
Decision Session
Executive Member for City Strategy

2 March 2010

Report of the Director of City Strategy

**Public Rights Of Way – Wildlife & Countryside Act 1981,
Preparation of Definitive Map Former County Borough of York**

Summary

1. This report seeks to assist the Executive Member in determining whether or not to make a number of Definitive Map Modification Orders to register public rights of way on the Definitive Map for the former County Borough of York within Acomb Ward (Annex 1), Dringhouses and Woodthorpe Ward (Annex 2) and Westfield Ward (Annex 3(a)and(b)).

Recommendation

2. It is recommended that the Executive Member approves Option 1, which is inclusive of the following:
 - i) Authorise the (Interim) Head of Civic, Democratic and Legal Services to make and advertise the required Definitive Map Modification Orders to add all those paths to the Definitive Map, where it is recommended based on the evidence available, to make an Order (see bottom of page of each Schedule (Annexes 1-3) for recommended action).
 - ii) If no objections are received, or any objections received are subsequently withdrawn, the Orders referred to in i) above be confirmed; or
 - iii) If objections are received, and not withdrawn, the Orders, or relevant parts thereof, be referred to the Secretary of State for determination.

Reason

3. As surveying authority for the area, the Council for the City of York has a statutory duty (Wildlife and Countryside Act 1981, section 55(3)), to produce a Definitive Map and Statement for the former County Borough of York; and in doing so is obliged to make Definitive Map Modification Orders to register the existence of all public rights of way in that area.

Background

4. Part IV of the National Parks and Access to the Countryside Act 1949 (NPACA 49) required every County Council to carry out a survey of 'all lands in their area over which a right of way is alleged to exist' and to produce a Definitive Map and Statement (hereafter referred to as the Definitive Map). The survey was not compulsory in every local authority in England and Wales, with some densely populated areas being excluded. The London Boroughs, County Boroughs (such as York) and other large urban conurbations (subject to application) were excluded from the compulsory survey under the NPACA 49. As a result of the provisions of the NPACA 49 the former County Borough of York was excluded and no Definitive Map produced.
5. The Wildlife and Countryside Act 1981 removed the majority of the exclusion provisions provided by the 1949 Act and replaced them by introducing a statutory duty to produce Definitive Maps for the previously excluded areas. This is achieved by first producing a blank map, which when modified, by making a Definitive Map Modification Order becomes the Definitive Map for the area. The Definitive Map is then further compiled by making additional Definitive Map Modification Orders.
6. In Order to achieve this, each of the Ward areas has been surveyed to identify potential routes for inclusion on the Definitive Map, followed by the investigation and consultation described below.

Identification of Routes for Inclusion

7. Initially a desk based mapping survey was undertaken in order to identify all routes within the area that had the physical characteristics of a public right of way (i.e. they physically existed as a through route between two other highways).
8. The results of this survey were then compared against the Council's List of Streets Maintainable at Public Expense (List of Streets), which is held pursuant to Section 36 of the Highways Act 1980. Those routes that were recorded on the List of Streets as being publicly maintainable were temporarily removed from the survey with a view to them being included in a second phase of Definitive Map Modification Orders at a later date. The reason for this being that as these temporarily excluded routes are already shown on one set of highway records (ie the List of Streets), their recording on the Definitive Map could take a slightly lower priority than those routes not recorded at all.
9. Those routes remaining within the survey, of which there are 204 (approximately 45.5km km) in total, form the basis of the first phase of proposed Definitive Map Modification Orders which, due to the number of paths involved, will be administered in three batches (see table below), Batch 1 being the subject of this report.

| Batch | Wards Included | Number of paths | Length of paths (approx) |
|--------------|----------------------------------------------------------------------------|------------------------|---------------------------------|
| 1 | Acomb (Annex 1), Dringhouses and Woodthorpe (Annex 2), Westfield (Annex 3) | 88 | 14 km |
| 2 | Guildhall, Fishergate and Micklegate | 52 | 16.5km |
| 3 | Clifton, Heworth, Holgate and Hull Road | 64 | 15 km |

10. Details of those routes that are included in the first batch (Acomb, Dringhouses and Woodthorpe, and Westfield Wards) are included in the attached Schedules at Annexes 1 - 3 of this report.
11. Eventually, as is required by law, all those public rights of way that are recorded on the List of Streets will be added to the Definitive Map, and all those routes recorded on the Definitive Map that are found to be highways maintainable at the public expense ie in existence prior to the 1959 Highways Act, will be added to the List of Streets.

Evidence

12. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 places a duty upon the Authority to promote a Definitive Map Modification Order upon 'the discovery by the authority of evidence which shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist'.
13. Each of the routes concerned has been surveyed, use observed and photographed. In addition a search of old maps etc has been undertaken to ascertain approximately how long each route has physically existed. Consultations also invited the submission of user evidence, although little was forthcoming. The evidence in respect of each individual path is summarised in the individual schedules located in the Annexes. At the bottom of each schedule there is a recommendation, based on the evidence produced, on whether or not to proceed with a definitive map modification order.
14. By and large the paths included in this report are set out, and have the general appearance of public rights of way; they also generally in use on a daily basis by members of the public, and have been for a number of years. They are generally accepted by the public as being public rights of way although in some cases there is a lack of evidence to progress a definitive map modification order at this stage.
15. Where there is *prima facie* evidence of the existence of a public right of way, and no evidence to the contrary, the "reasonably alleged" test set out above will be satisfied. A summary of the number of paths under consideration, and those recommended for further action is set out below:

| Ward | No of Paths under consideration | No. of paths recommended for DMMOs | No. of paths where no further action is recommended at this time |
|--------------------------|---------------------------------|------------------------------------|------------------------------------------------------------------|
| Acomb | 9 | 6 | 3 |
| Dringhouses & Woodthorpe | 26 | 16 | 10 |
| Westfield | 51 | 15 | 36 |

Consultation

16. In an effort to reduce the potential for disputes a significant amount of consultation has been undertaken. This has included writing to all adjacent property holders and posting maps and notices on site. There has only been a minimal response to the consultations, principally because the routes in question are obviously public rights of way (paths maintained by the Council).
17. Whilst substantial consultations have been undertaken, there is no guarantee that all landowners have been identified. In recognition of the levels of consultation which has been undertaken, and will be incorporated into the Order making process, dispensation from serving notices direct on landowners is being sought from the Secretary of State.
18. The aim, within this part of the project is to record as many undisputed public rights of way on the Definitive Map as possible. So as not to delay progress, any disputed paths, or contentious issues, have been removed from the project and will be dealt with separately.

Consultation

19. Ward Members and Group Spokesperson(s) have been consulted. Their comments, verbatim, are:

Ward Councillors

20. **Acomb**
Cllr David Horton – Comments received 29th January, 2010,
'Have looked at all the statistics and responses and have come to the conclusion that I agree with Jim Shank's observations.

I could never go with 100% closure – nor did I ever suggest it – as this would be disadvantageous to numerous residents in Jute~Road and its cul-de-sacs seeking access onto Beckfield lane to/from the bus stops if nothing else. It would also be disadvantageous to residents with mobility problems in the same area. I can understand the immediate neighbours to the snicket seeking permanent closure, indeed the resident at no.58 was the resident who raised the matter with me in the first place. I find it strange that you have had no response from her.

I would support 100% the permanent closure of the leg between B and D which would also benefit No.54 Jute Road. I don't think that a conditional closing order would solve the problem and could be more trouble than it is worth. In other words I agree with the recommendation in your penultimate paragraph and we can wait and see if there is any benefit in the future of looking at a conditional closure though I would take some convincing,'

Further comments received 15th February, 2010.

No problem with any of those listed though some are 'desire' lines rather than formal footpaths e.g. 123 & 124. No.117 runs from Rosedale Avenue through St. Stephen's churchyard and past the church to York Road. I didn't recognise this as a Right of Way – it is gated at the Rosedale Avenue end.

Cllr Tracy Simson Laing – No comments received.

21. **Dringhouses and Woodthorpe**

Cllr Tom Holvey – No comments received.

Cllr Ann Reid – Comments received 30th January, 2010, '*I would make the following comments about the proposals for Dringhouses and Woodthorpe Ward:*

1. In the covering report you say that you have removed contentious paths, however, there are 2 marked that the subject of residents petitions to close them, at least at night. The first is the path {York 34} along side of Dringhouses School from St Helen's Road to Mayfield Grove and the second is the one from Moor Lane Bridge to Old Moor Lane {York 33}. It would seem premature to add them to the Definitive Map while they are subject to debate. I am now wondering, if they are not on the Definitive Map, whether the process we have been following to allow gating orders is necessary. If they are not on the Definitive Map does this mean that they are not a PROW? {Gating Order Legislation allows a Council to gate a relevant highway such as a public footpath to reduce crime and anti-social behaviour. A Gating Order restricts the public's use of the route. The fact that a Gating Order is being considered implies that the route is public as Gating Order Legislation cannot be used to gate private paths. If the route is public it should be recorded on the Definitive Map}.

2. The disputed PROW at the corner of Ashbourne Way and Ryecroft Avenue is marked blue. I assume that this because it is disputed? {The route is a disputed right of way. The matter is to be determined at a Public Inquiry to be held on 16 March, 2010}.

3. There are proposals to add some of the paths {York 57, 58 and 59} in Acomb Wood to the map. Because of 2 above, I think that it might be better to wait for the outcome of the public inquiry before adding more paths. It has always been our long term ambition to make the wood capable of being locked at night. Whilst the Ashbourne Way path has been in dispute we have not progressed that but if adding paths to the Definitive Map makes that more difficult then I think we should wait the outcome of the Inquiry

I don't see a problem with adding the other paths to the Definitive Map.'

Cllr Susan Sunderland - No comments received.

22. **Westfield**

Cllr Steve Galloway – Comments received 7th February, 2010, *'All but 2 of the footpaths in Westfield marked in red seem to be correct*

1. The path shown in red {York 98} next to 14 Bellhouse Way is a gated private access only path {York Footpath 98 is subject to a Gating Order} (the other two {York 96 and 97}, on the same stretch of road, are not gated but were never intended to be PROWs

2. The path {York 115} adjacent to 24 {path located adjacent No.23 not No.24} Kingsway West was closed many years ago.

The paths marked in red {paths subject to investigation} on the Foxwood Lane estate are all still open. Those marked in black were closed several years ago {paths closed using Extinguishment Orders in 2000}. Those marked in yellow {adopted} are still open

There are many other footpaths in this estate which are not marked at all (e.g. adjacent to 5/6 Herman Walk).

Many of the footpaths (not coloured) on Foxwood Lane itself have been closed (e.g. between numbers 124/122) Similarly there is a footpath across the Stirrup Close amenity area which is not marked

There is a request with you for the footpath, across the Cornlands Road park {York 104}, to be diverted via the existing snicket which skirts the White Rose (former) public house {York 103}. This would facilitate the night time closure of the Park which is a serious source of anti social behaviour for neighbours. We hope that good progress is now being made with this request.

Cllr Susan Galloway – No comments received.

Cllr Andrew Waller – Comments received 14th February, 2010. *There are a number of paths which help residents to access the open space next to Westfield Ward which I would support as becoming public rights of way as indicated in the report.*

However, the council does need to recognise its responsibility to residents to reduce the potential for anti-social behaviour. This has already happened in Kingsway West {115} as detailed by Cllr Steve Galloway in the location of house number 23. Equally there have been requests for night time closure of the Cornlands Road Park which would require the diversion of one PROW {York 104} to the existing snicket next to the White Rose Pub.

There are other paths on the Foxwood Estate which are open, and Cllr Steve Galloway has identified these, and they should be acknowledged in the outcome of this process. Other paths have been closed following requests from residents, and one {96 and 97} were never intended to be PROW.

23. **Group Spoke(s)person**
Cllr Steve Galloway – See above.

Cllr R Potter – No comments received.

Cllr I Gillies – No comments received.

Cllr A D'Argone – No comments received.

24. **Officer's Comments**

In light of Councillor's comments above, no further action will be taken at this time in respect of Footpath Nos 57, 58 and 59 (Dringhouses and Woodthorpe Ward), and Footpath Nos 96, 97, 115 (Westfield Ward). With regards to comments made about some paths being subject to Gating Orders, or requests for Gating Orders, as Gating Orders can only be made on a 'relevant highway' (a public right of way being a 'relevant highway' for the purposes of Gating Order legislation), those paths that are currently subject to a Gating Order (eg Footpath 98) are required to be recorded on the Definitive Map.

Options

25. Two options are available to the Executive Member:
26. Option 1: Make the necessary DMMOs to add those paths to the Definitive Map that are recommended in the Schedules (to exclude those paths identified in para 24 above). This option is recommended; or
27. Option 2: Do not make the DMMOs to add the paths to the Definitive Map.

Analysis

28. Making the Orders as recommended (Option 1) represents compliance with the Authority's statutory duty (Wildlife and Countryside Act 1981, section 55(3) to produce a Definitive Map for the area. Once the Orders are confirmed the paths will be added to the Definitive Map which will safeguard the public's use of them.
29. Failure to make the required Orders is contrary to the Authority's statutory duties in this respect. Additionally, if the Authority decides not to make the Orders the paths concerned will not enjoy the same level of protection as those paths that are recorded on the Definitive Map and Statement.

Corporate Priorities

30. 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. If it is determined that rights of way subsist or is reasonably alleged to subsist and the Orders made to add the paths to the definitive map the benefits of doing so would link into the Council's Corporate priorities.

Implications

Financial

31. The cost of advertising the making of the required Definitive Map Modification Orders will be approximately £12,000 and will be covered this financial year, by grant monies obtained from the Department of Transport for recording and bringing up to date certain council asset records. If no objections are received then the Orders will require to be confirmed, again at a cost of approximately £12,000. The funding of phase's 2 and 3 of this project will be met from existing PROW budgets as and when resources allow. The current annual PROW budget for Definitive Map work is £20,000. There is a statutory duty to keep the definitive map under continuous review, therefore in light of the current and future workload associated with definitive map work it will be necessary to formulate and pursue a growth bid for funding.
32. Identified in the schedules shown in the Annexes to this report, The Council of the City of York as the highway authority has an existing and significant responsibility to maintain all publicly maintainable highways whether shown on its records such as the List of Streets and the Definitive Map, or not. Therefore the recording of the paths identified in the schedules shown in the Annexes attached to this report on the Definitive Map will not theoretically result in any increase in the maintenance liability for the Council. The process of recording the rights of the public and producing a Definitive Map provides the authority with an increased knowledge and a continuing accurate record of paths that are publicly maintainable. The funding that will be required to provide continued maintenance of the paths identified is not currently reflected in any of the council's highway maintenance budgets.
33. The addition of a further 45.5 km of path to the Definitive Map will mean that there will be increased pressure put upon the existing PROW Maintenance and Highway Maintenance Services budgets.
34. The paths under consideration within this report have either natural, crushed-stone (or similar), or hard surfaces (eg tarmac, rosemary sets). In accordance with a decision made by Members in September 2004 (where it was determined that those paths recorded on the Definitive Map, but which lie within the more urban areas of York, be maintained out of the Highways Maintenance budget), it is proposed that those paths that currently have a hard surface be maintained by Highways Maintenance Services and those that have natural or crushed stone surface be maintained by PROW.
35. Highway Maintenance Services has provided the following comments, *'The inclusion of these footways and the resultant maintenance liability on the metalled surfaces where that exists will introduce further demands on our maintenance budget. On this basis we recommend that Members allocate increased funds to cover this. Also we would be faced with the annual inspections of these areas where they are metalled. Again this is going to involve further demands on existing resources.'*

Human Resources

36. The addition of a further 45.5 km of path to the Definitive Map will increase the current work-load of both PROW and Highway Maintenance Services as all those paths added to the Definitive Map and which are maintainable at the public expense will be required to be included within Highway Maintenance Services' annual inspection of highways and also the PROW Team's routine maintenance checks.

Equalities

37. There are no equality issues

Legal

38. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 places a duty upon the Authority to promote a Definitive Map Modification Order upon the discovery of evidence that a public right of way subsists or is reasonably alleged to subsist.
39. Section 55 of the Wildlife and Countryside Act 1981 places a statutory duty on the Authority to produce a Definitive Map for the former County Borough of York. This is not a discretionary matter.
40. Making the proposed orders contributes, in part, towards the Authority meeting these obligations

Crime and Disorder

41. In view of the fact that Definitive Map Modification Orders only seek to register public rights of way that already exist, and do not create any new rights, there are no crime and disorder issues. The registration of routes may however assist in identifying "Relevant Highways" for the purposes of the Gating Order legislation.

Information Technology

42. There are no information technology issues.

Property

43. Although some of the paths under consideration in this report run over council owned land, there are no property issues as actual ownership of land will not change.

Other

44. There are no other known issues for consideration.

Risk Management

45. In compliance with the Council's Risk Management Strategy, there is a low financial risk identified which is linked to the fact that the funding that will be required to provide continued maintenance of the paths identified is not currently reflected in any of the council's highway maintenance budgets, this will inevitably put pressure on the existing PROW maintenance budget and Highways Maintenance Service budget. As Batch numbers 2 and 3 are determined the budget position will require monitoring.

Contact Details

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**Report
Approved**



Date

16 February 2010

Wards Affected:

Acomb, Dringhouses and Woodthorpe, Westfield.

All

For further information please contact the author of the report.

Background Papers:

Evidence evaluated and background analysis which forms the basis of the report prepared by consultant: Robin Carr Associates, 2 Friarage Avenue, Northallerton, North Yorkshire.

Annexes:

Annex 1 - Acomb location plan, path schedules and path plans

Annex 2 – Dringhouses and Woodthorpe location plan, path schedules and path plans

Annex 3 – Westfield location plan, path schedules and path plans