

Individual Executive Member Decision

Case Programmes for Public Rights of Way Work for 2019/20

Committee considering report:	Individual Executive Member Decision
Date ID to be signed:	25 March 2019
Portfolio Member:	Councillor Jeanette Clifford
Forward Plan Ref:	ID3717

1. Purpose of the Report

- 1.1 To report progress on the Case Programmes for 2018/19 and to recommend Case Programmes for 2019/20.

2. Recommendations

- 2.1 To note progress in dealing with the cases assigned for 2018/19. To agree recommended cases for 2019/20.

3. Implications

- 3.1 **Financial:** none.
- 3.2 **Policy:** the PROW case programmes contribute to a number of objectives within the Council Strategy, particularly the economy, wellbeing, and infrastructure.
- 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 Alan Law

Ward Members: All Members are affected.

Opposition Spokesperson: Councillor Lee Dillon.

Local Stakeholders: Mid and West Berkshire Local Access Forum.

Officers Consulted: Paul Hendry, Jon Thomas, Sallie Jennings, Stuart Higgins, Sharon Armour.

Trade Union: David Lowe.

5. Other options considered

- 5.1 Many public rights of way functions are statutory and so might potentially be subject to judicial review if not carried out. Some of the proposed Rights of Way Improvement and Path Orders work is discretionary.

6. Introduction/Background

- 6.1 The Council possesses statutory duties to maintain the public rights of way network; keep it open for public use; to record it and then to keep the records under continuous review (the 'Definitive Map' process). These duties have been translated into four public rights of way Case Programmes, concerned with 'Maintenance and Improvement', 'Enforcement', 'Path Orders', and the 'Rights of Way Improvement Plan'.
- 6.2 **The Maintenance and Improvement Case Programme** is concerned with ensuring that the Council complies with its statutory duty to keep the standard of public rights of way suitable for the public use which is made of them.
- 6.3 **The Enforcement Case Programme** is concerned with ensuring that the Council complies with its statutory duty to ensure that the network remains free from obstruction and interference.
- 6.4 **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.
- 6.5 The Council 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.

7. Supporting Information - details of the four existing Case Programmes

- 7.1 **Maintenance Case Programme.** This is drawn up each year from requests from the public, plus surveys, and includes strategic improvements which enhance the network in accordance with the objectives of the Rights of Way Improvement Plan, and other relevant council strategies. It also contains lists of routine tasks required each year.
- 7.2 There are many outstanding requests and needs for maintenance and improvements to the network, but limited resources necessitate 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 records progress from the 2018/19 Programme. It also lists records of routine annual work such as signposting, vegetation clearance, volunteer tasks, stiles/gates and minor drainage. A working version is updated continually as new requests and needs come to light.
- 7.3 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, routine drainage maintenance, and winter signposting. Three volunteer groups also carry out surveys and simple tasks to keep the network open and easily useable.

- 7.4 **Enforcement Case Programme.** The Council possesses extensive legal powers to assist it to carry out enforcement work if necessary. This Case Programme is compiled from complaints from the public, surveys, and problems noted by officer. It includes only the large and involved specific cases, because there are so many smaller enforcement issues reported to us on a weekly basis. 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.
- 7.5 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. Because of the constantly-changing nature of this work, these items are recorded on the Case Programme as 'general obstructions.' The prioritisation matrix used is attached at Appendix A.
- 7.6 The progress for the Case Programme 2018/19 is represented at Appendix C1, and the proposed Case Programme for 2019/20 is shown at Appendix C2.
- 7.7 **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.
- 7.8 Appendix D1 lists the path order cases proposed for 2019/20, and includes any outstanding work needed on the 2018/19 Programme. All other cases on the 2018/19 Programme have been completed. Completion is regarded as reaching the WBC decision stage (a public inquiry or written representations might follow, which are outside our control). Appendix D2 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. In this process, consideration ought to be given to any potential legal challenges.
- 7.9 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.

- 7.10 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.
- 7.11 In addition to the cases, following the completed project to re-digitise the Definitive Map of Public Rights of Way at a scale of 1:1250, the Definitive Map is presently being republished at this new, much clearer, and more accurate, scale.
- 7.12 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 have been contacted to explain this legislation, and were 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.
- 7.13 **Rights of Way Improvement Plan Case Programme (ROWIP).** The 2010 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 E).
- 7.14 Appendix E shows progress on all objectives. Some priorities were completed in 2018/19 and the ** notation has therefore been removed. These completed objectives are ROWIP numbers 4, 9, 10, 11, 13, and 33. Additional priorities have not been added, pending the review of the ROWIP, due to 2020.
- 7.15 The ROWIP is due for review in 2020, and consultation with the Mid and West Berkshire Local Access Forum on the best way to approach this has begun.
- 7.16 **General note.** The year 2018/19 has been difficult in terms of PROW staff resources. Two members of staff in the small team have been absent on long term sick leave and there have also been vacancies. The situation is much improved but it has had an impact on some achievements in 2018/19.

8. Options for Consideration

- 8.1 Comments on any aspects of the proposed case programmes are sought.

9. Proposals

- 9.1 That the proposed 2019/20 PROW Case Programmes are approved, subject to any approved modifications.

10. Conclusion

- 10.1 Progress on the 2018/19 Rights of Way Case Programmes has been set out in this report together with the recommended Case Programmes for 2019/20.

Background Papers:

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.

Subject to Call-In:

Yes: No:

Officer details:

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11. Executive Summary

The Council possesses statutory duties to maintain the public rights of way network; keep it open for public use; to record it and then to keep the records under continuous review (the 'Definitive Map' process). These duties have been translated into four public rights of way Case Programmes, concerned with 'Maintenance and Improvement', 'Enforcement', 'Path Orders', and the 'Rights of Way Improvement Plan'. The report sets out details of progress on the previously-approved 2018/19 Case Programmes, and asks for comments on and approval of the proposed 2019/20 Case Programmes.

12. Conclusion

12.1 Progress on the 2018/19 Rights of Way Case Programmes has been set out in this report together with the recommended Case Programmes for 2019/20.

13. Appendices

- 13.1 Appendix A – Priority matrix.
- 13.2 Appendix B – Maintenance and Improvement Case Programme.
- 13.3 Appendix C1 – Enforcement Case Programme 2018-19.
- 13.4 Appendix C2 – Enforcement Case Programme 2019-20
- 13.5 Appendix D1 – Proposed Legal Order case Programme 2019-20.
- 13.6 Appendix D2 – Remaining Legal Order case list 2019 +.
- 13.7 Appendix E – Rights of Way Improvement Plan Case Programme.
- 13.8 Appendix F - Data Protection Impact Assessment.
- 13.9 Appendix G - Equalities Impact Assessment.