

Horsforth Footpath No. 50 Diversion Order

Date: 8 October 2021

Report of: Principal Definitive Map Officer

Report to: Natural Environment Manager

Will the decision be open for call in?

☐Yes ☒No

Does the report contain confidential or exempt information?

☐Yes ☒No

What is this report about?

Including how it contributes to the city's and council's ambitions

- 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 Horsforth Public Footpath No. 50 following the granting of Planning Permission to construct a new two storey school building and expand the courts at Horsforth School (20/04297/FU)
- 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 12 week period will not be met due to delays when liaising between the applicant and consultees.
- 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.
- The Best Council Plan, West Yorkshire Transport Strategy 2040, Leeds Transport Strategy, Local Transport Plan, Climate Change Plan, Leeds Vision 2030 and the Leeds Health and Wellbeing Strategy all encourage the development and improvement of facilities to promote walking and cycling, active travel, access to green space to improve physical and mental health and reduce pollution and noise. The diversion will help achieve this.

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 Horsforth Footpath No. 50 shown on Background Paper 1 and to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

Why is the proposal being put forward?

- 1 A Public Path Diversion Order Application has been made to divert part of Horsforth Footpath No. 50 following the granting of planning permission to construct a new two storey school building and expand the courts at Horsforth School (20/04297/FU). The diversion would be necessary to allow the development to go ahead as proposed and expand into the former training centre to the south west of the school.
- 2 The existing footpath to be extinguished is 141 metres with stone flagged and tarmac surfaces and a recorded width of between 2.25 and 4.4 metres. It is enclosed on both sides by fencing (mostly 1.8 metres or higher) or hedging and can become flooded due to runoff from the hills pooling on the footpath. The proposed new footpath would also be 141 metres long and would have a tarmac surface with a width of 2 metres. Although it would be narrower than the existing footpath, it would only be fenced on the school side with a security fencing and a low knee-high timber fence alongside the existing car park to stop cars encroaching onto the footpath. There would be grass verges on at least one side of the new section of footpath. This would make the footpath feel more open and secure for members of the public walking along it.

What impact will this proposal have?

Wards Affected: Horsforth

Have ward members been consulted?

☒ Yes

☒ No

- 3 The diversion of the footpath will allow the school to be expanded into the adjoining site without having a safeguarding risk associated within the school premises. Even if the footpath were fenced on both sides with secure gated access there would still be a safeguarding risk, it would make it difficult for pupils and staff to cross between the two sites and cause delay and disruption to lessons.
- 4 The new footpath is the same length as the existing footpath so this would not make it less convenient for the public. The new footpath would be more open with grass and trees to at least one side making it visually more attractive and enhance the feeling of safety and security for pedestrians.
- 5 The new surface would be tarmac replacing the flagged section which can cause a trip hazard and required regular maintenance. The works to the school site should also improve drainage limiting runoff from the hill and school fields onto the footpath.

What consultation and engagement has taken place?

- 6 Although consultation is only required with other local authorities consultation was also undertaken with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members, local residents and appropriate Council Departments.
- 7 The Ramblers and Local Access Forum commented that the diversion of the footpath was a sensible one and was no less convenient. Peak and Northern Footpath Society had no objections but requested that the footpath be signed, verges kept maintained and a litter bin should be provided on the verge as there is currently one provided on the existing footpath. They also requested that any security fencing should avoid spiked tops or razor wire, or if this was necessary that planting should screen it from view. The security fencing alongside the school is to be a 2.4 metre high weld mesh fence which would meet this request.

Public rights of way are signed where they leave the metalled highway we will request that Environmental Action relocate or install a new bin in this location.

- 8 Six residents whose properties abut the site responded to the consultation objecting to the proposed diversion. The primary concern of residents relates to a fear of increased crime and anti-social behaviour on and around the footpath. Residents indicate that there have been some anti-social behaviour issues associated with the car park off Church Lane and have had attendance by both the police and fire services. They also report car park users urinating, dog fouling and litter issues which could attract vermin. They are concerned that the diversion of the footpath is likely to lead to an increase in these issues, easier access to their rear gardens, loss of privacy. They have requested that a security fence like the one alongside the school be provided on the other side of the footpath enclosing the grassed area to the rear of their property with CCTV.
- 9 The anti-social behaviour team have advised that it would not be feasible to install CCTV in this location due to data protection issues and the level of scrutiny required to get CCTV installed on public land.
- 10 The Public Rights of Way Section do not consider that fencing the footpath on both sides is acceptable in the interests of public safety and security as they are perceived to be less safe. Well-designed unenclosed and open footpaths are more welcoming and attractive to the public increasing use and therefore surveillance leading to less crime and anti-social behaviour. The existing footpath is known to be well-used, therefore, it is considered that the footpath could lead to a decline in crime and anti-social behaviour due to the expected level of use of the footpath by the public. If the footpath was not diverted the land would remain as it currently is which would not resolve the current concerns.
- 11 If the footpath was fenced off from the grassed area to the rear of the properties, the public would still be able to access it from the car park unless this area was completely fenced off. The former would not alleviate the residents' concerns regarding crime and anti-social behaviour. However, the latter would effectively lead to an area of land which could not effectively be maintained and could become overgrown, unattractive or littered. This would have the potential to cause more issues for residents in terms of their concerns over litter, vermin and attracting crime and anti-social behaviour. Enclosing the footpath and fencing off the grassed area is not considered to be in the interests of public safety for path users and could potentially have a negative impact on residents.
- 12 The developers have advised that they are willing to fund a new rear boundary fence for the existing properties backing onto this area to meet the requirements specified by the abutting residents. The current boundary fencing to some of the properties is low chain link fencing. A higher more robust boundary fence would increase the security and privacy to the fear of these properties. Additional planting outside this fencing would also increase security and privacy for the residents here.
- 13 The line of the proposed new footpath is also being used as a temporary diversion while the school site is being developed. One of the residents reported several incidents of crime and anti-social behaviour in the area. Two of these related to the footpath; a motorcyclist driving along the footpath and a cyclist riding an electric bike along the footpath. These could be resolved by access controls on the footpath and the continuation of the knee rail fences along the full boundary to the car park area. The other two incidents were an attempted theft of machinery from the building site via the car park and the second a group in cars and on motorcycles doing hand break turns and donuts in the car park. These two incidents are not associated with the footpath, but the car park which will remain regardless of the footpath diversion. Crime figure also indicate a similar pattern of anti-social behaviour associated with the car park rather than use of the public footpath.

- 14 Three of the residents raised concerns that proper procedures have not been followed in accordance with legislations and that communication about the project has been poor, predominantly with the planning application. The planning application was advertised and available for viewing on Leeds City Council's web pages with an option to make comments on the planning application. However, no comments appear to have been made by any member of the public to the planning application. Prior to submitting the planning application, the agent for the developers also distributed a flyer to residents informing them that the application was to be submitted and providing details of where to view the application and how to contact the agents. Regarding the diversion of the footpath, a consultation was undertaken with local residents in October 2019 at the request of Ward Councillors. Two site meeting were held with local residents in December 2019 and January 2020 and another in March 2021.
- 15 None of the statutory undertakers had any objections to the proposed diversion and most did not have apparatus in or around the footpath.

What are the resource implications?

- 16 The cost of making and advertising the necessary Public Path Diversion Order is to be met by the developer.
- 17 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 developer. Public Inquiry will cost approximately between £4000 and £8000.
- 18 There are no additional staffing implications resulting from the making of the Order.

What are the legal implications?

- 19 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).
- 20 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.
- 21 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

What are the key risks and how are they being managed?

- 22 There is the risk that objections will be received to any orders made. In this case it is likely that there will be objection to the Public Path Diversion Order. Officer will continue to negotiate with the developer and residents to agree on measures that will make the proposed diversion more acceptable to the residents

Does this proposal support the council's 3 Key Pillars?

☒ Inclusive Growth

☒ Health and Wellbeing

☒ Climate Emergency

- 23 The proposed diversion will support active and leisure travel by allowing the footpath to be retained. It will benefit those who choose to walk for health and wellbeing reasons and anyone who wants to reduce car travel or does not have access to a car supporting the council's response to the climate emergency. The diversion also allows for the expansion of the school to provide vital school places. Where access controls are needed, accessible options will be considered.
- 24 As the decision is not a Significant Operational Decision, an EDCI impact assessment is not required. However, a completed EDCI screening is attached at Appendix 1.

Options, timescales and measuring success

a) What other options were considered?

- 25 The Public Path Diversion Order Application could be turned down, but this would prevent the development proposal going ahead in accordance with the Planning Permission granted.
- 26 There were no other suitable diversion routes and the extinguishment of this footpath would lead to objections from user groups and the public who use this footpath. Leaving the footpath on its original line and fencing it off on either side would result in safeguarding and management issues for the school.

b) How will success be measured?

- 27 The making of a Public Path Diversion Order under the Town and Country Planning Act 1990 and confirmation as an unopposed order or determination by The Planning Inspectorate if objections are made.

c) What is the timetable for implementation?

- 28 The Public Rights of Way Section will make a Public Path Diversion Order within 12 weeks of approval and confirm shortly after the end of the objection period if none are received.
- 29 The developer intends to complete work on providing the new route in 2022.

Appendices

- 30 EDCI Screening

Background papers

- 31 Background Paper 1: Proposed Diversion