
MEETING	DECISION SESSION - EXECUTIVE MEMBER FOR CITY STRATEGY
DATE	2 FEBRUARY 2010
PRESENT	COUNCILLOR STEVE GALLOWAY (EXECUTIVE MEMBER)
IN ATTENDANCE	COUNCILLORS D'AGORNE AND MOORE

74. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

Councillor Steve Galloway declared a personal non prejudicial interest in relation to one of the speakers registered for Agenda item 4 (PROW – Application for Definitive Map Modification Order, Ings Bridge to Storwood, Wheldrake). He confirmed that Richard Watson was known to him as a fellow City of York Councillor although he understood that he would be speaking in a professional capacity at the meeting.

75. PUBLIC PARTICIPATION - DECISION SESSION

It was reported that there had been 10 registrations to speak at the meeting under the Council's Public Participation Scheme. Details of these speakers are set out under the individual agenda items except for Dr T K Halstead who had registered to speak in relation to all the Public Right of Way agenda items 3-7.

Dr Halstead spoke as the Chair of the York Group of the Ramblers Association and as a resident of Wheldrake since 1967. He confirmed that he had walked all the footpaths on the provisional map in the area and referred to historic evidence of the Church Lane/Carr Lane, Ings Bridge to Storwood, Main Street to Sparrow Hall Farm routes together with that path that ran to Lawn Closes.

76. PUBLIC RIGHTS OF WAY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER, ALLEGED PUBLIC FOOTPATH, CHURCH LANE TO CARR LANE, WHELDRAKE

The Executive Member considered a report which had been prepared to assist him in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route, shown on Plan 1 at page 12 of the report, to the Definitive Map.

Representations were received from a local resident, Bridget Gratton, who confirmed that this path had been little used since 1957. Mrs Gratton explained that it ran close to farm buildings and that users would have difficulty in accessing the full route. She also stated that, if adopted, there

would be safety issues using the proposed route and that an adjacent alternative location would be preferable.

The observations of the Executive Member contained within the report sought to clarify the position of a section of the claimed route commencing at its junction with Church Lane and subsequently passing through a house as implied on the map attached to the report. The Definitive Map Officer explained that the DMMO application had been received by the Council in 1993 prior to the development of the existing housing estate. The developer had been informed of the DMMO application, however it had subsequently transpired that provision had been made for a path but not on the claimed route applied for, the alternative path provided was located to the east of the claimed route. It was reported that the alternate route was overgrown and obstructed by a fence which would necessitate some work to open up the route. The Officer went on to explain that the claimed route was shown as in existence under the 1910 Finance Act. Mrs Gratton, in her statement, had raised the possibility of diverting the route to a preferred alignment. The Officer explained that the legislation did not allow some of the issues raised by Mrs Gratton to be taken into consideration. However the Officer pointed out that an application could be made at a future date for a diversion, if it met certain criteria.

The Executive Member confirmed that this was only the first part of the process and that it may be sensible for the path to be diverted to a more sensible alignment at a later date. Following further consideration the Executive Member considered the following options:

Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to exist, the Executive Member should resolve that:

- (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
- (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist, he should resolve that:

- (a) The application to modify the Definitive Map be refused.
- (b) The applicant be advised of their right to appeal.

- RESOLVED:
- i) That the Executive Member agrees that public rights are reasonably alleged to exist;
 - ii) The Executive Member resolves that
 - (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached at page 12 of the report, to the Definitive Map; ¹.
 - (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
 - (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

REASON: All the available relevant evidence suggests that this has probably never been a heavily used path, but that it is nonetheless a public right of way, which has been subject to use from the mid Nineteenth Century until the latter part of the Twentieth Century. As there is evidence in support of the existence of a public right of way over the application route the authority is required to make the order under the provisions of the Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

Action Required

1. Instruct Head of Legal Services to make a DMMO.

JC

77. PUBLIC RIGHTS OF WAY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER, ALLEGED PUBLIC FOOTPATH, INGS BRIDGE TO STORWOOD, WHELDRAKE

Consideration was given to a report which had been prepared to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route to the Definitive Map, as shown on Plan 1 page 40 of the report, as a Public Footpath.

The Definitive Map Officer confirmed that evidence had been obtained of 20 years usage of the path and that the period of use was between 1946 and 1966. She pointed out that there could be some discrepancies on the map and explained that it was difficult for some people to show accurately on a map a route that they had used when they were unfamiliar with maps. Therefore variations of the route claimed would not be unusual and would not necessarily imply that different routes had been used.

She went onto refer to evidence provided in relation to the bridges and explained her belief that use of the route between the period of 1946 to

1966 had used the Old Drawbridge which had been located to the north of the existing Bailey Bridge.

Representations were made by Ian Carstairs, as a landowner who claimed he had not been served with a notice as a person affected by the route of the path. He expressed concern at some of the evidence detailed in the report and he referred to witness statements, which indicated that the path lay along the course of the bed of the River Derwent. He referred to the suggested course of the path and to the post and wire fence obstructions.

Richard Watson, made representations on behalf of the Carstairs Countryside Trust who also referred to discrepancies in the report in relation to the history of events and to the map. He referred to the photographic evidence and to procedural flaws in that correct procedures had not been followed and he pointed out that the application should fall on this point alone. He also pointed out that a public right of way had to have a highway link at each end and this path did not.

Representations were received from Ernest Smith of Sutton on Derwent, who gave evidence as a regular user of the path both by him and his relatives. He went onto refer to a number of footpaths that had been lost in the Parish.

The Definitive Map Officer confirmed that evidence showed that the line of the route ran along the top of the flood bank. She further explained that it was not, she believed, the intention that the route claimed would follow the actual river bed, therefore there was no requirement to serve notice upon Mr Carstairs as he was not an affected landowner. However, the evidence received was subject to interpretation. The Officer confirmed that no mention had been made of additional landowners when the original notices had been served. She stated that the alleged path connected Ings Bridge to Storwood the majority of the route being within the boundary of the City of York Council. However a small section of the route commencing from the Council boundary eastwards to a point south of New Farm lay within the boundary of the East Riding of Yorkshire County Council and connected with a county maintained road.

The Executive Member confirmed that this was a complex issue and that there was little documentary evidence to support the making of the order, with most being very old and anecdotal. He also pointed out that further evidence had indicated that the required processes had not been fully complied with by the Council and that whatever the decision those that were aggrieved would have the right of further recourse.

Consideration was then given to the following options:

Option A: If, having considered all of the available evidence, and in the absence of any evidence to the contrary the Executive Member decides there is sufficient evidence to raise a reasonable allegation in support of the existence of public footpath rights:

- a) under common law based upon user between 1920 and 1966
- b) under the provisions of Section 31 of the Highways Act between 1946 and 1966

that the alleged public rights do exist, the Executive Member should resolve that:

- a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
- b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- d) The East Riding of Yorkshire Council be invited to make a corresponding Order for the section of the route within their area.

Option B: If, having considered all of the available evidence, the Executive Member may decide that the alleged public rights do not exist, the Executive Member should resolve that:

- a) The application to modify the Definitive Map be refused.

The applicant be advised of their right to appeal.

- RESOLVED:
- i) That having considered the available evidence the Executive Member agrees that the alleged public rights do not exist and resolves to refuse the application to modify the Definitive Map.¹
 - ii) That the applicant be advised of their right of appeal.

REASON: Taking the evidence as a whole there is not a prima facie case in favour (i.e. there is a reasonable allegation) of the establishment of public footpath rights over the application route

Action Required

1. Do not add this route to the Definitive Map.

JC

78. PUBLIC RIGHTS OF WAY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER, ALLEGED PUBLIC FOOTPATH, MAIN STREET TO NORTH LANE (LOVE LANE), WHELDRAKE

Consideration was given to a report which sought to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route, as detailed on Plan page 76 of the report, to the Definitive Map, as a Public Footpath.

The Executive Member confirmed that he had received no representations or objections in relation to the making of this DMMO and that there was considerable evidence to confirm that the path was regularly used.

He then considered the following options

Option A: If, having considered all of the available evidence the Executive Member decides that the alleged public rights do exist, the Executive member should resolve that:

- a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
- b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

Option B: If, having considered all of the available evidence, the Executive Member may decide that the alleged public rights do not exist, the Executive Member should resolve that:

- a) The application to modify the Definitive Map be refused.
- b) The applicant be advised of their right to appeal.

- RESOLVED:
- i) That the Executive Member agrees that public rights are reasonably alleged to exist;
 - ii) The Executive Member resolves that
 - (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached at page 76 of the report, to the Definitive Map;¹
 - (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
 - (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

REASON: There is evidence in support of the existence of a public right of way over the application route thus requiring the authority to make the order under the Wildlife and Countryside Act 1981, Section 53 (3)(c)(i).

Action Required

1. Instruct Head of Legal Services to make DMMO.

JC

79. PUBLIC RIGHTS OF WAY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER, ALLEGED PUBLIC FOOTPATH, FROM MAIN STREET TO SPARROW HALL FARM, WHELDRAKE

The Executive Member considered a report which sought to assist him in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route, as shown on Plan 1 pages 98 and 99 of the report, to the Definitive Map, as a Public Footpath.

The Definitive Map Officer confirmed that although there appeared to be a lack of use of this path it was incorrect to say that it did not exist. She pointed out the path was shown on the 1910 Finance Act documents and if there was any conflict of evidence that this would be tested at any subsequent Public Inquiry. If felt appropriate application could then be made for a diversion of the path, subject to meeting the relevant legislative criteria.

Mrs Shepherd as landowner made representations, she referred to the reported evidence from the application map, which showed a diagonal route across fields on their land, which they contested. She stated that they had owned the farm since 1969 during which time the path had been little used as the fields had contained arable crops, which would have made a diagonal path very inconvenient. She also referred to existing trespass problems on their land and to a bridleway, which ended at their property.

Officers explained that there was a body of evidence that supported the allegation that public rights existed on the diagonal route across the fields. She also confirmed that discussions regarding improvements to signage and way marking could be undertaken at a later date.

The Executive Member confirmed that it appeared part of the route was well used and that the balance of documentary evidence suggested that a PROW had existed albeit in the distant past. He stated that this could be tested at appeal and any appropriate diversions to avoid agricultural activities could be put forward at a later date.

He then considered the following options:

Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to subsist, the Executive Member should resolve that:

- (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order

to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;

- (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
- (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- (d) A decision be made regarding the Authority's position in respect of the confirmation of the Order (i.e. support, or seek non-confirmation)

Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist, they should resolve that:

- (a) The application to modify the Definitive Map be refused.
- (b) The applicant be advised of their right to appeal.

- RESOLVED:
- i) That the Executive Member agrees that public rights are reasonably alleged to exist;
 - ii) The Executive Member resolves that
 - (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plans 1a and 1b attached at pages 98 and 99 of the report, to the Definitive Map;¹
 - (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
 - (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

REASON: There is evidence to support the existence of a public right of way over the application route based both upon historic evidence and modern user, thus requiring the authority to make the order under the Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

Action Required

1. Instruct Head of Legal Services to make DMMO.

JC

80. PUBLIC RIGHTS OF WAY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER, ALLEGED PUBLIC FOOTPATH, THORGANBY LANE TO LAWN CLOSES (PUBLIC FOOTPATH NO.7), WHELDRAKE

The Executive Member considered a report, which had been prepared to assist him in determining whether or not to make a Definitive Map Modification Order (DMMO) to add this route, shown on Plan 1 page 128 of the report, to the Definitive Map, as a Public Footpath.

The Definitive Map Officer updated that Annex 6 of the report only related to the Ordnance Survey maps and not to the 1910 Finance Act. She also confirmed that there had been clear evidence of use of the path between two separate periods of time namely 1971 to 1991 and 1973 to 1993, thus fulfilling the full period of 20 years, meeting the necessary test.

Representations were then received from Bridget Gratton, as landowner, who stated that she did not support the claim of usage, detailed in the report. She referred to their farms internal road network, which was in constant use by farm machinery and their dairy herd. She stated that in many areas there was no permanent barriers just electrified post and wire fencing and that part of the paths route was visible from the house. She confirmed that during their time at the farm no one had been seen using the paths.

Rod Dawson, confirmed that he had given evidence as to use of the path as part of the investigation and he confirmed his use of the path on a regular basis.

Officers appreciated that landowners did not wish to have public rights of way on their land but that if there was evidence that reasonably alleged the existence of a public right of way then the authority were obliged to add the route to the Definitive Map.

The Executive Member then considered the following options and referred to there being very little in the way of documentary evidence in this case. He referred to the claims on both sides and on balance he confirmed that he was not convinced that there was evidence that a PROW existed in this case.

Option A: If, having considered all of the available evidence the Executive Member decides that public rights are reasonably alleged to subsist, the Executive Member should resolve that:

- (a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 (Annex 1) attached to this report, to the Definitive Map;
- (b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal

Services be authorised to confirm the Order made in accordance with (a) above; or

- (c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
- (d) A decision be made regarding the Authority's position in respect of the confirmation of the Order (i.e. support, or seek non-confirmation)

Option B: If, having considered all of the available evidence, the Executive Member decides that the alleged public rights do not exist they should resolve that:

- (a) The application to modify the Definitive Map be refused.
- (b) The applicant be advised of their rights of appeal.

- RESOLVED:
- i) That having considered the available evidence the Executive Member agrees that the alleged public rights do not exist and resolves to refuse the application to modify the Definitive Map.¹
 - ii) That the applicant be advised of their right of appeal.

REASON: Taking the evidence as a whole there is not a prima facie case in favour (i.e. there is a reasonable allegation) of the establishment of public footpath rights over the application route

Action Required

1. Do not add this route to the Definitive Map.

JC

81. A19/A1237 ROUNDABOUT IMPROVEMENTS - CONSULTATION RESULTS AND DETAILED DESIGN

The Executive Member considered a report, which provided him with the results of the consultation undertaken on the proposed improvements to the A19/A1237 roundabout. It also updated him on the changes, which had been made to address comments and accommodate constraints identified during the design period.

Officers reported that following further preparatory work after confirmation of the preferred option, a consultation exercise was undertaken to ensure that residents, external stakeholders and users of the roundabout views were collected to incorporate into the final design, where at all possible.

Ron Healey, then made representations both as a local resident and cyclist user of this roundabout and underpass. He stated that the consultation had failed to engage local residents. He pointed out that if changes were made at the roundabout any problems would be moved down the route. He went onto refer to the hierarchy of users and the need to reduce journey times

for all users so he felt these proposals would reduce journey times for commuters at the expense of pedestrians and cyclists. He stated that he felt more sustainable proposals should be considered to alleviate the problems encountered.

Cllr Moore, made representations as Local Member and Chair of Rawcliffe Parish Council, he referred to the speed of traffic using the roundabout and to driver attitudes. He pointed out that policing of traffic was required together with consideration by drivers of other road users. He went on to refer to the closure of the westbound lay-by on the A1237 and the proposed use of spaces at the P & R site, which at times was already oversubscribed. He referred to the provision of a pedestrian refuge, which he felt would encourage unnecessary conflict between pedestrians/cyclists and vehicles when the underpass had worked well for many years. He requested deferment of the proposals to further examine these details but stated that should the scheme be approved he asked the Executive Member to consider the removal of the rumble strips on Shipton Road.

Officers confirmed that the hierarchy of users had been considered and that Police enforcement had proved difficult, as lane markings were only advisory although CCTV coverage would assist. He stated that the pedestrian refuge had been included at a point where people wished to cross the road and that all efforts would be made to ensure everyone's safety in using the roundabout.

The Executive Member confirmed that Officers had amended the scheme following receipt of the consultation responses. He also pointed out that similar upgrading of roundabouts had proved successful.

RESOLVED: That the Executive Member agrees to:

- i) Note the comments raised by the public, Councillors and interested organisations.
- ii) Note the Officer's response to the comments and the proposed amendments to the design.
- iii) Approve the further development of the scheme in line with the amended layout subject to the removal of the rumble strips on Shipton Road, as part of the necessary resurfacing works, to enable the improvements to be tendered and constructed in the summer/autumn of 2010. ¹
- iv) Approve the inclusion of a total allocation of £1.5m in the City Strategy Capital Programme to construct the proposed scheme. Authorise the removal of the minimum amount of vegetation from the A1237 West landscaped bund in February, to allow the main works to proceed later in the year to minimise the impact on nesting birds. ²

REASON: To reduce journey times for travellers in the A19/A1237 area whilst maintaining safe crossing points for pedestrians and cyclists.

Action Required

1/2. Undertake further development of the scheme, as detailed, for tendering and construction.

TC

82. ORBITAL CYCLE ROUTE SCHEME - PROPOSALS FOR THE REMAINING THREE SECTIONS

The Executive Member considered initial proposals for the following three sections of the orbital cycle route:

Section 1 : Clifton Green to Crichton Avenue
Section 2 : Hob Moor to Water End
Section 3 : James Street to Heslington Road

He considered the proposed route alignments included in the successful Cycling City bid in 2008, together with the best options to take forward on each section for further detailed design and public consultation.

Cllr D'Agorne confirmed that as Cycling Champion he supported the overall concept of an improved coherent network of routes, which cut across the radial routes in York. He stated that these routes were often the most difficult to make by public transport and therefore more likely to be a choice between bike and car. He confirmed that he strongly supported completion of the missing link in Section 1 Clifton Green to Crichton Avenue. However with reference to Section 3 James Street – Heslington Road he raised a number of issues regarding accesses at the eco depot and the proposed routing via the University. He also suggested the naming and numbering of the route and junctions on the cycle map to make signing and maintenance reporting easier.

Officers confirmed that they would have no difficulties considering and incorporating Cllr D'Agornes comments at the feasibility stage of the scheme.

The Executive Member confirmed that the proposals were generally welcomed and that he was happy to take into account the suggestion made at the meeting, however the main area of controversy appeared to relate to the Hob Moor to Water End section. He then considered the following options:

- Option One – progress the three remaining scheme proposals for the orbital cycle route through more feasibility work, detailed design and public consultation. In addition, initiate feasibility work for the Hob Moor to Water End section to develop improved connections between the outlying residential areas and the orbital route.
- Option Two – develop alternate route proposals for the Hob Moor to Water End section that are located within the outlying residential areas and progress them through more feasibility work, detailed

design and public consultation. A plan showing the general area of consideration for an alternate route was attached to the report at Annex F.

- Option Three – abandon plans to provide any further improvements associated with one, two or all three sections of the orbital cycle route.

RESOLVED: That the Executive Member agrees to:

- i) Note the proposals for each section;
- ii) Provide in-principle approval for sections 1 and 3 and authorise Officers to undertake further detailed design and public consultation on the schemes shown in Annexes B and E. ¹.
- iii) Have the issues raised by the Cycling Champion regarding route alignment and signage to be considered during the detailed design and consultation stage of the process. ².
- iii) A review of a possible alternative route for section 2 to the west through West York and compares this with the current proposed route through Acomb. A further report to be brought back to the Decision Session for route approval. ³.

REASON: The proposals will provide improved facilities for cyclists, completing an orbital route that cyclists will be able to use in accessing a variety of destinations while avoiding busy radial routes where possible. The proposed measures would also make a significant contribution towards the objectives of the Council in its Cycling City strategy.

Action Required

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| 1. Undertake detailed design and consultation on these schemes. | MM |
| 2. Take account of issues raised. | MM |
| 3. Examine alternate route for Section 2. | MM |

Cllr Steve Galloway, Executive Member for City Strategy
[The meeting started at 4.00 pm and finished at 5.55 pm].