

DRAFT

Report for: Decision
Item Number: 4



Contains Confidential or Exempt Information	Part 1 Excluding Appendix C which is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972
Title	Thames Path Missing Link
Responsible Officer(s)	Anthony Hurst, Principal Rights of Way Officer Kevin Mist, Head of Leisure Services
Contact officer, job title and phone number	Anthony Hurst, Principal Officer, Rights of Way 01628 796180
For Consideration By	Rights of Way and Highway Licensing Panel
Date to be Considered	5 th June 2014
Implementation Date if Not Called In	2014/15
Affected Wards	Riverside
Keywords/Index	Thames, River, Path, Maidenhead, Riverside

Report Summary

This report seeks approval to the making of a Public Path Creation Agreement to provide a footway along the road frontage of properties at Bridge View, Ray Mead Road, Maidenhead, whilst retaining the existing resolution made by the Panel on 4th March to authorise the making of a Public Path Creation Order for a riverside footpath, in the event that agreement cannot be reached on the roadside route.

The roadside footway would provide an improved alignment for the Thames Path National Trail, as well as improved pedestrian access to Bridge Gardens, by filling a missing link the roadside footway.

This report follows a recommendation from Cabinet which considered this matter at it's meeting on 29th May, and resolved that:

- i) Authority be delegated to the Lead Member for Finance in consultation with the Director of Adult and Community Services, Head of Leisure Services and Lead Member for Leisure & Libraries, to agree an appropriate budget for delivery of an agreed proposal.
- ii) It be recommended to the Rights of Way and Highway Licensing Panel that a Public Path Agreement in relation to Option 2 be pursued, alongside retaining the existing resolution of the Panel taken on 4 March 2014.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
Improved pedestrian access on this section of the Thames Path, and improved access to Bridge Gardens.	May 2015

1. Details of Recommendations

RECOMMENDATION:

(1) That the Panel authorises the Head of Legal Services to make a Public Path Creation Agreement under section 25 of the Highways Act 1980 for the route shown on the Plan at Annexe 1.

2. Reason for Recommendation(s) and Options Considered

2.1 At its meeting on 4th March 2014, the Panel considered a proposal to make a Public Path Creation Agreement or Public Path Creation Order, to create a new section of riverside footpath along the river frontage of properties at Bridge View.

2.3. The Panel resolved as follows:

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:

(2) 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;

(3) 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”.

2.4 Following the Panel’s resolution, further discussions were held with the affected landowners and residents who put forward a suggestion that a new section of roadside footway could be created along the road frontage of Bridge View, as an alternative to the proposed new riverside footpath. A report was therefore submitted to the Cabinet on 29th May, setting out 3 options: the riverside footpath as proposed by the Panel; a roadside footway, and a third option of a river pontoon.

2.5 The draft minutes of the Cabinet meeting are set out below:

Cabinet considered options to complete the Thames Path National Trail missing link in front of 1-5 Bridge View, Ray Mead Road, Maidenhead.

Cabinet was addressed by Ms Phillipa Haerderle. Ms Haerderle stated that she was speaking on behalf of the affected property owners at Bridge View. There had never been a riverside path outside the properties; this could be verified by the owner of flat 4 who knew the history back to the 1800s. The property owners had not been aware of any proposals when they purchased their properties. The residents requested the right to peaceful enjoyment of their property, as enshrined in the Human Rights Act. Ms Haerderle commented on the security issues experienced by the neighbouring set of flats, where the path ran along the riverside by their balconies. She also believed that the cost of a riverside route far exceeded the estimate in that it did not reflect the likely legal costs. A riverside route would not be supported by the property owners and would therefore most likely result in a public enquiry. Ms Haerderle commented that the patio areas of the property had flooded earlier in the year which meant any path would be impassable at certain times of the year.

The property owners recognised that the current situation was not ideal, therefore they supported Option 2. They would accept the loss of a small part of their front gardens including parking area. Ms Haerderle highlighted that in a number of places the Thames Path did not stick to the riverbank, including in the borough. A small diversion was therefore not abnormal.

Cabinet was then addressed by Mr David Bailey of the Ramblers' Society. Mr Bailey thanked the Royal Borough for final, after more than 60 years, to agreeing to take forward the project to complete the missing link in the Thames Path. However, he felt that the recommendation in the report should be rejected by the Cabinet and the unanimous decision of the Rights of Way and Highways Licensing Panel reached in March 2014 to recommend a riverside path should be approved. Contrary to what was implied in the current report the only consultation on its recommendation was with the residents of Bridge View. The Ramblers were not only refused any involvement in its preparation but were not even allowed to know what was being discussed.

Mr Bailey asserted that the recommendation made in the report was the wrong solution. A roadside option was wrong for a number of reasons. Firstly, because it was an extremely busy main road (and was going to get even busier in future); but also because the Ramblers, Natural England, the Civic Society, Rotary Club, River Thames Society, Open Spaces Society, the Local Access Forum, the MP, all supported the early completion of the missing link by means of a riverside path. So far as he was aware all of those he had mentioned were, like the Ramblers, excluded from any consultation on the report prior to its publication. Mr Bailey stated that the Ramblers' commitment to making a financial contribution to the cost of the project was dependent solely on a riverside route being adopted. Mr Bailey commented that this was a National Trail (the most heavily used of all such trails in the country) used by thousands of people and visitors from all over the world. The council had the opportunity to make this something of which the Borough could be truly proud. A riverside route would tie in perfectly with the Borough's Sculpture Trail and Maidenhead Bridge Gateway initiatives.

In the report, the option for a riverside path referred to a raised 30m footpath. This would increase the estimated cost substantially, yet was neither necessary nor

desirable. The Ramblers believed that a more detailed and accurate financial and legal comparison of the costs of the two major options would produce a very different conclusion to that suggested in the report. In relation to the roadside option, the idea of sacrificing part of Bridge Gardens (a conservation area) to provide parking for Bridge View residents would cause an outcry. In any case, as there was no legal right to park in front of numbers 1 and 2, nor the offices, because of the obstruction this caused to Definitive Footpath 53, the question of compensating these occupants did not arise. Creation of a riverside path would free-up FP 53 and allow parking to take place legitimately, negating the need to decimate Bridge Gardens. Mr Bailey reminded the Cabinet that the riverside route was an approved project in the Council's Rights of Way Improvement Plan, a requirement on the Council under the CRoW Act, 2000 (Section 60-62). He requested that the Cabinet reject the recommendation in the report and approve Option I.

The Lead Member thanked the two speakers. She commented that the borough had the opportunity to deliver a solution to a long-standing problem. The Thames Path was one of the most popular National Trails. However, this was not an easy problem to solve. In 2009 the council had received a petition signed by 1000 people on the issue. Therefore it was important for the council to come to a conclusion. The petition referred to the safety of walkers, which the council took very seriously. Cabinet noted the resolutions of the Rights of Way and Highway Licensing Panel that met in March 2014, as detailed in paragraph 2.4 of the report.

If option 1 were approved, a Public Path Creation Order would be required. As long as no objections were received, it could go ahead. However the council knew that residents of Bridge View would be in objection and this would therefore lead to lengthy and costly legal proceedings. This would also hold up the chance to solve the highway safety issues. Option 2 (roadside path) would require a Public Path Creation Agreement. Members noted the options detailed on page 37 of the report. The Lead Member highlighted the need to be mindful in the way public money was spent. She suggested the best way forward would be to look at both options 1 and 2. She proposed that the Rights of Way and Highway Licensing Panel be asked to add to their previous decision the option of a Public Path Creation Agreement to achieve option 2.

In response to comments from the public speakers, the Lead Member commented that the right to peaceful enjoyment of one's property was something she would wish for all residents. The security issues associated with neighbouring flats would require discussions with the police. The parking issues also raised would be up to the police to enforce. Flooding issues would need to be seriously looked at if either options 1 or 3 were pursued.

The Lead Member for Finance commented that he and his fellow Ward Councillors had wished for a satisfactory resolution for some time. They had all donated funds from their Member Budgets to the issue. However, he recognised that a decision on the most appropriate option was a difficult one. Ideally the path would be along the riverside, however he was concerned about the cost implications and the idea of the state imposing powers over a private householder's interest. The most important issue was highway safety. He felt it was appropriate to keep the two horses running and supported the Lead Member's proposal to ask the Rights of Way and Highway Licensing Panel to look at both options.

Councillor Claire Stretton, Vice Chairman of the Leisure, Culture & Libraries Overview & Scrutiny Panel, reported on the discussions of the Panel that had taken

place the previous evening. Councillor Ms Stretton commented that Members had been dissatisfied with the level of consultation, however she had since received an explanation of the process. She was supportive of the idea that the Rights of Way and Highway Licensing Panel be asked to look at both options, which would trigger a full consultation. The O&S Panel would be pleased to ensure any designs were compatible with the Gateway Project and Sculpture Trail.

Councillor Saunders commented that he felt it was important to bring the issue to a head even if it were decided, once and for all, that nothing would be done. He had been delighted that the Rights of Way and Highway Licensing Panel had determined, subject to Cabinet approval of the budget, for a definitive option for a riverside route. However, Cabinet had a responsibility to ensure residents' funds were used in a due and proper manner. The final decision on any compensation level would be determined by the judicial process; at that stage the council would not be able to withdraw from the process. It was therefore right that both options stayed in play and a full consultation took place. An important trade would be made between a substantial amount of money and an uncertain timetable for a riverside option, and a modest amount of money and a more certain timetable for the roadside option. The issue required debate to ensure an unambiguous majority view.

The Chairman commented that it was worthy of note that this issue had been around for 60 years. The highways safety issues required minimum delay in decision making. It was also important that the costs to the taxpayer be taken into account. Putting the safety of walkers first would be in line with the petition received on 24 February 2009. He believed that this would be delivered if either option 1 or 2 were pursued. In relation to the Council's Rights of Way Improvement Plan, he commented that there were a number of ambitious schemes included.

The Lead Member explained that if the Rights of Way and Highway Licensing Panel agreed to pursue both options, the lead officer would contact residents to discuss a Public Path Creation Agreement. A documented agreement would then be brought to Members for budget approval. It was noted that the consultation would relate to the loss of open space if land at Bridge Gardens was provided to residents of Bridge View for parking. If option 2 were pursued, a notice would be placed in the local newspaper for two consecutive weeks. Anyone could respond to this part of the process.

RESOLVED UNANIMOUSLY: That:

- i) Authority be delegated to the Lead Member for Finance in consultation with the Director of Adult and Community Services, Head of Leisure Services and Lead Member for Leisure & Libraries, to agree an appropriate budget for delivery of an agreed proposal.**
- ii) It be recommended to the Rights of Way and Highway Licensing Panel that a Public Path Agreement in relation to Option 2 be pursued, alongside retaining the existing resolution of the Panel taken on 4 March 2014.**

A copy of the Cabinet report and associated Appendices are attached at Annexe 2.

Option	Comments
Authorise the making of a public path creation agreement to create a roadside footway.	This would provide Improved pedestrian access on this section of the Thames Path, and improved access to Bridge Gardens.

This would involve extending and widening the existing public footpath (Maidenhead FP 53) which already runs along part of the frontage of Bridge View, as shown on the plan at Annexe 1.	
Reject the project and retain the current arrangements for walkers	The partner organisations will continue to seek an improved route for walkers.

3. Key Implications

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Roadside footway designed, constructed and opened	Footway not opened by June 2015	Opened by May 2015	Opened by April 2015	Opened by March 2015	May 2015

4. Financial Details

Financial impact on the budget

If it is necessary to make a Public Path Creation Order for a riverside footpath compensation will be payable to affected landowners under section 28 of the Highways Act 1980. If the roadside 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 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.

Build costs of a public car park and the necessary pavement works are estimated at £55k, landscaping in the park to lessen the impact of the car park £20k and works to create frontage to the properties £30k (total £105k). Compensations are estimated in appendix C (Confidential).

	Year1 (2014/15)	Year2 (2015/16)	Year3 (2016/17)
	Capital £000	Capital £000	Capital £000

Addition	£185K (estimate)	0	0
Reduction	0	0	0

	Year1 (2014/15)	Year2 (2015/16)	Year3 (2016/17)
	* Revenue £000	Revenue £000	Revenue £000
Addition	2k (estimate)	0	0
Reduction	0	0	0

5. Legal Implications

5.1 Negotiations will need to be entered into with property owners with regard to the additional land required for the new path. The land may be secured by the Council entering into a public path creation agreement under section 25 of the Highways Act 1980. 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. Once the new footpath has been created, notice of the Creation Agreement is then published in the local press to advise the public that the Agreement has come into effect.

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 Rights of Way Improvement Plan (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.
 - 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.

6. Value For Money

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
Process for a Path Creation Agreement delays the opening of the footway	Medium	Negotiations for a Path Creation Agreement should assist with the timeframes	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 Society have expressed support for a riverside footpath. Letters from the River Thames Society, Ramblers, Maidenhead Civic Society, the Open Spaces Society and the Rotary Club of Maidenhead are attached at Appendix E to the Cabinet report.

Written comments from affected landowners/residents are also attached at Appendix E to the Cabinet report.

A further report received from the Ramblers setting out comments on the riverside and roadside options is attached at Appendix F.

15. Timetable for Implementation

Depending on whether the footpath is created through a Path Creation Agreement (roadside route) or a Path Creation Order (riverside route), the process could take between 9-12 months or 2-3 years .

16. Appendices

Annexe 1: Site plan

Annexe 2: copy of 29th May 2014 Cabinet report (with Appendices)

Annexe 3: Further comments from the Ramblers

17. Consultation

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Maria Lucas/SLS	Head of Legal Services		Briefing 20 th May	
Cllr John Stretton	Chairman of Rights of Way and Highway Licensing Panel		Briefing 20 th May	
Ben Smith	Strategic Manager Highways & Transport		Briefing 20 th May	
External (various)				Appendix E

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)	19/05/14
2. Report goes for review to head of service or DMT	19/05/14
3. To specialist departments: eg, legal, finance, HR (in parallel)	19/05/14
4. To Chairman's briefing	20/05/14
5. To Panel	05/06/14