

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 24th July 2020

Subject: Diversion of Otley Public Footpath No. 5

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

Summary of main issues

- 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

- The Natural Environment Manager is requested to authorise the City Solicitor:
 - 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 part of Otley Footpath No. 5 shown on the maps attached at Background Document A

and

 - to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 Otley Public Footpath No. 5 following the granting of Planning Permission for a flood alleviation scheme at Billams Hill, Otley as shown on Background Document A.

2 Background information

- 2.1 Works are required to improve flood alleviation within Otley by Leeds City Council. The works include construction of a flood embankment that will cross the current alignment of Otley Public Footpath No. 5. In order to comply with DDA requirements regarding gradient and to maintain the integrity of the flood alleviation scheme part of the footpath requires diversion. Planning permission has been granted for the flood alleviation scheme reference 19/06219. A detailed plan of the proposed works is shown as Background Document B.

3 Main issues

- 3.1 The existing footpath has recorded width of 2.1 metres and a recorded surface of rolled ash. The footpath has, at some point in the past, been resurfaced with tarmac but is starting to deteriorate along the section to be diverted. It has been flooded several times in the last few years which has caused damage to the surface causing it to break up in places and required emergency repairs, particularly after the floods earlier this year. The length of footpath to be extinguished is 79 metres. It runs across rough open ground that was previously a cattle market.
- 3.2 The proposed new route will have a tarmac surface and a width of 2 metres. It will cross run through an area of open space where landscaping and habitat enhancements are proposed parallel to the new flood embankment approximately 10 to 20 metres from the base. It will then run on a footway along the improved access to the Otley Sailing Club. The maximum gradient of the embankment will be 1 in 20 and there will be a handrail along the rear of the footway alongside the embankment. The new section of footpath will be 106 metres long. Although slightly longer this is not considered to make the path less convenient to the public and the improved surface and landscape improvements provide by the scheme will make it easier to use and more enjoyable.

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 user groups and Leeds Local Access Forum were happy with the proposed scheme and viewed it as an improvement on the existing footpath. The Peak and Northern Footpath Society did request that we ensure that any temporary

diversion during the works adequately signed that that if the footpath signpost is removed it is replaced following the completion of the works.

- 4.1.3 Cllrs. Campbell, Cllr. Downes and Otley Town Council have objected on the grounds that they believe that the diversion will be the safest or most convenient route, primarily because they believe it should join Billams Hill at the existing controlled crossing point. This crossing point is 30 metres north-west of where the existing and proposed footpath join Billams Hill. This Public Path Diversion Order Application is to be made under the Town and Country Planning Act 1990 to allow development which has been granted planning permission to go ahead, therefore the proposed diversion considered needs to be in accordance with the planning permission. If alternative routes were preferred they needed to be raised during the planning consultation so that an amendment to the development design could have been considered.
- 4.1.4 Prior to the submission of the Planning Application, several different options were considered for the design of the Flood Alleviation Scheme. The Public Rights of Way Section advised that a couple of these options would not be supported due to increase in length, reduced convenience or safety grounds. One of the preferred options did have the public footpath crossing the embankment at a similar point to the existing footpath going diagonally across it on the west side and down a ramp on the east side joining Billams Hill at the pedestrian crossing. However, this option would add significant costs to the capital works over alternative schemes. This diversion would also take the footpath onto land owned by another party would have been able to claim compensation for loss of value and disturbance to their enjoyment of their land further increasing the costs of this option.
- 4.1.5 It would also make the long-term maintenance of the flood risk asset more complex leading to more costs and liabilities as well as having an impact on the realignment and daylighting of the beck and maintenance access.
- 4.1.6 They also had discussions with Highways regarding road safety where the footpath joins Billams Hill and there were no recorded accidents involving pedestrians going back two decades despite the existing footpath joining the road at the same point. Therefore, this option was discounted by Flood Risk Management for these reasons and in line with their ethos of spending public money wisely.
- 4.1.7 The Public Rights of Way Section do not consider that extending the footpath along the inside of the wall alongside Billams Hill would be in the interests of the public and it would be a duplication of the roadside footway along Billams Hill. It would add 30 metres to the length of the diversion, increasing the distance travelled to 60 metres for those heading into Otley which is not in the interests of less mobile members of the public and is likely to have resulted in objections from user groups. Those who wish to use the crossing point can still use the roadside footway to safely reach the crossing and those who prefer the shorter route would just join Billams Hill via the access road even if a footpath to the crossing was provided and if fencing or walls prevented this, those who could are likely to just climb over them increasing risk. Therefore, the proposed diversion is considered

to be the best option in terms of the approved planning permission and in terms of providing and maintaining a viable, cost effective Flood Defence Scheme.

4.1.8 The Bridges Section advised that the bridge over the beck may be affected and that we should contact the maintaining agent. The bridge is recorded with Parks and Countryside, who have no objections to the scheme, and is the responsibility of the Public Rights of Way Section who will make the Diversion Order. Prior to the Diversion Order becoming operative the Public Rights of Way Section will approve the final works.

4.1.9 Flood Risk Management initially advised that due to a culvert in the area approval for the works would be required from them and advised on restrictions to any works. The flood alleviation scheme has been commissioned by the Flood Risk Management Section and who will approve the design and works required and they have since confirmed that the works will not affect the culvert.

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 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.

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.

4.3.3 The Leeds Transport Strategy, Local Transport Plan, Climate Change Plan, Best Council Plan Leeds City Region Green Infrastructure Strategy, Leeds Vision 2030 and the Leeds Health and Wellbeing Strategy all encourage and promote healthy active travel with improved walking and cycling facilities particularly through green space, for health and wellbeing, climate change and environmental benefits. This footpath is already a well-used walking route and the improvements to the surface and landscaping of the area from the scheme will enhance this footpath making it more convenient and enjoyable for the public.

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. 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 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 As is always the case there is the potential for objections to the Order. In this case Ward Councillors have objected to the diversion as they would have preferred an alternative scheme that was considered but discounted, prior to the planning application being submitted. There were six objections to the planning application but these did not relate to the diversion of the public right of way. Therefore, there is potential for objections to be received which may lead to a Public Path Diversion Order needing to be submitted to the Planning Inspectorate for determination. The applicants have been made aware of this and the implications on their development.

5 Conclusions

5.1 The diversion of the public footpath is needed to allow the construction of the approved flood alleviation scheme without compromising the integrity of the scheme and to ensure that the footpath complies with DDA requirements. Although the new footpath will be slightly longer the scheme will result in surface improvements and landscape enhancements making the footpath more convenient and enjoyable for path users.

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 part of Otley Footpath No. 5 shown on the maps attached at 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

Background Document B: Proposed Flood Alleviation Scheme

Background Document C: 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.