
**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). 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

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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