



Report of the Chief Recreation Officer

Scrutiny Board (City Development)

Date: 9th September 2008

Subject: Adding paths to the Council's Definitive Map as Public Rights of Way

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary- In 2003 Shadwell Parish Council applied for a Definitive Map Modification Order application (DMMO) to add a new footpath to the Definitive Map and Statement, (a legal record that indicates a paths status). As the City Council had not determined this application within 12months of receipt, the applicant has the right to apply to the Secretary of State seeking a direction, requiring the authority to determine the application by a given date.

The Parish Council applied for such a direction in July 2005 and as the Secretary of State was satisfied that the City Council dealt with these applications in line with its published statement of priorities, did not give a direction to the City Council but did expect the City Council to determine the application by 2011. It is not possible to bring forward this application as this would not be fair on the other applicants who have had to wait and follow the same process. We remain on target and will determine this application by 2011.

Although the City Council has a target of determining 6 DMMO applications per year nearly all Orders made receive objections, resulting in Public Inquiries creating in further time delays. Each application takes between 12 and 18 months to complete and costs between £4k and £45k dependant on the length of Inquiry and the amount of ground maintenance works required.

Processing DMMO applications is just one area of work involved to manage the Definitive Map and Statement. In comparison to other West Yorkshire Authorities, Leeds is similar to the other Authorities in terms of staff resources and progress made on the legal record. A dedicated Officer dealing with these applications may help, but due to the complexities involved would not really speed up the process. In the last two years additional resources have been used to take on a Rights of Way Consultant to help deal with these applications so that the Principal Definitive Map Officer could focus on Public Inquiries and working on checking the data to produce an electronic version of the Definitive Map and Statement.

1.0 Purpose of the Report

This report has been prepared in response to a request from Scrutiny Board for information relating to the delays in administering Definitive Map Modification Order applications, (DMMO's).

2.0 Background

- 2.1 The City Council as Highway Authority has a duty to maintain the Definitive Map and Statement, (a legal record that indicates the status of a public right of way).
- 2.2 This duty can be broken down into four main areas of work as follows:
1. Processing Definitive Map Modification Order, (DMMO) applications
 2. Review and Consolidate the Definitive Map and Statement
 3. Map the Excluded area (a previously un-surveyed area of Leeds)
 4. Processing Path Orders
- 2.3 The Wildlife & Countryside Act 1981 enables anyone to apply for a Definitive Map Modification Order, (DMMO) to record ways that are not shown on the Definitive Map on the basis of historic or user evidence. Other particulars in the map and statement can be modified including the position and width of a right of way or any limitations (such as stiles and gates) affecting the public's right of way. The Act provides for objections and appeals relating to Modification Order applications to be referred to Inspectors appointed by the Secretary of State for determination.
- 2.4 If a DMMO application is not determined within 12months of receipt, the applicant may apply to the Secretary of State seeking a direction requiring the authority to determine the application by a given date. Government advice recommends that Highway Authorities publish a statement of priorities setting out how they deal with such applications and path orders affecting the public rights of way network. The City Council has published a statement of priorities which states that we deal with these DMMO applications in order of receipt and is attached to this report at Appendix A.
- 2.5 We have 50 DMMO applications, the earliest of which dates back to 1992. Although an application may be made on the basis of user evidence only, we are obliged to undertake historical research and investigate all other relevant evidence available to the City Council before determining an application. This also entails taking witness statements from those for and against the application.
- 2.6 The decision to make an Order is based on the balance of probabilities and issues such as desirability and suitability are not material factors in investigating these cases, as a result, nearly all Orders made receive objections.
- 2.7 Unless these objections are withdrawn, the City Council is unable to confirm the Order as made and has to refer the matter to the Secretary of State, who in turn will appoint an Independent Inspector and call a local public inquiry. This adds further time delays as Officer's have to prepare a proof of evidence and defend the Council's Order and prepare witnesses for the case at Public Inquiry.
- 2.8 Due to the specialist nature and the complexities involved investigating these matters, it takes a significant amount of Officer time to process each application and the City Council has a target of processing 6 DMMO applications per year. Most

years we can meet this target, but it is dependant upon the amount of Public Inquiries. In West Yorkshire, only Leeds and Kirklees Council's work towards a target of determining 6 DMMO applications per year. The remaining Authorities have not set any targets.

- 2.9 Each DMMO application can take between 12 to 18 months to complete and on average costs between £4k to £45k per application. These costs are dependant upon the length of time a Public Inquiry takes and the associated legal and advertising costs and whether ground maintenance works are required or whether further path orders are required.

3.0 Main Points

- 3.1 In 2003 Shadwell Parish Council applied for a Definitive Map Modification Order (DMMO) application to add a public footpath to the Definitive Map and Statement. This application was number 37 on the list of applications. By July 2005 there were 47 applications and Shadwell Parish Council were concerned that their application had only move up three places in two years. Concerned at the length of time this was taking, they applied to the Secretary of State to seek a direction requiring the City Council to determine the application by a given date.
- 3.2 Although there were 34 applications preceeding the Parish Council application, Officers had began work on 23 of these applications. The Secretary of State was satisfied that the City Council was dealing with these applications in accordance with its published statement of priorities and in the circumstances did not issue a direction to determine the application. However, in 2005 there was an expectation that the City Council will determine this application within the next six to seven years and we remain on target to determine this application by 2011.
- 3.3 Between 2002 and 2007, the City Council determined 18 applications and 6 Review matters. Although the Council achieved its target of 6 determinations in some years, it has not been possible to meet this every year. This was due to 16 of the determined matters being subject to unresolved objections or appeals, which required referral to the Secretary of State and were subsequently heard at Local Public Inquiry.
- 3.4 As at March 2008 following 13 Local Public Inquiries, 11 orders have been confirmed, 2 have not; and three appeals remain outstanding. Today Shadwell Parish application is number 27 out of 50 on the list of applications.

4.0 Current Position and Staff Resources

- 4.1 Processing DMMO applications is just one area of work associated with managing the Legal Record. Although there is not a dedicated Definitive Map Officer dealing with these applications, the City Development Dept have dedicated 3 full time staff dealing with all matters relating to the Definitive Map and Statement. The Principal Definitive Map Officer has recently left the employment of the City Council and we are currently going through the recruitment process but to maintain continuity to process these DMMO applications, a rights of way consultant has been taken on to maintain the level of service.
- 4.2 Much work has been spent on getting the Definitive Map and Statement web based and it is hoped that this will be available on line within this financial year.

- 4.3 In addition to this, a complete survey has been undertaken in preparation to produce a map for the Excluded Area, (a previously un surveyed area of Leeds) and this will be published as soon as the Definitive Map is on line. An estimated 322km of claimed path will need to be added to the Excluded Area using the same legislative procedure as the DMMO process. This will be quite a lengthy process however Officers are looking at ways to try and stream line this process by adding those paths onto the map that have already been subject to a diversion order. In the meantime where paths have been identified within the Excluded Area these are afforded some protection on a case by case basis.
- 4.4 Officers are currently working on over 80 path order cases to deal with various diversions and creations to enable development to occur as well as processing legal land charge searches. There are also over 400 Definitive Map review matters or mapping anomalies to be dealt with on file.
- 4.5 In comparison to other Authorities within West Yorkshire, Leeds is not really that different. No Authority has a dedicated Officer who just deals with these DMMO applications. Such an Officer would not significantly speed up the process and there would be other associated costs to consider that would create significant budget pressures. There is also a danger that the DMMO application process would take resources away from other areas of Definitive Map work that have a wider public interest.
- 4.6 Kirklees and Wakefield Council's are the only other Authorities who have 3 full time staff working on the Definitive Map and Statement and at the most are able to determine 6 DMMO applications per year. The West Yorkshire Authorities have between 40 and 60 DMMO applications on file.
- 4.7 It is acknowledged there are time delays in processing these DMMO applications however, once they have been resolved and should the Order be confirmed as made, this becomes a public right of way for future generations to come.
- 4.8 Over the last two financial years £75k has been added to the base budget for public rights of way and a significant amount of this has been allocated to managing the Definitive Map and Statement.
- 4.9 Should the City Council wish to allocate further resources into processing these DMMMO applications, then this should be taken into context within the broader financial implications and challenges that face the Parks and Countryside Service and across the City Council as a whole. The financial year 2008/9 will provide a serious challenge for the City Council and it's services. Parks & Countryside have been targeted with achieving £363K of efficiencies in the 2008/9 budget which includes additional surplus of £250K against income initiatives and £74K of staff savings.

5.0 Rights of Way Improvement Plan

- 5.1 We have just gone out to public consultation on the Rights of Way Improvement Plan (ROWIP). This forms a ten year management plan, setting out areas for consideration and improvement across the public rights of way network within the Leeds district.
- 5.2 Although it is an inspirational document highlighting improvements (which in part) are over and above the basic statutory requirements. This ROWIP provides an opportunity to bid for additional funding on an informed basis. This in turn will inform

the Council's future investment decisions concerning improvements to the public rights of way network in Leeds.

- 5.3 Importantly, the Countryside and Rights of Way Act 2000 has imposed a cut off date on the Definitive Map of 1 January 2026. Consequently, after this time, it will not be possible to add any additional public rights of way to the Definitive Map on the basis that they are recorded in historical documents. We, recognise that before 2026 we will have to carry out a full historical path survey of the whole district.
- 5.4 Central Government have recently acknowledged that it is unlikely that any Authority will meet this deadline and are likely to review this legislation. In the meantime Officer's are working on the Definitive Map Review as well as processing these DMMO applications.

6.0 Recommendation

- 6.1 Members are asked to note the contents of this report and continue to support Officer's to progress the list of applications in line with the Council's published Statement of Priorities.

Background Papers

1. Modification of the definitive map and statement, statement of priorities
2. Countryside and Rights of Way Act 2000
3. Rights of Way Improvement Plan (ROWIP)
4. The Wildlife & Countryside Act 1981