

**Decision Session – Executive Member for  
Transport**

**8 September 2020**

Report of the Assistant Director, Transport, Highways and Environment

**Progress Towards Determining all Outstanding DMMO Applications**

**Summary**

1. This report details ongoing progress towards eliminating City of York Council's backlog of undetermined definitive map modification order applications (DMMO).

**Recommendation**

2. The Executive Member is asked to note the content of the report and give authorisation for it to be forwarded to the Local Government Ombudsman.

**Background**

3. Following the finding of the Local Government Ombudsman (LGO) made in May 2019 that City of York Council (CYC) was at fault in the time taken to process the DMMO application of the individual known as Mr X, CYC is required to report progress towards reducing the backlog of undetermined DMMO applications to the Executive Member for Transport.
4. This report constitutes the second of those update reports, a copy of which is required to be forwarded to the LGO. The first report was made in January 2020.

**Progress made to date**

5. Since the last report two of the determined applications have had orders made (199712 Kexby – BW8 to FP11 & 199712 Kexby – Hagg Farm to FP11). These orders both attracted substantial numbers of objections and have now been submitted to the Secretary of State for a final decision.

6. At the time of writing we have no indication of how the Secretary of State is planning to resolve these two opposed applications.
7. Four applications were rejected and none of them have been appealed. Consequently these are now considered closed although the evidence will be retained.
8. The outstanding, undetermined application from the previous report has now been determined and the council.
9. One new DMMO application has been received from Strensall with Towthorpe Parish Council for a number of routes beside the River Foss. Initial investigations will be started on this in the near future.
10. All of the above means that the seventeen outstanding DMMO applications mentioned in the previous report that constituted council's backlog has been reduced to twelve.
11. See appendix 1 for a detailed progress chart for each application and appendix 2 for a flow chart illustrating the process.
12. Finally, the order CYC were directed to make as a consequence of the application submitted by Mr X (see para 3 above) has been submitted to the Secretary of State for a final decision. At the time of writing we have not received any indication of how the Secretary of State intends to resolve this matter.

## **Council Plan**

13. The need for the council to be an "efficient, open, transparent, democratically-led and accountable organisation" identified by the Council Plan 2019-2023 means that historic failings identified by the LGO are being rectified by the measures set out in this report.

## **Implications**

### **Financial**

14. The making and confirmation of an unopposed DMMO requires that two statutory notices are placed in a local newspaper. This will cost in the region of £1700.
15. If the order attracts objections then CYC are required to send the opposed order to the secretary of state for determination. Depending on how the

secretary of state chooses to determine, the additional cost to CYC will be between £2000 and £5000.

16. 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)**

17. There are no human resource implications. This work will continue to be managed within existing staffing levels.

### **Equalities**

18. There are no equalities implications

### **Legal**

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

24. There are no crime and disorder implications

### **Information Technology (IT)**

25. There are no IT implications

### **Property**

26. There are no property implications

### **Risk Management**

27. The need to reduce the backlog of undetermined DMMOs is part of the steps required for CYC to avoid a finding of maladministration by the LGO.

28. The need to make this report and submit it to the LGO are part of the steps required for CYC to avoid a finding of maladministration by the LGO.

### **Councillor Responses**

29. Comment from Councillor ...

### **Contact Details**

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#### **Chief Officer Responsible for the report:**

#### **James Gilchrist**

Assistant Director Transport Highways and  
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**Report**  **Date** 27.08.20  
**Approved**

### **Specialist Implications Officer(s)** List information for all

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**Wards Affected:** All wards.

**For further information please contact the author of the report**

## **Background Papers:**

None

## **Annexes**

Appendix 1

Appendix 2

## **List of Abbreviations Used in this Report**

DMMO – definitive map modification order