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**Decision Session**  
**Executive Member for City Strategy**

**2 February 2010**

Report of the Director of City Strategy

**Public Rights Of Way – Application for Definitive Map Modification Order, Alleged Public Footpath from Main Street to North Lane (Love Lane), Wheldrake**

**Summary**

1. This report seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add the route (shown by a broken black line on Plan 1 (**Annex 1**)) to the Definitive Map, as a Public Footpath. In determining this issue it is important to consider the available evidence against the requirements of the legislation (see **Annex 6**).

**Recommendation**

2. It is recommended that the Executive Member approves Option A and authorises the making of a DMMO to add the route as a Public Footpath to the Definitive Map.

**Reason**

3. There is evidence in support of the existence of a public right of way over the application route thus requiring the authority to make the order: Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

**Background**

4. In September 1993 Wheldrake Parish Council submitted, to North Yorkshire County Council, an application for a DMMO to add the footpath, shown by a broken black line (the application route) on Plan 1 (**Annex 1**). Then in 1996, as a result of Local Government Reorganisation, the application which had still to be determined and remained outstanding, was passed to City of York Council as the newly appointed Surveying Authority for the area.
5. In 2002 the Council commenced preliminary investigations into this, and a number of other similar applications made by Wheldrake Parish Council. Whilst these investigations were substantially completed at that time, the applications were never formally determined. Therefore, more recently, and in order to

bring these matters to a close, the previously considered evidence was checked and ratified so as to allow the matter to be brought to a conclusion.

## **Summary of Evidence**

### **Historical Documents**

6. As part of the investigations a range of documents have been consulted, and these are listed in **Annex 2** of this report. Where the documents are considered to have some evidential value in this case, they are further summarised within the report, with more detailed comments included in **Annex 3**.

### **Ordnance Survey Maps**

7. The physical existence of a path or track is shown on the Ordnance Survey Maps for the area, but they do not attribute any status to the route.

### **1910 Finance Act Maps and Field Books**

8. The 1910 Finance Act Plan shows that the application route was excluded from the valuation of the adjoining hereditaments (land holdings). As a result of the path being excluded from valuation there is no corresponding Field Book entry.

### **Plan of Wheldrake Village**

9. A plan entitled "Part of Village of Wheldrake" dated 20.8.46 (presumably 1946) shows the existence of the application route, but is silent as to status.

### **User Evidence**

10. The application was supported by five user evidence forms, and an additional two forms were located in the Parish Files. These user witnesses claim use of the application route during the period 1920 – 2002 (82 years). The forms are summarised in **Annex 4** of this report, and the periods of claimed use summarised on the User Graph in **Annex 5**.
11. All of the witnesses claim to have used the route, "as of right" and without interruption. One of the witnesses lives alongside the path and has always considered it to be public. Four of the witnesses were interviewed over the telephone as part of the 2002 investigations.

## **Comments on Evidence**

### **Historical Documents**

12. The Ordnance Survey Maps certainly confirm the physical existence of the path as being a feature in the village for some considerable time, however such maps carry a disclaimer to the effect that the showing of any path, track or way is not evidence of the existence of public highway rights. The 1910 Finance Act documents provide good evidence in support of the application route enjoying public highway rights.

### **User Evidence**

13. In common with many cases of this nature across the country, the fact that the application is being determined some sixteen years after it was made, is problematic so far as the continued availability of witnesses is concerned. The

evidence of the four witnesses who were interviewed should be given more weight than that of the witnesses who were not, which can only be taken as read. Notwithstanding this problem there is a clear indication of long uninterrupted use and acceptance of the application route as a public right of way.

## **Assessment of Evidence**

### **Historical Documents**

14. The recording and depiction of the application route on the available documentary evidence is consistent with it being a public right of way however, on its own it is probably insufficient to meet the legislative tests. This evidence should however be considered alongside, and in support of the user evidence to demonstrate the use and reputation of the route as a public right of way.

### **User Evidence**

15. There is no evidence to suggest that the existence of the application route has ever been called into question (challenged), and prior to 2006 this would have precluded consideration of this case under the provisions of Section 31 of the Highways Act 1980. However the Natural Environment & Rural Communities Act 2006 amended the legislation so that where such a challenge does not exist, the date of the submission of an application for a Definitive Map Modification Order may be used instead. The reckoning date for calculating any twenty year period of user is therefore, in this case, 1993; the relevant twenty year period being 1973 to 1993.
16. The user evidence suggests uninterrupted user, "as of right" and by the public throughout the whole of the period, and for quite some time before it. Furthermore the route continues to be open and available for use. There would therefore appear to be a prima facie case in favour of the establishment of public rights over the application route.
17. No objections to the registration of this route as a public footpath have been received, nor has any evidence been discovered to suggest any lack of intention to dedicate such rights, on the part of a landowner.

## **Consultation**

18. Consultations have been carried out in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice on consultation, which includes consultation with user groups etc. The Parish Council and landowners have also been consulted. No objections have been received.
19. The Parish Council commented, along with the original application that:

*"This "snicket" is a long established short cut between Main Street and North Lane and has always been considered a village lane. In former times it was used for access to the village pump and playing fields. Its position opposite the village store in Main Street and opposite the village*

*school in North Lane generates consistent use today by shoppers and school children wishing to avoid the hazards of the road at Dalton Hill.”*

### **Ward Councillors**

Cllr C Vassie – No comments received.

### **Political Parties**

Cllr S Galloway (Lib Dem) – No comments received.

Cllr R Potter (Labour) – ‘*Happy to support the modifications*’: comments received 30<sup>th</sup> December, 2009.

Cllr I Gillies (Conservative) – No comments received.

Cllr A D’Argone ( Green Party) – No comments received.

### **Options**

20. Option A: If, having considered all of the available evidence the Executive Member decides that the alleged public rights do exist, the Executive member should resolve that:
  - a) The Director of City Strategy be authorised to instruct the Head of Legal Services to make a Definitive Map Modification Order to add a public footpath, along the route A – B on Plan 1 attached to this report, to the Definitive Map;
  - b) If no objections are received, or any objections that are received, are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order made in accordance with (a) above; or
  - c) If any objections are received, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.
21. Option B: If, having considered all of the available evidence, the Executive Member may decide that the alleged public rights do not exist, the Executive Member should resolve that:
  - a) The application to modify the Definitive Map be refused.
  - b) The applicant be advised of their right to appeal.

### **Corporate Priorities**

22. If it is determined that the available relevant evidence shows that a right of way subsists or is reasonably alleged to subsist and is added to the map the benefits of doing so would link into the Council’s Corporate priorities. A public right of way is sustainable, car free and provides access to health and recreation opportunities thus contributing to the priorities of making York a Sustainable and a Healthy City.

## **Implications**

### **Financial**

23. If it is determined to progress a DMMO it will have to be advertised in the local press. The cost of advertising the order would be in the region of £1500. If an order is made, and no objections are received the order will be confirmed and re-advertised, again at a cost of £1500.
24. If objections to the order are received, and not withdrawn, the outcome of the order will be decided by the Secretary of State, possibly by means of a Public Inquiry. The cost of a Public Inquiry being approximately £5000.
25. If the order is confirmed by either the Council or the Secretary of State the authority has to accept that the route is maintainable at the public expense.
26. Acceptance is not as such a new obligation but is part of the Council's statutory duty to keep that map up to date and formally record the rights of the public where those rights exist but are not yet shown and recorded in the definitive map and statement.

### **Human Resources**

27. There are no human resource implications.

### **Equalities**

28. There are no equalities implications.

### **Legal**

29. City of York Council is the surveying authority for the purposes of the Wildlife and Countryside Act 1981, and has a statutory duty to ensure that the Definitive Map and Statement for its area is kept up to date.
30. If, and when, the Authority discovers evidence to suggest that the Definitive Map and Statement needs updating, it is under a statutory duty to make the necessary changes. A DMMO enables any changes to the map and statement to be made.
31. Before the Council can make the a DMMO to add a route to the definitive map, as is the subject of this report, it must be satisfied that, taking into account the available evidence, that a right of way can from the evidence reasonably be alleged to exist. If it can, the authority must make the order. If objections are received during the process and not withdrawn the order must be forwarded to the Secretary of State. The Secretary of State will appoint an Inspector who will test the evidence and determine the outcome of this application.
32. DMMO's do not create any new public rights of way they seek to record those already in existence but not formerly recorded in the definitive map and statement. Issues for example such as safety, security and desirability whilst being genuine concerns cannot be taken into consideration. The DMMO process requires an authority to look at all the available evidence, both documentary and user, before making a decision.

### **Crime and Disorder**

33. There are no crime and disorder implications.

### **Information Technology**

34. There are no IT implications.

### **Property**

35. There are no property implications.

### **Other**

36. If the definitive map modification order process concludes that public rights do exist the public footpath becomes maintainable at the public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. The Council, as the highway authority for public rights of way, has a duty to maintain the public footpath to a standard that allows use by lawful traffic: the right of way is on foot only.

### **Risk Management**

37. In compliance with the Council's Risk Management Strategy, Options A is subject to internal budgetary pressures (financial). There are no risks associated with Option B.

### **Contact Details**

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#### **Chief Officer Responsible for the report:**

Damon Copperthwaite, Assistant Director,  
City Development and Transport

**Report  
Approved**

**Date** 22.10.2010

#### **Wards Affected:**

Wheldrake

All

**For further information please contact the author of the report.**

#### **Background Papers:**

Evidence evaluated and background report prepared by Consultant: Robin Carr Associates, Public Rights of Way Management and Consultancy Services

Highways Act 1980

Wildlife and Countryside Act 1981

Rights of Way: A Guide to Law and Practice, Fourth Edition, by John Riddall and John Trevelyan.

England and Wales Court of Appeal (Civil Division) Decisions: R v Secretary of State for Wales ex parte Emery (1997)

**Annexes:**

- Annex 1: Plan 1: Claimed Public Footpath, Main Street to North Lane (Love Lane), Wheldrake
- Annex 2: List of documents consulted
- Annex 3: Summary of Documentary Evidence
- Annex 4: Summary of User Evidence
- Annex 5: Graph showing Periods of Claimed User
- Annex 6: Legal Tests