



Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 26 March 2021

Subject: Extinguishment of Part of Leeds Footpath No. 205 and the Declaration of an Alternative route

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Hunslet & Riverside and Middleton Park		
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input 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

1. To seek authority to declare two sections of public footpath over land owned by Leeds City Council between Leeds Footpath Nos. 200 and 205 and at the northern end of Leeds Footpath No. 200 by the Middleton Railway tunnel under the M621 as shown on Background Document A and thus enabling the recording of them the Definitive Map and Statement.
2. To seek authority to extinguish part of Leeds Footpath No. 205 through the Middleton Railway tunnel under the M621 as shown on Background Document A and thus modify the Definitive Map and Statement of Public Rights of Way following an application under Section 118 of the Highways Act 1980 from the Middleton Railway Trust.

Recommendations

3. The Natural Environment Manager is requested to authorise the City Solicitor:
 - (a) to declare two sections of footpath dedicating them as public rights of way between Leeds Footpath Nos. 200 and 205 with a 3 metre wide stone surface and at the northern end of Leeds Footpath No. 200 with a 3 metre wide tarmac surface as shown on the maps attached at Background Document A.

- (b) to make and advertise a Public Path Extinguishment Order in accordance with Section 118 of the Highways Act 1980, in respect of part of Public Footpath No. 205 as shown on the maps attached at Background Document A.
- (c) to confirm the Order subject to there being no objections or in the event of objections which cannot be withdrawn, for the Order to be referred to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination.

1 Purpose of this report

- 1.1 To seek authority to formally dedicate two sections of footpath as public rights of way between Leeds Footpath Nos. 200 and 205 with a 3 metre wide stone surface and at the northern end of Leeds Footpath No. 200 with a 3 metre wide tarmac surface as shown on Background Document A.
- 1.2 To consider the making of a Public Path Extinguishment Order under Section 118 of the Highways Act 1980 to extinguish the section of Leeds Footpath No.205 that runs through the Middleton Railway tunnel under the M621

2 Background information

- 2.1 The Middleton Railway Trust and Cllr. Nash contacted the Public Rights of Way Section about extinguishing the section of Leeds Footpath No. 205 under the M621 which runs through a tunnel under along the railway line and poses a safety risk to walkers. The railway line and surrounding land are owned by Leeds City Council but are leased to the Middleton Railway Trust for use as a heritage railway.
- 2.2 They believed that it should not have been shown on the Definitive Map and Statement on this line as they understood that it had been diverted when the M621 was built to a new line on the western side of the M621 to join Leeds Footpath No. 200 on the western side of the pedestrian tunnel under the M621 on the line of Leeds Footpath No. 205. We were unable to find a Side Roads Order or other legal evidence for this section of the M621 despite asking Highways England. Without a copy of a Legal Order or other relevant documentary evidence to show this occurred it was not possible to make a Legal Event or Evidential Modification Order.
- 2.3 A Diversion Order was not possible because the alternative route is already available for use on the ground as provided by Leeds City Council although this section is not currently recorded on the Definitive Map and Statement. Extinguishment Orders can only be made under the Highways Act 1980 if the route is not needed for public use. It was considered that an Extinguishment Order would be unsuccessful unless the existing alternative route was formally dedicated as a public right of way because without the declaration a legally recorded route would not exist and user groups would object to an extinguishment.

3 Main issues

- 3.1 The Middleton Railway Trust would like to improve public safety and security to the heritage railway line around their engine houses at Moor Road and the tunnel under the M621. In order to improve public safety they would need to prevent public access to the railway line and tunnel under the M621. However, as a public footpath is recorded on the Definitive Map and Statement through the tunnel they cannot legally prevent public access here unless the footpath is extinguished.
- 3.2 An alternative route already exists on the ground on land owned by Leeds City Council and vested with Parks and Countryside. As a Diversion Order was not

possible Parks and Countryside were asked to formally dedicate this path as a public footpath to allow an Extinguishment Order to be made. This would reduce the liability on both the Middleton Railway Trust as operators of the heritage railway and Leeds City Council as landowners for the footpath through the railway M621 tunnel. They also agreed to dedicate the unrecorded section of footpath over their land at the northern end of Leeds Footpath No. 200.

- 3.3 The section of Leeds Footpath No. 205 to be extinguished is 186 metres long with a recorded width of 1.2 metres and a loose stone surface with railway sleepers and rails which are a trip hazard. There is also limited width for pedestrians to use the tunnel when a train is coming through. The tunnel is unlit and if someone were to fall in the tunnel it would be difficult for an approaching train to see them. A metal safety rail exists at the northern end of the footpath across the line of the footpath which means that anyone using the footpath has to continue a further 45 metres north along the railway line to reach the level crossing if they were not able to climb over the fence. The remains of a wooden fence also exist at the southern end of the section of footpath to be extinguished which would once have obstructed the line of the footpath. It is not clear when these fences were erected but it is assumed that they were provided when the M621 was built. No complaints have been made about obstructions along this section of the footpath. If an Extinguishment Order is not made and confirmed the metal fence at the northern end would need to be removed as it obstructs the legal line of the footpath. Photos of the existing footpath are shown in Background Document B.
- 3.4 The alternative section of footpath to be dedicated between Leeds Footpath No. 205 and 200 is 129 metres long and 77 metres of Leeds Footpath No. 200 would also need to be used to reach the northern end of the section of Leeds Footpath No. 205 to be extinguished. The footpath would be 3 metres wide and has a compacted crushed stone surface. Although this is 20 metres longer the wider, better quality surface without trip hazards and the safety issues associated with using an active heritage railway line means that it is a safer, easier to use and more commodious than the section of Leeds 205 proposed to be extinguished. It is also much easier to use for those with mobility issues and those using wheelchairs, mobility scooters, prams and pushchairs who would struggle to use the existing line of Leeds Footpath No. 205. The majority of those using the footpaths in this area use the alternative section of path rather than the Definitive line through the tunnel. The majority of those using the section through the tunnel are school children from a nearby senior school. Photos of the alternative footpath are shown in Background Document B.
- 3.5 The additional section of footpath at the northern end of Leeds Footpath No. 200 is 30 metres long and has a 3 metre wide tarmac surface on the western side of the railway and a wooden level crossing across the railway. The section shown on Background Document A with dashed green lines running north-west to Moor Road and the M621 Junction 5 Roundabout is adopted by Leeds City Council Highways and Transportation so does not need to be recorded on the Definitive Map and Statement. The recording of this section of footpath would provide a legally recorded right for the public between Leeds Footpath No. 205 and the adopted footpath which although currently used is not recorded.

- 3.6 The section on the eastern side of the railway line heading east to Carrmoor Street is a claimed footpath on land not owned by Leeds City Council and will need to be investigated when the area is reviewed. We have been unable to identify the owners of this land to approach them about dedicating it by a Creation Agreement. Historical Ordnance Survey maps indicate that it is an ancient road or footpath that existed prior to the railway line but research is not possible while the archives are closed due to COVID.

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 British Horse Society asked if consideration could be given to declaring the routes as bridleways instead of footpaths. It was explained that there was insufficient head clearance for horses underneath the M621 on the tunnel on the line of the Leeds Footpath No. 200 and this would only take you into a busy road network at the junction of the M621 heading north. There is an extensive network of definitive and permissive bridleways to the south around Middleton Park but access from this footpath could only be achieved by a more indirect route through an industrial estate, adopted cycle tracks where horses are not permitted or along a very narrow footpath that is not suitable for horse use. The British Horse Society were satisfied with this explanation.
- 4.1.3 The Ramblers and Local Access Forum were both supportive of the Extinguishment Order provided the alternative routes were dedicated as a public footpath.
- 4.1.4 The Peak and Northern Footpath Society raised concerns over the approach taken by using a declaration instead of a Creation Order to record the alternative route on the Definitive Map and Statement. It was explained that this approach was taken to reduce the costs involved for both Leeds City Council who own the land and the applicants who are a registered charity. An Extinguishment Order would not be confirmed until the new paths had been dedicated. The Peak and Northern Footpath Society agreed to this approach providing the declaration and recording on the Definitive Map and Statement by Legal Event Modification Order occurred prior to the making of the Extinguishment Order and would object if they did not receive copies of these.
- 4.1.5 There were no objections from Ward Councillors or Statutory Undertakers and the West Yorkshire Police Service supported the extinguishment and declaration on the grounds that it would be a safer route for the public.

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 Various policies and strategies including the Leeds Transport Strategy, Local Transport Plan 3, The Climate Change Plan: Promote cycling, walking and the use of public transport, reduce pollution and noise, The Best Council plan, the Leeds City Region Green Infrastructure Strategy 2010, Leeds Vision 2030, the Leeds Health and Wellbeing Strategy 2016-2021 all aim to encourage active travel, provide suitable off road walking and cycling infrastructure, access to green spaces and provide local path networks to meet the needs of everyone. The recording of the exiting paths will ensure that they can remain open and available for use for everyone to enjoy and provide a safer route than the existing railway tunnel under the M621.

4.4 Resources and Value for Money

- 4.4.1 As the land is owned by Leeds City Council and leased to a registered charity who provide community activities and with limited funds available Parks and Countryside agreed to waive the councils charges associated with the Extinguishment Order and Ward Councillors have approved the use of Wellbeing Community Committee Funds to cover the cost of advertising the Extinguishment Order and declaration.
- 4.4.2 If the Orders are opposed, referred to the Secretary of State and is taken to Public Inquiry, then the additional costs are incurred, not currently covered. A Public Inquiry will cost approximately between £4000 and £8000.
- 4.4.3 The public rights of way section will be responsible for maintaining the declared footpaths which are already being maintained by Parks and Countryside as the vested department. This can be carried out within existing budgets and staffing levels. Volunteer groups have previously assisted with vegetation cutbacks and litter picking on this network of paths. The Public Rights of Way Section will no longer be responsible for maintaining the extinguished footpath which had additional liabilities with regards to it being on Leeds City Council land and running through a railway tunnel.
- 4.4.4 There are no additional staffing implication 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 creation of public rights of way under Section 25 of the Highways Act 1980 as set out in the Constitution under Part 3, Section 2C, Officer Delegation Scheme (Council (non-executive) functions), Director Communities & Environment (u).
- 4.5.2 The Natural Environment Manager has authority to take decisions relating to the extinguishment of public rights of way under Section 118 of the Highways Act 1980 as set out in the Constitution under Part 3, Section 2C, Officer Delegation

Scheme (Council (non-executive) functions), Director Communities & Environment (x).

- 4.5.3 Section 118 of the Highways Act 1980 enables a Council as respects a footpath, bridleway or restricted byway in their area that it is expedient that the path or way should be stopped up on the grounds that it is no longer needed for public use, to make an Extinguishment Order.
- 4.5.4 The Secretary of State shall not confirm an Extinguishment Order and the Council shall not confirm an unopposed Extinguishment Order unless they are satisfied that it is expedient so to do having regard to the extent that the path or way would be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respect land served by the path or way, account being taken to compensation.
- 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 As is always the case there is the potential for objections to be received to the Extinguishment Order. User groups are supportive of the extinguishment of the existing section of Leeds Footpath No. 205 providing that the alternative route is dedicated as a public rights of way.

5 Conclusions

- 5.1 The Extinguishment Order will remove a short section of public footpath from the Definitive Map and Statement that currently runs along a railway line through a tunnel under the M621 which is unlit, is narrow and the surface is loose stone with railway sleepers and track along it. There are safety concerns for the public using an active railway tunnel both by the Middleton Railway Trust and Leeds City Council. The footpaths to be declared would provide a much safer, wider and better surfaced alternative route that would be recorded on the Definitive Map and Statement. The additional section of footpath at the northern end of Leeds Footpath No. 200 would connect it to the wider adopted highway network.

6 Recommendations

- 6.1 The Natural Environment Manager is requested to authorise the City Solicitor:
- (a) to declare two sections of footpath dedicating them as public rights of way between Leeds Footpath Nos. 200 and 205 with a 3 metre wide stone surface and at the northern end of Leeds Footpath No. 200 with a 3 metre wide tarmac surface as shown on the maps attached at Background Document A.
 - (b) to make and advertise a Public Path Extinguishment Order in accordance with Section 118 of the Highways Act 1980, in respect of part of Public Footpath No. 205 as shown on the maps attached at Background Document A.

- (c) 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 for the Department of the Environment, Food and Rural Affairs for determination.

7 Background Documents¹

- 7.1 Background Document A: Map of the Proposed Declaration and Extinguishment
- 7.2 Background Document B: Photos of the Footpaths to be Declared and Extinguished
- 7.3 Background Document C: Completed 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.