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| **Order Decision** |
| Site visit made on 15 October 2024 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 31 October 2024** |

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| **Order Ref: ROW/3341820** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Leeds City Council (Leeds Public Bridleway No.259) Diversion Order 2023. |
| * The Order is dated 2 March 2023 and proposes to divert and stop up the public rights of way shown on the Order plan and described in the Order Schedule. |
| * There were 2 objections outstanding when Leeds City Council (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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**Preliminary Matters**

1. I undertook an unaccompanied site visit on Tuesday 15 October 2024.
2. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

The Main Issues

1. It is proposed that Bridleway 259 (BW259) be diverted onto an alternative alignment and non-definitive Footpath 261 (FP261) be stopped up. Since the Order is made under section 257 of the Town and Country Planning Act 1990 (the 1990 Act), if I am to confirm the Order, I must be satisfied that it is necessary to permanently stop up the length of non-definitive footpath and divert the length of bridleway in question onto the alternative line shown on the Order plan to enable development to be carried out in accordance with the planning permission granted. The procedure is only available if the consented works have not been substantially completed.
2. The merits of the planning permission granted for the development are not matters that are before me in respect of this Order Decision. However, the grant of the planning permission does not mean that a public right of way will automatically be stopped up or diverted. When considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the stopping up and diversion of the ways to members of the public generally, or to persons whose properties adjoin or are near the existing highways, should be weighed against the advantages of the proposed Order.
3. In short there are two issues that must be considered here. These legal tests, as outlined above, have been described by the Courts as “the necessity test” and “the merits test”. Confirmation of an Order requires that both are satisfied.
4. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.

Reasons

*Whether the stopping up and diversion of the paths are necessary to allow development to be carried out in accordance with planning permission*

1. Planning permission was granted by the Council in November 2017 for up to 1,100 dwellings, a new food store (up to 2,000 square metres) a new local centre (up to 1,300 square metres), a new school and areas of public open space, together with the means of vehicular access at land to the east of Junction 45 and the M1 motorway and south of Pontefract Lane. A series of Condition and Reserved Matters applications, approvals and additional full applications were submitted and approved.
2. It is clear from the approved plans that the diversion and stopping up of the connected non-definitive footpath is necessary as the current alignment of BW259 would cross two new roads diagonally within 60 metres of the motorway services roundabout.
3. It was apparent from my site visit that construction of houses or commercial developments has yet to be commenced, the construction of the access road has been completed. Accordingly, I am satisfied that the approved development has not yet been substantially completed and that the planning permission, under which the development would take place, could not be fully implemented if the bridleway were to be retained on its existing line.
4. I am therefore satisfied that the approved development would encroach onto the existing line of the bridleway. Consequently, I conclude that it is necessary to divert the bridleway and stop up the non-definitive footpath to enable the approved development to be carried out in full.

*The extent to which the stopping up of the non-definitive footpath and diversion of the bridleway would disadvantage members of the public generally or persons whose properties adjoin or are near to the bridleway affected by the Order*

1. The existing alignment of the bridleway and non-definitive footpath are through a live development site. It was noted on my site visit that the existing bridleway is overgrown at its northern end.
2. It is not my role to revisit the planning decision previously made by the Local Planning Authority. In this regard, whilst I acknowledge the objections and concerns raised regarding the loss of existing character of the path if the diversion were to be confirmed, the marked change in the character of the route from a green corridor, as a result of passing through a new development, would have been known to the Local Planning Authority when it granted planning permission.
3. Concerns to the change of character would primarily be as a result of the approved development rather than as a result of the proposed diversion. The proposed diverted bridleway would include passing through landscaped space within the approved development, and this would be in accordance with the guidance contained within the Department for Environment, Food and Rural Affairs, Rights of Way Circular 1/09, whereby alternative alignments should avoid the use of estate roads, with preference being given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic.
4. An objection was raised in respect of the effect on biodiversity and ecology. However, in those respects such matters would have fallen for consideration during the determination of the planning application by the Local Planning Authority. From the evidence it is clear that it is not the diversion of the existing bridleway that has given rise to those concerns, but rather such matters arise from the development. Consequently, irrespective of whether this Order is confirmed or not, permission to relandscape the site would still exist.
5. The proposed diversion would have an overall greater length, by approximately 93 metres, when compared to the alignment of the existing bridleway. In consideration of the additional length when compared to the alignment of the existing bridleway, I conclude that the limited increase in overall distance is unlikely to inconvenience users of the existing bridleway in terms of recreational use.
6. One objector raises health and safety as a concern with regards to road crossings as a result of the diversion, stating there would be significant disadvantages to the public in terms of safety for equestrian users. I am satisfied that the proposed underpass, between Points H and G, and at grade crossing between Points E and F, with a speed table installed to ensure it is easily identifiable by both bridleway users and drivers on the road, are sufficient to ensure safety of BW259 users. If the Order was not to be confirmed the current route would cross two new roads diagonally within 60 metres of the motorway services roundabout without any suitable crossings.
7. An objection is raised regarding loss of amenity of the route. The termination points of the current and proposed route are the same, therefore amenity of the route is unaffected in terms of recreational users using the wider network. The gradients and surfacing of the current and proposed routes are similar therefore amenity is unaffected.
8. Consequently, I conclude that confirmation of the Order would not result in disadvantage or loss to members of the public generally, or people whose properties adjoin or are near the existing bridleway and non-definitive footpath.

Other matters

1. One objector was concerned that site notices were not adequate advertisement of the Order. The Council advertised the Order by notice to the landowner and the applicant, statutory and local consultees, by press notice, and by site notice with documents being made available for inspection at Parks and Countryside Reception and at Halton Library. I am satisfied they undertook their duty as per Section 14 of the 1990 Act.
2. One objector refers to the tests of Section 119 of the Highways Act 1980 and states that the standards of the proposed bridleway does not meet these tests. As the Order is made under Section 257 of the 1990 Act I can only consider the tests as set out above in the main issues above.

Conclusions

1. I have concluded that the diversion of BW259 and stopping up of FP261 are necessary to enable development to be undertaken in accordance with planning permission granted for the site. Furthermore, the alignment of the diversion through a landscaped area would be in accordance with the guidance described above. Whilst I acknowledge that the diversion would have a greater overall length, the diverted path would provide a level, drained all weather surface providing access for all legitimate users.
2. For the reasons given above, I conclude that any disadvantages to the public generally, or to persons whose properties adjoin or are near the existing highway, arising from the stopping up of the non-definitive footpath and the diversion of the bridleway would not be of such substance to outweigh the benefits of confirming the Order.
3. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Charlotte Ditchburn

INSPECTOR

ORDER MAP – COPY NOT TO SCALE

ORDER MAP