
Executive

18 July 2019

Report of the Corporate Director of Economy and Place

Portfolio of the Executive Member for Transport

Public Rights of Way – Review of Definitive Map Processes and impact of imminent implementation of the Deregulation Act 2015

Summary

1. In 2018 a local resident complained to the Local Government Ombudsman about the length of time it was taking to process his definitive map modification order application. This complaint has led to the Definitive Map service accelerating the processing of definitive map modification order applications. This report sets out proposals that will accelerate the process further.
2. Nevertheless, processing definitive map modification order applications remains a complex statutory duty of the council. The requirements set out by the legislation mean that resolving applications is necessarily time consuming. Therefore, in common with other highway authorities, resolving all the matters raised by the Local Government Ombudsman will take a number of years.
3. The Local Government Ombudsman has found that the council is at fault in regards to the time taken to determine a definitive map modification order.
4. The Local Government Ombudsman's decision requires that the council:
 - a. Within 1 calendar month of the completion of a review of the Definitive Map service, seek authorisation from the Executive for the changes required as a consequence of that review (*the purpose of this report*).
 - b. Within 2 weeks of the Executive decision detailed at para(a) above write to the complainant and all other definitive map modification order applicants advising them of the Executive decision and detailing the time frame within which the council expects to be able to decide their applications.

- c. Send copies of all correspondence, reports, and decisions to the Local Government Ombudsman. In addition, a report is to be sent to the Local Government Ombudsman advising them of the progress the council is making towards eliminating its definitive map modification order backlog. These reports are to be sent every 6 months for a period of 2 years.

A copy of the Local Government Ombudsman's decision can be found at annex 1 of this report.

Recommendations

5. The Executive is asked to consider the finding of the review and:

Review of the Statement of Priorities

6. Support the findings of the review and adopt the revised Statement of Priorities (see annex 6) including the requirement to ensure that any direction from the Secretary of State at Defra (SOS) will be dealt within either 3 months or 12 months according to the type of direction received.

Review of the definitive map process

7. Members to consider authorising a change to the current scheme of delegation so that definitive map modification order applications to make changes to the definitive map and statement will be determined by an Assistant Director or more senior officer with responsibility for the Rights of Way team, in consultation with the Executive Member and affected ward councillors and;
8. A report considering the progress of reducing the backlog of definitive map modification order applications to be presented to the Executive Member every 6 months – copy to be sent to the Local Government Ombudsman.

Review of staffing levels and budget

9. Develop an apprentice/trainee role for rights of way to initially focus on definitive map modification order applications to be considered in the 2020/21 financial year budget setting by full Council. the cost of which is £25,000 and which needs to be incorporated as unavoidable growth in the 2020/21 budget process.

10. To keep further resources under review to ensure we deliver on our new commitment to deal with SOS directions within either 3 months or 12 months according to the type of direction received.

Reasons:

- a. With the aim of eliminating the definitive map modification order backlog in the shortest possible time, with the available resources.
- b. To reduce the risk of further appeals for non-determination and further complaints to the Local Government Ombudsman
- c. To comply with the findings of the Local Government Ombudsman and prevent a finding of maladministration against the council.
- d. To ensure the statutory escalation process to the Secretary of State results in resolution.

Background

11. The background information relating to the review of the Statement of Priorities can be found at annex 3.
12. The background information relating to the review of the Definitive Map process can be found at annex 2.
13. The background information relating to the review of staffing levels and the budget can be found at annex 4.

Consultation

14. The review relates to the internal processes the council uses to meet its statutory obligations. As such, no public consultation is required.

Options

15. Options are given across the 3 key areas covered by this review (*statement of priorities, definitive map process, staffing levels and budget*).
16. Review of the Statement of Priorities
 - a. *Statement of Priorities Option 1*: Support the findings of the review (annex 4) and adopt the revised Statement of Priorities (see annex 6) including the requirement to ensure that any direction from the SoS will be dealt with by officers within

either 3 months or 12 months according to the type of direction received. This is a recommended option

- b. *Statement of Priorities Option 2*: Take note of the review of the Statement of Priorities and retain the existing Statement of Priorities. This is not a recommended option

17. Review of the definitive map process

- a. *Definitive Map Option 1*: Support the findings of the review and consider authorising a change to the current scheme of delegation so that definitive map modification order applications making changes to the Definitive Map and Statement (definitive map and statement) are determined by an Assistant Director or more senior officer with responsibility for the Rights of Way team in consultation with the Executive Member and affected ward councillors; members need to consider the benefits gained in time with the delegation of such an issue. A and B are the recommended options.
- b. *Definitive Map Option 2*: A report considering the progress on reducing the backlog of definitive map modification order applications to be presented to the Executive Member every 6 months – a copy to be sent to the Local Government Ombudsman. A and B are the recommended options.
- c. *Definitive Map Option 3*: Take note of the review of the council's definitive map processes and retain the current system i.e. all definitive map modification order applications continue to be determined by the Executive Member for Transport and Planning at decision session, except those where the determination has been made by the Secretary of State. This is not a recommended option.

18. Review of resources - staffing levels and budgets

- a. Review of Resources Option 1: Develop an apprentice/trainee role for rights of way with a budget for the work involved initially concentrating on definitive map modification order applications commencing in April 2020, to be considered as part of the budget setting process for 2020/21 by Full Council. This is a recommended option.
- b. Review of Resources Option 2: Keep further resources under review to ensure the commitment to resolve cases reviewed by the Secretary of State can be achieved. This is a recommended option.

- c. Review of Resources Option 3: Take note of the review of staffing levels and budgets but not authorise any changes. This is not the recommended option.

Analysis

19. The findings of the review of the Statement of Priorities (SoP) are that items set out by the current SoP are, in many cases, complete. This has resulted in a SoP that focussed efforts on administrative functions that, whilst legally necessary, do not deal with issues that the residents of York care about.
20. Furthermore, the imminent introduction of the Deregulation Act 2015 and the 2026 cut off date for certain types of application mean that demands on the Definitive Map service will only increase over the foreseeable future. The current SoP was written under a very different legislative regime.
21. By adopting the revised Statement of Priorities (RSoP) the Definitive Map service will concentrate on matters that directly affect the residents of York and the demands placed on the council by the legislation.
22. The full analysis of the review of the Statement of Priorities can be found at annex 3.
23. The findings of the review of the Definitive Map process are that because it is a legal process even straightforward definitive map modification order applications take around 1 year to complete. Where an application attracts vociferous or complex objections this time is significantly extended.
24. As a consequence is extremely difficult to predict what resources will be required. Hence keeping the Definitive Map service under review will allow the council to respond to any additional demands that are made.
25. The review identified that most of the time taken to process a definitive map modification order from start to finish is outside the council's control. One area under the council's control is the timescale for adding items to the Forward Plan. The delays stemming from the need to follow the current scheme of report writing and presentation can add between 6 and 8 weeks to the process.
26. By making the determination of definitive map modification order applications a delegated responsibility of a specified senior officer in

consultation with the Executive Member and ward councillors this delay can be significantly reduced.

27. The full analysis of the review of the Definitive Map process can be found at annex 2.
28. The findings of the review of staffing levels and budget are, necessarily, somewhat dependant on the actions taken in regard to the Definitive Map process and SoP.
29. That notwithstanding, in order to address the matters raised by the Local Government Ombudsman, additional staff resources is the key to accelerating the work programme.
30. Given the difficulty of attracting experienced definitive map officers this may be an ideal role for considering an apprenticeship post.
31. Making accurate predictions about future budgetary requirements is difficult at this stage. Keeping the situation under review will allow the council to alter budget allocations when the need arises.
32. The review of the staffing levels and budgets can be found at annex 4

Council Plan

30. As set out in the Council Plan 2015-19: One of our key priorities is to be *'a council that listens to residents to ensure it delivers the services they want and works in partnership with local communities'*.
31. The aims of this priority are to:
 - Focus on the delivery of frontline services for residents and the protection of community facilities
 - Focus on cost and efficiency to make the right decisions in a challenging financial environment
32. To do this we will ensure:
 - We always consider the impact of our decisions, including in relations to health, communities and equalities
 - Use of evidence based decision making;
33. In the next 4 years we will:

- Promote a new model of governance, with the Executive to replace the cabinet and a new cross party scrutiny and policy committee approach;
- Implement the outcomes of our new governance, transparency and public engagement
- Promote mutual respect between officers and Members with clearly defined roles for each;
- Build the culture we need and attract, retain and develop colleagues.

34. The approval of the recommended options will contribute to the above aims and 4 year work programme.

Implications

- **Financial:** The cost of an apprenticeship/trainee post is £25,000 and requires inclusion as growth in the annual budget process for future years and subject to decision making by Full Council. There is the possibility of additional compensation to be paid to definitive map modification order applicants should further complaints be made to the Local Government Ombudsman, or a finding of maladministration may lead to the council being fined by the Local Government Ombudsman. These would need to be identified if and when they occur and addresses through the financial monitoring process.
- **Human Resources (HR):** Should Resources Option 1 be approved an additional Rights of Way assistant/trainee would be added to the establishment
- **One Planet Council / Equalities:** There are no known Equalities Implications.
- **Legal:** The Council has a statutory duty to process applications for a DMMO. There is a set statutory process under the provisions of the Wildlife and Countryside Act 1981 which the Council has to follow before the Definitive Map can be altered. These involve both the making of a definitive map modification order and then the confirmation of that Order. A definitive map modification order only takes effect when it is confirmed. When it is made, it shows that it is intended to add a path to the

Definitive Map and invites objections and representations in relation to the existence or non-existence of that path.

The Council is required, as soon as reasonably practicable after receipt of applications, to investigate and determine whether or not to make the Order sought. If after 12 months no such determination has been made, the applicant may appeal to the Secretary of State who may then direct the Council to determine the application and may impose a timescale for doing so.

The Countryside and Rights of Way Act 2000 provides for a cut-off date of 1st January 2026 for recording certain rights of way.

The Deregulation Act of 2015 made a number of changes to rights of way legislation. Once these amendments are brought into force, there will be a 'basic evidential test' for new applications but also a new appeals process via the Magistrates' Court for applicants and affected landowners should the Council fail to make a decision within the timeframe specified by legislation.

- **Crime and Disorder:** There are no known Crime and Disorder implications
- **Information Technology (IT):** There are no known IT implications
- **Property:** There are no known Property implications
- **Other:** There are no known Other implications

Risk Management

35. Leaving the scheme of delegation in respect of determining definitive map modification order applications; the statement of priorities; staff levels and budgets etc at their current level will not comply with the required actions of the Local Government Ombudsman and most likely result in a finding of Maladministration, causing severe reputational damage to the council.

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Report

Approved

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Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex 1: Decision of Local Government Ombudsman

Annex 2: Review of the Definitive Map process

Annex 3: Review of the Statement of Priorities

Annex 4: Review of staffing levels and budgets

Annex 5: Current Statement of Priorities

Annex 6: Revised Statement of Priorities

List of Abbreviations Used in this Report and Annexes

BHS – British Horse Society

CROW Act – Countryside and Rights of Way Act 2000

DEFRA – Department of Food and Rural Affairs

Dereg Act – Deregulation Act 2015

DMO – Definitive Map Officer

DMMO– Definitive Map Modification Order

definitive map and statement - Definitive Map and Statement

FCB – Former County Borough of York

Local Government Ombudsman – Local Government Ombudsman

PA – Preliminary Assessment

PRoW – Public Rights of Way

RSoP - Revised Statement of Priorities

RUPPs – Roads used as Public Paths

SoP – Statement of Priorities

SoS – Secretary of State