

# North Yorkshire Council

## Environment Executive Members

30 October 2023

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

#### Report of the Assistant Director – Integrated Passenger Transport, Licensing, Fleet, Harbours and Countryside Access

#### 1.0 PURPOSE OF REPORT

- 1.1 To advise the Corporate Director of Environment of proposed changes to the prioritisation of investigation of Definitive Map Modification Order (DMMO) applications.
- 1.2 To request the Corporate Director, in consultation with the Executive Member for Highways and Transportation, to approve the proposed changes to the DMMO processes.

#### 2.0 BACKGROUND

- 2.1 Since 1949 local authorities across the country have recorded Public Rights of Way in Definitive Maps and Statements. The Council has a duty to keep the Definitive Map and Statement relating to North Yorkshire up to date by making legal orders to reflect changes made to the network, and to make amendments based on evidential circumstances.
- 2.2 Since 1983 one element of keeping the Definitive Map and Statement (DM&S) up to date is the investigation and resolution of evidentially supported applications submitted to the Council by members of the public for DMMOs to be made. In the majority, these applications are made proposing to add routes to the Definitive Map and Statement where the applicant believes an unrecorded historic route, or a route that has come into being by recent but long usage, should be recorded. Less commonly applications may be made to amend the status of routes already recorded, or more rarely, to delete routes due to a belief they should not have been recorded in the first place.
- 2.3 As is the case for many Authorities, for over 20 years there has been a backlog of DMMO applications awaiting investigation. The backlog has been mounting ever-more rapidly as members of the public became increasingly concerned 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, for such applications (those that rely entirely upon historic evidence). In March this year DEFRA proposed to extend the cut-off date until to 2031, though this has yet to be formalised in law.
- 2.4 For many years the average number of applications submitted per year was 12, however, over the last two years 72 applications have been submitted, resulting in a current total of 190 applications awaiting investigation. A further 35 applications are currently in progress, which means actively being investigated, or that an Order has been made but is opposed and has been referred to the Secretary of State. Applications and the subsequent made Orders have a lengthy consultation process, and the majority are opposed, resulting in a necessity of referral to the Secretary of State, which can take upwards of two years to conclude.

- 2.5 Due to the growing backlog of applications a basic prioritisation system was devised in approximately 2003 to establish the order in which applications would be dealt with. The 'points' system prioritised applications based on limited criteria and was utilised for a while but was considered unsatisfactory as it resulted in many cases having the same priority score.
- 2.6 The system was revised in approximately 2011, expanding upon the merit system, providing a more helpful, wider spread of 'point scores'. 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 which would be beneficial to more users in local communities
  - where public use had been recently prevented.
- 2.7 It was anticipated that this system 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.
- 2.8 However, over time, the flaws in this system have become increasingly apparent, and a review of the situation has been undertaken.

### **3.0 THE REASONS TO AMEND THE SYSTEM**

- 3.1 The main flaws in the current system are:
- The overall 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, where 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 is laudable and extremely helpful towards the investigation of cases. However, this is compounding the plight of the lower scoring cases which have increasingly little hope of ever being investigated in a timely manner.
  - The lower scoring cases are not necessarily 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 with the lower scoring cases the system is exposing the Authority to a very real risk of serious challenge for failing to deal with applications in a timely manner, as some low scoring cases were submitted many years ago. Amongst the low scoring cases there are 10 which have been held by the Authority for more than 20 years. This is clearly unacceptable.
  - Old cases are becoming more difficult to investigate as evidence becomes less apparent, and witnesses providing verbal evidence may be increasing less able to partake in the investigative processes.

## 4.0 PROPOSED CHANGE TO THE PRIORITISATION SYSTEM

- 4.1 Consideration was given to amending the criteria further, to attempt to resolve the issues identified however after some discussions with other Authorities and considerable deliberation over the issues, it was resolved that the fairest approach would be to abandon a merit-based points system, and to deal with the applications in the order in which they arrive, simply dealing with the oldest first.
- 4.2 This would then be consistent with the approach that is taken for the processing of the public path order applications that we receive. The benefits of this approach would be that:
- The very oldest cases would be investigated soonest, giving the Authority the chance to test the available evidence before it is weakened any further due to the passage of time.
  - Investigation of these oldest cases would also be an opportunity to greatly reduce the risk of challenge for failing to address applications for such an unacceptable period of time.
  - A priority list can be simply devised assisting the preparation of annual work programmes and allowing us to give greater clarity to applicants on when their cases are likely to be commenced.
  - There would be assurance to applicants that all cases will be investigated regardless of the quantity or quality of evidence that the applicant was able to amass.
  - The unhelpful scope for applicants to attempt to disagree and debate the scores attached to their applications would be removed.
- 4.3 A report was put before the Local Access Forum explaining the proposals and asking for their views. After some debate around revising the existing scheme to resolve some of the issues raised there was general acceptance of the proposed change to dealing with applications on an oldest first basis.
- 4.4 The proposal was also discussed at the User Group Liaison Meeting, where nominal support was given, although following the meeting a small number of representations were received suggesting some weighting should be retained.
- 4.5 Internal legal advice was sought, and the view given was that as applicants had been advised how their applications were to be prioritised and had some understanding how their cases sat within the current prioritisation list, that it would be appropriate to engage with them regarding the proposed change.
- 4.6 It had already been established that we would not halt cases that were already under investigation, these cases were not to be disrupted by the proposed changes. The applicants for the 190 outstanding cases for which investigation has not yet been commenced were contacted.
- 4.7 Of these 190 cases, 140 had been submitted by just three British Horse Society representatives attempting to secure routes suitable for equestrians.
- 4.8 It was explained to the applicants, allowing for comment to be made, why we were proposing to amend the system to move to a simple process of dealing with all applications in chronological order.

### Applicant Responses

- 4.9 Seven responses were received, of these two demonstrate clear support, only one states that it is an objection. The remaining four responses whilst generally accepting the proposed change, also offer reasons why there should be some priority weighting in favour of higher status routes, and/or routes threatened by landowners.

- 4.10 Three responses are from equestrians who are concerned that the change will detriment higher status route applications, which they feel should be given higher priority, suggesting a weighting should be introduced to benefit these cases. However, it is their misconception that the older cases are more likely to be applications for footpaths. Of the 20 oldest cases 12 are for bridleways and byways open to all traffic.

## **5.0 REPRESENTATION MADE BY THE LOCAL MEMBER**

- 5.1 As this matter is a county wide proposal there has been no consultation with local Members.

## **6.0 CLIMATE CHANGE IMPLICATIONS**

- 6.1 There are no significant climate change implications arising from this report.

## **7.0 EQUALITIES IMPLICATIONS**

- 7.1 There are no significant equalities implications arising from this report.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 There are no financial implications in altering the order in which applications are investigated.

## **9.0 LEGAL IMPLICATIONS**

- 9.1 There is no external statutory guidance on prioritisation schemes for the management of DMMO application prioritisation, therefore, how the Authority chooses to prioritise such applications is ultimately an internal decision.

## **10.0 CONCLUSIONS**

- 10.1 Any introduction of a weighting system would open up individual case prioritisation again, and walkers would also have arguments why well used pedestrian routes should also be prioritised more highly.
- 10.2 It is appreciated that any change to the current system will be disappointing to those applicants who have been benefiting by the structure of the current system, but there will inevitably also be relief amongst other applicants who were facing the possibility that they would never see their applications progressed.
- 10.3 There may be the occasional circumstance that could arise whereby it would be desirable for a particular DMMO application to be investigated out of sequence from the simplified proposed priority system. Therefore, it is also proposed that discretion is given to the Assistant Director to permit cases to be progressed out of sequence in exceptional situations, such as to avoid delays within planning processes, to resolve particularly controversial issues in a locality, or to assist with operational efficiency gains.

## **11.0 RECOMMENDATION**

11.1 It is recommended that:

- i) The proposal to move away from the current merit-based system of prioritisation of DMMO applications in favour of applications being progressed in chronological order, giving priority to the oldest applications, is approved, and for this approach to be implemented with immediate effect.
  
- ii) discretion is granted to the Assistant Director – Integrated Passenger Transport, Licensing, Fleet, Harbours and Countryside Access to authorise the investigation of certain occasional applications ‘out of sequence’ in exceptional circumstances.

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Background papers: None

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.