

Report of the Assistant Director, Planning Service, to the meeting of Bradford West Area Committee to be held on 24th January 2018

V

**Subject: Petition requesting closure of the public right of way between
Whetley Lane and Walker Drive, Manningham**

Summary statement:

A petition has been received from residents of Regency Court and Walker Drive, Manningham requesting the closure of a public footpath which links Whetley Lane with Walker Drive. The petition was referred to this Committee by Full Council at its 12th December 2017 meeting. The Council has powers to close public rights of way for purposes of crime prevention in certain, limited, circumstances. The criteria for deciding such requests are described.

Officers have considered the petition and recommend that closure of the path for the reasons requested does not meet the necessary criteria and therefore is not within the powers available to the Council.

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1. Summary

A petition has been received from residents of Regency Court and Walker Drive, Manningham requesting the closure of a public footpath which links Whetley Lane with Walker Drive. The Council has powers to close public rights of way for purposes of crime prevention in certain, limited, circumstances. The criteria for deciding such requests are described.

2. Background

- 2.1 The path under consideration is shown in the Appendix 1. It is a delineated tarmac path running through the car park of Regency Court, before leading onto a wide flight of steps. It connects Whetley Lane to Walker Drive.
- 2.2 The path was retained as a public footpath when other highways in the area were closed during the redevelopment of Regency Court in 1986.
- 2.3 It provides a pedestrian link from Whetley Lane, through Regency Court to Walker Drive, and vice versa. Many people then continue on to Thornton Road via the path through to Hockney Road.
- 2.4 In November 2013, the Rights of Way Section received a complaint about anti-social behaviour connected with this path and a request for the path to be closed. Officers made a site visit and 38 people were seen using the path in a one hour period. A similar visit in January 2018 noted 24 people using the path in a one hour period.
- 2.5 The request was recorded in a list of all similar requests for closures across the district for further consideration if a decision is taken to consider further such closures. The complainant was advised to ensure all criminal and antisocial behaviour was reported to the police.
- 2.6 There are currently 225 requests for path closures for crime prevention reasons across the district, 41 of them in the Bradford West area. Five paths requested for closure have been permanently closed, one in the Bradford West area.
- 2.7 In May 2015 the owners of Regency Court reported ongoing anti-social behaviour, drug dealing and prostitution, particularly in the area of the steps. The owners also indicated they would like to make Regency Court a gated community. Officers advised the owners on methods of gating the estate without the need for any highway or footpath closures, and also to report any incidents of antisocial or criminal behaviour to the police. No progress has been made on the proposals to gate the estate.
- 2.8 In April 2017 a petition was received requesting closure of the path to reduce the level of crime and antisocial behaviour in the area. The petition was signed by 62 residents of 55 addresses, mainly in Regency Court but including nine addresses in Walker Drive. The Petition reproduced in Appendix 2.
- 2.9 Under the Highways Act 1980 it is possible to permanently close a public right of way in certain circumstances: **(a)** If it can be proven that it is not needed for public

use, or **(b)** For crime prevention, by Special Extinguishment Order, in certain designated areas and in school grounds. The application of both of these powers has been considered for the path at Regency Court.

- 2.10 The situation does not fit the necessary criteria for option **(a)**. Officers have observed the path on a number of occasions (most recently on the 8th January 2018) and noted frequent use by pedestrians of all ages using the route on journeys from the Whetley Lane area, via Walker Drive, to and from bus stops and other facilities in the Thornton Road area. As many people use the path it is highly likely there would be objections to its closure. One objection stating that the path was needed would mean that an order to close the path would not be able to be implemented.
- 2.11 The power to close paths for crime prevention, described in option **(b)**, was added to the Highways Act 1980 by the Countryside and Rights of Way Act 2000. Specific criteria must be met before an order can be made for such closure. These are described in Appendix 3. Such closures are considered to be a last resort in situations where other measures have been considered and permanent complete removal of the public right of way is the only option to resolve persistent levels of serious crime (burglary, theft, criminal damage, vehicle crime).
- 2.12 An initial assessment using these criteria is applied to all requests to close paths for crime prevention reasons to establish whether the request falls into one of three broad categories: a) High priority and likely to be successful for closure; b) Possibly successful; c) very unlikely to be successful. These criteria have been applied to the path in question as shown in Appendix 4.
- 2.13 The path does not fall within a current Designated High Crime Area, and available information about crime in the area shows that there are very few reported issues at Regency Court and those were not in relation to issues in the snicket. Following the initial submission of the petition a PCSO discussed the issues with residents. Some of the residents did state that there are youths that sometimes loiter in the snicket. The vast majority of the residents that raised the issue stated that they either didn't report it or told the security guard employed by the owners of Regency Court. The people loitering in the snicket are generally teenagers, many of whom live in Regency Court.
- 2.14 All the local PCSOs have been asked to pay more attention to the area and particularly the path as it leads down the steps. Since May the issue has not been raised again. There does not, therefore, appear to be sufficient evidence to ensure a successful application for a Designated Area Status.
- 2.15 This path is not considered to be a high priority for closure as there is no evidence of high levels of serious crime directly associated with the path. In addition there are clearly well established high levels of legitimate use.
- 2.16 To close a path by Special Extinguishment Order, funding would be required to research, prepare and submit an application to the Secretary of State for Designated Area status. If this is successful, officer time would then have to be allocated to consulting, negotiating and preparing a legal order. In addition, funding would be needed for the advertising costs for the order, practical works to physically block the path and removal of any statutory undertakers equipment. The

minimum total of such costs would be £3,000, with considerably more officer time needed if objections led to a public inquiry.

- 2.17 There is currently no funding allocated to pursuing closures of paths for crime prevention reasons. Funding has been previously allocated by the council for projects to gate alleyways. However, this funding was targeted for use only where no public rights exist – i.e. bin runs and back alleys.
- 2.18 If funding were to be identified for path closures, the relative priority of the request at Regency Court would have to be considered in relation to the 230 other requests received so far. Initial information suggests that this route has lower levels of immediately adjacent problems and much higher levels of legitimate public use than many of the other paths on the list.
- 2.19 The possibility of closing this path has been considered in detail, as described above, in response to the petition. However, closure of a path by Special Extinguishment Order is normally considered to be the last resort in a hierarchical series of possible actions in response to reports of criminal or anti-social activity associated with a public right of way.
- 2.20 The different option is to consider improvements to the existing situation without removing or reducing public rights. This could include practical environmental improvements such as cutting back surrounding trees to increase visibility over the steps, improve street lighting, and increased Police and anti-social behaviour team involvement.
- 2.21 A private security guard is employed at Regency Court, he has at times approached people loitering on the steps. The Council's Cleansing Services keep the path and steps clear of litter. There is no evidence that practical measures, which the landowners could take to increase visibility over the path or reduce littering/tipping on land adjacent to the steps have been attempted. Police have increased patrols in the area since the petition was submitted. However the most recent police records show no requests for service associated with the path and very few calls to Regency Court in general.
- 2.22 A further option is to consider the suitability of the path for a Public Space Protection Order. In some parts of the country, anti-social behaviour and criminal activity associated with public footpaths has been reduced by the construction of gates across the path, restricting use to certain permitted users, or allowing the route to be open at certain times of day with a designated person being responsible for locking and unlocking the gates. This process requires a legal order that is subject to public consultation, with costs of £5000.
- 2.23 Guidance from the Local Government Association suggests it may be more appropriate to draft an Order focussed on the problem behaviour instead of restricting public access. Consideration of how the order would be enforced would also be needed. More detailed investigation into current levels and times of legitimate use of the path and detailed information on the disruption caused by anti-social behaviour would be necessary if a public space protection order were to be considered.

- 2.24 It is acknowledged that the Council has a duty under Section 17 of the Crime and Disorder Act 1998 to consider the possible effects of crime and disorder in its activities. This duty should be considered in the context of the Council's duty under the Highways Act 1980, section 130, to 'assert and protect the right of the public to the use and enjoyment of any highway' in the district.

3. Other considerations

- 3.1 Guidance for Local Highway Authorities on the use of powers to close public rights of way for crime prevention reasons has been issued by Defra in Circular 1/2003.
- 3.2 This states, in paragraph 3.5, "Assurances were given during the passage of these provisions through Parliament that the intention was for the closure orders to be used sparingly by local highway authorities, and not as a first response to crime."
- 3.3 Paragraph 3.6 of the same circular states "Where the new powers are used the closure should significantly reduce the opportunity to commit offences and increase the security and well being of residents. The powers should be particularly helpful in areas where high levels of crime are undermining attempts to address wider problems within the neighbourhood."
- 3.4 Once a path is legally closed it is virtually impossible to reopen it. The public's right to use it will be lost permanently.
- 3.5 Consultations carried out prior to preparation of the Council's Rights of Way Improvement plan lead to the conclusion that appropriate improvements should be sought before any restriction on public rights is considered.
- 3.6 The relevant chapter of the Rights of Way Improvement Plan is in Appendix 5

4. Financial And Resource Appraisal

- 4.1 There is currently no funding allocated to making orders to close paths for crime prevention purposes.

5. Risk Management And Governance Issues

- 5.1 There are no significant risks arising out of the implementation of the proposed recommendations.

6. Legal appraisal

- 6.1 There are no legal implications at present.

7. Other implications

7.1 Equality & Diversity

There are no implications for equal rights.

7.2 Sustainability implications

The path provides a traffic free pedestrian link between Whetley Lane and Walker Drive.

7.3 Greenhouse Gas Emissions Impacts

The path offers a carbon free transport option.

7.4 Community safety implications

The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to consider the possible effects of crime and disorder in its activities. As many of the people loitering on the steps are residents of Regency Court closing the path is unlikely to resolve the concerns.

7.5 Human Rights Act

There are no implications for human rights.

7.6 Trade Unions

There are no implications for the trade unions.

7.7 Ward Implications

There are no Ward implications

7.1 Area Committee Ward Plan 2016/17 Implications

There are no Ward Plan implications

8. Not for publication documents

None.

9. Options

- 9.1 Option 1 Leave the path open, request further involvement of the Council's Anti-Social Behaviour Team and the Police and suggest that the landowners consider additional alternative means of reducing the problems. For example, cutting back nearby trees would stop the area around the steps being as secluded and removing the fly tipping from the land adjacent to the steps would improve the surrounding environment.

- 9.2 Option 2 Consider applying for designated area status from the Secretary of State on the area around the path, with the intention of making a Special Extinguishment order to close the path. This is unlikely to be successful, as the circumstances of the area around the path do not meet the necessary legal tests.
- 9.3 Option 3 Consider making a public space protection order for the path to allow residents with keys to use the path or to allow public access at certain times of day or preventing certain behaviours. Currently there are no funds allocated for this type work. If funding were to become available the levels and timing of legitimate use would be investigated and the relative priority of this path in relation to other requests would be assessed. The details of who would take responsibility for closing (and locking) and opening the gates at the agreed times would also need to be established.

10 **Recommendations**

- 10.1 That the situation on the path does not currently meet the criteria for a permanent closure of the public right of way. Option 1 is the recommended course of action. i.e. Leave the path open, request further involvement of the Council's Anti-Social Behaviour Team and the Police and suggest that the residents and owners consider additional alternative means of reducing the problems.

11 **Appendices**

Appendix 1 – Map showing location of the path

Appendix 2 – Petition

Appendix 3 – Criteria for assessing requests for path closures to reduce crime

Appendix 4 – Assessment of the Regency Court path against criteria.

Appendix 5 – Rights of Way Improvement Plan Policy Statement: Crime Related Issues.