

Constitution Committee

Date of Meeting: 20 September 2018

Report Title: Public Rights of Way Public Path Orders: Change to Scheme of Delegation

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The report puts forward a proposal for a change to the Scheme of Delegation in order that the determination of non-contentious Public Path Order applications can be undertaken by the Executive Director – Place in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee.
- 1.2. The work of the Public Rights of Way (“PROW”) team contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1. That the Constitution Committee recommend to Council that the scheme of delegation be amended to enable the Executive Director – Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-Order consultation stage.

3. Reasons for Recommendations

- 3.1 Currently all Public Path Order cases are presented to the quarterly Public Rights of Way Committee for determination. The Committee cycle creates a concertina effect on cases awaiting determination and thus can have a negative impact on the speed with which cases can be processed, legal orders made, advertised and confirmed, and costs recovered.
- 3.2 It is therefore proposed to enable cases that are non-contentious at the pre-Order consultation stage to be determined by the Executive Director –

Place in consultation with the Public Rights of Way Committee Chairman and Vice-Chairman.

4. Other Options Considered

- 4.1. The delegations could remain unchanged, which will not generate the efficiencies associated with the suggested amendment. Alternatively, the Council could consider moving to a position where the determination of all orders were delegated to Officers (in consultation with the Chairman and Vice-Chairman) but were subject to a system of call-in, like planning applications, where members could choose which orders they wanted to determine themselves. The view is taken that this latter option would require more consideration before forming the basis of a recommendation.

5. Background

- 5.1 The Council has powers under the Highways Act 1980 to make Public Path Orders to create, extinguish or divert Public Rights of Way.
- 5.2 Prior to a Public Path Order being made by the Council, an informal consultation is conducted with statutory and local user groups in order to highlight any potential issues of a contentious nature. That way, the decision whether to make an order or not can be made on an informed basis.
- 5.3 The proposed changes will better equip the Council to deal with growing pressures in this area of work, and other tasks undertaken by Officers, by providing increased flexibility. It will also provide a greater ability to deal with the imposition of strict time limits for determining applications in both the areas of Public Path Order applications when the Deregulation Act 2015 is implemented. When implemented this Act will, amongst many other provisions, change the role of the Council with regards to Public Path Orders from a power to a duty, thereby providing landowners with a right to apply for such an order. Further, the provisions will enable an applicant to appeal to the Secretary of State should the Council have refused their application or not have determined their application within 4 months.
- 5.4 A brief report would be taken to each Public Rights of Way Committee meeting following the determination of any cases under the proposed delegated powers.
- 5.5 Any cases which had proven to be contentious at pre-order consultation stage would still be referred to the Public Rights of Way Committee for determination, as at present.

- 5.6 The proposed definition of ‘uncontested’ would be ‘any case in which correspondence received from consultees is of a neutral, or positive nature’. In contrast, the proposed definition of contested would be ‘any case in which correspondence received from consultees raises negative comments or objections’.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There is no prohibition in law preventing the delegation of powers proposed. A change to the Scheme of Delegation and Committee terms of reference in the Constitution is required to enable the proposal to be implemented. That change would need to be authorised by full Council.

6.2. Finance Implications

- 6.2.1 There are no direct budgetary implications foreseen other than increased efficiencies in the processing of Public Path Order applications.

6.3. Policy Implications

- 6.3.1. There are no policy implications foreseen.

6.4. Equality Implications

- 6.4.1. There are no equality implications foreseen.

6.5. Human Resources Implications

- 6.5.1. There are no human resource implications foreseen.

6.6. Risk Management Implications

- 6.6.1. There are no risk management implications foreseen.

6.7. Rural Communities Implications

- 6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. All Wards. No Ward Member engagement has been undertaken other than with those Members of the Public Rights of Way Committee.

8. Consultation & Engagement

- 8.1. The Public Rights of Way Committee considered the proposal on 11th June 2018. The Committee resolved that “the Constitution Committee be recommended to amend the scheme of delegation to allow the Executive Director – Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-Order consultation stage.”
- 8.2 Engagement with Public Rights of Way user groups has been undertaken through consultation with the attendees of the Rights of Way Consultative Group. A representative of North Cheshire Riders responded to say that the proposal “sounds a very sensible way forward”. The Open Spaces Society representative verbally reported that the Society had no issue with the proposal. Goostrey Footpaths Group commented that it had no objections to the proposal. Questions as to the definition of ‘uncontested’ were raised by other user groups (though no formal response was submitted); this has been considered as part of the report and is addressed in paragraph 5.5 above.
- 8.3 Under the proposal, statutory public consultation on each legal order made, would continue as required under the Public Path Orders Regulations 1993, regardless of which determination process was employed.

9. Access to Information

- 9.1. Not applicable.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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