
Meeting of the Executive Member for City Strategy and Advisory Panel

11 December 2006

Report of the Director of City Strategy.

PUBLIC RIGHTS OF WAY – NETWORK DEVELOPMENT, PROPOSED DEVELOPMENT OF THE PUBLIC PATH NETWORK USING LEGAL ORDERS

Summary

1. This report seeks the authority to make 4 Public Path Orders to legally change the alignment of several rural public footpaths from their current legal alignment as shown on the Definitive Map of public rights of way, to improved alignments. The changes will improve the public path network for the public. It is proposed to alter the following footpaths as described below:

PROPOSAL 1 - Public Footpath Askham Bryan No5 – Diversion of 2 Sections of Path. **PLAN 1 Annex 1**

PROPOSAL 2 - Public Footpath Strensall No17, Diversion of a Section of Path. **PLAN 2 Annex 1.**

PROPOSAL 3 - Public Footpath Skelton No's 7 & 8 - Extinguishment of 3 Sections of Path and the Creation of 1 Section of Path as an Alternative. **PLAN 3 Annex 1**

The report recommends that the Executive Member approve **Option A** and authorise the making of the proposed public path orders.

Background

2. The Definitive Map is the legally conclusive record of the existence of public rights of way. The legal line of the public rights of way shown on the map are fixed, regardless of whether they become obstructed, are un used or whether walkers, over time, use a different line to that shown on the map. Regardless of the circumstances on the ground, the authority's various duties and powers can only apply to the line of paths as shown on the Definitive Map. Over time, field boundaries may change as can the use of land and such changes can impact on the use of paths on the ground. Public Footpaths however, unless changed through legal order remain as recorded on the Definitive Map
3. The changes to the paths proposed by this scheme intend to utilise legal orders to improve the path network in one or all of the following ways:

- The rationalisation of legally recorded footpaths with the routes that are used by the public on the ground.
 - The utilisation of exiting tracks and land to accommodate footpaths and result in improvements in surface and width.
 - The creation of routes that can be better managed and maintained by the authority for the benefit of path users.
 - Preventing the seasonal interference of footpaths due to agricultural activity.
4. A common element of each of the proposals is the realignment of paths from across arable fields to field edges. Cross-field paths must be kept free from obstructions by crops and reinstated after ploughing. Landowners have a legal responsibility for this and the authority has the duty to enforce this responsibility. To meet this duty, and in addition to responding to any complaints, the Public Rights of Way Unit conducts an annual inspection campaign to ensure that landowners are complying with this duty.
 5. Whilst cross-field paths in York are generally kept free from obstruction, they are often not as usable as established paths around field edges. Annual ploughing of cross-field paths can render them temporarily unavailable for use as landowners have a set time by law before the path must be reinstated. Even when reinstated, the surfaces of ploughed paths are bare earth, which can become muddy and difficult to walk in wet conditions.
 6. Even though City of York has a good record in ensuring cross field paths are kept clear, there may still be instances where a path is obstructed despite the proactive approach taken by officers on this matter. In such instances a certain amount of time must be given by law for the path to be cleared before more direct action can be taken. Again, this is time where a path may be unavailable.

PROPOSAL 1. Public Footpath Askham Bryan No5 - Annex 1 Plan 1.

7. Public footpath Askham Bryan No5 runs from Askham Bryan village to Bog Lane off Moor Lane, Woodthorpe. It is proposed that section 1 of this path indicated on the plan to the west of A1237 Outer Ring Road be diverted from a line across an arable field to a line around the field edge.
8. It is also proposed to divert section 2 of the path, East of the A1237, from a line crossing paddocks to a line following an existing access track and the edge of a pasture field.
9. Section 1 on plan 1 currently crosses an arable field. Construction of the A1237 created a small triangular parcel of land to the southeast of the footpath. The field boundary, which this path followed, was subsequently removed. This created a cross-field path. The proposed diversion of this section would restore the path to around the field edge.
10. On the eastern side of the A1237 the same public footpath continues in an easterly direction. Section 2 runs over land that is currently divided into small enclosures for the containment of horses. Although the definitive line is accessible to the public,

via a series of pedestrian gates, it is understood that the people using this footpath choose to walk a line to the south of the definitive line and avoid crossing these enclosed areas containing horses. Walkers then rejoin the definitive line via an access track. The landowner appears to prefer this alternative and has provided gates at field boundaries along this route.

11. The diversion of section 2 of this path essentially legally diverts the path onto the line favoured by the public. It would also prevent the need to operate a series of gates and enter fields containing stock.

These proposals (section 1 and 2) create an additional 235 metres of public footpath.

PROPOSAL 2 - Public Footpath Strensall No17 - Annex 1 Plan 2.

12. Public Footpath Strensall No.17 runs from Brecks Lane to the River Foss. It is proposed that a section of the path that crosses an arable field be diverted on to an adjacent access track.
13. The existing line of the footpath across the field is clearly signposted off Brecks Lane. It is understood however that the public currently choose to use the field edge margin to the east.
14. It is proposed to realign the path onto an existing access track in an adjoining field providing a better surface for walkers and one which will not be disturbed by agricultural activity. The diversion is shorter than the existing path by 42 metres.

PROPOSAL 3 - Public Footpath Skelton No's 7 & 8 - Annex 1 Plan 3.

15. Public Footpath Skelton Number No8 runs from Moor Lane, Skelton to the village of Shipton-by-Beningbrough in the North Yorkshire County Council administrative area. Public Footpath Skelton No7 branches from Skelton No8 near the City of York and NYCC boundary. It continues to Shipton village along a different line to footpath No8.
16. It is proposed that a section of both paths be extinguished where they cross the same arable field and that a public footpath be created around the field edge linking to the continuations of both paths.
17. It is also proposed to extinguish a section of public footpath Skelton 8 along a field edge and create an alternative path utilising an access track on the opposite side of the field boundary.
18. It is apparent that the 2 sections of Public Footpaths No7 and No8 where they cross the arable fields have not been in use for a number of years. The public at present use a track, currently maintained by the landowner as an access track, around the edge of a field. It is also apparent that the public use the same track in favour of the continuation of the Footpath Number 8 towards Skelton rather than crossing a stile and using the existing field edge path.
19. This proposal essentially removes 3 presently unused sections of path, 2 across field and 1 field edge in favour of an alternative route currently maintained by the landowner as an access track and preferred by the public. The proposal

extinguishes a total of 774 metres of path, much of which is unused cross-field path. The alternative route is 219 metres shorter.

Consultation

20. Pre order consultation has been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice for consultation on proposed changes to rights of way. All prescribed bodies and statutory undertakers have been consulted including the relevant ward members and Parish Councils.
21. All landowners affected have been consulted and all agree with and support the proposals.
22. Objections to and concerns over the scheme have been received from The Ramblers Association. Correspondence on the project between the PROW Unit and the Footpath Secretary of the Ramblers has been exchanged.
23. The main objection concerns the use of public funding for what is perceived, by The Ramblers, as changes to paths for the exclusive benefit of the landowner. Whilst it is true that landowners may benefit as a result of these proposals through no longer having to reinstate paths across ploughed and cultivated fields, this is very much secondary to the principal reasons for promoting these changes. The benefits to the path network and to the public's use of it is described in the background to this report are the principal aims of the project. Any objections relating to how such orders are funded are not considered relevant to the criteria of the legislation under which such orders would be made. The legislative requirements are discussed in Paras 43 – 47.
24. Other elements to the objection include the belief that the maintenance liability of the authority will increase as a result of the changes to these paths. It is not anticipated however that the changes will result in a significant change to the existing maintenance liability. This issue is dealt with under financial implications (Para 38).
25. A specific objection to the creation of 'dog-legs' in the footpath Askham Bryan 5 (Proposal 1, Plan 1) has been raised. The Ramblers have suggested an alternative line cutting directly to the west and the A1237. This field is regularly cultivated. The effect of diverting the path on to this line would be to create a cross-field path and the issues associated with seasonal disturbance of the surface for which other elements of the proposals are seeking to avoid. This alternative is also unlikely to be favoured by the landowner whose consent is required.

Options

26. Option A - Make the necessary Public Path Orders to implement Proposals 1, 2 and 3 (or any combination of proposals 1 to 3 depending on consideration of each proposal) to alter legal alignments of sections of public footpaths Askham Bryan No. 5, Strensall No.17 and Skelton No.s 7 and 8
27. Option B - Do nothing and leave the footpaths along their existing legal alignments.

Analysis

28. Option A. - Make the necessary Public Path Orders to implement Proposals 1, 2 and 3 (or any combination of proposals 1 to 3 depending on consideration of each proposal) to alter legal alignments of sections of public footpaths Askham Bryan No5, Strensall No17 and Skelton No's 7 and 8
29. In all the proposed changes, other than section one of Proposal 1 (Askham Bryan No5 Plan 1) the change in the alignment of the paths rationalises the legal line of the public right of way with the path used, through choice, by the public on the ground. Exactly why the public have come to use these alignments is not completely clear, however changes in land use, such as pasture field to arable fields and changes to field boundaries are possible reasons for this. It is an established fact that when given a choice of route walkers will tend to take the line of least resistance. It is clear therefore that more convenient and usable routes have been established and are preferred by the public in favour of the definitive line. At present these alternative routes have no legal protection as highway and are not maintained by the authority. If realigned onto these routes the authority can maintain and protect them in an appropriate manner as with any other public right of way.
30. As explained for each of the proposals in the background to this report, the intention is to use field edges, which are currently uncultivated and include existing access tracks, which are maintained by the respective landowners as access to an adjoining land. This will make the condition of the path more accessible to the public all year round and would prevent any problems with the current line being ploughed and cultivated.
31. As mentioned previously the PROW unit have a good record in ensuring all paths across the network are free from ploughing and cropping obstructions. This is however, resource intensive, requiring correspondence with landowners and minimum of 1 site visit to each path that crosses arable fields. In cases where paths are found to be obstructed a second site inspection is required and potentially enforcement action. Field edge paths, although occasionally illegally ploughed out are generally self-managing.
32. Option B. Do not make the orders and leave the footpaths open for the public to use along their present alignment.
33. The likelihood is that the public will continue to favour the alternatives to the definitive line. These alternatives will remain unprotected and although they may be maintained by the landowner at present this may not always be the case. The authority will continue to have a duty to ensure the legal line of the paths is available for use, regardless of whether they are actually in use by the public.

Corporate Priorities

34. The recommended option meets the council's Corporate Aim 1: *Take pride in the city, by improving quality and sustainability, creating a clean and safe environment.*

35. Although this aim related mainly to the environment, it incorporates the second Local Transport Plan (LTP2), where the hierarchy of transport user is firmly embedded within this plan, with pedestrians and cyclists being the top of our priority when considering travel choice. The encouragement of travel by sustainable modes also corresponds with other wider quality of life objectives as contained in the Community Strategy, such as those relating to health. Although the preferred option has no bearing on vehicle usage, it does assist in making the diverted route more pleasant for users and encourages its use, which would tie in to Objective 1.3 to: *Make getting around York easier, more reliable and less damaging to the environment.* It would also tie in with the council's improvement statement No2, to increase the use of public and other environmentally friendly modes of transport that reduce car usage.

Implications

Financial

36. Other than officer time, the following financial implications apply.
37. Advertisement of legal orders - The making of any orders must be advertised. The cost of each advert is approximately £500. 4 orders are required to implement all of the proposed changes. The cost of advertising may be significantly reduced however if the orders are advertised simultaneously. If confirmed, the confirmation of the orders would also need to be advertised. The total costs of all advertising therefore would be a maximum of £4000. This cost would be met by the Public Rights of Way Budget.
38. Maintenance Liability - The maintenance of any public rights of way surface is vested in the authority. The maintenance level required depends very much on the context in which the path occurs. For the rural paths subject of these proposals, maintenance is not likely to involve anything other than seasonal vegetation clearance. A maximum cost for the clearance of vegetation from the new routes has been calculated as £217.20 per annum based on current costs. This is likely to be much less however because, as described previously for each proposal, much of the new path follows existing access tracks already maintained to higher standard by landowners. The actual cost is estimated therefore to be around £100 - £150. These costs would be met from the Public Rights of Way Budget. Officer time will however be freed up through not having to monitor these particular routes as part of annual cropping inspection regime.
39. Other Maintenance - A stile or gate may be required to implement proposal 3. If provided and installed by the authority, the cost is likely to be a maximum of £200, which would be met from the PROW budget.
40. Opposed Orders - If any objection is outstanding following the notification period of the making of the orders, the authority cannot confirm them. In this event, they can only be confirmed by the Secretary of State who would also determine the means through which the supporters and objector/s can make their case. This could be through written representations, a hearing or public inquiry. In addition to its own costs. The authority is required to facilitate a hearing or public inquiry. This cost would be met from the Public Rights of Way Budget. If any party at a public inquiry

feels the other side has acted unreasonably, a claim for costs can be made on these grounds.

Human Resources (HR)

41. There are no HR implications.

Equalities

42. There are no equalities implications.

Legal

43. The following legal orders will be required to implement the proposals.
44. **PROPOSALS 1 and 2** – Public Path Diversion Order. Section 119 of the Highways Act 1980, allows the diversion of a public right of way if it is in the interests of the landowner, or of the public and it is expedient to do so.
45. **PROPOSAL 3** – Concurrent Public Path Creation and Extinguishment Order. Sections 26 and 118 allow for both the creation of and extinguishment of a public footpath respectively. The orders can be made concurrently.
46. Before a Public Path Creation Order is made, the authority must be satisfied that there is a need for the creation of the new route, i.e. that it is expedient that the path should be created having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public and also the effect on persons interested in land effected having regard to the compensation provisions contained in Section 28 of the Highways Act 1980. Before a Public Path Extinguishment Order can be made, the authority must be satisfied that the path or paths concerned are not needed for public use and that it is expedient that it should be stopped up.
47. It is recognised practice that if extinguishment and creation orders are made concurrently the authority must first consider the creation order on its own merits, i.e. ignoring the extinguishment order. If the authority is satisfied that, if confirmed, the creation order will provide an alternative path to that proposed for closure, then the prospective confirmation may be taken into consideration in the determination of the extinguishment order.

Crime and Disorder

48. There are no Crime and Disorder implications.

Information Technology (IT)

49. There are no IT implications.

Property

50. There are no Property implications.

Other

51. There are no other implications

Risk Management

52. Not applicable

Recommendations

53. It is recommended that the Advisory Panel advise the Executive Member to accept **Option A**, and resolve to:
1. Authorise the Head of City Strategy Directorate to instruct the Head of Civic, Democratic Legal Services to make the necessary Public Path Orders to implement Proposals 1, 2 and 3 (or any combination of proposals 1 to 3 depending on consideration of each proposal) and alter the legal alignments of sections of public footpaths Askham Bryan No. 5, Skelton No.s 7 and 8 and Strensall No.17.
 2. That if no objections are received to the making of the orders, or that if any objections that are received are subsequently withdrawn, the Head of Civic Democratic and Legal Services be authorised to confirm the Orders recommended in 1. above.
 3. If objections are received in relation to one or more of the proposed diversions and not subsequently withdrawn, the Head of Civic, Democratic and Legal Services be authorised to confirm the Order in respect to the public footpath(s) where no objection was received.
 4. That if objections are received to any of the orders and such objections have been considered already within this report and not subsequently withdrawn, the order or orders to which the objection(s) relates be passed to the Secretary of State for determination.
 5. If objections are received to any of the orders and such objections have not been considered already within this report, a further report be placed before the Committee, to enable Members to consider whether or not pass the Order(s) to the Secretary of State for determination.

Reason: The orders would develop the public path network for the benefit of the public and the future management of the routes and the proposed orders also meet the criteria of the relevant legislation.

Contact Details

Author: David Holdsworth
Acting Public Rights of Way Officer
Public Rights of Way Unit
9 St Leonard's Place
YORK

Chief Officer Responsible for the report:
Damon Copperthwaite
Assistant Director
(City Development and Transport)

Report Approved



Date 29/11/06

Specialist Implications Officer(s) List information for all

Implication Financial
Name Patrick Looker
Title Finance Manager
Tel No. 551633

Implication Legal
Name Martin Blythe
Title Senior Assistant Solicitor
Tel No. 551044

Wards Affected:

Rural West York, Strensall, Skelton, Rawcliffe and Clifton Without
Askham Bryan, Skelton & Strensall Parishes

All

For further information please contact the author of the report

Background Papers:

PPO/NetworkDevelopment

Highways Act 1980

ANNEXES

Annex 1

- **Plan1 Proposal 1** - Public Footpath, York, Askham Bryan No.5 - Plan of Proposed Diversion
- **Plan 2 Proposal 2** - Public Footpath, York, Strensall No.17. – Plan of Proposed Diversion
- **Plan 3 Proposal 3** - Public Footpath, York, Skelton No.s 7 & 8 – Plans of Proposed Alterations

Annex 2

Objections received from the Ramblers Association.