

Individual Executive Member Decision

Public Rights of Way Case Programmes

Committee considering report: Individual Executive Member Decision

Date ID to be signed: 18 March 2021

Portfolio Member: Councillor Richard Somner

Forward Plan Ref: ID4033

1. Purpose of the Report

To report progress on the Public Rights of Way (PROW) Case Programmes for 2020/21 and to recommend Case Programmes for 2021/22. To note and approve changes of priorities within the Definitive Map Case Programme. To note and approve changes to the report formats for the Enforcement and Maintenance/Improvement Case Programmes.

2. Recommendations

2.1 To note progress in dealing with the cases assigned for 2020/21. To agree recommended cases for 2021/22. To approve the proposed change of priorities within the Definitive Map Case Programme.

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 Definitive Map work is discretionary.

6. Introduction/Background

- 6.1 The Council possesses statutory duties with regard to 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).
- 6.2 These duties have been translated into four public rights of way Case Programmes, concerned with 'Maintenance and Improvement', 'Enforcement', 'Definitive Map' (previously called 'Path Orders'), and the 'Rights of Way Improvement Plan'.
- 6.3 **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.
- 6.4 **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.
- 6.5 **The Definitive Map Case Programme** (renamed from Path Order Case Programme for clarity) comprises two processes:
- The investigation of evidence to support the existence of a public right of way which has not yet been recorded on the Definitive Map ('**Claims**');
 - The legal diversion, extinguishment or creation of a right of way ('**Path Orders**'). 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 process Path Orders.
- 6.6 **Rights of Way Improvement Plan (ROWIP).** The Council has a statutory duty to prepare a 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.
- 6.7 A ROWIP should be reviewed every ten years. The 2010 WBC ROWIP is being reviewed in 2021.

6.8 **Changes to priorities and reporting** - there are a number of changes since the 2020/21 ID report:

- Due to shifts in emphasis in the area of Definitive Map Orders, we feel it necessary to review the priorities given to different aspects of this work.
- As a result of comments received on past Case Programme ID reports, we have amended the reporting format for two Case Programmes: there is now an Enforcement and Maintenance report which includes numbers of cases received, resolved, and outstanding. The Maintenance/Improvement report includes more tabulation, traffic light notation, and indications of broad priority.

7. **Supporting Information - details of the four existing Case Programmes plus changes to priority and reporting.**

- 7.1 **Maintenance and Improvement Case Programme.** This is drawn up each year from requests from the public, plus surveys. It 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. Note that there have been some minor changes to the weightings in this Appendix, as part of the Draft Enforcement Policy (see below).
- 7.3 The Maintenance and Improvement Priority Case Programme (attached at **Appendix B**) now includes traffic lights and priorities, so as to keep track of progress made on existing cases and new cases added. The table includes the approved Capital Programme, and notes the new cases added as a direct result of the enormously increased use of the PROW network during the Covid-19 Pandemic. As before, 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.
- 7.4 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.
- 7.5 Funding comes via the annual revenue rights of way works budget, and the capital programme (including S.106/CIL). External funding is sometimes available, and one example is contributions made by the National Trails Office. 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 carry out surveys and simple tasks to keep the network open and easily useable.
- 7.6 **Enforcement Case Programme.** The Council possesses extensive legal powers to assist it to carry out enforcement work if necessary. Items for action (which we term

'issues') are 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, using the matrix at Appendix A, and then logged.

- 7.7 A new draft Enforcement Policy is in preparation. This policy sets out how we prioritise enforcement cases, the processes we use, and the timescales for inspection and resolution. The policy also lists categories of issue which are addressed using a more strategic approach in order to use economies of scale.
- 7.8 The Enforcement Case Programme at **Appendix C1** gives a general update, and refers to new quantitative data contained in **Appendix C2**:
- **New quantitative summary of maintenance and enforcement issues.**
Appendix C2 is a quantitative summary of all reported issues for both maintenance and enforcement. It shows categories of issue, and number received/resolved during 2020/21, and the overall number remaining. This appendix also contains, for information, the draft timescales for inspection and resolution from the draft Enforcement Policy. Previous ID reports have contained no quantitative data, and this new draft Enforcement Policy has given us the opportunity to aim towards tracking progress against the timescales.
- 7.9 **Definitive Map Case Programme.** The Definitive Map Case Programme is compiled each year with reference to the prioritisation procedures for Claims and Path Orders which have 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 ('Path Orders'), 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.
- 7.10 Claims are a statutory duty and the processing of applications for Path Orders is discretionary.
- 7.11 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.
- 7.12 For Path Orders, 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.
- 7.13 Completion of a case is regarded as reaching the WBC decision stage (a public inquiry or written representations might follow, which are outside our control). 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.

7.14 Proposed changes to priorities for Path Order work

Over the past year it has become clear that there are shifts in emphasis taking place in this area of work. Until now, we have dealt with and prioritised the incoming request for claims and path orders. The following additional work is changing this dynamic:

- **Increasing numbers of applications for path orders in the landowners' interest** – various forces are at work here, including diversification of business interests by landowners, and tensions having arisen out of the increased use of PROWs during the Covid-19 Pandemic.
- **The '2026 cut-off date'** (or 'Lost Ways') - legislation says that any historic footpath or bridleway which is not recorded on the Definitive Map will be automatically extinguished in 2026. The Ramblers' Association is researching the existence of historic routes, and has already produced draft maps. In West Berkshire, there are presently 185 miles of potential Lost Ways identified on the map by the Ramblers. We are increasingly seeing enquiries to the rights of way team, asking for advice on the process. There will then be a significant amount of additional work in processing the applications for recognition of the routes once they have been submitted.
- **National and Local Street Gazetteers (NSG and LSG)** – this is the national effort towards the digitisation of all public highways within a common data set, which in turn is part of a wider Government effort towards linked data sets in the public sector. The national data set is the NSG and the local authority set is the LSG. The Definitive Map of Public Rights of Way needs to be part of this data set and there are various technical and legal challenges in achieving this, which require the input and advice of the rights of way team.

The NSG and LSG are likely to form an important part in recording highways to protect them prior to the 2026 cut-off.

With these three major new pressures, we feel that a change in priority of Claims and Public Path Order work is due.

New proposal for Definitive Map Case Programme Priorities

Suggested proposal

The key reasoning is as follows:

1. We consider our statutory duties to be more important than our discretionary powers. Claims are a statutory duty under S. 53 Wildlife and Countryside Act 1981, and this section of the Act also requires us to keep the Definitive Map under continuous review, which would include work towards the National and Local Street Gazetteers.
2. The processing of Path Order applications is only a discretionary power. However, our statutory duties also include to assert and protect the rights of the public to the use and enjoyment of the highway network (S.130 Highways Act 1980), and it can therefore be argued that a Path Order which is clearly in the public interest falls under this category.

Options to deal with the additional workload

- a) Carry out all extra work by bringing in additional resources. It is important to note that there is a fee to cover applications for Path Orders, which could resource staff. The fee does not cover costs if there are objections to an Order which then proceeds to a public inquiry or written representations.
- b) Carry out statutory duties only, and drop all Path Order applications.
- c) Carry out statutory duties only plus Path Orders in the public interest (including cases which assist the Council).

We are suggesting the following new approach, which we estimate will involve no requirement for extra resources. It gives priority to statutory duties:

Priority work

- Claim applications.
- Processing of Claim applications for the 2026 cut-off date.
- Processing of applications for Path Orders which are clearly of public benefit, and therefore consistent with our duty under S.130 HA80 (and cases which assist the Council).
- Supporting the work to record Definitive Map PROWs accurately on the LSG (consistent with our S. 53 Wildlife and Countryside Act 1981 statutory duty to keep the Definitive Map under continuous review).

Lower priority work

- Path Order applications from owners wishing to apply to divert, or extinguish PROWs in their own interest.
- **Process for dealing with this lower priority work:** we propose that applicants will be referred to a list of consultants held by the Institute for Public Rights of Way Management (IPROW). These consultants will be able to undertake certain informal consultation, preparatory work and presentation of a report to the Council for consideration. However, WBC will be left with overall responsibility for determination of the matter, making and advertising any resulting order including publication of notices, and would be unable to charge for the involved and detailed procedure for submitting opposed orders to the Planning Inspectorate for determination.

7.15 Using these priority criteria, we have compiled the attached documents to form the proposed 2021/22 Definitive Map Case Programme:

Appendix D1 is the total statutory register of Claims applications.

Appendix D2 is the existing list of all cases being worked on in 2020/21.

Appendix D3 is a list of Path Order cases for consideration in the future that are not on the current or proposed case list and **Appendix D4** shows maps for each route.

Appendix D5 is the proposed case list for Claims and Path Orders for 2021/22 and

Appendix D6 shows maps for each route.

7.16 As part of this current ID process, there are two representations from applicants for Path Orders who wish their cases to be considered in the Programme for 2021/22.

- 7.17 **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.
- 7.18 The ROWIP is presently being reviewed by an external consultant working closely with the Rights of Way Team and other key areas of the Council. The final revised ROWIP is due to be published early in 2022.
- 7.19 Many of the existing objectives are ongoing, and have been incorporated into the normal day-to-day work of the team. Some have required special effort in order to progress, and to date, the objectives have been reviewed each year and the proposed manageable number identified by ** in the table of objectives. The new ROWIP review will take up quite a bit of staff time and so we propose not to add any additional objectives for special effort in 2021/22.
- 7.20 The table at **Appendix E** sets out the current progress on all the objectives. We have found that the huge increased use of the network during the Covid-19 Pandemic has meant a heavier workload in reacting to reports from the public, and therefore further progress on ROWIP objectives in 2020/21 has been slow.

8. Options for Consideration

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

9. Proposals

- 9.1 That the proposed 2021/22 PROW Case Programmes are approved, subject to any approved modifications.

10. Conclusion

- 10.1 Progress on the 2020/21 Rights of Way Case Programmes has been set out in this report, together with the recommended Case Programmes for 2021/22.

Background Papers:

Public Rights of Way Case Programmes.

Report to Management Board - 11th September 2008.

Statement of priorities for bringing and keeping the Definitive Map and Statement (DMS) up to date ('Claims').

Statement of priorities for dealing with proposals to amend the public rights of way network (PPOs).

Rights of Way improvement Plan 2010 - 2020.

Subject to Call-In:

Yes: ☒ No: ☐

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

☐

Strategic Priorities Supported:

The proposals contained in this report will help to achieve the following Council Strategy priorities:

- ☒ **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**
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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 2020/21 Case Programmes, and asks for comments on and approval of the proposed 2021/22 Case Programmes, plus approval for the proposed change of priorities within the Definitive Map Case Programme.

12. Conclusion

- 12.1 Progress on the 2020/21 Rights of Way Case Programmes has been set out in this report together with the recommended Case Programmes for 2021/22, and a proposed change in priorities within the Definitive Map Case Programme.

13. Appendices

- 13.1 Appendix A – Priority Matrix.
- 13.2 Appendix B – Maintenance and Improvement Case Programme.
- 13.3 Appendix C1 – Enforcement Case Programme.
- 13.4 Appendix C2 – Maintenance and Enforcement issues received and resolved 1/4/20 – 26/2/21.
- 13.5 Appendix D1 - Definitive Map Case Programme - the total statutory register of Definitive Map Modification Order ('Claims') applications.
- 13.6 Appendix D2 - Definitive Map Case Programme - the existing list of cases being worked on in 2020/21.
- 13.7 Appendix D3 - Definitive Map Case Programme - the list of cases for consideration in the future that are not on the current or proposed case list.

13.8 Appendix D4 - Definitive Map Case Programme - maps to show each route in Appendix D3.

13.9 Appendix D5 - Definitive Map Case Programme - the case list proposed by the Definitive Map Officer for April 2021-2022.

13.10 Appendix D6 - Definitive Map Case Programme - maps to show each route in Appendix D5.

13.11 Appendix E – Rights of Way Improvement Plan Case Programme.

13.12 Appendix F - Data Protection Impact Assessment.

13.13 Appendix G - Equalities Impact Assessment.