



Report of the Assistant Chief Executive (Corporate Governance)

Executive Board

Date: 22 August 2007

Subject: Wharfemeadows Park Fencing Proposals – Recommendation of Scrutiny Board (Culture and Leisure)

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Executive Summary

The report sets out the powers of a Scrutiny Board in relation to decisions of the Executive Board and also provides legal advice to the Board in relation to Scrutiny Board's request that work to erect fencing at Wharfemeadows Park in Otley be suspended while an enquiry is undertaken by the Board.

2.0 Role of Scrutiny Board

2.1 Article 6.3 of the Council's Constitution states that:-

Within their terms of reference, all Scrutiny Boards will

- Review or scrutinize any function of the Council or Executive.
- Make reports or recommendations to the Council or Executive in connection with the exercise of any functions of the Council or the Executive and,
- Make reports or recommendations to the Council or Executive on any matter affecting the area or its inhabitants.

In addition to the above, the Overview and Scrutiny Committee has the right to call in decisions made but not yet implemented by the Executive, for reconsideration.

2.2 Further, Article 6.4 states that

“All Scrutiny Boards may

- Review and scrutinize decisions made by and the performance of the Executive.....both in relation to individual decisions and over time”.

2.3 Scrutiny Board (Culture and Leisure) has agreed to undertake an inquiry into the Council’s approach to water safety in general and agreed to specifically include a review of the decision relating to Wharfemeadows. As the Executive Board decision re fencing proposals has not yet been implemented on site, it is of course open to a Scrutiny Board to request that the Executive Board consider suspending implementation of its decision pending the outcome of a Board’s enquiry. It is entirely a matter for the Executive Board as to whether they would wish to accede to such a request from a Scrutiny Board and such a request would need to be considered in the circumstances of the particular decision made and all relevant factors.

3.0 Present Position

3.1 Following the Executive Board’s decision of 13 June 2007, officers are currently actioning the following recommended safety works:-

- The installation and maintenance of an ornamental bow top fence along the low top wall.
- 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”.
- The installation and maintenance of warning signs on the steps including highlighting the step edge and undertaking repairs to the steps.
- Along the remaining unprotected waters edge, creating a 2m strip of untrimmed vegetation to define river bank edge.
- The installation and maintenance of multi-safety and information signage at main park entrances and installation of nag signs at regular intervals.

3.2 The current position is that the Council is receiving quotes for the supply and installation for the protective fencing and safety signage. Contractors are holding quotes for 30 days and any deferment is likely to involve an increase in costs.

A planning application for the siting of the main entrance safety signage has been submitted.

3.3 Orders are being placed with contractors to undertake the essential repairs to the steps and the river bank wall near to the weir. This work has to be undertaken when river levels are low and the flow is at its weakest. A deferment at this stage is likely to mean that works will not be able to be undertaken until a similar period next year. This would therefore also delay the installation of the fence on top of the wall at the weir (one of the most high risk areas).

3.4 There have been two reported accidents on the steps within the past three years.

4.0 Legal implications of suspending work on the fencing

The legal position was fully covered in both reports to the Executive Board on 9 February and 16 May 2007 and was based on the advice of leading Counsel. The basic legal position, is that the Council has a legal duty to ensure the safety of those who enter land for which it is responsible. In addressing that legal duty, it must carry out an appropriate risk assessment and act on that assessment. An appropriate risk assessment has been carried out in this case some months ago, and the fencing proposals arise from that assessment. At the date of its decision, the Executive Board was on notice of the need to address the assessed risk and the risk continues to exist until the fencing proposals are implemented. It follows that the decision of the Executive Board regarding the fencing should be implemented expeditiously, and any delay in implementation, could be argued to be the Council being in breach of its legal duty of care during that period of delay, if an incident occurred during that period. It should be noted that there has not been any material change in circumstances regarding the risk assessment since the date that the Executive Board took its decision

5.0 Recommendations

The Executive Board is asked to consider and respond to the recommendation made by Scrutiny Board (Culture and Leisure) that “it be recommended to the Executive Board that work on the fencing be suspended until the Board has reported its findings”.