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## Decision Session Executive Member for City Strategy

1 December 2009

Report of the Director of City Strategy

### Public Rights of Way - Investigation into the Status of Grange Lane, Rufforth

#### Summary

- 1 This report considers all the available evidence and seeks to assist the Executive Member in determining whether or not to make a Definitive Map Modification Order (DMMO) to add Grange Lane in Acomb and Rufforth (shown by a broken black line on Plan 1, Annex 1), to the Definitive Map of Public Rights of Way.

#### Recommendation

- 2 It is recommended that the Executive Member authorises the making of a Definitive Map Modification Order to add Grange Lane to the Definitive Map.

**Reason:** Evidence shows that at a minimum, Public Footpath rights are reasonably alleged to subsist.

#### Background

- 3 The issue of the status of Grange Lane, shown on Plan 1 was identified as a Definitive Map anomaly (an unrecorded route with possible highway status) in 1981, after the installation of a locked gate triggered the submission to North Yorkshire County Council (the highway authority at the time), of 6 user evidence forms claiming that the way was public and that the gate obstructed the use of the route.
- 4 In 1996, City of York Council became the highway authority for the area and inherited a considerable backlog of work relating to the Definitive Map, one of these issues being the question of the status of Grange Lane. Since that time there has been steady progress made with regards to outstanding Definitive Map work, and during this time there have been repeated attempts to resolve the status of Grange Lane, mainly in order to resolve issues relating to the Council's maintenance liability for the surface of the lane after repeated pressure from one of the landowners affected to improve and maintain the surface so that is suitable for vehicles.

- 5 In 200/01 the Council commissioned an independent report to establish whether any public highway rights existed over Grange Lane. A copy of the report is included in Annex 3, Tab 2. This report concluded that Grange Lane was an historic public carriageway and that it should be recorded on the Definitive Map as a Byway Open to All Traffic.
- 6 In response to the findings of the Council's investigation, another landowner sought their own independent report as to the status of the route. A copy of this report is included in Annex 3, Tab 3. The resulting investigation raised some queries within the Council's report, relating to the alignment of the old turnpike road from York to Wetherby.
- 7 This report now considers the available relevant evidence (documentary and/or user) in order to determine the status of Grange Lane, in doing so the extent of any maintenance liabilities that the Council, as Highway Authority for the area, may have in respect of the route will also be clarified.

### **Summary of Evidence**

9. Under Common law there are three types of highway, namely footpaths, bridleways and carriageways (vehicular highway). Parliament has subsequently sub-divided the latter category into a number of other classifications (e.g. Restricted Byways, Byways Open to All Traffic, Cycle Ways and Motorways).
10. When determining the status of a route, it must first be decided whether the evidence suggests that one of the common law definitions applies (i.e. footpath, bridleway or carriageway). If it is decided that the route is a highway of carriageway status (i.e. a vehicular highway) further consideration must be given to which of the sub-divisions, if any, apply.
11. The DMMO process requires the authority to carry out a detailed search of all available evidence. A detailed analysis of these documents is included in Annex 2 and summarised below.

### **Documentary Evidence**

12. In the case of Grange Lane the following historic documents were examined:
  - Acomb & Holgate Inclosure Award 1774 (Annex 3, Tab 4)
  - Rufforth Inclosure Map and Award 1795 (Annex 3, Tab 5)
  - Map of the Acomb Grange property owned by the Marwood family 1760 (Annex 3, Tab 6)
  - Eighteenth & Nineteenth Century Commercial Maps (Annex 3, Tab 7)
  - York to Collingham Turnpike Road (Modern B1224)
  - Ordnance Survey Maps and Plans (Annex 3, Tab 8)
  - Ordnance Survey Object Names Books (Annex 3, Tab 9)
  - 1910 Finance Act records (Annex 3, Tab 10)
  - Wartime closures (Annex 3, Tab 11)
  - Declarations pursuant to Section 31 (6) of the Highways Act 1980 (Annex 3, Tab 13)

## **User Evidence**

13. In 1981 the Ramblers' Association submitted 6 user evidence forms, providing evidence of uninterrupted use of Grange Lane between 1921 and 1981, at which time a gate was installed across the lane and the locked. Two further user evidence forms were submitted in 2001 providing further evidence of user between 1975 and 2001. Copies of the user evidence are included in Annex 3, Tab 12.

## *Analysis of the Documentary and User Evidence*

14. 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. At the very least the documentary evidence suggests that public carriageway rights are 'reasonably alleged to subsist' over the full length of Grange Lane, as shown by a broken black line on Plan 1.
15. In view of this finding, it is appropriate to consider the implications of the Natural Environment & Rural Communities Act 2006, with regard to the extinguishment of public rights for mechanically propelled vehicles.
16. The Natural Environment and Rural Communities Act 2006 (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.

17. There is no evidence to suggest that any of these conditions apply, therefore if it is determined that Grange Lane is a public vehicular highway, the rights for mechanically propelled vehicles will have been extinguished and the most it could be added to the Definitive Map is as a restricted byway (ie a public right of way on foot, on horse-back and on non-mechanically propelled vehicles such as cycles and horse-drawn vehicles).
18. With regards to the user evidence submitted by the Rambler's Association, this would certainly suggest that, if historic carriageway rights do not exist,

there is a case in favour of the establishment of public footpath rights arising from user prior to the locking of a gate in 1981

### **Consultation**

19. Consultation has been carried out in accordance with the Parliamentary Rights of Way Review Committee's code of practice for consultations on changes to the rights of way network. Landowners, the Parish Council and others known to have an interest in the case, have also been consulted.
20. Any documentary evidence submitted as a result of the consultation exercise has been included and discussed in detail within the evidential sections of Annex 2.

### **Parish Council**

21. Comments were received from Rufforth Parish Council who believe that Grange Lane is in private ownership with no public rights of way over the land. They have based their view on:
  - the wartime closures
  - the status of Grange Lane was investigated when the A1237 ring road was built; and
  - when the land was sold the purchaser had searches done which revealed that there was no public rights of way along Grange Lane.

### *Analysis of representations*

22. The wartime closures do not extinguish rights over the whole length of Grange Lane, they only closed footpath rights over the section now covered by the airfield. Contrary to the Parish Council's assertion this would, in fact suggest that the rest of Grange Lane did enjoy public rights of at least footpath status. Furthermore, if public carriageway rights do exist, as this investigation would suggest, then the war-time closures are likely to be void because they did not extinguish the vehicular/carriageway rights.
23. With regard to any investigations into the status of Grange Lane when the A1237 was built including any searches undertaken in connection with the sale/purchase of land, in the absence of any evidence to the contrary it is highly unlikely that these investigations and searches went further than a consultation of the Definitive Map for the area. This would have revealed that Grange Lane was not registered as a public right of way, nonetheless, this cannot in any way be properly interpreted as meaning that no public rights exist. This is because the conclusive status of the Definitive Map is without prejudice to the existence of any unrecorded highway rights.

### **Landowners**

24. Indications of objections to any proposed Definitive Map Modification Order have also been received from an adjoining landowner, and also a land agent acting on behalf of another landowner. Both dispute the existence of any public rights along Grange Lane. Copies of correspondence from both landowner and land agent are included in Annex 3, Tab 15.

25. In 2002/03, in support of their objection one of the landowners sought their own independent expert opinion on the available evidence (Annex 3, Tab 3), which raised some queries/anomalies with the original research report commissioned by the Council (Annex 3, Tab 2).
26. The landowners also rely upon the fact that the section of Grange Lane, which used to cross what is now Rufforth Airfield was set out in the Rufforth Inclosure Award (Annex 3, Tab 5) as a “*private or occupation carriage road*”.
27. In 1981, and again in 1994 the landowners also submitted plans and statements pursuant to Section 31(6) of the Highways Act 1980.
28. The matters raised by the landowners have been taken into account within the evidence as a whole. Their particular concerns are discussed in more detail in Annex 2 paras 26 to 30 and para 46 respectively.

### **Ward Councillors and Groups Spokeperson(s)**

29. Their comments, verbatim, are:

#### Ward Councillors

30. Cllr Ian Gillies: *“It would appear in the substantial amount of correspondence, that the person who has complained regarding this Lane, has an agenda that would see the Authority maintaining the lane. I do have sympathy with him regarding the amount of fly-tipping he is having to endure, but his historical expertise and opinion differs to the advice that has been obtained by the Authority, therefore I am happy to support your recommendation”.*
31. Cllr Healy: No comments received.
32. Cllr Hudson: No comments received.

#### Group Spokesperson(s)

33. Cllr Stephen Galloway: *“I am familiar with this route which has been used off and on informally by pedestrians for many years. It is gated at the ring road end following the death of a young cyclist (who cycled straight into the path of a vehicle). Establishment as a PROW would be difficult to resist. There should be no public vehicle or cycle access to the ring road from this path. It would be a very dangerous junction. I would resist any attempts to make the Council liable for any maintenance costs”.*
34. Cllr Ruth Potter: No comments received.
35. Cllr Ian Gillies: See above.
36. Cllr Andy D’Agorne: *“Strongly support this proposal, provided it is designated as a ‘quiet lane’ suitable for access and non motorised traffic”.*

## Conclusion - status

37. Taking into account the documentary evidence and user evidence, including evidence submitted by the objectors, it may be concluded that a minimum, public footpath rights are, 'reasonably alleged to subsist' along Grange Lane.
38. If it is determined that public carriageway rights are 'reasonably alleged to subsist', then having considered the provisions of the Natural Environment & Rural Communities Act 2006 it has also been concluded that, as none of the exceptions apply, public rights for mechanically propelled vehicles will have been extinguished. It would therefore be appropriate to record the route on the Definitive Map as a Restricted Byway.

## Options

39. Options available when determining this issue are.
40. Option A: If having considered all of the available evidence, it is determined that Restricted Byway rights subsist, or are reasonably alleged to subsist, the Executive Member may
  - a) Grant authorisation to make a Definitive Map Modification Order to add the Restricted Byway shown on Plan 1 to the Definitive Map;
  - b) If no objections are received or any objections that are received are subsequently withdrawn the Order, made in accordance with a) above, be confirmed; or,
  - c) If objections are received and are not subsequently withdrawn, the Order be referred to the Secretary of State for determination.
  - d) If the Order is confirmed the route be added to the List of Streets Maintainable at Public Expense and maintained in accordance with its status.
41. Option B: If it is determined that Footpath rights subsist, or are reasonably alleged to subsist, the Executive Member may:
  - a) Grant authorisation to make a Definitive Map Modification Order to add the Footpath shown on Plan 1 to the Definitive Map;
  - b) If no objections are received or any objections that are received are subsequently withdrawn the Order, made in accordance with a) above, be confirmed; or,
  - c) If objections are received and are not subsequently withdrawn, the Order be referred to the Secretary of State for determination.
  - d) If the Order is confirmed the route be added to the List of Streets Maintainable at Public Expense and maintained in accordance with its status.
42. Option C: If having considered all of the available evidence, it is determined that the case in support of a Definitive Map Modification Order has not been made, or has been overturned by contrary evidence, then the Executive Member may determine that:

- a) no further action be taken.
- b) the Authority does not undertake any maintenance work on the lane

### **Corporate Priorities**

- 43. The addition of Grange Lane to the Definitive Map is purely an asset recording exercise. However, should it be determined that there is enough evidence to add the route to the Definitive Map, the benefits of doing so would link into the Council's Corporate priorities of making York a Sustainable City and also a Healthy City, as the route could be used for sustainable, car-free, health and recreation purposes.

### **Implications**

#### **Financial**

- 44. If it is determined to a Definitive Map Modification Order it will have to be advertised in the local press. The cost of advertising the Order would be in the region of £1500. If an Order is made, and no objections are received the Order will be confirmed and re-advertised, again at a cost of £1500.
- 45. If objections to the Order are received, and not withdrawn, the outcome of the Order would have to be decided by the Secretary of State, probably at a local public inquiry. The cost of a public inquiry being approximately £5000.
- 46. If the Order is confirmed by either the Council or the Secretary of State as a result of a Public Inquiry, 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 so the recognition of an existing, but previously unrecorded liability.

#### **Human Resources (HR)**

- 47. There are no human resource implications

#### **Equalities**

- 48. There are no equalities implications

#### **Legal**

- 49. 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.
- 50. 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 Definitive Map Modification Orders (DMMO).
- 51. Before the Council can make a Definitive Map Modification Order 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 Order making process.

52. 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**

52. There are no crime and disorder implications

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

53. There are no IT implications

### **Property**

54. There are no property implications

### **Other – Maintenance Implications**

55. 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 for purpose in its present condition.
56. 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.
57. Another concern is that access is being allowed to the side of the A1237 at a point where traffic speeds are 60mph. In order to deter children / pedestrians / cyclists etc from entering straight onto the A 1237, it is suggested that holding areas are created with barriers. Due to existing carriageway width there is no room for a carriageway centre refuge.

### **Risk Management**

58. In compliance with the Council's Risk Management Strategy, Options A and B are subject to internal budgetary pressures (Financial), There are no risks associated with option C. If the issue of the status of Grange Lane is not properly resolved there is the risk that the Authority will be failing its statutory duties to assert, protect, maintain and properly record public highways; and have action initiated against it accordingly.

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**Report Approved**  **Date** *Insert Date*

**Wards Affected:**

Rural West York

**All**

**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  
PROW (R)/Grange Lane

**Annexes**

Annex 1: Plan 1 - Plan showing the route under investigation  
Annex 2: Discussion of Evidence  
Annex 3: Bundle of Evidence (Tabs 1 to 16) Available to view at Guildhall Reception, in the Member's Library and on the M:Drive (All Members – City Strategy – PROW Grange Lane, Rufforth)