

# North Somerset Council

## REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

<b>DATE OF MEETING:</b>	<b>15 NOVEMBER 2016</b>
<b>SUBJECT OF REPORT:</b>	<b>REDUCING THE DEFINITIVE MAP MODIFICATION ORDER BACKLOG</b>
<b>TOWN OR PARISH:</b>	<b>ALL</b>
<b>OFFICER/MEMBER PRESENTING:</b>	<b>ELAINE BOWMAN</b>
<b>KEY DECISION:</b>	<b>NO</b>

### RECOMMENDATION

It is recommended that three actions are implemented to reduce the DMMO backlog:

1. Reduce evaluation of historical records to a core of five sources
2. Employ interns to collect and collate historical documentation from the five sources
3. Undertake this approach for a trial period of 12 months (from the date of this committee) continuing to deal with applications in a chronological order.

### 1. SUMMARY OF REPORT

It is necessary to try and reduce the time it takes to process Definitive Map Modification Orders (DMMO) because there are currently 50 outstanding registered claims with an estimated completion time of a minimum of 15 years which is not satisfactory.

The proposed trial has a target of 12 DMMO reports brought back to this Committee. This would however be subject to Appeals, urgent items and team resource availability. This means the backlog could be resolved within 5 years.

The report identifies where the delays are occurring e.g. legislation changes; lack of resources.

The report also presents the options available to improve the time it takes to process DMMOs.

### 2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan "Health and Wellbeing" and "Quality Places".

### 3. DETAILS

The Council has a statutory duty to ensure that the rights of way network is legally defined. This is carried out by ensuring that the Definitive Map and Statement for public rights of way is kept up-to-date.

The Definitive Map has been in force since 26 November 1956. Since that date it was inevitable that changes would happen e.g. it would be found that routes had been omitted from the original map or the status of those recorded would be challenged.

When such matters become known the map must be corrected by a legal order known as a Definitive Map Modification Order (DMMO). Any person may request the Council to make an order where there is sufficient evidence.

Applications can be controversial because the parties are likely to want different outcomes. For example, users of the path are likely to be passionate about the access; and landowners tend to oppose access across their land. It is necessary to be sensitive to both parties' needs and this contributes to the time it takes to process Orders.

A well-established process for administering DMMOs has developed since 1956. However, the process is time consuming because of these issues:

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Evaluating the historical evidence is complex and the data is not easily accessible

The consideration of evidence includes a detailed evaluation of the historical context of the claimed route. This involves visits to record centres and reviewing archived documents (see section 4). Being historical documents (some will date from 1700s) means that they can be difficult to interpret.

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Our objective is to seek consensus when processing DMMOs to reduce the risk of appeal which can involve complex and lengthy discussions.

Before any research is undertaken contact is made with the landowner to see if agreement can be reached. This can be a long process because landowners need to consider the matter carefully. If this is not successful informal consultations with interested parties are carried out as well as interviewing the parties who have claimed use. This could require interviewing a large number of individuals i.e. anywhere between 1 and 100 depending on the application. Once all of this information is collated a report is written and presented to the Public Rights of way Sub Committee for consideration. Any new evidence that comes to light will also be considered.

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Orders can be appealed to the Secretary of State which impacts our ability to process new applications

It is possible to appeal the decision of the Public Right of Way sub-committee which is automatically heard by Planning Inspectorate. Dealing with appeals takes up time that would otherwise be spent processing outstanding applications.

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Two legislative changes caused a significant increase in applications and because no additional resources were provided to cover this increase they just added to the backlog.

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Changes created by the Countryside and Rights of Way Act 2000 increased the number for DMMOs in 2003

The Countryside and Rights of Way Act 2000 allowed for a blanket reclassification of all routes previously known as Roads Used as Public Paths (RUPPs) to become known as Restricted Byways. This automatically excluded use by mechanically propelled vehicles, which in turn resulted in further applications being submitted from those who believed that a particular Restricted Byway carried full vehicular rights.

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Changes in designations were also introduced by the Natural Environment and Rural Communities Act 2006 which increased outstanding claims by 25%

The Natural Environment and Rural Communities Act 2006 decreed that no public rights of way for mechanically propelled vehicles could be created after 20 January 2005 unless it met certain criteria.

In 2003, North Somerset Council had 38 applications awaiting resolution and this rose to 50 following the Natural Environment and Rural Communities Bill in 2006. Although a number of applications have been determined because of the influx of applications around 2006 the overall number of applications has never really decreased.

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#### 4. CURRENT PRACTICE FOR PROCESSING APPLICATIONS

In a report dated 21 December 2004 presented to the first meeting of the Public Rights of Way Sub-Committee it states that the Council has a policy of determining Orders in chronological order with limited discretion to give certain Orders priority. Since this date DMMOs have been processed in order but having regard for the following

1. the obligations to fulfil previous Committee resolutions on particular Orders
2. directions from the Secretary of State to determine Orders within a specified timescale
3. directions from the Secretary of State to make an Order when the Council has declined
4. to prepare for and appear at inquiry when an Order has attracted objections

New applicants for orders are currently advised that there will be a delay of a minimum of fifteen years before their application will be investigated.

It is the role of the Committee to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.**

It is also important to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The collection and presentation of evidence is therefore a critical element of the processing of DMMOs to make sure the committee is able to make an informed decision. It must be

noted that only one Officer is employed for this role who also has several other duties including being the lead Officer for access, managing the PROW team. This inevitably reduces the time available to carry out the duties described in this report.

## How we currently investigate evidence

We visit several record sources to evaluate the historical validity of all claims

When reviewing an application our policy is to consider all available documents held within the offices of North Somerset, Somerset Record Office and even the Record Office at Kew. Whilst this produces a full historical picture for the claimed route it is very time consuming. However, a full investigation is more likely to reduce the re-submission of an application if the order was not made, was made but not confirmed or was dismissed following appeal.

We analyse a range of documents at these record centres

There is a hierarchy of documents which are considered valuable evidence. Most important are The Tithe Maps, Enclosure Awards, Finance Act, Railways Act, Ordnance Survey Plans and The Definitive Map Process. Secondary to these are Estate Plans, Sale documents, Parish records and minutes and Highways Records. Reviewing this many documents is inevitably time consuming especially when considering their archaic language and presentation.

User evidence forms are usually submitted and these must also be investigated

If user evidence has been submitted then those parties are interviewed to test the strength of the evidence given. The amount of user evidence is variable but the most we have received is 67 forms which it is anticipated will take over 130 hours to process.

The amount of time to fully investigate an order is variable depending on the complexity of the case. The following table contains a sample of recent DMMOs heard by the Committee identifying the range of work required to provide a report that enables the committee to make an informed decision.

<b>DMMO No.</b>	<b>No. of record offices attended</b>	<b>No. of records analysed</b>	<b>No. of interviews carried out</b>
Mod 1b (111 pages)	Somerset and Kew	24	8 of 45 statements
Mod 2a (99 pages)	Somerset	22	13 of 22 statements
Mod 45 (58 pages)	Somerset	31	0

These figures demonstrate why it takes so long to determine each application.

Any application which has not been determined by the Council within twelve months of receipt can be appealed to the Secretary of State for non-determination. If found in the applicant's favour a direction will be issued for us to determine the case within a fixed time.

At present one such case (Mod 102) has been appealed and the Secretary of State has instructed us to complete the determination by 28 February 2018. This is the first time this has happened in the past 10 years

Such decisions will inevitably delay the determination of other applications which have been waiting a lot longer.

The successful appeal of Mod 102 will cause considerable delay. There are 21 user evidence forms held against the first application and each one will require a face-to-face interview. In addition, the second application held on Mod 102 may also be considered at the same time and this will require 46 interviews. Historical maps will be looked at to assess whether any evidence can be ascertained from them. It is estimated that the evaluation of the evidence to Committee Report will take between 230 - 270 hours.

This can be broken down as follows:

<b>Process</b>	<b>Estimated time (hours)</b>
Interviewing 67 'users'	70
Processing interview statements	70
Historical record investigation	40
Collating all data	30
Report preparation and submission	40

There are currently 50 applications awaiting determination which will require similar resources to that shown above.

In addition to these 50 applications it should be mentioned that the Section 53 Definitive Map Register also has listed 24 applications which have been considered as incomplete applications. The applicant has been advised and invited to submit the missing documentation however until such time as that is received no further action will be taken on those files. Should the applicant provide the relevant information these files will be reinstated.

## **5. THE DEEGULATION ACT**

The Deregulation Act received Royal Assent in March 2015 and we are currently waiting for the Public Rights of Way associated regulations and guidance to be completed. This Act is intended to assist local authorities to reduce their back logs whilst at the same time making it easier for landowners and applicants to navigate the DMMO process. Until enacted it is not known whether this will be successful in these aims but this may speed up the process.

## **6. PROPOSAL TO IMPROVE THE RATE OF PROGRESS**

Local Authorities have a statutory duty to determine DMMOs so it is not possible to decide to stop processing them.

In an attempt to try to address the considerable DMMO backlog the following options have been considered and are now being placed before the Public Rights of Way Sub Committee for consideration.

The options below are proposed because they are considered to be the best way to speed up the process for determining DMMOs.

<b>Option</b>	<b>Issues</b>	<b>Solution and Risks</b>
Employ more resources to assess the applications	<p>1. It is not currently financial viable to appoint another member of staff to carry out this task due to Council budget restrictions</p> <p>2. However, other opportunities are available e.g. interns</p>	<p>Interns were employed during the summer of 2016 and successfully reviewed historical data for many outstanding DMMOs.</p> <p>We will need to monitor the intern's work to ensure it is of the right quality.</p>
Review fewer historical documents.	<p>1. Currently we review all identified sources of information</p> <p>2. Reviewing all these sources also requires travelling to various record centres</p>	<p>1. Proposed to only review sources which provide the most valuable evidence which are: The Tithe Maps, Enclosure Awards, Finance Act, Railways Act, Ordnance Survey Plans and The Definitive Map Process.</p> <p>2. Other parties will be advised that they can provide evidence from other sources if it supports their case; which we will include in our determination.</p> <p>3. An Inspector's decision may conclude that insufficient research was undertaken requiring further review.</p> <p>4. There is a continued risk that unsuccessful applications will be resubmitted if applicants find new evidence.</p>
Introduce trial where applications submitted between 1992-2000 undergo method described above	<p>1. It is important to determine the oldest applications as soon as possible.</p> <p>2. Applications made in this period will undergo fewer historical record checks, which have been carried out by interns.</p>	<p>It is unknown how many user evidence forms will need to be evaluated until each application is looked at in more detail but this will influence the time it will take to process.</p>

### **Other options considered**

- Option 1 Don't change current practice.  
Rejected for reasons stated above which have created current delay.
- Option 2 Rely upon applicants and objectors to provide all research and evidence and assess on face value.  
Rejected because Committee would be unlikely to be satisfied that they have been made familiar with all available evidence.

## **7. CONSULTATION**

This report is currently the only consultation that has been undertaken.

## **8. FINANCIAL IMPLICATIONS**

If authority is given for our working practice to be changed this could lead to an increase in the rate of applications considered, which in turn could lead to an increase in Public Inquiries which have to be funded by North Somerset.

These financial considerations must not form part of the Committee's decision because the legislation is the overriding issue.

## **9. RISK MANAGEMENT**

The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible. The Council's decision must be made considering all of the evidence correctly. The applicant has the right to appeal to the Secretary of State who may change the decision of the Council if it decides not to make an Order and direct that an Order should be made. Alternatively if an Order is made objections can lead to a Public Inquiry.

## **10. EQUALITY IMPLICATIONS**

Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

## **11. CORPORATE IMPLICATIONS**

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

## **12. OPTIONS CONSIDERED**

See background

## **AUTHOR**

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