

# Individual Executive Member Decision

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## Public Rights of Way Case Programmes

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**Committee considering report:** Individual Executive Member Decision

**Date ID to be signed:** 29 June 2017

**Portfolio Member:** Councillor Dominic Boeck

**Forward Plan Ref:** ID3301

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### 1. Purpose of the Report

1.1 To report progress on the Case Programmes for 2016/17 and to recommend Case Programmes for 2017/18.

### 2. Recommendations

2.1 To note progress in dealing with the cases assigned for 2016/17. To agree recommended cases for 2017/18.

### 3. Implications

3.1 **Financial:** None.

3.2 **Policy:** The PROW Case Programmes contribute to a number of objectives within the Council Strategy.

3.3 **Personnel:** None.

3.4 **Legal:** None.

3.5 **Risk Management:** None.

3.6 **Property:** None.

3.7 **Other:** None.

### 4. Consultation Responses

#### Members:

**Leader of Council:** Councillor Graham Jones

**Overview & Scrutiny Management Commission Chairman:** Councillor Emma Webster

**Ward Members:** N/A

**Opposition Spokesperson:** Councillor Lee Dillon

<b>Local Stakeholders:</b>	Mid and West Berkshire Local Access Forum
<b>Officers Consulted:</b>	Paul Hendry, Jon Thomas, Sallie Jennings, Stuart Higgins
<b>Trade Union:</b>	David Lowe

## 5. Other options considered

- 5.1 No, as it is considered necessary to have a set of work programmes in order to aid communication to the public and work planning.

## 6. Executive Summary

- 6.1 The Council possesses statutory duties to maintain the public rights of way network; keep it open for public use; and to record it and then to keep the records under continuous review (the 'Definitive Map' process). These duties have been translated into three public rights of way Case Programmes, concerned with 'Maintenance and Improvement', 'Enforcement', and 'Path Orders'.
- 6.2 The Council also has a statutory duty to prepare a Rights of Way Improvement Plan ROWIP, which is the means by which the council identifies the changes to be made to its rights of way networks in respect of management and improvement, so that it can improve provision for walkers, cyclists, equestrians and people with restricted mobility. Implementation of the ROWIP is not a duty, and it is therefore good practice to formulate an appropriate Case Programme so that progress can be made within available resources.
- 6.3 The Maintenance and Improvement Case Programme is concerned with ensuring that the standard of public rights of way is suitable for the public use which is made of them. It is drawn up each year from requests and complaints from the public, and from surveys, and incorporates strategic improvements which enhance the network in accordance with the objectives of the Rights of Way Improvement Plan.
- 6.4 The Enforcement Case Programme is concerned with ensuring that the network remains free from obstruction and interference. The Council possesses extensive legal powers to assist it to carry out enforcement work if necessary. The Enforcement Case Programme is compiled from complaints from the public, surveys, and problems noted by officers. Some categories of enforcement work can be grouped together so as to utilise economies of scale, and these are termed 'projects'. An example of an annually active project is ploughing and cropping.
- 6.5 The Path Order Case Programme comprises two processes: 1. the investigation of evidence to support the existence of a public right of way which has not yet been recorded on the Definitive Map (a 'claim'); 2. the legal diversion, extinguishment or creation of a right of way. Both processes are usually carried out on receipt of an application from the public. The Council is under a statutory duty to investigate claims, but only a discretionary power to divert, extinguish or create rights of way.

## 7. Introduction/Background

- 7.1 **Maintenance Case Programme.** There are many outstanding requests and needs for maintenance and improvements on the network, but limited resources require a method of prioritisation. As a general approach, relative priorities for attention are

determined through a matrix, attached as Appendix A, through which benefits to the public and value for money are assessed. The recommended priorities for the coming year are listed in the Maintenance and Improvement Priority Case Programme attached at Appendix B, which also includes projects completed in 16/17. The full Case Programme is an ongoing working document which also records routine annual work such as signposting, vegetation clearance, volunteer tasks, stiles/gates and minor drainage. It is updated continually as new requests and needs come to light.

- 7.2 Funding comes via the annual revenue rights of way works budget, and the capital programme (including S.106/CIL). There are plans to seek increased external funds where appropriate. Most surface works projects are carried out by contractors and a large amount of other maintenance work is carried out by the team of rights of way Rangers, e.g. vegetation clearances and winter signposting. Volunteers also carry out simple tasks to keep the network open and easily useable.
- 7.3 **Enforcement Case Programme.** There are many outstanding enforcement matters recorded on the rights of way network, and present resources do not allow the Council to resolve them all. A monthly prioritisation process takes place, from which the highest priorities are selected for attention. The prioritisation matrix used is attached at Appendix A. The resulting Case Programme for 2017/18 is represented at Appendix C, showing progress and work yet to be done.
- 7.4 **Path Order Case Programme.** The Path Order Case Programme is determined each year with close reference to the prioritisation procedure which was agreed between Countryside and Environment and Legal Services in 2008/09 (see background papers). 'Claims' are generally dealt with in chronological order of receipt. For the diversion, extinguishment or creation of public rights of way, the application will only be accepted if the relevant legal criteria are met, and will generally need to demonstrate public benefit, or benefit to the overall management of PROW.
- 7.5 Appendix D lists all path order cases which have been dealt with in 2016/17. Completion is regarded as reaching the WBC decision stage (a public inquiry might follow, which is outside our control). Appendix E lists the path order cases proposed for 2017/18 and Appendix F lists the remaining path order cases yet to be dealt with. If a new case is presented in a current year which meets the Statement of Prioritisation for Claims and Path Orders, then officers have agreed to make a request to the Portfolio, and relevant ward members, for permission for it to replace an agreed lower-priority case in the current Case Programme.
- 7.6 For 'claims', the Council has 12 months, from the date that the landowner was notified of the possibility that a right of way exists, to decide whether the evidence is sufficient for a Definitive Map Modification Order to be made. This timescale allows for the due legal processes to be followed. There is a right of appeal to the Planning Inspectorate if the Council either declines to make an Order or if there is a delay of more than one year in reaching a decision. A public inquiry procedure will be required if an Order is made and objections received.
- 7.7 For diversions, extinguishments and creations, there is no right of appeal to the Planning Inspectorate, but a public inquiry procedure will be required if an Order is made and objections received.

- 7.8 In addition to the cases, there has been a completed project to re-digitise the Definitive Map of Public Rights of Way. The present Definitive Map is accurate to a scale of 1:10,000 only, and this restricts the scale at which it can be viewed accurately, therefore limiting its use for both the public and council staff. Re-digitisation at 1:1250 also is consistent with British Standard 7666 Pt. 4 and is needed prior to the statutory re-publication of the Definitive Map so that legal changes can be incorporated at the correct scale. Re-digitisation will also enable the rights of way to be shown on the National Street Gazetteer, which is used by utility companies to identify and protect highways planned for excavation. This project was left for several years whilst the rights of way Case Programme backlog was reduced but is now almost complete.
- 7.9 In 2026, any right of way or highway which was in existence in 1949 and which has never been formally recognised will be automatically extinguished. Parish councils and interested groups are being contacted to explain this legislation and being asked to make known to us any suspected public rights of way which are useful to the public but under threat of extinguishment under this legislation. WBC will then have a duty to examine the evidence for any such suspected routes and to make or reject an Order.
- 7.10 **Rights of Way Improvement Plan Case Programme (ROWIP).** The ROWIP contains 63 strategic objectives, concerned with improving access provision for users and also improving the efficiency of service delivery. Many of these objectives are ongoing, and are incorporated into the normal day-to-day work of the team. Some require special effort in order to progress, and to this end the objectives are reviewed each year and the proposed manageable number are identified by a \*\* in the table of all 63 objectives (Appendix G).
- 7.11 The key background information to this report is:
- Public Rights of Way Case Programmes  
Report to Management Board - 11th September 2008  
Statement of Prioritisation for Claims and Path Orders  
Rights of Way improvement Plan 2010 – 2020  
Full working Maintenance and Improvement Case Programme

## 8. Proposal

- 8.1 Portfolio Holder to note progress in dealing with the cases assigned for 2016/17 and to agree recommended cases for 2017/18.

## 9. Conclusion

- 9.1 Progress on the Rights of Way Case Programmes has been set out in this report together with the recommended Case Programmes for 2017/18.

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### Subject to Call-In:

Yes:  No:

**Officer details:**

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**10. Appendices**

- 10.1 Appendix A – Prioritisation matrix for maintenance and enforcement
- 10.2 Appendix B – Maintenance and Improvement Priority Case Programme 2017/18
- 10.3 Appendix C – Enforcement Case Programme proposed 2017/18
- 10.4 Appendix D – Path Order Case Programme - path order cases completed 2016/17
- 10.5 Appendix E - Path Order Case Programme – proposed cases for 2017/18
- 10.6 Appendix F – Path Order Case Programme - remaining cases
- 10.7 Appendix G – Rights of Way Improvement Plan Priority Case Programme 2017/18
- 10.8 Appendix H – Equalities Impact Assessment – Stage 1