



Report of the Chief Recreation Officer

Executive Board

Date: 16th May 2007

**Subject: River Safety Management at Wharfemeadows Park, Manor Park and
Tittybottle Park, Otley**

Electoral Wards Affected:

Otley

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

The report outlines the need for water safety measures at Wharfemeadows Park, Manor Park and Tittybottle Park. A Risk Assessment that includes various safety measures to be implemented and its justification is included. The revised safety measures proposed are those recommended by Senior Council Officers in Parks and Countryside, Corporate and Departmental Health and Safety and Legal Services. The recommendations take into account the issues raised by the Wharfemeadows Action Group and residents of Otley.

1. Purpose Of This Report

1.1 To inform the Executive Board of revised proposals to improve water safety at Wharfemeadows Park, Manor Park and Tittybottle Park, Otley.

2. Background Information

2.1 Following the drownings in Roundhay Park Lake in 2005, the Council commissioned a report from RoSPA (Royal Society for the Prevention of Accidents) in relation to areas of open water for which the council are responsible and this included the River Wharfe as it passes through Wharfemeadows Park, Manor Park and Tittybottle Park.

2.2 For clarification the sequence of events during this period was as follows:

- Following the tragedy at Roundhay Lake in June 2005 Council officers were aware there would be a Coroner's Inquest on the two deaths.
- An Incident Group of officers was formed from Departments across the Council.
- It was decided to commission a report from a respected body, RoSPA, on any issues that they considered needed addressing at Roundhay so that the Council would be prepared for the Inquest.
- It was apparent through the liaison with RoSPA and legal and health and safety expertise within the Council, and owing to the fact that there had been previous water safety incidents involving Leeds schools, that the Council needed to develop and approve a Water Safety Policy.
- As part of the Water Safety Policy, the Parks and Countryside service would need to audit all of its water sites and conduct specific risk assessments of those sites with appropriate recommendations.
- At the same time as RoSPA were commissioned to advise on issues at Roundhay Park and Lakes, they were also asked to look at a number of other sites, and particularly Wharfemeadows Park, which was a cause of concern to Parks and Countryside officers.

2.3 A Water Safety Policy, Education Programme and water safety recommendations for Wharfemeadows and the other two Parks, based on the advice of senior officers from pertinent Departments and also the RoSPA report were considered by the Executive Board on the 9th February 2007. The Executive Board resolved:

- a) That the Policy on the Safety Management of Open Water be approved and adopted and that Directors be requested to implement the Policy as detailed in paragraph 5.3 of the report.
- b) That the 'Wise up to Water' lifesaving Water Safety Project for young people be endorsed.
- c) That provision within the Capital Programme to ensure that the result of the remaining risk assessments can be implemented be approved.

2.4 Members will be aware that public opinion in Otley on the water safety recommendations at Wharfemeadows Park has not been positive. The proposed fencing is considered by residents to be inappropriate as it would ruin the aesthetics of the river frontage; interfere with angling and feeding the ducks and would not deter people from climbing over it.

2.5 As the RoSPA report on water safety at Wharfemeadows cited the Tomlinson v Congleton Borough Council (2003) case the Wharfemeadows Action Group have inferred and stated that RoSPA incorrectly quoted this case and this therefore weakens their report and advice on the safety measures considered to be appropriate for the Park.

3. **Main Issues**

- 3.1 The Council received a deputation on this matter at the Council meeting on the 18th April, 2007 and a copy of the Wharfemeadows Action Group deputation is attached at Appendix One. Many of the issues raised by WAG are addressed in Section 6 on Legal Implications. Attached at Appendix Two is an alternative view put forward by an Otley resident supporting the fencing.
- 3.2 Arrangements have been put in place to enable Otley residents to share with the Council any views that they have on the proposals and this meeting will take place on the 10th May. As this report will have been circulated by then, their comments and views will be tabled at this Executive Board meeting.

This report reflects further advice and a further report from RoSPA, and a Risk Assessment carried out on site by relevant Council officers.

- 3.3 The Council is legally obliged to undertake a Risk Assessment which identifies hazards, assesses risks and takes into consideration all relevant factors before deciding what action, if any, to take in relation to a particular site. A Risk Assessment concerning water safety at Wharfemeadows and the other two parks is attached along with general notes which accompany the Risk Assessment. The Assessment is attached at Appendix Three and the revised RoSPA report is attached at Appendix Four. The full RoSPA report is not attached as it contains the Roundhay Park Assessment and other generic water safety issues and runs to 50 pages. A full copy of the report can be made available on request to the Chief Recreation Officer at denise.preston@leeds.gov.uk.
- 3.4 It should be recognized that sites with open water bodies may have different water hazards. Whilst signage at the flooded quarry was considered adequate in the Tomlinson v Congleton Borough Council (2003) case the scenario is very different at Wharfemeadows Park where there is a fast flowing river, a weir and a low wall creating a trip hazard. Indeed, each Risk Assessment at each of the 70 parks and Countryside sites will specifically reflect the hazards and type of usage of the site. The Assessments will need to take into account both deliberate and informed access where people are aware of what they intend to do regardless of signs and notices, as opposed to those users who are too young to read signs and realise the potential hazards, i.e. very young children who run ahead of their parents or carers.
- 3.5 Council Officers have researched incidents in the Park, reviewing press coverage from 2004 onwards. There may be other incidents prior to this year. Three incidents were found, one each in 2006, 2005 and 2004, where people have inadvertently fallen into the river and only through the prompt assistance of nearby visitors has a possible drowning situation been prevented. The incidents involved an old lady feeding the ducks, a 9 year old girl using a fishing net and a late night inebriated reveler.
- 3.6 Another issue to be taken into account in the Risk Assessment is river flooding and the strength of the current in times of flood. There have been two instances one on the 10th August 2004 and the other on the 8th January 2005 where the water has come over and covered the riverside path. Water coverage of the path means that the visitor is quite likely not to see the steps leading into the water at the landing stage and could inadvertently slip into the fast moving river. According to the Environment Agency there is a 20% chance that the river will reach or exceed the banking at this point in any year.

3.7 Officers conducting the Risk Assessment on 30th March witnessed two potentially unsafe incidents whilst on site. Parks & Countryside staff in the area are also aware of continuing acts of inappropriate behaviour in and around the river at Wharfemeadows Park, exemplified by the known and hazardous crossing of the weir. Throughout the Council have a duty of care that is owed to the visitor where there may be careless or inadvertent access to the river and this duty is particularly relevant in the case of very young children who use this Park and approach the riverside. The Park is not only used by Otley residents, and as is stated by the Wharfemeadows Action Group, in referring to the 'Vision for Otley' document, the Park and River are tourist attractions, which means that the Council is inviting visitors in to the Park who will not be aware of the hazards adjacent to the River.

In respect of the 'Vision for Otley's Riverside' document this was a report commissioned by the Otley Town Partnership and produced by Spawforth Associates. The main aim of the document was to set out the community's aspirations for the riverside area with the main thrust of the document being to link the riverside area with three key sites (Garnets, Ashfield Works and Otley Mills) and ultimately to provide a footbridge at Otley Mills creating a circular route for pedestrians. It was endorsed by the Planning Authority at the time, almost four years ago, as an aspirational document, and indeed within the document it states 'Due to the wide range of aspirations held by the various consultees, it is important to realize this Vision is not necessarily endorsed in whole or part by those who have made contributions during the consultation process, and that this document cannot and does not override current planning policy'. It is not considered by senior Council officers that the proposals for fencing, signing and planting along parts of the River within the Parks would have a detrimental effect on either this Vision document or the attraction of tourists to the Parks and the River areas.

4.0 IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE

4.1 The recommendations in this report comply with the Council's Water Safety Policy.

5.0 SPECIFIC ACTION TO BE TAKEN AT WHARFEMEADOWS PARK, MANOR PARK AND TITTYBOTTLE PARK

5.1 The Risk Assessment for these sites carried out by Council Officers and the revised RoSPA recommendations indicate that the following action should be taken:

- The installation and maintenance of an ornamental bow top fence along the low wall top
- The installation and maintenance of an ornamental bow top fence along the bank from the playground to the top of the access path
- The installation and maintenance of an ornamental bow top fence at the base of the white bridge
- The installation and maintenance of drop gates to prevent unauthorized access into "Holbeck"
- Install and maintain warning signs on steps. Highlight the step edge and undertake repairs to steps
- Along remaining unprotected waters edge create a 2m strip of untrimmed vegetation to define river bank edge
- Install and maintain multi safety and information signage at main park entrances and installation of nag signs at regular intervals.

The revised proposals will allow access to the steps and most of the river bank for recreation activities such as sitting on the steps, fishing, feeding birds and picnicking.

The low wall is not a legitimate access point for the river and the installation of an ornamental bow top fence will not stop visitors walking by the river and feeding the birds. The style of the fence is ornamental and will match similar fencing in the park particularly the new bowling green fence and the existing fence in front of the playground.

6.0 LEGAL AND RESOURCE IMPLICATIONS

Legal

- 6.1 The Council's legal duty in relation to water safety arises from its legal status in relation to areas of open water for which it is responsible as "occupier" under the Occupiers Liability Act 1957 and the Occupiers Liability Act 1984, the relevant sections of which are set out in Appendix Five (which also sets out legal position as regards corporate killing which has been the subject of some debate).
- 6.2 In summary the Council is legally obliged to undertake a risk assessment and to take into account all relevant factors before deciding what action, if any, to take in relation to a particular site. Caselaw does not define what should happen in relation to particular stretches of water or the risks or otherwise in relation to such sites, nor does it create the law in relation to such sites. It merely applies the law in relation to a particular set of circumstances.
- 6.3 The House of Lords case of Tomlinson v Congleton Borough Council (2003) UKHL47 is referred to in a document issued by the Wharfemeadows Action Group entitled "10 Areas of concern for the people of Otley". That case has also been the subject of some public debate, it having been mentioned in the RoSPA report which was appended to the last report to the Executive Board on 9 February 2007. It is true that the reference to the Tomlinson case in that RoSPA report is incorrect but that is an irrelevant consideration in the Council's own determination of the legal position. The WAG document was responded to by a letter in the name of the Assistant Chief Executive (Corporate Governance) on 17 April which sets out the legal position and points out that the legal analysis based on the Tomlinson case set out in that document is incorrect itself and has led to a public misunderstanding of the basis on which the Council has dealt with the matter and a consequent misinterpretation of the legal position, not by the Council but by the public.
- 6.4 In the Tomlinson case the claimant "dived" into a flooded quarry having ignored the "no swimming" signs erected by the relevant Council. His action of "diving" turned him from a "visitor" into a "trespasser". He failed to establish liability under the Occupiers Liability Act 1984 for the injuries he sustained as a result (Lord Hoffman who gave the leading judgement in the House of Lords also considered that the claim would have failed under the Occupiers Liability Act 1957 as a "visitor").
- 6.5 The judgement merely applied the law in relation to the particular set of circumstances in the Tomlinson case and the decision in that case does not define Leeds City Council's duty at Wharfemeadows Park, Otley. The case was a decision on its own facts, dealing as it did with a trespasser who ignored the warnings not to swim in the quarry. Whilst deliberate and/or foolish access to a known and obvious hazard is still an issue at Wharfemeadows Park e.g. crossing the weir, the most important issue is a far more "mainstream" issue for the Council namely the duty of care that is owed to visitors (particularly vulnerable visitors such as children) where there may be careless or inadvertent access to the river e.g. the risk of a pedestrian accidentally falling over the low wall which runs alongside the river near to the weir. Since the decision in Tomlinson there have been three further decisions following on

from it. These cases all involved “deliberate/foolish access” although in one of them the Court of Appeal also made observations about the duty which was owed where the foreseeable risk was the risk of “accidental access”.

- 6.6 Whilst the decision making process is informed by the legal context generally, the prospect or otherwise of legal proceedings being brought against the Council (or its members or officers) is not the issue (notwithstanding that might be a possibility in relevant circumstances). The Council has a legal duty as set out above and must act with regard to that duty. In so doing the Council must also take into account the provisions of the Compensation Act 2006 which provides that a Court considering a claim of negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against the risk or otherwise) have regard to whether a requirement to take those steps might:-
- a) Prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
 - b) Discourage persons from undertaking functions in connection with a desirable activity.
- 6.7 The key to the matter is proper risk assessment taking everything into account. Legally it is perfectly proper for the Council to revisit the risk assessment in relation to Otley Wharfemeadows in the light of further advice from RoSPA. Although the Council has indicated a commitment to have regard to the views of local residents, the position is that any “duty” to consult must be a very limited one in a situation where safety of the public is the overriding issue. The duty is to act not consult.
- 6.8 Given the attention which has been paid by the public to these matters and their misinterpretation of the Tomlinson case and its consequences on the Council’s decision making, leading Counsel who is an expert on the legal aspects of health and safety including water safety was instructed and the legal provisions set out in this report reflect his advice. It is his view about the legal position and the Council’s legal duty on which reliance is placed and not on the view expressed on the legal situation by any external organisation e.g. RoSPA, Wharfemeadows Action Group etc.

Resource

- 6.9 The capital sum of £165,000 to carry out this signage, planting and fencing scheme has been identified and approved by the Asset Management Group.

7.0 Conclusions

There is no doubt that this has been a difficult process for all involved, and that there is a great weight of public opinion in Otley that does not wish to see any fence in place. However, having taken these views into account and had regard to the advice given to the Council by a leading Counsel, and the detailed Risk Assessment conducted on site, it is the professional view of Council Officers that the Council has no reasonable option but to implement the revised fencing proposal and signage. This has been amended from the first proposal in that the steps will be repaired, will remain unfenced, and the visitor will be warned of hazards through appropriate signage, as outlined in paragraph 5.1.

8.0 Recommendations

- 8.1 It is recommended that the scheme to erect signage and to fence parts of the Parks adjacent to the River Wharfe as detailed graphically in Appendix Four of this report, which were considered and verified as essential by senior Council Officers when conducting the Risk Assessment, be implemented as soon as is practically possible.