

**Name of meeting:** Planning sub-committee (Heavy Woollen Area)

**Date:** 2 September 2021

**Title of report:** Proposed diversion of part of the public footpath Batley 40 and provision of alternative route at Howley Walk, Soothill, Batley.  
 Town & Country Planning Act 1990, Section 257

**Purpose of report:** **Members are asked to consider** an application to divert part of public footpath Batley 40. The footpath route to be stopped up, and the alternative routes to be created are shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Yes – Colin Parr 13 August 2021
Is it also signed off by the Service director Finance?	Yes – James Anderson on behalf of Eamonn Croston.
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes - No Julie Muscroft
Cabinet member <a href="#">portfolio</a>	Not applicable

**Electoral wards affected:** Batley East

**Ward councillors consulted:** Cllrs. Loonat, Zaman and Akhtar.

**Public or private:** Public

## 1. Summary

- 1.1 The Council received an application from the Head of Asset Management, Kirklees Neighbourhood Housing to divert part of public footpath Batley 40 and provide alternative routes, under section 257 Town & Country Planning Act 1990. The stopping up of existing public footpath would be required to implement planning

consent 2020/93489 for the demolition of existing garages and erection of 7 dwellings (modified proposal)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F93489>

- 1.2 The proposal is to facilitate the redevelopment of the land with new Council housing, see appended App B. A small part of the alignment of the recorded footpath is currently obstructed. The applicant is proposing to divert a larger part of the public footpath than is obstructed to create a path that will run at the rear of the new development.
- 1.3 All the development land is within the ownership of the Council and is managed by Housing.
- 1.4 The effect of the proposal is shown on the appended Plan 1. The route to be stopped up is shown by the bold solid line between points A & B, and the new routes to be created are shown by the bold dashed line between points C & B, with a new link to point E.
- 1.5 The Council may make and confirm a diversion order under Section 257 of the Town & Planning Act 1990 Act if it considers that it is expedient to do so when the following criteria are met:-
  - a) it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
  - b) The Council must also take into account the suitability of the proposal and the effect the change would have on those entitled to the rights that would be extinguished.
- 1.6 The statutory procedure is a two-stage process which involves the making of a public path diversion order. The order would be subject to public consultation by way of statutory advertisement and notices posted on site. If no objections are received or they are resolved, the Council may confirm the order as unopposed. If the order is opposed and the objections cannot be resolved it would need to be submitted to the Secretary of State at DEFRA for determination if it is to be confirmed.
- 1.7 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report

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

- 2.1 Section 257 of the Town & Country Planning Act 1980 gives an authority the power to divert or footpaths, bridleways or restricted byways if it is satisfied that the relevant criteria are satisfied.
- 2.2 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.
- 2.3 A location plan is appended at App A.
- 2.4 A plan showing the proposed development is appended at App B.

- 2.5 An extract of the Executive Summary of the Rights of Way Improvement Plan (“ROWIP”) is appended at App C.
- 2.6 Option 1 is to decide to refuse the application to make the order.
- 2.7 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an order under section 257 of the Town & Country Planning Act **and only to confirm it if unopposed**, but to defer its decision on sending any opposed order to the Secretary of State at DEFRA.
- 2.8 Option 3 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would also authorise confirmation of the order by the Council if it is unopposed, and authorise seeking confirmation of any opposed order by forwarding it to the Secretary of State for confirmation.

### 3. **Implications for the Council**

#### 3.1 **Working with people**

- 3.1.1 There has been public consultation regarding this application.

#### 3.2 **Working with partners**

- 3.2.1 There has been consultation with partners regarding this application.

#### 3.3 **Place based working**

#### 3.4 **Climate change and air quality**

- 3.4.1 Promoting walking and other green transport, and providing better facilities for physical activity works towards local and national aims on healthy living, climate change and air quality.

#### 3.5 **Improving Outcomes for Children**

- 3.5.1 See 3.4.1

#### 3.6 **Other (e.g. Legal/Financial or Human Resources)**

- 3.6.1 The Council receives applications to change public rights of way, in this case to regularise an historic situation, and facilitate future land management changes, including development.
- 3.6.2 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.
- 3.6.3 Any person may make an objection or representation to the order.
- 3.6.4 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.

- 3.6.5 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.
- 3.6.6 Land management and development proposals, potentially 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, changes to land use and 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 Loonat has no concerns or objection regarding this application.
- 4.2 Cllr Zaman has no objection to this application.
- 4.3 Cllr Akhtar has no objection to this application.
- 4.4 The West Yorkshire Police Designing Out Crime Officer has no issues with this and has no objections.
- 4.5 The Ramblers commented that as long as the work is completed as per plans then they have no issue.
- 4.6 The Peak and Northern Footpath Society representative enquired about width, surfacing, gradient and lighting, no objection received.
- 4.7 The Open Spaces Society representative noted that the proposed diversion would not significantly inconvenience footpath users but attention may be required regarding the diverted footpath in context of the route being behind any new housing. Officers then provided further information. No objection received.
- 4.8 KCOM, National Grid and Cadent have no objections to the application.
- 4.9 Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, British Horse Society, Huddersfield Rucksack Club, Kirklees Bridleways Group, British Gas, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, and Road Haulage Association offered no response.
- 4.10 Notices were posted on site for 28 days and details were posted on the Council website  
<https://www.kirklees.gov.uk/beta/countryside-parks-and-open-spaces/changes-to-definitive-map.aspx>

#### **5 Next steps**

- 5.1 If an order is made, it would be advertised and notice served. There would be a period of at least 28 days for representations and objections.
- 5.2 If the order is unopposed the Council may confirm it.

- 5.3 If any objections are duly made and not withdrawn, the Council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the Council may decide to abandon the order.
- 5.4 If members decide to authorise the making of an order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:
- 5.4.1 any objections that are received, and
  - 5.4.2 potential referral of the order (if opposed) back to the Secretary of State, or
  - 5.4.3 abandonment of an opposed order.
- 5.5 If sub-committee refuses the application, the order is not made. There is no appeal right for the applicant against a refusal.

## **6 Officer recommendations and reasons**

- 6.1 Officers recommend members to choose option 3 at 2.8 above and to give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under section 257 Town & Country Planning Act 1990 to divert Batley footpath 40 (part) and provide alternative public footpath routes.
- 6.2 The diversion would enable the implementation of planning consent 2020/93489 and would be expedient when considering the effect on the holders of the rights to be extinguished. The resulting public path provision would be appropriate and acceptable and there would be no undue negative effect on public path users.
- 6.3 The minor changes to paths outside the development are considered appropriate to regularise and tidy up the historic use of land, including previous development to the north and a residential drying area to the south.

## **7 Cabinet Portfolio Holder's Recommendations**

Not applicable

## **8 Next steps**

- 8.1 If the diversion order is made, there will be a statutory 28 day notice period during which time the public may make representations and objections. Any opposed Order could only be confirmed after referral to the Secretary of State, DEFRA. This may result in a public inquiry.
- 8.2 If the diversion order is not made, then Batley 40 would remain on its current alignment and the planning permission could not be fully implemented as granted.

## **9 Contact officers and relevant papers**

Contact Officer: Giles Cheetham    Direct Dial (01484) 221000  
Email: [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

## **10 Background Papers and History of Decisions**

- 10.1 PROW file 872/DIV/Bat40: Rights of Way Improvement Plan
- 10.2 Planning consent 2020/93489.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F93489>

### 10.3 Appendices

- 10.3.1 Plan 1 – Proposed diversion
- 10.3.2 App A – Location Plan
- 10.3.3 App B - Development proposal
- 10.3.4 App C – ROWIP extract

## 11 Service Director responsible

Sue Procter, Service Director:

Highways and Streetscene, Environment & Climate Change Directorate