

## BARNSLEY METROPOLITAN BOROUGH COUNCIL

Report of Assistant Director,  
Highways, Engineering and  
Transportation to Planning  
Regulatory Board on  
27<sup>th</sup> June 2017

### Public footpath diversion application: Farm Road, Kendray.

<b>1.0</b>	<b><u>Purpose of Report</u></b>
<b>1.1</b>	To consider an application to divert an unrecorded public footpath at Farm Road, Kendray and stop up a second unrecorded footpath at the site.
<b>1.2</b>	To consider proposals to divert Barnsley footpath no. 423 at the same site.
<b>2.0</b>	<b><u>Recommendations</u></b>
<b>2.1</b>	That, in exercise of statutory powers, the Council makes a Public Path Order under the provisions of section 257 of the Town and Country Planning Act 1990 for the stopping up and the diversion of 2 unrecorded public footpaths joining Farm Road and a Public Path Order under the provisions of section 118 of the Highways Act 1980 for the diversion of Barnsley footpath no. 423, as shown on the plans attached to this report.
<b>2.2</b>	That the Executive Director, Core Services and Solicitor to the Council be authorised to publish the Orders and to confirm them himself in the event of there being no objections thereto.
<b>2.3</b>	In the event objections are received which cannot be resolved, the Executive Director, Core Services and Solicitor to the Council 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>2.4</b>	That the Executive Director, Core Services and Solicitor to the Council be authorised to make a Definitive Map Modification Order to make the necessary changes to the Definitive Map and Statement for the area.
<b>3.0</b>	<b><u>Background and Proposal</u></b>
<b>3.1</b>	The applicant has been granted planning permission for a new residential development off Farm Road, Kendray, consisting of 2 blocks of 3

	attached properties. (Planning reference 2017/0341.)
<b>3.2</b>	2 unrecorded public footpaths run diagonally across the site through the proposed new properties. These routes were acknowledged as rights of way by the Council at a public inquiry in 2007 and are accepted by the landowner. The continuation was formally recorded as a public right of way following that inquiry.
<b>3.3</b>	To enable development to go ahead and provide an alternative through route for the public, the developer has applied to stop up one of the footpaths and divert the other onto a new route between the 2 proposed new buildings. As end points of the 2 routes are very close together, it is considered that a single replacement path is appropriate.
<b>3.4</b>	The new path would be 2 metres wide throughout with a tarmac surface. Several other features aim to make visibility and security as good as possible for both the public and residents: the turn in the path would be widened to soften the turn, adjacent fencing would be a maximum of 1.5 metres high and existing street lighting at point D would illuminate the majority of the path. These proposals are considered to be the best available that allow the planning permission to be implemented.
<b>3.5</b>	The Council also proposes to divert Barnsley footpath no. 423, which was created following a public inquiry in 2007 and runs across the Barnsley Academy access road (E-F). This footpath is blocked by fencing and has at no time since creation been open to or used by the public. It is therefore considered appropriate to divert this path onto the alternative line marked G-H. This will provide a more practical route and better access for the public.
<b>3.6</b>	Informal consultations have been carried out with user groups, ward councillors and utilities companies. South Yorkshire Police's Crime Reduction Officer questioned the need to create a new path, but the proposals do not create new paths, instead moving existing footpaths.
<b>4.0</b>	<b><u>Statutory Criteria</u></b>
<b>4.1</b>	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.
<b>4.2</b>	The existing paths run directly through the proposed properties on Farm Road. Development is not possible unless the path is moved and the application therefore meets the statutory criteria.
<b>4.3</b>	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

	<p>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 –</p> <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>4.4</b>	The proposed diversion of Barnsley footpath no. 423 is considered to benefit both the landowner and public by stopping up the existing recorded alignment of the path, which has never been available to the public, and replacing it with a much more useful alternative. This would clarify the public rights for both the public and landowner and would remove the need for costly works to open up the current recorded alignment for public use.
<b>4.5</b>	It is considered that the diversion would improve public enjoyment of the path, have no affect on any other land that is served by the existing path (which is all enclosed within the school fencing) and would not have any negative impact on the land onto which is being diverted or any other land held with it.
<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 and that the proposals are the best available.
<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 proposals will have no negative impact on social inclusion.
<b>9.0</b>	<b><u>Reduction of Crime and Disorder</u></b>

<b>9.1</b>	In response to consultations, South Yorkshire Police's Crime Reduction Officer questioned the need to create a new path, stating that this may create more opportunities for crime. However, the application is not to create a new path but to divert an existing route. Extinguishment is not considered a realistic option as the path is a well-used link to a much longer route through recreational land in a predominantly urban area.
<b>9.2</b>	The proposals take into consideration possible problems on site and several features aim to improve security for both residents and the public, namely: the bend in the path would be widened to soften the turn, adjacent fencing would be a maximum of 1.5 metres high and existing street lighting at point D should illuminate the majority of the path.
<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. 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 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 routes have 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. No objections 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>	<p>Appendices</p> <p>Appendix A – Map 1: Farm Road FP diversions overview</p> <p>Appendix B – Map 2: Farm Road FP diversion with planning layout</p> <p>Officer Contact: Rik Catling Tel: ext 2142</p> <p>Date: 27<sup>th</sup> June 2017</p>