

**Decision Session – Executive Member for
Transport**

20 July 2021

Report of the Director of Transport, Environment and Planning

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.
3. The Executive Member is also asked to consider whether they would like to receive an annual report giving an over view of the rights of way function.

Background

4. 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.
5. This report constitutes the fourth and final update report, a copy of which is required to be forwarded to the LGO. The first report was made in January 2020.

Progress made to date

6. Since the last report eight further applications are in the process of being made. These relate to routes in Dunnington, Heslington, Naburn, Heworth, Westfield, and three orders in Skelton. These applications were received between 2004 and 2018 respectively.
7. Publicity for the making of these orders will be happening at the time of the decision session or shortly after.
8. The three DMMOs for routes in Naburn, Haxby, and Strensall referred to in the last report have been publicised. The Naburn DMMO received five objections and we are analysing these before responding.
9. The Haxby DMMO attracted one objection which was subsequently withdrawn and the order has been confirmed in accordance with the determination report of 17 December 2019, recording it on the definitive map.
10. The Strensall order received no objections and a report is being prepared for the Executive Member and the Director to decide whether it will be confirmed.
11. With reference to the two DMMOs 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.
12. The DMMO application received from Strensall with Towthorpe Parish Council has now been determined. The orders for these routes will be made in accordance with the Statement of Priorities.
13. Since the last report a two new DMMO applications have been received. One is for a route between Sandringham St and Marlborough Terrace and we are currently assessing the responses to the initial consultation before preparing a determination report. The second is for a route in Copmanthorpe from Moor Lane to the CYC/NYCC boundary. We are waiting to receive confirmation that the applicant has served notice on all the affected land owners
14. As a result, all but two of the outstanding DMMO applications have been determined by CYC. The remaining two are still within the 12 month period the council has to determine them. This means that one of the LGO's principal findings against the council has been addressed.

15. See Appendix 1 for a detailed progress chart for each application and Appendix 2 for a flow chart illustrating the process.
16. The Definitive Map Assistant has now been recruited. Lauren Grindley joined the council in April and she is responsible for the acceleration in the rate we are determining applications and making orders.
17. The DMMO CYC were directed to make as a consequence of the application submitted by Mr X (see para 3 above) is going to be resolved through written representations. The Planning Inspectorate have given a start date of 18 May 2021 for the order and the other parties to it need to have made any representations by 13 July 2021.
18. Finally, although this is the last report that needs to be sent to the LGO, there is considerable merit in continuing to provide a regular report on rights of way matters to the Executive Member. This would ensure continuing Executive Member oversight and maintain the transparency these reports have provided the public.

Council Plan

19. 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

20. 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.
21. 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. These costs will be met out of existing budgets.
22. 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)

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

Equalities

24. The Council recognises its duty under section 149 of the Equality Act 2010 to have due regard to equalities in the exercise of its functions. There are no equalities implications identified in respect of the matters discussed in this report. The process of consulting on the applications mentioned in this report will identify any equalities implications on a case by case basis.

Legal

25. 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.
26. 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.
27. 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.
28. DMMOs, such as those mentioned within this report, do not create any new public rights they simply seek to record those already in existence.
29. 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

30. There are no crime and disorder implications

Information Technology (IT)

31. There are no IT implications

Property

32. There are no property implications

Risk Management

33. 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.
34. 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.

Contact Details

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**Report
Approved**



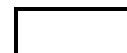
Date 9 July 2021

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

Appendix 2

List of Abbreviations Used in this Report

DMMO – definitive map modification order