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

26 March 2007

Report of the Director of City Strategy

### **PUBLIC RIGHTS OF WAY – PROPOSAL TO RESTRICT PUBLIC PEDESTRIAN RIGHTS ALONG WRAY’S AVENUE, HUNTINGTON ROAD.**

#### **Summary**

1. This report presents a proposal to restrict public pedestrian rights along Wray’s Avenue, Huntington Road, using new legislation under Section 129A of the Highways Act 1980, as amended by the Clean Neighbourhoods and Environment Act 2005.
2. The report recommends that the Advisory Panel advise the Executive Member to approve **Option A**, to authorise the making of a Gating Order to restrict public pedestrian rights over Wray’s Avenue, along the route between Huntington Road and Birch Park Industrial Estate (see copy of draft Order Annex 1).

#### **Background**

3. Wray’s Avenue is a vehicular cul-de-sac situated off Huntington Road and occupies land between Huntington Road and Birch Park Industrial Estate. It is a private street repairable at private expense and carries, at least, public footpath status (Points A to B on the Order Map Annex, 1).
4. Birch Park Industrial Estate was built in the early 1990’s on the site of the former Wray’s Brickyard, with planning permission granted by Ryedale District Council, the planning authority responsible at the time. Due to the layout of the development, an access link was created behind certain industrial units onto Wray’s Avenue, to allow access for emergency vehicles into Birch Park from Huntington Road (Points B to C on the Order Map Annex, 1). This access link was controlled by removable concrete bollards and over time pedestrians and cyclists have used it as a short cut onto the industrial estate where they work. It could be argued that this is a use for which it was never intended and because the emergency access section is an adopted highway, the status of the route between Birch Park and Huntington Road, via Wray’s Avenue would also appear to have become a public highway of footpath status. However, at the time the surface of the road in Wray’s Avenue was deemed not to be of a

standard suitable for adoption by Ryedale District Council and it therefore remains the responsibility of the residents.

5. Prior to the access link being opened, Wray's Avenue and Wray's Cottages, the next adjacent street on Huntington Road were both cul-de-sacs (see Order Map Annex 1), situated at the western side of Wray's Brickyard. At that time, both streets were blocked by either fencing or a wall, which one is not certain.
6. When building work started on the industrial estate, both streets were opened up to allow works access to the site from Huntington Road, but after complaints from residents this was stopped and works vehicles were directed to use what is now the main access road, some 135 metres to the north of Wray's Avenue. After further complaints from residents, the road at Wray's Cottages was completely blocked off at its eastern end with a brick wall. There is now no access onto Birch Park Industrial Estate from Wray's Cottages.
7. Enquiries into the original planning files for Birch Park Industrial Estate do not show any evidence that residents in either Wray's Avenue or Wray's Cottages were consulted prior to the opening up of the two routes. The reason for this lack of consultation is not clear and recent evidence suggests that had residents been consulted, they would most likely have objected to the change in status for their roads, from cul-de-sacs to through routes.
8. For a number of years, residents in Wray's Avenue have experienced increasing problems with crime, vandalism and anti-social behaviour, either on or from the access route, with motorcycles (some of them stolen) using it to get to and from the industrial estate. Residents' vehicles and property have been damaged on a regular basis; one of these incidents being arson on a resident's car which resulted in damage to the door and external wall of their house. There have also been several 'near-misses' with cyclists travelling along the path from the industrial estate into Wray's Avenue close to residents' front doors.
9. In March 2005 a petition was presented at the East Area Planning and Transport Sub Committee meeting by one of the residents, requesting that the access be closed down. An officer's report, which included police crime statistics, was presented before the same Committee on 12 May 2005, when Members resolved to allow fencing and a kissing gate to be installed to try and reduce crime and the use of the link by unauthorised motor vehicles, in an effort to increase user and residents safety. This decision was made, because at that time there was no available legislation which would have allowed the closure of this route. Members also resolved that the residents' request for closure should be reviewed once the new legislation became available.
10. On 1 April 2006, Section 2 of the Clean Neighbourhoods and Environment Act 2005 came into force. This inserted a new S129A of the Highways Act 1980, which allows the restriction of public rights, if the highway suffers from crime and/or anti social behaviour and closure would be a useful crime or anti social behaviour reduction method. It also allows the council to make a Gating Order, even if objections are made and not withdrawn. In such cases, if the authority so wishes, it may hold a public inquiry to decide whether the objections to a

Gating Order being made outweigh the reasons for making the Order if it is in the best interests of the local community to do so. For example even if there is no convenient alternative route. In addition the new legislation does not require the highway to be in a designated high crime area as previously required.

11. On 26 March 2007, the Executive Member for City Strategy and the Advisory Panel will review the revised Gating Order Policy, Procedure & Practice Document, which gives guidance for the restriction of public rights of way for crime purposes using the new legislation introduced by the Clean Neighbourhoods and Environment Act 2005. Should this policy document be implemented, it would be possible to restrict public rights along Wray's Avenue and the emergency access path.

## **Consultation**

12. Prior to preparing the May 2005 report, the Police, Fire and Ambulance services were consulted and all of them supported the closure of this route. Both the Fire and Ambulance services stated that, as this route was inadequate for the purposes it was intended, they would not use it anyway. The Police were keen to eliminate a crime and anti-social behaviour hot spot. No other consultation was carried out at that time.
13. External consultation was carried out in January this year, in accordance with Home Office guidelines on the making of Gating Orders under S129A of the Highways Act 1980 and included:
  - All affected residents and businesses.
  - All statutory consultees set out in the Parliamentary Rights of Way Review Committee's Code of Good Practice for consultation on proposed changes to rights of way, including The Ramblers' Association, Open Spaces Society etc.
  - All statutory undertakers and utility providers, such as gas, electric and telephone companies.
  - All emergency services, including the North Yorkshire Police Authority.
14. Notices have also been advertised on site and in the local newspaper.
15. There have been two objections to the Order; one from the local branch of the Ramblers' Association (see Annex 2) and one from the Production Manager of Unit 4 Birch Park Industrial Estate, on behalf of his staff (see Annex 3).
16. The Footpath Committee of the York Group of the Ramblers' Association have objected on a number of grounds, although their head office has stated that it does not object to the proposal. These objections can be abridged to two main concerns, the rest having been already catered for.

- The link should only be closed at certain times and left open to allow access to allow access to the Royal Mail Delivery Office during its opening times.
  - The increased distance of the alternative route to the Royal Mail Delivery Office.
17. With regards to conditional closure of the link, the problems associated with managing the opening and closing of a gate, could leave the Council open to prosecution should the gate not be opened or closed at the time specified on the Order. A full explanation of conditional closures is contained within the new Gating Order Policy, but this is not recommended.
  18. Any increase in distance experienced by closure of a short cut is dependent on the complete journey being undertaken at the time. Due to the nature of the business carried out at the Royal Mail Delivery Office, it is not possible to determine these journeys, although there are only two directions by which Birch Park Estate can be approached. Customers approaching from the direction of York will have further to travel, whilst those approaching from the Huntington direction would have no increase in journey time.
  19. Notwithstanding the above, the distance from Point A on the Order map to the Royal Mail Delivery Office, via Wray's Avenue, is 325 metres, which, at a nationally agreed average walking speed of 1.4 metres per second would take approximately 3 min 50 sec. From Point A using the alternative route is 445 metres, which would take approximately 5 min 20 sec; an increase of 120 metres or 1 min 30 sec. If taken as part of an overall journey, it could be argued that this is a reasonably convenient alternative.
  20. The objection from the Production Manager of Unit 4, states that the alternative route that would be used by his staff is such, that access to shops in Huntington Road would necessitate the use of a car in the absence of the short cut through Wray's Avenue, as the route would be too far to walk.
  21. Having spoken to the objector, the main shop referred to is the Post Office at No191 to 195 Huntington Road, which is also a small supermarket, in the direction of the city centre. The distance from Unit 4 to the Post Office, via Wray's Avenue is 544 metres, which would take 6 min 30 sec one way, or 13 min return. From Unit 4 to the Post Office via the alternative route is 805 metres, which at the same walking speed would take approximately 10 minutes one way, or 20 min return. As this is only 261 metres, or 3 min 30 sec longer to walk one way, or 7 minutes for a return journey, it could be argued that the alternative route is reasonably convenient and should not necessitate using a motor vehicle.

## **Options**

22. Option A. Restrict public pedestrian rights along the route between Huntington Road and Birch Park Industrial Estate. This option is recommended.

23. Option B. Do nothing and leave the route open to public use. This option is not recommended.

## **Analysis**

24. Option A Restrict public pedestrian rights along the route between Huntington Road and Birch Park Industrial Estate once new Gating Order Policy has been agreed. Since the kissing gate and fencing were installed, crime and anti social behaviour experienced by the residents has been slightly reduced. However, although it has almost stopped unlawful vehicular use, there is still public access available and unlawful activity and anti social behaviour has not fallen as much as was expected. The strain of dealing with these problems, mainly anti social behaviour, has had an adverse effect on the health of at least two of the residents and has caused another of the residents to move away from the area. Restricting public use at all times would return the street to being a quiet, private cul-de-sac and should eliminate any crime and anti social behaviour associated with the access link. However, Members should note that there are still 2 objections outstanding from the local Ramblers and Unit 4 Birch Park. Notwithstanding this there are 2 options open to the council to deal with these objections. Firstly, the council could hold its own Public Inquiry to decide whether or not the subject of the objections outweighs the interests of the local community. Secondly if Members feel that this has already been proven, the Executive Member should be advised to make the Gating Order to restrict access along the route. In either case should the Order be made the objectors could appeal to the High Court for the decision to be overturned. Notwithstanding the above the fact that the closure would greatly improve residents' quality of life and meets the criteria of the legislation means that this option is still the recommended option.
25. Option B Do nothing and leave the route open to public use, but retain the installed fencing and kissing gate. This route is not a short cut to places of residence, only to businesses and the only residents who would be affected are those in Wray's Avenue and adjacent properties on Huntington Road. The situation faced by these residents on an almost daily basis is likely to continue and may become worse. Residents could be faced with a situation where they would not be able to move away from a property they might be unable to sell. This option is not recommended.

## **Corporate Priorities**

26. The recommended option ties in with the council's Information Statement No4 *"Reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York."*
27. This aim relates to improving the quality of life for York residents, by implementing a range of key objectives designed to reduce crime and the fear of crime and also tackle persistent nuisance behaviour, which can make life intolerable to some people.
28. Although the preferred option has no bearing on vehicle usage, it may appear to conflict with the council's policy to improve sustainable methods of transport,

such as walking and cycling. However, the alternative route is only a minor inconvenience and it is felt that the interests of residents outweighs those of the users of this route, who are using it as a short cut to businesses rather than residential properties.

## **Implications**

### **Financial**

29. As a kissing gate and fencing are already in place, total restriction of this route only requires the removal of the kissing gate and installation of a new section of fencing to bridge the gap. This would be paid for out of the Public Rights of Way budget and would cost approximately £150. The adopted section of the route would remain on the authority's List Of Streets Maintainable at the Public Expense as the public rights along it would only be restricted and not extinguished. Members may also wish to consider the financial implications of a public Inquiry should they wish to go down that route. The cost of this would be approximately £1000 per day including the cost of an inspector and venue. Should Members decide that the Order should be made with objections outstanding and the Order then be challenged by the objectors, the costs of the Order being taken to the High Court would have to be met.

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

30. There are no HR implications.

### **Equalities**

31. There are no equalities implications.

### **Legal**

32. Other than those already discussed in this report, there are no further legal implications.

### **Crime and Disorder**

33. There are no crime and disorder implications not already discussed.

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

34. There are no IT implications.

### **Property**

35. There are no property implications. All property affected by the Order is privately owned.

### **Other**

36. There are no other implications.

## Risk Management

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

## Recommendations

38. It is recommended that the Advisory Panel advise the Executive Member to accept **Option A**, and resolve to:
1. Note the outstanding objections from the local Ramblers and Unit 4, and;
  2. authorise the Director of City Strategy to instruct the Head of Civic, Democratic and Legal Services to make a Gating Order in accordance with S129A of the Highways Act 1980, as amended and approve the installation of a section of fencing to restrict access along the route in question.

## Reason

The reason for making this decision is that it meets the criteria of the legislation, as set out in paragraph 10 and 11, where restriction of public rights over the route would be to the benefit of the local community and that there is a reasonably convenient alternative route available.

## Contact Details

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Report Approved  Date 13/3/07

### Specialist Implications Officer(s)

Financial – Patrick Looker, Finance Manager, City Strategy

### Wards Affected:

Huntington & New Earswick

For further information please contact the author of the report

### Background Papers:

1. Report to the Planning and Transport (East Area) Sub Committee 12 May 2005 - Petition Relating To Closure of Emergency Vehicle Access Link At Wray's Avenue, Huntington Road.
2. Highways Act 1980

3. Clean Neighbourhoods and Environment Act 2005

**Annexes**

1. Draft Copy of Gating Order and Order Map
2. Copy of Objection from Local Ramblers' Association.
3. Copy of Objection from Joshua Barrington Ltd.