comments from Leeds Local Access Forum

Background Document G – Comments from Ramblers Leeds Group,

Background Document H - 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.