

Report for: Decision
Item Number: 4



<b>Contains Confidential or Exempt Information</b>	<b>Part 1 Excluding Appendix B which is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972</b>
<b>Title</b>	Thames Path Missing Link
<b>Responsible Officer(s)</b>	Anthony Hurst, Principal Rights of Way Officer Kevin Mist, Head of Leisure Services Ben Smith, Strategic Manager Highways and Transport
<b>Contact officer, job title and phone number</b>	Anthony Hurst, Principal Officer, Rights of Way 01628 796180
<b>For Consideration By</b>	Rights of Way and Highway Licensing Panel
<b>Date to be Considered</b>	4 <sup>th</sup> March 2014
<b>Implementation Date if Not Called In</b>	2014/15
<b>Affected Wards</b>	Riverside
<b>Keywords/Index</b>	Thames, River, Path, Maidenhead, Riverside

<p><b>Report Summary</b></p> <ol style="list-style-type: none"> <li>1. This report is to obtain approval to the making of a Public Path Creation Order or a Public Path Creation Agreement (FCO/A) subject to the requisite Cabinet approval of: (i) the project to complete the missing link in the Thames Path National Trail; (ii) the funding of £350K necessary to implement the project and (iii) to the continuation of the fund raising programme with potential partner organisations to raise additional grants towards the costs.</li> <li>2. There has been an historic desire for this project and it is supported by the Council's Local Access Forum, local Members, the Ramblers, Maidenhead Civic Society, Natural England and the River Thames Alliance. The project is also identified in the Council's Rights of Way Improvement Plan as a necessary improvement to the network.</li> </ol>
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<b>If recommendations are adopted, how will residents benefit?</b>	
<b>Benefits to residents and reasons why they will benefit</b>	<b>Dates by which residents can expect to notice a difference</b>
The Thames Path will be a complete riverside pathway through Maidenhead encouraging more ramblers and	April 2015

walkers to use the Thames Path	

## 1. Details of Recommendations

### RECOMMENDATION:

- a. That the Panel requests that Cabinet delegate authority to the Leader, the Lead Members and Directors of Operations and Adult & Community Services to work together and with partner organisations to complete this project.
- b. That the Panel requests that Cabinet approves a budget of £350k to be provided in the 2014/15 capital programme for the funding of the project.
- c. That subject to Cabinet approval to items (a) and (b) above:
  - (1) the Panel hereby authorises the making of a Public Path Creation Agreement under section 25 of the Highways Act 1980 or the making of a Public Path Creation Order under section 26 of the 1980 Act by the Head of Legal Services and, in respect of an order made under section 26, to confirm the order as an unopposed order in the event that no objections are received in respect thereof or any objections so received are subsequently withdrawn;
  - (2) The Panel hereby authorises the Development and Property Manager to pay such consequential compensation or equivalent payments as may arise as a consequence of the coming into operation of any agreement or order authorised under sub-section (1) above.

## 2. Reason for Recommendation(s) and Options Considered

- 2.1 There has been a historic desire to complete the above link in the Thames Path in front of 1-5 Bridge View, Ray Mead Road in Maidenhead Riverside Ward. The project is identified in the Council's Rights of Way Improvement Plan as providing a benefit to the network. A site plan is submitted as Appendix A.
- 2.2 The Council's Local Access forum, local Members, the Ramblers, Maidenhead Civic Society, the Open Spaces Society, Natural England and the River Thames Alliance support the project to complete the link.
- 2.3. The Ramblers have committed £14,000 to the project.
- 2.4 Officers propose to negotiate a public path creation agreement with property owners in tandem with the making of a public path creation order to facilitate a timely resolution for this project and increase the chance of success. A recent successful order was achieved by West Berkshire Council along the Thames Path using the same procedure.

Option	Comments
Approve the project and the making of a public path creation order or agreement <b>This is the recommended option</b>	This will finalise the Thames Path in Maidenhead and give an unbroken riverside pathway for residents enjoyment

Reject the project and retain the current arrangements for walkers	The partner organisations will look to continue their applications to attain this at a future date.
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### 3. Key Implications

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Project and Footpath Creation Order authorised	Not authorised by April 2014	Authorised by 1 <sup>st</sup> April 2014	Authorised by 27 <sup>th</sup> March 2014	Authorised by 27 <sup>th</sup> March 2014	1 <sup>st</sup> April 2014
Footpath designed, constructed and opened	Footpath not opened by 30 <sup>th</sup> April 2016	Footpath opened by 30 <sup>th</sup> April 2016	Footpath opened by December 2015	Footpath opened by September 2015	30 <sup>th</sup> April 2016

### 4. Financial Details

#### a) Financial impact on the budget

If it is necessary to make a Public Path Creation Order compensation will be payable to affected landowners under section 28 of the Highways Act 1980. If the route is secured by way of a Public Path Creation Agreement, a negotiated compensation payment may be made to affected landowners. The budget for the project therefore includes a compensation element for the affected property owners.

The District Valuer's confidential report contains the relevant information and is attached at Appendix B (Confidential)

The construction element, plus fees and legal costs is estimated to be in the region of £100k. The legal fees may be significantly less if the land is secured by a public path creation agreement under section 25 of the 1980 Act because once an agreement is reached with the affected landowners as to the use of the land and the amounts equivalent to compensation have been agreed a formal agreement will be drawn up by the Council's solicitor. The legal fees may be higher under the order making process because if objections are received in response to the creation order, it will be necessary that a public inquiry is held.

	Year1 (2014/15)	Year2 (2015/16)	Year3 (2016/17)
	Capital £000	Capital £000	Capital £000
<b>Addition</b>	350k	0	0
<b>Reduction</b>	0	0	0

	Year1 (2014/15)	Year2 (2015/16)	Year3 (2016/17)
	* Revenue £000	Revenue £000	Revenue £000
<b>Addition</b>	5k	0	0
<b>Reduction</b>	0	0	0

The £350k necessary to complete the project comprises £10k in Public Rights of Way s106 contributions, £83k of which could be justifiably reallocated from Public Open Space s106 funds, and £25k from Highways s106 funds. Alongside £17k from the local Participatory Budget and £2,250 from Member contributions.

The East Berks Ramblers have also committed funds of £14k to the project.

Leaving a net capital requirement for £200k from the RBWM capital programme.

Officers will work with other funding agents i.e. Natural England and the Ramblers to seek to obtain further grants to help fund the project.

An annual revenue budget will be required to maintain the Thames Path in Riverside Ward, requiring additional revenue funding of up to £5k per annum.

## **5. Legal Implications**

5.1 Negotiations will need to be entered into with property owners with regard to securing the land required for the new path. The land may be secured either by the Council entering into a public path creation agreement under section 25 of the Highways Act 1980 or if the landowners are unwilling to agree to the project the Council may make a public path creation order under section 26 of the 1980 Act. The negotiations with affected landowners will be undertaken by officers in the Property Services team.

### **5.2 Public Path Creation Agreements**

- Section 25 of the 1980 Act provides that a local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted byway over land in their area. Before entering into a public path creation agreement the authority is required to consult any other local authority in whose area the land concerned is situated. This will include any relevant parish council. An agreement under section 25 shall be on such terms as to payment or otherwise as may be specified in the agreement and may also provide for limitations or conditions affecting the land to be dedicated. In entering into such agreements the authority is under a duty to have regard to the needs of agriculture and forestry and the desirability of conserving flora and fauna and geographical and physiographical features.
- Where a path is dedicated under a public path creation agreement, the authority will be under a duty to take all steps necessary for securing that the footpath is dedicated in accordance with it.
- As soon as may be after the dedication of the footpath the authority is required to give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.

Public path creation agreements are generally more straightforward than creation orders. There is no requirement for statutory notices and no procedures for public objections. Consultation is only compulsory with other local authorities if applicable. After conclusion of negotiations an agreement is drawn up between the affected landowners and the authority.

### 5.3 Public Path Creation Orders

- Section 26 of the 1980 Act provides that where it appears to a local authority that there is a need for a footpath, bridleway or a restricted byway over land in their area and they are satisfied that having regard to;
  - (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
  - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.

- Before exercising its power under section 26 the local authority is required to consult any other local authorities in whose area the land concerned is situated and the Secretary of State and/or the local authority shall have regard to any material provisions of a ROWIP in determining whether or not to confirm the order.
- Before making a public path creation order the authority is required to have due regard to the needs of agriculture and forestry and the desirability of conserving flora and fauna and geographical and physiographical features. In this case it is considered that creation of the footpath would have no impact on agriculture, forestry, flora and fauna or geographical or physiographical features.
- A public path creation order must be made in the prescribed format and notice of making must be displayed in the press, on site and at the Council offices. Notice of the order and the order must be served on owners, occupiers and lessees of all affected land and to other prescribed bodies.
- If no objections are received in the time period advertised, the authority may confirm the order. It will come into effect when the necessary works have been completed and the authority certifies that the path is ready and fit for public use.
- If objections are made and not subsequently withdrawn, the order is referred to the planning inspectorate for confirmation. The planning inspectorate will determine whether a hearing or a public inquiry will be held. The inspector will decide whether or not to confirm the order as it is or with modifications.
- Section 27 of the 1980 Act confers a duty on the authority to carry out the works necessary to physically create the new path. Section 28 confers a duty on the authority to pay compensation when a claim is made and depreciation or damage is shown to exist.
- It is necessary for the panel to be satisfied that the new path will add to the enjoyment or convenience of a substantial section of the public. In this case it is considered that completion of the missing link clearly would add significantly to the enjoyment and convenience of path users, both those using the Thames Path National Trail and local walkers accessing Bridge Gardens. Confirmation of the order must take into consideration the Council's stated intention in the ROWIP in relation to the proposal – The Council's Rights of Way Improvement Plan includes the following proposal: *"Secure a continuation of the Thames Path in Maidenhead*

*beside the river bank from the landing steps opposite Thames Hotel to Bridge Gardens.”*

## 6. Value For Money

The completion of the Thames Path will provide a safe continuance of the pathway. The negotiations with property owners will ensure best value is achieved. The tender for the contract(s) for design and construction will be carried out using RBWM procurement processes to ensure value for money is achieved.

## 7. Sustainability Impact Appraisal

None

## 8. Risk Management

Risks	Uncontrolled Risk	Controls	Controlled Risk
Processes for the path creation delays the opening	Medium	Negotiations alongside the FCO should assist with the timeframes	Low
Weather conditions delay construction of the boardwalk style footpath and fencing	Medium	Planning of construction period and time built in for winter working will reduce risk	Low

## 9. Links to Strategic Objectives

If the recommended option is approved the links to our strategic objectives will be

- Encourage Healthy People and Lifestyles
- Improve the Environment, Economy and Transport
- Deliver Economic Services
- Deliver Effective Services
- Strengthen Partnerships

## 10. Equalities, Human Rights and Community Cohesion

If the project is approved the following principles of the Human Rights Act 1998 will be engaged:

- The First Protocol Article 1 (*Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law*) The Highways Act 1980 provides the legal basis for controlling the use of property in accordance with the general interest. There must be a demonstrable “general interest” for an imposed public right of way creation such as for example a need identified in a ROWIP which is the case in relation to the project. It is intended that the authority will ensure that the interference will be no greater than necessary by way of extensive consultation with affected landowners about mitigation works.

- Schedule 1 Part 1 Article 6 (*In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*) The public path creation order process provides for any person with a valid objection to the order to be heard before an inspector at a hearing or a public inquiry.
- Schedule 1 Part 1 Article 8 (*everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is accordance with the law*) The Highways Act 1980 provides the legal basis for the interference with this right. It is intended that landowners will be fully consulted to ensure that the effect of the creation order on their privacy is minimised.

Section 17 of the Crime and Disorder Act 1998 confers a duty upon the Council to exercise its functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is intended that the design of the route will such that crime and disorder will be minimised by the installation of suitable screening and other security measures and that the affected landowners will be fully consulted in this respect.

#### **11. Staffing/Workforce and Accommodation implications:**

n/a

#### **12. Property and Assets**

This project will increase the Public Rights of Way network as an RBWM asset.

#### **13. Any other implications:**

n/a

#### **14. Consultation**

The Ramblers, Natural England, Maidenhead Civic Society, and the River Thames Alliance have been involved in requesting and progressing this project. Letters of support from the Ramblers, Civic Society, the Open Spaces Society and the Rotary Club of Maidenhead are attached at Appendix C.

Initial contact has been made with all landowners who would potentially be affected by the creation of the new section of footpath. Written comments have been received from the owners of the ground floor offices and the owners/occupiers of numbers 2, 4 and 5 Bridge View (see Appendix C).

#### **15. Timetable for Implementation**

Once approved the Footpath Creation Order or Agreement can be issued, this is likely to take 2 years to complete, however officers believe that with negotiations taking place in the shadow of the FCO and in tandem with it a time reduction could be seen.

## 16. Appendices

Appendix A: Site plan

Appendix B: Compensation estimate from District Valuer

Appendix C: Consultation responses

## 17. Background Information

In the Local Budget Consultation of 2013/14 there were 109 instances of the completion of the Thames Path stated when asked for other desired outcomes from the 1450 respondents, and in 2009 a 1000+ signature petition was received requesting that the Council pursue creation of the footpath.

## 18. Consultation

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Maria Lucas	Head of Legal Services	4/2/14	11/2/14	5
Mark Lampard	Finance partner	12/2/14	12/12/14	4
Cllr John Stretton	Chairman of Rights of Way and Highway Licensing Panel	14/2/14	Briefing 19th Feb	
Cllr Maureen Hunt	Vice-Chair of Rights of Way and Highways Licensing Panel	14/2/14	Briefing 19th Feb	
Ben Smith	Strategic Manager Highways & Transport	14/2/14	Briefing 19th Feb	
<b>External (various)</b>				Appendix C

### Report History

Decision type:	Urgency item?
Key decision	No

Full name of report author(s)	Job title	Full contact no:
Kevin Mist	Head of Leisure Services	01628 796443
Anthony Hurst	Principal Officer – Rights of Way	01628 796180

### Schedule for writing and reviewing report

Stages in the life of the report (not all will apply)	Date to complete
1. Officer writes report ( in consultation with Lead Member)	1/2/2014
2. Report goes for review to head of service or DMT	6/2/2014
3. To specialist departments: eg, legal, finance, HR (in parallel)	3/2/2014
4. To Chairman's briefing	19/2/2014
5. To Panel	4/3/2014