

**Decision Session – Executive Member for
Transport and Planning**

14 March 2019

Report of the Corporate Director of Economy and Place

**Request to authorise taking a Definitive Map Modification Order
Application out of turn**

Summary

1. We are seeking authorisation from the Executive Member to take a definitive map modification order (DMMO) application out of turn and start to process the application immediately as matter of priority. The intent of the application is to record Yorkfield Lane, Copmanthorpe as a public right of way (PRoW) on the basis of historical documentary evidence and user evidence. The request is being made to end uncertainty over the status of Yorkfield Lane prior to Network Rail carrying out proposed improvement works to the crossing of the east coast main line and the possibility of housing development adjacent to the lane.

Recommendation

2. The Executive Member is asked to authorise the Yorkfield Lane DMMO be taken out of turn and the investigation be started immediately as a matter of priority.

Reason: Determining the status of Yorkfield Lane will give certainty to planners, developers and Network Rail allowing future development to be better integrated into the existing sustainable transport network of the area. This in turn will allow improved sustainable transport links within Copmanthorpe village, particularly to the school.

Background

3. The route in question was identified as a possible PRoW in 2000-2001 during the council's research into "lost ways" around the city. However,

because the route was not within the area of the former County Borough of York no further action was taken at that time.

4. In August 2005 Copmanthorpe Parish Council made an application for an order under section 53 of the Wildlife and Countryside Act 1981. This application sought to record Yorkfield Lane as a PRow.
5. The application was supported by the local inclosure award where the route was awarded as an occupation road. It gave access to land lying to the east of the village.
6. The application was also supported by fourteen user evidence forms.
7. Initial research shows Yorkfield Lane depicted on all the historic Ordnance Survey (OS) maps the council has access to. Although by the time the OS surveyors arrived in 1851 the lane had already been crossed by the York and North Midland Railway. This line later becoming the east coast main line.
8. At the moment there are fourteen applications that, according to the council's statement of priorities, should be dealt with first. However it has been many years since any member of the public asked about the progress of any of these applications.

Options

9. Option A. Authorise the Yorkfield Lane DMMO be taken out of turn and started immediately.

Reason: Determining the status of Yorkfield Lane will give certainty to planners, developers and Network Rail allowing future development to be better integrated into the existing sustainable transport network of the area. This in turn will allow improved sustainable transport links within Copmanthorpe village, particularly to the school.

10. Option B. Do not take the application out of turn.

Reason: This is not recommended, because the opportunity to improve the sustainable transport links within Copmanthorpe will be lost.

Analysis

11. The fair, equitable, and transparent processing of DMMO applications is important for the council and the public we serve. That notwithstanding, occasionally a collection of circumstances can come together to make the processing of a particular application have an impact far beyond the narrow confines of rights of way law.
12. Such a combination of circumstances has now surrounded the Yorkfield Lane DMMO application.
13. The first is Network Rail's approach to the council regarding the closure of the Bishopthorpe level crossing. The level crossing is shown on the map at Annex 1 a short distance to the south of Yorkfield Lane.
14. Network Rail are seeking the authority's help in closing this crossing because they see it as one of the most high risk crossings on the railway network. They are proposing to replace it with a bridge. Owing to the existing housing developments near Bishopthorpe Crossing it is not possible to locate bridge there.
15. Instead, Network Rail are proposing to put the bridge in the vicinity of Yorkfield Lane and divert the existing public footpath (Copmanthorpe 2) to and over the new bridge.
16. The second is that the council has received an application for outline planning consent for the area of land to the north west of Yorkfield Lane (the shaded area on the map at Annex 1).
17. Access to the proposed development is shown as being off Top Lane. This means that to access the services in the centre of the village, like the primary school, residents will have to negotiate the busy Top Lane.
18. If the status of Yorkfield Lane is resolved and found to be a PRow it will allow the developer to incorporate traffic free access routes into the development promoting sustainable transport and reducing the need for people to use their cars.

Council Plan

19. 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 taking this DMMO out of turn the council is

fulfilling one of its statutory obligations and demonstrating that it is putting residents first.

20. **Implications**

Financial

If the DMMO is opposed it will need to be submitted to the secretary of state for determination.

Determination by the secretary of state may lead to a local public inquiry. The cost of a public inquiry being approximately £5000.

If the Order is confirmed by the secretary of state the authority will have to accept that the route is maintainable at the public expense. This will not, as such, be a new obligation, more the recognition of an existing, but previously unrecorded liability.

Human Resources (HR)

There are no human resource implications

Equalities

There are no equalities implications

Legal

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.

If, and when, 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.

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.

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.

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

There are no crime and disorder implications

Information Technology (IT)

There are no IT implications

Property

There are no property implications

Other – Maintenance Implications

The evidence indicates that the public rights over Yorkfield Lane were established prior to the commencement of the Highways Act of 1835, therefore as an ancient highway it is maintainable at public expense and should be recorded as such on the List of Streets Maintainable at Public Expense. There will therefore be an ongoing future maintenance liability to Highway Maintenance Services. The intention would be to maintain it fit to the standard required for the status that is recorded on the definitive map.

Risk Management

21. In compliance with the authority's Risk Management Strategy, option A and option B are subject to the same internal budgetary pressures (financial) because the processing of DMMO applications is a statutory duty of the council.

Councillor Responses

22. Councillor D'Agorne made the following comment, "Agree makes sense to give this priority for adding to definitive map."
23. Councillor Carr made the following comments:
 - “1. Please take the Yorkfield Lane DMMO out of turn and process immediately.
 2. Please advise Network Rail that to maximise the benefits to the community of Copmanthorpe, and for reasons of

residential amenity, access for the disabled, and land availability, the proposed new railway crossing at Copmanthorpe should comprise an underpass in the vicinity of the Recreation Centre at the centre of the village rather than a bridge some distance away at Beckett's Crossing. A crossing at this more central location would provide a direct link to the proposed additional recreation facilities which the neighbourhood plan envisages on the opposite side of the railway, and would also provide a more convenient pedestrian route to the centre of the village from the outlying Temple Lane/Drome Road area of the village.

3. I would be grateful for the opportunity to attend the 14 March Decision Session to make representations personally and to provide further information in support of comment (2) above."

Contact Details

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Report Date 05.03.19
Approved

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Wards Affected: Copmanthorpe.

For further information please contact the author of the report

Background Papers:

Highways Act 1980
Wildlife and Countryside Act 1981

Annexes

Annex 1: Location map

Annex 2: Route map

Annex 3: Outline planning application site and possible location of network
Rail Bridge

List of Abbreviations Used in this Report

DMMO – Definitive map modification order

OS - Ordnance Survey

PRoW – Public right of way