

## BARNSELY METROPOLITAN BOROUGH COUNCIL

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

### Diversion of public footpaths at Tankersley Golf Club.

<b>1.0</b>	<b><u>Purpose of Report</u></b>
<b>1.1</b>	To consider an application to divert Tankersley public footpaths 31, 33, 34, 35 and to extinguish part of Tankersley public footpath no. 34 at Tankersley Park Golf Club.
<b>2.0</b>	<b><u>Recommendations</u></b>
<b>2.1</b>	<b>That, provided the applicant can satisfy the Council as to the matters set out in paragraph 3.4 below, the Council makes a Public Path Order under the provisions of section 257 of the Town and Country Planning Act 1990 for the diversion of Tankersley footpath 34, and Public Path Orders under the provisions of sections 118 and 119 of the Highways Act 1980 for the diversion of Tankersley footpaths 31, 33 and 35 and the extinguishment of part of Tankersley footpath no. 34 at Tankersley Park Golf Club as shown on the plan attached to this report.</b>
<b>2.2</b>	<b>That the Executive Director 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>
<b>2.3</b>	<b>In the event objections are received which cannot be resolved, the Executive Director 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>
<b>2.4</b>	<b>That the Executive Director 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>
<b>3.0</b>	<b><u>Background and Proposal</u></b>
<b>3.1</b>	Tankersley Park Golf Club has obtained planning permission to construct a new driving range (application no. 2015/0087).
<b>3.2</b>	The proposed driving range is crossed by Tankersley footpath no. 34 (A-B

	<p>on the plan at appendix A). To enable development, the golf club has applied to divert this path onto a new alignment alongside the edge of the range (A-C).</p>
<b>3.3</b>	<p>The new alignment is the most direct and most convenient for walkers, is the same length as the existing path and is the line favoured by local user groups. Provided that the measures set out below are provided to the satisfaction of the Council, it is also considered to be the safest available alternative as it borders the driving range on one side only. Alternative routes have been considered but rejected as they would have to run between or across other holes on the course, increasing the danger of pedestrians being struck by stray golf balls.</p>
<b>3.4</b>	<p>In order to protect members of the public from golf balls on the driving range, the golf club will erect fencing alongside the new footpath. The golf club commissioned Alan B. Partnership Limited, a firm of health and safety advisors, to conduct a safety assessment of the proposed diversion. The assessment recommends installation of a 3 metre high fence comprised of aluminium posts and 1.2mm knotted twine with a 28mm mesh, made from UV treated polyethylene, edged at the top and bottom. The golf club have agreed to install this fencing along the full length of the driving range.</p>
<b>3.5</b>	<p>The proposed fencing will require planning permission which is to be the subject of a separate application by the golf club. The proposed diversion order will not be published until such time as the required planning application has been submitted to the Council for approval and the golf club has made satisfactory arrangements with the Council to secure the future maintenance of the fencing by way of a unilateral undertaking.</p>
<b>3.6</b>	<p>The golf club also proposes 2 further diversions to reduce the existing conflict between walkers and golfers and improve public safety on the course.</p>
<b>3.7</b>	<p>Tankersley footpath no. 35 crosses 3 fairways, leaving walkers exposed to golf balls in several locations and causing interruptions and uncertainty for players (existing D-E).</p>
<b>3.8</b>	<p>The proposed diversion would instead turn at point D before reaching the fairways and run through the woodland parallel to hole 3 to join the existing footpath no. 23, which runs around the boundary of the course (D-F-E). The path would have a grass surface through the woodland.</p>
<b>3.9</b>	<p>This proposed route is significantly safer than the existing path as it completely avoids the 3 fairways. The new section D-F is separated from the closest fairway by an 'out of bounds' area of rough grass and between 5-15 metres of woodland. The new route would be approximately 135m longer than the existing path between points D-E, but the benefits of the new route are thought to outweigh the additional length, especially as this is primarily a rural leisure route. The new path would also pass a historical stone plaque noting the site of a former folly, which may be of interest to</p>

	walkers.
<b>3.10</b>	Tankersley footpath no. 33 (existing G-H) crosses the fairway of hole 8 through a landing zone with poor visibility, immediately south of point G. The existing path enters the fairway between 2 small hills, which means that walkers can only see or be seen by golfers after they have stepped onto the playing area. The recorded line of the path then continues through the woodland before crossing the fairway of hole 1.
<b>3.11</b>	The proposed alternative runs around the hills, crossing the fairway at a point 75 metres further east where visibility is much improved. It would then continue along a surfaced path through the adjacent woodland, avoiding the fairway of hole 1 altogether. The proposed route is 110 metres longer than the current path.
<b>3.12</b>	Footpaths 31 and 34 are proposed to be diverted / stopped up around the clubhouse. These are minor changes to ensure that the paths recorded on the Definitive Map and Statement match those that are available on the ground, which is not currently the case.
<b>3.13</b>	Informal consultations have been carried out with user groups, ward councillors and utilities companies. No objections have been received to the proposals put forward in this report.
<b>3.14</b>	A different set of proposals was previously considered at this site which intended to divert the path onto the other side of the driving range without a protective fence. These proposals received numerous objections based on public safety concerns. Following discussions between the Council, Tankersley Parish Council, user groups and the Golf Club, the current plans were drawn up. No objections have been received to the new plans and those parties who objected previously have confirmed their support for the proposals, on condition that the new fence is built to a standard to protect walkers.
<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>	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

	<p>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.’</p>
<p><b>4.3</b></p>	<p>Tankersley footpath no. 34 runs directly across the proposed driving range and a diversion is required to allow development to go ahead. The Council is satisfied that the proposed new route provides a convenient link to the existing path through the woodland and is the best available option, provided that the required safety measures are satisfactorily implemented. The provision of fencing along the full length of the driving range will minimise as far as possible the risk of any golf balls being accidentally hit towards people using the footpath.</p>
<p><b>4.4</b></p>	<p>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 –</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>
<p><b>4.5</b></p>	<p>The proposed diversions of Tankersley footpaths 35, 33 and 31 are all considered to benefit both the landowner and the public by reducing or removing the existing conflict between people using the public footpaths and those playing on the golf course. Each of the diversions increases safety for walkers and provides greater certainty for golfers by either separating the paths from the fairways or else providing major improvements to vision and crossing points, which is considered to improve enjoyment for all parties. The additional length added to the footpaths is considered to be offset by the benefits provided.</p>
<p><b>4.6</b></p>	<p>Section 118 of the Highways Act 1980 enables a path to be extinguished on the grounds that it is not needed for public use. Before confirming such an order, the Secretary of State or the Council, as the case may be, must be satisfied that it is expedient so to do having regard to the extent to which the path or way would be likely to be used by the public; and the effect which the extinguishment of the path would have as respects land served by the path or way.</p>
<p><b>4.7</b></p>	<p>The section of Tankersley footpath no. 34 proposed to be extinguished does not physically exist and, as far as the Council is aware, is not walked by the public. Nearby alternative paths exist to connect the rest of the</p>

	rights of way network in all directions, so extinguishment of the path is not considered to have a negative effect on public access and will have a positive impact on the land by clarifying the access rights on 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. The gradients, surfaces and widths of the new paths would be similar to those of the existing paths in order to ensure that they are no less accessible.
<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.
<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 orders 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 and notices have been placed on site.
<b>12.2</b>	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>	Appendices Appendix A – Map 1 Tankersley 34 (TCPA). Appendix B – Map 2 Tankersley 33 + 35 (HA)
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	Date: 25 <sup>th</sup> July 2017