



**DIRECTORATE OF CITY  
& ENVIRONMENTAL  
SERVICES**

**REQUEST FOR  
DECISION**

**Decision making  
level**

**OIC - Director**

**Date**

**Report Title:- Public Rights of Way: Public Footpath, Strensall No 4  
– Proposed diversion (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, Strensall No 4.

**Reason**

In order to allow the development at The Tannery to be carried out.

**Background Information**

On 18<sup>th</sup> July 2013, planning permission 12/03149/FULM was granted by the council for a residential development of 53 dwellings with associated public open space, access, infrastructure, and pedestrian and cycle bridge over the River Foss, at The Tannery, Sherriff Hutton Road, Strensall.

The right of way in question (Public Footpath, Strensall No 4), runs on land between The Tannery, Sherriff Hutton Road and the River Foss, Strensall (Plan 1). The path carries the Foss Walk, Centenary Way and Ebor Way which are regionally promoted routes. A section of the path is directly affected by the above planning permission (ped/cycle bridge and fences around rear gardens of riverside properties) and is therefore required to be diverted in order to enable the development to take place (see Plan 2 for affect of the development on the footpath).

It is proposed to divert the definitive line of the affected section (bold black line on the Plan 1), onto a new alignment (bold dashed line) that will circumnavigate the new ped/cycle bridge and then drop down to run on a new alignment that is closer to the river.

From Point A to B the path will have a tarmac surface and have a definitive width of 3 metres. From B to C the path will have a definitive width of 2 metres, have a stoned surface with timber edging and a gradient of no more than 1:20. From C to D the surface will be

grass/natural, possibly over a stoned base in areas more prone to water logging, with a definitive width of 2 metres. The sections of the path that are not going to be adopted will be maintained by a management company which will take over maintenance responsibility of the public open spaces within and adjoining the development on its completion. There will not be any path furniture (for example, stiles and gates) along the length of the proposed diverted route.

### **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*', although a shorter period of 4 weeks rather than 3 calendar months was given due to restricted timescales involved. Not everyone consulted replied.

Of those consultees who did reply the main points are summarised below (full replies are included in Annex 1).

Surface of the proposed new path: There is a feeling that the current walked path (which is the proposed new line of the path) is frequently quite muddy and slippery, with the danger of sliding towards the river. The development will bring about increased use of the path, which will exacerbate the situation. A crushed stone surface along the river bank has been suggested, although The Ramblers have said that they are happy with the natural surface for the time being and have said to see how it wears, before considering the necessity of crushed stone. The IDB are concerned that any path surface may be damaged by their machinery operating along the way-leave to maintain the river; more specifically the short downhill section that is to be stoned with a timber edge. Additionally, arisings from the river are typically deposited within the 9m maintenance margin along the river and a crushed stone surface may not be conducive with this.

Officer's comments: The most muddy section of the proposed new path leads away from the weir in an easterly direction. The weir, whose ownership is in dispute is causing the riverbank to erode and slip towards the river thus lowering the level of the bank in places and making it more prone to flooding and wet spots at the lowest points.

Exit of proposed new path onto Sherriff Hutton Road: The proposed exit point of the path onto the Sheriff Hutton Road is considered to be potentially dangerous to pedestrians due to the fact that walkers would be required to cross the road diagonally to continue along the riverside path on the other side of the road. It is therefore suggested that the

proposed path should exist on to the road at a location closer to the foot of Sheriff Hutton Road bridge (where it is currently) to allow a more direct crossing of this road. People would most likely take a more direct route across the verge at this point anyway rather than walk up the proposed footway to then walk back again. The platform onto the continuation of the path to the east is also thought to be inadequate and should be increased in size to provide a safe refuge for at least two people, rather than the one currently provided.

Officer's comments: This improvement is included within the terms of the s106 Agreement, although permission from the owner of the land will be required.

Footbridge across Primrose Dyke (to the west of the site): It is suggested that this bridge requires repair or replacement to accommodate increased use of the path.

Officer's comments: This improvement is included within the terms of the s106 Agreement, although permission from the owner of the land will be required.

Current definitive line of the footpath: The local Ramblers would have preferred the path to either continue up to the new bridge before turning up towards the road, or crossing diagonally over the Open Space to the northern end of the new bridge. If there is to be a slope down from the bridge to the Open Space, it is suggested that this should be a few metres further east than that shown by the Developer. The Ramblers have also suggested that the Developer provide a continuation path up to (but not under) the new bridge, as this could form part of the riverside walk and perhaps have a bench or two thus firmly designating the top of the river bank as public access.

Use of the new Ped/cycle bridge: The British Horse Society (BHS) have suggested that the new ped/cycle bridge be designated as bridleway which would allow all vulnerable users to use it and also allow better links to the bridleway along Forest Lane, which would also make a sensible network for cyclists.

The BHS have also suggested that the footpath along the river be upgraded to bridleway as too would allow cyclists a nice route, and the few riders of horses would also be able to get off road. *'Obviously the whole scheme would hold up this development, but even if it was initially a dead end bridleway, the further western link could then be worked on in the future'*.

Officer's comments: This suggestion is outside the scope of the legislation to divert the path.

Internal Drainage Board (IDB) consent requirements: The IDB have stated that Any works undertaken within 9 metres of the top of the riverbank (including a footpath diversion), require IDB consent, this includes the application to divert the footpath. Any diversion or right of way granted should not preclude the Board from carrying out their strategic flood risk management function and access to the bank must be afforded at all times including during periods where facilitation works are being undertaken.

The plan provided would indicate that the diversion will incorporate some amendment to the course within the 9m wayleave and it would therefore be suggested that the applicant submits a formal application to the Foss (2008) IDB for a Section 23 consent encompassing formal consent for the diversion and all aspects of works including resurfacing and temporary works. Subject to this the Board would have no objections to the proposal.

Officer's comments: The Developer has approached the IDB for this consent.

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 ped/cycle bridge and the fencing of the rear gardens of the riverside properties are to be constructed over the path.

## **Ward Member(s') view**

### **Strensall Ward**

Cllr P Doughty: *'Although I do not object to the right of way variation proposed, I support the views in the submission from Strensall with Towthorpe Parish Council and the Foss Society. These should be considered.'*

*It is likely that there will be a substantially increased usage of the footpath when the 53 adjacent homes are completed and occupied. Increased wear could see access restricted as the surface becomes too muddy. I too would therefore endorse the Parish Council and Foss Society recommendation that a crushed stone surface is used to help ensure the footpath remains accessible.*

*I also indicate support for the Parish Council suggestion that a safer option would be to include an additional spur of the footpath to and from the proposed footbridge over the river.'*

Cllr S Wiseman: *'I am unable to open the attachments so will support Cllr Doughty, the Parish Council and the Foss Society as they are in a better position to comment.'*

### **Group Spokespersons' view**

Cllr A D'Agorne: No comments received

Cllr Steward: No comments received

Cllr D Merrett: No comments received

Cllr A Reid: No comments received

### **Financial Implications**

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

The section of path to be diverted will not to be maintained Rights of Way, but by the management company who will take over the maintenance of the public open space within and adjoining the development.

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 bridge and riverside properties.

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 new bridge and the fencing around the riverside properties 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 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:**

Tony Clarke  
Head of Transport

Report Approved

Date

**Wards Affected:** Strensall

All

For further information please contact the author of the report