

Local Members' Interest	
N/A	

Countryside and Rights of Way Panel – 16th June 2023

Audit and Standards Committee- 11 July 2023

Review of the Definitive Map Modification Order Service

Report of the Director for Corporate Services

Recommendation

1. That the proposed Priority Scheme for the consideration of Definitive Map Modification Orders as set out at Appendix B of this report be approved and the full Council be requested to grant delegated powers to the Director for Corporate Services to exercise the County Councils Discretion as detailed in section 3 of the scheme.
2. That the Panel support the proposed measures set out in paragraph 27 of this report aimed at reducing officer time spent on certain stages of the Definitive Map Modification Order process.

Why is it coming here – what decision is required?

1. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Carrying out the duties of the Council in respect of s53 of the Act falls within the terms of reference of the Countryside and Rights of Way Panel.
2. To consider the findings of a review of the County Council's Definitive Map Modification Order ("DMMO") service as set out in this report.
3. To decide, having regard to and having considered the findings and whether or not to approve the recommended priority scheme set out in Appendix B.

Introduction

4. Staffordshire County Council, as Surveying Authority, is required to maintain a Definitive Map and Statement (DMS) showing all public rights of way in the county. The representation of a public right of way on the DMS is conclusive evidence of its existence.

5. If any person has evidence to suggest that the DMS is inaccurate or incomplete, under Section 53 of the Wildlife and Countryside Act 1981, they can apply (free of charge) to the Council, requesting a modification to the DMS. This is done through a Definitive Map Modification Order (DMMO) application.
6. DMMOs are solely concerned with formally recording rights that already exist on the ground but are not recorded on the DMS. Applications for DMMOs can also be made to delete a right of way if evidence can be produced to show that the way was included on the DMS in error, or to change the classification where its status can be proven to be incorrectly recorded or to correct an error on the DMS. DMMOs cannot:
 - o Create rights that do not already exist.
 - o Extinguish rights that do exist.
 - o Divert existing rights onto a preferred route.
7. On receipt of a DMMO application, the Council must investigate the evidence submitted, which may be documentary evidence or evidence of user, and make a decision as soon as reasonably practicable. Following investigation, if the Council considers that the DMS is inaccurate or incomplete, an Order must be made. DMMO's are subject to public consultation, and if objections are raised that cannot be resolved, the application is submitted to the Secretary of State for Environment, Food and Rural Affairs (SoS). The SoS will hold a Public Inquiry or Hearing, or invite written representations, following which the SoS will decide whether or not to confirm the DMMO.
8. The legislation provides that if the Council has not determined (decided the outcome of) the DMMO application within 12 months the applicant can appeal to the SoS against this non-determination. If found in the applicant's favour, the SoS can direct the Council to determine the application within a fixed timescale. Such decisions inevitably delay the determination of other applications, which may have been submitted earlier.
9. As the 12-month timeframe for determination is rarely achieved by English Surveying Authorities, many have adopted a Statement of Priorities for dealing with DMMO applications. The Secretary of State has stated that published statements setting out the authority's priorities for bringing and keeping its definitive map and statement up to date are taken into account in considering applications for directions.
10. The County Council's Countryside and Rights of Way Panel resolved that applications for Modification Orders should be investigated and determined in the order in which they are received, except where there are exceptional circumstances which would warrant an application receiving priority consideration. The current Priority Criteria is appended to this report at Appendix A. In the past the SoS has taken the view that the Council's statement of priority formed a reasonable basis for processing DMMO

applications and considered that the applications for which directions had been applied did not fall within the criteria set out by the Council requiring them to determine those applications within a given time.

11. However, in recent years the SoS has taken a different stance and started to direct councils to deal with applications within a specified timeframe on application, irrespective of the Council's statement of priority, and this has resulted in far more applications being made to the SoS for a direction. Many applicants are now applying for a direction immediately following the 12-month timeframe. Consequently, many of the new applications are being determined before those which have been with the Council for a much longer period. This means that the order in which applications are dealt with has been distorted and many of the older applications remain a low priority and will not be dealt with in the foreseeable future, unless a direction is applied for from the Secretary of State in respect of those applications.
12. At the time of writing, the Council has 67 undetermined applications on which it has been directed by the SoS to determine within a specified timeframe, which is typically between 6 and 12 months. It also has 3 direction applications pending with the SoS. The current backlog of applications requiring a determination currently stands at a total of 290.
13. The Council has been directed in respect of 166 DMMO applications since 2017, and of those, it has determined 98, as set out below:

	2017	2018	2019	2020	2021	2022	2023 to date
Total Number of DMMO applications received	5	10	14	41	40	33	3
Number of Directions received	22	50	46	29	7	6	6
Number of directed applications determined	0	16	15	25	23	16	3

14. It would appear from the above that the number of directions being applied for each year is decreasing, and as these are now being determined at a faster rate than they are being received, the number of outstanding directions is also decreasing, although the number of applications being received remains relatively high.

15. Once a DMMO application has been submitted to the Council in the prescribed manner, the Council has a statutory duty to investigate the application to its conclusion; it is not possible to stop processing or remove an application from the DMMO register.
16. Almost all DMMO applications are contentious and hotly contested. This is because the parties involved want different outcomes. For example, users are likely to be passionate about the access and landowners are likely to oppose access across their land. As a result, the Council must be sensitive to both parties' needs and examine the evidence to such a degree that it can satisfy itself whether or not an order should be made.
17. Following determination of an application, there is a right of appeal against a refusal, and there is a right to object to a DMMO once it has been published. Appeals against refusal and objections to DMMOs which cannot be resolved are submitted to the SoS, who will hear the appeal/objections by way of a public inquiry, a public hearing or written representations. The SoS will then decide, in the case of appeal against refusal, whether or not to direct the order-making authority to make a DMMO or, in the case of objections to an order, whether or not to confirm the DMMO.

Review of the DMMO Service

18. Due to the quasi-judicial nature of the procedures for determining DMMO applications the nature of the work is extremely labour-intensive and time-consuming. For example, there is a need to research and evaluate historical evidence which is often difficult to find and complex, and the drafting and publishing DMMOs many of which result in submissions to the SoS often leading to public inquiries.
19. The service has recently been reviewed with the aim of considering whether any measures can be introduced to reduce the backlog more quickly within the current staffing and experience levels, work practices, policies and procedures, and also taking into account how other local authorities have dealt with similar backlogs.
20. As part of this review a sample of other order making authorities were surveyed to ascertain information about how they have dealt with similar backlogs.
21. Of the 15 authorities surveyed, responses were received from 12.
22. Of these 12 authorities, 8 have backlogs of more than 100 undetermined DMMO applications, as follows:

	Fewer than 100 undetermined	Between 100 and 200 undetermined	Between 200 and 300 undetermined	Over 300 undetermined DMMO applications
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	DMMO applications	DMMO applications	DMMO applications	
Number of surveying authorities	4	4	3	1

- 23.** Of these, only three authorities have been directed by the SoS to determine in excess of 10 applications by a specific deadline. The other authorities had no or very few directions from the SoS.
- 24.** Of the three authorities who had more than 10 directions at the time of the survey, two of them stated that they were unable to meet the deadlines set by the SoS, and the other authority was able to meet the deadlines by employing additional officers, although no further detail relating to this was provided.
- 25.** After considering information received from other surveying authorities, it would appear that Staffordshire is in a similar position to many other authorities in respect of the backlog, although it has been directed by the SoS in considerably more cases than any of the authorities surveyed. The reason for this could not be ascertained from the responses.
- 26.** This survey did not present any significant measures or solutions could be implemented to reduce the backlog.
- 27.** However, the review did identify some measures which would help to reduce officer time spent on certain stages of the DMMO process, as follows:
- a.** I have delegated powers to determine applications for Modification Orders under the Wildlife and Countryside Act 1981 unless, after consultation with the local County Councillor(s) for the area concerned and the Director for Economy, Infrastructure and Skills, we decide that the matter in question ought properly to be determined by this Panel. I propose to maximise the use of those powers thereby making more determinations, reducing the time spent on report preparation, enabling members to focus on the more contentious cases.
 - b.** Considering whether the application could be resolved by alternative means, such as a public path creation agreement or a diversion order. This would only be relevant where the owner of land affected by the application is willing to accept the route onto their land and given the contentious nature of such applications it is not likely to succeed in the vast majority of cases. However, where it is a viable option, an application can be progressed without the need to wait until it reaches the requisite ranking in the DMMO backlog, thereby resolving the case much more quickly.

- c.** As part of the Digital Council initiative I intend to explore digital solutions in respect of application packs, and the informal consultation processes, again reducing the volume of paperwork and amount of officer time spent on the administration of applications.
- 28.** With Panel's approval, I intend to implement the first of these three measures, with immediate effect. Proposals b) and c) would be implemented as soon as I'm confident that the processes involved are sufficiently robust.
- 29.** Referring back to the survey of other Authorities, it was noted that many have priority statements in place which are designed to score applications using specific criteria in order to prioritise certain applications. There was a variety of reasons for prioritisation of applications, although common themes were to accord with policy objectives such as improving connectivity and promoting active travel.
- 30.** As a consequence, a draft revised priority criteria for Staffordshire is set out at Appendix B. This provides further opportunities for owners or occupiers of land affected by an alleged route to request priority consideration, and also provides the Council with options to prioritise applications where specific circumstances apply.
- 31.** The aim of this is to provide a mechanism for those landowners adversely affected by a DMMO application to apply for priority consideration, and also to prioritise those applications which would be considered to have a benefit to the public, such as those which meet certain council objectives, and those which would be lost as a consequence of development.
- 32.** Applications on which the Council has been directed by the SoS would remain a priority and this status would be taken into account in the priority scoring. The scoring matrix is currently being developed and tested with the intention of implementing the new priority scheme during this calendar year, once a robust scoring matrix is in place.

Summary

- 33.** As a consequence of the review and the survey, I propose to introduce measures which are aimed at reducing the time taken in processing certain stages of DMMO applications within the current staffing resource levels.
- 34.** I also propose the introduction of a new priority scheme which should largely benefit the wider public, but also allow affected landowners a mechanism to apply for priority where they are adversely affected by a DMMO application, whilst still prioritising those applications on which the

Council has been directed by the SoS to determine within a specific timeframe.

35. Additionally, the wider Rights of Way service, including the DMMO process, is being reviewed and further changes may be implemented as a consequence.

Recommended Option

36. To consider this report and to approve the proposed new Priority Scheme set out at Appendix B of this report, and also to note the proposed measures set out in paragraph 27 of this report aimed at reducing officer time in processing certain stages of Definitive Map Modification Order applications.

Other Options Available

37. Not to approve the new Priority Scheme set out at Appendix B and to continue with the current approved priority criteria set out at Appendix A.

Legal Implications

1. As with any Council decision, there is a risk of legal challenge, however, the risk is considered to be low.

Resource and Financial Implications

2. The costs of determining applications are met from existing provisions.
3. The proposals are aimed at streamlining the process and so the resource and financial implications of implementing the proposals should be offset by savings made in respect of the existing processes.

Risk Implications

4. None

Equal Opportunity Implications

5. There are no direct equality implications arising from this report.

J Tradewell

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Background File: N/A

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APPENDIX A

Existing Priority Criteria

The Countryside and Rights of Way Panel have resolved that applications for Modification Orders should be investigated and determined in the order in which they are received, except where there are exceptional circumstances, which would warrant a claim receiving priority consideration.

For an application to be given priority status the person requesting such would need to provide evidence that it falls within one or more of the criteria set out below. If the material provided is not sufficient to support the claim Officers have the power to reject the request. The decision on a request supported by relevant evidence is reserved to the Countryside and Rights of Way Panel.

Further, applicants or owner/occupiers should be aware applications will only be afforded priority in rare and exceptional circumstances.

Additionally, that where the Council has been directed to determine applications by a set date by the Secretary of State an application afforded priority status will be dealt with after such directions have been satisfied unless the Countryside and Rights of Way Panel decides otherwise.

These exceptional circumstances are as follows: -

1. Where the land over which the route runs has received permission for development and
 - (a) the implementation of such would mean the claimed way would be lost as a consequence of being built over, and
 - (b) all attempts to divert or otherwise cater for the route within the development have been exhausted.
2. Where there is evidence of severe financial hardship caused by the existence of an application for an addition of a route to the owner/occupier of the land

APPENDIX B

Proposed Priority Scheme

The Countryside and Rights of Way Panel have resolved that applications for Definitive Map Modification Orders should be investigated and determined in the order in which they are received, except where there are circumstances which would warrant priority consideration. All undetermined Definitive Map Modification Order applications will be prioritised using a scoring matrix based on the following circumstances.

1. Directions by the Secretary of State

- A. Where the County Council has been directed by the Secretary of State to determine an application within a specific timescale.

2. On application to the County Council

An owner or occupier of land which is affected by a modification order application may make a request to the County Council for priority consideration based on one or more of the following four circumstances (B-E). The owner or occupier would need to provide evidence to support their request. If the material provided is not considered to be sufficient to support the priority request, officers have the power to reject the request. The decision on a priority request which is supported by relevant evidence is reserved to the Countryside and Rights of Way Panel.

- B. Where the land over which the route runs has received permission for development and
 - a. the implementation of such would mean the claimed way would be lost as a consequence of the development AND
 - b. all attempts to divert or otherwise cater for the route within the development have been exhausted.
- C. Where there is evidence of
 - a. detrimental financial implications, and/or
 - b. detriment to the health

of the owner or occupier of any land affected by a modification order application, AND that either C(i) or C(ii) above has been caused by the existence of a modification order application for an addition of a route over their land.

- D. Where there is evidence that the sale of land is being prevented by a modification order application for an addition of a route over that land.
- E. Where the applicant has identified that there is more than one application which are in close proximity to each other and/or are supported by the same documentary evidence and it would make more efficient use of resources to investigate those applications together.

3. County Council Discretion

Where in the sole opinion of the Director for Corporate Services, any of the following criteria (F-I) are satisfied, the Director for Corporate Services shall have the discretion to prioritise those modification order applications without the need for a decision from the Countryside and Rights of Way Panel.

- F. Where, unless already accounted for by the application, the land over which the route runs has received permission for development and the implementation of such would mean the claimed way would be lost as a consequence of the development
- G. Where, unless already accounted for by the application, there is more than one application which are in very close proximity to each other and/or are supported by the same documentary evidence and it would make more efficient use of resources to investigate those applications together.
- H. Where the subject of the application would assist in meeting one or more corporate objectives and is considered to offer a significant benefit to users of the Rights of Way network by enabling or improving:
 - 1) Connectivity of the overall highway network
 - 2) Access to services
 - 3) Physical and mental health and wellbeing
- I. Where an existing path is subject to enforcement but the status or alignment of a route which is currently on the Definitive Map is in dispute and a resolution would enable the County to deal with enforcement with more certainty.