

NORTH YORKSHIRE COUNTY COUNCIL  
NORTH YORKSHIRE LOCAL ACCESS FORUM

24 NOVEMBER 2005

ORDERS RELATING TO PUBLIC RIGHTS OF WAY AND THE ROLE OF  
THE LOCAL ACCESS FORUM

1.0 Purpose Of Report

- 0.1 At a previous meeting of the Local Access Forum, there was a discussion concerning diversion applications in the vicinity of farmyards, the role of the Ramblers' Association and the possible involvement of the Local Access Forum.
- 1.2 It was considered that it would be helpful if the process involved in amending the particulars contained in the Definitive Map and Statement was outlined and to give Members a brief explanation of the County Councils powers and duties in its role as both highway authority and surveying authority.

2.0 Background

- 1.1 The background to the preparation of the Definitive Map and Statement is attached to this report as Appendix A. As a result of the process described in Appendix A, the Definitive Map and Statement provide conclusive evidence that at the relevant date, a right of way as shown in the Definitive Map and Statement existed. It does not however provide conclusive evidence that if a route is not recorded in the Definitive Map and Statement, it does not exist as a public right of way. As a result of this conclusive nature the only way to change the particulars contained in the Definitive Map and Statement is by means of a Legal Order.
- 2.2 In its role as the highway authority, the County Council has powers to promote orders under the Highways Act 1980. These are: -
- Creation Orders under section 26,
  - Diversion extinguishment and creation under section 116 by application to Magistrates Court,
  - Extinguishment under section 118, and
  - Diversion under section 119.
- 2.3 In addition to the above, the County Council, in its role as the surveying authority, has a duty to keep the Definitive Map and Statement under continuous review in accordance with section 53 of the Wildlife & Countryside Act 1981.

- 2.4 Prior to the making of a Legal Order affecting a right of way, including adding a route to the Definitive Map, there is consultation process. If it is decided to make an order, the order has to be advertised both on site and in local papers to allow the public the opportunity to make any comments they wish to make either in support or against the order.

### 3.0 Highways Act 1980 Diversion Order Criteria

- 3.1 A council may make an order to divert a public path if it is satisfied that it is expedient to do so either in the interests of the owner, lessee or occupier of land crossed by the path or way in question or that it is expedient in the interests of the public. However, before deciding to authorise the making of an order, the council has to be satisfied the new route will be “substantially as convenient” to the public.

- 3.2 If the application satisfies the above, then the highway authority may authorise the making of the order.

- 3.3 After the advertising period, and if there are no objections, then the order making authority may proceed to confirm the order. However, a diversion order cannot be confirmed unless the council is satisfied that the path or way will not be substantially less convenient to the public as a result of the diversion and that confirmation is expedient having regard to the effect of the diversion on the public enjoyment of the path or way as a whole and on land crossed by the existing path or to be crossed by the new one.

### 4.0 Making an Order

- 4.1 The order making stage is a two stage process, namely making the order, and the second stage is the confirmation of the order. Each stage has different criteria that must be satisfied before the order can be made and confirmed.

- 4.2 In instances where objections are anticipated, it is standard practice to place a report for Members of the relevant Area Committee to seek approval to either make the Order or to refuse to make the Order.

### 5.0 Diversions around Farmyards

- 5.1 Whilst the existence of public rights of way passing through farmyards has been identified as a ‘health and safety ‘ risk issue, any application to divert a right of way would have to satisfy the criteria referred to above. Unless the application satisfied the criteria, the council would not be in a position to support or confirm any order.

- 5.2 At the present time, the County Council has no policy relating to diverting public rights of way in the vicinity of farmyards and it may be that the Local Access Forum would like to take the lead in developing such a policy

### 6.0 Conclusion

- 6.1 Whilst it may be of interest to Members of the Local Access Forum to be made aware of any proposed Orders affecting the public rights of way network, it is difficult to see what role they could play in assisting in the determination of an application unless they had first hand knowledge of the specific route in question, as, in cases where objections are anticipated, the decision whether or not to make an order is made by elected Members of the County Council who serve on the Area Committees.
- 6.2 The preliminary information relating to any application is gathered by Officers during the consultation process with the relevant user groups. This is undertaken prior to any order being made, and it is felt that consulting with the Local Access Forum would inevitably slow the process down.
- 6.3 It may be possible for individual members of the Local Access Forum, who have a particular interest in changes to the public rights of way network to be added to the consultation list to be consulted at the initial information gathering stage.

#### 7.0 Recommendation

- 7.1 It is recommended that Members of the Local Access Forum note the contents of this report and decide on the level of involvement they would like to have with regards to applications to amend the Definitive Map and Statement, bearing in mind the constraints detailed above.

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