

BARNSLEY METROPOLITAN BOROUGH COUNCIL

**Report of Assistant Director,
Highways, Engineering and
Transportation to Planning
Regulatory Board on
26th July 2016**

Diversion of a public footpath at Goldthorpe.

1.0	<u>Purpose of Report</u>
1.1	To consider an application to divert Dearne public footpath no. 18 south of Barnburgh Lane at Goldthorpe.
2.0	<u>Recommendations</u>
2.1	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 Dearne footpath no. 18, as shown on the plan attached to this report.
2.2	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.
2.3	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.
2.4	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.
3.0	<u>Background and Proposal</u>
3.1	Gleeson Homes has applied for planning permission for phase 2 of a new residential development south of Barnburgh Lane at Goldthorpe.
3.2	Dearne public footpath no. 18 runs across this site, directly through several of the proposed properties. To allow construction and provide a clear, defined route for the public, the developer has applied to divert the footpath through a 10 metre wide landscaped buffer zone around the boundary of the development. (NB: The Council can make a diversion

	order without planning permission, but permission must be granted before the order can be confirmed.)
3.3	The continuation of the path to the south of the development site is currently blocked by a large bog, ditch, fencing and crops. In order to create a clear, usable through route for the public, it is also proposed to divert this section of the footpath onto a new alignment under the Highways Act 1980.
3.4	At present the legal alignment of the footpath runs along Engine Lane then forks into 2 spurs which rejoin shortly afterwards in the adjacent field. There is no obvious reason why the path should split into 2, so it is considered appropriate to stop up both existing routes and identify a single good alternative path for the public to use.
3.5	Both parts of the forked path run across the centre of open fields after leaving Engine Lane. The legal lines of the routes are undefined and difficult to follow, run on boggy ground and are blocked by several obstructions. The path is part of the Barnsley Boundary Walk and provides a good link to the local countryside, and it appears that people are walking on a variety of informal routes through the fields to avoid the obstructions rather than sticking to a defined footpath.
3.6	The proposed diversion route leaves Engine Lane then runs through a 10 metre wide landscaped buffer zone around the development with a 2 metre width (between points E-B on the attached plan), before continuing around the field edge to the south of the development with a width of 1.5m (points B-D). It is also proposed to make a minor diversion of the path on Council land between points F-G to reflect the route that is available on the ground.
3.7	NB: As part of the proposed development Gleeson Homes intends to install new drainage, which should help resolve the existing problems with boggy ground.
3.8	The new route is approximately 410m long, which is longer than the current legal lines (340m and 395m). However as the new path would provide a clear, defined through route that the Council could sign, maintain and enforce it is considered to be significantly more convenient for the public than the existing route and the best available alternative.
3.9	Informal consultations have been carried out with user groups, ward councillors and utilities companies. No objections have been received.
3.10	South Yorkshire Police's Crime Prevention Officer made some comments about the planting in the buffer zone around the perimeter of the proposed new development, which have been passed onto the relevant planning officer. A minimum gap of 5 to 6 metres of planting between the path and the boundary of the properties is proposed.

4.0	<u>Statutory Criteria</u>
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 across the proposed development site, directly through several of the proposed properties. Development is not possible unless the path is moved and 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 through the development site is undefined and runs on boggy ground. The proposed new route is slightly longer but will provide a clear, easy to follow 2 metre wide path through a landscaped area around the perimeter of the development. These benefits are considered to offset any inconvenience caused by the additional length while allowing the proposed development to go ahead.
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"> (i) the diversion would have on public enjoyment of the path or way as a whole, (ii) the coming into operation of the order would have as respects other land served by the existing public right of way, and (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.

4.6	The Council also has to have regard to the likely impact of the diversion on agriculture, forestry and biodiversity.
4.7	The proposals are considered to benefit the public by providing a clear, defined through route which the Council would be able to sign, maintain and enforce. This would be a significant improvement on the current path and is considered particularly important as the route is part of the Barnsley Boundary Walk. It would also remove the existing path from a field in which livestock are kept and would avoid the need to reinstate the existing legal line of the path, which would be costly and difficult owing to the aforementioned problems on the route.
4.8	The diversion is also considered to have a positive effect on the land over which both the existing and proposed routes run by consolidating the 2 existing parallel routes running through the centre of adjacent fields into a single path. This would reduce the burden on the landowner by moving the path to a more manageable field edge route and would allow the field through which the path currently runs to be secured.
4.9	The proposed diversion is not considered to have any negative impact on agriculture, forestry and biodiversity.
5.0	<u>Options</u>
5.1	The Council makes the orders applied for. Officers are satisfied that the necessary statutory criteria are met and that the proposed alternative route is the best available.
5.2	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. Furthermore, the Council would have to spend significant time and resources to enforce reinstatement of the existing legal line due to the large number of obstructions and problems with the current route.
6.0	<u>Local Area Implications</u>
6.1	There are no implications for the local area beyond minor changes to the rights of way network.
7.0	<u>Compatibility with European Convention on Human Rights</u>
7.1	These proposals are considered to be compatible with the Convention.
8.0	<u>Ensuring Social Inclusion</u>
8.1	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 and will be much easier for the

	public to follow.
9.0	<u>Reduction of Crime and Disorder</u>
9.1	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, while their comments on planting in the landscaped buffer zone have been passed onto the relevant planning officer for consideration.
10.0	<u>Financial Implications</u>
10.1	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.
11.0	<u>Risk Assessment</u>
11.1	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.
11.2	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.
12.0	<u>Consultations</u>
12.1	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.
12.2	No objections have been received.
13.0	<u>Proposal</u>
13.1	Councillors approve the recommendations in section 2.
14.0	<u>Glossary</u>
15.0	Appendices Appendix A – Dearne FP 18 diversion plan.
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	Date: 26 th July 2016