

Cabinet Member for Public Services

14th January 2016

Name of Cabinet Member:

Councillor R Lancaster

Director Approving Submission of the report:

Executive Director of Place

Ward(s) affected:

Wainbody

Title:

Petition – To Retain the Bollard Protecting the Pathway Between Fosseway Road and Anchorway Road, Finham

Is this a key decision?

No

Executive Summary:

In December 2012, the resident of 6a Fosseway Road was granted planning permission for the creation of a new vehicular entrance into his property off an adjacent pathway linking Fosseway Road with Anchorway Road. The new entrance was subsequently built and came into use.

Whilst the deeds for No. 6a grant private access rights over the pathway, it cannot be demonstrated that they specifically grant access by motor vehicle. Therefore, in November 2014, following the receipt of complaints from other residents, the Council installed a bollard on the pathway preventing vehicles from using it to access the property. The resident successfully appealed against this decision, which was communicated to residents in June 2015, including plans to move the bollard.

A petition with 28 signatures was subsequently presented by Councillor Crookes to request that the bollard be retained in its current position to protect children from any potential danger posed by vehicles which may wish to use the pathway.

In accordance with the City Council's procedure for dealing with petitions, those relating to road safety are heard by the Cabinet Member for Public Services.

Recommendations:

The Cabinet Member for Public Services is recommended to:

1. Approve the relocation of the bollard to enable the resident of No. 6a Fosseway Road to use the short section of pathway to access the property from Fosseway Road, subject to, the resident first obtaining private vehicular access rights from the land owner and also to the resident agreeing to fund any necessary improvements to the construction of the pathway surface to enable it to bear vehicles.

2. As an interim measure (pending the resident of No 6a Fosseway Road meeting the conditions identified in recommendation 1. above), approve that bollards or similar features are placed at the ends of the pathway adjacent to Fosseway Road to prevent any vehicular encroachment on it.
3. Endorse that appropriate action is taken to address unauthorised vehicular crossings in the adjoining area.

List of Appendices included:

Appendix A – Location plan

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title:

Petition – To Retain the Bollard Protecting the Pathway Between Fosseway Road and Anchorway Road, Finham

1. Context (or background)

- 1.1 A petition with 28 signatures has been presented by Councillor Crookes. The petition states *“The undersigned wish to retain the bollard protecting the pathway between 6 & 7 Fosseway Road and 137 & 139 Anchorway Road in its current position (known to the Council as RA 406). The undersigned wish to retain this bollard protecting pathway RA 406 in its current position for the specific reason of protecting children from vehicular danger using the pathway to access local schools”*. The petition was in response to plans to relocate the bollard to enable the resident of 6a Fosseway Road to use the pathway to gain vehicular access to his property. A location plan can be found in Appendix A.
- 1.2 To provide some context, in December 2012 the resident of 6a Fosseway Road was successfully granted planning permission, on appeal by the Planning Inspector, for the creation of a new vehicular entrance into his property off the adjacent pathway. The new entrance including gates was built, but unfortunately for the resident, whilst the deeds for the property did grant access rights over the pathway it cannot be demonstrated that they specifically permit access by motor vehicle.
- 1.3 In November 2014, following complaints from residents in connection with the use of the new vehicular entrance, the Council installed a bollard on the pathway between the end of Fosseway Road and the entrance to No. 6a (see location in Appendix A) to prevent vehicles from using it to access and egress the property. The resident subsequently appealed against this decision and a review was undertaken.
- 1.4 The review took into account a range of factors including safety, the access design and layout, the suitability of any alternative access arrangements, the mobility impairment of the resident concerned and the equitability of the situation. Also taken into account was the Appeal Decision by the Planning Inspectorate. The outcome of the review was to recommend moving the bollard a short distance further up the pathway subject to various conditions. This was communicated to residents by way of a letter in June 2015. The above petition then followed in July 2015.
- 1.5 In September 2015, a street meeting was held with residents on Fosseway Road to discuss the concerns further in order to fully appreciate and understand the situation from all perspectives.

2. Options considered and recommended proposal

- 2.1 In assessing the suitability of the various options, the main factors that have been considered are as follows:

- (i) Safety

It is clear, not only from the petition but also following the street meeting, that there is a strong perception amongst some residents that vehicles using the pathway to access No. 6a would pose a real danger to pedestrians. In assessing the likelihood of this risk the physical layout has been assessed.

In terms of the layout of the pathway, the distance between the turning head at the end of Fosseyway Road and the vehicular entrance to No. 6a is only 15 – 20 metres in length, so vehicle speeds would be expected to be very low, perhaps in the region of 5-10 mph. Whilst the pathway is only around 3.0 metres wide and therefore not ideal, the narrowness will also help to keep vehicle speeds low.

In addition, the section of pathway concerned is straight, so forward visibility is good giving both drivers and pedestrians' opportunity to see each other. It also has a system of street lighting to provide illumination during the hours of darkness. In relation to the pathway, the Planning Inspectorate in his decision notice of December 2012 concluded that *"the length of footway affected is limited, to the effect that it would be no great inconvenience for pedestrians or cyclists to step aside or drivers to wait whilst they passed this point"*.

In terms of the design of the vehicular entrance off the pathway into No. 6a, it includes a generous visibility splay, so visibility between drivers and pedestrians when a vehicle was entering or leaving the property would be acceptable in design terms. On this point, the Planning Inspectorate concluded that the *"way the access has been constructed with the gates and fence set back, allows for good inter-visibility between drivers using the access and users of the passageway"*.

At the street meeting safety issues were also raised about the use of unauthorised vehicle crossings in and around Fosseyway Road and how this could impact on pedestrian safety. The Council has suitable powers under the Highways Act 1980 to address this and which can be considered in conjunction with the bollard.

(ii) Condition of pathway

The pathway is adopted highway so is maintainable at public expense by the City Council. An inspection of the pathway concluded that there were no existing intervention level defects and that it was safe for use on foot.

Although the pathway was not designed for use by vehicular traffic, this does not mean that some limited short term use would cause noticeable damage. However, any long term regular vehicular use is likely to lead to potholes and other defects occurring which would require intervention. If long term vehicular use was anticipated it would be necessary to make improvements to the construction of the pathway surface to enable it to bear vehicles.

(iii) Vehicular access rights

Whilst the deeds to No. 6a Fosseyway Road grant private rights of access over the pathway, it cannot be demonstrated that they grant private vehicular access rights. In order to permit vehicular access rights over the pathway and therefore to allow legal entitlement of access, the expressed permission of the land owner is required.

Whilst the surface of the pathway is adopted and maintained by the Council, the Council do not own the land and sub-soil beneath it. Records indicate that the land owner is a private trust.

(iv) Equality

In assessing options it is also important to consider the impact of fairness and equality. It is evident from site observations that No. 6a is not the only property on Fosseyway Road that uses the pathway to drive and in some cases park a vehicle on.

The Planning Inspectorate commented in his decision notice that access to an adjoining garage of another property on Fosseway Road “*also appears to necessitate traversing a section of the footway and the additional stretch required to access the appeal property is negligible in my view*”.

Another factor to consider here are the disabilities that the resident of No. 6a has which impair his mobility. An alternative access arrangement is available via the access at the rear of Daleway Road, which may be used but it is clear from site observations that this route is poor and not as direct and convenient as the route using the pathway would provide.

2.2 Given the above factors, the main options are:

(i) Do nothing

In light of the concerns expressed from all sides, doing nothing would not satisfactorily address the matter and is therefore not considered a viable option.

(ii) Relocate the bollard to permit vehicular access to No. 6a

This would satisfy some of the above factors and could be a viable option, although it would not address the concerns of the petitioners. However, given the assessment of the likely safety risks as outlined above any risks are considered to be minimal and therefore moving the bollard a short distance further up the pathway to enable the resident of No. 6a to access his property could be considered. This would also be consistent with the conclusions of the Planning Inspectorate in his decision notice who stated “*I cannot accept that the provision of the access is likely to create any appreciable risk of conflict with or inconvenience to other users of the footway*”. It is also worth noting that, where private vehicular access rights are in place, vehicles using pathways to access adjoining properties, whilst not common, is certainly not unique.

Before this option could be considered however, the written permission of the land owner would be required first as a pre-condition as only the land owner can legally permit access rights by motor vehicle over a footpath. In addition, a further assessment of the likely long-term maintenance implications and associated costs would also be required and it is recommended that the owner of No. 6a Fosseway Road pay for any necessary improvements to the construction of the pathway surface to enable it to bear vehicles, to ensure that any future costs do not fall on the public purse.

(iii) Relocate the bollard to prevent any motor vehicles from using the pathway

This would also satisfy some of the above factors and could be a viable option. It would work by placing a series of bollards or other features across the ends of the pathway as it joins Fosseway Road to physically prevent any motor vehicle from driving or parking on any part of the pathway. It would satisfy the safety concerns expressed in the petition and avoid any possible future maintenance issues. In conjunction with these measures the additional concerns around use of unauthorised vehicle crossings in the vicinity could also be addressed through appropriate action.

This option would also be equitable in terms of addressing any perceived unfairness in the current arrangements as it would be consistent and apply to all. It would not though improve the access arrangements to No. 6a.

- 2.3 The recommended way forward is to consider a combination of options (ii) and (iii). In effect this would involve relocation of the bollard to enable the resident of No. 6a to use the short section of pathway to access the property on the condition that vehicular access rights to use the land are obtained first from the land owner. As there is no certainty as to if and when this permission would be granted, as a suitable interim measure it is recommended that bollards or similar features are placed at the end of the pathway to prevent any vehicular encroachment and in addition, that appropriate action is taken to address unauthorised vehicular crossings in the adjoining area.

3. Results of consultation undertaken

- 3.1 A street meeting was held with residents in September 2015 to discuss the concerns and possible solutions.

4. Timetable for implementing this decision

- 4.1 If the recommendations are approved, they will be enacted within a three month time period or as soon as practicable afterwards.

5. Comments from Executive Director, Resources

5.1 Financial implications

If the recommendation is approved any associated costs will be funded from the Highways and Integrated Transport Capital Programme.

5.2 Legal implications

The key issue in this case is that the resident of No. 6a cannot currently demonstrate that he has a private right to take vehicles from his land via the footpath to the carriageway. If he had such a right then he would have 'lawful authority' for driving over (or along) the footpath and would not be committing the offence under Section 34 Road Traffic Act 1988.

The highway authority is not empowered to allow private right of access of a highway unless it is the owner of the sub soil. Although the footpath is adopted highway and so maintained by the City Council as highway authority, it does not own the sub-soil. Only the landowner therefore can grant this right.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The recommendations, if approved, will support the Council's priority to improve the quality of life for Coventry people, in particular, protecting the most vulnerable.

6.2 How is risk being managed?

The safety concerns raised in the petition have been considered as part of the recommendations outlined in the report.

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

Whilst no formal equalities impact assessment has been carried out, there are a number of equalities issues that are highlighted in the report and have been taken into account when considering the report recommendations.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None

Report author(s)

Name and job title:

Paul Boulton
Head of Traffic and Transportation

Directorate:

Place

Tel and email contact:

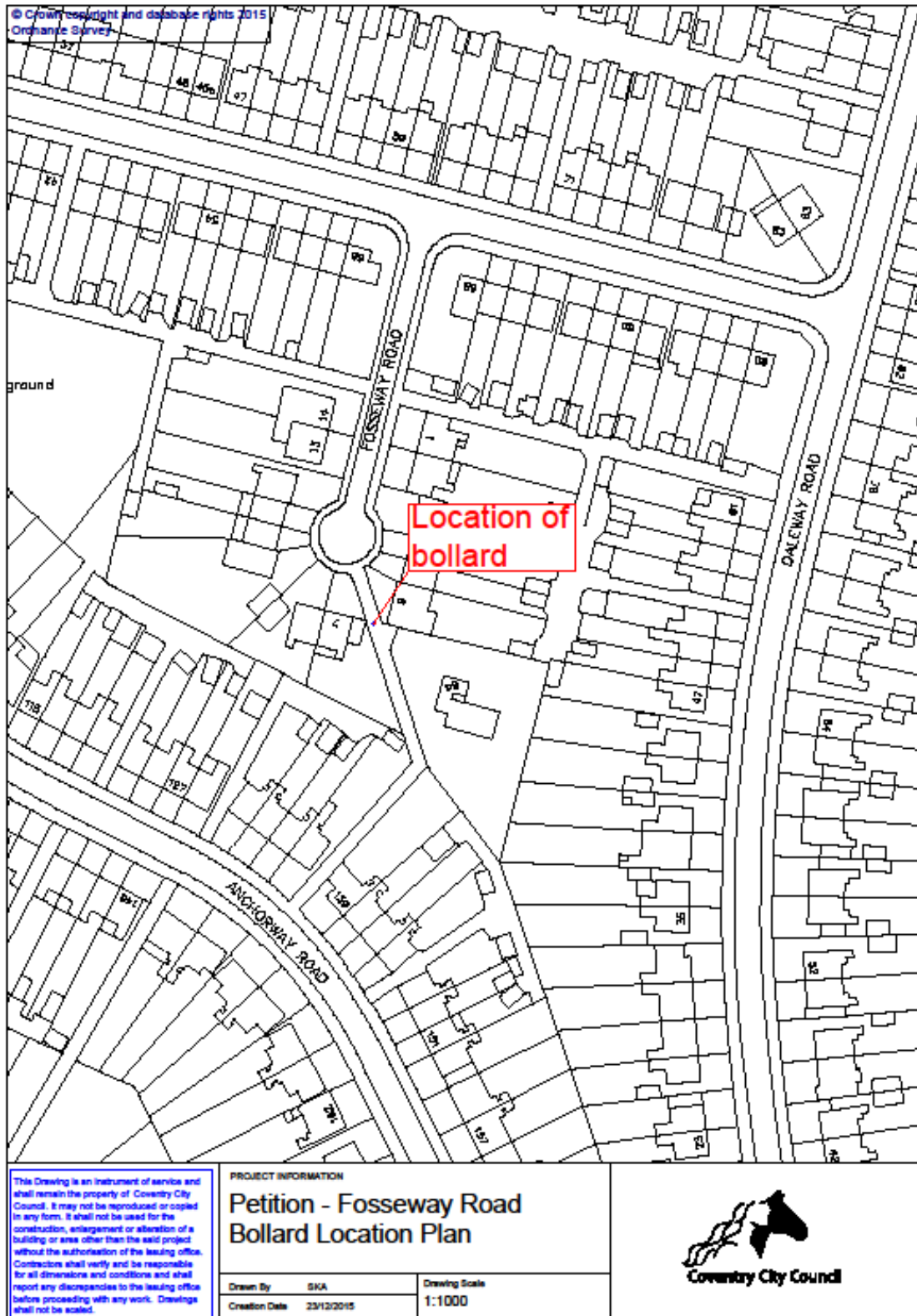
Tel: 024 7683 3479
E-mail: Paul.Boulton@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Colin Knight	Assistant Director (Planning, Transport and Highways)	Place	23.12.15	23.12.15
Jas Bilen	Human Resources Manager	Resources	23.12.15	24.12.15
Liz Knight	Governance Services Officer	Resources	23.12.15	04.01.16
Names of approvers: (officers and Members)				
Graham Clark	Lead Accountant	Resources	23.12.15	24.12.15
David Joy	Solicitor, Legal Services	Resources	23.12.15	05.01.16
Councillor R Lancaster	Cabinet Member for Public Services	-	23.12.15	04.01.16

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Appendix A – Location Plan



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PROJECT INFORMATION	
Petition - Fosseway Road Bollard Location Plan	
Drawn By: SGA	Drawing Scale: 1:1000
Creation Date: 23/12/2015	

