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## Meeting of the Executive Members for City Strategy and the Advisory Panel

11 December 2006

Report of the Director of City Strategy

### **PUBLIC RIGHTS OF WAY – OUTSTANDING OBJECTION TO PUBLIC PATH EXTINGUISHMENT ORDER, PUBLIC FOOTPATH OSBALDWICK NO6 – PROPOSAL TO SEND OPPOSED ORDER TO SECRETARY OF STATE FOR DETERMINATION.**

#### **Summary**

1. This report requests the Advisory Panel to consider whether or not to submit an opposed Public Path Extinguishment Order to the Secretary of State for determination, with a request that the order is confirmed. The Order in question being the Public Footpath Osbaldwick No6 Extinguishment Order 2006. It is recommended that Members resolve that the Order be passed to the Secretary of State for determination.

#### **Background**

2. Osbaldwick Link Road is the road linking Hull Road with Murton Way, Osbaldwick. It is a single carriageway road designed for two-way traffic and was originally constructed without pedestrian footways. In mid 2000 a single footway was built along the full length of the west side of the highway and was designated as a combined cycle and pedestrian way. The footway has a tarmacadam surface and is illuminated along its entire length. For the first 260 metres, travelling in a northerly direction from Hull Road, the footway follows the line of and improves on the surface of, Public Footpath Murton No2.
3. From the end of Murton Footpath No2, north to Murton Way, the footway follows a line to the east of and parallel to, Public Footpath Osbaldwick No6 for the remaining 360 metres. Both routes are separated by a 4 metre high well-established hedge (see map - Annex 1).
4. It is apparent that pedestrians continue along the footway adjacent to the link road and do not use Osbaldwick No6, as they have no reason to divert off the well-lit, well-surfaced footway onto the un-surfaced, unlit and enclosed public footpath. In addition to this, gaining access to the public right of way has been difficult due to fencing and hedging, although the Public Rights of Way office have received no complaints to this effect. This would suggest that the path is no longer used by, nor needed for use by the public.

5. In June 2005, an application was made by Spawforth Associates on behalf of George Wimpey, North Yorkshire, to extinguish public rights over this path (Shown A - B - C on the plan in Annex 1). The application was made following the digging of and subsequent granting of retrospective planning permission for drainage swales within the line of the footpath (See Photos - Annex 2).
6. The applicants have acknowledged that this matter should have been resolved previously and have therefore agreed to pay all costs associated with the preparation, publication and confirmation of the order should it be successful. It has also been explained to the applicant that the granting of retrospective planning permission for the swales, did not grant authority to alter the public footpath and it was made clear, that the situation regarding the obstruction of the footpath caused by the swales, must be dealt with on an entirely independent basis to the planning process.
7. In November 2005, the then Planning and Transport (East Area) Sub Committee authorised the making of a Public Path Extinguishment Order. The decision of that committee was as follows:
  - 1) To authorise the Acting Director of Environment and Development Services to instruct the Head of Legal Services to make a Public Path Extinguishment Order to extinguish Public Footpath Osbaldwick No6.
  - 2) That if no objections are received to the making of the order, or that if any objections are received and are subsequently withdrawn, the Head of Legal Services be authorised to confirm the order as unopposed.
  - 3) That if objections are received and not subsequently withdrawn, a further report be placed before Committee, to enable Members to consider whether or not to pass the order to the Secretary of State for determination.
8. The order was made on 14 June 2006 under Section 118 of Highways Act 1980 (a copy of which is in Annex 4). The delay between the committee's decision and the making of the Order, was as a result of the need for Wimpey to agree a wayleave, allowing a statutory undertaker to access plant on the land affected by the order. The order was advertised as required by regulations. One objection was received from a resident of Osbaldwick during the required notification period. As a result of this, the authority cannot now confirm the order (The objection is contained in Annex 5).

## **Consultation**

9. No consultation, further to that previously undertaken, is required to allow the authority to make this decision. Both the Ward Member and the Parish Council have been consulted and agree with the action taken.

## **Options**

10. **Option A** – Submit the Order to the Secretary of State with a request that it is confirmed.
11. **Option B** – Formerly abandon the Order.

## Analysis

12. **Option A** – Submit the Order to the Secretary of State with a request that it is confirmed. The original reason for recommending the making of the order was that *“The path is not needed for public use, as the already well used footway adjacent to the link road provides a safer and more convenient route. This option is recommended.”* The recommendation was made as the particular circumstances met the required legislative criteria, namely that the path is not needed for public use and is in fact, no longer used by the public. The situation remains unchanged.
13. If this option is adopted, the order must be submitted to the Secretary of State for Environment Food and Rural Affairs. An Inspector would then be appointed to determine the matter on behalf of the Secretary of State. This could be done through written representations, a hearing or a Public Local Inquiry. The method adopted to determine the matter is entirely at the discretion of the Planning Inspectorate. The costs incurred by any decision made would be met by City of York Council.

## The Objection (Annex 5)

14. The issue of construction traffic access across the Link Road footway during works on the site (Point 1 (ii) of the objection letter) was addressed as part of the planning process. The gateway at this access point is to remain as an emergency access and also as access for pedal cycles on to the housing development, following the completion of works on site. Access via this gateway will have no significant impact on the quality and convenience of the Link Road footway as an alternative to using the Link Road.
15. **Option B** – Formerly abandon the Order. The authority is not required to submit the Order to the Secretary of State, if it decides that that it would not be expedient to make it. If the decision is to abandon the Order, it is necessary to advertise this. The applicants have no right of appeal against this decision.
16. In this event the legal status of the footpath would remain unchanged, as would the authority’s statutory duties in protecting and asserting the public’s right to use this path. The drainage swales dug in the path constitute a wilful and unlawful obstruction of the public footpath and the authority has a duty to ensure the obstruction is removed and therefore the swales would have to be filled in, despite having been given retrospective planning permission by City of York Council.

## Corporate Priorities

17. The recommended option meets the council’s Corporate Aim 1: *Take pride in the city, by improving quality and sustainability, creating a clean and safe environment.*
18. Although this aim related mainly to the environment, it incorporates the second Local Transport Plan (LTP2), where the hierarchy of transport user is firmly embedded within this plan, with pedestrians and cyclists being the top of our priority when considering travel choice. The encouragement of travel by sustainable modes also corresponds with other wider quality of life objectives as contained in the Community Strategy, such as those relating to health. Although the preferred

option has no bearing on vehicle usage, it does assist in making the diverted route more pleasant for users and encourages its use, which would tie in to Objective 1.3 to: *Make getting around York easier, more reliable and less damaging to the environment.* It would also tie in with the council's improvement statement No2, to *increase the use of public and other environmentally friendly modes of transport that reduce car usage.*

## **Implications**

### **Financial**

19. In submitting the Order to the State of State, the authority must incur all expenses required to facilitate the determination of the Order. The financial implications of this would depend on which method is adopted by the Inspector to determine the matter. In the event of written representations, costs incurred would be officer time only. A hearing or Public Inquiry would require the authority to provide a venue and legal representation may also be required in addition to officer time. These costs would be met from the Public Rights of Way Budget, which in this case could be up to around £1,500; although this could possibly be recharged to the applicant.

### **Human Resources (HR)**

20. There are no HR implications

### **Equalities**

21. There are no Equalities implications.

### **Legal**

22. The Order was made under Section 118 of the Highways Act 1980. This section of the Act allows for the extinguishment of a public footpath where it appears to the council that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.
23. DOE Circular 2/1993: Public Rights of Way confirms that authorities have the discretion not to proceed with public path orders where they are opposed.

### **Crime and Disorder**

24. There are no Crime and Disorder implications.

### **Information Technology (IT)**

25. There are no IT implications.

### **Property**

26. There are no property implications.

### **Other**

27. There are no other implications

## Risk Management

28. There are no known risks associated with this decision.

## Recommendations

29. It is recommended that the Advisory Panel advise the Executive Member that:

- 1) The Public Footpath Osbaldwick No6 Extinguishment Order 2006 be passed to the Secretary of State for the Environment Food and Rural Affairs and a request made that the order be confirmed.

**Reason:** It is believed that the path is no longer needed for public use.

## Contact Details

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### Chief Officer Responsible for the report:

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Assistant Director  
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Report Approved



Date 29/11/06

### Specialist Implications Officer(s) List information for all

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### Wards Affected:

All

Osbaldwick Ward, Osbaldwick Parish

**For further information please contact the author of the report**

### Background Papers:

1. Highways Act 1980 Section 118
2. DOE Circular 2/1993: Public Rights of Way
3. PROW File: PPO/061/Osbaldwick
4. Planning Files: 05/00779/FUL, 03/01305/FUL

### Annexes:

1. Annex 1 – Plan Showing Public Footpath Osbaldwick No6 subject to Extinguishment Order
2. Annex 2 – Photographs showing drainage swales dug in line of path (2005)
3. Annex 3 – Public Footpath Osbaldwick No6, Extinguishment Order 2006
4. Annex 4 – Letter of Objection