

**Decision Session – Executive Member for
Transport and Planning**

9 March 2017

Report of the Corporate Director of Economy and Place

**Public Rights of Way – Proposed Diversion of Public Bridleway
Metcalf Lane to Meadlands, Derwenthorpe, Osbaldwick (part)**

Summary

1. This report seeks authorisation to make a Diversion Order under section 257 of the Town and Country Planning Act 1990 to divert a section of a public bridleway affected by Phase 4 of the Derwenthorpe development, for which planning permission has already been granted. The path runs between Metcalfe Lane and Meadlands, Derwenthorpe, Osbaldwick, York (Annex A: Location Plan).

Recommendations

2. The Executive Member is asked to consider:
 - 1) Authorising the making of the Order to divert the path – this option is recommended.

Reason: To enable that part of the development affected by the path to take place
 - 2) Not authorising the making of the Order to divert the path – this option is not recommended.

Reason: That part of the development that is affected by the path will not be able to take place.

Background

3. Planning background: Following a public inquiry, outline planning permission for the Derwenthorpe site was granted by the Secretary of State in 2007; with reserved matters for details of the

houses being later granted in 2013. The development is being carried out in 4 phases.

4. On 12th February 2016, a planning application (16/00342/FULM) was received to request permission for the '*Erection of 36 dwellings with associated roads and public open space - revised layout of part of Phase 4 of the Derwenthorpe development (resubmission), Land Lying To The West Of Metcalfe Lane Osbaldwick York*'.
5. The application for the revised layout was due to issues with overhead cables, which were originally to be re-routed underground, but which are now required to be left in situ.
6. The revised layout affects the northern most section of the path in question, as 2 dwellings are to be built on it. As a result, the council have received an application under section 257 of the Town and Country Planning Act 1990 to divert the affected section of the path to enable development to take place (see attached plan provided by David Wilson Homes for details).
7. Public status of the path: The path in question was constructed in 1995/1996 by York City Council in partnership with Ryedale District Council, using public funds. At the time, no formal agreement was made as to its status, although it was signposted to encourage use and is now used by walkers, cyclists and occasional horse riders. The path is also part of York's Cycle Route Network.
8. Although the path has been accepted as a right of way by the public, it is not recorded on the Definitive Map and Statement. To determine the status of the route a specialist, independent consultant was employed. The investigations determined that the route was likely to be a public bridleway as the majority of use is by cyclists and walkers with very occasional use by horse riders. The landowners have accepted this bridleway status for the section of path that crosses their land and the application to divert the path reflects this.
9. The proposed diversion: The revised layout affects the northern most section of the Metcalfe Lane to Meadlands path, as x2 no. dwellings are proposed to be constructed on it. This relatively short section is therefore required to be diverted in order to enable the development to take place.

10. The effect of the development on the path is shown in Annex B (Layout Plan). The application, proposes to divert the line of the path (bold black line), onto a new alignment (bold dashed line). It is proposed that the surface of the new section will be tarmac with a width of 2 metres, which is slightly more than the width of the original path.
11. The path currently has a temporary diversion in place for safety reasons, the alignment and specification of which has been approved by the authority as a temporary measure.

Consultation

12. Pre-order consultation has been carried out in accordance with the Rights of Way Review Committee's Practice Guidance Notes on '*Consultation on changes to public rights of way and Definitive Maps*'. Not everyone consulted replied.
13. The Ramblers (Local Rep) (received 06/12/2016) - "*We are disappointed with the proposed diversion route and wish to object to the current proposal. We are however pleased that the Developer is willing to accept both the proposed route and presumably the unaffected part of the Cycle Route as a Public Bridleway. It appears that the Cycling Officer has only considered Cyclists within this proposal and even then it is not satisfactory.*"
14. Officer's comment: We employed an independent consultant to determine the status of the route, which has been accepted by the developer. The proposal was considered by both myself and the cycling officer and was deemed a suitable way forward to enable the development to be carried out.
15. "*There appears to be a speed table where the proposed path meets the Estate road. It would be preferable for the path to meet the speed table itself, rather than the southern edge of the table. The tree hereabouts should also be removed and moved further into the Open space, to give better access for pedestrians onto the proposed route from the Estate Road. There is no indication of any footway from the proposed route to pass in front of 444 & 445. We would request a footway to allow pedestrians to continue up to the footway beyond the northern speed table, at the entrance to Meadlands, where it meets with the adjacent Public Footpath from Metcalfe Lane to Meadlands. The Site Plan is a better indication than the Plan provided by DWH for your*

consideration. It may be there is a grass footway available, but should any footway be present, it would be obstructed by yet another tree, which again should be moved to a more appropriate position nearby.”

16. Officer’s comment: Although it looks as though there is a speed table, I am advised by my colleagues in Highways Development that the drawing shows a change in surface treatment only. There is not a speed table at this point. The internal layout has been designed in the same vein as previous phases; shared spaces with priority to pedestrians and cyclists, design measures to reduce vehicle speeds, and managed on-street parking etc. Vertical level changes in the highway areas have been sought to be minimised. To this end it is thought that a separate footway is not required.
17. *“As this is proposed to be a bridleway, the surface should be suitable for horses, as well as cyclists and pedestrians, as such any ‘tarmac’ or whatever must have the approval of the horse riding fraternity.”*
18. Officer’s comment: The previous tarmac surface has been accepted by the few horse riders that have historically used the path and the authority is under no obligation to supply differing surfaces for different users.
19. *“We note the Planning Officers appear to have made no mention of this path, when giving Approval to this amended Application on the 18th November, not even noting that that a Diversion Order was required with a pre-order deadline date of 9th December.”*
20. Officer’s comment: The plans submitted did show the alignment of the original path and the proposed alignment of the new path.
21. *“Any Diversion Order should be completed before any work is started on the site, with a cycle route available at all times during the development. Diverting temporarily onto the nearby footpath is unacceptable, especially in view of the state of the surface drainage.”*
22. Officer’s comment: The developers have provided an acceptable alternative route which has the same surface treatment (tarmac) and is of a similar width of the original cycle path, the alignment and specification of which has been approved by the council.

The specification of the path mitigates the past state of the surface drainage and was approved by the council.

23. *"We would not wish the process to drag out in a similar fashion to the DWH development at the former Strensall Tannery. We await further comment from yourselves and DWH."*
24. Officer's comment: As long as there are no objections and/or representations outstanding to the proposed diversion, this should not be the case.
25. The Ramblers (Local Rep) (received 22/02/2107) – *"Many thanks for your responses, which appear to satisfy most of our observations."*
26. *"The tree hereabouts should also be removed and moved further into the Open space, to give better access for pedestrians onto the proposed route from the Estate Road. It may be there is a grass footway available, but should any footway be present, it would be obstructed by yet another tree, which again should be moved to a more appropriate position nearby. The legislation (S257 TCPA 90) states that it is necessary to divert the path in order to enable development to be carried out; the built environment is not affected by our comments regarding the two trees and ask that they be moved to more appropriate positions. The original proposals can be altered, without affecting the layout of the houses."*
27. Officer's comments: The planning consent for the scheme will include a landscaping condition the details of this will need to be agreed by the relevant officers. The position of the tree could be amended to avoid compromising visibility, in accordance with national guidance. Furthermore the design of the internal highway layout is such that vehicle speeds will be restricted to 20mph or below.
28. *"Some of the proposals that emanate via Newcastle have been modified between the original proposals and the Orders. We have our York Group Footpath Sub-committee meeting next Monday 27th February and I would hope to respond on the Tuesday."*
29. Byways and Bridleways Trust: *"Thank you for consulting the Byways and Bridleways Trust about the proposed development at Derwenthorpe. The diversion seems sensible to me; the only comment I would like to put forward is on behalf of the occasional*

horse, that the tarmac surface is not given too fine and slippery a finish.”

30. No objections were received from the Utility Companies consulted.

Options

31. 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 path 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 Decision Session for further consideration.

This is the recommended option

32. Option 2: Do not authorise the making of the making of the Order to divert the path. This option is not recommended.

Analysis

33. Option 1: This option would allow the path to be diverted onto the proposed new alignment to enable the construction of the two new dwellings to take place.
34. 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.
35. 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.

36. Option 2: This option would leave the definitive line of the path on its current alignment. The construction of the two new dwellings 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.

Council Plan

37. The Plan is built around 3 key priorities:

- **A Prosperous City for All**
- **A Focus on Frontline Services**
- **A Council that Listens to Residents**

38. The proposal to divert the path relates to the Council's corporate priorities by ensuring a valued community facility remains open and available for use by the public, the use of which takes vulnerable users off the roads and encourages modal shift away from the car to more sustainable forms of travel around the city.

Implications

- **Financial:** The cost of advertising the required legal orders (Making and Confirmation) will be met by existing budgets as necessary.

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.

The newly diverted route will be constructed by the developer and continue to be maintained by the authority.

- **Human Resources (HR):** There are no HR implications.
- **Equalities:** A Community Impact Assessment (CIA) has been carried out. It is regarded that there are no negative impacts associated with this proposal

- **Legal:** The Council as planning authority for the area has powers (in respect of footpaths, bridleways, and restricted byways) to make orders under s257 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*'. Bearing this in mind the order is required to be made before the development is substantially complete.

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 plot Nos 444 and 445 of the revised layout of Phase 4 are to be built on the line of the path.

- **Crime and Disorder:** There are no Crime and Disorder Implications.
- **Information Technology (IT):** There are no IT implications.
- **Property:** There are no Property Implications.
- **Other:** There are no other implications.

Risk Management

39. Planning permission has already been granted by the authority for Derwenthorpe Phase 4. Any delays to the making and confirmation of the Order required to divert the section of path affected by the development would delay that part of the development being concluded, leading to possible financial loss to the developer. Notwithstanding this, the granting of planning permission does not give authority for the interference of a right of way and the developers have been made aware of this.

Contact Details

Author:

Alison Newbould
Rights of Way Officer
(Transport Service)

Tel No. 01904 551481

Chief Officer Responsible for the report:

Neil Ferris
Corporate Director of Economy and Place

**Report
Approved**



Date 28 February
2017

Specialist Implications Officer(s)

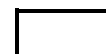
Financial

Jayne Close
Principal Accountant
4175.

Legal

Sandra Branigan
Senior Solicitor
1040.

Wards Affected: Osbaldwick and Derwent Ward



For further information please contact the author of the report

Annexes

Annex A – Location Plan

Annex B – Layout Plan

Annex C - CIA