

**Decision Session - Executive Member for  
Transport**

**18 October 2022**

Report of the Corporate Director of Place

Portfolio of the Executive Member for Transport

**Application to stop up parts of the adopted highway verges off  
Scoreby Lane, Kexby**

**Summary**

1. This report considers an application by a local resident to stop up part of the adopted highway verges off Scoreby Lane in Kexby. The subsoil of the adopted highway verges in question is in the ownership of the resident. The landowner has asked the Council to consider submitting an application to the Magistrates' Court for a stopping up order under Sections 116 and 117 of the Highways Act 1980.
2. The status of these sections of verge has been in dispute over many years. A previous application to stop up the area, leaving a 1m wide adopted highway strip, was abandoned by the Council due to objections received through the consultation process. A new application was submitted by the resident in 2022, which is considered in this report.

**Recommendations**

3. The Executive Member is asked to:
  - 1) Instruct officers to prepare an application to the Magistrates' Court for an order to stop up the highway rights over part of the verges off Scoreby Lane in Kexby, shown on the plan at Annex A, subject to the applicant agreeing to bear all costs associated with the application, including serving the required notices,

preparing and advertising the application, and progressing it through the court process;

**Reason:** To positively respond, in principle, to the application made by the landowner in July 2022, whilst ensuring that the views of stakeholders are considered and that the Council recovers its costs as per section 117 of the Highways Act 1980. It is important to note that the applicant will be required to pay all costs incurred by the Council regardless of the outcome of the application process. The application would be made on the basis that the areas of highway verge concerned are surplus to highway requirements. The Council may decide not to progress the application to Magistrates Court if significant highway related objections and concerns are raised by stakeholders during the consultation process. It would clearly not be appropriate for the Council to make an application to the Magistrates if it did not itself consider that the highway in question was unnecessary. Even if the Council decides to submit an application for a stopping up order to the Magistrates Court, the final decision to either grant or refuse the order will lie with the Magistrates and the Court's decision is a discretionary one.

- 2) To instruct officers to consider representations received by the Highway Authority once the required notices (under Section 116 of the Highways Act) have been served and advertise, and delegate the decision to officers as to whether the application should be progressed and submitted to the Magistrate's Court;

**Reason:** To ensure that the views of stakeholders are considered, and resolve the long-standing dispute as to the extent of necessary adopted highway along this section of Scoreby Lane.

## Background

4. This report considers a new application for up the highway in an area which has been the subject of a long running dispute on the status and extent of the adopted highway. The areas considered are shown in Annex A. Of particular interest are the sections of verge that flank the metalled lane outside Hendwick Hall, those sections being within the ownership of the applicant.
5. Scoreby Lane is an ancient lane, clearly shown on maps pre-1900. The key events of this case however follow from the local government reorganisation effective from 1st April 1996.
6. Before the local government reorganisation to create unitary authorities, this section of lane was within North Yorkshire County Council. It was transferred to City of York Council through the local government reorganisation. North Yorkshire passed on its list of streets, which identified the linear extent of the publicly maintained section of Scoreby Lane but did not have any further extent information (i.e. widths and boundaries). The linear extent of the lane went from the (new) boundary with North Yorkshire, generally southerly, for some 1330 metres to what is now Byre House.
7. City of York Council had a policy of recording additional information on the extent of the highway, including local widths, not just the highway's status along its centreline. City of York Council therefore reviewed the data provided by North Yorkshire to clarify the full extent of its adopted highways (length and width). This involved reference to maps and records and site visits. As evidence was gathered, information on the width of the adopted highway was added to maps and records, as shown in Annex A.
8. The land considered in this report was purchased by the applicant in 2002. It is understood that since the purchase, the applicant planted a large number of trees in the land either side of the metalled lane. The applicant made several attempts to gain clarification on the extent of the adopted highway either side of the lane. Unfortunately, the information obtained from North Yorkshire County Council and City of York Council was not consistent.
9. In 2014, City of York Council decided in principle to progress an application to stop up areas of the verge off Scoreby Lane. The decision was taken by City of York's Interim Director of City and Environmental Services, in consultation with the Cabinet Member for Transport, and at the request of the landowner. The Director

*“agreed subject to the adjacent property owners submitting an application under Section 117 Highways Act 1980 to the Council to request the ‘stopping up’ of said highway and confirming they will fund all the legal work required, to process the stopping up via S116 of the Highways Act 1980, give approval to initiate the legal process to remove the highway rights from Scoreby Lane except for the existing carriageway and 1m of verge either side”.* The decision also noted that: *“Bearing in mind the unusually wide expanse of what is believed to be highway, the very few properties reached from Scoreby Lane and the fact that it is not a through route for vehicles it is thought reasonable to conclude that the highway rights could be reduced to the carriageway and a narrow verge”.* The decision and supporting documents are available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=4255>

10. The legal advice presented in the 2014 report noted that when considering whether to make an application to stop up a highway, the Highway Authority should consider any objections it receives during the consultation on the application. The advice was that, if, on the balance of evidence, the Highway Authority cannot demonstrate to the Magistrates' Court that the highway is "unnecessary", as required under Section 116(1) of the Highways Act, the application should not progress.
11. The responses to the consultation raised some concerns with the proposed stopping up application as drafted following the 2014 decision (see Annex B for a review of objections previously received). The Highway Authority therefore decided not to proceed with the application to the Magistrate's Court. The revised application considered in this report proposes to retain a wider area of the verge to the west of the lane as adopted highway (2m proposed, with a wider area in the bend, increased from 1m in the previous proposals – see Annex A). Officers therefore consider that the revised proposal addresses most of the concerns raised during the previous consultation.

## Consultation

12. Section 116 of the Highways Act 1980 requires the following stakeholders to be formally consulted on stopping up proposals (through notices):
  - a. the owners and occupiers of all lands adjoining the highway;
  - b. any statutory undertakers having apparatus under, in, upon, over, along or across the highway; and
  - c. the parish council.

The Act requires notices to be displayed in a prominent position at the ends of the highway before an application is made to the Magistrates Court. Notices must also be displayed in the London Gazette and at least one local newspaper prior to making an application.

13. As previously noted, a statutory consultation process took place following the 2014 decision in principle. There were no objections from the statutory undertakers that could not be resolved, but issues were raised by other stakeholders. These objections are summarised in Annex B, which also includes a review of these objections in light of the revised proposals. It is the view of the Highway Authority that the revised proposals, providing the retention of a wider adopted verge area, seem to address most of the concerns expressed through the previous consultation process.
14. It is however important to note that some stakeholders remain opposed to the revised proposal and that, if the application were to proceed, they are likely to make submissions to the Magistrates Court, to present the case that the highway verge, which is proposed for stopping up, remains necessary. A letter from the legal firm representing the Church Commissioners for England, who are a landowner in the area, is included in Annex C stating the reasons for their position. The letter was received by CYC in response to an informal consultation on the option of retaining 2m of adopted highway verge instead of the 1m width initially proposed in 2014.
15. If this revised application is to progress, a new statutory consultation process will however need to take place to determine whether any previous objections remain or any new objections need to be considered by the Highway Authority before a final decision is made on whether or not to continue with making an application to the Magistrates Court for a stopping up order.

16. It is important to note that parish councils have a right of veto against applications made under Section 116 of the Highways Act 1980. Kexby & Scoreby Parish Council will be consulted on the revised proposal. However, the Parish Council were consulted informally on the 2m proposal in 2020 and supported the proposal as evidenced in Annex D.

## Options

17. The following options are to be considered:

- a. Option A - Having considered the revised proposal and the objections to the previous proposal, to conclude that an order to stop up part of the highway verge of Scoreby Lane should be drafted for the area presented in Annex A, further consultation undertaken, and subject to responses to this consultation, an application made to the Magistrates' Court.
- b. Option B - Having considered the revised proposal and the objections to the previous proposal, to conclude that the revised proposal cannot be supported by the Highway Authority, but that an alternative proposal may be considered acceptable, and ask officers to review the proposal with the applicant and present a revised application to the Executive Member once agreed.
- c. Option C - Having considered the objections to the previous proposal, to conclude that all of the area currently recorded as adopted highway is 'necessary' and that the Highway Authority should not progress a revised application for a stopping up order.

## Analysis

18. The table below presents an analysis of the pros and cons of each of the three options introduced above.

Options	Pros	Cons
Option A – Progress the revised application	Supports the clarification of the extent of the adopted highway in this location (subject to consultation responses). Revised proposal (increased widths)	Some stakeholders remain in objections and would be likely to submit their position to the Magistrates Court who may find in their favour.

Options	Pros	Cons
	<p>addresses most of the objections previously received and preserves adopted highway verges to create passing places should these be required/funded in the future.</p> <p>Reduced maintenance responsibility for the Highway Authority for a large area of verge with a large number of mature trees (note: the current landowner maintains the vegetation in the adopted highway area, but this arrangement may not continue in the future)</p>	<p>Concerns previously raised about the fence and posts on the east side of the lane, near Hendwick Hall, not fully addressed.</p> <p>Once the land is stopped up the landowner could decide to change its use (subject to other legal requirements such as planning law).</p> <p>Staff resources required to progress an application, although the Council is likely to outsource the work to reduce officer time spent on this matter, and the applicant will be charged to ensure cost recovery.</p>
<p>Option B – Refuse this application but consider a revised proposal</p>	<p>A revised proposal may address some of the issues raised in the previous consultation and in this report.</p> <p>A revised proposal may receive more support from stakeholders, reducing the risk of challenge at Magistrates, Court.</p>	<p>An agreement on a revised proposal may not be possible.</p> <p>Uncertainty would remain on the extent of the adopted highway until a revised application considered.</p> <p>Additional staff resources required to prepare a revised proposal.</p>
<p>Option C – Refuse to consider any further applications in this area</p>	<p>Clarifies the extent of the adopted highway.</p> <p>Retains a wide area of verge as adopted highway which can be used by non-motorised users, including equestrians, to avoid travelling on the carriageway and could be used to create passing places if required/funded in the future.</p>	<p>The Highway Authority remains responsible for the maintenance of a large area of verge with many mature trees. Although the current landowner manages the vegetation in the adopted highway, this arrangement may not continue in the future.</p>

Options	Pros	Cons
	<p>Adopted highway area retained could be used to provide access to future developments between Scoreby Lane and Gate Helmsley or to the south or Hendwick Hall.</p> <p>No further resources expanded on this issue and officer time can be used to work on other matters.</p>	

### Council Plan

19. The recommended option included in this report is supportive of the “open and effective council” outcome identified in the Council Plan.

### Implications

20. The following are the identified implications.

- **Financial** – There are no direct financial implications in the short term as the applicant must undertake to re-imburse the council of all reasonable costs. In the longer term, it is possible there may be a small reduction in maintenance costs associated with the reduced area of adopted verge and trees. The officer time required to progress the application will be met from within existing resources.
- **Human Resources** – No HR implications identified.
- **Equalities** – No negative impacts identified for people and groups with protected characteristics under the Equality Act 2010. The area proposed for stopping up is an uneven grassed area with many mature trees and does not provide a convenient route for most users apart from equestrians who may prefer it to the carriageway or the area of verge closer to the road.  
As the process for applying for a stopping up order includes opportunities for anyone who feels they may be disadvantaged to object and, if they wish, be heard in court, equality impacts, if any, would also be considered by the Council before the



decision is made to proceed with an application to the Magistrates' Court and by the Magistrates' Court.

- **Legal** – Section 116 of the Highways Act 1980 provides the power for a Highway Authority to apply to the Magistrates' Court for an order stopping up a highway, or part of a highway. Section 117 enables a Highway Authority to apply for a stopping up order on a third party's behalf and provides the Council with powers to recover its reasonable costs for making such an application. Section 116(1) of the Highways Act states that if it appears to a Magistrates' Court that a highway (other than a trunk road or a special road), as respects which the appropriate (highway) authority have made an application:
  - (a) is unnecessary, or
  - (b) can be diverted so as to make it nearer or more commodious to the public,the Court may by order authorise it to be Stopped Up or, as the case may be to be so diverted.

The Authority is obliged to give 28 days' notice of its intention to apply for an order, specifying the time and place at which the application is to be made and the terms of the Order applied for. A plan must be attached showing the effect of the Order. Any person to whom notice is required to be given, any person who uses the highway and any person who would be aggrieved by the making of the Order applied for, have right to be heard at the Magistrates' Court hearing.

In this case notice will need to be given to the owners and occupiers of all lands adjoining the highway and to the statutory undertakers having apparatus under, in, upon over, along or across the highway.

The Authority will also be required to display a site notice and plan no later than 28 days before the day on which the application is made in a prominent position at the ends of the highway. At the same time the Authority should also insert a notice in the London Gazette and in at least one local newspaper circulating in the area.

The final decision to either grant or refuse the Order will lie with the Magistrates. A further right of appeal to the Crown Court exists where a person affected by the Order (or refusal to grant an Order) is aggrieved by the Magistrates' decision.

When considering whether to make an application to stop up a highway, the Highway Authority should consider any objections it receives during a statutory consultation on the application. If any objections cannot be resolved and, on the balance of evidence, the Highway Authority determines that it will not be

able to demonstrate to the Magistrates' Court that the highway is "unnecessary", the application should not be proceeded with. Parish councils have a right of veto to applications under Section 116 of the Highways Act 1980.

Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. As well as whether the highway is needed for passing and repassing, issues such as safety, e.g. for visibility splays, or potential development access should also be considered.

The central questions to be addressed are: what is the highway function being performed by that part of the highway which is the subject of the requested application, and whether it is unnecessary for that function to be performed by that part or whole of the highway. If the answer to that is that it is unnecessary for that function to be performed, the second question is: if it is unnecessary for the highway to perform those functions, are there any other highway reasons why a stopping up order should not be made?

The making of a stopping order will extinguish the highway rights over the land concerned and control over the land will revert to the freehold or leasehold owner of the subsoil.

- **Crime and Disorder** - No crime and disorder implications identified.
- **Information Technology (IT)** – No IT implications identified. If the order is granted the highway extent map (available here: [www.york.gov.uk/RoadAdoption](http://www.york.gov.uk/RoadAdoption)) would be updated to reflect the revised extend of the adopted highway.
- **Property** – No property implications identified.

## Risk Management

Key risks	Description	Mitigation
Council costs	There are significant costs attached to the Section 116 process and as the Council leads on the process, these costs will all be with the Council to manage.	Section 117 allows for cost recovery and the Council will only proceed with the proposed application on behalf of the landowner on this basis.

Key risks	Description	Mitigation
Council resources (staff time)	There are significant staff resources committed to such an application, diverting limited staff resources from other matters.	The revised proposal should address most of the objections previously received, hopefully making for a more streamlined process. If further objections are received the Authority can decide to stop the process at any time.
Application could fail – reputational damage for the Council	The Highway Authority could decide not to submit the application to the Court, or the Court could decide not to grant the order	This is to be made clear to the applicant and all involved in the process. The Highway Authority could decide to stop the process at any time if the evidence gathered points to the highway being necessary.

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**Date** 10/10/2022

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**Wards Affected: Osbaldwick and Derwent (Kexby)****For further information please contact the author of the report****Background Papers**

No background papers included.

**Annexes**

Annex A – Draft Stopping up Order Plan

Annex B – Review of objections received during the previous consultation

Annex C – Letter from the representatives of the Church Commissioners for England (2020)

Annex D - Parish Council email of support (2020)

**List of Abbreviations Used in this Report**

CYC – City of York Council