



**DIRECTORATE OF CITY  
& ENVIRONMENTAL  
SERVICES**

**REQUEST FOR  
DECISION**

**Decision making  
level**

**OIC - Director**

**Date 20<sup>th</sup> June 2013**

**Report Title:- Public Rights of Way – Proposed Diversion of Public Footpath Dunnington No 16 (part)**

**Decision Requested**

Authorisation to make a Diversion Order under section 257 of the Town and Country Planning Act 1990 to divert a section of Public Footpath, Dunnington No 16 located on land between the A64 and York Sport Village swimming pool, near Heslington ( Annex 1: Location Plan).

**Reason**

To divert the current definitive alignment of a section of the footpath, in order to enable development to be carried out.

**Background Information**

On 21<sup>st</sup> September 2012 planning permission (Ref 12/02306/FULM) was granted for the construction of

- A public 8 lane, open-air, county standard athletics track;
- A public 1km long, open-air cycle racing track;
- A coach drop-off point and parking for 139 cars;
- lighting, fencing and landscaping,

and also the diversion of the public right of way through the site.

The right of way in question (Public Footpath, Dunnington No 16) runs along the Derwent/Heslington and Fulford Ward boundary and bisects the land that is affected by the development. The path runs from the Grimston Bar Park & Ride site in a southerly direction over the A64, eventually linking in with Ox Close Lane, Heslington (via Public Bridleway, Heslington No 7) to the south. From the east, a short section of (currently non-definitive) path, leading off from the end of Low Lane, Heslington, also links in to the path.

A section of the footpath is directly affected by the above planning permission and is therefore required to be diverted in order to enable the development to take place (Annex 2: Order Plan).

It is proposed to divert the definitive line of the affected section of the

footpath (bold black line on the plan) from Point A on the plan, onto a new alignment (bold dashed line) that runs between the boundary fence of the new cycle track and the newly planted woodland mounding that runs along the eastern edge of the site, to a point where it joins back up with the original path (Point B on the plan).

The path will have a definitive width of 3 metres. An additional 0.5 metres either side of this width will be kept free of overhanging vegetation. The surface will be natural/grass, over a stoned base, which will be maintained/mown by the university. The path will cross a culvert at its northern end which will also be maintained by the university. There will not be any path furniture (for example stiles and gates) along the length of the proposed diverted route.

The path currently has a temporary diversion in place for safety reasons. The proposed diversion largely follows the line of the temporary diversion.

### **Consultation Process**

Pre-order consultation has been carried out, in accordance with the Rights of Way Review Committee' Practice Guidance Notes on '*Consultation on changes to public rights of way and Definitive Maps*'. Not everyone consulted replied.

The Ramblers: *"Following the slight changes after the site inspection, we are happy with a 2 metre stone surfaced path within a 4 metre Definitive width, such that there is a minimum 1 metre width alongside the stoned path free of vegetation. Less active people will appreciate the proposed minimum slope of 1 in 20 and also the views of the cyclists using the track.*

*At the by-pass end of the path, it would appear that the public will probably take a short across the corner, to cross the bridge, whilst people using the proposed permissive path to the south of the lake will use the proposed diversion route."*

Heslington Parish Council: (27/02/13) *"The Parish Council wanted to make the point that there was no warning notice of the diversion at the Low Lane end of the diversion. There was a notice at the northern end near the swimming pool dated 14 December 2012 effective from 17 December 2012 and by 14 January 2013 the diversion was functioning. The Parish Council was not informed or consulted till well after the*

*event, which is not Pre Order Consultation. I know the footpath is legally in Dunnington Parish but it is much more relevant to Heslington residents.*

*Officer's comments:* There seems to be some confusion here between the pre-Order consultation request which proposes the permanent diversion of the path and the temporary diversion that is currently in place for safety reasons and which is administered under different legislation.

The temporary diversion, which largely follows the line of the proposed diversion, is effective until 16 June 2013. The council does not consult with anyone when agreeing a Temporary Diversion with a landowner, a Notice is however advertised in the Press.

Heslington Parish Council: (13/03/13) *I can now confirm that the Parish Council does not have any objections to the route diversion, but is concerned about how the council went about it, which maybe what led to the confusion!? I forgot to state that the Parish Council want to see the area properly landscaped with an even stoned surface for walking on.*

No objections were received from those utility companies that replied.

### **Statutory Powers**

The granting of planning permission does not authorise interference with a right of way, however, the Council as planning authority for the area has powers (in respect of footpaths, bridleways, and restricted byways) to make orders under s259 of the Town and Country Planning Act 1990 to stop up or divert highways affected by development for which planning permission has been granted.

For the power to be exercisable the authority must be satisfied that it is 'necessary' to stop up or divert the way 'in order to enable development to be carried out'.

It is not sufficient that the making of the order would facilitate the carrying out of the development. The order must be necessary in the sense that without the order development could not be carried out.

In this instance it is considered that the above legislative criteria have been met. Both the construction of the stadium and cycle track, including security fencing to prevent the public from entering these areas for safety reasons, are to be constructed over the path.

## **Derwent Ward**

Cllr J Brooks: “I have no objections to the proposed diversion which, unlikely as it seems, is within Dunnington Civil Parish.”

## **Group Spokespersons' view**

Cllr A D'Agorne: No comments received

Cllr J Galvin: *“I have no problem with the diversion, I will leave it up to the Ward Councillor Cllr Mrs Brooks.”*

Cllr D Merrett: No comments received

Cllr A Reid: *“I was surprised to see that this is classed as a Dunnington footpath given that it is within the University. However, I have no problem with the proposed diversion. The proposed path is not much longer than the current one and I suspect that there will be no effect on anyone using the path. This diversion was highlighted when the planning application was considered and no concerns were raised at that time.”*

## **Financial Implications**

The cost of advertising the required legal orders (making and confirmation) will be met by the applicants.

The newly diverted route and the culvert it crosses will be maintained by the university.

Should objections or representations be received to the Order and should the council decide to continue with it, the Order could be referred to the Secretary of State for determination. This may lead to a Public Inquiry or Hearing which the council will be required to fund. Approximate cost £3,000 to £5,000.

## **Options**

Option 1: Authorise the Assistant Director of Governance and ICT to make the required Order, under s257 of the Town and Country Planning Act 1990, to divert the footpath onto the proposed new alignment and,

- i) if no objections or representations are received, to confirm the Order as an unopposed Order.
- ii) if objections or representations are received and not withdrawn, to bring the proposal back to OIC for further consideration.

Option 2: Do not authorise the making of the Order.

### **Analysis**

Option 1: This option would allow the path to be diverted onto the proposed new alignment to enable the construction of the new stadium, cycle track and associated security fencing, to take place.

If objections or representations are received the Council has 2 options, a) not to confirm the Order and b) send the Order to the Secretary of State for determination. It should be noted that any Order made to divert the path is required to be confirmed before the development is substantially complete. Both the above will delay the development of the site.

It should also be noted that the Secretary of State has no power to amend a planning permission so as to facilitate what any objectors to the Order claim to be a preferable diversion. Objectors are also not allowed to use any subsequent public inquiry or hearing to re-argue the merits of a development for which planning permission has been granted.

Option 2: This option would leave the definitive line of the path on its current alignment. The construction of the stadium, cycle track and associated security fencing for which planning permission has been granted will not be able to go ahead, as they will obstruct the legal line of the path. This option will effectively halt/delay the development taking place.

### **Level of Risk**

1-3 Acceptable	✓	16-20 Action Plan	
4-8 Regular Monitoring		21-25 Registered as a corporate risk	
9-15 Constant Monitoring			

### **Internal Consultation**

There are no Legal, Financial, HR, Crime and Disorder, Sustainability, Equalities or Property implications, other than those already discussed above.

### **Recommendations**

That Option1 be approved.

### **Contact Details**

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#### **Manager Responsible for the Report:**

Ruth Stephenson  
Head of Sustainable Transport Service

Report Approved

Date

**Wards Affected:** Derwent, Heslington

All

**For further information please contact the author of the report**

#### **Background papers:**

Annex 1: Location Plan  
Annex 2: Order Plan