

## BARNSELY METROPOLITAN BOROUGH COUNCIL

**Report of Assistant Director,  
Highways, Engineering and  
Transportation to Planning  
Regulatory Board on  
27<sup>th</sup> October 2015**

### Diversion of a footpath at Birdwell / Rockingham.

<b>1.0</b>	<b><u>Purpose of Report</u></b>
<b>1.1</b>	To consider an application to divert Worsbrough public footpath no. 40 north of the Dearne Valley Parkway at Birdwell / Rockingham.
<b>1.2</b>	To consider proposals to stop up part of Tankersley footpath no. 11 to the south of the Dearne Valley Parkway at the same location.
<b>2.0</b>	<b><u>Recommendations</u></b>
<b>2.1</b>	<b>That, in exercise of statutory powers, the Council makes Public Path Orders under the provisions of section 257 of the Town and Country Planning Act 1990 and section 119 of the Highways Act 1980 for the diversion of Worsbrough footpath no. 40 and under section 118 of the Highways Act 1980 for the extinguishment of Tankersley footpath no. 11, as shown on the plan attached to this report.</b>
<b>2.2</b>	<b>That the Director of Legal and Governance be authorised to publish the Orders and to confirm them himself in the event of there being no objections thereto.</b>
<b>2.3</b>	<b>In the event objections are received which cannot be resolved, the Director of Legal and Governance be authorised to submit the Orders to the Secretary of State for confirmation and to take all necessary steps to support the Orders at any public inquiry, informal hearing or written representation as necessary</b>
<b>2.4</b>	<b>That the Director of Legal and Governance be authorised to make a Definitive Map Modification Order to make the necessary changes to the Definitive Map and Statement for the area.</b>
<b>3.0</b>	<b><u>Background and Proposal</u></b>
<b>3.1</b>	Harworth Estates have applied for planning permission under reserved matters to build a mixed use commercial unit (unit 5) at the Gateway 36 development north of the Dearne Valley Parkway at Birdwell.

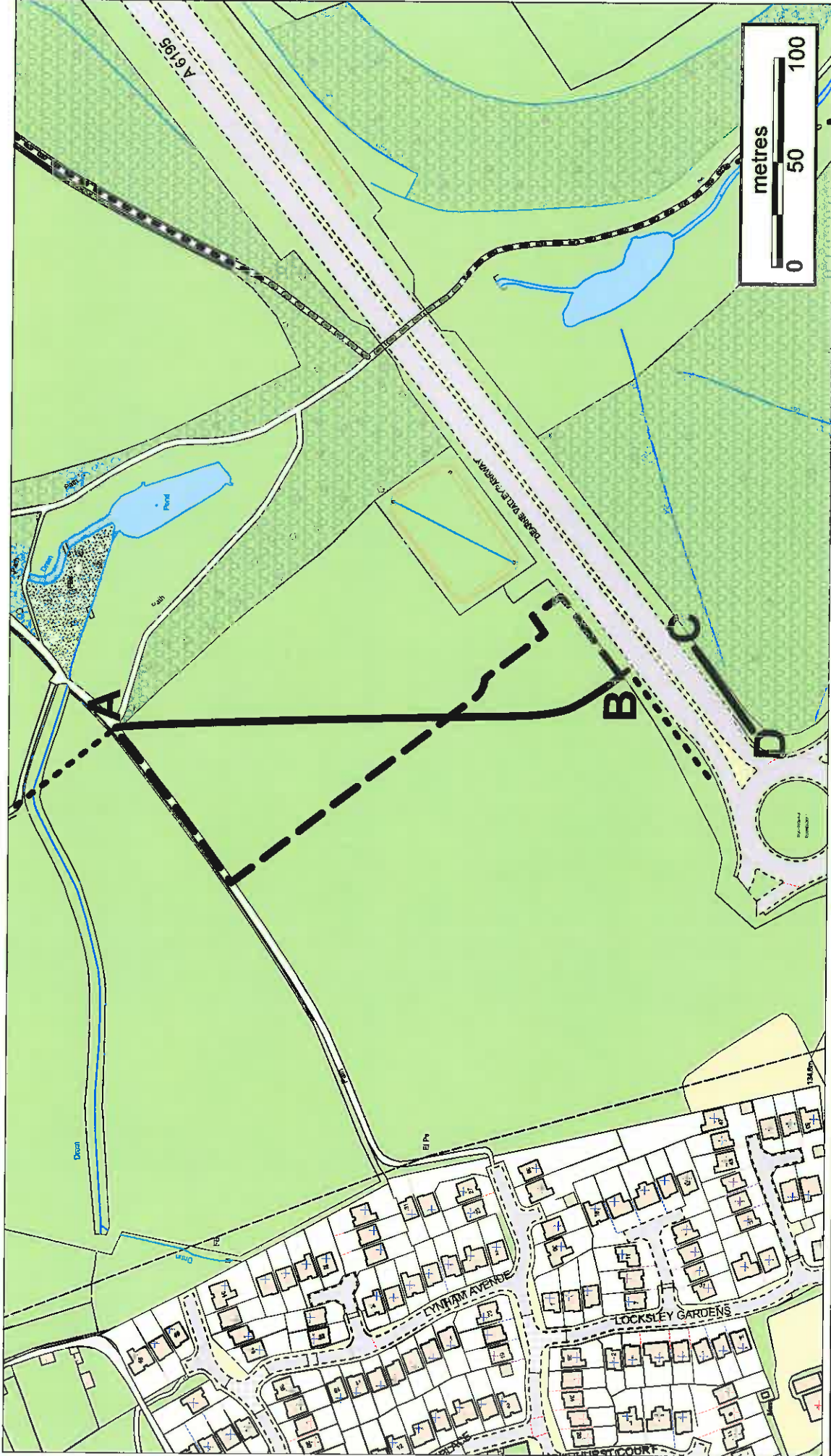
<b>3.2</b>	Worsbrough footpath no. 40 runs directly through the site and crosses the proposed new unit. To allow construction and provide a clear, defined route through the site, the developer has applied to divert the footpath around the perimeter of the unit.
<b>3.3</b>	As only part of the path is directly affected by the proposed development, it is necessary to make a further order to divert the remaining length of the path which continues from the site boundary to the Dearne Valley Parkway. Diversion of this route enables the full length of the path to be dealt with at the same time, ensuring minimum disruption for both landowner and the public and clarifying public access across the site. It creates a defined, surfaced route for the whole of the path on an alignment which would also allow future development to go ahead without the need for further changes to the footpath network.
<b>3.4</b>	The existing route of the footpath has no defined alignment or width and a boggy surface. The path is currently under a temporary closure order to allow construction of the adjacent units.
<b>3.5</b>	The proposed diversion route runs alongside a car park, across the site access road, between unit 5 and the adjacent unit (under construction) then along the track which follows the northern boundary of the site.
<b>3.6</b>	This route is approximately 110m longer than the existing path, but is the shortest available alternative. It will be 2 metres wide and have a tarmac or stone surface throughout, which will give the path a defined alignment for the first time since it was suspended in 1990 to allow open cast mining at the site.
<b>3.7</b>	In addition, the A61 Birdwell Junction Improvement Side Roads Order formally stopped up part of Tankersley FP 11 between the Dearne Valley Parkway and Cross Keys Lane. This left a section of footpath running parallel with the Parkway as a dead end route.
<b>3.8</b>	It is proposed to stop up this short section of path as it no longer links to the rest of the network and therefore is no longer required for public use.
<b>3.9</b>	Informal consultations have been carried out with user groups, ward councillors and utilities companies, and consultation notices have been placed on site.
<b>3.10</b>	South Yorkshire Police's Crime Prevention Officer raised some concerns about security at the site. As these relate primarily to the development and not the footpath diversion, they have been forwarded to the developer to consider.
<b>3.11</b>	A local resident has contacted the Council to ask why the diversion is necessary, and commented that 'buildings should be designed to accommodate existing definitive rights of way'. This is considered to be a criticism of the planning procedure and not a matter that the Council can

	consider in relation to the footpath diversion application. Despite further queries, no relevant objections have been raised to the proposed diversion.
3.12	No other negative comments have been received.
4.0	<b>Statutory Criteria</b>
4.1	Section 257 of the Town and Country Planning Act 1990 (as amended) enables public rights of way to be extinguished or diverted where the Council, as Planning Authority, is satisfied that it is necessary to do so in order to enable development to take place.
4.2	The existing path runs directly across the site of the proposed new unit, so development is not possible unless the path is moved. Therefore the statutory criteria are met.
4.3	DEFRA Rights of Way Circular 1/09 provides guidance for local authorities and is used by inspectors when considering objections to public path orders made under the Town and Country Planning Act. It states in paragraph 7.15; 'That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.'
4.4	The existing path has had no defined alignment, width or surfacing since it was suspended in 1990 to allow open cast mining at the site. This section of the proposed new path is approximately 60 metres longer but is the shortest alternative that allows development to go ahead, provides a clear alignment and has a width of 2 metres and a tarmac or crushed stone surface throughout. These benefits are considered to offset any inconvenience caused by the additional length or road crossing (the path is part of a much longer link route which involves walking at least a further 800 metres and crossing the Dearne Valley Parkway, so the length and crossing are considered to be in character with the existing route and not to cause significant additional inconvenience).
4.5	Section 119 of the Highways Act 1980 enables a path to be diverted where it is considered expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the path or in the interests of the public. Before confirming such an order the Secretary of State or the Council, as the case may be, must be satisfied that the diversion is expedient and that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –

	<ul style="list-style-type: none"> <li>(i) the diversion would have on public enjoyment of the path or way as a whole,</li> <li>(ii) the coming into operation of the order would have as respects other land served by the existing public right of way, and</li> <li>(iii) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.</li> </ul>
<b>4.6</b>	The Council also has to have regard to the likely impact of the diversion on agriculture, forestry and bio diversity
<b>4.7</b>	The diversion of the path outside the development boundaries is considered to be in the interests of both the landowner and the public. It allows the full length of the path to be diverted at the same time, providing a defined, surfaced route through the site on an alignment that would allow future development to go ahead without the need for further diversions. This part of the diversion is approximately 50 metres longer than the original but is considered to have a positive impact on public access as it provides a clear alignment, 2 metre width and crushed stone surface, rather than the existing nominal alignment across an open, wet field.
<b>4.8</b>	As only part of the path is directly affected by the proposed development, it is necessary to make a further order to divert the remaining length of the path which continues from the site boundary to the Dearne Valley Parkway. Diversion of this route enables the full length of the path to be dealt with at the same time, ensuring minimum disruption for both landowner and the public and clarifying public access across the site. It creates a defined, surfaced route for the whole of the path on an alignment which would also allow future development to go ahead without the need for further changes to the footpath network.
<b>4.9</b>	Section 118 of the Highways Act 1980 enables a public right of way to be stopped up where it is considered that it is not needed for public use. When making an Order the Council must be satisfied that it is not needed for public use. Further, before confirming the Order the Secretary of State, or the Council, as the case may be, must be satisfied it is expedient so to do having regard to the extent (if any) it appears that the path would, apart from the Order, be likely to be used by the public. It also has to have regard to the effect which the extinguishment will have as respects land served by the path.
<b>4.10</b>	The A61 Birdwell Junction Improvement Side Roads Order stopped up part of part of Tankersley footpath no. 11, leaving a short length alongside the southern side of the Dearne Valley Parkway as a dead end route. The Council is satisfied that the path is not needed for public use as it no longer links to the remainder of the network, a public place or any other

	destination.
<b>5.0</b>	<b><u>Options</u></b>
<b>5.1</b>	The Council makes the orders applied for. Officers are satisfied that the necessary statutory criteria are met, that the proposed alternative route is the best available and that the section of Tankersley footpath no. 40 proposed to be extinguished is no longer required for public use.
<b>5.2</b>	The Council could decline to make the orders applied for, but as the relevant statutory criteria have been satisfied, it is not considered reasonable to do so.
<b>6.0</b>	<b><u>Local Area Implications</u></b>
<b>6.1</b>	There are no implications for the local area beyond minor changes to the rights of way network.
<b>7.0</b>	<b><u>Compatibility with European Convention on Human Rights</u></b>
<b>7.1</b>	These proposals are considered to be compatible with the Convention.
<b>8.0</b>	<b><u>Ensuring Social Inclusion</u></b>
<b>8.1</b>	The proposal will have no negative impact on social inclusion. The new path will have gradients, surfaces and widths that are similar to or more accessible than the existing footpath.
<b>9.0</b>	<b><u>Reduction of Crime and Disorder</u></b>
<b>9.1</b>	The proposals are not considered to have any effect on crime and disorder. In response to consultations, South Yorkshire Police's Crime Reduction Officer raised no objections or comments.
<b>10.0</b>	<b><u>Financial Implications</u></b>
<b>10.1</b>	If the Orders are made and objections are received there will be additional costs to the Council that cannot be passed on to the applicant. This is especially the case if the matter has to be resolved at a public inquiry.
<b>11.0</b>	<b><u>Risk Assessment</u></b>
<b>11.1</b>	The Council has powers under the Town and Country Planning Act 1990 and the Highways Act 1980 to make the orders applied for. The statutory process provides an opportunity for objections which, if upheld, may result in the order not being confirmed by the Secretary of State.
<b>11.2</b>	Objections may be received to the diversion application. However, the Council is satisfied that no relevant grounds for objection have been

	raised during the consultation period, that the application meets all of the statutory criteria and that the best possible alternative route has been identified for the diversion orders.
<b>12.0</b>	<b><u>Consultations</u></b>
<b>12.1</b>	User groups (including the Barnsley Local Access Forum), ward councillors, other Council departments and utilities companies have been consulted on the application and notices have been placed on site.
<b>12.2</b>	South Yorkshire Police's Crime Prevention Officer raised some concerns about security at the site which have been forwarded to the developer to consider.
<b>12.3</b>	A local resident has complained that the diversion is not necessary, but did not raise any relevant grounds for objection.
<b>12.4</b>	No other negative comments have been received.
<b>13.0</b>	<b><u>Proposal</u></b>
<b>13.1</b>	Councillors approve the recommendations in section 2.
<b>14.0</b>	<b><u>Glossary</u></b>
<b>15.0</b>	<b><u>Appendices</u></b> Appendix A - Plan showing proposed diversion. Appendix B – Plan showing diversion and planning layout.
	Officer Contact: Rik Catling Tel: ext 2142
	Date: 27 October 2015



Proposed diversion of Worsbrough  
public footpath no. 40 / Tankersley  
public footpath no. 11 at Birdwell

Drawn by BMBC  
Map 1

Scale 1 : 2500

- Footpath(s) to be created
- Footpath(s) to be deleted
- Unaffected rights of way










KEY	
	EXISTING PUBLIC RIGHT OF WAY (FOOTPATH 40)
	PROPOSED PUBLIC RIGHT OF WAY

CRUSHED STONE FINISH  
2.0m WIDE

BITUMINOUS 2.0m  
SURFACE

CRUSHED STONE FINISH  
2.0m WIDE

A		19/08/15	TP	INITIAL ISSUE	RAM	RAM	PROJECT ROCKINGHAM	CLIENT HARWORTH ESTATES			 <b>OPTIMA</b> Intelligent Highways Solutions <small>120, 121 &amp; 122, The Parkway, Lutterworth, Leicestershire, LE15 9JG</small>
REV	DATE	BY	DESCRIPTION	CHK	APP	DRAWING TITLE	CHECKED RAM	APPROVED RAM	DRG No. 14001/IN/05		
STATUS PRELIMINARY						PUBLIC RIGHT OF WAY DIVERSION APPLICATION	DRAWN BY: TP	SCALE @ A3 1:1000	DATE 19/08/15	REV. A	

