
Decision Session
Executive Member for City Strategy

6 April 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
(Fishergate, Guildhall and Micklegate Wards)**

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 record public rights of way on the Definitive Map for the former County Borough of York within Fishergate Ward (Annex 1), Guildhall Ward (Annex 2) and Micklegate Ward (Annex 3). This is a continuation of the work so far carried out to prepare a Definitive Map for the former County Borough of York (a statutory requirement), the first of 3 batches having been considered on 2 March 2010, where approval was given to make and advertise Definitive Map Modification Orders to record 87 paths on the Definitive Map.

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 - ii) If no objections are received, or any objections received are subsequently withdrawn, the Orders referred to in i) above be confirmed; or
 - iii) If objections are received, and not withdrawn, the Orders, or relevant parts thereof, be referred to the Secretary of State for determination.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 City of York Council 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, are being administered in three batches (see table below).

10. Batch 1 (Acomb, Dringhouses and Woodthorpe, and Westfield) was considered at the Executive Member Decision Session on 2nd March 2010 and approval was given to make and advertise Definitive Map Modification Orders to record 87 paths on the Definitive Map. This report considers the available evidence for the second batch of paths ie those so far identified in the Fishergate, Guildhall and Micklegate Wards.

Batch	Wards Included	Number of paths	Length of paths (approx)
1	Acomb, Dringhouses and Woodthorpe, Westfield	88	14 km
2	Fishergate (Annex 1), Guildhall (Annex 2) and Micklegate (Annex 3)	52	14.5km
3	Clifton, Heworth, Holgate and Hull Road	64	15 km

11. Details of those routes that are included in this second batch (Fishergate, Guildhall and Micklegate Wards) are included in the attached Schedules at Annexes 1 - 3 of this report.
12. 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

13. 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'.
14. 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.
15. By and large the paths included in this report are set out, and have the general appearance of public rights of way; they are 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.

16. 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
Fishergate	13	7	6
Guildhall	5	4	1
Micklegate	31	21	10

Consultation

17. 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).
18. Whilst substantial consultations have been undertaken, there is no guarantee that all landowners have been identified. In recognition of this, special dispensation from serving notices direct on landowners is being sought from the Secretary of State.
19. 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

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

Ward Councillors

21. **Fishergate**
Cllr Andy D'Argone – Comments received 2nd March, 2010. *“there are a few more I can let you know about but main ones are there - assume you will want to include some status for things like Millennium Bridge even though they don't yet have 20 years use”?*

Further comments received 10th March 2010. *“Ive marked the paths that Im aware of in Fishergate ward that you didnt have and sent it in internal post to you. If you need clarification or more detail please get in touch. Andy”*

Cllr Dave Taylor - No comments received.

22. **Guildhall**

Cllr Janet Looker – No comments received.

Cllr Brian Watson – No comments received.

Cllr Susan Sunderland - No comments received.

23. **Micklegate**

Cllr Sandy Fraser – No comments received.

Cllr Julie Gunnell – No comments received.

Cllr David Merrett – Comments received 8th March 2010. *“Thanks for the extension. These are my comments on behalf of the three Micklegate ward Councillors who have gone through them with me.*

Key path omissions:

1. *Clementhorpe area. You have missed a series of historic links through the area and on towards South Bank. Cherry Hill Lane between Bishopgate Street and Clementhorpe, and at the other end of Cherry Street the alley through from Vine Street to the junction of Charlton Street and the end of Fenwick Street, then the further alley through from the south west corner of Fenwick Street through to Bewlay Street, then slightly up and across the street through the back lane from Bewlay down the back and out into Richardson Street next to the Rowntree Park entrance. Finally back up Richardson street on the other side and down the further back alley to the bottom end of Norfolk Street which then runs along past the bottom of all the side streets until you get to Cameron Grove and the south west corner entrance to Rowntree park. These are key paths to & from town at the north end, then as the most direct access to Rowntree Park and between the east end of the side streets between Bishopthorpe road and Rowntree Park.*

2. *Butcher terrace / Terry Avenue/Riverside footpath. The footpath from the current end of Butcher Terrace straight down to the river and then left until you get to the current end of Terry avenue were part of a continuous highway route until the Millenium bridge was built. The carriageway was removed as part of the works, but the footpaths follow the original line and remain therefore as a right of way. The current riverside footpath, where you show the north end of the PROW ending south of the bridge actually used to finish at the previous junction of Butchehr Terrace and terry avenue, also remains on it's original line and should also therefore be shown up to that point. Further north on the riverbank south of Clementhorpe there is a lower riverside footpath with a link to the top of the bank near Duke's Wharf which is a public footpath (principle established in a legal action some twenty years ago).*

3. *Nunthorpe Crescent / Southlands Road. There is a public footpath connecting the two.*

4. Carr's Lane/Albion Street, Bishophill. Clearly at least part of this is laid out as public highway. The rest should be marked as public footpath, plus the further stretch of Carr's Lane on the other side of Skeldergate down to the river.

5. Tanner Row / North Street & link to riverside path. There's an alley between Tanner Row and North Street via All Saint's church where we secured a part time closure the other year which has been missed. There is also a link through the North Street Gardens from North Street to the riverside path, plus the link down to the river next to the Viking Hotel.

6. Cinder Lane & Scarborough bridge. The link between Leeman road and West Esplanade down the back of the post office, and the pedestrian link at the east side of Scarborough bridge have been missed off our plan (part of key route between Holgate and Bootham).

7. St. Catherine's Place / Mount Parade. There's two little alleys linking the two - the southern link is a key route between the Cambridge Street estate and Milthorpe school.

8. The Knavesmire. You show only one footpath in the area west of the racecourse, with its north end incorrectly located - it should reach the kissing gate located more or less opposite or just south of St. George's Place. In reality there are a large number of paths on the area there, as it's a major dog walking area, and a nice route home from town to Dringhouses, which should all be shown. I'll send a sketch. Most importantly, in terms of principle routes, you have not shown the part of the strategic route from Hob Moor and beyond to Scarcroft, i.e. the stretch across the Knavesmire from Tadcaster road - at Tyburn and then across the mire, Knavesmire road and up to Albemarle road opposite Scarcroft allotments, to the gate in the railings there. This is extensively used by Milthorpe pupils as well as other residents. The path through the section west of the racecourse is well defined on the ground, the remainder undefined, but well known. There is also a specific path between the St. George's Place kissing gate and another gate on the other side of the wooded area by the north end of the racecourse which should be marked.

Query:

The map shows a forked path in the middle of Rougier Street. Is this a printing error??

In terms of evidence, I have been the Councillor for the north and western half of this area since 1982, and can vouch for all the paths in those areas have been in use for that period. I can also vouch for the bulk of the paths in the southern half which I have also used during the 33 years I have lived in this part of the City."

Further comments received 9th March 2010. *"One afterthought. I should also have mentioned the Millennium cycle / walking path down the side of the west end of Knavesmire road and across the Little Knavesmire to Albemarle road. I'm aware it hasn't been there twenty years, but it has been provided with the purpose of providing a public right of way."*

24. **Group Spoke(s)person**
Cllr Steve Galloway – No comments at this stage, 5th March 2010.

Cllr R Potter – No comments received.

Cllr I Gillies – No comments received.

Cllr A D'Argone – See above.

25. **Officer's Comments**

The Highways Act 1980, section 31(9) allows for those routes that do not have a minimum period of 20 years use but have been used 'as of right (without force, without secrecy and without permission)', to give rise to the presumption of dedication.

It is acknowledged that there are many routes that have not been identified and included within Batches 1 –3 which represent the first stage in the production of a Definitive Map for the Former County Borough. The duty upon the Council following the production of a Definitive Map is to keep the map under continuous review. Any public rights that are in existence but not recorded, and were not investigated at the first stage can be identified and investigated as part of the continuous review and included at a later time.

Options

26. Two options are available to the Executive Member:
27. Option 1: Make the necessary DMMOs to add those paths to the Definitive Map that are recommended in the Schedules. This option is recommended; or
28. Option 2: Do not make the DMMOs to add the paths to the Definitive Map.

Analysis

29. 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.
30. 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

31. 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

32. The cost of advertising the making of the required Definitive Map Modification Orders will be approximately £12,000. If no objections are received then the Orders will require to be confirmed, again at a cost of approximately £12,000. The funding of this batch and batch 3 of the 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.
33. City of York Council 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 (Annex 1-3) 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.
34. The recording of 43.5 km (ie the total length of batches 1, 2 and 3, see Para 10) of path to the Definitive Map, for this first phase in the production of a Definitive Map for the former County Borough, will mean that there will be increased pressure put upon the existing PROW Maintenance and Highway Maintenance Services budgets. This is the first stage of the process and the subsequent stages to come will involve an investigation of the information held on the List of Streets (routes that are publicly maintainable); a thorough investigation of any contentious routes identified and excluded in the first phase (ie batches 1, 2 and 3) and the investigation of Definitive Map Modifications Order applications that have been received by the Council. The potential outcome of the statutory requirement to produce a Definitive Map could significantly increase the total recorded length of public rights of way within the City of York boundary.
35. 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 Services 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.

36. 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

37. The addition of a further 43.5 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

38. There are no equality issues

Legal

39. 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.
40. 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.
41. Making the proposed Orders contributes, in part, towards the Authority meeting these statutory requirements.

Crime and Disorder

42. 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

43. There are no information technology issues.

Property

44. 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

45. There are no other known issues for consideration.

Risk Management

46. 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. On the 2nd March, the EMDS agreed the Officer's recommendation for definitive map modification orders to be made and advertised for 87 paths identified in Batch 1 (Acomb, Dringhouses and Woodthorpe, and Westfield). As Batch numbers 2 (the subject of this report) and 3 are determined the budget position will require close monitoring.

Contact Details

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Report **Date** 15.03.10
Approved

Wards Affected:

Fishergate, Guildhall and Micklegate.

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 - Fishergate Ward location plan, path schedules and path plans
Annex 2 – Guildhall Ward location plan, path schedules and path plans
Annex 3 – Micklegate Ward location plan, path schedules and path plans