



Diversion of part of Pudsey Footpath No. 39 at Gibraltar Road, Pudsey

Date: 22nd September 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 received to divert part of Pudsey Public Footpath No. 39 as shown in Background Paper A. A diversion would be necessary to allow a development to go ahead as planned following planning application 22/01463/RM for a housing development on land to the north of Gibraltar Road, Pudsey.

A diversion order would close 64 metres of 1.2 metre wide grass surfaced public footpath . It would create 51 metres of 3.0 metre wide public footpath with a mainly tarmac surface.

Consultations have been carried out and comments have been received. Responses to the comments are included below.

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 the footpath shown by a solid red line on the plan in Background Paper A, onto the route shown as a solid green line, and to confirm the Order, subject to there being no objections or in the event of objections which cannot be withdrawn, for the order to be referred to the Secretary of State, Department of the Environment, Food and Rural Affairs for determination,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 Pudsey Public Footpath No. 39, following an application for planning permission for reserved matters for eight dwellings with associated appearance, landscaping, layout and scale (planning reference 22/01463/RM) on land to the north of Gibraltar Road, Pudsey. The proposed development also has a previously approved outline permission, reference 17/07071/OT. If planning permission is granted for the reserved matters, implementation of the development would require the diversion of the footpath.
- 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. 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 Diversion Order will achieve these Statements of Action by providing a suitable alternative route for the section of Pudsey Footpath No. 39 affected by the development.
- 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, creation and dedication will contribute to achieving this for pedestrians.

What impact will this proposal have?

- 4 The section of Pudsey Footpath No. 39 to be extinguished is shown by a solid red line on the plan in Background Paper A. It runs for approximately 64 metres from its junction with Gibraltar Road to the site boundary at the rear of houses on Waterloo Road. It has a recorded surface of "meadow" a recorded width of 1.2 metres.
- 5 The proposed diverted route is shown by a solid green line on the plan in Background Paper A. It will start on Gibraltar Road, approximately 20 metres east of the existing path. It will run for 51 metres from Gibraltar Road, up a stepped tarmac path, then across a tarmac shared driveway, a shared surface roadway and up a flight of steps to re-join the existing path at the northern boundary of the development site. It will be 3 metres wide.
- 6 Gibraltar Road where it is adjacent to the site is not recorded on the Definitive Map as a public right of way, nor is it recorded as an adopted highway. However, it is the start and end point for several sections of definitive footpath and bridleway and is shown on the Council's records as a "claimed path". It is well used for walking, cycling, horse riding and as vehicular access to several properties. It seems very likely that Gibraltar Road has at least public bridleway status. This will be investigated during a future review of the Definitive Map for the Pudsey area.
- 7 The application to divert this path has been made by a developer who has outline planning permission for residential development (planning reference 17/07071/OT) and has subsequently applied for Reserved Matters approval for eight dwellings with associated appearance, landscaping, layout and scale. (Planning reference 22/01463/RM). The applicant's site plan showing the proposed layout of the site and the existing and proposed diverted path is in Background Paper B. A cross-section showing the layout of the steps is in Background Paper C. If the proposed development is implemented, this would result in the

construction of buildings and property boundaries across the footpath on two plots and consequent obstruction of the public footpath. Therefore, the development cannot be constructed as proposed without the diversion of Pudsey Public Footpath No. 39.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 8 The proposed diversion will protect access through the development for pedestrians, maintaining the link from Gibraltar Road towards Waterloo Road and vice versa. The existing path has a rough grass surface and appears to be little used. The new path will create a fully constructed and surfaced path which will help to provide and maintain opportunities for access on foot to green areas and other public rights of way to the south and to public transport services on Waterloo Road. This will be of benefit to existing residents, visitors and occupiers of the new properties. It provides opportunities for leisure activities which can be of benefit to mental and physical health. The new routes also provide opportunities for active travel for those who do not have a car or who chose to reduce car use. Thus, the proposed diversion supports the Council's response to the climate emergency and aids progress towards carbon neutrality.
- 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: Pudsey 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, Leeds Local Access Forum, affected landowner, Ward Members and appropriate Council Departments. Comments were received from one Ward Councillor, Peak and Northern Footpaths Society (PNFS), The Ramblers, and Leeds Local Access Forum (LLAF). Copies of all substantive comments received and responses to them are in Background Papers D, E, F and G.
- 11 Statutory utility companies were consulted and no objections received. One utility company has cables in the southern edge of the site but does not object to the diversion. Their information has been shared with applicant.
- 12 Ward Councillor D Seary was concerned that the development might be completed without implementing the diversion if the developer had a shortage of funds. The process for securing the construction of the diverted path and the benefits of doing this for the developer have been explained to Cllr Seary. No further comments have been received from her. The relevant correspondence is copied in Background Paper D.
- 13 Ward Councillor S Seary stated that he has no objection to the application. No response was received from the third Ward Councillor.

- 14 The full comments from PNFS are in Background Paper E. They commented on the condition of the existing path and consider that the proposed diversion offers an opportunity to bring the path back into use as a useful link from Gibraltar Road and the development to Waterloo Road, bus stops and shop.
- 15 Their main concerns were the need for handrails on the steps, particularly at the northern end of the site, potential problems on the shared driveway and the need for signing.
- 16 The applicant has confirmed that they do intend to provide handrails on the steps at the northern exit from the site.
- 17 The applicant has also agreed to provide public footpath signage. The precise location of signs will be agreed between the developer and Public Rights of Way Officers.
- 18 PNFS also commented on issues outside the boundary of the site. They identified differences between the depiction of Footpath 39 on the consultation plan and on rights of way plans saved with the planning application information in Public Access. This discrepancy was also identified by the Ramblers. PROW Officers have commented that the Consultation Plan is the correct version.
- 19 Also outside the development site boundary, PNFS commented that the path is difficult to locate at the two points where it meets Waterloo Road and requested that Public Footpath signs should be erected on Waterloo Road at each of the two points where the continuation of Footpath 39 meets the road and at other points on the route where necessary. This request will be considered by the Public Rights of Way Officers.
- 20 The Ramblers representative provided the comments in Background Paper F. They also made further comments in subsequent emails.
- 21 The Ramblers do not object to the diversion in principle but have concerns because the continuation of the path to the north of the development site is obstructed at the rear of the houses on Waterloo Road.
- 22 The area in which the definitive line is affected by structures belonging to houses on Waterloo Road is outside the applicant's ownership and therefore it is not within their control to rectify this. It is more appropriate for this to be resolved through enforcement action by Public Rights of Way Officers rather than through the current diversion process.
- 23 The Ramblers comments relating to the "invisibility" of the existing path within the development site reflect the current condition of the path, which appears to be little used at present. The character of the site will change with the development and the diverted path will be clearly identifiable through the site.
- 24 The Ramblers also state that where the new path meets Gibraltar Road, it will be necessary to create a new junction which is compatible with the heritage stone wall running along the roadside.
- 25 The applicant has stated that they propose to create a "chicane" at this point by an extension of the existing stone wall so that it is not possible to exit onto the road at speed.
- 26 In further emails the Ramblers raised concerns about the proximity of planting to the continuation of Path 39 to the north of the site and a pinch point on the new path between the houses and garden boundaries at Plots 4 and 5. This comment expressed concern that hedges referred to in plans, on the property boundaries could cause problems of obstruction on the path as they grow. The Ramblers comments have been passed to the applicant. They have

responded that they will take the first comment into account. The applicant also states that hedging referred to will only be for the boundaries between gardens. There will be sections of screen fencing where appropriate on the line of the footpath.

- 27 Leeds Local Access Forum responded to the consultation with two queries, one relating to construction vehicle access to the site and the other relating to the status of Gibraltar Road. Their response is in Background Paper G.
- 28 Regarding construction vehicle access, the applicant has commented that, for practical reasons the works will be accessed from the proposed road at the north side of the site. Deliveries via the lower section of Gibraltar Road will probably be confined to hard and soft landscaping materials.
- 29 The status of Gibraltar Road is discussed in Paragraph 6 above and this information has been passed to the LLAF Chair.
- 30 Responses and explanations have been sent to those who commented and no further comments received from them.

What are the resource implications?

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

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

- 34 There is always the risk that objections will be received to any orders made, leading to public inquiry. Pre-order consultations have identified queries, suggestions and concerns about the proposed diversion.
- 35 None of the comments have challenged the need for an order under Section 257 of the Town and Country Planning Act 1990 to enable the development to be carried out in accordance with the Planning Permission.

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 Personal information in Background Papers D, 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.

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 this case the development would not be able to proceed as planned without obstruction the public right of way.

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 is likely to start on site in October 2023 at the earliest.

Appendices

- EDCI Screening

Background papers

- Background Paper A – Plan of Proposed Diversion Pudsey 39
- Background Paper B – Proposed Site Layout
- Background Paper C – Cross-Section Showing the Steps
- Background Paper D – Cllr D Seary Comments (confidential)
- Background Paper E – PNFS Comments (confidential)
- Background Paper F – RA Comments (confidential)
- Background Paper G – LLAF Comments (confidential)