



Notice of a public meeting of

Decision Session - Executive Member for Economy and Transport

To: Councillor Kilbane

Date: Tuesday, 16 January 2024

Time: 10.00 am

Venue: The George Hudson Board Room - 1st Floor West Offices (F045)

AGENDA

Notice to Members – Post Decision Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by **4:00 pm on Thursday 18 January 2024.**

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent, which are not subject to the call-in provisions. Any called in items will be considered by the Corporate Services, Climate Change and Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00 pm** on Friday 12 January 2024.

1. Declarations of Interest (Pages 1 - 2)

At this point in the meeting, the Executive Member is asked to declare any disclosable pecuniary interest, or other registerable interest, they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the member during the meeting.

[Please see attached sheet for further guidance for Members].

2. Exclusion of Press and Public

To consider the exclusion of the press and public from the meeting during consideration of the following:

Annex 1 and Annexes A-M on the grounds that they contain information relating to any individual and information which is likely to reveal the identity of an individual. This information is classed as exempt under paragraphs 1 and 2 of Part 1 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006).

3. Minutes (Pages 3 - 12)

To approve and sign the minutes of the Decision Sessions held on 14 November 2023 and 12 December 2023.

4. Public Participation

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

Please note that our registration deadlines have changed to 2 working days before the meeting. The deadline for registering at this meeting is at **5.00pm on Friday 12 January 2024.**

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill out an online registration form. If you have any questions about the registration form or the meeting please contact the Democracy Officer for the

meeting whose details can be found at the foot of the agenda.

Webcasting of Public Meetings

Please note that, subject to available resources, this public meeting will be webcast including any registered public speakers who have given their permission. The public meeting can be viewed on demand at www.york.gov.uk/webcasts.

During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates (www.york.gov.uk/COVIDDemocracy) for more information on meetings and decisions.

5. Highway Encroachment, Rural West (Pages 13 - 60)

This report presents a summary of the evidence collated by officers, regarding an identified encroachment issue over roadside verges.

6. Urgent Business

Any other business which the Executive Member considers urgent under the Local Government Act 1972.

Democracy Officer: Ben Jewitt
Telephone No- 01904 553073
Email- benjamin.jewitt@york.gov.uk

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

**Ta informacja może być dostarczona w twoim (Polish)
własnym języku.**

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

Declarations of Interest – guidance for Members

- (1) Members must consider their interests, and act according to the following:

Type of Interest	You must
Disclosable Pecuniary Interests	Disclose the interest, not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Directly Related) OR Non-Registrable Interests (Directly Related)	Disclose the interest; speak on the item <u>only if</u> the public are also allowed to speak, but otherwise not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Affects) OR Non-Registrable Interests (Affects)	Disclose the interest; remain in the meeting, participate and vote <u>unless</u> the matter affects the financial interest or well-being: (a) to a greater extent than it affects the financial interest or well-being of a majority of inhabitants of the affected ward; and (b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest. In which case, speak on the item <u>only if</u> the public are also allowed to speak, but otherwise do not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.

- (2) Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.
- (3) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations,

and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.

City of York Council

Committee Minutes

Meeting	Decision Session - Executive Member for Economy and Transport
Date	14 November 2023
Present	Councillor Kilbane
In attendance	James Gilchrist – Director of Transport Joanne Waddington – Senior Project Manager for Sustainable Transport Lara Thornton – Communication Manager, Transport Darren Hobson – Traffic Management Team Leader

20. Declarations of Interest (10:00am)

The Executive Member was asked to declare, at this point in the meeting, any personal interests not included on the Register of Interests or any prejudicial or disclosable pecuniary interests they might have in respect of the business on the agenda. None were declared.

21. Minutes (10:01am)

Resolved: That the approval of the minutes of the Economy and Transport Decision Session held on 19 October 2023 be deferred to the next Decision Session.

22. Public Participation (10:02am)

It was reported that there had been 7 registrations to speak at the session under the Council's Public Participation Scheme.

Flick Williams spoke on item 5 of the agenda and stated that long journeys to and from disabled bays would mean that fewer disabled people with blue badges would be able to travel due to accessibility issues. She also noted that access features, such as wheelchair space, was missed off the strategy and that many people who could not walk or cycle relied on public transport.

Councillor Taylor spoke on item 5 of the agenda and requested that the Executive Member prioritised speed calming measures and safe travel.

Graham Collett spoke on item 4 of the agenda on behalf of York Bus Forum and asked the Executive Member for an update of the plan's progress against its' objectives. He asked for confirmation that York BSIP funds would continue to be spent on York buses.

Anthony May spoke on item 5 of the agenda on behalf of York City Trust and asked the Executive Member when objectives for the plan would be available to see. He asked the Executive Member to include the strategy's objectives in the consultation process.

Anna Semlyen spoke on item 5 of the agenda and noted that there were no targets in the strategy and that there needed to be restrictions on HGV drivers if objectives were to be achieved. She supported 'Operation Snap' (OP Snap) which encouraged submission of recordings of driving offenses.

Lynette Mills spoke on item 5 of the agenda on behalf of York Cycle Campaign and noted that there was a lack of detail on improving access to the city centre for disabled cyclists or improving disabled cyclists' access. She asked the Executive Member to include the strategy's objectives in the plan.

Andy D'Agorne spoke in relation to all transport items on the agenda and stated that healthy active travel, public transport, and low pollution was important. He stated that targets which York's Bus Service Improvement Plan (BSIP) was to deliver were getting less likely per week and asked the Executive Member for an annual progress update into this.

Councillor Fenton spoke on item 6 of the agenda. He stated that he would like to see options 1 and 3 improved, and meaningful consultation in regard to time limits on parking bays. He noted that many parking spaces outside shops were being taken up by park and ride users and were not being able to be used by potential customers and added that many loading bays outside shops were not being used as a loading bay. He noted that shops could be given the opportunity to transform loading bays into parking spaces and asked for this to be included in option 3 of the report.

Councillor Fenton made the Executive Member aware of an error in the report, and the Traffic Management Team Leader confirmed that the recommendations to the Executive Member were Options 1 and 3, not Option 2 as documented in the agenda.

23. Local Bus Service Update (10:29am)

The Director of Transport presented the report and detailed that the transport industry had deflated 20% since the COVID-19 pandemic and this update was a response to stabilise York's transport network.

In response to questions from the Executive Member, it was confirmed that a wider update of BSIP would be presented to Executive alongside the Network Review, scheduled for early 2024.

The Executive Member noted that the Council was undertaking a review of York's bus network which would inform the local transport plan.

Resolved:

That the Executive Member:

- i. Noted and approved plans to extend the existing subsidy arrangements for some early morning and evening bus services on routes 1, 4, 6, 10/10A and 19 up to and including 30 April 2024.
- ii. Delegated authority to the Director of Transport, Environment and Planning (and their delegated officers) to liaise with the Director of Governance and the Chief Finance Officer (and their respective delegated officers) to draft, negotiate and conclude any necessary documentation to properly extend the existing subsidy arrangements and/or bus service contracts for the aforementioned routes in compliance with (where applicable) the rules and regulations set out within Regulation 72 under Part 2 of the Public Contract Regulations 2015 or Regulation 43 within Part 4 of the Concession Contract Regulations 2016 (in respect of any extensions and/or variations to service contracts between CYC and the relevant operator(s)), the Subsidy Control Act 2022 (in respect of any extensions and/or variations to any existing grant funding arrangements between CYC and the relevant operator(s)) and CYC's Financial Regulations set out within

under Appendix 10a of the Council's Constitution and CYC's Contract Procedure Rules set out within under Appendix 11 of the Council's Constitution.

Reason:

- i. The rationale for this extension is to enable the outputs of the York Bus Network Review to be thoroughly considered and discussed with stakeholders, with a view to bringing recommendations for longer-term, better value, and more stable bus network to the Executive and York Enhanced Bus Partnership in January 2024, for a controlled and well-communicated implementation in c. May 2024.
- ii. The extension will help to ensure that the Bus Network in York is stabilised and that the council can work with the statutory Enhanced Bus Partnership to deliver its stated Bus Service Improvement Plans objectives in line with the National Bus Strategy, by both improving passenger experience and increasing bus patronage.

24. Local Transport Strategy Consultation (10:35am)

The Director of Transport presented the report and noted that following Devolution, York would be the highway authority and the York and North Yorkshire Mayoral Combined Authority would be the transport authority. It was confirmed that the proposals in Annex A of the report, Detailed Transport Policies proposed for consultation, had been updated following consultation with Economy, Place, Access and Transport Scrutiny Committee.

Resolved:

That the Executive Member approved the detailed policies set out in Annex A to form the basis of the policy consultation for the Local Transport Strategy.

Reason:

If the detailed policies set out in Annex A are agreed, then consultation can commence in November to allow a Strategy to be put before Full Council in March 2024 and adopted by City of York Council for presentation to the Mayoral Combined Authority and the newly elected mayor at the start of their term of office.

25. Tadcaster Road TRO Consultation (10:34am)

The Traffic Management Team Leader presented the report and confirmed that the recommendations to the Executive Member were Options 1 and 3, not Option 2 as documented in the agenda.

Resolved:

That the Executive Member:

- i. Implemented the proposed 'No Waiting at any time' restrictions as they were proposed.

Reason:

In order to help achieve the original benefits of the scheme as it was proposed. The introduction of the 'No waiting at any time' restrictions will also remove any potential parking away from the laybys on Tadcaster Road, which will reduce the congestion in the area.

- ii. Engaged in further consultation with the businesses, local residents and Ward Councillors about potentially creating limit time parking for the laybys, to remove the all-day parking that has historically occurred.

Reason:

This will help create a better parking amenity for the local businesses.

Cllr Kilbane, Chair

[The meeting started at 10.00 am and finished at 10.48 am].

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Meeting	Decision Session - Executive Member for Economy and Transport
Date	12 December 2023
Present	Councillor Kilbane
In Attendance	Michael Howard – Head of Highways and Transport Graham Titchener – Head of Parking Services Patricia Barrett – Transport Programme Officer

26. Declarations of Interest (10:00am)

The Executive Member was asked to declare, at this point in the meeting, any personal interests not included on the Register of Interests or any prejudicial or disclosable pecuniary interests they might have in respect of the business on the agenda. None were declared.

27. Minutes (10:01am)

Resolved: That the minutes of the Decision Session held on 12 September 2023 and 19 October 2023 be approved and signed by the Executive Member as a correct record.

28. Public Participation (10:02am)

It was reported that there had been 1 registration to speak at the session under the Council's Public Participation Scheme.

Andy D'Agorne spoke on item 5 of the agenda and stated to the Executive Member that Millennium Bridge became inaccessible every winter due to flooding and expressed issues for accessibility as waterlogged pathways prevented access for wheelchair users. He urged the Executive Member to liaise with the Environment Agency over work on Millennium Bridge.

29. Review and Decision on the Parking Permit Emission Level, Daily Property Permit and City Parking Waiver Policies (10:05am)

The Parking Services Manager presented the report and issued a correction to the agenda, confirming that the third recommendation of the report was for the Executive Member to “approve that residents, property owners, as well as trades people will be able to purchase the daily property parking permits”.

Resolved: That the Executive Member approved:

- i. That the emission discount level will only be available to Ultra Low Emission vehicles (those with an emission level of 0 to 75g/km).

The Executive member also approved option iii/C as outlined in paragraphs 34 and 37 of the agenda.

Reason: To deliver the required savings as identified in the budget.

- ii. That all “annual parking waivers” used by businesses e.g., window cleaners to be time limited to 2 hours only per parking event, currently there is no time limit.

Reason: To free up the road space for those that need it most, 2 hours should be sufficient for these business types.

- iii. That residents, property owners, as well as trades people will be able to purchase the daily property parking permits.
- iv. Approve that daily property parking permits can be used in occupied properties as well as unoccupied properties, where currently these are only available for use in unoccupied properties.
- v. Approve that the maximum number of daily property permits issued per day be increased from 1 to 3.

Reasons: To respond to requests we have had from customers and where officers feel there is room for flexibility. Gives residents flexibility when tradesman don't buy their own permit and reduce the impact on residents having to use their visitor vouchers. To recognise the need to have more than one trades vehicle per day per property where trades jobs may well require more than one vehicle. However,

to protect the parking capacity it is deemed to extend this only to 3 trades vehicles per property per day from the current 1 trades vehicle per day.

30. Directorate of Place 2023/24 Transport Capital Programme (10:15am)

The Transport Programme Officer presented the report and noted that the majority of capital programme funding was received through external grants.

In response to public participation, they noted that there was a need for the Environment Agency to approve of the council's design for Millennium Bridge, which could have been approved by the end of the financial year.

It was noted that Active Travel Schemes would be included in the transport plan which would be developed in the upcoming year.

Resolved:

- i. That the Executive Member approved the proposed programme of schemes to be delivered in 2023/24.

Reason: To implement the council's transport strategy identified in York's third Local Transport Plan and the Council Priorities and deliver schemes in order to achieve these aims.

Cllr Kilbane, Chair

[The meeting started at 10:00am and finished at 10:20am].

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Meeting:	Decision Session - Executive Member for Economy and Transport
Meeting date:	16/01/2024
Report of:	James Gilchrist, Director of Transport, Environment and Planning
Portfolio of:	Councillor Kilbane, Executive Member for Economy and Transport

Decision Report: Highway encroachment in Rural West

Subject of Report

1. In 2021 and 2022, the Parish Council contacted City of York Council (CYC) to ask CYC, as the highway authority, to investigate a possible highway encroachment issue.
2. CYC officers have investigated the location and have identified an encroachment issue over roadside verges.
3. Under Section 130 of the Highways Act 1980, the Highway Authority has the duty to assert and protect the rights of the public to use any highway for which they are the highway authority, including any roadside verges.
4. This report presents a summary of the evidence collated by officers, describes the legal background to any enforcement action that the Council may decide to take, and provides options for the Executive Member to consider when determining the next steps to be taken by CYC as the highway authority.
5. Due to data privacy issues, any information which could lead to persons being identified has been included in Annexes which will not be published.

Benefits and Challenges

6. If the decision is made to recover the verges to their full width under the Inclosure Act (**Option A**):
 - a) The benefits include:
 - i. Sufficient width recovered to provide passing places and plant trees/and or hedges should resources become available to do so; and
 - ii. CYC would be acting according to its duty under Section 130(6) (b) of the Highways Act 1980;
 - b) The challenges include:
 - i. Significant cost to the Council to reinstate the verges (currently estimated at approx. £250,000) and significant risk of additional costs if this is contested in court as well as a risk that these costs may not be recovered by the Council (despite the provisions of the Highways Act); and
 - ii. Significant on-going maintenance duty for the reinstated verges (with associated resource implications).

7. If the decision is made to recover the verges to a reduced width (compared to that established by the Inclosure Act – **Option B**):
 - a) The benefits include:
 - i. Sufficient width recovered to provide passing places and plant trees/and or hedges should resources become available to do so (although to a lesser extent than with Option A);
 - ii. CYC would act according to its duty under Section 130(6) (b) of the Highways Act 1980, whilst reaching a compromise solution;
 - iii. This option would reduce reinstatement costs and the long-term maintenance burden on CYC;
 - b) The challenges include:
 - i. The Parish Council has a right of veto on the Stopping Up Order which would be required for the part of the verges which would not be reinstated so the option may not be

deliverable if further discussions with the Parish Council do not result in an agreed reduced width for the verges;

- ii. The reinstatement works required would still result in a significant cost to CYC initially, and significant risk of additional costs if this is contested in court, as well as a risk that these costs may not be recovered by the Council (despite the provisions of the Highways Act 1980).

8. If the decision is to take no further action (**Option C**):

a) The benefits include:

- i. No additional costs/risks for CYC, linked to the reinstatement and the future maintenance of the verges;

b) The challenges include:

- i. No future improvements possible to the lane (for example by providing passing places) or to the planting in the verges;
- ii. CYC would be in breach of its duty under Section 130(6) (b) of the Highways Act 1980. The obligation on a Highway Authority to act in relation to a Section 130(6) representations is an absolute duty. A mandatory order could be granted to the Parish Council against the Highway Authority, resulting in costs for CYC and an obligation to reinstate the verges.

Policy Basis for Decision

9. The proposed decision will contribute to the following Council Plan Core Commitments:

- a) **Climate** – Environment and the climate emergency, as recovering the highway verges should enable the Parish Council to plant trees and/or hedges and seed the verges in line with the Council's pollinator strategy (if funding is available – this is not considered as part of this report);
- b) **Health and wellbeing** – As the recovery of the grass verges (and possible tree planting) will result in an improved experience for users of the highway, many of which use the highway for leisure and recreation purposes, using active travel modes (exercise, dog walking, cycling, etc).

10. The proposed decision will contribute to the following Council Plan's Priorities (as described above):
 - a) **Health and wellbeing**; and
 - b) **Sustainability**: Cutting carbon, enhancing the environment for our future.
11. Under Section 130 of the Highways Act 1980, the Highway Authority has the duty to:
 - a) Section 130 (1): "assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it" (Note: highway grass verges are described as "roadside waste" in the Act).
 - b) Section 130 (4): "prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are the highway authority".
12. Section 130 (6) (b) also states that: "If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local Highway Authority
 - a) that a highway as to which the local Highway Authority have the duty imposed by subsection (3) above has been unlawfully stopped up or obstructed, or
 - b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority,it is the duty of the local Highway Authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name".

Financial Strategy Implications

13. Financial implications for CYC if further action is required include:
 - a) Costs related to enforcement action taken by the highway authority against the landowner. The Council's actions may for example be challenged in court.
 - b) Costs related to the reinstatement of the verges. A cost of approx. £250,000 has been identified as an initial estimate for

the reinstatement for the full width of 60 feet (18.3m) between, and exclusive of the ditches (as described in the Inclosure Act – see below). CYC would aim to recover these costs from the landowner, but this may be challenged in court and full cost recovery may not be possible. It is important to note that this is an initial cost estimate and costs may increase once more detailed surveys and designs have been undertaken.

14. There are also staff costs and resource implications associated with any enforcement action pursued by CYC (as well as an opportunity costs as officers spending time on this issue will not be able to work on other matters).
15. The recommended Option A will require the Council to fund the initial costs of the work from Highways Maintenance Programme.
16. In the long-term, CYC will need to maintain and protect the wider verges which may be reclaimed through enforcement action. This will result in long-term costs associated with repairs to the verges when damage is caused by any vehicle, cutting, cleaning and possibly protecting the verges (and any future planting) from damage, obstruction or occupation.
17. The additional cost of planting and/or creating passing places in the reinstated verge areas is not considered in this report.

Recommendation and Reasons

18. It is recommended:
 - a) To approve that CYC takes all necessary enforcement action to recover and reinstate the verges to their full width in accordance with Sections 130, 131 and 305 of the Highways Act 1980.
 - b) To delegate authority to the Director of Transport, Environment and Planning, in consultation with the Director of Governance, to determine and undertake all necessary activity to recover and reinstate the verges to their full width in accordance with Sections 130, 131 and 305 of the Highways Act 1980, including (but not limited to) the determination, drafting, commissioning, and concluding of any necessary public highways works contracts in compliance with the Highways Act 1980 and CYC's Contract Procedure Rules.
19. Reasons: The recommended option is Option A – Enforcement action under Sections 130, 131 and 305 of the Highways Act 180

aiming for full width reinstatement. This option is recommended due to the following:

- a) Option B (reduced width reinstatement) is not considered feasible as it requires the approval of the Parish Council, and this option has been rejected by the Parish Council during previous consultation;
- b) Option C (no further action taken by CYC) would result in the Council being in breach of its duty, with the risk that a mandatory order could be granted to the Parish Council against the highway authority;
- c) Option A also offers the maximum width to support future planting in the verges, contributing to the Council's climate and pollinator strategies.

Background

- 20. This is provided in Annex 1 as the information is likely to reveal the identity of an individual.

Consultation Analysis

- 21. This is provided in Annex 1 as the information is likely to reveal the identity of an individual.

Options Analysis and Evidential Basis

Option A – Enforcement action under Sections 130, 131 and 305 of the Highways Act 180 – full width reinstatement

- 22. CYC could serve notice to the landowner that works will take place to reinstate the verges to the original alignment. The Council will aim to recover the costs of doing so from the landowner (under Section 305 of the Highways Act 1980). Once the full width of the verges is recovered, this may enable tree and hedge planting and the construction of passing places by the Council (if funding becomes available to do so – this is not considered in this report).
- 23. Action is also available to the Council under Section 131 (1) of the Highways Act 1980: "If a person, without lawful authority or excuse (...) (b) removes any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the highway authority for the highway". Maximum fines are Level 3 of standard scale (£1,000).

Option B – Enforcement action under Sections 130, 131 and 305 of the Highways Act 180 – reduced width reinstatement

24. CYC could continue discussions with the Parish Council and the landowner to agree a modified highway alignment, subject to a successful stopping up order being processed for the remaining width of highway (as described by the Inclosure Act). The Parish Council has a right of veto for such a stopping up order, so pursuing this option would only be possible if a revised alignment can be agreed with the Parish Council.
25. The reduced width of the recovered verges would enable the construction of passing places by CYC and should enable limited planting in the verges (if funding becomes available to do so – this is not considered in this report).
26. If the stopping up process were successful, CYC would then serve notice to the landowner of works taking place to reinstate the verges to the modified alignment. CYC would aim to recover the costs of the stopping up process and the reinstatement of the verges from the landowner (under Section 305 of the Highways Act 1980).

Option C – No further action taken by CYC

27. CYC could decide that no further action will be taken due to the costs and risks associated with any enforcement action and the relatively low usage of the highway. This would result in CYC being in breach of its duty under Section 130(6) (b) of the Highways Act 1980.

Organisational Impact and Implications

28. The following implications have been identified:
 - **Financial** - This scheme will need to be incorporated into the Highways Maintenance Programme. Cost will vary significantly depending on the option chosen, the highest being Option A with cost over £250k, including potential significant legal costs. Despite the provisions of the Highways Act these costs might not be recovered. If CYC can recover all or part of those costs, the receipts will be added back into the Highways Maintenance Programme.
 - **Human Resources (HR)** - no implications identified.
 - **Legal**

- Under Section 130 of the Highways Act 1980, the Highway Authority has the duty to assert and protect the rights of the public to use any highway for which they are the Highway Authority, including any roadside verges. CYC (acting as Highways Authority) has the power to recover and reinstate the verges to their full width in accordance with Sections 130, 131 and 305 of the Highways Act 1980 (i.e., Option A in this report).

Key risks identified in relation to **Option A** are as follows:

- CYC's enforcement decision could be challenged in court – associated costs and resource implications.
- CYC takes enforcement action, but CYC not able to recover all costs, resulting in CYC having to meet some or all of the costs (court costs and/or verge reinstatement costs).
- Recovery of costs under Section 305 of the Highways Act 1980 is subject to appeal by the landowner to the Magistrates' Court (under Section 305(3) of the Highways Act 1980).
- Reinstatement costs may be higher than currently estimated as no detailed survey has been undertaken at this stage.
- As resources are limited within CYC to manage, supervise, and undertake this type of reinstatement works, notice could be served on the landowner but the works to reinstate the verges could be delayed significantly due to resourcing issues.
- As with any enforcement action, there can be psychological and physical risks for CYC officers, members of the Parish Council or any other party involved, if the landowners or other persons affected by an enforcement decision oppose the Council's actions.
- If the person seeking the removal of an obstruction, or the owner or occupier of land on which there is an obstruction thinks that the Council made an error in carrying out its duties, and that the Council should have acted differently, they may submit a complaint to the Local Government Ombudsman.

Key risks identified in relation to **Option C** are as follows:

- If the Council decided to take no further action (**Option C**), this would result in the Council being in breach of its duty under Section 130(6) (b) of the Highways Act 1980.
- The obligation on a Highway Authority to act in relation to a Section 130(6) representations is an absolute duty. Case law makes it clear that, once charged with acting under Section 130(6), the Highway Authority must act accordingly, and not seek to evade or undermine its duty.
- If CYC fails to respond, the Parish Council could apply to the High Court for a mandatory order compelling the authority to act. Such an application would involve judicial review of the Highway Authority. Judicial review action is likely to be very costly, particularly if the Court, upon undertaking an objective review of the evidence finds that the Parish Council acted correctly.
- **Procurement** - Any contractors required to undertake any reinstatement works, subject to there being sufficient budget to do so, must be appointed in accordance with a robust procurement strategy in compliance with the Council's Contract Procedure Rules.
- **Health and Wellbeing** - no implications identified.
- **Environment and Climate action** - no implications identified at this stage (any potential planting on reinstated verges does not form part of this report).
- **Affordability** - no implications identified.
- **Equalities and Human Rights** –

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

At the time of writing there are no equalities implications identified in respect of the matters discussed in this report. However, if Options A or B are implemented and funding can be made available in the future to create additional passing places, this would make the lane more suitable for people who live with a disability and for families with pushchairs.

An Equalities Impact Assessment will be carried out in due course and the process of consulting on the recommendations in this report will identify any equalities implications on a case-by-case basis, and these will be addressed in future reports.

- **Data Protection and Privacy** – Decision to be made in private due to the report containing information relating to an individual, information which is likely to reveal the identity of an individual and information relating to the financial or business affairs of any particular person.

Data protection impact assessments (DPIAs) are an essential part of our accountability obligations and is a legal requirement for new systems and processes such as introducing new technology or where the processing operation is likely to result in a high risk to the data protection and privacy rights and freedoms of individuals. Failure to carry out a DPIA when required may leave CYC open to enforcement action, including monetary penalties or fines.

The DPIA screening questions identified that whilst there is processing of personal and/or special categories of personal data for the purposes of this report, it was not considered this processing would have a high risk to the data protection and privacy rights and freedoms of individuals and a full DPIA was not carried out.

However the potential risk of information identifying an individual including information relating to the financial or business affairs of any particular person, has been mitigated and minimised by the decision being made in private.

- **Communications** - no implications identified.
- **Economy** - no implications identified.

Risks and Mitigations

29. Key risks identified in relation to **Option A** are as follows:

- a) CYC's enforcement decision could be challenged in court – associated costs and resource implications.
- b) CYC takes enforcement action, but CYC not able to recover all costs, resulting in CYC having to meet some or all of the costs (court costs and/or verge reinstatement costs).
- c) Recovery of costs under Section 305 of the Highways Act 1980 is subject to appeal by the landowner to the Magistrates' Court (under Section 305(3) of the Highways Act 1980).
- d) Reinstatement costs may be higher than currently estimated as no detailed survey has been undertaken at this stage.
- e) As resources are limited within CYC to manage, supervise, and undertake this type of reinstatement works, notice could be served on the landowner but the works to reinstate the verges could be delayed significantly due to resourcing issues.
- f) Any contractors required to undertake any reinstatement works, subject to there being sufficient budget to do so, must be appointed in accordance with a robust procurement strategy in compliance with the CPRs and (where applicable) the Procurement Regs.
- g) As with any enforcement action, there can be psychological and physical risks for CYC officers, members of the Parish Council or any other party involved, if the landowners or other persons affected by an enforcement decision oppose the Council's actions.
- h) If the person seeking the removal of an obstruction, or the owner or occupier of land on which there is an obstruction thinks that the Council made an error in carrying out its duties, and that the Council should have acted differently, they may submit a complaint to the Local Government Ombudsman.

30. Key risks identified in relation to **Option C** are as follows:

- a) If the Council decided to take no further action (**Option C**), this would result in the Council being in breach of its duty under Section 130(6) (b) of the Highways Act 1980.

- b) The obligation on a Highway Authority to act in relation to a Section 130(6) representations is an absolute duty. Case law makes it clear that, once charged with acting under Section 130(6), the Highway Authority must act accordingly, and not seek to evade or undermine its duty.
- c) If CYC fails to respond, the Parish Council could apply to the High Court for a mandatory order compelling the authority to act. Such an application would involve judicial review of the Highway Authority. Judicial review action is likely to be very costly, particularly if the Court, upon undertaking an objective review of the evidence finds that the Parish Council acted correctly.

Wards Impacted

31. Rural West York.

Contact details

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Background papers

Not applicable

Annexes

All Annexes are exempt from publication

- Annex 1: Further information on the issue and evidence collated by officers
- Annexes A, B and C: Extracts from the Inclosure Act
- Annex D: OS map dated 1850
- Annex E: OS map surveyed in 1891 and published in 1893
- Annex F: OS map made and published in 1968
- Annex G: OS map made and published in 1968 coloured version
- Annex H: Topographical survey information –South of the area
- Annex I: 1951 Aerial Photograph
- Annex J: Close up of 1951 Aerial Photograph
- Annex K: Topographical survey information – North of the area
- Annex L: Pictures of roadside markers
- Annex M: Pictures provided by the Parish Council

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