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Please ask for: Mrs Denise Bales  
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Your ref:  
My ref: DB/17906  
Date: 18 May 2018

Dear Mr Sullivan,

### **Re: Norfolk County Council Policy on Definitive Map Modification Orders**

I have been asked to respond, on behalf of Mr Wilby, to your letter of the 11 April, 2018.

I will reply to the questions in the order in which they appear in your letter, as follows:

#### **Norfolk County Council policy**

The policy is fair to all parties involved in the legislative process. It is true to say that it necessitates further work by an applicant, but it also encourages a greater community participation in what is, to some extent, a free service and has the added benefit of providing the applicant with a greater sense of responsibility. The County Council still prepares a detailed and documented Statement of Case, which the applicant can adopt as his/her own and which has been found to assist in terms of presentation of arguments at inquiries, hearings and exchanges of written representations. The 2011 policy has been well received and is viewed as being an equitable process. Planning Inspectors have confirmed that it works and is fair to all parties.

#### **Orders made for a higher level of public right than that for which the application was made**

If an applicant applies for a footpath but the County Council, as the Order Making Authority (OMA) finds that bridleway rights have been established on the claimed route, it has a duty to make an order for that level of established public right. Applicants are warned of this possibility at the outset of the process. They will still have the opportunity, when either adopting the OMA's Statement of Case, or putting forward an amended version, to explain why they disagree with the OMA's findings.

#### **Duty to investigate modification applications, make modification orders and assert and protect the rights of the public**

The County Council, as the 'Surveying Authority' is responsible for investigating formal modification applications submitted under section 53 of the Wildlife and Countryside Act,

1981. Once those applications have been determined (either by the County Council or the Secretary of State for Environment, Food and Rural Affairs/appointed Planning Inspector and that determination is that a public right of way has been found to exist, the duty to assert and protect will then be engaged by the County Council as the Highway Authority.

### **Policy criteria and statistics**

In deciding whether to promote the Order, the County Council considers as 'policy criteria' firstly the significance and quality of the evidence received, secondly the extent of evidence to the contrary, thirdly the nature of objections received and fourthly the connectivity with the existing rights of way network. By making a case by case decision whether to actively promote the Order, the County Council will allow for situations where it would seem perverse or invidious of the County Council not to actively promote the case beyond referral to the Planning Inspectorate. This individual case approach ensures that the County Council does not fetter its discretion by the imposition of a blanket ban on promotion. It is already the case that if the County Council has been directed to make an Order by the Secretary of State on appeal, it usually takes a neutral stance at any public inquiry.

### **Statistics**

(i) Since 2011, the County Council has made 45 definitive map modification orders under section 53 of the Wildlife and Countryside Act 1981.

(ii) The County Council has promoted two of those orders as own motion cases. It has not opposed any of the orders and has taken a neutral stance on the remaining 43 cases. It received 2 Directions from the Secretary of State for Environment, Food and Rural Affairs to make orders, following successful appeals by applicants against the OMA's decision not to uphold their applications. Of those 2 orders, 1 was then not confirmed by a Planning Inspector and the other has yet to be considered by a public inquiry this summer.

(iii) In 3 of the 45 cases an order has been made at a higher level.

In addition to the above, since 2011, 20 dedications have been negotiated by the team (involving landowners and applicants) which would otherwise have had to be dealt with under the modification order process.

I hope you find this information useful.

Yours sincerely

*Denise Bales.*

Denise Bales  
Senior Legal Orders Officer