

## **Public Rights of Way Committee**

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**Date of Meeting:** 07 December 2020

**Report Title:** Definitive Map Modification Order Applications:  
Revision of Statement of Priorities

**Senior Officer:** Frank Jordan, Executive Director – Place

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### **1. Report Summary**

- 1.1. This report seeks approval from Members for a revised Statement of Priorities for dealing with Definitive Map Modification Order applications.
- 1.2. The work of the Public Rights of Way 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. In addition the Statement of Priorities is integrated with the Council’s Local Transport Plan 2019-2024.

### **2. Recommendation/s**

- 2.1. That the revised Statement of Priorities outlined at Appendix 1 be approved.

### **3. Reasons for Recommendation/s**

- 3.1 The current Statement of Priorities was adopted by the Public Rights of Way Committee on 12th December 2011. The Statement of Priorities has been revised to take account of policy changes since that date and user group comments.

### **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

### **5. Background**

- 5.1 Under Section 53 of the Wildlife and Countryside Act 1981 (“the Act”), the Council has a duty to keep the Definitive Map and Statement, the legal record

of Public Rights of Way, namely public footpaths, bridleways, restricted byways and byways open to all traffic, under continuous review and to make modifications as required. Changes are affected by means of Definitive Map Modifications Orders (DMMO) for the addition/deletion/amendment of public footpaths, bridleways, restricted byways and byways open to all traffic on the Definitive Map. This is triggered 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.

- 5.2 The Secretary of State recognises that the task of bringing Definitive Maps up to date is considerable - at present Cheshire East has 38 outstanding DMMO applications, with 9 cases currently in progress. Prior to the Covid-19 pandemic which has resulted in a number of long term staff absences and therefore diversion of resources to priority matters, the main focus of 2 Officers was on DMMOs and progression through the waiting list was being achieved; in 2019/20, 5 cases were taken to the Public Rights of Way Committee for determination. However, Covid-19 has interrupted that process and in fact potentially causing an increase in the rate of applications. Cases therefore remain on the waiting list and further applications can be anticipated; 26 applications have been submitted since 2015. It is therefore best practice for the Council, as the Surveying Authority, to publish periodic statements of its priorities for processing applications, this being a demonstration of an Authority's acknowledgement of its duty, and of a determination to progress with the work.
- 5.3 Under Schedule 14 of the Act an applicant has a right of appeal to the Secretary of State if an application is not determined within 12 months of registration. In considering such appeals from applicants, the Secretary of State takes account of any statement made by the Authority setting out its priorities for bringing and keeping the Definitive Map up to date, the reasonableness of such priorities, any actions already taken by the Authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant (Circular 1/09). A successful appeal will result in the Secretary of State making a direction to an Authority to determine an application within a set timeframe, which has recently varied between 6 and 12 months. The appeal process diverts resource from the determination of cases and, if successful, results in a re-prioritisation of cases being actively progressed, away from locally-agreed priorities.
- 5.4 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 - though

DMMO applications could still be allowed if based on user evidence. This date is referred to as the 'cut-off date', and although as yet this part of the legislation has not been enacted, there is considerable concern amongst user groups which is already resulting in increased levels of applications. It is therefore increasingly important to have a workable and justifiable method in place to prioritise such applications.

- 5.5 The only instance where an application may be investigated out of priority order would be in the case where a route is under threat of development and therefore may be potentially lost.
- 5.6 On registration, new applications are scored using the Statement of Priorities to add them to the waiting list in priority order. All registered applications are reviewed on an annual basis to take into account any change in scoring required under the Statement of Priorities due to the age of witnesses.

#### The revised Statement of Priorities

- 5.7 The current Statement of Priorities has been revised to reflect a number of changes in corporate policy that have been made since the document was adopted in 2011.
- 5.8 The proposed revised Statement of Priorities continues to take account of the objectives of the Council's statutory Rights of Way Improvement Plan (ROWIP) 2011-2026. This has the advantage of being defensible (all ROWIPs are subject to wide consultation and input from a diverse range of groups) and of helping with the implementation of that document by 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, such as horse riders or cyclists who have comparatively little current recorded provision by length of network.
- 5.9 The proposed Statement of Priorities employs the relevant<sup>1</sup> objectives of the revised Cheshire East Local Transport Plan 2019-2024, adopted by Cabinet on 8<sup>th</sup> October 2019, into which the ROWIP is integrated. These objectives replace the former Sustainable Community Strategy policies which featured in the previous Statement of Priorities. The Statement of Priorities also supports the Outcomes of the Corporate Plan.
- 5.10 The proposed Statement of Priorities affords recognition of the length of time application has been on the waiting list.
- 5.11 The proposed Statement of Priorities affords recognition of the value of an application in resolving a known mapping anomaly on the Definitive Map and

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<sup>1</sup> The objectives of the Local Transport Plan not appearing in the proposed Statement of Priorities relate to 'maintaining and managing our network assets' and 'improving organisational efficiency and effectiveness'.

Statement, anomalies which may date from the time during which the Map and Statement were drawn up.

- 5.12 The proposed Statement of Priorities affords recognition of where a claim coincides with a 'Discovering Lost Way' route in acknowledgement of the potential value of the route and the potential impact of the 'cut-off date', though any application already registered prior to the 'cut-off date' must be duly determined. A 'Discovering Lost Ways' pilot project was initiated by the Countryside Agency in 2004 for which Cheshire was one of 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, is still retained by the Authority and can provide good base information upon which a claim could be substantiated.
- 5.13 Finally, in consideration of the fact that the user evidence frequently presented to substantiate applications is from individuals of advancing years, additional weight is given to applications where the witnesses are over the age of 70 years.

## **6. Implications of the Recommendations**

### **6.1 Legal Implications**

- 6.1.1 There are no legal implications.

### **6.2 Finance Implications**

- 6.2.1 There are no additional financial implications foreseen.

### **6.3 Policy Implications**

- 6.3.1 The Public Rights of Way Statement of Priorities will be updated.

### **6.4 Equality Implications**

- 6.4.1 There are equality implications as applications supported by older witnesses receive additional weighting in the proposed Statement of Priorities. An Equality Impact Assessment has been undertaken.

### **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.

## **6.10 Climate Change Implications**

6.10.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel.

## **7. Ward Members Affected**

7.1 All Wards.

## **8. Consultation & Engagement**

8.1 Comments on the proposed Statement of Priorities have been invited from user groups represented on the Rights of Way Consultative Group and statutory Cheshire East Countryside Access Forum. No recommendations for amending the proposed Statement of Priorities were received from the Forum. Comments from the Consultative Group have been assessed and taken into account where considered appropriate in the proposed revision of the Statement of Priorities presented to the Committee.

## **9. Access to Information**

9.1 Contact the report writer.

## **10. Contact Information**

10.1 Any questions relating to this report should be directed to the following Officer:

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