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**Meeting of the Executive Member for  
City Strategy and the Advisory Panel**

**14 January 2008**

Report of the Director of City Strategy

**PUBLIC RIGHTS OF WAY – PETITION SEEKING THE ADDITION OF  
CHAPEL ALLEY, FULFORD TO THE LIST OF STREETS  
MAINTAINABLE AT THE PUBLIC EXPENSE**

**Summary**

1. This report is in response to the receipt of a petition (Annex 1) signed by 127 residents of Fulford, requesting that the path known as Chapel Alley be adopted by the Council.
2. The report considers 2 options to progress the matter and recommends that the Advisory Panel advises the Executive Member to approve Option B and authorise officers to carry out the required surveys and costing required with a view to presenting this information to the next available EMAP meeting for further consideration.

**Background**

3. Chapel Alley links Main Street to School Lane in Fulford (see Annex 2 Location Plan). The path is approximately 88 metres long, has a tarmac surface and street lighting. The surface is in poor condition (see Annex 3 photos). It is not recorded on the Definitive Map and Statement – the legally conclusive record of known public rights of way, nor is it recorded on the List of Streets Maintainable at the Public Expense (LoS) i.e adopted.
4. After extensive investigations by Fulford Parish Council, including land registry searches and the posting of a Notice at either end of the path, no owners of the path have been identified.
5. Fulford Parish Council initially wrote to the Council in June 1998, requesting that the surface of the path be repaired. The Parish Council was advised that as the path was not recorded on either the Definitive Map or the LoS, then as the Council had no record of it being either a public right of way or a highway maintainable at public expense it had no maintenance liability for it.
6. The Parish Council was further advised that, although the path was not recorded, it did not preclude the existence of public rights or maintenance

liabilities. However, before any public funds could be used to repair it, it would have to be proven firstly that it was a public right of way and secondly that it was repairable at the public expense. The forms required to add the path to the Definitive Map were sent to the Parish Council but were not returned.

7. On receipt of another letter from the Parish Council in November 2000, regarding the surface of the path, the forms to add the path to the Definitive Map were once again sent to the Parish Council. Again they were not returned.
8. In April 2001 the Parish Council wrote with information relating to the past maintenance of the path and also the history of its origins. The letter did not include the required supporting evidence in the form of copies of original documentary sources and/or witness statements, but stated that East Riding of Yorkshire County Council (the highway authority at the time) maintained the surface prior to Local Government reorganisation in 1974, carrying out repairs and then relaying the whole path at the request of Mr Britton the then County Councillor. The Parish Council then understood that City of York Council took over maintenance liability from North Yorkshire County Council after a further Government Reorganisation in 1996.
9. Recent case law dictates that if a highway authority undertakes maintenance work on a path it assumes maintenance liability for it by default. With regards to the above information it is unlikely that East Riding of Yorkshire County Council carried out maintenance works on the path as it was not recorded on the List of Streets. It is, however, possible that the pre 1974 district council at the time maintained the alley. But, unless the district council had entered into an agency agreement (under s 101 Local Government Act 1972), with the then East Riding of Yorkshire County Council, to maintain the alley on their behalf, any maintenance works carried out by them would not make the highway authority liable for its maintenance.
10. The above would also apply should Selby District Council have carried out any maintenance works pre 1996. There is no record of City of York Council, as highway authority, having carried out any surface maintenance on the path, nor can any record be found that previous highway authorities have maintained the path in the past.
11. Regarding the history of the path, the letter stated that Chapel Alley came about as a route from Main Street to a Methodist Chapel built on land in Back Lane (now School Lane) in the 1820s. The chapel is no longer there, having been relocated to Main Street, but a commemorative stone marks its original location on School Lane.
12. In response to this letter, the forms to add the path to the Definitive Map and a request to supply the required supporting evidence were again sent to the Parish Council in April 2001 and then again in March 2007. The Parish Council were advised that should they be able to supply proof in the form of Parish Minutes or letters to, or received from, East Riding of Yorkshire County Council or North Yorkshire County Council regarding the maintenance of the

path, then this would provide enough evidence to have the path adopted relatively quickly.

13. A completed Definitive Map Modification Order (DMMO) Application Form was ultimately received by the Council in April 2007 with 7 User Evidence Forms attached. However, no copies of the required supporting documentary evidence were submitted. The application was put on the list of DMMO applications to be determined.
14. The petition that is the subject of this report was received by the PROW Office in September 2007. It is entitled *Cllr Keith Aspden's Petition on Chapel Alley*. The statement for the adoption request reads:

*"We the undersigned call for Chapel Alley, the snicket between School Lane and Main Street, Fulford to be adopted by the City of York Council, so that improvement and ongoing maintenance can be carried out.*

*We understand that this path has long been a public right of way in Fulford and we would like this adoption to take place as quickly as possible".*

## **Consultation**

15. As this report is to advise the Advisory Panel of the receipt of the petition no external consultation has yet taken place. The Ward Member, joint DMMO applicant and Lead Petitioner (Cllr K Aspden) has been consulted; *'I would urge EMAP to support Option 2, so that investigations can be carried out quickly to improve the pathway. Chapel Alley is a much used footpath in Fulford, having been used for generations initially get to the local church, and now to reach local shops and community facilities. The condition of the alley is gradually getting worse and becoming dangerous. As local councilor I support the calls of the local community to get Chapel Alley adopted by the Council. The community would like to see improvements to the surfacing and lighting'.*
16. Should the Executive Member approve Option A then the necessary statutory consultation required, as part of the Definitive Map Modification process, will be carried out.
17. Should the Executive Member approve Option B then the Public Utility companies will be consulted re their plant requirements.

## **Options**

18. Option A – Continue to progress the Definitive Map Modification Order application method, to add the path to the Definitive Map, as and when resources allow.
19. Option B – Progress the request to adopt the path and authorise officers to carry out the necessary surveys and costing required with a view to presenting this information to the next available EMAP meeting for further consideration.

## Analysis

20. Option A – As Cllr Aspden and the Parish Council have already submitted a DMMO Application to add the path to the Definitive Map, the evidence submitted so far in the form of User Evidence Forms will mean that the path is likely to be, barring the production of any evidence to the contrary, recorded as a public right of way.
21. The purpose of the investigation of such an application is to establish firstly whether public rights exist and secondly, if they do, whether the route is maintainable at public expense. It is not always the case that a public right of way is maintainable at public expense, it could be that no one is liable for its maintenance. The investigative process also provides an auditable paper trail for the alteration of the Council's legal records and ultimately the grounds for the expenditure of public money on maintaining its highways.
22. For a public right of way to be maintainable at the public expense it must be proved to have been in existence prior to the Highways Act 1959. If it were proven that public rights did exist then the Council's PROW Team would take on maintenance liability. Evidence to prove public rights, may be in the form of the original dedication of the path as a route to the original Methodist Chapel, or old maps, plans, deeds, parish council records and/or witness testimonies.
23. However, even if the alley were to be proved to be maintainable at the public expense, ultimately the level of construction and repairs would not be as high as a normal urban footpath/footway as PROW does not hold a budget large enough to maintain paths with a tarmac surface. This matter was considered by Members in September 2004 when it was determined that those paths recorded on the Definitive Map, but which lie within the urban areas of York, be maintained out of the current Highway Maintenance budget, held by Highways Infrastructure.
24. The DMMO Application for Chapel Alley is currently bottom of a list of 19 DMMO Applications received by the Council. DMMO Applications are currently dealt with in the order in which they are received in accordance with the Council's Statement of Priorities for Public Rights of Way which was approved by Members in October 1999. At current resource levels the PROW Team are determining one DMMO application per year.
25. Notwithstanding the above, The Statement of Priorities also allows for an application to be taken out of sequence where it can be demonstrated that it is:
  - i. necessary to prevent actions which are illegal under current highway legislation; or
  - ii. deemed to necessitate immediate action in an attempt to prevent further local difficulties; or
  - iii. in the interests of the promotion of development.

26. The applicants have expressed an interest in applying for their application to be taken out of sequence. This would require a further report to be considered by the Executive Member and the Advisory Panel.
27. If the request to take the application out of sequence were approved, the application would then be prioritised within the list of other out of sequence applications. There are currently 2 such applications, which means that it could still be up to 3 years before the matter is dealt with and possibly proven to be an 'ancient highway' that is maintainable at public expense.
28. Given the present poor state of repair of the path, it is for this reason that this option is not recommended. In the meantime, however, s50(2) of the Highways Act 1980 permits a local council to undertake maintenance on any footpath that is privately maintainable within its area. Therefore, if the Parish Council is so minded they may make repairs to the path, until the matter is settled, without the concern of becoming liable for its future maintenance.
29. Option B – If this option were approved to be progressed, investigations to identify all costs involved in adopting the path would be carried out and a second report placed before the Executive Member and the Advisory Panel.
30. Investigations would broadly consist of:
  - a. a survey of Chapel Alley to establish what remedial works would be required, including surfacing, lighting and any additional drainage;
  - b. an estimate of the cost of any remedial works that would need to be carried out;
  - c. identifying the source of funding required;
  - d. Consultation with public utility companies; and
  - e. prioritisation of the scheme against any similar requests throughout the City.
31. In addition, as there is a building which is situated over the alleyway at the Main Street end, an Agreement with its owner will need to be completed indemnifying the Council from any action or claim as a result of the structure.
32. A further report presenting the above information would then be required to be considered by The Executive Member and the Advisory Panel to determine whether or not to proceed with the adoption of the alley.

## **Corporate Priorities**

33. As both options would ultimately have the same outcome, both link in to the Council's Corporate Strategy (2007 – 2011) Priority for Improvement Statement:
  - No 3 "*Increase the use of public and other environmentally friendly modes of transport*"; and
  - No 4 "*Improve the actual and perceived condition and appearance of the city's streets, housing estates and publicly accessible spaces*".

34. The *hierarchy of transport users* is firmly embedded within the second Local Transport Plan (LTP2), with pedestrians and cyclists being given priority when considering travel choice. The adoption of Chapel Alley as a highway maintainable at public expense would encourage use and therefore fits soundly within Council transport policy. 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 and also ties in with Objective 1.3 to: *Make getting around York easier, more reliable and less damaging to the environment*"

## **Implications**

- **Financial**

35. The approval of option B will set in motion investigations to determine the likely cost of adopting Chapel Alley. This would involve officer time. These cost implications of adopting the alley would be considered within the resulting report should Option B be the preferred option.

- **Legal**

36. Legal Services advise that as the status of the alleyway is yet to be determined it is unclear who is liable for the maintenance of its surface.

37. There are no implications for the following:

- **Human Resources (HR)**
- **Equalities**
- **Crime and Disorder**
- **Information Technology (IT)**
- **Property Other**

## **Risk Management**

38. In compliance with the Council's Risk Management Strategy, there are no risks associated with the recommendations of this report.

## **Recommendations**

39. That the Advisory Panel advise the Executive Member to select **Option B** and;
- 1) progress the request to adopt the path and authorise officers to carry out the necessary surveys and costing required to bring Chapel Alley up to an adoptable standard.

**Reason:** To enable this information to be presented at the next available EMAP meeting for further consideration by the Advisory Panel and the Executive Member.

## Contact Details

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### Chief Officer Responsible for the report:

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Assistant Director  
City Development and Transport

**Report Approved**  **Date** 28/12/07

### Specialist Implications Officer(s)

#### Financial

Patrick Looker (Finance Manager) 01904 551633

#### Legal

Martin Blythe (Senior Assistant Solicitor) 01904 551044 – See para 36

#### Wards Affected:

Fulford

All

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

### Background Papers:

PROW(R)/030 Chapel Alley, Fulford

Executive Member for Planning and Transport Report (01/09/04) *Public Rights of Way - Budgets*

Highways Act 1959

Local Government Act 1972 s101

Highways Act 1980 s50(2)

Wildlife and Access to the Countryside Act 1981

Public Rights of Way Statement of Priorities

### Annexes

Annex 1 – Petition

Annex 2 – Location Plan (Chapel Alley)

Annex 3 – Photos (Surface of Path)