

**Decision Session – Executive Member for
Transport**

18 January 2021

Report of the Assistant Director, Transport, Highways and Environment

Progress towards determining all outstanding DMMO applications

Summary

1. Report detailing ongoing progress towards eliminating City of York Council's backlog of undetermined definitive map modification order applications (DMMO).

Recommendation

2. The Executive Member is asked to note the content of the report and give authorisation for it to be forwarded to the Local Government Ombudsman.

Background

3. Following the finding of the Local Government Ombudsman (LGO) made in May 2019 that City of York Council (CYC) was at fault in the time taken to process the DMMO application of the individual known as Mr X, CYC is required to report progress towards reducing the backlog of undetermined DMMO applications to the Executive Member for Transport.
4. This report constitutes the third of those update reports, a copy of which is required to be forwarded to the LGO. The first report was made in January 2020.

Progress made to date

5. Since the last report three further applications are in the process of being made. These relate to routes in Naburn, Haxby, and Strensall. These applications were received in 1998, 2000, and 2002.

6. Publicity for the making of these orders will be happening at the time of the decision session or shortly after.
7. With reference to two orders mentioned in the last report (199712 Kexby – BW8 to FP11 & 199712 Kexby – Hagg Farm to FP11) we are still waiting to hear how the Secretary of State is going to deal with them.
8. The initial consultation with user groups and land owners for the DMMO application received from Strensall with Towthorpe Parish Council is currently underway.
9. As a result, all the outstanding DMMO applications have either been determined by CYC or will be in the near future. This means that one of the LGO's principal findings against the council has been addressed.
10. See appendix 1 for a detailed progress chart for each application and appendix 2 for a flow chart illustrating the process.
11. To maintain this momentum the additional member of the rights of way team (Definitive Map Assistant) that the council committed to as consequence of the LGO finding has been advertised internally and interviews will be taking place shortly. This member of staff, after initial training, will be focussed on making and advertising orders for the outstanding applications. This means the Definitive Map Officer can concentrate their time on dealing with the cases that are with the Secretary of State.
12. Finally, the order CYC were directed to make as a consequence of the application submitted by Mr X (see para 3 above) has been submitted to the Secretary of State for a final decision. At the time of writing we still have not received any indication of how the Secretary of State intends to resolve this matter.

Council Plan

13. The need for the council to be an “efficient, open, transparent, democratically-led and accountable organisation” identified by the Council Plan 2019-2023 means that historic failings identified by the LGO are being rectified by the measures set out in this report.

Implications

Financial

14. The making and confirmation of an unopposed DMMO requires that two statutory notices are placed in a local newspaper. This will cost in the region of £1700.
15. If the order attracts objections then CYC are required to send the opposed order to the secretary of state for determination. Depending on how the secretary of state chooses to determine, the additional cost to CYC will be between £2000 and £5000.
16. Notwithstanding the above, the costs to the council of making a DMMO, are not relevant within the legislation and can therefore not be taken into account when determining an application.

Human Resources (HR)

17. There are no human resource implications. This work will continue to be managed within existing staffing levels.

Equalities

18. There are no equalities implications

Legal

19. City of York Council is the Surveying Authority for the purposes of the Wildlife and Countryside Act 1981, and has a duty to ensure that the Definitive Map and Statement for its area are kept up to date.
20. If 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 using legal orders known as DMMOs.
21. Before the authority can make a DMMO to add a route to the definitive map it must be satisfied that the public rights over the route in question are reasonably alleged to subsist. Where this test has been met, but there is a conflict in the evidence, the authority are obliged to make an order so as to allow the evidence to be properly tested through the statutory order process.
22. DMMOs, such as those mentioned within this report, do not create any new public rights they simply seek to record those already in existence.
23. Issues such as safety, security, desirability etc, 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

24. There are no crime and disorder implications

Information Technology (IT)

25. There are no IT implications

Property

26. There are no property implications

Risk Management

27. The need to reduce the backlog of undetermined DMMOs is part of the steps required for CYC to avoid a finding of maladministration by the LGO.
28. The need to make this report and submit it to the LGO are part of the steps required for CYC to avoid a finding of maladministration by the LGO.

Councillor Responses

29. No comments were received.

Contact Details

Author:

Russell Varley
Definitive Map Officer
Rights of Way
Tel No. 01904 553691

Chief Officer Responsible for the report:

James Gilchrist
Assistant Director Transport Highways and
Environment

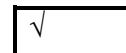
Report **Date** 07.01.21
Approved

Specialist Implications Officer(s) List information for all

Financial
Jayne Close
Accountant
01904 554175

Legal
Sandra Branigan
Senior Solicitor
01904 551040

Wards Affected: All wards.



For further information please contact the author of the report

Background Papers:

None

Annexes

Appendix 1
Appendix 2

List of Abbreviations Used in this Report

DMMO – definitive map modification order