

Diversion of a part of Leeds Public Footpath 147 and Non-Definitive path off Whitehall Road, New Farnley

Date: 1 March 2022

Report of: Public Rights of Way Manager

Report to: Parks and Countryside Management Team

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 Leeds Public Footpath 147 and a non-definitive link path, off Whitehall Road, New Farnley following the granting of Planning Permission to develop up to 130 dwellings.
- 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. The application for diversion of this path was made in October 2021 and consultation commenced in December 2021. 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 proposed diversion will assist in protecting pedestrian access by recognising the non-definitive path and diverting this and a section of definitive path to provide a suitable alternative route which reduces potential conflict with vehicular traffic.
- 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 the footpaths shown on the plan in 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 Leeds Public Footpath No. 147 and a non-definitive link, from the end of the definitive path to the footway of Whitehall Road, following the granting of planning permission, reference 16/05912/OT and 19/05327/COND for a development of up to 130 dwellings, to include demolition of 632 and 634 Whitehall Road. The approved development includes a new entrance to the site, with a new road running through the area currently occupied by houses 632 and 634.
- 2 The existing and proposed new routes are shown in Background Paper 1. The path to be closed is shown by a solid red line. From Whitehall Road to the site of houses 632 and 634, approximately 15 metres of non-definitive path would be closed. Continuing to the north-west from this, approximately 45 metres of Leeds definitive public footpath No.147 would be closed. The proposed diverted path, shown by a solid green line will be 65 metres long and will be constructed to adoptable standards with a tarmac surface 2.0 metres wide.

What impact will this proposal have?

Wards Affected: Farnley and Wortley Ward

Have ward members been consulted?

☒ Yes

☐ No

- 3 The proposed path diversion would facilitate the implementation of the development as approved without obstructing public rights of way. The approved development includes a new entrance to the site, running through the area currently occupied by houses 632 and 634. Part of the definitive path and the non-definitive link would be within the carriageway of this new access road. To provide an appropriate pedestrian route, a diversion of the relevant part of the path would run on a surfaced route between the new carriageway and new greenspace on the site of 632 Whitehall Road. This will enable path users to continue to walk from Whitehall Road to the continuation of Leeds Footpath No147 without walking in the carriageway of the new access road.

What consultation and engagement has taken place?

- 4 Although consultation is only required with other local authorities, best practice for public rights of way matters advocates wider pre-order consultation to enable potential concerns and objections to be identified and, if possible, resolved at an early stage. Consultation for this application was carried out in December 2021 with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members, land owners and appropriate Council Departments.
- 5 One comment which was presented as an objection was received from Leeds City Council's Flood Risk Management team (FRM). A copy is attached as Background Paper 2A and 2B. Although this comment is headed as an objection, it does not object to any aspect of the diversion route. It is identifying that there is a culverted watercourse in the area of the diversion and requesting the applicant to seek further approval from the FRM before any works are executed. The applicant has stated that they are aware of the culverted watercourse and that their works will result in improvements to surface water management. They are in contact with FRM regarding this.
- 6 The consultation also resulted in questions from Ward Councillor Anne Blackburn (Background Paper 3) including queries about drainage issues on the site in general and surfacing of the new path. Further information has been provided to her and no further comments received.

- 7 The Peak and Northern Footpaths Society asked why the new path is not running through the new greenspace rather than adjacent to it. Paths through greenspaces would normally be preferable to roadside paths. However, in this case, the construction of a surfaced, 2.0 metre wide path within the narrow greenspace, in addition to the roadside footway, would significantly reduce the amount of greenspace. The applicant has commented that they tried to keep the path as close as possible to the existing path line. The applicant also stated that there will be a full height kerb which will deter cars from mounting the path and a 20 mile per hour speed limit. The Society also asked about the proposed status and signing of the new path, and about proposals for other paths on the site. A copy of the correspondence is in Background Paper 4. Their questions have been answered and no further comments received.
- 8 Leeds Local Access Forum members were consulted but no comments received.
- 9 Several statutory utility providers have plant and apparatus in or near the path. They have supplied plans, but none have objected. The applicant is aware and has taken appropriate action to allow for the construction of the access road and path.

What are the resource implications?

- 10 The cost of making and advertising the necessary Public Path Diversion Order is to be met by the applicant/ developer.
- 11 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.
- 12 There are no additional staffing implications resulting from the making of the Order.

What are the legal implications?

- 13 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).
- 14 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.
- 15 The personal information in Background Papers 3 and 4 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.
- 16 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?

- 17 There is the risk that objections will be received to any orders made. The pre-order consultations described above are intended to help identify potential objections and to enable

the Council and the applicant to share relevant information with consultees and address concerns raised through appropriate amendments to the proposal. In this case, comments raised by consultees have been addressed by providing further information. The only outstanding objection is referred to in Paragraph 5 above. This objection can be resolved by the applicant taking the action recommended in the objection correspondence. Neither this nor the other comments received challenge to the grounds for making and advertising a Public Path Diversion Order under Section 257 of the Town and Country Planning Act 1990.

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

☒ Inclusive Growth

☒ Health and Wellbeing

☒ Climate Emergency

- 18 The proposed diversion protects access to the public footpath through the site of the development, connecting the site and existing houses beyond, to Whitehall Road and to the rights of way network to the south, thus supporting options for active travel and leisure. It provides a route for those who do not have a car or who cannot drive or who chose to reduce car use and thus supports the Council's response to the climate emergency. Where route control is needed, accessible options will be considered.
- 19 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?

- 20 The Public Path Diversion Order Application could be turned down but this would prevent the development proposal going ahead in accordance to the Planning Permission granted.
- 21 The possibility of incorporating the diverted path within the greenspace on the site of 632 Whitehall Road was considered during the development process but was not considered suitable as described in paragraph 7 above.

b) How will success be measured?

- 22 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?

- 23 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.
- 24 The developer intends to complete work on providing the new route by the end of March 2022.

Appendices

- 25 Appendix 1 – EDCI Screening

Background papers

- 26 Background Paper 1 – Diversion Plan
- 27 Background Paper 2 – Objection from FRM

28 Background Paper 3 – Correspondence with Cllr A Blackburn

29 Background Paper 4 – Correspondence with Peak and Northern Footpath Society