

**Decision Session – Executive Member for
Transport and Planning**

16 November 2017

Report of the Corporate Director of Economy and Place

**Public Rights of Way – Proposed public bridleway Creation
Agreement - Metcalf Lane to Meadlands, Derwenthorpe,
Osbaldwick**

Summary

1. This report seeks authorisation to enter into a Creation Agreement with landowners to create a section of public bridleway between Metcalf Lane and Meadlands, Derwenthorpe (Annex 1 – Location Plan). The proposal is put forward to mitigate the concerns of an objection received to a Diversion Order that has been previously made by the Council, under section 257 (s257) of the Town and Country Planning Act 1990 (TCPA 90), on 1 June 2017. The objection has been withdrawn on the condition that the Council enters into the Creation Agreement with the landowners.
2. This is being considered as an urgent matter to allow the Diversion Order to be confirmed. This will then allow the completion of the 2 supported living dwellings which are to be built on the original alignment of the bridleway in accordance with planning permission granted in 2012 (later varied in 2016). At the decision session on 14th September representations were made about how important the completion of these properties was to the residents. The original objector supports this coming to the decision session as an urgent matter. This is not a key decision as defined in Article 4 of the council's Constitution .

Recommendations

3. There are two options available to consider:

- i) To confirm the original Diversion Order and instruct officers to enter into a Creation Agreement with the landowners to create a public bridleway – this option is recommended.

Reason: The outstanding objection to the original Diversion Order has been withdrawn on condition that officers are instructed to enter into a Creation Agreement. The withdrawal of the objection allows the Diversion Order to be confirmed meaning work on the 2 dwellings affected by the Order can recommence.

- ii) To not enter into a Creation Agreement – this option is not recommended.

Reason: The section of bridleway will not be created, the outstanding objection will not be withdrawn and the opposed Diversion Order will be required to be forwarded to the Secretary of State for determination.

Background

- 4. Authorisation to make the original s257 Diversion Order was granted at Decision Session – Executive Member for Transport and Planning on 9th March 2017 (Annex 2: link to Decision Report and Minutes). The Order was subsequently made on 1st June 2017 and advertised on 16th June after which there was a 4 week period of statutory consultation. One objection was received during that time which focussed on the view that a bend in the proposed new alignment of the path was too severe. As the objection was not withdrawn, authorisation was sought to refer the Order to the Secretary of State for determination. This was granted at Decision Session – Executive Member for Transport and Planning on 14th September 2017 (Annex 3: link to Decision Report and Minutes).
- 5. The authority has a power to make an order under s257 of the TCPA90 to divert a highway that is affected by development for which planning permission has been granted. For the power to be exercisable the authority must be satisfied that it is necessary to divert the way *in order to enable development to be carried out*. Bearing the above in mind, and in order not to preclude the

making of the Order, work on the construction of the 2 dwellings that are to be built on the original line of the bridleway has been halted until the Order is determined.

6. Due to the length of time it will take for the Planning Inspectorate to determine the Order (currently up to 35 weeks) and the effect that this delay will have on the construction of the 2 properties, negotiations have continued with the objector and the landowner with a view to mitigating the concerns raised regarding the bend.
7. It is now proposed to enter into a Creation Agreement with the landowner, under s25 of the Highways Act 1980 to create an additional section of bridleway that will ease the severity of the bend. It is considered that this is the most expedient way of dealing with the issue.

Consultation

8. Before making such an Agreement, an authority must consult with any other affected council in the area subject to the agreement. As the Council is a unitary authority there is no requirement to consult in this respect. It should also be noted that there is no requirement to consult with a parish council or the public.

Options

9. Option 1: To instruct officers to enter into a Creation Agreement with the landowners to create a public bridleway

This option is recommended.

10. Option 2: To not enter into a Creation Agreement

This option is not recommended

Analysis

11. Option 1: The objection to the Diversion Order has been withdrawn on the condition that officers are instructed to enter into a Creation Agreement with the landowners. The Creation Agreement will have the effect of widening the path between Points B and C (Annex 4: Creation Agreement plan (hatched area)), so that it abuts the line of the path shown in the opposed Diversion Order. This increased width will have the effect of reducing the severity of the bend and thus mitigate the objector's concerns.

12. With the withdrawal of the objection, the Diversion Order will not be required to be referred to the Secretary of State for determination as authorised in September 2017 and can instead be confirmed by the Council. On confirmation of the Order the developers can recommence building work on the 2 dwellings affected by the Diversion Order.
13. Option 2: This option would see the opposed Diversion Order sent to the Secretary of State for determination and it become subject to the Planning Inspectorate's timescales – currently up to 35 weeks for a decision. In the meantime this would delay the construction of the 2 dwellings as legislation directs that work on them cannot progress until the Order has been confirmed.

Council Plan

14. The Plan is built around 3 key priorities:
 - **A Prosperous City for All**
 - **A Focus on Frontline Services**
 - **A Council that Listens to Residents**
15. Whether the Creation Agreement is made or not and the opposed Diversion Order is confirmed or not confirmed the Council will ensure that a valued community facility will be open and available for use by the public, the use of which takes vulnerable users off the roads and encourages modal shift away from the car to more sustainable forms of travel around the city.

Implications

- **Financial**: A Creation Agreement is required to be advertised in the local press; the approximate cost of which is £850. Additionally, the confirmed Diversion Order is required to be advertised at an approximate cost of £850. The total cost will be approximately £1700 and will be met by existing budgets as necessary.

If the Creation Agreement is not made the council will continue with sending the opposed Diversion Order to the Secretary of State as originally authorised. The cost of holding a local

hearing or public inquiry will be met by the Council. This will include the cost of providing a venue and anything else to facilitate the hearing/inquiry process eg photocopying. It does not include any costs that may be accrued by anyone objecting to the Order. The approximate cost of a hearing or inquiry is £3,000 to £5,000, depending on the location.

- **Human Resources (HR):** There are no HR implications other than a change in priority of the PROW Team's program of work in order to prepare the documentation required for the Creation Agreement and the confirmation of the Diversion Order. The paperwork that is required to send the opposed Order to the Secretary of State has already been completed.
- **Equalities: As this decision is primarily administrative, it is regarded that there are** no negative impacts associated with this proposal. If a hearing or public inquiry is held, the venue would require to be accessible for all.
- **Legal:** The Council as highway authority for the area has power to enter into an agreement with any person having the capacity to dedicate a footpath, bridleway or restricted byway in its area.

The Council as planning authority for the area has powers (in respect of footpaths, bridleways, and restricted byways) to make Orders under s257 of the Town and Country Planning Act 1990 to stop up or divert highways affected by development for which planning permission has been granted.

If, after an Order is made, objections or representations are received and are not withdrawn, the Council cannot itself confirm the Order, but are required to send it to the Secretary of State for determination.

- **Crime and Disorder:** There are no Crime and Disorder Implications.
- **Information Technology (IT):** There are no IT implications.
- **Property:** There are no Property Implications.
- **Other:** There are no Other implications.

Risk Management

16. Planning permission has already been granted by the authority for Derwenthorpe Phase 4. Any delays to the proposed Creation Agreement and the confirmation of that Diversion Order, would delay that part of the development being concluded. This would lead to a delay in the 2 unfinished properties being occupied and possible financial loss to the developer.

Contact Details

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**Report
Approved**



Date 15/11/17

Specialist Implications Officer(s)

Wards Affected: Osbaldwick and Derwent Ward

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex 1: Location Plan

Annex 2:

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=738&MId=9483&Ver=4>

Annex 3:

<http://modgov.york.gov.uk/ieListDocuments.aspx?CId=738&MId=9858&Ver=4>

Annex 4: Creation Agreement plan