

Individual Executive Member Decision

Report title : Public Rights of Way Case Programmes

Committee considering report: Individual Executive Member Decision.

Date ID to be signed: 15th April 2020.

Portfolio Member: Richard Somner

Forward Plan Ref: ID3873

1. Purpose of the Report

1.1 To report progress on the Public Rights of Way (PROW) Case Programmes for 2019/20 and to recommend Case Programmes for 2020/21.

2. Recommendation

2.1 To note progress in dealing with the cases assigned for 2019/20. To agree recommended cases for 2020/21.

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, transport infrastructure, and environmental sustainability.

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: Lynne Doherty

Overview & Scrutiny Management Commission Chairman: Alan Law

Ward Members: all members are affected.

Opposition Spokesperson: Lee Dillon

Local Stakeholders: Mid and West Berkshire Local Access Forum.

Officers Consulted: Paul Hendry, Sallie Jennings, Stuart Higgins, Matthew Walters, Garry Kimber, Ken Bowman, Sharon Armour.

Trade Union: N/A.

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; to 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 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.

6.6 A ROWIP should be reviewed every ten years. The 2010 WBC ROWIP is therefore due for review in 2020.

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 previous Case 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 The nature of the unsealed PROW surfaces, and the UK weather, is such that new priorities can emerge during the year. This will mean that other lower priority projects may not be completed, and usually these will be carried forward to the following Case Programme.

7.4 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. Volunteer groups also carry out surveys and simple tasks to keep the network open and easily useable.

7.5 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 officers. We receive frequent reports of enforcement issues, and these are assigned a priority, then logged on the Countryside Access Management System (CAMS). CAMS is then used to produce reports of priority work, based on the matrix and Appendix A.

7.6 The priorities in CAMS are frequently reviewed. A major review is taking place at the time of writing of this report, with the aim that CAMS can be used more often to produce some figures of cases received versus cases resolved. Some categories of enforcement work can be grouped together in projects so as to utilise economies of scale. An example of an annually-active project is ploughing and cropping.

7.7 The proposed Case Programme is shown at Appendix C2, with comments on progress made in the last year.

7.8 Path Order Case Programme. The Path Order Case Programme is determined each year with close reference to the prioritisation procedure which has been agreed between Countryside and Environment and Legal Services (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.

7.9 Appendix D1 lists the path order cases which have been worked on in 2019/20. Some have been completed, and some must be carried forward due to delays by third parties. Appendix D3 sets out the new proposed Case Programme. 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.

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 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).

7.15 The table at Appendix E sets out the current progress on all the objectives.

7.16 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. The use of a consultant is being explored.

7.17 **General note.** The year 2019/20 has been difficult in terms of PROW staff resources. One member of staff in the small team has been absent on long term sick leave, and there has also been a vacancy. The situation is much improved but it has had an impact on some achievements in 2019/20.

8. Options for Consideration

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

9. Proposals

9.1 That the proposed 2020/21 PROW Case Programmes are approved, subject to any approved modifications.

10. Conclusion

10.1 Progress on the 2019/20 Rights of Way Case Programmes has been set out in this report, together with the recommended Case Programmes for 2020/21.

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.

NOTE: The section below does not need to be completed if your report will not progress beyond Corporate or Operations Board.

Subject to Call-In:

Yes: No:

If not subject to call-in please put a cross in the appropriate box by double-clicking on the box and selecting 'Checked':

The item is due to be referred to Council for final approval

- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only
-

Wards affected:

*(add text)

Please put a cross in the appropriate box(es) by double-clicking on the box and selecting 'Checked':

Strategic Priorities Supported:

The proposals contained in this report will help to achieve the following Council Strategy priority(ies):

- PC1: Ensure our vulnerable children and adults achieve better outcomes**
- PC2: Support everyone to reach their full potential**
- OFB1: Support businesses to start, develop and thrive in West Berkshire**
- GP1: Develop local infrastructure to support and grow the local economy**
- GP2: Maintain a green district**
- SIT1: Ensure sustainable services through innovation and partnerships**

The proposals contained in this report will help to achieve the above Council Strategy priorities by *(add text)

Officer details:

Name: *

Job Title: *

Tel No: *

E-mail Address: *

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 2019/20 Case Programmes, and asks for comments on and approval of the proposed 2020/21 Case Programmes.

12. Conclusion

12.1 Progress on the 2019/20 Rights of Way Case Programmes has been set out in this report together with the recommended Case Programmes for 2020/21.

13. Appendices

- 13.1 Appendix A – Priority Matrix.
- 13.2 Appendix B – Maintenance and Improvement Case Programme.
- 13.3 Appendix C – Enforcement Case Programme.
- 13.4 Appendix D1 – Path Order Case Programme progress 2019/20.
- 13.5 Appendix D2 – Remaining Path Order case list 2020 +.
- 13.6 Appendix D3 – Proposed Path Order Case Programme 2020/21.
- 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.

Corporate Board's recommendation (if applicable):

*(add text)

To be completed after the Corporate Board meeting.
