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

26th March 2007

Report of the Director of City Strategy

**PUBLIC RIGHT OF WAY – PROPOSED DIVERSION OF PUBLIC
FOOTPATH, HAXBY NO.3 (PT)**

Summary

1. This report seeks authorisation to make an Order to divert a section of Public Footpath, Haxby No.3 as shown on Plan 1 attached to this report.
2. The report recommends that the Advisory Panel advises the Executive Member to approve **Option 2** and authorise the making of a Public Path Diversion Order to divert the footpath to the new alignment as shown on Plan 1.

Background

3. The section of path in question runs in a generally easterly direction from Calf Close following the boundary of Willowtree House before turning slightly north east and continuing to the edge of the railway line, where it crosses the line by means of two stiles before continuing across agricultural land onto Landing Lane. (Refer to Plan 2. for general location).
4. The applicant (Antler Homes Yorkshire Ltd) have acquired a parcel of land extending to the rear of No.30 Calf Close. Planning Permission was granted on 18th April 2006 to erect 11 properties on this land. The submitted plans for this development show that access to the new properties will be via a new section of adopted vehicular highway leaving Calf Close at the same point as the footpath currently does.
5. The application proposes to divert the existing footpath using Section 119 of the Highways Act 1980 from its current alignment to the one shown on Plan 1.
6. The developer has given written assurance that access to this footpath will be available to the public throughout subsequent construction works.

Consultation

7. Pre-order consultation was carried out in accordance with the Parliamentary Rights of Way Review Committee's code of practice for consultation on changes to the PROW network. No objections were received.

Options

There are 2 options available.

8. Option 1: Do nothing and leave the footpath on its current alignment
9. Option 2: Use Section 119 of the Highways Act 1980 to divert the footpath onto the alignment as shown on Plan 1.

Analysis

10. **Option 1: Not Recommended.**

Do nothing and leave the footpath on its current alignment. This option would leave an anomaly on the Definitive Map as it would still show the line of the public footpath beneath the proposed vehicular access road. In other words, the higher rights of the vehicular highway supercede the pedestrian rights of the footpath and the Definitive Map should be modified accordingly.

11. **Option 2. Recommended.**

Use Section 119 of the Highways Act 1980 to divert the footpath onto the alignment as shown on Plan 1.

12. Before making the Order, the authority must be satisfied that it is expedient to divert the path in the interests of either the public and/or the owner/lessee of the land crossed by the path. In this case, it is considered the application is in the interests of the public in that the path will be more direct and constructed to adopted footway standards with street lighting. It is not considered that the diversion will be in the interest of the owner of the land. Antler Homes Yorkshire Ltd. will not gain any advantage from the diversion and will in fact incur additional costs in constructing the path and installing lighting as opposed to leaving the path as it currently stands.
13. In addition to the above the authority must be satisfied that the diversion does not alter any point of termination of the path other than to a point on the same path or another highway connected with it, which is substantially as convenient to the public. In this instance the path, once diverted, will not terminate on the original highway i.e. Calf Close, but will terminate on the newly constructed road, which will link with Calf Close. Therefore satisfying the criteria of the legislation.
14. Before confirming an Order the authority must be satisfied that the diversion is expedient in the interests of the person(s) stated in the Order. The authority must also be satisfied that the diversion route will not be substantially less

convenient to the public as a consequence of the diversion and that it is expedient to confirm the Order having regard to the affect it will have on the public enjoyment of the path as a whole.

15. The authority must be satisfied that the diversion is expedient with regard to other land served by the existing path and on land affected by any proposed new path taking into account the provisions for compensation. Antler Homes Yorkshire Ltd. have waived any rights to compensation.

Corporate Priorities

16. The recommended option ties in with the council's Corporate Aim: *Take Pride in the City, by improving quality and sustainability, creating a clean and safe environment.* The proposed improvements to the path i.e. a more convenient surface and street lighting, accords with Objective 1.3 to: *Make getting around York easier, more reliable and less damaging to the environment.*
17. The second Local Transport Plan (LTP2). The *hierarchy of transport users* is firmly embedded within this plan, with pedestrians and cyclists being the top priority when considering travel choice. It is evident from the preceding comments that the retention of the link for public use, fits soundly within council's transport strategy. 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.

Implications

- **Financial**

18. The applicant, Antler Homes (Yorkshire) Ltd. Will pay for all costs relating to the making and advertising of the Order, including all officer time.
19. Maintenance Liability - The Developer has proposed to create a more defined surfaced path up to an adoptable standard, with a minimum width of 1.4 metres. This will become adopted highway repairable at public expense. It will also have street lighting up to the railway crossing.
20. Opposed Orders - If any objection is outstanding following the making of the order, the authority cannot confirm it. In this event, the Order can only be confirmed by the Secretary of State who would also determine the means through which the supporters and objector/s can make their case. This could be through written representations, a hearing or public inquiry. The Council is required to pay the costs of a hearing or public inquiry including officer time, the cost of advertising and a venue which would total approximately £2000.
21. Notwithstanding the above, if there are outstanding objections, the authority can decide not to proceed any further with the Order, in this case there would be no further costs incurred.

- **Human Resources (HR)**

22. There are no HR implications.
- **Equalities**
23. There are no Equalities implications.
- **Legal**
24. The council has the power to divert a public path under Section 119 of the Highways Act 1980.
- **Crime and Disorder**
25. There are no Crime and Disorder implications.
- **Information Technology (IT)**
26. There are no IT implications.
- **Property**
27. There are no property implications.
- **Other**
28. There are no other implications.

Risk Management

29. In compliance with the Council's Risk Management Strategy. There are no risks associated with the recommendations of this report.

Recommendations

30. It is recommended that the Advisory Panel advise the Executive Member to accept **Option 2**, and resolve to:
1. Authorise the Director of City Strategy to instruct the Head of Civic, Democratic and Legal Services to make the necessary Public Path Order to implement Option 2 and divert Public Footpath, Haxby No.3.
 2. That if no objections are received to the making of the Order, or that if any objections that are received are subsequently withdrawn, the Head of Civic Democratic and Legal Services be authorised to confirm the Order recommended in 1. above.
 3. If objections are received to the Order and are not withdrawn, a further report be placed before the Executive Member's Advisory Panel, to enable the Executive Member to consider whether or not pass the Order to the Secretary of State for determination.

Contact Details

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Assistant Director
(City Development and Transport)

Report Approved

Date 13/3/07

Specialist Implications Officer(s) - There are no specialist implications

Wards Affected: Haxby

All

For further information please contact the author of the report

Background Papers:

PPO/068/Haxby No.3

Highways Act 1980, Section 119.

Annexes

Annex 1

- **Plan 1** - Public Footpath Haxby No.3, Plan of Proposed Diversion.
- **Plan 2** - Public Footpath Haxby No.3, Plan of the General Location.