

**Decision Session – Executive Member for
Transport**

25 July 2019

Report of the Corporate Director of Economy and Place

**Definitive Map Modification Order recording a public footpath in
woodland adjacent to Windmill Lane, Heslington**

Summary

1. Following on from the Executive Member Decision Session held on the 7 February 2019, the above definitive map modification order (DMMO) has been made and publicised. No objections were received during the statutory notice period. This report is seeking authorisation from the Executive Member to confirm the order.

Recommendation

2. The Executive Member is asked to authorise the confirmation of the DMMO to record the route through Mill Plantation as a public footpath as shown on the map at annex 2.

Reason: No objections were received during the statutory notice period. Additional evidence of use detailed at the 7 February 2019 decision session means that the way is a public right of way in the balance of probabilities.

Background

3. The report presented to the Executive Member on 7 February 2019 is attached to this report as annex 3 and contains all the background information that lead to the making of the DMMO.
4. At that Decision Session information was also given by officers about the additional evidence supporting the existence of the public footpath that CYC had received. This is reproduced here:

“In total, 32 user evidence forms now support the application alleging use between 1947 and 2019; of the 32 forms, 23 fell within the relevant period of 1969 to 1989; of the 23 forms alleging use within the relevant period, eleven evidenced use for 20 or more years; the majority of users (27 out of 32) said they had used the path on foot on a daily or weekly basis; and two users also said they had used the path on a bicycle but only for a period of six years each which was not sufficient to bring a right of way on a bike into being.”

5. As no objections were made during the statutory notice period it is now open to CYC to confirm the unopposed DMMO and record the route on the definitive map and statement. Before confirming the DMMO, the Executive Member must be satisfied that the way is a public footpath on the balance of probabilities.

Consultation

6. The statutory consultation has been carried out with Heslington Parish Council, the affected land owners, user groups, and the relevant ward councillors. In addition, notices were erected at each end of the route and a copy of the notice was placed in the local newspaper.
7. No objections or representations were received during the notice period.

Options

8. Option A. The Executive Member authorises the confirmation of the DMMO recording the way as a public footpath.

Reason: This is the recommended option because no objections were received to the order as advertised and the additional supporting evidence received is sufficient to show that the public footpath exists on the balance of probabilities.

9. Option B. The Executive Member does not authorise the confirmation of the DMMO and the council issues a notice to all parties to that effect.

Reason: This is not recommended because the additional supporting evidence received is sufficient to show that the public footpath exists in the balance of probabilities.

Analysis

10. As noted at para. 4 above, 23 people have evidenced use of the route during the relevant period (1969 to 1989) and 11 have claim their use extended for 20 or more years.
11. A further 9 people adduced evidence showing use from 1989 to 2019 demonstrating continued use of the path being made by members of the public.
12. The nature of the path through Windmill Plantation is such that it likely to be used most heavily by people living in its immediate vicinity. This is borne out by the evidence produced. This shows that the way is being used by the public at large, rather than by a specific class of user.
13. As such, in the balance of probabilities, the requirements set out in section 31 of the Highways Act 1980 have been met and a public footpath has been brought into being through use.
14. The above coupled with the fact that no objections were received to the order means that CYC are able to confirm the DMMO and record the footpath on the definitive map and statement.

Council Plan

15. As set out in the Council Plan 2015-19 “Our purpose is to be a more responsive and flexible council that puts residents first and meets its statutory obligations” by submitting this DMMO to the secretary of state the council is fulfilling one of its statutory obligations.

Implications

Financial

16. The confirmation of an unopposed DMMO requires that a statutory notice is placed in a local newspaper. This will cost in the region of £800.
17. 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)

18. There are no human resource implications

Equalities

19. There are no equalities implications

Legal

20. City of York Council is the Surveying Authority for the purposes of the WCA 1981, and has a duty to ensure that the Definitive Map and Statement for its area are kept up to date.
21. 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.
22. 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 in order to allow the evidence to be properly tested through the statutory order process.
23. DMMOs, such as the one being considered within this report, do not create any new public rights they simply seek to record those already in existence.
24. 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

25. There are no crime and disorder implications

Information Technology (IT)

26. There are no IT implications

Property

27. There are no property implications

Risk Management

28. In compliance with the authority's Risk Management Strategy, Option A is subject to internal budgetary pressures (financial). Option B is subject to a greater budgetary pressure (financial) because of the possibility the additional work defending the decision to reject the application. It is highly likely that CYC would be directed to make the DMMO in the event of an appeal.

Councillor Responses

29. To be added as they are received.

Contact Details

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Report Date 15.07.19
Approved

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For further information please contact the author of the report

Annexes

Annex 1: Location map

Annex 2: Route map

Annex 3: Previous report

List of Abbreviations used in this Report

CYC – City of York Council

DMMO – Definitive map modification order

PRoW – Public right of way

WCA 1981 – Wildlife and Countryside Act 1981