

Name of meeting and date: Planning Sub-Committee (Heavy Woollen Area)

Date: 17 February 2021

Title of report: Application (amended proposal) for diversion order - public footpath Spenborough 110 (part), near Spen Valley Leisure Centre, Bradford Road, Liversedge. Highways Act 1980, section 119

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| Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | No |
| Is it in the Council's Forward Plan? | No |
| Is it eligible for "call in" by Scrutiny? | Yes |
| Date signed off by <u>Director</u> & name | Colin Parr – 5 February 2021 |
| Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance? | Yes: James Anderson on behalf of Eamonn Croston |
| Is it also signed off by the Service Director (Legal Governance and Commissioning)? | Yes: Julie Muscroft |
| Cabinet member portfolio | Not applicable |

Electoral wards affected: Liversedge & Gomersal

Ward councillors consulted: Cllr David Hall, Cllr Michelle Grainger-Mead and Cllr Lisa Holmes consulted.

Public or private: Public report

1. Summary

1.1 An amended proposal has been received from Kirklees Council for an order to divert part of public footpath Spenborough 110, under section 119 of the Highways Act 1980, which the applicant states is made in the interests of the landowner, to facilitate the development of Spen Valley Leisure Centre ("SVLC").

1.2 The amendments to the proposal include improvements to the surface, additional width, removal of steps - with an appropriately graded approach to the Spen River crossing (1 in 12 max.) and, between the housing and the Leisure Centre site, moving the proposed new path away from palisade fencing to improve the setting. The Council previously made a section 119 Highways Act 1980 diversion order, in

March 2020, under officer-delegated powers (see App E). That order was subject to an objection at formal stage, not raised during our preliminary, informal consultation.

- 1.3 The amended proposal from the Kirklees SVLC project team looks to address the points raised in objection to the order. Officers look to bring this matter before members, to acknowledge and authorise the amended proposal, and to note that it is not intended to progress the original order.
- 1.4 The Council may make and confirm a diversion order under section 119 of the 1980 Act if it considers that it is expedient to do so, when the following criteria are met: -
 - 1.4.1 The diversion must be in the interests of the owner, lessee or occupier of the land involved or in the interest of the public
 - 1.4.2 The alternative path to be provided should not be substantially less convenient for the public
 - 1.4.3 The point of the junction of the alternative path with other highways must not be altered unless the alternative path still ends on the same or a connected highway and it is substantially as convenient to the public.
 - 1.4.4 Any temporary circumstances preventing or diminishing the use of the path shall be disregarded.
 - 1.4.5 When seeking confirmation, the Council must have regard for the effect which the diversion would have on public enjoyment of the path, as a whole.
 - 1.4.6 When seeking confirmation, the Council must have regard for any material provision of any Rights of Way Improvement Plan ("ROWIP") for the area.
- 1.5 The effect of the proposal is shown on the appended App A Plan 1. The route to be diverted is shown by the bold solid line between points A & B, and the new route to be created is shown by the bold dashed line between points B & C.

The applicant is proposing the new route will be up to 3 metres wide, instead of the current route's recorded 1.2 metre width. The new route will narrow from 3 metres as it negotiates the gradient down to the bridge over Spen River. The proposed new path will run adjacent to the west boundary of the new pool car park, further east than the original diversion proposal.

- 1.6 The new footpath route is proposed to be constructed of various surface types, including macadam and planings.
- 1.7 All the land is within the ownership of Kirklees Council, part is vested with Community Development Service and part by Streetscene and Housing, Parks and Open Spaces.
- 1.8 A further preliminary public consultation has been held on the amended proposal; the details are listed in section 4 of this report, and updates will be reported to members.
- 1.9 Option 1 for committee is not to authorise the making of an order. The public footpath would remain on the current alignment unless the earlier order is progressed.

1.10 Option 2 is for the committee is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** of an Order under section 119 of the Highways Act 1980 to divert public footpath 110 (part).

2. **Information required to take a decision**

2.1 Section 119 of the Highways Act 1980 gives an authority the power to divert footpaths, bridleways, or restricted byways, if it is satisfied that the relevant criteria are satisfied.

2.2 Account must be taken of the effect of the order on the rights of the public as described above at 1.4.

2.3 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 5 deals with changes to the public rights of way network.

2.4 A location plan is appended at App B.

2.5 An extract of the executive summary of the ROWIP is appended at App C.

2.6 A Leisure Centre site plan showing the proposed diversion route is appended at App D.

2.7 Option 1 is to decide to refuse the application to make the order.

2.8 Option 2 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** of an order under section 119 of the Highways Act 1980. This would authorise confirmation of the order by the Council if unopposed, or seeking confirmation of an opposed order by forwarding it to the Secretary of State to confirm.

3. **Implications for the Council**

3.1 **Early Intervention and Prevention (EIP)**

3.1.1 Providing better facilities for physical activity works towards local and national aims of healthy living.

3.2 **Economic Resilience (ER)**

3.2.1 There is an indirect impact of a welcoming environment which helps promote and retain inward investment

3.3 **Improving Outcomes for Children**

3.3.1 See 3.1.1

3.4 **Reducing demand of services**

3.4.1 See 3.5.

3.5 **Other (e.g., Legal/Financial or Human Resources)**

3.5.1 The Council receives applications to change public rights of way.

3.5.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.

- 3.5.3 Any person may make an objection or representation to the order.
- 3.5.4 The Council may choose to forward an opposed order to the Secretary of State at DEFRA (“SoS”) to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. The Council recharges the costs of applications to the applicant as appropriate, but the Council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The Council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.
- 3.5.5 If the Council confirms its own order, or after an order has been confirmed by the SoS, the Council may recharge its costs of concluding the order process, including bringing an order into force.
- 3.5.6 Development proposals, including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, development may well be delayed, prevented, or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4. Consultees and their opinions

- 4.1 Cllr David Hall has offered no comment to date on the new proposal.
- 4.2 Cllr Michelle Grainger-Mead has no issue with the new proposal
- 4.3 Cllr Lisa Holmes has no comment to date on the new proposal.
- 4.4 Peak and Northern Footpath Society has no objection to the new proposal.
- 4.5 North Kirklees Ramblers, Open Spaces Society, Auto Cycle Union, Byways & Bridleways Trust, Kirklees Bridleways Groups, Huddersfield Rucksack Club, Spen Valley Civic Society, BT, British Gas, YEDL, NTL, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, KCOM, Atkins Telecoms, Road Haulage Association and West Yorkshire Police offered no response.
- 4.6 Notices were posted on site for 14 days.

5 Next steps

- 5.1 If the order is made and is unopposed, then the Council may confirm it, and may bring it into effect.
- 5.2 If the diversion order is made, there will be a statutory 28-day notice period during which time representations and objections may be made. Any opposed Order could only be confirmed after referral to the Secretary of State, DEFRA. This may result in a public inquiry
- 5.3 If the order is opposed, it may be forwarded to the Secretary of State at DEFRA to determine.

5.4 If the order is not made, then the public footpath Spenborough 110 would remain on its current legal alignment, unless the earlier order is pursued.

6 Officer recommendations and reasons

6.1 **Officers recommend** that members choose option 2 at paragraph 2.8, that the Service Director of Legal, Governance and Commissioning be authorised to make and seek confirmation of an Order under Section 119 of the Highways Act 1980 to divert Spenborough public footpath 110 (part).

6.2 **Officers consider** that the proposed diversion would satisfy the relevant criteria to make and confirm an order.

7 Cabinet Portfolio Holder's Recommendations

Not applicable

8 Contact officer:

Giles Cheetham, Definitive Map Officer
01484 221000 giles.cheetham@kirklees.gov.uk

9 Background papers

9.1 PROW file 872/DIV/11/110 and Rights of Way improvement Plan

9.2 Appendices

9.2.1 App A - Plan 1

9.2.2 App B - location plan

9.2.3 App C - ROWIP extract

9.2.4 App D - diversion route proposal on SVLC site plan

9.2.5 App E - diversion order made March 2020 for earlier proposal

10 Service Director responsible

10.1 Sue Procter: Service Director, Environment