

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Legal Orders Team: Statement of Priorities for Definitive Map Modification Orders

1.0 Purpose of Report

- 1.1 To seek approval from Members for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations.

2.0 Recommendations

- 2.1 That the revised Statement of Priorities outlined at Appendix 2 be approved.

3.0 Financial Implications

- 3.1 There are no specific financial implications arising from the report.

4.0 Legal Implications

- 4.1 The proposed prioritisation system which is the subject of the report will facilitate the Legal Orders Team’s ability to carry out the statutory duties conferred by the Wildlife and Countryside Act 1981.

5.0 Risk Assessment

- 5.1 n/a

6.0 Background and Options

- 6.1 Cheshire East Council as Surveying Authority for the Definitive Map & Statement has a duty to keep it 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 Orders¹ (Circular 2/93 para.24²). The former Rights of Way Committee for Cheshire County Council previously considered and approved interim statements

¹ Referred to as ‘DMMOs’ for brevity

² Now replaced by Circular 1/09

of priorities on 3 April 2000, 29 March 2004 and most recently on 23 January 2006 (**Appendix 1**).

- 6.2 The future demands on the Legal Orders Team, who deal with DMMOs, has increased in recent years due to national initiatives, such as the Rights of Way Improvement Plan, and local pressures, such as the need for the completion of a consolidated Definitive Map and Statement. The team also now process large volumes of Public Path Order applications.
- 6.3 A revised statement of priorities is therefore proposed to permit a systematic yet flexible approach to dealing with a potentially large volume of DMMO applications and matters requiring detailed investigations.
- 6.4 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 there is an error in the legal record.
- 6.5 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.
- 6.6 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.

THE CURRENT SYSTEM OF PRIORITISATION

- 6.7 At the moment, a mixed system of prioritisation is employed (see **Appendix 1**) comprising parallel lists, each star-rated against certain criteria, namely:
 - a) A master list (“List A”) of Schedule 14 claims from individuals/organisations listed chronologically in order of receipt/registration
 - b) “List B” – internal priorities & investigations

- c) ROWIP priorities (items from the work programme or other identified improvements, e.g. safe routes to schools/ strategic links/ improvements to safety etc).
- d) Discovering Lost Ways applications.³

6.8 Star ratings are also attributed to the following criteria:

- Date of receipt / length of time on the register (say, one star each year or six-month period following registration; this being dependent on the scale of any backlog)
- Impending development threatening the claimed route

6.9 Applications are then addressed according to the highest star ratings and in date order. Periodic reviews would continue to be made of outstanding applications and progress is monitored on a monthly basis in any case.

APPRAISAL OF CURRENT SYSTEM

6.10 The current system is clearly complex, in that it attempts to combine a chronological approach with other qualitative criteria. As a result, it is difficult to apply and was never fully implemented.

6.11 Furthermore, a moratorium was placed on all DMMO work in early 2007 to enable the Legal Orders Team to deal with a large backlog of Public Path Order work and to concentrate on the consolidation of the Definitive Map and Statement in advance of Local Government Reorganisation. This further prevented the prioritisation system from being put into practice.

FUTURE DEMANDS & CONSIDERATIONS

Rights of Way Improvement Plan (ROWIP)

6.12 Many other 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; 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.

Consolidation of the Definitive Map

6.13 The consolidation process is well underway and as a result the Definitive Map and Statement are known to contain at least several hundred anomalies and while it is generally understood that these cannot all be rectified prior to publication of a consolidated map, an

³ Members are advised that the 'Discovering Lost Ways' Project was abandoned nationally by Natural England, but that claimed routes which coincide with routes identified through that project will be given additional weighting – see Appendix 2.

unspecified number are likely to require investigation and correction by means of DMMOs. Some anomalies will be more important than others and a system of prioritisation should be applicable to these too.

PROPOSED NEW CRITERIA FOR PRIORITISATION

- 6.14 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 & consequently benefit to the public.
- 6.15 The advantages of reverting to a priority system based solely on date of receipt are that it is inherently fair, ranking is simple and does not discriminate between applicants, nor are applications judged on merit or quality of evidence. The disadvantages are that it is inflexible, and that the relative merits of the application or the potential benefits of a successful application are disregarded.
- 6.16 It is evident that some means of ranking or weighting of applications is required to enable the Council to effectively target its resources.
- 6.17 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. An increased number of directions from the Secretary of State (see 6, above) would inevitably disrupt any priority system and reflect badly on the Council.

7.0 Reasons for Recommendation

- 7.1 Bearing 6.12-17 in mind, a new scoring system is proposed, whereby all new Schedule 14 applications and internally generated cases will be given a score, based on applying the system shown in **Appendix 2**. 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.
- 7.2 In the interests of fairness to our existing applicants, however, it is also proposed that the applications in the current backlog, of which there are 22, will be dealt with in chronological order of receipt, lest

the new scoring system push some long-standing claims even further down the list.

For further information:

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Background Documents: Appendices 1 & 2