

Delegated Decision



6 January 2022

**Definitive Map Modification Orders –
Statement of Priorities**

Ordinary Decision No.

Report of Regeneration, Economy and Growth

Dave Wafer, Head of Transport and Contract Services (acting)

Electoral division affected:

Countywide

Purpose of the Report

- 1 To agree the Council's method for determining priorities for Definitive Map Modification order work.
- 2 To note the decision of the Highways Committee on 10 December 2021 to endorse a report to this effect.

Executive summary

- 3 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 in response to formal applications, or on its own initiative following the discovery of new evidence.
- 4 Since 2018 the County Council has received in excess of 270 applications based on historical documentary evidence, primarily submitted by representatives of the British Horse Society seeking to record historic bridleways. These have been prompted by the proposed 'cut-off' date for the receipt of such applications of 1 January 2026. A small number of user evidence applications and claims also continue to be made.
- 5 At the present time there are 280 DMMO applications which have yet to be considered by the Highways Committee. In addition there are a large number of 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. It is envisaged that at least one application or claimed path can be presented to each meeting of the Highways Committee. Therefore, it is felt that the Council needs to put in place criteria to clarify the reasons for prioritising the determination of certain applications in advance of others.

Recommendation

- 6 It is RECOMMENDED that the attached report, as endorsed by the Highways Committee on 10 December 2021, be formally adopted as per paragraph 52 (Table 3) of the Constitution of the County Council.

Background

- 7 As per the attached report.

Options

- 8 A random approach to determining applications would be unfair to all parties, lack clarity and be open to challenge
- 9 Where an application has not been determined by the Council within 12 months of receipt, the applicant has a right to refer the matter to the Secretary of State who may direct the Council to determine the application by a specified time. The SoS will have regard to any statement of priorities when deciding what timescale to impose. Failure to have an agreed statement of priorities may lead to the imposition of challenging timescales and the setting of priorities by the Secretary of State.

Conclusion

- 10 Agreed to the adoption of the report in accordance with the Recommendation.

Contact: Mike Ogden

Tel: 03000 265331

Appendix 1: Implications

Legal Implications

Set out in the body of the Committee report.

Finance

None.

Consultation

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

Equality and Diversity / Public Sector Equality Duty

All persons seeking to claim new public rights of way will be advised and assisted in making formal applications and any decision on the application of priority criteria will have due regard to the PSED.

Climate Change

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

Human Rights

Any decisions on application of the priority criteria will be made in accordance with the ECHR and the Human Rights Act, having due regard to any rights which are engaged.

Crime and Disorder

Any decision to modify the Definitive Map and Statement will have due regard to the Council's duty to consider crime and disorder implications in section 17 of the Crime and Disorder Act 1998 but must follow the statutory framework laid out by the Wildlife and Countryside Act 1981 and the Highways Act 1980.

Staffing

None

Accommodation

N/A

Risk

Not having prioritisation criteria will expose the Council to a greater degree of risk in the event of a Schedule 14 referral to the SoS.

Procurement

N/A

Highways Committee

10 December 2021

Definitive Map Modification Orders Statement of Priorities



Report of Alan Patrickson, Corporate Director, Neighbourhoods and Climate Change

Electoral division(s) affected:

Countywide

Purpose of the Report

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

Executive summary

- 2 In the last 2-3 years, the Council has received an unprecedented number of Modification Order applications due to the government's proposed 2026 cut off date for certain applications.
- 3 Accordingly, there is a significant backlog of applications awaiting determination and with limited resources, the Council needs to put in place criteria to assist with how determination of these applications are to be prioritised.

Recommendation(s)

- 4 That the Committee approve this report as the Authority's statement of priorities for Definitive Map Modification Orders.

Background

- 5 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 in response to formal applications, or on its own initiative following the discovery of new evidence.
- 6 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. Evidence is generally either in the form of use or documentary evidence.
- 7 Since 2018 the County Council has received in excess of 260 applications based on historical documentary evidence, primarily submitted by representatives of the British Horse Society seeking to record historic bridleways. These have been prompted by the proposed 'cut-off' date for the receipt of such applications of 1 January 2026. A small number of user evidence applications and claims also continue to be made.
- 8 There are therefore a substantial number of cases awaiting investigation into alleged public rights of way which require detailed research of historical documentation and invariably require a legal assessment of the evidence in each particular case. There are also a few which require in-depth interviews with selected users. Modification Orders once made are usually subject to objections from landowners 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. Also, where an application has not been determined by the Council within 12 months of receipt, the applicant has a right to refer the matter to the Secretary of State who may direct the Council to determine the application by a specified time. The SoS will have regard to any statement of priorities when deciding what timescale to impose.
- 9 All outstanding formal applications for Modification Orders are contained within the Definitive Map Modification Order (DMMO)

register which is available for the public to view both on the County Council's website and in hard copy held in the Access and Rights of Way Office. This register is a statutory requirement for all Surveying Authorities introduced by the Countryside and Rights of Way Act 2000.

- 10 It is many years since the Committee last considered the scale of applications received by the County Council or agreed a process for prioritising those applications.

Current Position

- 11 In response to the increase in applications since 2018, the County Council appointed two Definitive Map Officers in July 2019 with the specific task of assessing the applications and bringing reports to Committee. The pandemic and the consequent closure of the County Record Office and other archives has hindered progress on the research and assessment of the evidence for each application. To date four reports have been brought to this Committee since the start of 2020.
- 12 At the present time there are 280 DMMO applications which have yet to be considered by the Highways Committee. In addition there are a large number of 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. It is envisaged that at least one application or claimed path can be presented to each meeting of this Committee. Therefore, it is felt that the Council needs to consider a new Statement of Priorities to clarify the reasons for determining certain applications in advance of others.

Proposed criteria for prioritisation

- 13 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 order of date received. Opportunities will be taken to group applications together where they affect the same landowners or rely on the same documentary evidence.
- 14 There will be occasions where 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 user witnesses are very elderly.
- 15 Persons seeking to claim new public rights of way will continue to be advised and assisted in the making of formal applications.
- 16 An annual report on progress will be made to this Committee each December.

Background papers

None

Other useful documents

None

Author(s)

Mike Ogden

Tel: 03000 265331

Appendix 1: Implications

Legal Implications

Legal implications are set out in the body of the report

Finance

None

Consultation

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Staffing

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Accommodation

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Risk

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Procurement

None.