

## Diversion of Public Footpath Scarcroft No 8 (pt) off Wetherby Road

Date: 10 March 2023

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 Public Footpath, Scarcroft No 8 in the vicinity of Wetherby Road. Whilst the diversion is not necessary to enable development to take place, it is desirable and will facilitate the development.

The existing footpath to be extinguished is 72 metres long and, if not diverted, will cross a new road junction, the proposed new footpath would avoid the above-mentioned conflict and therefore provide a safer route, as shown on Plan 1. It would have a rolled and compacted stone surface, a length of 76 metres and a width of 3 metres.

### 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 119 of the Highways Act 1980, in respect of Public footpath, Scarcroft No 8 as shown on Plan 1 and to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination.

## What is this report about?

- 1 This report seeks to assist Leeds City Council to determine an application for a public path diversion order to divert part of Public Footpath, Scarcroft No 8. The application seeks to divert the section of footpath shown by a solid black line (**A-B**) on **Plan 1** attached, onto the alignment shown by a broken black line (**A-C-D-E**) on **Plan 1**. The diversion has been requested in order to facilitate development approved by Leeds City Council under reference 18/05022/FU.
- 2 Leeds City Council is the Highway & Surveying Authority for the area within which Public Footpath Scarcroft No 8 runs.
- 3 The consideration of applications for Public Path Orders is a discretionary power of the authority, rather than a statutory duty. The decision whether or not to make a Public Path Order is “quasi-judicial” in nature. This means that the decision must be made having taken into account all of the available and relevant evidence, along with consideration of any submissions made by any party with an interest in the matter.
- 4 On 7<sup>th</sup> July 2022 JP Wild Homes (landowner/developer) applied to Leeds City Council to divert the section of footpath shown by a solid black line (**A-B**) on **Plan 1**, onto the alignment shown by a broken black line (**A-C-D-E**) on **Plan 1**. The application was originally made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) on the grounds that it was necessary to enable the approved development to take place. However, an initial assessment of the proposals suggests that whilst it is certainly desirable to divert the footpath to maintain the integrity of the path network, it is not actually necessary to enable the approved development to take place. As a result, it would not be possible to make an Order under the provisions of the 1990 Act. In view of the above, the application is being considered under the provisions of Section 119 of the Highways Act 1980 (the 1980 Act) instead.
- 5 This report seeks to advise the Council of the outcome of statutory and non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling the Council to consider whether or not to promote the requested Order.
- 6 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. 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.
- 7 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 reducing the potential for conflict between pedestrians and vehicles.

### **Summary of Legislative Criteria:**

- 8 Section 119 of the Highways Act 1980 gives local authorities the powers to make orders to divert footpaths, bridleways or restricted byways where it is considered expedient to do so in the interests of either the owner/lessee/occupier of the land and/or the public.
- 9 Such an Order must not alter the termination point of a path or way if that point is not on a highway; or (where it is on a highway) otherwise to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 10 An Order made under Section 119 of the 1980 Act shall not be confirmed unless the Authority (or where appropriate, the Secretary of State) is satisfied that it is expedient, as described above, and that the path will not be substantially less convenient as a consequence of the diversion. The Authority (or the Secretary of State) must also have regard to the effect to which:
  - The diversion would have on public enjoyment of the path as a whole
  - The effect on other land served by the path
  - Any provisions for compensation
  - Any material provision within the Rights of Way Improvement Plan
  - The needs of agriculture and forestry; biodiversity; and disability discrimination/inclusivity legislation

### **Consideration of the Proposal Against the Legislative Criteria:**

#### Landowner/Occupier or Public Interest

- 11 The proposed diversion allows the applicants to undertake their development in the form previously approved by the City Council in their role as Planning Authority. The diversion may therefore be considered to be in the interest of the landowners. The proposals also move the footpath so that it avoids a potential conflict with vehicular traffic at the road junction. The diversion may therefore also be considered to be in the interests of the public.

#### Whether the diversion will result in the path being substantially less convenient

- 12 When considering the convenience of a proposal, a variety of matters may be taken into consideration including, but not necessarily restricted to, distance, gradient, ground conditions and the existence of path furniture.
- 13 The proposed diversion will be approximately 20 metres longer/15 metres shorter than the current route depending upon the direction of travel when the footpath meets the road. This is considered negligible. The new route will also reduce the potential for conflict between pedestrians and vehicles manoeuvring at the newly created road junction. Overall, it is not considered that the diversion will be substantially less convenient than the current route.

#### Effect on Enjoyment of the Path as a Whole

- 14 The proposed change is minimal and may be considered have a positive impact on enjoyment of the footpath as a whole because it avoids the potential for conflict with vehicles at the new road junction.

The effect on other land served by the path

- 15 No reliance is placed on the existence of the public footpath for the purposes of access to land or property.

Any provisions for compensation

- 16 The land crossed by proposed new route is all in the same ownership, therefore no compensation issues are likely to arise.

Any material provision within the Rights of Way Improvement Plan

- 17 There are no provisions within the Rights of Way Improvement Plan that would have a negative impact on the consideration of these proposals.

Consideration of the needs of agriculture and forestry; biodiversity; and disability discrimination/inclusivity legislation

- 18 There are no matters arising from these proposals that have any negative impact on agriculture, forestry or biodiversity.

**What impact will this proposal have?**

- 19 The proposed diversion will help to avoid a potential conflict between pedestrians and vehicles at the new road junction.

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

Health and Wellbeing       Inclusive Growth       Zero Carbon

- 20 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:

Have ward members been consulted?       Yes       No

- 21 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. No objections have been received.

**What are the resource implications?**

- 22 The cost of making and advertising the necessary Public Path Diversion Order is to be met by the applicant.
- 23 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.
- 24 There are no additional staffing implications resulting from the making of the Order.

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

- 25 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.

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

- 26 The Natural Environment Manager has authority to take decisions relating to the diversion and extinguishment of public rights of way under Section 119 of the Highways 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).
- 27 Where it is considered expedient to divert a footpath, bridleway or restricted byway a competent authority may by order, made in accordance with Section 119 of the Highways Act 1980, authorise the diversion of any footpath, bridleway or restricted byway if they are satisfied that it is expedient to do so in the interests of the owner/occupier of the land and/or the public.
- 28 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?**

- 29 The Public Path Diversion Order Application could be turned down

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

- 30 The making of a Public Path Diversion Order under the Highways Act 1980 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?**

- 31 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.

### **Appendices**

- EDCI Screening

### **Background papers**

- Background Paper A: Plan 1 - Proposed Diversion