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| <b>Meeting:</b>      | Decision Session – Executive Member for Transport                |
| <b>Meeting date:</b> | 05/12/2024   |
| <b>Report of:</b>    | James Gilchrist, Director of Transport, Environment and Planning |
| <b>Portfolio of:</b> | Cllr Ravilious, Executive Member for Transport                   |

## **Decision Report: Proposed diversion of public bridleway, Heworth (Without) 1 and 2**

### **Subject of Report**

1. Diverting a section of the public bridleway Heworth (Without) 1 and 2 away from Cow Moor Farm buildings, on to a wider and longer route mainly passing through mixed woodlands.
2. The application to divert part of the public bridleway has been made by the land owner because moving the bridleway away from its current alignment, next to farm buildings will streamline farming operations.

### **Benefits and Challenges**

3. Diverting the section of the bridleway will allow the land owner to carry out farming activities more efficiently, such as being able to feed livestock from the hard standing of the farm access road and move stock around without interfering with users of the bridleway. The proposal should also more effectively separate livestock from the users of the bridleway.
4. The new section of bridleway will be 3 metres which is wider than the available 1.5 metre width on the current alignment of the bridleway.
5. The total length of the proposed bridleway will be approximately 237 metres longer than the current bridleway. This has been considered by equestrian users of the path to be a benefit due to the lack of

bridleway routes in the area, even though the proposed new alignment will run closer to the A64.

6. The proposed new alignment of the path will run through a mixed woodland setting, rather than alongside farm buildings, which may be considered more desirable and be a benefit to leisure users of the path, although some may be wary of using a circuitous woodland path for personal safety reasons.
7. All costs associated with this proposed diversion will be met by the land owner. This includes the costs associated with administering the diversion order process and the construction of the new path.

### **Policy Basis for Decision**

8. The proposals included in this report relate to the Council Plan for 2023-27 commitments and priorities, specifically:
  - a. Commitment: Climate, which states, “prioritise safe active travel in our Movement Plan and in routes to school”.
  - b. Commitment: Health, which states, “encourage healthy travel options to maintain healthy lifestyles”.
  - c. Priority: Health and Wellbeing, which states, “All York residents (young, old and future residents) will...be able to actively participate in their communities.”
  - d. Priority: Transport, which states, “York’s transport networks will be inclusive and sustainable, connecting neighbourhoods and communities”.

### **Financial Strategy Implications**

9. The financial implications of the recommended option are set out below.
10. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I. 1996/1978), permit authorities to charge applicants the costs of making orders under S119 of the Highways Act 1980. Therefore, there are no financial implications as the land owner will meet all the costs incurred by the diversion

process, from initial application to completion of the bridleway on the ground.

11. If objections to the making of the order are received during the statutory consultation and these are unable to be resolved, then the matter can either be referred to the Secretary of State (SoS), Department of the Environment, Food and Rural Affairs for a final decision or the council can abandon the order. The council are not permitted to charge the applicant for sending an order to the SoS for confirmation. However, under these circumstances unresolved objections from the public would suggest that the diversion is not in their best interests - therefore the council would most likely abandon the order. This would be a matter for the Executive Member to decide and a new Decision Report would need to be put forward.
12. The current section of bridleway is highway maintainable at public expense. The proposed new section of bridleway will continue to be highway maintainable at public expense. The council currently cuts the surface of the existing bridleway as part of the PROW annual cutting programme and as there is a problem of fast-growing nettles, the path is cut more frequently than other paths in the area. The path will continue to be included within the annual programme, but there is likely to be a small increase in cost, as the bridleway is longer and wider than the existing route. The landowner will continue to be responsible for cutting back any overgrowing vegetation.
13. Additionally, the surface of the existing bridleway is often flooded and would likely need extensive surface improvement works/drainage at some point in the future. The relocation of the bridleway to the new route, which follows a previously cleared and lightly surfaced route through mixed woodlands and under trees, means the ground will be less likely to become waterlogged.
14. There is a section of the proposed bridleway, approximately 81 metres, which is across an open field and it will not be fenced in. This means that users will be able to divert around the bridleway and each other in poor, wet/muddy weather conditions. This may reduce the council's maintenance liability for this section as there is less likely to be a clear, worn track across the field.

15. There will be no cost incurred by the council moving the existing public bridleway signs as the starting point and termination point will stay the same. Way-marker posts may need to be installed initially to signpost users to the new route.
16. Compensation can be claimed for the making of Diversion Orders, under S28 of the Highways Act 1980. However this proposal is at the landowner's request and they have agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the path into fit condition for use by the public. This will be laid out in the Order.

### **Recommendation and Reasons**

17. That the Executive Member authorises:
  - (1) The making of a public path order under S119 of the Highways Act 1980 to divert part of the public bridleway Heworth (Without) 1 and 2 by creating a new public path and extinguishing the current public path as illustrated on the map attached to this report.
  - (2) Public notice of the making of the order be given and if no objections are received within the period specified, or if objections received are subsequently withdrawn, authorises the confirmation of the order.
  - (3) In the event the order is confirmed to authorise the making of a legal event modification order to change the Definitive Map.

#### Reasons

18. The council is satisfied that the proposed diversion order meets the legislative requirements as set out under S119 of the Highways Act 1980, on the ground that it is expedient to divert the path in the interests of the owner of the land crossed by the path.
19. The proposed new section of bridleway is not considered less convenient to the public, being wider and with only a short increase in travel distance, which is seen as a desirable by users.

## Background

20. S119 of the Highways Act 1980 gives City of York Council (CYC), as local highway authority, the power to divert public footpaths, bridleways, and restricted byways by making a public path diversion order where it is expedient to do so and in the interests of either:
  - a. the owner, lessee or occupier of land crossed by the path or way or,
  - b. the public,but only where the diverted route would be substantially as convenient to the public.
21. Additionally, any diversions made under S119 of the Highways Act 1980 shall not alter a termination point of a path or way:
  - a. If that point is not on a highway, or
  - b. (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
22. As the proposed diversion of public bridleway Heworth (Without 1 and 2 does not alter the termination points of the way these conditions do not apply to the proposal.
23. Under S119(A) of the Highways Act 1980, the council must consider any material provisions of their Rights of Way Improvement Plan (ROWIP). The ROWIP is intended to be a mechanism for improving the network of public rights of way (PROW) and other non-motorised routes in light of the needs of all types of users. It is not designed to provide detailed solutions to access problems in every locality, but to take a strategic approach to managing public access. York's ROWIP is currently in draft format. The council are satisfied that the proposal meets the aspirations of the draft ROWIP.
24. The current section of bridleway was previously diverted in 2003. The alignment, before the 2003 diversion, ran through the farm yard and closer to the farm buildings and cottage.
25. There have been intermittent reports from the public about the bridleway being difficult to use. This is due to the narrow width of

an enclosed section of the path where users are unable to safely pass each other. The surface is also prone to water logging and rapid nettle growth.

26. After liaising with the landowner about the above issues, the land owner made an application in May 2024 to divert the current bridleway, as diverting the path would also significantly streamline farming activities carried out on the land over which the bridleway runs.
27. Both the current section of bridleway and proposed new section of bridleway are shown on the map attached to this report.

### **Consultation Analysis**

28. An initial consultation was carried out between 11 July 2024 and 9 August 2024. Responses were received from one member of the public, Northern Powergrid, Heworth (Without) Parish Council, CYC Natural Environment, York Consortium of Drainage Boards, Northern Gas Networks, the British Horse Society and the Ramblers.
29. Northern Powergrid, CYC Natural Environment, York Consortium of Drainage Boards, Northern Gas and the Ramblers had no objections.
30. Heworth (Without) Parish Council, the British Horse Society and one member of the public supported the proposed diversion of Heworth (Without) 1 and 2.
31. Please note there will be a second, formal consultation if the Executive Member authorises the making of an order. This is required by the Highways Act 1980.

### **Options Analysis and Evidential Basis**

32. Option 1. That the Executive Member authorises the making of a public path order to divert part of public bridleway Heworth (Without) 1 and 2 by creating a new public path and extinguishing the current public path as illustrated on the map attached to this report, that public notice of the making of the order be given and if no objections are received within the period specified, or if received objections are subsequently withdrawn, authorises the confirmation of the order.

33. If objections are received and not withdrawn, then the matter will be referred back to the Executive Member to decide whether it is sent to the SoS for a final decision.
34. This option is recommended as it is in the interests of the land owner and the council is satisfied that the legislative requirements have been met. Those in support of the order have commented that the new section of bridleway will be more pleasant for horse riders and walkers, although some may be wary of using a circuitous woodland path for personal safety reasons. The increased length of the bridleway is seen as a positive change as is the increased width which will enable all users to safely pass one another while using the path – an ongoing issue with the existing path. There have been no objections at pre-order consultation stage.
35. It is considered that the proposed diverted path will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.
36. In the event the Order receives no objections or any objections that are made are subsequently withdrawn, the council has the power to confirm the Order. Before doing so the council must have regard to:
  - i. The public's enjoyment of the whole path. The responses to the initial consultation indicate that the diversion will increase the public's enjoyment of the route.
  - ii. The effect of the Order on the land crossed by the current route and the new route. The land owner has agreed to defray any compensation that may become payable and no other land owners are affected by the diversion.
  - iii. material provisions of the council's ROWIP.
37. There will be a small increase in maintenance costs to the council as we are still responsible for the annual cutting of the bridleway, which would be longer and wider.
38. Option 2. That the Executive Member does not authorise the making of the diversion order.

39. This option is not recommended. Although the making of a diversion order is a power that the council can choose to exercise, the application to divert the path has been made by the landowner as it is their interest that the path be diverted. The new alignment will be wider and have a better surface. The increased length is seen as a desirable factor.
40. As this meets the requirement of the legislation for both making and confirming the order the application can be progressed.
41. Additionally, if the order were not made, an opportunity would be missed to address the narrow width and flooding/drainage issues of the existing section of the bridleway. The associated cost to the council of remedying these issues would be an expense to the council, whereas the land owner is meeting the cost of processing the order to divert the path.

## **Organisational Impact and Implications**

42. **Financial** - The recommended option is to authorise the making of a public path order to divert public bridleway, Heworth (Without) 1 and 2. The costs associated with the advertisement and construction of the route will be covered by landowner. The council will continue to be responsible for the maintenance of the new bridleway. This will be funded from Public Rights of Way / Public Realm budgets.
43. **Human Resources** - There are no HR implications noted in this report.
44. **Legal** - In accordance with Section 119 of the Highways Act 1980 it is within the Council's discretion to make a public path diversion order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

Where objections to the making of an order are made and not withdrawn, this removes the power of the Authority to confirm the order itself.

In considering whether to confirm an unopposed order the Council, or the Secretary of State in deciding whether to confirm an opposed order, must in addition to the legislative criteria set out in paragraph 22 of this report, have regard to whether it is expedient to confirm the order considering the effect:



- the diversion would have "on public enjoyment of the path or way as a whole"; and
- the new right of way and the extinguishment of the existing right of way would have on lands served by them.

Compensation can be claimed for the making of diversion orders under section 28 of the Highways Act 1980.

45. **Procurement** - If there are no financial implications, and CYC are not carrying out the works – then there are no procurement implications.
46. **Health and Wellbeing** - There are no public health implications.
47. **Environment and Climate** - It is suggested that the creation of the new bridleway is carried out in a way that minimises operational carbon emissions. Use of any materials should consider resilience to future changes in the climate.
48. **Affordability** - There are no affordability implications of this report.
49. **Equalities and Human Rights** - A full Equalities Impact Assessment is included at Annex C. This outlines mitigations which will be implemented to offset potential negative impacts identified.
50. **Data Protection and Privacy** - As there is no personal data, special categories of personal data or criminal offence data being processed, there is no requirement to complete a data protection impact assessment (DPIA). This is evidenced by completion of DPIA screening questions AD-10216.
51. **Communications** - We note the positive benefits of this proposed change that are outlined in this report. Communications will proactively support any media enquiries that arise.
52. **Economy** - There are no economic impacts arising from the proposals in this report.

## Risks and Mitigations

53. No additional risks identified other than those stated in Options above.

## Wards Impacted

54. Heworth (Without).

## Contact details

For further information please contact the authors of this Decision Report.

## Author

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|-------------------------|---|
| <b>Name:</b>            | James Gilchrist                                 |
| <b>Job Title:</b>       | Director of Environment, Transport and Planning |
| <b>Service Area:</b>    | Environment, Transport and Planning             |
| <b>Telephone:</b>       | 2547  |
| <b>Report approved:</b> | Yes   |
| <b>Date:</b>            | 15/11/2024                                      |

## Co-author

|                         |   |
|-------------------------|---|
| <b>Name:</b>            | Molly Kay                                     |
| <b>Job Title:</b>       | Assistant Rights of Way Officer (Alleygating) |
| <b>Service Area:</b>    | Transport/Rights of Way                       |
| <b>Telephone:</b>       | 4654  |
| <b>Report approved:</b> | Yes   |
| <b>Date:</b>            | 15/11/2024                                    |

## Annexes

Annex A, Location map – Heworth (Without) 1 and 2

Annex B, Proposed diversion route – Heworth (Without) 1 and 2

Annex C, Equalities Impact Assessment