



## Notice of a public

### Decision Session - Executive Member for Economy and Strategic Planning

**To:** Councillor Mason (Executive Member)

**Date:** Tuesday, 21 March 2023

**Time:** 4.00 pm

**Venue:** The Snow Room - Ground Floor, West Offices (G035)

## 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 Democracy Support Group by:

**4:00 pm on Thursday 23 March 2023** if an item is called in *after* a decision has been taken.

\*With the exception of matters that have been 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 Customer and Corporate Services Scrutiny Management Committee.

Written representations in respect of item on this agenda should be submitted to Democratic Services by **5.00pm on Friday 17 March 2023**.

**1. Declarations of Interest**

At this point in the meeting, the Executive Member is asked to declare any disclosable pecuniary interests or other registerable interests he might have in respect of business on this agenda, if he has not already done so in advance on the Register of Interests.

**2. Minutes** (Pages 1 - 4)

To approve and sign the minutes of the meeting held on 24 January 2023.

**3. 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 17 March 2023**.

To register to speak please visit [www.york.gov.uk/AttendCouncilMeetings](http://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](http://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](http://www.york.gov.uk/COVIDDemocracy)) for more information on meetings and decisions.

**4. Hull Road Verges Status** (Pages 5 - 16)

This report asks the Executive Member for Economy and Strategic Planning to note the Planning Authority's position on the status of the Hull Road verges, located between Nursery Gardens and number 315 Hull Road (to the north of the A1079).

## 5. Inclusive Growth Fund – Final Allocation

This report outlines the final allocations given to the inclusive growth fund initiatives.

*[Report to follow]*

## 6. Urgent Business

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

### Democracy Officer

Margo Budreviciute

Contact details:

- Telephone – (01904) 553819
- Email [margo.budreviciute@york.gov.uk](mailto:margo.budreviciute@york.gov.uk)

**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 własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

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

 **(01904) 551550**

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

- Registering to speak
- Written Representations
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above

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City of York Council

Committee Minutes

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Meeting	Decision Session - Executive Member for Economy and Strategic Planning
Date	24 January 2023
Present	Councillor Mason
Officers in attendance	Simon Brereton, Head of Economy Becky Eades, Head of Planning and Development Services Guy Hanson, Design and Sustainability Manager Ed Freedman, Conservation Officer

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#### 19. **DECLARATIONS OF INTEREST (16:02)**

The Executive Member was asked to declare, at this point in the meeting, any disclosable pecuniary interests or other registerable interests he might have in respect of business on the agenda, if he had not already done so in advance on the Register of Interests. None were declared.

#### 20. **MINUTES (16:02)**

Resolved: That the minutes of the two previous meetings held on 25 October and 1 November 2022 be approved as a correct record and be signed by the Executive Member.

#### 21. **PUBLIC PARTICIPATION (16:03)**

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

Councillor Kilbane spoke on agenda item 4 - Quarterly Economic Update. He raised some concerns with the inclusive growth fund and its application in the city, and argued for targeted intervention to ensure resources and money was not spent on already affluent wards. He noted that there was a 10 year life expectancy difference between the poorest and most affluent wards before he requested that income inequality

across York forms part of regular updates in Finance and Major Projects decision sessions.

Nicholas Allen spoke on agenda item 5 - Article 4 Direction - Heslington. He spoke of his experience in conservation work and in the Heslington Village Trust before he urged the council to adopt the Article 4 Direction. He explained that there was wide support from the local community and the Parish Councils, as exemplified by the well-attended public meetings and consultations, to protect and enhance the character of the Village.

## **22. QUARTERLY ECONOMIC UPDATE (16:09)**

The Executive Member considered a report that provided an update on the local financial climate, core business support activity and Council-led initiatives, an update on the national and local economy, key account management work, events and initiatives, progress against major milestones, and inward investment work.

The Head of Economy outlined the report and noted that:

- Businesses were still reporting increased costs of doing business and recruitment remained a challenge across the economy. However, there was a high demand for workspace and commercial properties in York.
- York Business Festival was delivered throughout November 2022 and over 1,000 businesses attended the Festival.
- The Council were still awaiting news in regards to the Great British Rail bid.
- The Council's Business Growth and Inward Investment teams were actively working across the economy and projects, such as the York BID film, were key to increasing inward investment. There were also new roles in the Council to promote this further.
- The City's Economic Strategy was agreed by the Council's Executive on 22 November 2022 and was ratified by the full Council on 15 December 2022.

- City of York Council's UK Shared Prosperity Fund Investment Plan received Government approval in December 2022.
- The Annual Survey of Hours and Earnings highlighted that York's median full-time weekly pay continued to be higher than the surrounding areas but was average in comparison to the national levels. Pay levels were increasing but were below inflation rates.
- York's claimant count had stabilised with 2,440 people claiming out of work benefits in November 2022, which was 700 more than the levels before Covid-19.
- Job vacancies were closely monitored with 3,071 vacancies advertised within 5 miles of York City Centre in January 2023.

In response to questions from the Executive Member, the Officer explained that the Annual Survey of Hours and Earnings figures were only accessible at a city-wide level due to how results were collected. He also stated that the Executive Member would receive an update on the Inclusive Growth Fund and a report on Inward Investment at the next meeting in March 2023.

Resolved: That the contents of the report be noted.

Reason: To support York's ongoing economic work and monitor how York is performing from an economic perspective.

**23. ARTICLE 4 DIRECTION - HESLINGTON (16:28)**

The Executive Member considered a report that provided an update on and the confirmation of the Article 4 Direction covering a variety of buildings within the Heslington Conservation Area. The Head of Planning and Development Services outlined the report and noted that:

- Article 4 would see the removal of permitted development rights in relation to extensions and alterations of dwelling houses.
- The area covered by Article 4 would exclude listed and modern buildings.

- The direction was created on 9 June 2022, the notice was provided to affected parties and the 6 week consultation began on 10 June 2022.
- The Council received 5 responses from affected parties with no objections.

In response to questions from the Executive Member, the Officer explained that the Council had noted the response from York Civic Trust and explained that this could be a conflict in the future but that it was taken into account to make a balanced decision for the area. She also confirmed that making changes to buildings could be done through applying for planning permissions.

The Conservation Officer then stated that the Executive Member's decision would be sent out to all the parties affected and the Secretary of State.

Resolved: That the confirmation of the Direction be authorised.

Reason: Officers consider that it is expedient to confirm the Direction due to the convincing justification for strengthening planning control in the Heslington Conservation Area; local support for doing so; and the availability of external funding and adequate resources.

Councillor Mason, Executive Member  
[The meeting started at 4.02 pm and finished at 4.32 pm].





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**Decision Session – Executive Member for  
Economy and Strategic Planning****21 March 2023**

Report of the Corporate Director of Place

**Status of Hull Road verges****Summary**

1. This report asks the Executive Member for Economy and Strategic Planning to note the Planning Authority's position on the status of the Hull Road verges, located between Nursery Gardens and number 315 Hull Road (to the north of the A1079).

**Recommendations**

2. The Executive Member is asked to:
  - i. Approve the Planning Authority's position on the status of the Hull Road verges, located between Nursery Gardens and number 315 Hull Road (to the north of the A1079), subject to any valid objection received in relation to the adoption process pursuant to Section 228 Highways Act 1980.

Reason: To provide clarity to existing and future landowners.

- ii. Note the attached draft Director Decision presenting the proposed approach to the adoption of part of the verges as highway maintainable at the public expense pursuant to Section 228 Highways Act 1980.

Reason: To protect the rights of highway users and provide clarity to existing and future landowners.

**Background**

3. City of York Council received requests to clarify the status of the verges off Hull Road, located between the junction with Nursery Gardens and

number 315 Hull Road (to the north of the A1079). The verges under consideration are shown in orange on the maps below.



4. These verges are not currently identified as adopted highway on the Council's Highway Extent Map (available here: [www.york.gov.uk/RoadAdoption](http://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.

5. 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. This is described in Annexe A.
6. For the areas which are not proposed to be included in the adopted highway, this report aims to provide clarity on the position of the Planning Authority, should landowners or occupiers want to make changes to the areas they own/occupy.
7. 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”.
8. Under current legislation, a private landowner could 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.
9. Any engineering or building operation (other than a means of enclosure) would require planning permission.
10. 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. Curtilage’ is a term of art and so there is a risk that owners may seek to litigate this point. It is the Officers’ view that there is a good case that the verges are not within the curtilage of the dwellings.
11. Future planning applications for the verge area are likely to be considered in the same way as the previous application referenced above.

## **Consultation**

12. Internal consultation has taken place between the Highway Authority and the Planning and Legal teams.

## Options

13. Options for the Executive Member to consider are:
  - a. Approve the position of the Planning Authority on the status of the land which is not proposed for adoption; or
  - b. Refuse to support the Authority's assessment of the planning status of the land and require officers to review the Authority's position.

## Analysis

14. If the Executive Member approves the position of the Planning Authority as recommended, this will bring more certainty to current and future landowners and protect the character and appearance of the area.
15. If the Executive Member decides not to support the Planning Authority's position, this will result in uncertainty on the status of the land and may result in residents trying to change the use of the land without first obtaining planning consent, which could result in planning enforcement cases.

## Council Plan

16. This proposal relates to the "open and effective council" outcome included in the Council Plan 2019-2023.

## Implications

- **Financial** – No financial implications identified
- **Human Resources (HR)** – No HR implications identified
- **Equalities** – No equalities implications identified
- **Legal** - See Annexe A for Legal Implications
- **Crime and Disorder** – No Crime and Disorder implications identified
- **Information Technology (IT)** – No IT implications identified
- **Property** – No property implications identified
- **Other** - No other implications identified

## Risk Management

17. No risks identified as this is a statement of position on a planning matter.

**Contact Details**

**Author:**

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Traffic and Highway Development  
Manager  
Place Directorate  
[Helene.vergereau@york.gov.uk](mailto:Helene.vergereau@york.gov.uk)

**Chief Officer Responsible for the report:**

Neil Ferris  
Corporate Director of Place

**Report Approved**  **Date** 02/03/2023

**Specialist Implications Officer(s)** List information for all

**Financial:**  
Name: Jayne Close  
Title: Accountant  
Email: jayne.close@york.gov.uk

**Legal:**  
Name Ruhina Choudhury  
Title Senior Solicitor (Planning)  
Tel No. 01904 555086

**Wards Affected:** Osbaldwick &  
Derwent

**All**

**For further information please contact the author of the report**

**Background Papers:**

N/A

**Annexes**

Annexe A – Officer Decision

**List of Abbreviations Used in this Report**

N/A

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**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)

Deputy Leader & Transport

Environment & Climate C

Economy & Strategic Plan

Housing & Safety Neigh

Finance & Performance

Culture, Leisure & Comm

Children & Young P & Edu

Health Adult Social Care

**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.



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These verges are not currently identified as adopted highway on the Council's Highway Extent Map (available here: [www.york.gov.uk/RoadAdoption](http://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.

<b>Implications:</b> Crime & Disorder	<input type="checkbox"/>	Equalities	<input type="checkbox"/>	Other:	
Human Resources	<input type="checkbox"/>	Legal	<input checked="" type="checkbox"/>	Highways	<input checked="" type="checkbox"/>
Financial	<input checked="" type="checkbox"/>	ITT	<input type="checkbox"/>	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

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