

North Yorkshire County Council

North Yorkshire Local Access Forum

27th January 2021

**Proposed Changes to the System of Prioritisation for
Definitive Map Modification Order Applications**

1.0 Purpose of the report

1.1 To advise and seek the views of members of the LAF on proposed changes to the system of prioritising applications for Definitive Map Modification Orders (DMMOs).

2.0 Context

2.1 The County Council has a duty to keep the Definitive Map and Statement relating to North Yorkshire up to date and one element of this is the investigation and resolution of applications made by members of the public for Definitive Map Modification Orders (DMMOs) to be made to add routes to, delete routes from or amend particulars within, the Definitive Map and Statement.

2.2 For many years there has been a backlog of DMMO applications awaiting investigation, and the backlog is now mounting ever-more rapidly as members of the public are becoming increasingly aware that they may lose unrecorded public rights of way if they are not subject of a formal application prior to the nationally proposed 'cut-off date' of 2026.

2.3 To establish the order in which applications would be investigated, a basic 'points' system was devised in 2003 to prioritise applications on a basis of limited criteria. The system inadvertently resulted in many cases having the same priority score. The system was reviewed and revised in 2011, expanding upon the previous merit system, providing a more helpful wider spread of 'points'. This system gave greater priority to cases which were:

- well supported by evidence;
- submitted by user groups or local community groups;
- near to population areas and would apparently be beneficial to more users in a local communities;
- where public use had been recently prevented.

2.4 It was considered at the time that this would result in those more strongly supported cases being resolved more quickly having a positive effect on the backlog, and would help escalate those cases which were apparently in the greater public interest. To some extent these aspirations were successful.

2.5 However, over time, flaws in this system have become increasingly apparent, and it is clear that the prioritisation system needs to be reviewed in the interest of fairness and to mitigate the risk of challenge.

3.0 The reasons for proposed change

3.1 The main flaws in the current system are:

- The position of any particular case is constantly changing within the priority list as newer, higher scoring applications are made, pushing lower scoring cases down the list, or as additional evidence is submitted, increasing the score of existing cases, moving them further up the list and also pushing lower scoring cases down the list.
- The result of this is that we are unable to give any applicant a realistic timescale when their application will be commenced as it is unknown how many higher scoring cases may be submitted in the intervening period. This is frustrating for both applicants and for officers. In addition, it hinders the ability of the team to produce a clear casework programme for the forthcoming year if priority cases are constantly changing.
- Many newer applications are now submitted with more substantial evidence in support, which in itself is laudable and extremely helpful towards the investigation of cases. However, this is compounding the lower scoring cases which have increasingly little, if any, hope of ever being investigated, inevitably becoming 'old' cases.
- Old cases are potentially more difficult to investigate as evidence can become less apparent, and witnesses providing verbal evidence may be increasingly less able to partake in the investigative processes, which is disadvantageous to the case.
- The lower scoring cases are not necessarily those relating to routes that are less likely to be proven to be public rights of way. A case with only one item of evidence which in itself is statutorily compelling, would still have a low score and would remain low in the list.
- In addition to the system being most unfair to applicants of the lower scoring cases the system is exposing the Authority to the risk of challenge for failing to deal with applications held for an unreasonable period of time. This is clearly unacceptable from a reputational and financial point of view.

4.0 Proposed changes to the prioritisation system

4.1 A benchmarking exercise was undertaken to establish how other Authorities prioritised DMMO applications, which revealed that there was no consensus on a recommended system, and that handling the oldest case first was the most frequently adopted approach.

4.2 Officers investigated options to modify the current point based system by altering criteria weighting scores, however, ultimately these did not satisfactorily address the concern of dealing with low scoring applications.

- 4.3 The conclusion reached is that reordering the prioritisation to dealing with applications based on the date of application commencing with the oldest case, is deemed to be the fairest to applicants, and avoids the possibility of certain cases having little or no chance of ever being aired.
- 4.4 The benefits of this approach are seen to be:
- The oldest cases would be investigated in the near future.
 - Investigation of these oldest cases would also be an opportunity to greatly reduce the risk of challenge.
 - A priority list could then be simply devised allowing us to give greater clarity to applicants on when their cases are likely to be commenced and online registered amended accordingly.
 - There is certainty that all cases will be investigated regardless of the quantity or quality of evidence that was available to the applicant.
 - This approach would be consistent with the approach that is taken for the processing of the public path order applications, which has been successful and clear to customers.
- 4.5 In addition to the above, it is recognised that there may be exceptional circumstances arising whereby it would be desirable to the Authority for a particular DMMO application to be investigated 'out of sequence', for example, in relation to land subject to major planning applications. These would only be promoted out of sequence by formal resolution by senior management in line with the Scheme of Delegation.
- 4.6 It is appreciated that change to any system would be clearly welcomed by some parties and not by others. Those with applications already within the system with high scores may be disappointed that a change would delay commencement on their own case. Conversely, there is likely to be relief amongst other applicants who were facing the possibility of never seeing their applications progressed.
- 4.7 Prioritisation of DMMO applications is an internal process and there is no obligation on the Authority to undertake a consultation on the matter. Nevertheless, it is considered appropriate to engage with the LAF and seek views on changing the current prioritisation system and would welcome views on any alternatives to the proposal.
- 4.8 Feedback from the LAF will help inform engagement with applicants directly affected who will subsequently be contacted for their views on any proposed changes. The Authority will have due regard to public sector equalities duties prior to any formal decision being made and change implemented.

5.0 Recommendation

- 5.1 The members of the LAF are requested to consider the proposals and offer any comments.

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