

8 November 2017

Wards: All

Pathways through West Park via KCom Stadium

Report of the Streetscene City manager Andy Burton

This item is not exempt  
Therefore exempt reasons are not applicable

This is a Non-Key Decision

1. Purpose of the Report and Summary

- 1.1 To advise on the current pedestrian access arrangements between Argyle Street and Walton Street through West Park that crosses land under a lease between the Council and Superstadium Management Company Ltd (“SMC”).
- 1.2 Provide options for consultation as to how appropriate pedestrian and cycle access can be established over this route.

2. Recommendations

- 2.1 To initiate consultation upon alternate options that would facilitate full pedestrian and cycle access being restored between Argyle Street and Walton Street through West Park.
- 2.2 That within such consultation to consider an order being made under S. 26 Highways Act 1980 by the Town Clerk in consultation with the City Manager Major Projects and Infrastructure and the City Manager for Property and Assets to establish a Restricted Byway connecting Argyle St to Walton Street through West Park as shown for indicative purposes only on the plan at Appendix A.
- 2.3 To advise the Cabinet of the consultation to enable it to respond to the same including considering making provision for any financial consequences which may arise from the making of an order pursuant to s26 of the Highways Act 1980.

- 2.4 To include within the consultation, the Chief Constable and the Regional Anti-Terrorism Unit of the Constabulary, in particular to identify any limitations or restrictions that could be imposed upon any statutory order or permissive route.
- 2.5 To request that a further report be brought back to the Area Committee with the outcome of such initial consultation together with the consideration of any financial consequences as may arise.

### 3. Reasons for Recommendations

- 3.1 The footpath / cycle track route from Argyle St to Walton Street through West Park via the land subject to the Council's lease to Superstadium Management Company Ltd (SMC) has been established and in continuous use in for approximately 15 years and formed part of the original proposals approved by Planning Committee. The route is frequented regularly by commuters avoiding busy trafficked routes and not just those accessing the facilities at the Stadium, West Park and the Fairground. As such it appears desirable in the wider public interest that a public safe route through the area should be made available and accessible at all times.
- 3.2 The retention of such a route is consistent with Planning Policies within the draft Local Plan and supports the Policy 36 commitments to proposed or existing key footpath and cycle tracks being safeguarded.
- 3.3 The initiation of consultation ensures that such proposals as may be progressed to determination will be informed by all relevant considerations including the views of users and stakeholders and how the financial consequences can be managed.

### 4. Impact on other Executive Committees (including Area Committees)

- 4.1 The report has an impact on the Executive of the Council in that there may be financial consequences arising from the potential establishment of a formal right of way.

### 5. Background

- 5.1 The Stadium was originally constructed with access from Walton Street and Anlaby Road through West Park and Argyle Street via the link footpath that was purposely built to serve the Stadium Complex. The access required was determined as being appropriate for the use of the stadium and wider West Park area through the statutory planning process, however the planning approval granted did not establish any minimum access requirements once constructed and as such changes to the access arrangements are possible without breaching any

planning conditions.

- 5.2 The KCOM Stadium is managed via a 50 year lease that commenced in 2002, the areas covered by the lease are shown on appendix A. This lease also reserves certain rights to the Council but does not reserve general public rights of access.
- 5.3 The route from Argyle Street to Walton Street through West Park is now well established and has been regularly used for approximately 15 years; in addition this route has been publicised as a recognised cycle route within the city. This route serves both regular commuters and leisure users, not just those wishing to access the facilities provided within the Stadium, West Park and Walton Street car park and Fairground sites.
- 5.4 As the result of recent terrorist incidents the Police Counter Terrorism officers have highlighted concerns over the access to stadia that are seen as high profile targets and as a result the SMC have installed a gate, which they control, that removes unobstructed access via the Argyle Street Link Footpath and disadvantages those pedestrians and cyclists who frequent this on a daily basis for purposes unrelated to use of the stadium.
- 5.5 Initial consultation with the Police suggests that security concerns are capable of being managed by a limitation upon the use of the pathway overnight in a manner that is consistent with the use of the footpath over the last 15 years.

## 6. Issues for Consideration

- 6.1 Initial requests to ensure that the new gate was only closed when the Stadium, Park and Fairground are operational have only achieved a temporary solution and the SMC have confirmed their intention to only have the gate open during events or match days at the stadium.
- 6.2 The Council could consider the creation of a public right of way (PROW); these are created, in general, where a local authority believes it is in the public interest to do so or as the result of a request from members of the public who have established a route and used it for a prolonged period, typically in excess of 20 years. The creation of such PROWs should be supported by the City's Rights of Way Improvement Plan and Local Transport Plan. Consultation, including evidence of use and demand, will be instrumental in showing that the statutory criteria set out in the Highways Act 1980 are met.

- 6.3 Should the Council decide to progress the creation of a PROW this would have to be by way of an order in the prescribed form, advertised by notice in the press and on street. This allows for objections to be raised, which would then be aired at a Public Inquiry, or possibly by written representations to the Planning Inspectorate. An inspector appointed by the Planning Inspectorate would then make a report with recommendations to the Secretary of State. There is no guarantee that the outcome would be confirmation of the creation order.
- 6.4 Consultation involving the Police Anti-terrorism officers and SMC may open up other options that can be reported back to Members. The suggestion of limitations on the availability of a footpath may compromise the ability to meet statutory criteria for establishment of a PROW, but a permissive route could be considered.

## 7. Options and Risk Assessment

- 7.1 Option 1  
Establish a Public Right of Way (Restricted Byway) that connects Argyle St to Walton Street through West Park
- 7.2 Option 2  
Establish a permissive route in conjunction with SMC and the Police
- Option 3  
Take no further action to facilitate pedestrian and cycle access to link Argyle Street with West Park.

All of these options should be explored in consultation.

## 8. Risk Assessment

- 8.1 Option 1 has the risk of a financial claim due to the entitlement to compensation that the leaseholder will have as a result of the creation of a right of way. In addition if objections to the creation of a PROW are lodged, there can be no certainty that the Inspector's report would recommend the creation of a PROW.

Option 2 may not have statutory protection and would be reliant upon the continued co-operation and goodwill of the respective parties to ensure access

Option 3 represents a reputational risk for the City Council as the public that have historically been using this route will expect this to be in the Council's control. However, concerns over public safety that have been raised by the Police Counter Terrorism officers have led to SMC introducing the lockable gate and this currently

does not breach either the terms of the lease nor planning consent. Its toleration therefore does not place the Council at risk of acting unlawfully, but could draw criticism from users

9. Consultation

9.1 Consultation has been undertaken with City Planning, City Property and Assets, Sustainable Travel officer and the City's Sports Ground Safety Officer. This report recommends more extensive consultation with users and stakeholders.

10. Comments of the Town Clerk (Monitoring Officer)

10.1 As is noted in the body of the report, SMC has not acted unlawfully or in breach of either the terms of its lease or planning consent by erecting the lockable gate. However, its presence goes against the intention of all parties, including SMC, when the Stadium was constructed and opened, in that the community stadium should be freely accessible at all times by those approaching from any direction. Clearly, detailed consultation is required before a satisfactory, binding solution can be identified and this may ultimately lead to establishment of a public right of way, which could lead to implications for the Council in terms of either statutory or negotiated compensation.

11. Comments of the Section 151 Officer

11.1 The recommendations are supported as the proposals for detailed consultation provide an essential step towards finding an appropriate solution. Any financial consequences arising from the consultation will need to be considered in the light of the Council's Medium Term Financial Plan.

12. Comments of HR City Manager and compliance with the Equality Duty

12.1 There are no staffing issues arising for the Council. There will need to be consideration of how the gate being in place has an impact on those with a protected characteristic, for example are those with a disability more disadvantaged by the gate being in place.

13. Comments of Overview and Scrutiny

13.1 This report has not been subject to scrutiny. (Ref. Sc4429)

14. Comments of the Portfolio Holder for Economic Investment, regeneration and Planning

14.1 I support the proposal to undertake the required consultation relating to pedestrian and cycle access arrangements between Argyle Street and West Park. Early consultation with the Chief Constable and the Police Counter Terrorism officers on a formal basis, as referred to in section 5.5, would seem to me to be the vital first step to determining the best way to proceed.

If the security concerns can be managed such that access to the pathway can be maintained for most of the time then it should be possible to come to a workable and acceptable solution to meet the needs of both the public and the SMC. This consultation should be initiated as a matter of urgency, ideally to remove the need to progress recommendation 2.2 above.

Richard Townend

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Officer Interests: None

Background Documents: - Lease of the Stadium, Anlaby Road, Kingston upon Hull

## Implications Matrix

**This section must be completed and you must ensure that you have fully considered all potential implications**

This matrix provides a simple check list for the things you need to have considered within your report

If there are no implications please state

I have informed and sought advice from HR, Legal, Finance, Overview and Scrutiny and the Climate Change Advisor and any other key stakeholders i.e. Portfolio Holder, relevant Ward Members etc prior to submitting this report for official comments	Yes
I have considered whether this report requests a decision that is outside the Budget and Policy Framework approved by Council	Yes
Value for money considerations have been accounted for within the report	Yes
The report is approved by the relevant City Manager	Yes
I have included any procurement/commercial issues/implications within the report	Yes
I have considered the potential media interest in this report and liaised with the Media Team to ensure that they are briefed to respond to media interest.	Yes
I have included any equalities and diversity implications within the report and where necessary I have completed an Equalities Impact Assessment and the outcomes are included within the report	Yes
Any Health and Safety implications are included within the report	Yes
Any human rights implications are included within the report	Yes
I have included any community safety implications and paid regard to Section 17 of the Crime and Disorder Act within the report	Yes
I have liaised with the Climate Change Advisor and any environmental and climate change issues/sustainability implications are	Yes

included within the report	
I have included information about how this report contributes to the City Plan/ Area priorities within the report	Yes