

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

**Date:** 15 November 2018

**Title of report:** Proposed diversion of part of the public footpath at Brook Meadows, Denby Dale. Town & Country Planning Act 1990, Section 257

**Purpose of report:** **Members are asked to consider** an application to divert part of a public footpath and the provision of an alternative footpath. This will allow vehicular access to the site where the new property is proposed. **Members are asked to make a decision** on making the order and seeking its confirmation.

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|---|---|
| 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<br>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<br><br>Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?<br><br>Is it also signed off by the Service Director (Legal Governance and Commissioning)? | Karl Battersby 2 November 2018<br><br>James Anderson on behalf of Eamonn Croston 2 November 2018<br><br>Jo Kingham-Slater on behalf of Julie Muscroft 5 November 2018 |
| Cabinet member <a href="#">portfolio</a>  | Not applicable  |

**Electoral wards affected:** Denby Dale

**Ward councillors consulted:** Cllrs. Turner and Watson (one ward member vacancy).

**Public or private:** Public

## 1. Purpose of report

Members are requested to consider a proposal for a diversion of part of the non definitive footpath at Brook Meadows, Denby Dale.

## 2. Key Points

- 2.1 An application has been received to divert part of the non-definitive footpath from Brook Meadows to Withyside, Denby Dale under section 257 of the Town & Country Planning Act 1990. The diversion would be required to implement planning consent 2015/91953 for the erection of a single detached dwelling, as it would facilitate changes to the current road and path (highway) network to provide a vehicular access.
- <http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f91953>
- 2.2 The site currently does not have a vehicular access. The proposal to develop the site is to take access from Brook Meadows over the existing footpath. The footpath will be regraded slightly and the current lamp column moved, with a short stretch of alternative footpath being created from land within the site.
- 2.3 The proposal would allow pedestrian rights to be stopped up on a section of footpath and an alternative footpath provided, to allow a new vehicular access to be created to the proposed property. The length to be stopped up commences at the southern end of the non definitive footpath from Withyside and is shown by the bold solid line from points A - B on appended Plan 1, whilst the path to be added is shown by the bold dashed line. A link through to the footway of Brook Meadows would be continued. New safety barriers are also proposed. An indication of the works proposed to form the new access and footpath are shown in the appended drawing BLD01-1. The ownership of land carrying the part of the non-definitive path to be extinguished is unregistered.
- 2.4 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.
- 2.5 The statutory procedure is a two-stage process which involves the making of a footpath 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 for determination.
- 2.6 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report

## 3 Implications for the Council

- 3.1 The public rights of way network is part of the Council's Green Network.

- 3.1.1 Improving public rights of way contributes to the Council's green ambitions by encouraging people to walk and ride rather than use the car. This can help to reduce traffic congestion and carbon emissions.
- 3.1.2 Providing better facilities for physical activity works towards local and national aims of healthy living
- 3.2 The West Yorkshire Local Transport Plan highlights maintenance and improvements to rights of way within its Delivering Accessibility, Tackling Congestion and Effective Asset Management themes.
- 3.3 Although the applicant would be responsible for most of the costs associated with the order process and for the costs of implementation of any changes on the ground, the council may incur unrecoverable costs. If the proposed order is made and subsequently opposed, the council may send it to the Secretary of State at DEFRA for determination/confirmation. This may result in a public inquiry. Under current legislation, costs incurred by the council in that determination process would not be recoverable.

#### **4 Consultees and their opinions**

- 4.1 Ward councillors have offered no comment to date.
- 4.2 Denby Dale Parish Council has no objection to the diversion.
- 4.3 The Peak and Northern Footpath Society representative has no objection
- 4.4 Atkins Global, Northern Gas Networks and Cadentgas have no objections to the application.
- 4.5 Open Spaces Society, Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, Ramblers Association, Huddersfield Rucksack Club, Denby Dale Walkers are Welcome, West Yorkshire Police Crime Prevention, Kirklees Bridleways Group, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, KCOM and Road Haulage Association offered no response.
- 4.6 Notices were posted on site for 28 days.

#### **5 Officer recommendations and reasons**

- 5.1 Officers recommend that members resolve that the Service Director of Legal Governance and Commissioning be authorised to make and seek confirmation of an Order under Section 257 of the Town & Country Planning Act 1990 to divert the non-definitive footpath as shown on report Plan 1 between points A & B.
- 5.2 The diversion will enable the implementation of planning consent 2015/91913 and be expedient when considering the effect on the holders of the rights to be extinguished.

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

Not applicable

#### **7 Next steps**

- 7.1 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.
- 7.2 If the diversion order is not made, then the non-definitive footpath would remain on its current alignment and the planning permission could not be fully implemented as granted.

## **8 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)

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

- 9.1 PROW file 872/DIV/3/Brook Meadows: Rights of Way Improvement Plan
- 9.2 Planning consent 2015/91953.  
<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f91953>
- 9.3 Appendices
  - 9.3.1 Plan 1
  - 9.3.2 Drawing of proposed works BLD01-1
  - 9.3.3 Location Plan

## **10 Assistant Director responsible**

Joanne Bartholomew, Service Director, Commercial Regulatory & Operational Services