

# North Tyneside Council

## Report to Assistant Chief Executive

### Date: August 2022

**Title:** Definitive Map Modification Order – The North Tyneside Council  
Benton 1 and Forest Hall 6 DMMO 2022

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<b>Report from Service Area:</b>	<b>Regeneration and Economic Development Law and Governance</b>	
<b>Responsible Officers:</b>	<b>Graeme Clark, Public Rights of Way, Definitive Map and Cycle Projects Officer</b>	<b>Tel: (0191) 643 6086</b>
<b>Ward affected:</b>	<b>Benton</b>	

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## PART 1

### 1.1 Executive Summary:

The purpose of the report is to seek the making of a Definitive Map Modification Order (DMMO) in relation to the paths referred to in this report that are considered to be public rights of way and as such should be included in the Authority's Definitive Map and Statement. The proposed order is appended to the report at Appendix 1.

The proposed order is not a "legal event" modification order made under section 53(2) of the Wildlife and Countryside Act 1981 (the "1981 Act") following one of the events listed in section 53(3)(a) of the 1981 Act.

It is proposed that the Assistant Chief Executive use the General Delegation given to all Directors relating to matters over which they have managerial or professional responsibilities in their service area.

GD6 states that a Director can : -

*"take decisions on behalf of the Authority on all matters where they have managerial or professional responsibilities for their service areas. A summary of the scope of the Assistant Chief Executive/each Director of Service's responsibility is set out at the beginning of each service area's section in the scheme."*

It is proposed that the Assistant Chief Executive, in consultation with the Director of Regeneration and Economic Development, make a DMMO under section 53(2) and section 53(3)(c) of the 1981 Act by adding specified Rights of Way to the Definitive Map and Statement using GD6.

It is further proposed that the Assistant Chief Executive agree, if no objections are received to the making of the DMMO, to confirm the DMMO as an "unopposed order".

## **1.2 Recommendation(s):**

It is recommended that the Assistant Chief Executive:

1. in consultation with the Director of Regeneration and Economic Development makes the Definitive Map Modification Order at Appendix 1 of this report and thereafter takes all necessary steps to give notice to the making of the Order in accordance with the requirements of the Wildlife and Countryside Act 1981;
2. confirms the Definitive Map Modification Order as an “unopposed order” on receipt of confirmation that no representations and objections have been received following the making of the Definitive Map Modification Order and that all necessary steps are taken to modify the Definitive Map and Statement accordingly; and
3. notes that if representations or objections are made to the making of the Definitive Map Modification Order, a further report will be provided to the Assistant Chief Executive on the further steps that must be taken by the Authority in accordance with the Wildlife and Countryside Act 1981.

## **1.3 Council Plan and Policy Framework:**

The proposals in this report support the following priority in Our North Tyneside, the Council Plan 2021 to 2025:

- A green North Tyneside
  - We will increase opportunities for safe walking and cycling, including providing a segregated cycleway at the coast

## **1.4 Background**

### **1.4.1 The Definitive Map and Statement (DMs):**

The DMs is a legal record of Public Rights of Way (PRoW). The records are held and maintained by Local Authorities, including North Tyneside (“the Authority”).

The North Tyneside DMs was first developed between the late 1940’s through to the 1960’s when parts of the borough fell within the remit of Northumberland County Council.

The Statement, which accompanies the DM, contains a description of the position, width and any limitation (e.g. gates or stiles) or condition affecting it.

Together, they provide conclusive evidence as to the existence and status of the public right of way shown.

Under the provisions of the 1981 Act the Authority as Surveying Authority has a duty to keep the DMs under continuous review.

In essence, this means that when evidence becomes available that there is an error, inaccuracy, or omission on the DMs, that it should be modified as soon as is reasonably practicable by means of a legal order (known as a Definitive Map Modification Order).

#### **1.4.2 Deciding to 'make' (authorise) a Definitive Map Modification Order (DMMO):**

A Surveying Authority can make a DMMO if it discovers new evidence which requires the map to be amended. But in addition to this, any person may apply to the Surveying Authority for a DMMO to be made.

The decision to make a DMMO when a path is not shown on the DMs should be based on whether it can be shown to subsist or reasonably alleged to subsist and the decision to confirm it on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) should be based on all relevant available evidence.

The question of suitability or desirability, safety or maintenance is not a relevant factor as legislation does not permit the Authority to take these factors into account.

When evaluating whether to make a DMMO, there are two tests to consider:

- Test A - Whether a PRoW subsists. For Test A to be fulfilled, the standard of proof is to show that a PRoW does exist on the balance of probabilities.
- Test B - Whether a PRoW has been reasonably alleged to subsist. For Test B to be fulfilled it must be shown that the reasonable person, considering all relevant evidence available could reasonably allege a PRoW to subsist.

The question to consider at this stage is whether all evidence available demonstrates that either Test A or Test B has been satisfied.

If it is considered that a PRoW can be shown to subsist or can be reasonably alleged to subsist, then a DMMO should be authorised.

#### **1.4.3 Process for Making and Confirming a DMMO**

The process for making a DMMO (which is not a "legal event" DMMO) is set out in Schedule 15 of the 1981 Act and the form of DMMOs are prescribed by the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. The procedure for the making and confirmation of a DMMO is as follows: -

On the making of a DMMO notice of the order having been made must be given in the prescribed form –

- describing the general effect of the DMMO, stating that it has been made and requires confirmation;
- naming a place where a copy of the DMMO may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours; and
- specifying the time (not being less than 42 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the DMMO, which must include particulars of the grounds relied on, may be made.

The notice of the making of the DMMO must be published in at least one newspaper circulating in the ward(s) affected.

In addition to the publication of the notice of the DMMO having been made, the same notice must be served, together with a copy of the DMMO, on the following: -

- every owner and occupier of the land over which the DMMO relates;
- every local authority whose area includes any of that land;
- any person who has paid a fee to the Authority and in return requires to be given notice of all DMMOs made in a specified area of the Borough during a specified period of time set out in the requirement;
- such other persons as the Authority considers appropriate

The notice of the making of the DMMO must also be displayed prominently, together with a plan showing the general effects of the DMMO: -

- at the ends of so much of any way as is affected by the DMMO;
- at the Quadrant; and
- such other places at the Authority considers appropriate (e.g. on the Authority's website)

If no representation or objections are made within the 42 day period (or longer period if so specified), or those that have been made have been withdrawn, the Authority may either: -

- Confirm the DMMO without modification; or
- If the DMMO requires modification, submit the DMMO to the Secretary of State who may confirm the DMMO with or without modification.

If representation or objections are made and not withdrawn, then the Authority cannot confirm the DMMO and it must be submitted to the Secretary of State for confirmation by him/her.

The Secretary of State on receipt of the DMMO can either cause a local inquiry to be held or afford an opportunity for any person who made a representation or objection to be heard by a person appointed by the Secretary of State for the purpose. On considering any representations or objections made and the report of the person appointed to hold the inquiry or hear representations or objections, the Secretary of State may confirm the DMMO with or without modifications.

#### **1.4.4 The Proposed DMMO**

The proposed DMMO concerns the formal recording of a public footpath in Benton and a Bridleway in Forest Hall. The proposed DMMO is attached to this report at Appendix 1 and would add to the Definitive Map and Statement "Public Footpath (Benton 1)" and "Bridleway (Forest Hall 6)".

##### Benton 1

This is proposed for inclusion in the DMMO in accordance with section 53(3)(c) of the Act, namely, the discovery by the Authority of evidence which, when considered with all other relevant available evidence, shows that a Public Footpath which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the Definitive Map and Statement relates.

Evidence which is publicly available on historic mapping websites indicates the existence of the path dating back to at least 1841. This evidence is strengthened by the fact that, as rail lines have been developed during the intervening decades, crossings such as an underpass and overbridge have been constructed serving the line of the path.

Furthermore, aerial photography on a publicly available mapping website dating back to 1999 indicates that the path can be clearly distinguished, thereby indicating ongoing use for over 20 years by the public at large.

Commencing at its west end at its junction with an adopted highway approximately 55 metres east of Oakhurst Terrace, Benton, the path travels in a largely north east direction along the north side of the main metro line before curving slightly along the line 'siding' and then southeast under the 'siding' where it re-joins the north side of the main metro line. The path continues northeast to the west side of the East Coast Main Rail Line pedestrian footbridge; crossing the bridge the path turns north west and then east to its end point on the east side of the main line at its junction with Forest Hall 6, described below.

The total length of Benton 1 is approximately 395 metres.

#### Forest Hall 6

This is proposed for inclusion in the DMMO in accordance with section 53(3)(c) of the Act, namely, the discovery by the Authority of evidence which, when considered with all other relevant available evidence, shows that a Bridleway which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the Definitive Map and Statement relates. Supporting evidence indicating that the route serves as a Bridleway rather than a footpath has been received by the Authority in the form of five user evidence submissions.

Evidence which is publicly available on historic mapping websites indicates the existence of the path dating back to at least 1841. This evidence is strengthened by the fact that, as rail lines have been developed during the intervening decades, crossings such as overbridges have been constructed serving the line of the path.

Furthermore, aerial photography on a publicly available mapping website dating back to 1999 indicates that the path can be clearly distinguished, thereby indicating ongoing use for over 20 years by the public at large.

It should be noted that the majority of the associated land does not feature on the Land Registry database as having recorded ownership.

Commencing at its north end at its junction with the adopted highway of Granville Drive, Forest Hall, the path travels south along Westcroft Road, Forest Hall and continues along a private access road alongside the east side of the East Coast Main Rail Line where it intersects with Benton 1, described above, at the foot of the pedestrian footbridge over the East Coast Main Rail Line. The path then heads in a south east direction via the metro line underpass to Granville Crescent where it then turns west via a bridge overpass of the East Coast Main Rail Line and then curves to the south passing The Covers, Benton before then crossing another bridge overpass of a dismantled rail line to its end point at its junction with an adopted highway at The Oval, Benton.

The total length of Forest Hall 6 is approximately 500 metres.

## **1.5 Decision options:**

The following decision options are available for consideration:

### Option 1

To approve the recommendations in section 1.2 of the report.

### Option 2

Not to approve the recommendations in section 1.2 of the report.

Option 1 is the recommended option.

## **1.6 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

It is considered expedient that the Footpath and Bridleway be formally recorded in line with the Authority's statutory duty and to legally protect them into the future for continued use by the public.

The Authority has appropriate evidence as set out in section 1.4.4.

## **1.7 Appendices**

Appendix 1 The North Tyneside Council Benton 1 and Forest Hall 6 DMMO 2022

## **1.8 Background Papers**

The following background papers have been used in the compilation of this report.

- (1) [The Wildlife and Countryside Act 1981](#)
- (2) [The Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1993](#)
- (3) [North Tyneside Transport Strategy](#)

## **1.9 Contact officers:**

Graeme Clark, Public Rights of Way, Definitive Map and Cycle Projects Officer  
(0191) 643 6086

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The costs associated with the process can be met from existing budgets within the Local Transport Plan capital programme.

## 2.2 Legal

The legal process to be followed in making a DMMO and the confirmation of such an Order is set out in the body of the report.

The proposed order is not a “legal event” modification order made under section 53(2) of the 1981 Act following one of the events listed in section 53(3)(a) of the 1981 Act. This is a relevant consideration because the Authority’s Officer Delegation Scheme at CS 65 gives the Assistant Chief Executive the following delegated authority in relation to DMMOs made under the 1981 Act: -

*“In consultation with the Director of Regeneration and Economic Development to authorise the making of “legal event” modification orders under section 53(2) of the Wildlife and Countryside Act 1981, which are consequential on events listed in section 53(3)(a) of the Act and take effect on being made, namely the coming into operation of any enactment or instrument, or any other event, whereby:*

- a) A highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;*
- b) A highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or*
- c) A new right of way has been created over land in an area to which the map relates, being a right of way such that the land over which the right subsists is a public path.”*

The Officer Delegation Scheme therefore gives specific delegation to the Assistant Chief Executive to make “legal event” DMMOs. It does not give specific delegation to the Assistant Chief Executive to make and confirm other types of DMMOs.

As the Officer Delegation Scheme has given specific delegated authority to the Director of Regeneration and Economic Development to make orders under the Highways Act 1990 and specific delegated authority to the Assistant Chief Executive to make orders under the Wildlife and Countryside Act 1981 (albeit on a limited basis) it is considered appropriate for the Assistant Chief Executive to make, and possibly confirm, the proposed DMMO at Appendix 1 of the report.

## 2.3 Consultation/community engagement

### 2.3.1 Internal Consultation

The Director of Regeneration and Economic Development has been consulted on this report and the proposed making of the Order at Appendix 1.

Benton ward members have also been informed of the proposal to make a DMMO.

### 2.3.2 External Consultation/Engagement

In the case of Benton 1, positive engagement has been carried out with the landowner of the route (other than the East Coast Main Line footbridge which is under separate ownership), Nexus, about the intention to formally record the path.

Details of the proposed DMMO were shared with groups representing public rights of way users to afford them an opportunity to make any comment on the proposed text of the Order.

In the case of Forest Hall 6, a number of formal user evidence submissions have been received, which refer to use without notice or challenge for the requisite period.

#### **2.4 Human rights**

The legal process as defined in the body of the report takes account of relevant human rights implications.

#### **2.5 Equalities and diversity**

There are no equality or diversity implications directly arising from this report.

#### **2.6 Risk management**

There are no risk management implications directly arising from this report.

#### **2.7 Crime and disorder**

There are no crime and disorder implications directly arising from this report.

#### **2.8 Environment and sustainability**

There are potential positive implications for environment and sustainability as confirming the status of public rights of way may facilitate the use of more sustainable modes of transport in preference to car travel.