

## Highways Committee

13 February 2008



### Definitive Map Modification Orders – Statement of Priorities

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#### Report of John Richardson, Corporate Director, Environment

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##### 1.0 Purpose of the Report

- 1.1 To agree the Council's method for determining priorities for Definitive Map Modification Order work.

##### 2.0 Background

- 2.1 The County Council as Surveying Authority has a statutory duty to keep the Definitive Map and Statement of Public Rights of Way under continuous review. It can make a modification order either on its own initiative following the discovery of new evidence or simply where legal 'events' have occurred such as diversion orders.
- 2.2 It is generally the Highways Committee that determines whether evidence based Modification Orders should be made after considering all the evidence and the necessary legal criteria. Modification Orders arise both from individual Applications or where evidence is 'discovered' by the Council. In practice the 'discovery' is usually due to evidence being submitted by local residents after a path or way which is not recorded as a public right of way becomes obstructed or disputed by the landowner.
- 2.3 There are a substantial number of cases awaiting investigation throughout the County and where a person has submitted a formal application for a modification order under Schedule 14 of the Wildlife and Countryside Act 1981, the Applicant may seek a direction from the Secretary of State for the Environment, Food and Rural Affairs if the Council does not determine the Application within 12 months. The Secretary of State will have regard to the Council's Statement of Priorities in considering requests for directions.
- 2.4 Investigations into alleged public rights of way can involve detailed research of historical documentation, in depth interviews with selected users and invariably require a legal assessment of the evidence in each particular case. Modification Orders are usually subject to objections and therefore these Orders are required to be forwarded to the Secretary of State for confirmation. The Secretary of State normally determines this by means of a public inquiry. Where the Highways Committee declines to make an Order, and a formal application has been received, the applicant has a right of appeal to the Secretary of State who may then direct the Council to make an Order.

- 2.5 All outstanding formal applications for Modification Orders are contained within the Definitive Map Modification Order (DMMO) register which is available both on the County's website and in hard copy held in the Access and Rights of Way Office. This register is a new statutory requirement for all Surveying Authorities introduced by the Countryside and Rights Of Way Act 2000.
- 2.6 On 9 March 2005 the Highways Committee agreed a system for prioritising Definitive Map Modification Order work (shown in Document A).

### **3.0 Current Position**

- 3.1 Since March 2005 the Highways Committee has determined 6 routes where DMMO applications have been submitted.
- 3.2 At the present time there are 22 DMMO applications which have yet to be considered by the Highways Committee. In addition there are at least 70 cases in which some evidence has been discovered or submitted claiming the existence of a public right of way but where no formal application has been submitted. A further 86 cases lack sufficient evidence to warrant any investigation at present. In March 2005 it was envisaged that on average 6 proposals could be presented to the Committee each year. The experience of the last 3 years means that it is now predicted that on average 3 proposals for Modification Orders could be presented to the Committee each year. Therefore, it is felt that the Council needs to reconsider its Statement of Priorities to clarify the reasons for determining certain applications in advance of others. The Local Access Forum has been consulted over this matter and has not expressed any objections. It should also be noted that the Rights of Way Improvement Plan (ROWIP) for County Durham was published in November 2007. This forms the framework for planning and implementing access work over the next 4 years. It also identifies the need to increase the staff resource for DMMO work if the rate of undertaking this work is to be increased.

### **4.0 Recommendations and Reasons**

- 4.1 When prioritising the order in which these matters should be investigated, it is recommended that priority be given to formal applications and that these will normally be dealt with in date order unless it can be demonstrated that a particular case (whether an application is submitted or not) ought to be dealt with at an earlier opportunity having regard to one or more of the following factors:
- a The degree of public benefit.
  - b The obstruction or real threat of obstruction of the route.
  - c The potential to reduce violence, harassment, hostility or ill feeling within a community.
  - d The potential to secure the co-operation of landowners and users in managing the rights of way network in that locality.
  - e To support enforcement action or to facilitate a planning application decision.

- f The proposal will contribute significantly to the objectives of the ROWIP.
  - g The user witnesses are very elderly.
- 4.2 The list of cases being investigated at present and attached at Document B should be given priority because they come within the criteria set out above. Such a priority list will be reported to the Highways Committee from time to time.
- 4.3 Persons seeking to claim new public rights of way will continue to be advised and assisted in the making of formal applications.
- 4.4 A list of Definitive Map Modification Order Applications not determined by the Highways Committee is shown in Document C.

### **Background Papers**

Files as identified in Documents B and C  
Report to Highways Committee on 9 March 2005 Item No. A4

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## DOCUMENT A

On 9 March 2005 the Highways Committee agreed the following system for prioritising Definitive Map Modification Order work:

- i The Council's first priority for the determination of Modification Orders are all those cases where a formal application has been received. Such applications to be investigated in chronological order but also having regard to:
  - a) the degree of public benefit,*
  - b) obstruction of the route,*
  - c) cogency of the evidence submitted,*
  - d) risk of violence/harassment due to issue being unresolved,*
  - e) necessity in order to enable or follow on from enforcement action or to facilitate a planning application decision,*
  - f) precedent setting,*
  - g) expediency in order to facilitate the resolution of ROW issues generally in that locality,*
  - h) where user witnesses are very elderly.**
  
- ii The Corporate Director, Environment has a duty to investigate other (non Application) cases for presentation to the Highways Committee. These should be prioritised with regard to the same factors as formal applications (see above points (a) to (h)).*

## DOCUMENT B

### Definitive Map Modification Order work - Priority list of cases

Listed in chronological order

Year of applic.	Title	District	File Ref
1992*	Pikestone Lane Byway	Wear Valley	3/92/030
1992*	Stanhope Road Byway	Wear Valley	3/92/031
1992*	Hartop Lane Byway	Wear Valley	3/92/032
1993*	Middleton Lane Byway	Wear Valley	3/93/029
1993	Old Stanhope Road Byway	Wear Valley	3/95/036
1995	Coal Lane Byway	Wear Valley	3/95/033
1995	Houselop Lane Byway	Wear Valley	3/95/034
1996	Witton Gilbert fp 19/Bearpark fp 20 upgrade to bridleway	Durham City	4/96/022
2004	Ramshaw, Gordons Gill Footpath	Teesdale	6/95/002
2005	Barnard Castle, West View Footpath	Teesdale	6/03/023
2006	Shincliffe Hall Footpath	Durham City	4/06/048
2006	Barnard Castle, Thorngate riverbank Footpath	Teesdale	6/06/025

Definitive Map Modification Order Applications are shown shaded =



NB The Applications marked \* were considered by the Rights of Way Sub Committee in 1996. Following confirmation of the Orders by an inspector three were challenged by the landowner and quashed by the High Court on a technicality. One was abandoned by agreement at the Public Inquiry pending further research. A full list of applications not considered by the Committee is found in Document C

## DOCUMENT C

### Applications for modification order made under Schedule 14 of the Wildlife and Countryside Act 1981 and not considered by Highways Committee

Listed in chronological order

Year of applic.	Title	Notes	File Ref
1993	Old Stanhope Road (Snoddy) Byway	<i>Long standing byway claim based on documentary evidence. Requires advice from expert map historian and surveyor. Applicant pressing for conclusion. Issue of funding.</i>	3/95/036
1995	Coal Lane (Snoddy) Byway	<i>As above</i>	3/95/033
1995	Houselop Lane (Snoddy) Byway	<i>As above</i>	3/95/034
1996	Witton Gilbert Fp 19/Bearpark Fp 20 upgrade to bridleway	<i>Long standing bridleway claim. Investigations carried out and suggest evidence weak.</i>	4/96/022
1997	Durham, Holly Street Byway	<i>Route open for pedestrians. No known conflict locally.</i>	4/97/030
1997	Chester le Street, Morningside Terrace to South Burns Footpath	<i>Route incorporated into Tesco development and pedestrian access secured through a Section 35 agreement.</i>	2/97/009
1997	Seaham Harbour North Dock Footpaths	<i>Dock Company has reached agreement with local community to secure permissive pedestrian access.</i>	5/97/025
1998	Wearhead Bridleway 14 Downgrade to Footpath	<i>Applicant not pressing for decision.</i>	3/98/048
1998	Middles Road, Stanley Footpath	<i>Route open for pedestrians. No known conflict locally.</i>	1/98/033
1999	Burnhope, Old Mineral Line Bridleway	<i>Investigation of evidence suggests only footpath. Applicant accepting of this. Part of route dedicated as public footpath by DCC on its own land. Remainder open for pedestrians and no known conflict locally.</i>	1/85/028
2000	Durham, rear of Elvet Bridge Bridleway	<i>Route open for pedestrians. No known conflict locally as to status of route. Issue of maintenance/management.</i>	4/00/036
2002	Blackhall Rocks, rear of Londis Footpath	<i>Route open for pedestrians. No known conflict locally.</i>	5/02/036
2002	Ramshaw, Gordon Lane to Ramshaw Lane Footpath	<i>Route open for pedestrians. No known conflict locally.</i>	6/02/020

<b>Year of applic.</b>	<b>Title</b>	<b>Notes</b>	<b>File Ref</b>
2003	Escomb to Witton Park, River Wear riverbank path Footpath	<i>Part of route has been created as public footpath through agreement with landowner. The remainder, for which the evidence was weaker, has been made available by landowners as a permissive route.</i>	3/03/056
2003	Belmont, Willowtree Avenue Footpaths	<i>Application submitted when land under threat of development which has not materialised. Routes open for pedestrians. No known conflict at present.</i>	4/03/045
2003	Stainton Grove, near Barnard Castle Footpath	<i>Footpath within site of proposed waste transfer station. Is subject to a diversion order (for planning purposes) which is to be determined by Secretary of State.</i>	6/03/022
2004	Ramshaw, Gordons Gill Footpath	<i>Strong interest locally including Parish Council. Conflict locally.</i>	6/95/002
2005	Low Willington Industrial Estate Bridleway	<i>Land acquired for highway purposes.</i>	3/04/057
2005	Barnard Castle, West View Footpath	<i>Short utility path within town. Although not blocked is objected to by landowner who has appealed against a refusal of planning permission to change use of land to garden.</i>	6/03/023
2005	Ouston, Rothesay to Main Road Footpath	<i>A public path creation order has been completed providing a route for pedestrians. Applicants satisfied with conclusion.</i>	2/04/014
2005	Herdship Fell Road, Upper Teesdale Upgrade Footpath to Byway	<i>Some research completed and suggests no evidence for a change of status. Applicant may provide further evidence.</i>	6/05/024
2006	Shincliffe Hall Footpath	<i>Well used and blocked off route and cause of much anxiety locally. A public path creation agreement being negotiated with landowner.</i>	4/06/048

Cases shown in Document B (Priority List) are shown shaded =



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**Appendix 1: Implications**

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**Local Government Reorganisation**

(Does the decision impact upon a future Unitary Council?)

No

**Finance**

None

**Staffing**

None

**Equalities and Diversity**

All persons seeking to claim new public rights of way will be advised and assisted in making formal applications.

**Accommodation**

Not Applicable

**Crime and Disorder**

Decision to alter the Definitive Map and Statement must follow the statutory framework laid out by the Wildlife and Countryside Act 1981 and the Highways Act 1980.

**Sustainability**

The recording of unregistered public rights of way enhances the local environment and opportunities for more sustainable forms of transport.

**Human Rights**

The County Council, as Surveying Authority, has to make a decision in accordance with the law which is necessary to protect the rights of the public and in the general interest.

**Localities and Rurality**

As detailed in report.

**Young People**

None

**Consultation**

Priorities will be reported on a regular basis to the Highways Committee and can be adapted following representations from interested parties.

**Health**

The benefits to health of regular exercise are well known. Any increase in the extent of rights of way network give more opportunities for outdoor exercise.