

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Definitive Map Modification Orders:  
Revised Statement of Priorities

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### **1.0 Report Summary**

- 1.1 The report seeks approval from Members for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order (DMMO) applications and matters requiring detailed investigations.

### **2.0 Recommendations**

- 2.1 That the revised Statement of Priorities outlined in the appendix be approved.

### **3.0 Reasons for Recommendations**

- 3.1 A revision to the existing Statement of Priorities approved by the Public Rights of Way Committee in June 2009 is required in order to reflect the new Rights of Way Improvement Plan, dated 2011 and the recent Sustainable Community Strategy (2010) within the DMMO prioritisation system and it will also take into account the Equality Act 2010

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All Members

### **6.0 Policy Implications including - Carbon Reduction - Health**

- 6.1 The recommendation would bring the Definitive Map Modification Order Statement of Priorities in line with the Rights of Way Improvement Plan and Sustainable Community Strategy of the Council and also take account of the Equality Act 2010.

### **7.0 Financial Implications**

- 7.1 None arising.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 As referred to within the report.

## **9.0 Risk Management**

9.1 None arising.

## **10.0 Background and Options**

- 10.1 Cheshire East Council, as Surveying Authority, has a duty to keep the Definitive Map & Statement under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modifications Orders (Circular 2/93 para.24<sup>1</sup>).
- 10.4 Under Section 53 of the Wildlife & Countryside Act 1981 ("the Act"), the Council is under a duty to keep the Definitive Map & Statement under continuous review and to make modifications as required. Changes are effected by means of DMMOs which may be triggered by the Council on the discovery of evidence which shows that the map and/or statement is in error, or by any individual making a formal application for a DMMO under the provisions of Schedule 14 to the Act and presenting evidence to show that a route is incorrectly shown or there is an omission in the legal record.
- 10.5 The Secretary of State recognises that the task of bringing Definitive Maps up to date is considerable and Surveying Authorities have been recommended to publish periodic statements of their priorities for doing so, this being a demonstration of an Authority's acknowledgement of its duty, and of a determination to get on with the work. Under Schedule 14 of the Act (paragraph (3)(2)) an applicant has a right of appeal to the Secretary of State if an application is not determined within 12 months of registration.
- 10.6 In considering such appeals from applicants, the Secretary of State takes account of any statement of priorities adopted by the Authority, the reasonableness of such priorities; action taken by the authority or expressed intention of further action on the application and the importance of the case compared to others. A successful appeal will result in the Secretary of State making a direction to an Authority to determine an application.
- 10.7 Many Local Authorities operate a prioritisation system for DMMOs which takes account of the objectives of their ROWIP. This has the advantage of being defensible (all ROWIPs are subject to wide consultation and input from a diverse range of groups) and of actually helping with the implementation of that document and offering a wider benefit; DMMOs may add routes which are useful to the public, by providing a link to a school, say, or by providing access for a group of users with little current provision, such as horse riders or cyclists.

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<sup>1</sup> Now replaced by Circular 1/09

- 10.8 The current statement of priorities is based on the former Cheshire County Council's Rights of Way Improvement Plan and a purely chronological scheme for those applications made prior to the instigation of Cheshire East Council.
- 10.9 Under Section 53 of the Countryside and Rights of Way Act 2000 there is a proposal that footpaths and bridleways that were in existence before 1949 but not recorded on the definitive map by 2026 will be extinguished. Claims will still be allowed based on user evidence but not purely on historic evidence. A pilot project called 'Discovering Lost Ways' was initiated in 2004 for which Cheshire and Wiltshire were the demonstration authorities. The project was not deemed a success so was not rolled out across the country, however the route information collated is useful and is held by the authority and could provide good base information upon which a claim could be substantiated. Therefore where a claim coincides with a 'lost way' additional points will be allocated in the prioritisation scheme.
- 10.10 The proposal to extinguish unrecorded routes which could only be substantiated on historical evidence is still under discussion by a Stakeholders Working Group (chaired by DEFRA) with the intent of finding the most effective and reasonable way to implement this section. When their findings are finally implemented it is expected that there may be a considerable influx of applications based on documentary evidence. It will be beneficial to have a workable and justifiable method in place to assess such applications.
- 10.11 At present Cheshire East have 23 outstanding DMMO applications. Under the Annual Report and Work Programme put before Committee in June this year it was hoped that 6 applications would be determined in the following year. To date no applications have been considered by committee however there has been progress in confirming previously made DMMO's (one after an inquiry and a second after being submitted to PINs, the objector withdrew. Two further applications are under investigation and two other issues are being determined, one by Public inquiry in February 2012 and the second through negotiation with a new landowner.

## **PROPOSED NEW CRITERIA FOR PRIORITISATION**

- 10.12 The method for prioritising Schedule 14 applications and investigations which may lead to changes in the Definitive Map and Statement needs to be: -
- Simple, transparent and fair, and applicable to potentially large numbers of applications.
  - It must allow some flexibility and not be a "bottleneck" or a constraint to the development of new initiatives or to the Council's legal duty to maintain and enforce public rights of way.
  - It must be seen to be reasonable and justifiable in view of the statutory right to seek a direction from the Secretary of State for the Council to determine the application after 12 months.
  - It is also desirable and expedient in the context of the Rights of Way Improvement Plan to be able to reflect improvements to the network and consequently benefit to the public.

- 10.13 It is evident that some means of ranking or weighting of applications is required to enable the Council to effectively target its resources.
- 10.14 There must also be some recognition of the length of time on a waiting list. It would be generally unacceptable and a breach of the Council's duty to determine registered claims for any particular application to be of such a low priority that there was no realistic chance of it being determined.
- 10.15 A new scoring system is proposed within the Statement of Priorities, whereby all new Schedule 14 applications and internally generated cases will be given a score, based on applying the system shown in the Appendix. All DMMO case work would thus be prioritised according to that score. The criteria are based on the objectives of the Council's Rights of Way Improvement Plan and Sustainable Community Strategy.
- 10.16 The only instance where a score would not need to be applied or taken into account, if already applied, would be in the case where a route is under threat of development and therefore potentially lost. In these instances the application would be taken out of turn and processed as a priority.
- 10.17 In the interests of fairness to existing applicants, however, the scoring system includes recognition of the amount of time for which applications have been on the register.
- 10.18 Age and Equality Impact Assessment  
In consideration of the fact that the user evidence frequently presented to substantiate applications is from individuals of advancing years, it is proposed to give additional weight to applications where the witnesses are aged over 70. In undertaking this, consideration has been given to the Equality Act 2010

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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