

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

14 September 2017

Report of the Corporate Director of Economy and Place

**Public Rights of Way: The Council of the City of York, Public
Bridleway, No. 18 (Part), Public Path Diversion Order 2017 –
Consideration of Outstanding Objection**

Summary

1. The above legal Order was made under s257 of the Town and Country Planning Act 1990. The effect of the Order is to divert a short section of public bridleway to allow the development of Phase 4, Derwenthorpe to take place according to planning permission granted by the authority. One objection has been received to the Order. As the authority cannot itself confirm an opposed Order, it is required to be sent to the Secretary of State for the Environment, Food and Rural Affairs for a decision.

Recommendations

2. The Executive Member is asked to consider:
 - i. Authorising the referral of the Order to the Secretary of State for a decision – this option is recommended.

Reason: To enable the Order to be determined, which if confirmed will allow that part of the development for which planning permission has been granted to take place.

- ii. Not authorising the referral of the Order to the Secretary of State for a decision – this option is not recommended.

Reason: The Order will effectively be abandoned and that part of the development for which planning permission has been granted will not be able to take place.

Background

3. Authorisation to make the above Public Path Order was granted at Decision Session – Executive Member for Transport and Planning on 9th March 2017 (link to report and minutes at end of this report). 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. As the objection has not been withdrawn, in order for the Order to be confirmed, the Order along with the outstanding objection is required to be referred to the Secretary of State for determination. The Secretary of State will appoint an independent Inspector to hear the case and make a decision on her behalf, by holding a local hearing, public inquiry or through written representations.

Consultation

4. A four week statutory consultation period commenced on the date that the Order was advertised (16 June 2017). Prescribed Bodies, including The Ramblers, British Horse Society, utility companies, the parish council and local Ward Councillors were consulted. Notices were placed in the York Press, on site at either end of the section of path that is affected and made available at West Offices. One objection was received during the 4 week period. The objection has not been withdrawn.

Details of the objection and Officer's comments:

Objection Point 1: The proposed diversion is not as convenient for users as the original route, the proposed route introduces a sharp bend which terminates at right angles to a new public highway and it is unclear from the map of the diversion order how termination point C will reconnect with point A.

Officer's comment: Termination Point C links with Point A by way of the new estate road which is shown on the Order map. The design details of the new path, including its junction with the new estate road were considered to meet current guidance on highway design and layout and are similar to many other rights of way throughout the city which are used on a daily basis, without incident. Bearing this in mind, the requirements of the legislation have been met.

Objection Point 2: *The proposed diversion is not as safe for users as the original route, the proposed route appears, although it is not clear from the map, to terminate at point C and then continue to point A by running across access to two properties/garages obviously leading to conflict between the public Bridleway users and occupants of the properties wishing to gain access/egress. Whereas the original A to B route if maintained in its original state and position has no conflict between users. Given that users on this route have and in all probability will continue to be horse riders, cyclists and walkers safety is of paramount importance.*

Officer's Comment: The original route of the path led users out onto Meadlands public highway where, in order to continue their journey, users are currently required to either ride on the road or walk along the adjacent footways. There are many driveways/accesses along Meadlands, as there are in many parts of the city. The addition of a further 2 dwellings and associated accesses onto the short section of new estate road is not considered to increase risk to users especially given that the internal layout of the development has been designed in the same vein as previous phases; ie shared spaces with priority to pedestrians and cyclists, design measures to reduce vehicle speeds, and managed on-street parking etc. The amenity of the path has not been affected and in this instance; the requirements of the legislation have been met.

Objection Point 3: *The issue of this public Bridleway has been recognised for sometime and it could reasonably have been expected that the developer of the site and the CYC as highway authority should have ensured that the development safely and conveniently (for users) accommodated this Bridleway, the Bridleway and users (Horse riders, cyclists and walkers) should not be expected to accommodate the development. I object to the closing off of this well used route without consultation and this rather clumsy attempt to regularise the situation and facilitate the development by introducing this diversion order.*

Officer's comment: Section 257 of the Town and Country Planning Act is available to an authority to allow for the diversion of a path to enable development, that has received planning permission, to take place ie there is law in place to accommodate/make changes to a public right of way. The planning permission given in this instance is for a development that has been designed in such a

way as to accommodate the path, with the vast majority of it remaining unaffected by development. The Order has been made to enable development to be carried out and the requirements of the legislation have been met.

Options

5. Option 1: Authorise the Order to be referred to the Secretary of State for determination.

This is the recommended option

6. Option 2: Do not authorise the Order to be referred to the Secretary of State for determination.

This option is not recommended.

Analysis

7. Option 1: In order for that part of the development that affects the path to be progressed as per the planning permission granted by the authority (x2 bungalows) the Order is required to be confirmed, otherwise the 2 dwellings will effectively obstruct the line of the bridleway. As an objection has been received, the authority cannot itself confirm the Order but is required to forward it to the Secretary of State for a decision.
8. Government guidance states that the disadvantages or loss likely to arise as a result of the stopping up or diversion of a path to members of the public generally, or to persons whose properties adjoin or are near the existing highway, should be weighed against the disadvantages of the proposed Order.
9. The diversion only affects the last 50 metres or so of the bridleway which is approximately 260 metres long in total. Therefore only a relatively short section is to be affected. The width of the new section of path will be 2metres, which is wider than the current width; the surface treatment will be the same (tarmac) so users of the path will not be disadvantaged in this respect.
10. Users of the path will be required to use an additional 35 meters of on-road facility, in order to reach the original exit point of the Bridleway onto Meadlands (Point C to Point A on the Order Plan (Annex A). However, the internal layout of this part of the

development has been designed in the same vein as previous phases; ie shared spaces with priority to pedestrians and cyclists, design measures to reduce vehicle speeds, and managed on-street parking etc, so any risk to users of the path using the road for this short section, before using Meadlands and the wider road network, has been mitigated.

11. Additionally, the diversion of the path does not disadvantage any persons whose properties adjoin or are near the existing bridleway as the new route will, in fact, take the path further away from their property.
12. It should be noted that the Secretary of State has no power to amend a planning permission so as to facilitate what any objectors to the Order claim to be a preferable diversion. Objectors are also not permitted to use any subsequent public inquiry or hearing to re-argue the merits of a development for which planning permission has been granted.
13. Option 2: This option would effectively abandon the Order and leave the definitive line of the path on its current alignment. The Order would not be sent to the Secretary of State for determination and the construction of the two new dwellings for which planning permission has been granted will not be able to go ahead, as they will obstruct the legal line of the path. This option will effectively prevent the development taking place.

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 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:** The cost of advertising the Order, if confirmed, will be met by existing budgets as necessary (approximately £850).

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 Public Rights of Way (PROW) Team's program of work in order to prepare the documentation required to be sent to the Planning Inspectorate, which may lead to a delay in other planned work.
- **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 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 confirmation of the Order required to divert the section of path affected by the development delay that part of the development being concluded, leading to possible financial loss to the developer. Notwithstanding this, the granting of planning permission does not give authority for the interference of a right of way and the developers have been made aware of this.

Contact Details

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Report Approved **Date** *August 2017*

Neil Ferris
Corporate Director of Economy and
Place

Report Approved **Date** 5 September
2017

Wards Affected: Osbaldwick and Derwent Ward

All

For further information please contact the author of the report

Background Papers:

Decision Session: Executive Member for Transport and Planning on 9th
March 2017 (Report and Minutes)

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

Annex:

Annex A: Copy of sealed Order and Order Plan