

Report author:

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## Leeds Footpath No. 115

Date: 30 June 2022

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 making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert a part of Austhorpe Footpath No. 115 off Leeds Road Scholes Park, and thus modify the Definitive Map and Statement of Public Rights of Way following an application from Leeds City Council.
- 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 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 119 of the Highways Act 1980, in respect of the start of Leeds Footpath No. 115 off Leeds Road shown on the maps attached Background Paper A and to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.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 To consider the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert a part of Leeds Footpath No. 115 off Leeds Road, Scholes Park and thus modify the Definitive Map and Statement of Public Rights of Way following an application from Leeds City Council.
- 2 A new access road is required for Scholes Park to ensure highway safety following the construction of the East Leeds Orbital Route. The new access would cross Leeds Footpath No. 115 and an application to divert the footpath was originally made under the Town and Country Planning Act 1990 to relocate the footpath so that the road did not cross it, to allow the farmer to fence and gate the new access for security reasons and to reduce the impact the new access road would have on crop production for the farmer. If the footpath was not diverted the line of the footpath would have prevented the farmer from planting the area between the footpath, Leeds Road and the new access road.
- 3 The application was made to divert the footpath shortly before work began to construct the new access road and the works were substantially completed before the end of the pre-order consultation period. Therefore, it is no longer possible to make a Public Path Diversion Order under the Town and Country Planning Act 1990. A subsequent application was made under the Highways Act 1980 in the interests of the landowner and occupier to allow the access to be fenced and to reduce the impact on crop production.
- 4 The existing footpath to be extinguished is 40 metres long and has an earth surface, is subject to ploughing and cropping and has a width of 0.9 metres. The proposed new footpath would be 51 metres long, although an additional 30 metres of roadside footway would also need to be travelled if coming from the west. It would have a width of two metres and a crushed stone surface. The diversion will also mean that the public do not have to walk up and down the slight embankment on either side of the farm track. It will only be fenced on the track side with it remaining unfenced on the field edge. The proposed diversion is shown on Background Paper A and the diversion and access track are shown on Background Paper B.

## What impact will this proposal have?

### Wards Affected: Crossgate & Whinmoor

Have ward members been consulted?

Yes

No

- 1 The footpath will be slightly longer but there will be an improved level stone surface. Walkers will also not have to cross the access track on a bend or go up and down the track embankment. The diversion will also allow the farmer to fence off the track to improve security to Scholes Park.

## What consultation and engagement has taken place?

- 2 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.
- 3 None of the user groups objected to the proposed diversion under the Town and Country Planning Act 1990. The Peak and Northern Footpath Society did comment that the new line would be slightly less convenient to the original straight line. They noted that there was a fence which would need gaps if the footpath was left on the original line and that the public would have to go over the slight slope on either side of the track. They considered that the overall change was small and not worth objecting to. They considered that when crops were low, walkers were likely to take a straighter line across the field rather than walking along the edge of the track. They correctly assumed there would be no new structures and that the footpath sign would be relocated.

- 4 Barwick-in-Elmet and Scholes Parish Council advised that one of their residents recalled a roadside stile in the past which was not replaced when it collapsed. They asked if it could remain as a gap for improved access. There are no plans to provide access controls here and there are no structures recorded on the Definitive Map and Statement. If the farmer were to put stock in the field at a later date, they could apply for access controls, but the least restrictive option is preferred and new stiles are rarely authorised. Currently the field is unfenced with a sparse hedge.
- 5 Open Reach did originally object as they had apparatus here. However, as part of the construction of the East Leeds Orbital Route and the new access track the East Leeds Orbital Route team relocated this apparatus and Open Reach withdrew their objection. No other statutory undertakers made objections, and few had apparatus here.
- 6 A subsequent consultation was made to ensure that user groups did not have any objections to the Order being made under the Highways Act 1980 instead of the Town and Country Planning Act 1990 as originally proposed. There were no objections to this.

### **What are the resource implications?**

- 7 The cost of making and advertising the necessary Public Path Diversion Order is to be met by the applicant.
- 8 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 applicant. Public Inquiry will cost approximately between £4000 and £8000.
- 9 Compensation can be claimed for the making of Diversion Orders under section 28 of the Highways Act 1980. The landowner has already come to an agreement with Leeds City Council concerning the new access, the East Leeds Orbital Route and the diversion of the footpath.
- 10 There are no additional staffing implications resulting from the making of the Order.

### **What are the legal implications?**

- 11 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(f), Officer Delegation Scheme (Council (non-executive) functions), Director of Communities, Housing and Environment (1z).
- 12 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.
- 13 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.
- 14 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?**

- 15 There is always the risk that objections will be received to any orders made leading to public inquiry. Pre-Order consultations have not identified any objections.

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

Inclusive Growth       Health and Wellbeing       Climate Emergency

- 16 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?**

- 17 The Public Path Diversion Order Application could be turned down.

#### **b) How will success be measured?**

- 18 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?**

- 19 The Public Rights of Way Section will make a Public Path Diversion Order within 12 weeks of approval and if there are no objections confirm it after the new path has been provided by the landowner.

### **Appendices**

- 20 EDCI Screening

### **Background papers**

- 21 Background Paper A: Proposed Diversion  
22 Background Paper B: New Access Road