

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 13th November 2020

Subject: Diversion of parts of Morley Public Footpaths 12, 13 and 15, stopping up of claimed bridleway and improvement by upgrading status of parts of Morley Public Footpaths 15 and 16

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Morley North	<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: 10.4 (1&2) Appendix number: Background Documents C, D, E 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 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 Order in accordance with Section 257 of the Town and Country Planning Act 1990, in respect of the footpaths and bridleways 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 Order under Section 257 of the Town and Country Planning Act 1990 to stop up and divert parts of Morley Public Footpaths Nos. 12, 13 and 15 and claimed public bridleways at Pitty Close Farm following the granting of Planning Permission for residential development, and to improve parts of Morley Public Footpath Nos. 15 and 16 by upgrading to bridleway status.

2 Background information

- 2.1 An application for diversion has been made by a developer who has Planning Permission (reference 16/07987/OT), for a residential development of up to 208 dwellings and associated works. A subsequent Condition Approval, (reference 20/01210/COND), gives planning approval for the proposed public rights of way through the site. The approved development cannot be implemented as approved without obstructing the existing routes of public rights of way on the site. The developer has therefore applied for a permanent diversion of the public rights of way.
- 2.2 Morley Public Footpaths Nos. 12, 13, 15 and 16 are all currently recorded as public footpaths only. However, this does not preclude the possibility that higher rights may exist. The Council has received a large number of evidence forms from horse riders demonstrating strong evidence of use of routes on the site as public bridleways for over 20 years. The claimed bridleway routes include parts of Morley Public Footpaths Nos. 12, 13 and 15, a non-definitive route linking Morley Public Footpath No. 13 to Morley Public Footpath No.16 within the site and Morley Public Footpath No. 16 as it continues from the site boundary southward to Wakefield Road. The claimed bridleways are shown with green cross-bars on the Plan in Background Document A.
- 2.3 Officers have previously discussed the proposals for this site with rights of way user groups and the bridleway claimants. When commenting on the relevant planning applications, Public Rights of Way Officers requested that the developer should upgrade all the public footpaths through the site to bridleways to accommodate the claimed use by horse riders and to provide 3 metre wide routes suitable for use by horse riders, cyclists and pedestrians.
- 2.4 Due to constraints on the site and the planned layout of the development, it will not be possible to construct 3 metre wide bridleways in exactly the same locations as the existing recorded footpaths. It is therefore proposed that the footpaths should be diverted to enable the development to proceed as planned while accommodating public bridleway and footpath rights on new and improved alignments.
- 2.5 In addition to changes within the site, it is proposed that parts of Morley Public Footpaths Nos. 15 and 16 should be upgraded to bridleway status within the site and on their continuation outside the site to connect to Wakefield Road to the south. This would provide an alternative for the claimed bridleway link which is to be stopped up and would create continuity in the bridleway network.

2.6 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. It also contains provisions for the creation or improvement of alternative highways.

3 Main issues

3.1 The sections of existing footpaths and claimed bridleways to be closed are shown on the plan in Background Document A by solid red lines and the proposed new by solid green lines. The existing definitive footpaths have widths of 1.2 metres and earth surfaces. A total of approximately 855 metres of existing route will be stopped up.

3.2 The current recorded routes of Morley Public Footpath Nos. 12 and 15 run through areas of trees and other vegetation on the north-western and north-eastern edges of the development site. It would not be possible to physically construct a 3 metre wide bridleway on the current alignment of either of these routes without impacting on the existing trees, some of which are protected by a Tree Preservation Order. Such impacts also potentially conflict with Leeds Climate Change policies. A diverted route would enable construction of the required width and surface on an appropriate line without affecting the trees.

3.3 The current recorded route of Morley Public Footpath No. 13 crosses the site of the housing development from west to east. The line and level of the existing route will be affected by the development as it runs through the position of several sections of proposed roads, driveways and structures. A diversion is needed to enable the development to proceed while also facilitating the upgrade of the footpath to bridleway.

3.4 A claimed public bridleway runs from the junction of Morley Public Footpaths Nos. 13 and 15 in a southerly then easterly direction to connect with Morley Public Footpath No. 16. This route is not formally recorded on the Definitive Map but has been claimed as a bridleway by users and appears to be well used. It runs through the proposed location of several houses, gardens and sections of road. The closure of this section of route is therefore required to enable the development to proceed.

3.5 A short section of new path from the rear of 41 Spring Gardens to its junction with the new route for the east-west path no.13 will be a public footpath 2 metres wide.

3.6 All the other new routes will be bridleways. The new routes for Morley Public Bridleways Nos. 12 and 13 will be 3 metres wide. The new route of Morley Public Bridleway No. 15 from its junction with Bridleway No. 12 to its junction with Bridleway No. 13 will also be 3 metres wide.

3.7 The alternative route for the claimed non-definitive bridleway will be on the route of part of Morley Public Footpath No.15, from its junction with Morley Public Footpath No. 13 in a south-easterly direction to Morley Public Footpath No.16 near Pitty Close Farm, then continuing on the route of Morley Public Footpath No.16, in a generally southerly direction to Wakefield Road. These routes are

currently recorded as footpaths but have also been claimed to be public bridleways. As a replacement for the bridleway described in paragraph 3.4 above, these sections of footpath will be formally upgraded from 1.2 metre wide footpaths to bridleways for the full available width of the track.

- 3.8 The section of upgraded Morley Public Bridleway No. 15 from its junction with Bridleway No. 13 to Bridleway No.16 is constrained between fences and hedges so that the maximum width which can be attained, after pruning back the hedge will be less than three metres. Alternative Options for diverting this section within the development site have been explored, as described in paragraphs 4.1.10 to 4.1.16, below but constraints of space and gradient mean provision of a segregated route for a diversion would not be possible.
- 3.9 All new routes within the development site will be constructed with timber edgings and self-binding gravel surface. In total, approximately 680 metres of diverted route will be created and approximately 380 metres of existing Morley Public Footpath Nos. 15 and 16 will be upgraded in status to bridleway.
- 3.10 The diversion of footpaths and upgrading to bridleway status will facilitate construction of 3 metre wide bridleways on the on-site routes which avoid the need to remove existing trees, will enable the development to proceed without obstructing public rights of way and will improve the connectivity of the public rights of way network for walkers, horse riders and cyclists. This will acknowledge the claimed bridleway status of the routes, provide good quality bridleways, mainly on vehicle-free routes and enhance the convenience and enjoyment of members of the public using the public rights of way network for recreation and for sustainable transport. This will benefit people from the local area, visitors and those who will live in the new houses.
- 3.11 Morley Public footpaths Nos. 12, 13, 15 and the non-definitive bridleway are affected by the proposed development which could not proceed as approved without obstructing the routes. It is therefore necessary to divert these routes and to improve and upgrade the status of parts of Morley Public Footpaths Nos. 15 and 16 to enable the development to proceed while maintaining connectivity for footpath and bridleway users.
- 3.12 A Public Path Order under Section 257 of the Town and Country Planning Act 1990 is therefore appropriate 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 potential concerns and objections to be identified and, if possible, resolved at an early stage.
- 4.1.2 Consultation for this path order application was carried out in April to June 2020 with prescribed rights of way organisations, local footpath and bridleway groups, landowners, Ward Members for Morley North Ward, Drighlington Parish Council and relevant Council Departments. The extended timescale for consultation

responses was given due to the effect of restrictions imposed during the COVID 19 outbreak. This consultation was based on the plans and schedule in Background Documents A and B.

- 4.1.3 Comments, queries and concerns were received from Councillor Hutchison, Councillor Finnigan, British Horse Society, Ramblers, Peak and Northern Footpaths Society, and four adjacent landowners. These are covered in paragraphs 4.1.4 to 4.1.30 below. Consultees have been provided with clarification and further details in response to their questions where necessary and no further comments or objections have been raised by them.
- 4.1.4 Comments in support of the creation of public bridleways in substitution for footpaths were received from two horse riding representatives. One horse rider stated that, due to the large number of riders in the area, the new bridleways would be very welcome. They would increase connectivity with existing bridleways and reduce riding on roads.
- 4.1.5 A representative of South Pennine Packhorse Trails Trust stated that the creation of the new bridleways all seem appropriate to the needs of the public and the new residents.
- 4.1.6 Ward Councillor Andy Hutchinson (Background Document C) stated that he is concerned that part of the new bridleway will be on land which is not owned by Miller Homes, but is on land owned by the owners of Pitty Close Farm. This aspect is discussed further in paragraphs 4.1.10 to 4.1.16, below.
- 4.1.7 Ward Councillor Robert Finnigan (Background Document D1) initially stated that he is happy with the proposal but would want clear signage so both walkers and horse riders are clear about their rights and responsibilities. Standard public rights of way footpath and bridleway signs will be erected at the ends of the paths and at junctions where required.
- 4.1.8 Later, after receiving a copy of Councillor Hutchison's comments, Councillor Finnigan also stated that he supports those comments (Background Document D2).
- 4.1.9 The owners of Pitty Close Farm commented by telephone that they do not object to the changes if the new routes are not on their land. They also requested a site visit at which they expressed their concerns about safety aspects of upgrading the track over which Morley Public Footpath No. 16 runs adjacent to Pitty Close Farm. They use this route as access to their property and consider there is potential for conflict between bridleway users and farm vehicles. They were also concerned about the impact on trees which may need to be cut back to enable use of the route as a bridleway. They suggested an alternative for part of the route which would reduce both the impact on the trees and the potential for conflict with farm vehicles. Their concerns are summarised in Background Document E.
- 4.1.10 The safety concerns are noted. However, there is evidence that part of this route is already used by horse riders and no known instances of conflict with vehicles have been reported.

- 4.1.11 Possibilities for creating an alternative new bridleway route within the development site to avoid having to create a 3 metre bridleway along the hedged section of Morley Public Footpath Nos. 15 and 16 have been explored with the developers. However, the available space and gradients within the site do not make this possible.
- 4.1.12 The developer has carried out a chained survey of the existing route in this area and, apart from a few pinch-points, a width of two metres or greater would be available if the hedge was pruned back. Background Document F shows the survey results in detail. As this will only be a short section of the overall bridleway this should be an acceptable situation.
- 4.1.13 The owners of Pitty Close Farm also refer in point 4 of their email (Background Document E) to a gate on the route, to the south of the farm. The gate referred to is locked and obstructed with a small bypass provided. This would need to be improved to make the route fully accessible to bridleway users.
- 4.1.14 Land Registry details demonstrate that the ownership of Pitty Close Farm does not include the track itself. Their ownership boundary is recorded as being the eastern boundary of the track. Part of the track is owned as part of the development site, as shown by the boundary recorded in Background Document F and the southern section, approximately 200 metres to Wakefield Road, is not registered to any landowner.
- 4.1.15 The fact that some of the land over which the proposed bridleway upgrade will run is not registered to any owner is not a barrier to the upgrade. It does, however mean that the authority will need to seek dispensation from the Secretary of State to post additional notices on site when the order is advertised.
- 4.1.16 The British Horse Society's Access Officer requested that rubber-based surfacing should be considered instead of crushed stone. Such surfaces do have benefits but, as this site is fairly flat, wash-off of stone surfacing is unlikely to be an issue. In this setting it may also lead to increased speed by cyclists, resulting in conflict with other bridleway users.
- 4.1.17 The Footpaths Officer for Leeds Group of the Ramblers commented that, in general, the proposed changes are acceptable to them and that they note with approval that efforts have been made to run the path lines through green corridors.
- 4.1.18 Leeds Ramblers group also commented on small elements of the network on and adjacent to the development site. These included a question about the proposed status of the western portion of Morley Public Footpath No. 13 outside the development site, with concerns that users will assume that it is a bridleway, even if it this is not upgraded as part of this order.
- 4.1.19 This path is included in the user evidence for a bridleway claim from Summerbank Close to the junction with Morley Public Footpath No. 15. The developers have accepted that the evidence supports bridleway rights across their site. However, the section referred to in this comment is outside the developers control and the

evidence for the continuation of the route will require further investigation by Public Rights of Way Officers in due course.

- 4.1.20 Leeds Ramblers also noted two sections of path that have been omitted from the developer's site plan. These are the eastern portion of Morley Public Footpath No.13, where it continues from the diverted routes to the site boundary and the south west branch of Morley Public Footpath No. 16. These sections of definitive footpath do not form part of the diversion proposal and have been brought to the developer's attention.
- 4.1.21 Leeds Ramblers final point refers to Morley Public Footpath No. 10 on the south west side of the site. Ramblers are concerned that any improvements to this path, which will remain on its current line as a footpath, would encourage cycling. Officers have commented that the physical characteristics of this path should be sufficient to deter cycling. If cycling were to become a problem, access control structures could be considered in future.
- 4.1.22 The Peak and Northern Footpaths Society (PNFS) questioned whether measures need to be taken to prevent access on to the rights of way by unauthorised users such as motorcyclists. This concern does not appear to relate to any known misuse of the existing routes. To take measures such as erecting barriers in anticipation of unproven concerns would be disproportionate and could potentially limit access for legitimate users. The existence of new housing will enhance natural surveillance of the routes. However, if problems do occur in the future, suitable barriers or other measures could be considered at that time.
- 4.1.23 PNFS also asked questions about proposals for dedication of other paths within the site and about future maintenance of trees within the site. These aspects have been discussed with the developer and they have confirmed that they do not intend to dedicate the internal paths. These paths and the trees within the site will be maintained by a management company when the developer has completed their work on the site.
- 4.1.24 The owner of a property at the western end of the affected part of Morley Public Footpath No. 13 commented that the short link from Spring Gardens into the new bridleway network should be kept as a footpath rather than being upgraded. His comments and a plan showing the section of path in detail are in Background Document G. This has been investigated and discussed with the developer and agreed that this small section will remain as footpath only.
- 4.1.25 The same resident has also requested that a sign should be placed at the junction of this path with Spring Gardens to ensure that users are aware that it is not a bridleway. Standard public footpath and bridleway signs will be erected at the ends and junctions of paths where required, following normal practice. Additional signage would only be considered if there was a proven problem.
- 4.1.26 An owner of property near the southern end of Morley Public Footpath No. 16 commented that the additional access resulting from upgrading Footpath No. 16 to bridleway could increase misuse of the route and lead to issues of security and privacy due to people accessing adjacent gardens without consent. She was also

concerned about potential increases in anti-social behaviour on rocks adjacent to the route and loss of parking space if the route is widened.

- 4.1.27 The rocks, parking area and gardens are not within the width of the track which is to be upgraded to bridleway. There is no intention to change the physical width of the track and use of the route by horse riders is already demonstrated by the user evidence. Therefore, this resident's concerns do not appear to be directly relevant to the proposed path changes.
- 4.1.28 An adjacent landowner near the northern site boundary raised concerns about the proposed surface of his private access and the impact of the development on trees on the site. His concerns do not relate to the sections of path to be closed or created. The resident would need to discuss any impact the development may have on his private access with the developers. The concerns about future maintenance of the trees are also not directly a public rights of way matter. Trees within the development site will be maintained by a management company when the developer has completed their work on the site.
- 4.1.29 No comments were received from the Leeds Local Access Forum.
- 4.1.30 Statutory Utility companies provided information about their apparatus in the area and no objections were received from them.
- 4.1.31 There are no other outstanding comments or objections to challenge the grounds for making a public path order under Section 257 of Town and Country Planning Act 1990.

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. This application was received in February 2020. An extended consultation period was provided for consultees due to the impact of Covid19 restrictions. Subsequent site meetings, discussions and investigations in response to comments received have resulted a longer timescale before determination of the application.
- 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 and 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. The proposed diversions and upgrade to bridleway status acknowledge the claimed non-definitive bridleways through the site and will create a network of bridleway routes, maintaining connectivity and providing suitable and appropriate alternative routes.

4.3.3 The protection and diversion of the footpaths and claimed bridleways affected by this development provides segregated facilities and maintains connectivity for pedestrians and riders. This makes a positive contribution to providing and improving off-road horse riding, cycling and walking facilities for healthy active travel and access to green spaces. The diversion therefore contributes to the realisation of walking and riding aspects of the Leeds Transport Strategy, The Local Transport Plan 3 2011-2026 proposal 22, The Climate Change Plan, Best Council plan, Leeds City Region Green Infrastructure Strategy 2010 Objective 3 and Leeds Vision 2030, the Parks and Green Space Strategy proposals 19 and 22.

4.4 Resources and Value for Money

4.4.1 The cost of making and advertising the necessary Public Path Order is to be met by the developer.

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 An order made under Section 257 may also provide for the creation of an alternative highway for use as a replacement for the one to be stopped up or diverted, or for the improvement of an existing highway.

4.5.4 The personal information in Background Documents C, D, E, and G 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 4.1.3 to 4.1.31 and therefore the public's interests in relation to the diversion have not been affected.

- 4.5.5 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 public path orders when formally advertised. This is particularly so where the stopping up or diversion is part of a large development and where site constraints mean that ideal outcomes cannot be achieved. 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 and sharing of relevant information with the consultees.

4.6.2 In this case, concerns raised by consultees have been addressed as far as possible within the constraints of the site. The unavoidable reduced width of one section of bridleway and perceived future problems of conflict between users, may result in objections being made when an order is made. However, none of the comments received in the pre-order consultations challenge the grounds for stopping up and diverting the affected paths and for creating new bridleways as alternative routes by making and advertising a public path order under Section 257 Town and Country Planning Act 1990.

5 Conclusions

5.1 Consultation has been carried out for a proposed public path order which would enable development to proceed while ensuring that appropriate routes are available for public footpath and bridleway users. Comments have been received and addressed as far as possible. There are no outstanding objections to challenge the grounds for making and advertising a public path order under Section 257 Town and Country Planning Act 1990, for parts of Morley Public Footpaths Nos. 12, 13 and 15, and the claimed bridleway and improvement by upgrading status of parts of Morley Public Footpaths Nos. 15 and 16.

6 Recommendations

6.1 The Natural Environment Manager is requested to authorise the City Solicitor:

- (a) to make and advertise a Public Path Order in accordance with Section 257 of the Town and Country Planning Act 1990, in respect of the footpaths and bridleways 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 – Plan of Proposed Path Changes

Background Document B – Site Plan – in two parts - North and South

Background Document C – Comments from Cllr Hutchison

Background Document D – Comments from Cllr Finnigan

Background Document E – Comments from Pitty Close Farm

Background Document F – Developers plan - widths of Path 15 and 16

Background Document G – Comments re: end of Spring Gardens – Email and plan

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.