

DIRECTOR DECISION

Decision: Hull Road verges adopted highway status

Type of Decision: Director

Key

N

Non-Key

Y

Portfolio Area that decision relates to:

Leader (in Policy & S&P)

Finance & Performance

Deputy Leader & Transport

Culture, Leisure & Comm

Environment & Climate C

Children & Young P & Edu

Economy & Strategic Plan

Health Adult Social Care

Housing & Safety Neigh

Background

Requests were received to clarify the status of the verges off Hull Road, located between the junction with Nursery Gardens and number 315 Hull Road. The areas under consideration are shown in orange on the maps.



These verges are not currently identified as adopted highway on the Council's Highway Extent Map (available here: www.york.gov.uk/RoadAdoption). Some highway infrastructure, such as footways, pedestrian and cycle paths, and street lighting has however been provided in some areas within these verges.

A review of available evidence has led to the conclusion that the verges are privately owned and that only parts of the verges can be considered as or become adopted highway.

Areas shown in purple to become adopted highway

This decision therefore proposes to display a notice declaring the parts of the verges shown in purple on the maps below as highway maintainable at public expense under Section 228 of the Highways Act 1980. These are areas where street works have been undertaken to provide a path, footways, street lighting (including associated electric connection), a cycle path and highway signage. The areas highlighted in green on the maps show the current extent of the adopted highway. The maps are shown within this decision sheet.





If no objections are received from the owner(s) of the street within one month of the notice being displayed, the sections of verges shown in purple on the maps above will become adopted highway. If an objection is received, the authority will need to decide whether to apply to the magistrates' court for an order overruling the objection(s).

Status of the remaining verge areas

- Highway

The areas of verges which are not highlighted in purple on the maps above are not considered to be highway. This means that these areas cannot be considered for adoption under Section 228 of the Highways Act 1980.

This is because in order to be considered a highway, whether under the statutory test in Section 31 of the Highways Act 1980 or at common law, the extent and character of the use must include the use of the land as a way, and there is no evidence that the remaining verge areas are or have been used as a way.

Evidence of maintenance of the verges by the authority is not sufficient to change the status of the verges from private land to highway.

If the highway authority requires access to the verges to repair the adopted carriageway located to the north of the verges, including the kerbs, and this could not be organised with the landowners, the authority could use its statutory powers granted by Section 291 of the Highways Act 1980. Pursuant to Section 291, where a highway authority have power or a right to maintain, alter or remove any structure or work which is situated on, over or under any land, and that land neither belongs to the highway authority nor forms part of a highway for which they are the highway authority, then, if for the purpose of exercising that power or that right it is necessary for a person to enter on that land or any other land, a person duly authorised in writing by that authority may at any reasonable time enter on that land or any other land for that purpose.

Legal advice has confirmed that it would therefore not be appropriate to extend the areas covered by the Section 228 notice described above behind the existing

kerb line (with the exception of the areas in purple on the plans above where street works have been undertaken).

- Open space

These areas are not considered to meet the definition of open space. The definitions of open space are set out in:

- Section 20 of the Open Space Act 1906 as “any land, whether enclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied”; and
- Section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”.

The verges do not fall into the definition in the Town and Country Planning Act. It could be argued that they fall within the definition of the Open Space Act as unoccupied land. However, the Open Space Act requires that the land is transferred to the local authority by the owners. There is no evidence that the owners would be willing to transfer the land to the authority. Based on the planning history relating to some parts of the verges, it is unlikely that all owners would agree to this.

- Planning status

In planning terms, the land is considered open land in the urban area. A previous planning application (21/00877/FUL), which proposed to create parking in the verge area, was refused by the planning authority on the grounds of “*harm to the character and appearance of the area*”.

A private landowner could however use permitted development rights to erect a means of enclosure around the land they own in the verge area, subject to existing height and sight-line obstruction limitations. If the landowner kept the land planted, it is unlikely that the fencing of the land could be considered as a change of use in planning terms. Any engineering or building operation (other than a means of enclosure) would require planning permission. As the land on the verges is not within the curtilage of the dwellings, albeit that they are in the same ownership, the use of the verge for parking would be a change of use of the land and would require planning permission. Future planning applications for the verge area are likely to be considered in the same way as the previous application referenced above.

- Protection of the trees

The trees which have been planted in the areas which will not become adopted highway will be assessed for protection under a Tree Protection Order (TPO), which will be progressed through a separate process.

- Maintenance of the unadopted verges

Maintenance of the verges (grass and hedge cutting and emptying the bins) has generally been undertaken by the Council (City of York Council and Ryedale

District Council before 1996), with the exception of a few areas where residents have maintained the verges or where the verge area has been fenced.

The Council proposes to continue maintaining the unadopted verges under its General Power of Competence to ensure that the area remains tidy and pleasant for all users. If fences are erected or landowners/occupiers ask the Council not to maintain the area opposite their properties, the Council will cease to maintain the areas which are not adopted highway as it will no longer be convenient to do so.

Implications: Crime & Disorder

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

Equalities

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Other:

Human Resources

Legal

Highways

<input checked="" type="checkbox"/>

Financial

ITT

Property

<input type="checkbox"/>

Decision Date: 21 March 2023

Wards Affected:

All Wards	<input type="checkbox"/>	Fishergate	<input type="checkbox"/>	Holgate	<input type="checkbox"/>	Rural West York	<input type="checkbox"/>
Acomb	<input type="checkbox"/>	Fulford & Heslington	<input type="checkbox"/>	Hull Road	<input type="checkbox"/>	Strensall	<input type="checkbox"/>
Bishopthorpe	<input type="checkbox"/>	Guildhall	<input type="checkbox"/>	Huntington & New Earswick	<input type="checkbox"/>	Westfield	<input type="checkbox"/>
Clifton	<input type="checkbox"/>	Haxby & Wigginton	<input type="checkbox"/>	Micklegate	<input type="checkbox"/>	Wheldrake	<input type="checkbox"/>
Copmanthorpe	<input type="checkbox"/>	Heworth	<input type="checkbox"/>	Osbalwick & Derwent	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Dringhouses & Woodthorpe	<input type="checkbox"/>	Heworth Without	<input type="checkbox"/>	Rawcliffe & Clifton	<input type="checkbox"/>		<input type="checkbox"/>

Comments/Observations:

Decision:

Corporate Director of Place in consultation with Executive Member for Transport has determined to implement

- The adoption process under Section 228 of the Highways Act 1980; as detailed in the above decision sheet.
- That the authority will continue a maintenance routine as proposed in this decision sheet; and
- Letters will be sent to appropriate frontagers in order to explain to local residents the effect of this decision at the same time as the Section 228 notice is published

Decision Made by: Neil Ferris, Corporate Director of Place in consultation with the Executive Member for Transport.

Contact Details: West Offices Email: neil.ferris@york.gov.uk

On behalf of: Neil Ferris, Corporate Director of Place

To be implemented by: Dave Atkinson, Head of Transport and Highways

On Completion – Signed off by:

Date: 02/03/2023

Neil Ferris

Corporate Director of Place