

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

Date: 2 September 2021

Title of report: Proposed stopping up of non-definitive footpaths and the provision of alternative footpaths at Kenmore Drive, Milton Terrace and Rook Avenue, Cleckheaton. Town & Country Planning Act 1990, Section 257

Purpose of report: Members are asked to consider an application to stop up non-definitive footpaths and the provision of alternative footpaths as 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 Council's Forward Plan (key decisions and private reports?)	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 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: Cleckheaton

Ward councillors consulted: Cllrs. Lawson, Pinnock, Pinnock.

Public or private: Public

1. Summary

- 1.1 The Council received an application from Housing 21 to stop up the alleged footpaths between Kenmore Drive, Rooks Avenue and Milton Terrace and for the provision of alternative footpaths. The application is made under section 257 Town & Country Planning Act 1990 (“s257, TCPA 1990”). The applicant states that the stopping up

would be required to implement planning application 2020/91746 for the erection of extra care development providing 80 apartments with associated communal facilities and landscaped gardens. Officers note that planning consent has been authorised by Council committee, but is yet to be issued:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F91746>

- 1.2 As part of the development the applicant will provide alternative footpaths linking Milton Terrace, Rooks Avenue and Kenmore Drive.
- 1.3 The s257 TCPA 1990 stopping up application would deal with routes associated with the Definitive Map Modification Order (“DMMO”) application to the Council to record public footpath routes between Kenmore Drive, Milton Terrace, Rooks Avenue and Kenmore View. The DMMO application, under the Wildlife & Countryside Act 1981, was made by Cllr Kath Pinnock to the Council asking the Council as surveying authority for public rights of way, to recognise the existence of claimed public footpath rights across the land at Kenmore.
- 1.4 The effect of the s257 TCPA 1990 proposal is shown on the appended Plan 1. The routes to be stopped up are shown by the bold solid lines A-B, B-C, B-D, A-C and A-D; with the routes to be provided as new paths shown by the bold dashed line between point A-G-F-B, G-E-C and E-F.
- 1.5 The Council may make and confirm an 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 footpath stopping up 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 for determination.
- 1.7 The proposal before members considers routes to be closed, both as shown in the definitive map modification order application and also the physical routes visible in aerial photos over the years (See appended photo at App D).
- 1.8 A small part of the claimed routes A-D and B-D runs over land in third party private ownership at the end of Kenmore View. The applicant is not in the position to offer a path connection over this land. It is considered appropriate to include this land in the proposed closure to avoid a small cul-de-sac path, even though it is outside the development site.
- 1.9 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report.
- 1.10 After discussion with officers, the applicant has agreed that any new public paths to be created by the s257 order would be a minimum of 2 metres wide.

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

- 2.1 Section 257 of the Town & Country Planning Act 1990 gives an authority the power to divert or stop up 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 B.
- 2.4 An extract of the executive summary of the ROWIP is appended at App C.
- 2.5 Option 1 is to decide to refuse the application to make the order.
- 2.6 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.
- 2.7 Option 3 is to authorise the Assistant Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. 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 **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 facilitate development, where planning consent has been authorised by Council committee, but is yet to be issued.
- 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 No comments have been received from local ward Councillors
- 4.2 Kirklees Highways Street Lighting did not require the provision of highways lighting.
- 4.3 The West Yorkshire Police Designing Out Crime Officer has no issues with this. He stated that the redevelopment of the site has been commented on for security matters and the PROWs have been taken into account at the time
- 4.4 A local resident questioned the change to the path routes and would prefer the site to be undeveloped.
- 4.5 The Peak and Northern Footpath Society representative queried the lack of link at point D, but noted in further discussion that it would be unlikely to object to the proposal.
- 4.6 The Open Spaces Society representative requested that the development design be amended to accommodate tread lines (those visible in aerial photos), particularly between Kenmore Drive and Milton Terrace. Also, that footpath access be provided at Kenmore View. The representative notes that the current tread line and other lines have utility to residents and provide short cuts and access to enjoy the green space
- 4.7 National Grid and Cadent have no objections to the application.
- 4.8 KCOM has no apparatus or proposals for new apparatus in the vicinity of the works

4.9 Ramblers, Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, Spenn Valley Civic Society, 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/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2F91746>

5 Next steps

5.1 If an order is made, it would be advertised and notice served.

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 that members choose option 3 at 2.7 above and 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

6.2 The stopping up will enable the implementation of planning consent 2020/91746 and be expedient when considering the effect on the holders of the rights to be extinguished. The proposal keeps a significant practical and recreational range of links through what is proposed to be a public space, connecting paths to east, west, and north, of an appropriate width.

6.3 The site is subject to significant ground level differences and steps to appropriate specification would be provided north of point C as the new path would pass the development buildings.

6.4 There has been no challenge to the existence of public rights across the site, and the s257 proposal as described would stop up paths, provide alternatives and allow for an extra care development.

7 Cabinet Portfolio Holder's Recommendations

Not applicable

8 Next steps

8.1 If the stopping up 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 stopping up order is not made, then the DMMO application would need to be considered separately and the planning application could not be fully implemented as proposed.

9 Contact officers and relevant papers

Contact Officer: Giles Cheetham Tel: (01484) 221000

Email: giles.cheetham@kirklees.gov.uk

10 Background Papers and History of Decisions

10.1 PROW files

872/Div/11/Kenmore:

872/DMMO app133:

Rights of Way Improvement Plan

10.2 Planning consent 2020/91746.

<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 stopping up and provision of alternative footpaths

10.3.2 App A – Location Plan

10.3.3 App B - Development proposal plan

10.3.4 App C – ROWIP extract

10.3.5 App D – aerial photo (2009)

11 Service Director responsible

Sue Procter, Service Director: Highways and Streetscene; Environment & Climate Change Directorate