



Report for Rights of Way Committee

27th March 2015

TITLE OF REPORT: Proposed changes to public rights of way in the Bill Quay Area

REPORT OF: Strategic Director, Communities and Environment

Summary

This report relates to proposed changes to public rights of way in the Bill Quay Area

Purpose of the report

- 1) To seek approval to rescind the previous decision of the Public Rights of Way Committee dated 23rd January 2009 and request approval for the Amended Proposals set out at paragraph 4 in this report.

Background

- 2) On considering the previous Proposals approved by the Public Rights of Way Committee dated 23rd January 2009, which are set out in paragraph 7 below; some issues were highlighted with them as explained below. In order to assist members, a plan has been produced at Appendix 2 to this report, which shows the existing public rights of way in the Bill Quay Area.
- 3) The main issue with the previous Proposals was the creation of a section of bridleway as detailed at paragraph 7(iv) below. This in effect would create a bridleway that would lead onto a recorded footpath in South Tyneside (the boundary). If created it would result in horse riders and cyclists having to go along the bridleway but when reaching the boundary would then have to turn round and go back the way they came. In order to resolve this issue, officers considered whether a circular bridleway route could be created that would in effect avoid horse riders and cyclists having to go back the way they came because they would not be able to exit onto the footpath in South Tyneside (the boundary). The proposal for a circular bridleway was discussed with the relevant user groups, who were in favour of the proposal and this would resolve the issue of creating a dead end or cul-de-sac bridleway route. This amendment incorporates part of the previous Proposals set out at paragraph 7(ii) and (iii); with the only modification being to upgrade those sections to be originally created as footpath to bridleway so that they form part of the newly proposed circular bridleway route.
- 4) In effect this report seeks approval for the new amendment above, but also incorporates the previous proposal of extinguishing Footpaths

Felling 14 and 15 as detailed at paragraph 7(i) below. This is because, previous demolitions of terraced houses and subsequent landscaping has changed the accessibility to those footpaths. The landscaping took place, approximately 15 years ago, during which time areas of woodland were planted and boundary fencing erected, which encroached onto the footpaths. The public do not use the footpaths as there is a network of accessible paths nearby.

- 5) The final element of the Proposal as detailed at paragraph 7(v) below was to divert a section of Footpath Felling 10 to avoid a steep slope where it joins the Keelmans Way Path. However the Public Rights of Way Officer has investigated this section of path on site and found that this section of Footpath Felling 10 is still well used by the public. Therefore it is not considered expedient that this section of footpath be diverted in order to satisfy the statutory test under section 119 of the Highways Act 1980; because it is well used by the public and thus the public would not derive any positive benefit from the diversion.
- 6) In summary the purpose of this report is to seek approval from the Public Rights of Way Committee to rescind its previous approval dated 23rd January 2009 and seek approval for the Amended Proposals, (which incorporate some of the previous Proposals), set out below of:-
 - Extinguishing Footpaths Felling 14 and 15 (indicated from Point A to Point B and from Point B to Point C as shown on the attached plan at Appendix 3 to this report), on the grounds that they are no longer needed for use by the public;
 - To create a circuitous bridleway from Points D-E-F-G-H-I as shown on the attached plan at Appendix 3 to this report.

The Proposals

- 7) The Proposals that were approved by the Public Rights of Way Committee on 23rd January 2009, to which this report seeks to amend in part are:-
 - (i) the extinguishment of Footpaths Felling 14 and 15 (as indicated from Point A to Point B and from Point B to Point C on the plan attached at Appendix 3 to this report, on the grounds that they are no longer needed for use by the public; and
 - (ii) the creation of a public footpath from Point D to Point E on the plan attached at Appendix 3 to this report; and
 - (iii) the creation of a public footpath from Point F to Point G on the plan attached at Appendix 3 to this report; and
 - (iv) the creation of a bridleway from Point H to Point I on the plan attached at Appendix 3 to this report; and

- (v) the diversion of a section of Footpath Felling 10 indicated from Point X to Point Y; to the line marked from Point X to Point Z shown on the plan at Appendix 4 to this report.

The Amended Proposals

- 8) After further consideration of the Proposals at paragraph 7 above and in light of the reasons outlined in paragraphs 3, 4 and 5 above, approval is sought to rescind the previous decision of the Public Rights of Way Committee dated 23rd January 2009 and to seek approval for the following amendments to the Proposals set out below :-
 - (i) To extinguish Footpaths Felling 14 and 15 (indicated from Point A to Point B and from Point B to Point C on the attached plan at Appendix 3 to this report), on the grounds that they are no longer needed for use by the public.
 - (ii) To create a public bridleway from Points D–E –F– G– H- I as shown on the plan at Appendix 3 to this report. This incorporates the upgrade of a section of Footpath Felling 16 (shown from Point E to Point F on the plan at Appendix 3 to this report) to a bridleway. It also includes the creation of sections of bridleway from Point D to Point E and from Point F to Point G on the plan at Appendix 3 to this report. This Amended Proposal incorporates the creation of the footpaths as approved by the Rights of Way Committee decision of 23rd January 2009, but is instead creating them as bridleways. These amendments will create one continuous circuitous bridleway; as oppose to the previous Proposal, which would have created a bridleway leading onto a footpath.
 - (ii) Not to divert the northern section of Footpath Felling 10 from the line shown at Point X to Point Y to the line of Point X to Point Z as indicated on the plan at Appendix 4 to this report. The public have continued to use the original line of the footpath and it does not appear to be expedient to divert this section of footpath now as it would not satisfy the statutory test for a diversion under section 119 of the Highways Act 1980.

Land Ownership

- 9) The ownership of the land where the above Amended Proposals are to take place if approved by the Public Rights of Way Committee; will all be on Council owned land.

Legislation

- 10) Under Section 118 of the Highways Act 1980, the Council has the power to extinguish a footpath, bridleway or restricted byway if it is expedient to do so, on the grounds that the path is not needed for public use. The Council will not be able to confirm an unopposed Order (if approved)

unless it is satisfied that it is expedient to do so having regard to the extent to which it appears to the Council that the path (notwithstanding the making of the order), would be likely to be used by the public and also having regard to the effect the extinguishment would have on land served by the path. It is considered that the Proposal to extinguish Footpaths Felling 14 and 15 satisfy this test because, the paths are currently not used by the public and are not needed because the public have access to other footpaths in the area.

- 11) Due to the Council owning the land where it is proposed to create a bridleway, then the Council would be able to dedicate that land as a bridleway via a Deed of Dedication in accordance with section 1 of the Localism Act 2011. This would be in contrast to making a creation order to create the bridleway on the land under Section 26 of the Highways Act 1980. The Council if dedicating the land would need to give public notice of the dedication in the local press and on site but it would not be subject to a public objection period in the same way as it would be if it was created via a Creation Order. However as explained at paragraph 14 below, extensive consultation has been undertaken and only one objection was received, which stated no grounds or reasoning for the objection and no further correspondence has been received from the objector. Therefore there is little if no opposition to the proposal and proceeding by way of a deed of dedication would be appropriate in this matter.
- 12) Section 28 of the Highways Act 1980 does provide for the Council to pay compensation where it is shown that the value of an interest in the land has depreciated or a person has suffered damage by being disturbed in their enjoyment of the land. An “interest” for the purposes of section 28 of the Highways Act 1980, includes any estate in land or right over the land, whether that is exercisable by ownership, licence or agreement. In relation to the proposed extinguishment of Footpaths Felling 14 and 15, there are no known interests in the land that the proposed extinguishment would affect.
- 13) Section 29 of the Highways Act 1980 places a duty on local authorities to have regard to agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. There are no such potential implications in this matter.

Consultation

- 14) Consultation letters and plans were hand delivered to residents in the surrounding streets of Brack Terrace, Joel Terrace, Marian Drive, and Bill Quay with consultation Notices being placed at the beginning and ends of paths around the area. Several replies were received from residents in response to the letters and Notices with the main concerns being over the possible future development of the site. One e-mail was received, which only stated that the person wished to object. A reply was sent requesting the objector's grounds of objection and the offer of a site meeting to discuss their concerns. However no further response was received from

them and apart from that one e-mail, no other objections have been made to the amended proposals set out at paragraph 8 above.

- 15) User groups such as the Bridleway and Riders Action Group (BRAG), British Horse Society (BHS), and Cyclist Touring Club (CTC) were consulted and were all in favour of the proposals. South Tyneside Council were also consulted on the Amended Proposals and it had no comments to make. Furthermore, copies of the consultation were sent to Ward Councillors and no responses were received. The Waste Services and Grounds Maintenance team of the Council were also consulted and it had no objections to the Amended Proposals.

Conclusion

- 16) In light of the results of the consultation, and the fact that Footpaths Felling 14 and 15 are not used by the public because landscaping took place, approximately 15 years ago, during which time areas of woodland were planted and boundary fencing erected, which encroached onto the footpaths. However the footpaths are not used by the public as there is network of accessible paths nearby which the public prefer to use. The Public Rights of Way Officer would recommend that it is expedient that Footpaths Felling 14 and 15 be extinguished because they are not needed for public use now or in the future.
- 17) In relation to the creation of the bridleway from Points D –E –F – G – H - I as shown on the plan at Appendix 3 to this report; it is recommended that a deed of dedication be made to dedicate a bridleway on Council land. This is in light of the lack of objections from the public to the Amended Proposals from the consultation and the support received from the user groups for the provision of a circuitous bridleway for public use; which would add to the convenience and enjoyment of a substantial section of the public.
- 18) It is recommended for the reasons outlined in paragraph 8 above, that the previous decision of the Public Rights of Way Committee dated 23rd January 2009 be rescinded. This in effect will mean that the previous proposal to divert a section of Footpath Felling 10 from Points X to Z as shown on the plan attached at Appendix 4 to this report will not be implemented. This is because the public have continued to use the original line of Footpath Felling 10 and is not considered that the previously proposed diversion would provide any benefit to the public or a more commodious route for them to use. For those reasons it is not now considered expedient to divert this section of the footpath and it would not satisfy the statutory test for diversion of a public right of way under section 119 of the Highways Act 1980 for those reasons.

Recommendation

19) The Rights of Way Committee approves:

- i) That a public path extinguishment order be made to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the plan attached at Appendix 3 to this report;
 - ii) That a public path extinguishment order be made to extinguish Footpath Felling 15 from Point B to Point C as shown with a black line on the plan attached at Appendix 3 to this report;
 - iii) That a deed of dedication be made to dedicate a public bridleway on Council land from Point D – E – F –G –H – I as shown with a green line on the plan attached at Appendix 3 to this report;
 - iv) To rescind the previous decision of the Public Rights of Way Committee dated 29th January 2009
- v) Grant delegated authority to the Strategic Director of Corporate Services and Governance to undertake the following:
- (i) To consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 14 from Point A to Point B as shown with a black line on the attached plan at Appendix 3 to this report;
 - (ii) To consult the statutory consultees and make a public path extinguishment order to extinguish Footpath Felling 15 from Point B to Point C as shown with a black line on the attached plan at Appendix 3 to this report;
 - (iii) To complete and publicise a deed of dedication to dedicate a public bridleway from Points D – E – F –G –H – I as shown with a green line on the plan attached at Appendix 3 to this report.

1 FINANCIAL IMPLICATIONS

The costs of making and advertising the orders and deed of dedication will be covered by existing budgets.

2 RISK MANAGEMENT IMPLICATIONS

None

3 HUMAN RESOURCES IMPLICATIONS

Staff from Legal, Democratic and Property in conjunction with the Public Rights of Way Officer, will carry out the processing of the orders and deed of dedication.

4 EQUALITY AND DIVERSITY IMPLICATIONS

None

5 CRIME & DISORDER IMPLICATIONS

None

6 SUSTAINABILITY IMPLICATIONS

None

7 HUMAN RIGHTS IMPLICATIONS

Under Article 8, everyone has the right to respect for his or her private and family life, home and correspondence.

8 WARD IMPLICATIONS

Pelaw and Heworth

9 BACKGROUND INFORMATION

None