

Culture & Leisure Scrutiny and Overview Board 16th July 10.00am

Labour

Cllrs Atha, Handley, Morgan & Mulherrin (maternity leave)

Liberal Democrat

Cllrs Barker, Kirkland, Rhodes-Clayton

Conservative

Cllrs Jennings, Wilkinson

Morley Independent

Cllr Gettings

Following text embargoed until released by WAG 11.00am

Chair & Councillors

Good morning ladies and gentlemen. May I introduce Linda Lukats, Tony Hartigan and myself Sylvia Reid, founder members of Wharfemeadows Action Group, a non party political group which was formed on 20th February to coordinate the overwhelming opposition to fencing off the River Wharfe in Otley. Thank you for inviting this group to your meeting today where, if you agree to our request, a formal enquiry can be progressed into this decision Leeds City Council began making at Executive Board on 9th February. Our request is that the decision to install fencing along the River Wharfe and the associated water safety strategy be fully examined. We also request that a recorded vote is taken so that everyone interested in this issue can be clear of what the meeting decides.

The delay and institutional confusion in progressing our request for Scrutiny has caused us concern. In itself it could suggest that officers or elected members have not wanted to acknowledge our request which was clearly explained in a letter we sent on 8th March. The points in that letter are still relevant but as time has passed I am sorry to say there are additional areas of concern. Only last Wednesday we were told by the NW Outer Area Committee that we had been wrongly directed there by Head of Scrutiny. And last Friday, we even had to ask for an agenda and relevant paperwork for today's meeting to be posted to us so that we could properly complete our preparations. On receiving these documents electronically last Friday we discovered that section 2.3 of today's Agenda Item 7 states 'On 16th May 2007 the Executive Board agreed to revised proposals taking into account objections raised, whilst still putting in place measures to restrict unauthorised access to the river edge.' This is wrong. The Executive Board in May did no such thing. Please read

your own minute of the meeting. We would also be interested to discover who had decreed that access to our river was 'unauthorised'.

As early as January 2007 it was evident from local press coverage that our ward members were not in favour of the original fencing plan. In the Airedale and Wharfedale Observer on 3rd January, Councillor Kirkland is quoted as saying 'It is a crazy idea'. On 23rd February in the Yorkshire Post Councillor Campbell is quoted as saying 'People are very upset about the fencing idea. My first reaction was that it was a joke.'

Ward members have told us that they lobbied their Executive Board members from January onwards to urge them not to go ahead with a scheme that they knew would be unacceptable to local people and detrimental to the health of the town's business centre. Discussions which have been ongoing for years linked to the plans held within '*A Vision for Otley Riverside*' and '*Otley Town Enhancement Study*' have emphasised the need for greater access to the river. Both reports were funded through Market Town's Initiative funding, supported by Yorkshire Forward and were published in 2005: they appear to have been ignored.

Our Ward members were given to understand their Executive Board members would vote against the fence proposal at the 9th February meeting. In the first of many meetings we have attended with Cllr Mark Harris, he recollected from that meeting that what he was told jarred with his own common sense.

So what happened at that 9th February Executive Board meeting regarding Agenda Item 13 to change people's minds so that it gained unanimous approval? We know from the minutes that the fencing proposal was directly linked to the coroner's report which followed the inquest into the tragic drownings at Roundhay Park in 2005. This would indicate that the reason given for installing Band 4, exclusion fencing, one and a half metres high for a distance of about half a mile was, because 'the coroner has told us to'. We think we can safely assume this because Councillor Andrew Carter in the verbatim minutes of the full council meeting held on 21st February says in his summing up, 'As John (Procter that is) said, the simple fact is a Coroner instructed this Authority to carry out a water safety strategy' *pages 79 of the verbatim minutes*. Councillor Ryk Downes also subscribed to this view because earlier on at the same meeting he said, 'It is a very difficult position that the Executive Board found themselves in following the very tragic accident at Roundhay Park where the Coroner, as we know, said that the Council should have a water policy and RoSPA have started to look at various bodies within Leeds

and one of the first they looked at is the River Wharfe in Otley, my Ward.' *Page 73 verbatim minutes.*

On 16th March Councillor Andrew Carter's letter to the Yorkshire Evening Post tried to defend the decision by stating 'It seems to many of us that people are no longer required to take responsibility for their own actions and common sense has "gone out the window"'. I can assure you good councillors that it hasn't in Otley and from reading the Yorkshire Evening Post, Yorkshire Post, Airedale & Wharfedale Observer over the past three months we must disagree with Councillor Carter. People in Otley and Leeds do want to take responsibility for their own actions and to use their own common sense.

Councillor Andrew Carter a month later on 21st March in a private meeting with WAG repeated the coroner's story. We showed him the correspondence that we had received from the coroner the previous day. Councillor Carter was visibly shocked when we told him the coroner had only recommended improving signage at Roundhay Park and nothing else. This would have cost probably somewhere in the region of a few thousand pounds instead of the 1.5 million pounds this fencing and water policy will cost in Leeds.

When local people were first informed of the suggestions to fence off the river they were told that RoSPA had instructed the council to do this. RoSPA is not a statutory body. The council's legal department would have known this. Even on a superficial reading it is obvious that the RoSPA report was flawed. But more worryingly its recommendations were based on an Appeal Court ruling of Tomlinson v Congleton Borough Council that was overturned in the House of Lords in 2003 and has now become a **Lead Case**. Again Leeds City Council's legal department would have been aware of this fact.

So, people had been told first that the coroner has instructed the council to have this fencing which also now seemed to include a water safety strategy, then the council had to do what RoSPA told it to because if it did not then what would happen was, (well would you believe it?) you could all go to prison because I quote 'if we don't take heed of their findings (RoSPA's that is) and then something happens we'll be at risk of being charged with corporate manslaughter charges' The words of Councillor Brian Cleasby. Or as one officer was reported to have said in the previous week's edition of the same local paper 'corporate murder action'.

Such claims are refuted in Agenda Item 19 of the May Executive Board which was then re-submitted as Agenda Item 7 to the June Executive Board. In Appendix 5 on the section entitled 'Legal position regarding corporate killing' it reads: 'There has also been some public speculation that the Council's position is that it must fence off the relevant part of the river because of fears ...of prosecution being brought for gross negligence...' it ends by stating 'The new Corporate Killing Bill focuses on the organisation and the way in which it manages and organises its activities. If the way it does so **causes** a person's death and the **breach of duty is gross** then the organisation and/or individual will be liable to prosecution for manslaughter. This clearly will not happen if the Council and its members and officers act within the law...'

What constitutes acting within the law requires careful legal advice. You may have referred to a Queens Counsel. We have referred to the highest court in the land – the law lords. As Lord Hutton said when he cited the 'good law' expressed by Lord M'Laren in his opinions in *Para 57 Tomlinson v Congleton BC*, I quote 'in a town, as well as in the country, there are physical features which may be productive of injury to careless persons or to young children against which it is impossible to guard by protective measures. The situation of a town on the banks of a river is a familiar feature:...But in none of these places has it been found necessary to fence the river to prevent children or careless persons from falling into the water. Now, as the common law is just the formal statement of the results and conclusions of the common sense of mankind, I come without difficulty to the conclusion that precautions which have been rejected by common sense as unnecessary and inconvenient are not required by law.'

The people of Otley which has provided much pleasure to Leeds visitors for generations at Leeds Seaside otherwise known as Wharfemeadows Park, began to seriously question what they were being told. Their Town Council listened to the people's concerns. In their submission to you today they state: 'Otley Town Council supports entirely, unanimously and with cross party support both before and subsequent to the May elections, the position of Wharfemeadows Action Group and its detailed challenges on legal and procedural grounds.' We fully support Otley Town Council's reference in their tabled submission to the 'Judge Over Your Shoulder' document in dealing with the way to avoid Judicial Review. This is the Wednesbury Reasonableness we referred to in our briefing document which was presented to the full council on 18th April when we took a deputation and a petition of over 6,000 signatures to the Civic Hall.

The decision was re-scheduled under Agenda Item 19 for the May Executive Board meeting. We were given an assurance that the decision would be deferred to the June Board meeting to allow time for consultation. This assurance was made in the local press by the leader Councillor Andrew Carter and at a public meeting held on 10th May by Executive Board member Cllr John Procter. Despite this, six days later the decision was made at the May Executive Board to fence off the play area and the weir on the basis that not to do so would be irresponsible. We were amazed that a decision had been made when we had been clearly told that that would not happen until the consultation period was over: our faith and trust in Leeds City Council plummeted.

The agenda papers sent out to us on the 8th May had been put to one side, for we hoped that in the light of all the information we had provided regarding the coroner, RoSPA and corporate manslaughter, the council would re-think the whole idea. So when the paperwork came for the June Executive Board and we had to resurrect the May paperwork we were delighted to read its contents. The report seemed to be speaking our language. We went in to the June Board meeting fairly hopeful that we might get a result that people would accept.

As you know this did not happen. The editorial in the following day's Yorkshire Evening Post says it all really. Under the headline, 'Senseless' the editor wrote, 'We can safely say that no one wants the River Wharfe to be fenced off. Not the 6,000 people who signed the petition to stop it, not even Leeds City Council...The move sets a dangerous precedent. Will we see more acres of our beautiful riverbanks made out-of-bounds in the months and years to come? One thing's for sure. It's a sad day for common sense.' *YEP 14th June.*

We asked for the decision to be Called-In a process by which city councillors can have a decision immediately frozen and examined within seven days. As you know we were unsuccessful. The issue is so complex it possibly would not have been an appropriate process. We did begin to think we might however get our request for scrutiny heard. In preparing for this we have discovered that there are three versions of Agenda Item 19 and Wharfemeadows Action Group has more information in one of our versions than you have in any of yours, good councillors. When we first discovered the discrepancy we wrote to Mr Rogerson on 17th June. Apparently a final version of Agenda Item 19 was sent to us on 9th May. We since have found that this supposed 'final version' is in itself quite

incomplete and different from the one you were given. On this aspect alone we are left asking the question, 'Is this incompetence or maladministration or maybe even both?'

To date many of our numerous letters to the council remain unanswered. To date not one elected member has apologised to the public for seriously misinforming them and no one has had the common courtesy to acknowledge that what the people have done by exercising their common sense has been helpful or instructive. The decision to install fencing along rivers is a misuse of public funds. The council's duty of care can be carried out in a more reasonable manner. Good information boards are absolutely essential in providing people with the relevant information that explains the natural attributes and hazards of each park location so that they can take responsibility for themselves and their children.

The more we have learnt the less we understand why this fencing proposal is going ahead. The more we have read, the less comfortable we feel with the decision-making process relating to this issue. And more worryingly, the more we have analysed, the less confident we have become in how this council is governing the city. In order to save this council over a million pounds and to prevent what Law Lord, Lord Hobhouse of Woodborough stated in his opinions in the by now famous Tomlinson Lead Case, *'The pursuit of an unrestrained culture of blame and compensation has many evil consequences and one is certainly the interference with the liberty of the citizen.'* Para 81 Tomlinson 2003.

We hope that even at this late stage you will support our request for an impartial and rigorous review of what has gone wrong with the city council's decision-making processes. We believe if our request is accepted it will have far reaching implications for Otley and the city of Leeds in restoring some faith in open, effective, accountable local government. We have files and files of evidence. We are fully prepared to provide the necessary documented detail to justify and support our case. We will cooperate fully with you and your officers in this process.

Thank you for your patience in listening to our summary presentation of the facts.

Sylvia Reid,
On behalf of Wharfemeadows Action Group
16th July 2007