

Diversion of Leeds Footpath 207 at Cockburn School

Date: 19 December 2022

Report of: Public Rights of Way Manager

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

Brief summary

A Public Path Diversion Order Application has been made to divert part of Leeds Public Footpath No. 207 and permissive bridleway at Cockburn School, as shown in Background Papers A and B. The diversion would be necessary to allow the development of a new sports pitch and secure boundary to go ahead as proposed.

A 342 metre long section of existing public footpath and permissive bridleway between Gipsy Lane and Park Wood would be extinguished. 448 metres of new footpath and permissive bridleway, with improved width and surface would be created.

Consultations have resulted in comments and objections which are discussed in this report.

Recommendations

- a) 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 Leeds Footpath No. 207, as shown on 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Paper A and to confirm the Order, subject to there being no objections or, in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

What is this report about?

- 1 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 Footpath No. 207 and the co-existent permissive bridleway following an application for Planning Permission for a new 3G pitch and tennis courts and associated fencing up to 4.5 metres high for Cockburn School, on the former South Leeds Golf Course. (Ref: 22/01376/FU).
- 2 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 application was received in April 2022. 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. Implementation of this application will apply Statements of Action PA1, PA5 and PA6 to ensure that the public footpath is protected, and that a suitable alternative is provided, that caters for both the public footpath and for non- definitive, permissive bridleway use.
- 3 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 by providing a good quality pedestrian, cycling and riding route through green space as part of the local network of off-road routes.

What impact will this proposal have?

- 4 The application has been made by an agent on behalf of Leeds City Council and Cockburn School. Planning Permission has been granted for a new 3G pitch and tennis courts and associated fencing up to 4.5 metres high at the former South Leeds Golf Course, Gipsy Lane, Beeston, under Planning Application 22/01376/FU. The development will include new fencing to ensure security and pupil safe-guarding at the extended school site. This fencing will cross the existing path at two points. Therefore, to fully implement the proposed development without obstructing a public footpath, a diversion order is required.
- 5 The proposed diversion will close approximately 342 metres of public footpath, shown by a red and black line on the plan in Background Paper A. It would also create 448 metres of footpath as shown by a green line on the plan in Background Paper A. The detailed proposed layout of the site is shown in Background Paper B. The existing path has a recorded width of 1.2 metres and a recorded surface of "earth". In addition to public footpath rights, the path is used as a permissive bridleway as part of the Leeds Links network of traffic-free routes for walkers, cyclists and riders. The new path will have a width of 3.0 metres and will be surfaced with Flexipave to provide an all-weather surface. It will also accommodate permissive bridleway use, enabling continuity as part of the Leeds Links network.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 6 The proposed diversion and construction of the new route will protect access from Gipsy Lane, through the former golf course, towards Park Wood for pedestrians, horse riders and cyclists. This supports options for active travel and leisure use for those who do not have a car or who chose to reduce car use. Thus, it supports the Council's response to the climate emergency.

- 7 The improved surface will increase accessibility of the route and provide opportunities for improved access to the green spaces of the former golf course and Middleton Park. Where route control is needed, accessible options will be considered.
- 8 Diverting the path will enhance safeguarding of pupils at Cockburn School by enabling the full implementation of the proposed development including fencing around the extended site. This will contribute to the wellbeing of the pupils at Cockburn School.
- 9 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

What consultation and engagement has taken place?

Wards affected: Beeston and Holbeck Ward and Middleton Park Ward

Have ward members been consulted? Yes No

- 10 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 in early May 2022. The path is on the boundary between Middleton Park Ward and Holbeck Ward so ward members from both wards were consulted.
- 11 Consultation responses were received from 10 consultees and four utility companies. None of the utility companies raised any objections. Two of the consultees raised questions which have received responses. The comments from the remaining eight consultees are summarised and included in Background Paper C. Three of these (two British Horse Society representatives and Leeds Local Access Forum) were in favour of the proposed change, including supporting the inclusion of bridleway use. Two Leeds City Council services made comments via the NRASWA section regarding potential flood risk and proximity of a bridge. Four organisations object to the proposed change. These are Peak and Northern Footpaths Society (PNFS), Save South Leeds Former Golf Course (SSLFGC), Beeston Forum and Friends of Middleton Park (FoMP).
- 12 PNFS stated that the Society does not believe that the diversion is necessary and reserves its position to object if an order is made. Their full objection is in Background Papers D1. Comments on the points raised are included in Background Paper C and discussed below. They have also recently re-confirmed their objection as shown in Background Paper D2.
- 13 SSLFGC strongly objects to the diversion on grounds of the local and national historical and cultural significance of the path, impact on hedgerows, possible contraventions of the Council's Parks and Green Spaces Strategy, change in character of the path and potential conflict between pedestrians and cyclists. Their full original objection is in Background Paper E. Their representative has also raised objections in correspondence during November 2022 based on potential impact of the diversion on the adjacent Ancient Woodland to the south. They assert that the 15 metre buffer zone currently applied to provide protection for the Ancient Woodland should be increased to 50 metres. All relevant points raised by this objector are included in Background Paper C and discussed below.
- 14 Beeston Forum also strongly objects to the diversion on grounds of the heritage value of the path, which they believe should not be disturbed for any reason. Their full objection is in Background Paper F. Comments on the points raised are included in Background Paper C and discussed below.
- 15 FoMP believe that the existing cobbled path is worth saving and that the proposed diversion is a poor substitute because of its gradients and the additional elevation and distance. Their full

comments are in Background Paper G. Comments on the points they raised are included in Background Paper C. and discussed below.

- 16 Of all the comments received, the most relevant in relation to the test for a potential Public Path Order under Section 257 of the Town and Country Planning Act 1990, are those which allege that the diversion is not necessary for the implementation of the proposed development and those which allege that the diversion will have a negative effect for users of the path.
- 17 The development includes the construction of new sports pitches and a secure perimeter fence which would enclose the new facilities continuously with the rest of the school site. The proposed fence would cross the existing path at two points. Objectors have suggested that the layout shown in Background Paper B could be achieved without fencing across the path, or by having gated access to the new pitches. PNFS refers to two other sites in Leeds where public footpaths bisect a site and suggests that similar arrangements could be made at Cockburn School.
- 18 Although these arrangements may work in the locations quoted, no two sites are the same and most similar sites are not without problems of security and anti-social behaviour. At Cockburn School, a priority for the applicant is to establish a secure boundary which will integrate the new sports facilities with the existing site and increase safeguarding for pupils. They want to avoid creating a new situation where the extended school site is crossed by a public right of way.
- 19 Objectors have also commented that the new route will be of a different character to the existing route and will be longer, less attractive and will have steeper gradients. FoMP consider that the advantage of a new, wider path with a good surface is not sufficient to balance the increased gradient and length of the new path compared with the existing route. The representative of SSLFG alleges that the increased length and gradient discriminates against some potential users and that the new route would be less safe for vulnerable groups as visibility for pedestrians would be obscured by a high fence. They suggest that the diversion could be seen as ageist and sexist.
- 20 The additional length is about 100 metres and, although there will be a gradient, the new route would have the advantage of a wider, even surface of Flexipave. This will provide an easier walking and riding surface than the existing earth and cobbles. The new path will also provide improved views over the landscape. It will continue to be in green space without the inevitable confinement which would be created if the path was left in place between the existing school site and the new sports pitches.
- 21 There are no proposals for fencing immediately adjacent to the new path.
- 22 Three of the objectors are against the diversion on the grounds of potential loss of historical features which contribute to the local heritage. The existing path has a cobbled surface for part of its length and is believed to be well over 150 years old, possibly much older. The applicant has commented that the physical form of the existing cobbled path would remain in situ but due to the need to integrate the application site within the school secure line boundary access to it will be restricted.
- 23 The meeting of the South and West Plans Panel on 29 September 2022 resolved to approve the planning application 22/01376/FU, including the fencing which would obstruct the existing footpath. Therefore, to implement the approved development fully a public path order would be needed.
- 24 Condition 12 of the planning approval requires the school to maintain the physical historic line of the path, the stone setts, hedging and tree line but this will no longer be accessible as a public right of way.
- 25 Several comments also referred to impacts on biodiversity and wildlife. These appear to be more relevant to the planning aspects of the development rather than specifically to path

diversion. The applicant has confirmed that new landscaping and shrub planting is to be included with replanting of a greater number of trees than those unavoidably removed.

- 26 The representative of SSLFG asserts that the appropriate width of the Ancient Woodland buffer zone should be 50 metres rather than the current 15 metres. With a 15 metre width, the proposed path is outside the buffer zone. If the buffer zone was widened to 50 metres, part of the proposed path would be within it. The plan in Background Paper H is referred to in the relevant Planning Decision Notice and shows the proposed path route and the location of the 15 metre buffer zone.
- 27 The objector's assertion is based on information about possible future changes to recommended buffer zones. However, the wider buffer zone is not included in approved current national or local regulations. Policy G2B of Leeds City Council's draft Local Plan Update includes proposals for prevention of harmful development within 50 metres of Ancient Woodland. This update is currently subject to consultation. The Council's Principal Planning Policy Officer has confirmed that the draft policy has little, if any, weight until it has developed further through the consultation and approval process. A 15 metre Ancient Woodland buffer zone is therefore the current requirement.
- 28 The applicant has confirmed that a BS5837 tree survey, an Environmental Impact Assessment and an Arboricultural Impact Assessment have all been undertaken. The assessments cover both the site of the proposed sports pitch development and the wider area through which the diverted path would run. All parts of the diverted footpath located in any root protection zone will be surfaced with a specific type of Flexipave in accordance with the guidance in BS5837:2012.
- 29 The information in Paragraphs 17 to 28 above has been shared with the objectors but the objections have not been withdrawn.

What are the resource implications?

- 30 The cost of making and advertising the necessary Public Path Diversion Order is to be met by the applicant.
- 31 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.
- 32 There are no additional staffing implications resulting from the making of the Order.

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

- 33 There is always the risk that objections will be received to any order made, leading to public inquiry. The pre-order consultations are intended to help identify potential objections, to enable the Council and the applicant to share relevant information with consultees and, where possible to address concerns through appropriate amendments to the proposal.
- 34 Pre-order consultations have identified objections and these have been addressed by providing further information and explaining mitigation measures where possible. It is clear that there is still a level of opposition from some local organisations to the development itself and some of the comments received in response to the path order consultation reflect this. The decision-making process for the public path order application should not question the merits of the planning permission itself but should focus on whether the path order would meet the order-making criteria under relevant legislation as described in Paragraph 16 above and 37 below.
- 35 The applicant has also stated that, if the order is eventually not confirmed, they would have to consider alternative options. However, it is their strong preference to implement the

development as approved under Planning Application 22/01376/FU and to divert the path as shown in Background Papers A and B to facilitate this.

What are the legal implications?

- 36 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).
- 37 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.
- 38 The personal information in Background Documents D1, D2, E, F and G 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. The comments relating to the diversion made in the exempt documents are considered in Paragraphs 11 to 27 therefore the public's interests in relation to the diversion have not been affected.
- 39 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

Options, timescales and measuring success

What other options were considered?

- 40 The Public Path Diversion Order Application could be turned down, in which case the development could not be completed as planned and the applicant will need to continue to accommodate the public footpath on its existing route.

How will success be measured?

- 41 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.

What is the timetable and who will be responsible for implementation?

- 42 The Public Rights of Way Section will make a Public Path Diversion Order within 12 weeks of approval and confirm it shortly after the end of the objection period if none are received.
- 43 The development programme for construction of the new path by the applicant is scheduled for March 2023, and due to be completed by 19th April 2023.

Appendices

- Appendix 1 - EDCI Screening
- Background Paper A: Proposed Diversion Plan

- Background Paper B: Proposed Site Layout
- Background Paper C: Summary of Consultation Comments with Responses
- Background Paper D1:Objection from PNFS (confidential)
- Background Paper D2:Confirmation that PNFS continue to object (confidential)
- Background Paper E: Objection from SSLFGC (confidential)
- Background Paper F: Objection from Beeston Forum (confidential)
- Background Paper G: Objection from FoMP (confidential)
- Background Paper H: Plan showing proposed path and 15m Ancient Woodland buffer

Background papers

- None