

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

16 August 2018

Report of the Corporate Director of Economy and Place

Submission of Definitive Map Modification Order “The Council of the City of York Public Footpath, Knapton No.4 (Grange Lane to Rufforth Airfield)” to the Secretary of State for Determining also requests that the Secretary of State change the Order Route from Footpath to Restricted Byway.

Summary

1. Advising the Executive Member that a number of objections have been received to the above Definitive Map Modification Order (DMMO) on the grounds that Grange Lane was a public road and should properly be recorded on the definitive map as a restricted byway rather than a footpath. When the order is submitted to the secretary of state for determining, the Executive Member can ask that the order be modified to restricted byway.

Recommendation

2. The Executive Member is asked to:
 - 1) Request that the secretary of state modifies the order to show Grange Lane as a public restricted byway when it is sent to the Planning Inspectorate for determining.

Reason: All the available evidence indicates that this route was a public road. Rights for mechanically propelled vehicles were removed by the NERC Act 2006. However, all other public rights for pedestrians, horse riders, cyclists, and horse and cart remain.

Background

3. This report is necessarily supplemental to the report presented to the Executive Member for City Strategy Decision Session in December 2009. That report is enclosed among the background papers (please see

annex 1). Annex 2 contains a general location map and a map showing the alignment of the route.

4. Following the decision made at the 1 December 2009 decision session a DMMO showing Grange Lane as a footpath was made and duly publicised between 7 December 2017 and 18 January 2018.
5. As a result of that consultation, twelve objections and two representations were received by the council. They can be broken down into the following three groups:
 - a. One representation regarding the impact on a proposed housing development should the route become a public right of way. There will be no impact on the development.
 - b. Nine objections from people who do not want Grange Lane to be a PRow of any sort.
 - c. Three objections and one representation from people who think the evidence shows that the route should be recorded as a restricted byway.
6. The objections from those who do not want Grange Lane to be a public right of way of any sort are understandable. However, none of these objectors have submitted any evidence to support their claims that the route carries no public rights. In their current form the inspector appointed by the secretary of state would set them aside.
7. The three objections and one representation that contend that the order route would be more properly recorded as a restricted byway are based on the existing evidence before the authority.
8. Having thoroughly reviewed the evidence in the light of these objections, officers find the argument in favour of recording the way as a public restricted byway extremely persuasive.

Consultation

9. Consultations were carried out in strict accordance to schedule 15(3) of the WCA 1981. Notice was duly served on all affected landowners and occupiers; in addition notice was also served on those bodies set out in schedule 6 of The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. Furthermore, as required by the aforesaid schedule 15(3) notices were erected on the order route and a notice was inserted into the local newspaper. As well as the statutory consultations other local interested parties (including local representative of organisations like the British Horse Society and the Ramblers) also

received notices. All parties had 42 days in which to make representations.

Options

10. Option A. The Executive Member requests that the secretary of state modifies the order to show Grange Lane as a public restricted byway when it is sent to the Planning Inspectorate for determining.

Reason: All the available evidence indicates that this route was a public road. Rights for mechanically propelled vehicles were removed by the NERC Act 2006. However, all other rights for pedestrians, horse riders, cyclists, and horse and cart remain.

11. Option B. The Executive Member instructs officers to submit the order in its current form.

Reason: This is not recommended, due to all available evidence indicating that the route is a restricted byway. In its current form (footpath) the council would be required to defend the indefensible at any subsequent hearing or public inquiry, leading to possible reputational damage. In order to mitigate this there may be additional expense for the council if a rights of way consultant is employed to represent the council at any hearing or public inquiry the secretary of state might decide to hold.

Analysis

12. The inclosure awards provide evidence in support of the existence of historic public carriageway rights at both ends of Grange Lane. This is further supplemented by a range of maps etc suggesting the historic reputation of the route throughout its length as an historic public carriageway. The documentary evidence indicates that public carriageway rights exist “in the balance of probabilities” over the full length of Grange Lane.
13. As noted at para 6 above, no evidence showing that Grange Lane was never a public highway has been submitted nor has any been discovered despite extensive research. Furthermore, no evidence has been submitted or discovered that the public rights were ever stopped up by a due process.
14. As the evidence strongly indicates that Grange Lane was a public highway, it is appropriate to consider the implications of the Natural

Environment & Rural Communities Act 2006 (NERC), with regard to the extinguishment of public rights for mechanically propelled vehicles.

15. NERC has the effect of extinguishing rights for mechanically propelled vehicles along such routes, except under the following prescribed conditions:

“Exceptions in section 67 of the 2006 Act may apply where:

- a) a way whose main use by the public during the period of 5 years ending with the commencement (of the Act) was used for mechanically propelled vehicles;
- b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36 (6) of the Highways Act 1980 (list of highways maintained at public expense);
- c) it was created on terms that expressly provide for it to be a right of way for mechanically propelled vehicles;
- d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used for such vehicles;
- e) it was created by virtue of use by such vehicles during a period ending before December 1930. “

NB: a private right to use mechanically propelled vehicles (to access property etc.) on routes which previously enjoyed public vehicular rights is retained.

16. There is no evidence to suggest that any of these conditions apply, therefore it is very likely that the rights for mechanically propelled vehicles will have been extinguished. Consequently the way should be recorded on the definitive map as a restricted byway.
17. No comments have been received from the ward councillors or other relevant councillors.

Council Plan

18. 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

19. Determination by the Secretary of State may lead to a local public inquiry. The cost of a public inquiry being approximately £5000.
20. 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)

21. There are no human resource implications

Equalities

22. There are no equalities implications

Legal

23. 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.
24. 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.
25. 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.
26. 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.
27. 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

28. There are no crime and disorder implications

Information Technology (IT)

29. There are no IT implications

Property

30. There are no property implications

Other – Maintenance Implications

31. The evidence indicates that the public rights over Grange 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.
32. Maintenance to a standard suitable for the passage of mechanically propelled vehicles, in the exercise of private access rights is the responsibility of those wishing to exercise such rights.

Risk Management

33. 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 of employing an outside consultant.

Contact Details

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Report **Date** 19.07.18
Approved

Wards Affected: Rural West York.

For further information please contact the author of the report

Background Papers:

Highways Act 1980

Wildlife and Countryside Act 1981

Natural Environment and Rural Communities Act 2006

Grange Lane DMMO case file

Annexes

Annex 1: Report submitted to Decision Session - Executive Member for
City Strategy - 1 December 2009

List of Abbreviations Used in this Report

| | |
|---------------|--|
| DMMO | Definitive map modification order |
| NERC Act 2006 | Natural Environment and Rural Communities Act 2006 |
| PRoW | Public right of way |
| WCA 1981 | Wildlife and Countryside Act 1981 |