

**Decision Session – Executive Member of
Transport and Planning**

13 September 2018

Report of Assistant Director, Transport, Highways and Environment

**Public Rights of Way – Proposed improvements to the rights of way
network in the vicinity of Knapton**

Summary

1. A request for authorisation to make concurrent extinguishment and creation orders under sections 118 and 26 of the Highways Act 1980, to extinguish Public Footpath, Knapton No 2 and create a new bridleway linking Main Street, Knapton to the southern end of North Field Lane, utilising the current underpass to cross the A1237 (Annex 1: Location Plan and Annex 2: Proposed Order Plan).
2. The proposal will provide a safer crossing of the A1237 and will form the final stage of an off-road walking, riding and cycling route that will link Rufforth, Knapton, Acomb, Upper Poppleton and the Northfield Lane business parks.

Recommendations

3. The Executive Member is asked to:
 - 1) Authorise the making of concurrent extinguishment and creation orders under sections 118 and 26 of the Highways Act 1980. If no objections are received, or are received and withdrawn, to authorise the confirmation of the orders as unopposed orders. If objections are received and not withdrawn to bring the proposal back to Decision Session for further consideration.

Reason: To legally put in place the proposed improvements.

Background

4. In September 2002 the council, through a Committee decision, authorised the making of public path orders to legally affect changes to the rights of way network in the vicinity of the then council owned New Farm, Knapton, York. Unfortunately, although Committee authorisation was given for the Orders to be made, the scheme was shelved due to delays relating to the sale of New House Farm site (now New House Covert), and then again due to lack of resources to take the scheme forward.
5. New House Farm was eventually sold in March 2006. Planning consent (ref 01/02582/GRG3) was given for the conversion of 3 barns on the site to be converted to 3 dwellings. The remainder of the site was granted outline consent for residential development (ref 00/02186/GRG3). A condition of the above consent required the provision on the ground of the committee authorised bridleway along the development's private access road from Main Street through to the council owned fields beyond (Condition 13: details of highway works). The highway details were given approval in January 2010.
6. A second period of pre-order consultation was then carried out in 2011 during which an objection was received. The proposal was amended in light of this objection and a further period of pre-order consultation was carried out, during which another objection was received from a local user group. Although the objection was eventually withdrawn the proposal could again not be taken forward as the funding for the works had lapsed.
7. Funding for the scheme has now been allocated from the Transport Capital Programme as part of the ongoing improvements to the A1237. In brief, the proposal is to create a new bridleway link (bold dashed line) between the village of Knapton and North Moor Lane, which will utilise the existing ringroad underpass in the vicinity of the village allotments (Annex 2: Proposed Order Plan).
8. It is then proposed to concurrently extinguish the existing public footpath (bold solid black line) that links Knapton Main Street with Moor Lane bridleway and which crosses the A1237 at grade.
9. In order to encourage the greatest number of users, the proposed new bridleway will have a dual surface that will allow year round, all-weather use. Where there is currently a natural surface, the path will be constructed with a 2 metre wide conventional bitumen macadam (bitmac) surface with an adjacent 2 metre wide firm, but unsealed path for use by

horses. The proposed 4 metre wide path will have 0.5 metre wide verges on either side with fenced or hedged boundaries. The path will be constructed to allow access for maintenance vehicles. A section that also needs to accommodate occasional use by farm traffic will be built to a suitable specification. Suitable barriers will be installed at either end to prevent unauthorised use of the path by vehicles and ensure the safety of people using it.

Consultation

10. Due to the time that has elapsed since the last period of pre-order consultation (2011) a further, shorter, period of consultation has recently been carried out (Annex 3: Consultation responses). No objections have been received.
11. Ward Councillors and Group Spokespersons have been consulted in respect of the proposal:
 - Councillor I Gillies: *'Happy to support Option 1'*.
 - Councillor C Steward: No comments received.
 - Councillor A D'Agorne: No comments received.
 - Councillor S Barnes: No comments received.
 - Councillor S Fenton: No comments received.
12. A further period of statutory consultation (28 days) will commence should authorisation be granted to make the orders under s26 and s118 of the Highways Act 1980.

Options

- 1) Authorise the making of concurrent extinguishment and creation orders under sections 118 and 26 of the Highways Act 1980. If no objections are received, or are received and withdrawn, to authorise the confirmation of the orders as unopposed orders. If objections are received and not withdrawn to bring the proposal back to Decision Session for further consideration.
- 2) Do not authorise the making of the orders and abandon the scheme.

Analysis

13. Option 1 will legally put in place the proposed improvements. The creation of the new bridleway, utilising the existing ringroad underpass will provide a safer method of crossing the A1237 for walkers, horse riders and cyclists. Currently the only way for all users to cross the ring road is by using the central pedestrian refuge located at the junction with Knapton Main Street and the ringroad. This crossing is widely considered to be unsuitable due to more than 20,000 vehicles using this section of the ringroad each day.
14. At the same time the council will extinguish the existing public footpath that links Knapton Main Street with Moor Lane bridleway. This footpath requires walkers to cross the A1237 at grade. Although irrelevant to the legislative requirements that need to be met when extinguishing a public right of way, it should be noted that the footpath has been unusable for many years from the Knapton end because it has been obstructed by a garage where it leaves Main Street.
15. As well as providing a safer and more convenient crossing of the A1237, the creation of the bridleway will open up this part of the rights of way network to more users because bridleways are open to horse riders and cyclists as well as walkers. The proposed surface treatment will also provide a more accessible surface for all users. The addition of this bridleway will mean that the existing public footpath will no longer be needed therefore meeting the criteria set out by section 118 of the Highways Act 1980.
16. If the scheme goes ahead, the new bridleway will provide the final section of the long awaited off-road cycle route linking Rufforth with Knapton and the wider area such as Acomb, York city centre, and the Northminster and Oakwood Business Parks. This will enable more sustainable modes of travel to and from these locations.
17. It should be noted that, there is a provision in the Highways Act 1980 s28 for the payment of compensation to anyone who is able to show that the value of his interest in land is depreciated, or that he has suffered damage by being disturbed in his enjoyment of land as a consequence of a creation order. Compensation may also be payable consequent on the coming into operation of an extinguishment order, to which the provisions of s28 are also applied by s121(2).

18. It should be noted that the proposal is for concurrent extinguishment and creation orders to be made. If the proposal is successful, the extinguishment of the footpath will compensate the landowner for any loss of land as a result of the construction of the new bridleway. If objections are received to one of the orders and they cannot be resolved, the other order will not be confirmed and the scheme will not go ahead. With regard to other landowners affected by the extinguishment of the path, there will be no detrimental effect on the land this path serves as a result of it being extinguished.
19. Option 2 will mean that the proposed scheme will not go ahead and the current at grade crossing of the ring road for walkers via the public footpath and for all users at the pedestrian refuge will continue.

Council Plan

20. As set out in the Council Plan 2015-19: One of our key priorities is to work towards “A Prosperous City for all: Where local businesses can thrive and residents have good quality jobs, housing and opportunities.
21. One of the aims is to have; Efficient and affordable transport links that enable residents and businesses to access key services and opportunities. This will be met through:
 - Steps taken to improve air quality
 - Continued inward investment in transport

In the next 4 years we will: Work to ensure York gets the best deal from all regional partners, including in relation to investment in transport infrastructure.

22. The authorisation of the making of the legal orders required to put the route on the ground, will ensure the scheme will be contributing to the above aims and 4 year work programme. Especially in regard to improving air quality by encouraging more sustainable modes of transport through the provision of a quality off-road walking and cycling route, sections of which have been funded by regional funding streams.

23. Implications

- **Financial** The scheme has an allocation in the Capital Funding Programme, which will fund both the legal orders required, officer time and the construction of the bridleway.

The council as highway authority will be responsible for the maintenance of the surface of the new bridleway, including the culvert bridge and any barriers/path furniture. Any adjacent hedging and fencing will be maintained by the landowners. The section of the route through New House Covert will continue to be privately maintained.

Should objections be received to either Order and should the council decide to continue with it, the Order would be referred to the Secretary of State for determination. This may lead to a Public Inquiry or Hearing which the council will be required to fund. Approximate cost £3,000 to £5,000.

- **Human Resources (HR)** Scheme to be delivered using existing resources.
- **One Planet Council / Equalities** See Annex 4: Community Impact Assessment.
- **Legal** Under the Highways Act 1980 the council, as highway authority, has powers to extinguish and create footpaths, bridleways and restricted byways.

When creating a right of way under s26 the authority must be satisfied that it is expedient that a path should be created. In considering the matter it must have regard to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area. It must also have regard to the effect that the creation would have on the rights of persons interested in the land, and in doing so should take into account the provisions in s28 under which compensation may be payable. It must also have regard to the needs of agriculture, forestry, and the desirability of conserving flora, fauna and geographical and physiographical features. Before confirming a creation order the council must have regard to any material provision of the council's rights of way improvement plan.

When making a public path extinguishment order under s118 the council can have only one reason in law and that is that it appears to it expedient on the ground that the footpath is not needed for public use. If there are no outstanding objections to the making of the order, the council when considering whether to confirm the order needs to consider whether it is expedient to do so having regard to the extent to which it appears that the footpath is likely to be used by the public and

having regard to the effect which the extinguishment would have on the land crossed by the footpath, account being taken of the provision as to compensation contained in s28. The council must also have regard to any material provision of a rights of way improvement plan prepared by the council.

S118 also allows extinguishment orders to be considered concurrently with creation orders. If considered concurrently the orders must each stand on their own. S118(5) provides that where an extinguishment order is being considered concurrently with a creation order then in considering the extent to which the path the subject of the order would be likely to be used by the public the council may (but not must) have regard to the extent to which the creation would provide an alternative path.

It is regarded that this proposal meets the requirements of the above legislation (see Analysis paras 12-16).

- **Crime and Disorder:** It is proposed to install appropriate barriers will be placed at either end of the path to prevent unlawful use.
- **Information Technology (IT):** There are no known IT implications
- **Property:** The new bridleway route will cross council owned land which is the subject of leases which will have to be renegotiated with the occupiers to allow for the implementation of the proposals, see Annex 5: Property map.
- **Other** There are no other known implications

Risk Management

24. In compliance with the authority's Risk Management Strategy, Option A is subject to internal budgetary pressures relating to ongoing maintenance of the new route.

Contact Details

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Report **Date** 05.09.18
Approved

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Wards Affected: Rural West York Ward

For further information please contact the author of the report

Background Papers:

Highways Act 1980 s26 and s118
Planning Ref: 01/02582/GRG3
Planning Ref: 00/02186/GRG3

Annexes

Annex 1: Location Plan
Annex 2: Proposed Order Plan
Annex 3: Consultation Responses
Annex 4: Community Impact Assessment
Annex 5: Property Map