

Report of Public Rights of Way Manager

Report to Parks and Countryside Management Team

Date: 15th April 2021

Subject: Diversion of Thorner Footpath Nos. 6 and 7 and the Creation of a Footpath Between Thorner 5 and 6

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

Summary of main issues

1. To seek authority for the making of a Public Path Diversion Order to divert parts of Thorner Footpath Nos. 6 and 7 to the field edges, and thus modify the Definitive Map and Statement of Public Rights of Way following an application under Section 119 of the Highways Act 1980 from the landowner.
2. To seek authority to create by agreement a public footpath over land alongside Carr Lane between Thorner Footpath Nos. 5 and 6 thus enabling the recording of a public footpath on the Definitive Map and Statement.

Recommendations

3. 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 119 of the Highways Act 1980, in respect of parts of Thorner Footpath Nos. 6 and 7 shown on the maps 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 - (b) to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the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

and

- (c) to authorise the City Solicitor to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to create a public footpath between Thorner Footpath No. 5 and 6 with a width of 2.5 metres as shown on Background Document B.

1 Purpose of this report

- 1.1 To consider the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert parts of Thorner Footpath Nos. 6 and 7.
- 1.2 To request authorisation to enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 with the landowner to create a public footpath between Thorner Footpath Nos. 5 and 6 with a width of 2.5 metres as shown on Background Document B.

2 Background information

- 2.1 Thorner Footpath Nos. 5, 6 and 7 form a network of public rights of way north of Carr Lane, Thorner which connect to Scarcroft in the north and north west and Shadwell to the south west. They cross farmland which is used for a mixture of arable and grazing purposes. They are well used paths and can be used for short circular walks around the area as well as longer distance routes. Background Document C shows how the paths connect to the wider area.
- 2.2 Carr Lane is a very narrow, busy road with no footways on either side. Walkers heading south west wanting to take the most direct route to Thorner 5 or wanting to take as short circular walk along Thorner 5 and 6 have to walk over 500 metres along the road side. It has long been an aspiration of Thorner Parish Council and the Public Rights of Way Section to create a field edge footpath between Thorner Footpath Nos. 5 and 6 to create a traffic-free route and is also included in the Rights of Way Improvement Plan.

3 Main issues

- 3.1 The landowner has applied for a Public Path Diversion Order for Thorner Footpath Nos. 6 and 7 to divert the crossfield sections of footpath to the edge of the field. This would allow the landowner and their tenant to better manage the land for agricultural purposes. The fields are regularly ploughed out and crops planted and the farmer has to reinstate the footpaths within 14 days requiring extra work as well as the loss of crops on the line of the footpaths. The alignment of the footpaths also means that it is difficult for the farmer to reinstate the line of the footpath on the exact line recorded on the Definitive Map and Statement. Although the footpaths are reinstated, there is some inconvenience to the public when the fields are initially ploughed or when crops reach a certain height and it makes the footpaths more difficult to navigate.
- 3.2 The crossfield sections of Thorner Footpath No. 6 to be extinguished have a minimum recorded width of 0.9 metres and have lengths of 333 metres (A to B) and 195 metres (C to D) for the western spur. They are subject to ploughing and cropping rights for the landowner. The new field edge footpath would have a recorded width of 2 metres and lengths of 290 metres from A to E, 75 metres from E to B and 214 metres from B to C. They would not be affected by ploughing or cropping and would be unenclosed. Those walking from A to B would have to walk an additional 32 metre on the line of the new footpath and those walking A to C would have to walk an additional 169 metres. Even for the route A to C the length increase would lead to very limited inconvenience to walkers but this slight

increase is mitigated by the footpath no longer being subject to ploughing and cropping and having a wider width so would be much easier to use.

- 3.3 The crossfield section of Thorner Footpath No. 7 to be extinguished has a minimum recorded width of 0.9 metres and a length of 354 metres D to B and is subject to ploughing and cropping. The new footpath would have a recorded width of 2 metres a length of 272 metres from F to E. Walkers would also have to use an unaffected section of Thorner Footpath No. 7 of 123 metres between D to F and the new section of Thorner Footpath 6 to reach points B and C. Those walking from D to B would have to walk an additional 116 metres but those walking from D to C would only have to walk an additional 13 metres due to the more direct field edge route of Thorner Footpath No. 6. The length increase would lead to very limited inconvenience to walkers but this slight increase is mitigated by the footpath no longer being subject to ploughing and cropping and having a wider width so would be much easier to use. The stile would also be replaced with a kissing gate making it easier to use for those with limited mobility.
- 3.4 The new footpath between Thorner Footpath Nos. 5 and 6 would be 521 metres with a 2.5 metre width. The new footpath will provide a link between two existing footpaths allowing walkers to avoid the busy and narrow Carr Lane which does not have a footway alongside it considerably improving safety for the public. The landowner is proposing to fence the footpath off from the rest of the field enclosing it between a fence and hedge. The landowner, Parish Council and user groups have been consulted about the width of the footpath and a 2.5 metre width agreed on. This will allow the farmer to easily maintain the hedges with existing machinery while allowing the wider than standard minimum 2 metres required for enclosed paths. Kissing gates will be provided at either end of the footpath to deter unauthorised users.

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 proposed diversion were supported by the user groups, Parish Council and Local Access Forum. They also all welcomed the Creation Agreement. The Ramblers hoped that barbed wire would not be used on the fence alongside the footpath to be enclosed.

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 D.

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. PI14 states that where reasonably possible all stiles will be replaced or augmented by gates to be compliant with the Disability Discrimination Act 1995 and 2005. In conjunction with landowners we will seek to improve path furniture for all legitimate path users. ML2 states that we will endeavour to seek new links in the path network particularly for key recreational routes. PW4 states that where appropriate we will seek to work with other organisations external to the council to maximise the benefits which can be achieved for the path network, its users and the environment. The Action Plan includes a Path Improvement Project to divert or extend Thorner Footpath No. 5 to link to the field edge to connect to Thorner Footpath No. 6 to avoid walking along the narrow and busy Carr Lane. The diversion of the footpaths, provision of gates and the creation of the new link will help achieve these Statement of Actions and one of the path improvement projects.
- 4.3.2 Various plans and policies including the Leeds Transport Strategy, Local Transport Plan 3 2011-2026, Climate Change Plan, Best Council Plan, Leeds City Region Green Infrastructure Strategy 2010, Leeds Vision 2030, The Leeds Health and Wellbeing Strategy 2016-2021 all encourage active travel, improved walking facilities and access to green spaces to improve physical and mental health. The proposals will improve the recreational path network in the area providing a new traffic-free route and improving the existing network making it easier to use.

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 landowner. Public Inquiry will cost approximately between £4000 and £8000.
- 4.4.3 Compensation can be claimed for the making of Diversion Orders under section 28 of the Highways Act 1980. Either the landowner has agreed not to claim or costs for compensation up to have been provided for by or applicant agreed to pay any compensation. We do not have to confirm the Diversion Order.
- 4.4.4 There are no additional staffing implications resulting from the making of the Order.
- 4.4.5 As soon as may be after the dedication of the way in accordance with the Public Path Creation Agreement the local authority shall give notice of the dedication by publication in as least one local newspaper. The cost of this is approximately £800 but can be included in the confirmation notice for the Diversion Order reducing overall costs.
- 4.4.6 Should the Agreement be signed, minor maintenance may be required occasionally, the cost of which can be met through existing budgets.

- 4.4.7 There are no additional staffing implications resulting from the making of the Agreement.
- 4.4.8 There are no compensation costs or payments being claimed by the landowners entering into the Creation Agreement.

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 of public rights of way under Section 119 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 (aa).
- 4.5.2 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).
- 4.5.3 Section 119 of the Highways Act 1980 enables a Council as respects to a footpath, bridleway or restricted byway in their area that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted, to make a Diversion Order.
- 4.5.4 The Secretary of State shall not confirm a Diversion Order and the Council shall not confirm an unopposed Diversion Order unless they are satisfied that the diversion is expedient in the interests of the owner, lessee or occupier of the land or the public and further that the path or way will not be substantially less convenient to the public and that it is expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole, the coming into operation of the order would have as respects other land served by the existing public rights of way and the new public right of way by the order would have as respect to the land over which the right is so created and any land held with it taking into account any compensation.
- 4.5.5 Under Section 25 of the Highways Act 1980, a local authority can enter into a Creation Agreement with any person having the capacity to dedicate a footpath or bridleway in its area.
- 4.5.6 An Agreement under this section will be on such terms as to payment or otherwise as may be specified in the agreement and may, if so agreed, provide for the dedication of the way subject to limitations or conditions affecting the public right of way.
- 4.5.7 When such an agreement is made it shall be the duty of the local authority to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- 4.5.8 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 Although no objections have been received at this time, objections may still be received within the four week consultation period. This could result in a Public Inquiry and would include any associated costs

5 Conclusions

- 5.1 The Diversion of the crossfield sections of Thorner Footpath Nos. 6 and 7 will enable the farmer to better manage the land for farming purposes and provide wider, easier to use footpaths for members of the public.
- 5.2 The footpath to be created by Creation Agreement will provide a safer traffic-free alternative to Carr Lane for walkers to use enhancing the footpath network.

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 119 of the Highways Act 1980, in respect of parts of Thorner Footpath Nos. 6 and 7 shown on the maps 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
- and
- (c) to authorise the City Solicitor to enter into a Public Path Creation Agreement with the landowner in accordance with Section 25 of the Highways Act 1980 to create a public footpath between Thorner Footpath No. 5 and 6 with a width of 2.5 metres as shown on Background Document B.

7 Background Documents¹

- 7.1 Background Document A: Proposed Footpath Diversions
- 7.2 Background Document B: Proposed Creation Agreement
- 7.3 Background Document C: Wider Public Rights of Way Network
- 7.4 Background Document D: 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.