

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 13th November 2020

Subject: Diversion of Leeds Public Footpath No. 173 (part) at the site of Snittles Farm

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: C, D and E	<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 a public footpath 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 part of Leeds Public Footpath No. 173 at the site of Snittles Farm, Churwell, following the granting of Planning Permission for residential development.

2 Background information

- 2.1 An application for diversion has been made by a developer who has Planning Permission (reference 18/00251/FU), for 97 dwellings with associated access and public open space. A subsequent Conditional Discharge application, reference 19/07897/COND, seeks approval for details of the layout, scale, appearance and landscaping of the development and includes the proposed diverted path on the alignment shown in Background Documents A and B.
- 2.2 A site plan of the proposed development is in Background Document B. The development will involve changes to levels and gradients to enable the construction of new houses. The construction of houses on plots 2 to 6, together with their associated garages, driveways and boundary structures, will directly affect the existing route of Leeds Public Footpath No. 173.
- 2.3 The approved development cannot be implemented without obstructing the existing route of public right of way on the site. The developer has therefore applied for a permanent diversion of the public right of way.
- 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. It also contains provisions for the creation or improvement of alternative highways.

3 Main issues

- 3.1 The section of existing footpath to be closed is shown on the plan in Background Document A by a red dashed line A to B. The existing footpath has a width of 1.2 metres and an earth surface. From A, it runs over an area of wet grassland before climbing a steep slope to B. Approximately 165 metres of existing route will be stopped up.
- 3.2 The proposed new routes are shown by dashed blue lines in Background Document A. New route A to X to C will be approximately 110 metres long and will have a width of 2 metres and a surface of rolled crushed stone with timber edgings. This section of the diversion route and adjacent levels have been specifically designed to avoid steep slopes and to permit easy access, without any steps.
- 3.3 The new route sections C to E to F and C to D will be on roadside footways constructed to adoptable standards. At Point F, the new route will connect to New Village Way. These two sections will be a total of will be approximately 190 metres long.

- 3.4 The new route section D to B will be 2 metres wide and will be approximately 30 metres long. It will be constructed to adoptable standard. This section will connect to the existing continuation of Leeds Public Footpath No. 173 to Digpal Road.
- 3.5 Leeds Public Footpath No. 173 is affected by the proposed development which could not proceed as approved without obstructing the footpath. It is therefore necessary to divert this route and to provide suitable alternative pedestrian access to enable the development to proceed while maintaining connectivity for footpath users.
- 3.6 A Diversion 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 August to September 2020 with prescribed rights of way organisations, local footpath groups, landowners, Ward Members for Morley North Ward, Morley Town Council and relevant City Council Departments. This consultation was based on the plans in Background Documents A and B.
- 4.1.3 Comments, were received from Councillor Finnigan, Peak and Northern Footpaths Society and a representative of a local environmental organisation. These are covered in paragraphs 4.1.5 to 4.1.15 below.
- 4.1.4 The Chair of the Leeds Local Access Forum responded to the consultation to say that the Forum has no comments to make on these proposals.
- 4.1.5 Councillor Finnigan commented that, if the Public Rights of Way Officers are happy with the proposals, then Ward Members are content. (Background Document C). No response was received from the other two Ward Councillors.
- 4.1.6 Peak and Northern Footpaths Society (PNFS) raised a number of comments and queries. A copy of their comments is in Background Document D.
- 4.1.7 Points 1 and 2 in the PNFS document have been noted.
- 4.1.8 With regard to their Points 3, 4 and 5, while the ideal situation would be for the diverted route to avoid estate roads altogether, this is not always possible given the constraints of a steep site. In this case, officers have sought, throughout the planning application and consultation process, to achieve segregated footpaths as far as possible. However, the constraints of the site have meant that this could not be fully achieved. The current proposed diversion route has been designed to provide connectivity for pedestrians while also avoiding the need for steep footpaths or steps.

- 4.1.9 PNFS Point 6 questions whether the footways will actually be adopted. The developer's current plans, in Condition Discharge Application 19/07897/COND include a proposed Section 38 plan which indicates their intention for the roadside footways to be adopted.
- 4.1.10 In response to PNFS Point 7, the section of new footway shown as C-E-F on the plan in Background Document A is included in the proposed diversion order to provide a footpath link to the existing roads and rights of way network to the south east end of the site, whether or not the adoption of the new footways is finalised before the diversion order process is complete.
- 4.1.11 The route annotated as S to T by PNFS and referred to in their Point 8 is intended to be an emergency access point and will also be accessible for pedestrians.
- 4.1.12 The request for signposting, in PNFS Point 9 is noted. Public Rights of Way Officers will liaise with the developers to ensure that appropriate signing is in place when the order is confirmed.
- 4.1.13 The above comments have been sent to PNFS and no further comments have been received from them.
- 4.1.14 The representative of a local environmental organisation who commented had previously contacted Public Rights of Way Officers during the consultation period for planning application 18/00251/FU. He objected to the proposed extinguishment because, at that time, the plans indicated that the public footpath would be stopped up and replaced entirely with road-side footways.
- 4.1.15 He was contacted as part of the consultation on the current diversion proposals and commented that, while not ideal, under the circumstances the diversion is better than extinguishment. A copy of the relevant correspondence is in Background Document E.
- 4.1.16 Statutory Utility companies provided information about their apparatus in and adjacent to the existing and proposed routes but no objections were received to the proposed diversion.
- 4.1.17 The comments and questions referred to above have been responded to and no further comments or objections to the proposed diversion have been received. There are, therefore, no outstanding comments or objections to challenge the grounds for making a Public Path Diversion Order under Section 257 of Town and Country Planning Act 1990.

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 F.

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 March 2020 and, following liaison with the applicant's agent regarding layout and route changes, pre-order consultations commenced in August 2020.

- 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 and Statement of Action PA5 states that we will seek to ensure that developers provide suitable alternative routes for paths affected by development. The proposed diversion will create a partially segregated footpath route with an improved surface. It also maintains connectivity with the rights of way and road network around the site, therefore providing a suitable and appropriate alternative route.
- 4.3.3 The protection and diversion of the footpath affected by this development provides partly segregated facilities and maintains connectivity for pedestrians. This makes a positive contribution to providing and improving off-road 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.

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 application fee. 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 and E 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 4.1.5 to 4.1.15. 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 when 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 and sharing of relevant information with the consultees.

4.6.2 In this case, comments raised by consultees have been addressed and there are no outstanding objections or challenge to the grounds for making and advertising a Public Path Diversion Order under Section 257 Town and Country Planning Act 1990.

5 Conclusions

5.1 Consultation has been carried out for a proposed Public Path Diversion Order which would enable development to proceed while ensuring that an appropriate route is available for public footpath users. Comments have been received and addressed. There are no outstanding objections to challenge the grounds for making and advertising a Public Path Diversion Order under Section 257 Town and Country Planning Act 1990, for part of Leeds Public Footpath No. 173.

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 footpath 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 – Revised Diversion Route Plan

Background Document B – Site Plan

Background Document C – Comments from Cllr Finnigan

Background Document D – Comments from Peak and Northern Footpaths Society

Background Document E – Comments from local environmental organisation

Background Document F - 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.