
**Decision Session –
Executive Member for Transport**

17 January 2020

Report of Assistant Director Transport, Highways and Environment

Progress towards determining all outstanding DMMO applications.

Summary

1. Report detailing 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) 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 first of those update reports, a copy of which is required to be forwarded to the LGO.

Measures implemented to date

5. The speed and agility by which CYC determines applications was enhanced when the CYC Executive delegated the determination of DMMO applications to senior officer in consultation with the Executive Member for Transport and the affected ward councillors.
6. The agile method of determining applications allowed us to exploit a short window in the definitive map work program caused by the statutory

timetable set out by the secretary of state for an upcoming public inquiry (the inquiry is scheduled for March 2020).

7. As a result the initial consultation required by the Wildlife and Countryside Act 1981 has now been carried out for all seventeen undetermined DMMO applications in CYC's possession.
8. In addition, all the affected land owners that could be identified have been consulted as well as the user groups.
9. Of the seventeen applications, sixteen have been passed to the Assistant Director for Transport Highways and the Environment and all sixteen have been determined.
10. Of those that have been determined four have been rejected and orders will be made in respect of the remaining twelve applications.
11. See appendix 1 for a detailed progress chart for each application and appendix 2 for a flow chart illustrating the process.
12. As attention is shifted back to the forthcoming public inquiry it will take some time for the twelve orders determined to be made illustrating the need for the apprentice/trainee role, the exploration of which was authorised by the Executive.
13. Further to that decision, we have contacted other authorities who have had an apprentice/trainee in similar or related roles. In the light of their experience we have drawn up an outline job description and qualification requirement. The next step is liaison with HR to flesh out these proposals before consideration of the role will be made by full council in February 2020. More will be reported in the next update (July 2020).
14. With regard to keeping additional resources under review, to date the only additional expenditure that has been incurred has been the postage costs associated with the consultations detailed at paragraphs 6 and 7. As orders are made additional advertising costs will be incurred (see para 16 below).
15. Finally, the order CYC were directed to make as a consequence of the application submitted by Mr X (see para 3 above) has been made and completed its statutory consultation period. As a duly made objection was received it now needs to be submitted to the secretary of state for a final decision.

Council Plan

16. The apprentice/trainee role will contribute to increasing the number of apprentices employed by the council identified as a key outcome in the Council Plan 2019-2023.
17. 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

18. 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.
19. 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.
20. 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)

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

Equalities

22. There are no equalities implications

Legal

23. 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.
24. 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.

25. 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.
26. DMMOs, such as those mentioned within this report, do not create any new public rights they simply seek to record those already in existence.
27. 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

28. There are no crime and disorder implications

Information Technology (IT)

29. There are no IT implications

Property

30. There are no property implications

Risk Management

31. 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.
32. 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.

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Report

Date 08.01.20

Approved ✓

Specialist Implications Officer(s) List information for all

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Wards Affected: All wards.

For further information please contact the author of the report

Background Papers:

None

Annexes

Appendix 1 – Progress Chart
Appendix 2 – Flow Chart

List of Abbreviations Used in this Report

DMMO – Definitive map modification order