

ANGUS COUNCIL

ROADS COMMITTEE

ADDITION TO THE LIST OF PUBLIC ROADS
FOOTPATH BETWEEN VICTORIA BRIDGE AND
NEWHAME ROAD, MONTROSE

REPORT BY THE DIRECTOR OF ROADS

ABSTRACT

This report recommends that the unadopted length of footpath between Victoria Bridge and Newhame Road, Borrowfield, Montrose be added to the List of Public Roads.

1 RECOMMENDATIONS

It is recommended that the Committee agree:-

- (i) that the footpath defined in the attached Schedule be formally added to the List of Public Roads in accordance with Section 18 of the Roads (Scotland) Act 1984;
- (ii) that an Order be promoted to re-determine part of the footpath as cycle track in accordance with Section 152(2) of the Roads (Scotland) Act 1984.

2 DETAILS

The footpath in question runs between Newhame Road and the previously adopted section of footpath/cycle track north west of Victoria Bridge, Montrose and it forms part of an important pedestrian/cycling link between the residential area of Borrowfield and Montrose Academy, Glaxo and the Leisure Centre to the south.

A 1.8m wide footpath was constructed along this route at the time of the original housing development which was built as a Council-owned housing scheme in 1974/75.

In 1998 Angus Council (per the Roads Department) constructed a 1.2m wide strip alongside the existing 1.8m wide footpath to form a 3.0m wide cycle track/footpath. This work was carried out on the understanding that the original footpath was owned by the Council and maintained by the Housing Department (albeit not adopted and listed on the List of Public Roads).

However, following a complaint to the Ombudsman it was discovered that, as and when individual houses had been sold off under the "Right to Buy" scheme, shared ownership of the path had been included in the terms of the sale. The original footpath was therefore in fact jointly owned by the Council and the former tenants

who had bought their homes. The unadoped status of the footpath now became legally very significant because the intention had been to divide the 3.0m width of the newly widened path into segregated halves to create a 1.5m wide cycle track alongside a 1.5m wide footpath. It was therefore intended to re-determine as cycle track the 0.3m width of the original footpath which would lie within the “cycle track half” of the path. However the Council only has powers under Section (1) of the Roads (Scotland) Act 1984 to determine the means by which the public have right of passage over a road which is entered on its List of Public Roads (ie an adopted road).

The Council was therefore obliged not to proceed with its plan to create a segregated footpath/cycle track at that time. Instead it was necessary to investigate the possible adoption of the original 1.8m wide footpath.

The procedures for adoption of footpaths are more complicated than the procedures for the adoption of other roads and they are laid down under Section 18 of the Roads (Scotland) Act 1984. These procedures include a requirement to “take all reasonable steps to ascertain the identity of every owner of the land on which the footpath is constructed and to have obtained the consent of a majority of those owners whose identities they have ascertained” to enter the footpath on their list of public roads.

Every owner of land associated with the footpath has now been consulted and the required majority of owners are in favour of the adoption.

The Council as local roads authority can therefore now proceed to add the original 1.8m wide footway to its list of public roads. It will then be possible to proceed with the promotion of the Order necessary to re-determine part of its width (0.3m) as cycle track.

3 FINANCIAL IMPLICATIONS

The revenue implications in respect of routine maintenance for the additional footpath will amount to £469 per annum, at current rates. This amount will require to be contained in future years’ Revenue Budgets.

4 HUMAN RIGHTS IMPLICATIONS

The recommendations in this report have potential implications for the owners of the land on which the footpath is constructed in terms of alleged interference with peaceful enjoyment of their possessions (First Protocol Article 1). However, any actual or alleged infringement of this right arising from the adoption of the footpath as a public road and the promotion of the Order to re-determine part of the footpath as a cycle path is considered to be justified in the public interest. Such a course of action by the Council as Roads Authority in the carrying out of its legal duties is reasonable and proportionate in accordance with the general interest and has regard to the necessary balance of the owners’ freedom to enjoy their property in common with others, against the public interest in the use of a property constructed and maintained footpath and cycle track.

5 CONSULTATION

The Chief Executive, the Director of Law & Administration, the Director of Finance and the Director of Housing have been consulted in the preparation of this report.

6 CONCLUSION

The Council has previously constructed a new 1.2m wide cycle track alongside and abutting an existing 1.8m wide footpath, with the intention of forming a segregated 1.5m/1.5m cycle track/footpath. In order to provide a standard 1.5m/1.5m cycle track/footpath it is necessary to re-determine a 0.3m width of the original footpath as cycle track. Before this can be done it is necessary to add the original 1.8m wide footpath to the List of Public Roads.

The footpath in question is of a standard suitable for addition to the List of Public Roads and thereafter part of it should be re-determined, by Order, to allow the use of a standard segregated 1.5m/1.5m cycle track/footpath.

Dr Bob McLellan
DIRECTOR OF ROADS

NOTE

No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AB/JSG
20 July 2001
REPORTS/add.pub.rds.montrose

SCHEDULE

FOOTPATH AT BORROWFIELD, MONTROSE

Road 1 – Footpath

Footpath (width 1.8 metres) extending from its junction with Newhame Road in a south-easterly direction for a distance of 405 metres or thereby terminating at its junction with the previously adopted section of footpath.