

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

Date: 9 February 2023

Title of report: Application for an order to divert public footpath Spenborough 24 (part) and 42 (part) at Whitechapel Road, Cleckheaton. Town & Country Planning Act 1990, Section 257

Purpose of report: Members are asked to consider an application to divert public footpath Spenborough 24 (part) and 42 (part) 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	25 January 2023 - Colin Parr
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: Cllr John Lawson, Cllr Andrew Pinnock, Cllr Kath Pinnock.

Public or private: Public

Has GDPR been considered? Not applicable

1. Summary

- 1.1 The Council received an application from BDW Trading Ltd to divert parts of public footpaths Spenborough 24 and 42 on the grounds that it is required to implement planning consent 2019/93658. The application is made under section 257 Town & Country Planning Act 1990. The planning permission is for the erection of 122 dwellings, landscaping and associated infrastructure. It was granted further to a decision of the strategic committee, a full s106 permission with conditions was issued on 24 June 2021.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93658>

- 1.2 The effect of the diversion proposal is shown on appended Plan 1. The location of the paths and development site are shown at appendix App A. The development site layout is shown at App B and at App F.
- 1.3 The section of the definitive footpaths to be stopped up is shown by the bold solid lines A-B-C-D, with the routes to be created shown by the bold dashed line between point A-E-F-G-H-J-D, J-K and G-L-M-D. The existing recorded definitive width of these footpaths is 1.2 metres, the new footpaths would be at least 2 metres wide.
- 1.4 Part of the alignment of public footpath Spenborough 42 outside of the development site is currently obstructed by a fence and trees, beyond the site boundary north of point C. This section of the footpath 42 is not within the ownership of the developer and these issues affecting the school site are subject of ongoing discussions with the school and Kirklees Council. An alternative route north through to Snelsins Bridge has been available outside the school playing fields on land adjacent to the motorway banking, north of point K. This current diversion proposal is a standalone application to deal with the length of public footpath within the development site, but is flexible enough to make allowance for access northwards towards the continuation of footpath 42 at Snelsins Bridge from point K and from point C. (Aerial photo 2021 at app D, path obstructed north of point D in the school grounds).
- 1.5 The proposal before members is slightly different than that which was shown in the informal consultation process on the diversion application. There are minor changes: at the southern end of the site, just north of the Priory pub, where the proposed path would run on a curved route through the public open space to address level differences between existing land and the new estate road; and at the northeast of the site where a slight change has been introduced due to the water attenuation tank. These minor amendments have been brought to the attention of ward members, as well as planning, flood management, landscape and highways colleagues, and also to those other respondents who made comments in the informal consultation on the diversion application. These changes reflect parts of the details to be agreed in connection with the discharge of planning conditions for the site, for which additional submissions have been made by the applicant to the Council. See appendix App F, for a draft landscape plan and a draft detail plan of the southern end of the diversionary path.
- 1.6 Separate from this section 257 order process, the developer will be dedicating multi-modal public rights of way over the route identified in appendix App E, connecting the estate road to land beyond the site boundary for an off-site potential future pedestrian/cycle link to the Spen Valley Greenway. The relevant Section 106 agreement for the development includes a sum to be provided towards these off-site improvements. The development also includes another pedestrian/cycle link at the

southeast of the site connecting the estate road to Whitechapel Road near the school gates. These routes do not form part of the s257 proposal, but may be considered for their effect on public access coming from the development.

- 1.7 The definitive alignment of the public footpaths across the site, including those proposed to be stopped up, is currently subject to a temporary closure order. A temporary informal diversion route has been available running all along the western (motorway) edge of the site from Whitechapel Road near the M62 bridge to point K on Plan 1 – please note that this temporary route is not the same as the permanent diversion routes proposed and has been provided by the developer to retain public access between Whitechapel Road and Snelsins Bridge north of the school site.

2. Information required to take a decision

- 2.1 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.

Alternatively, following amendment of Section 257 by the Growth and Infrastructure Act 2013, an order may be made in anticipation of planning permission. However an order made in advance of planning permission cannot be confirmed by either the authority or the Secretary of State until that permission has been granted.

<https://www.planningportal.co.uk/permission/responsibilities/other-permissions-you-may-require/footpaths-bridleways-or-restricted-byways-stopping-up-or-diverting>

- 2.2 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 (DEFRA) for determination, to progress.
- 2.3 A preliminary public consultation has been held on the proposal; the details are listed in section 4 of this report.
- 2.4 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.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf
- 2.5 An extract of the executive summary of the 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 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

There has been public consultation regarding this application.

3.2 Working with partners

There has been consultation with partners regarding this application.

3.3 Place based working

Not applicable

3.4 Climate change and air quality

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

See 3.4.

3.6 Financial Implications for the people living or working in Kirklees

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. There are conditions which are yet to be discharged.

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.

3.7 **Other (eg Legal/Financial or Human Resources) Consultees and their opinions**

Not applicable

4 Consultees and their opinions

- 4.1 Cllr Kath Pinnock states that her main objection is the diversion of the path to go alongside the M62. This will mean walking with a very noisy motorway on one side and a high acoustic fence on the other. It will be neither safe nor pleasant due to the noise levels. Any diversion could follow the boundary with the school site and then turn to join an access to the Greenway. **Officers would note that:** where the proposed path splits, one part goes to the west nearer the M62, whilst there is also an alternative route to be provided to the east of the site; the acoustic fence proposed would be between the proposed western path and the motorway (see site layout in App B, a submission in the ongoing application 2021/93587 for discharge of condition 17 (acoustic barrier) of permission 2019/93658); and that, in relation to the last point, in the approved plan that received planning consent, there is no space for the path to run next to the school boundary, as the land forms rear gardens.
- 4.2 No response to the preliminary consultation has been received to date from the other ward councillors.
- 4.3 The West Yorkshire Police Designing Out Crime Officer has no concerns as the planning application for the site has been assessed for security measures.
- 4.4 The Peak and Northern Footpath Society (“PNFS”) representative visited the site and noted that there is currently no access to Spen 24 and 42. PNFS indicated that it’s a concern that Kirklees granted temporary closures ahead of the formal diversion process as this inevitably leads to the destruction and permanent obstruction of the definitive paths. **Officers offered** to arrange a site meeting with PNFS and explained that the temporary path allowed views of the site. Officers have informed the applicant not to make any permanent above ground constructions obstructing the path and the applicant has undertaken not to obstruct the public footpaths proposed to be stopped up.
- 4.5 The Open Spaces Society representative indicated that works currently being undertaken affect the PROW. Can you please advise the position re-ongoing works affecting the existing footpath, as the diversion, identified in your documentation, appears not yet to be approved. A follow up response from the representative states that it appears the developer has already done other works affecting the footpath. **Officers have** discussed these concerns with the OSS representative, explained the temporary closure order, the proposed new two footpath routes, that the temporary closure informal route is not the same as the diversion proposal, and clarified the stage that the diversion application has reached.

- 4.6 KCOM has no apparatus or proposals for new apparatus in the vicinity of the works
- 4.7 Ramblers, Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, Spen 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.
- 4.8 Notices were posted on site for 28 days and details were posted on the Council website – including the following links:

<https://www.kirklees.gov.uk/beta/countryside-parks-and-open-spaces/pdf/Spenborough-24-and-42-proposal-plan.pdf>

<https://www.kirklees.gov.uk/beta/countryside-parks-and-open-spaces/pdf/Spenborough-24-and-42-build-plan.pdf>

[Changes to the Definitive Map and Statement | Kirklees Council](#)

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 2.8 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 diversion would be required for the implementation of planning consent 2019/93658 and be expedient when considering the effect on the holders of the rights to be extinguished. The proposal provides a choice of links through the development site and connects to the public open spaces, the continuation of public footpath 42 and the access/egress point at the boundary of the site at the northwest corner. The routes are considered to be of an appropriate construction and design, tarmac or

stone surfaced. The development proposes additional public access benefits through the multi-modal links.

6.3 The site was and would be subject to ground level differences, which the applicants have demonstrated may be addressed satisfactorily.

6.4 Officers continue to work on submissions regarding discharge of conditions for relevant planning consents. (See App G).

6.5 The s257 proposal as described would stop up public footpaths, provide alternatives and allow for residential development to occur in line with the aims of the Council's Local Plan.

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 the planning application could not be fully implemented as proposed.

9 Contact officers and relevant papers

Contact Officer: Giles Cheetham

10 Background Papers and History of Decisions

10.1 PROW files

872/Div/11/24&42

Rights of Way Improvement Plan (ROWIP)

10.2 Planning consent 2019/93658

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93658>

10.3 Appendices

10.3.1 **Plan 1** – Proposed diversion

10.3.2 **App A** – Location Plan

10.3.3 **App B** - Development proposal plan from 2021/93587 applicant submissions for discharge of condition 17, acoustic fence.

10.3.4 **App C** – ROWIP extract

10.3.5 **App D** – aerial photo (2021)

10.3.6 **App E** – plan submitted during discussions regarding proposals for footpath diversion and discharge of relevant PROW-related conditions, showing multi-modal pedestrian/cycle links proposed to be dedicated by separate process.

10.3.7 **App F** – draft landscape masterplan and draft detail of southern public footpath through POS, submitted during discussions regarding proposals

for public footpath diversion and discharge of relevant PROW-related conditions.

- 10.3.8 **App G** – list of discharge of condition applications for conditional s106 full permission for erection of 122 dwellings, landscaping and associated infrastructure 2019/93658

11 Service Director responsible

Service Director: Highways And Streetscene; Environment & Climate Change Directorate