

*Report Author:* **Pete Hobley**  
*Contact Details:* **01823 358185**  
**pahobley@somerset.gov.uk**

*Description of Report:* **CONSULTATION ON AMENDMENTS TO THE STATEMENT OF PRIORITIES**

## **1. Summary of Key Issues and Recommendation**

- 1.1 The order in which applications to modify the Definitive Map and Statement are investigated is determined by the County Council's Statement of Priorities, which was last revised in 2011. Applications received prior to 28 November 2011 were scored using the Rights of Way Improvement Scorecard and this determined their order of investigation. A number of applications have been received since that date and are awaiting scoring in accordance with the adopted Statement. It was intended that these would be scored in 2016 following the review of the Rights of Way Improvement Plan (RoWIP).
- 1.2 The scoring round has been postponed primarily for two reasons. Firstly it was envisaged that any review of the ROWIP would include any changes required as a result of regulations commencing sections of the Deregulation Act 2015, however these regulations continue to be delayed. Secondly the scoring round has been postponed to enable limited resources to be focussed on investigating the scored applications.
- 1.3 The applicants who have submitted applications which have yet to be scored require clarity as to when their applications are likely to be investigated and in addition, recent changes in practice mean it is timely to update the Statement of Priorities document.
- 1.4 The main changes proposed to the Statement of Priorities are:
  - Where there is a direction from the Secretary of State to determine an application within a specified timeframe the application will be prioritised accordingly.
  - The current scored list of applications will continue to be investigated in scored order, and unscored applications will be investigated thereafter in chronological order.
  - Investigations initiated by the County Council will be treated as 'applications' for the purposes of this policy.
  - Applications in relation to paths where a decision has already been reached by the Authority will not be treated differently in terms of priority simply because they are second applications. Previously such applications were given less priority than first applications. However, a disadvantaged

applicant or landowner may well find additional evidence to support their position and reverse any previous decision. Arguably if such evidence is found, the application should be given no greater or lesser priority than a first application.

- 1.5 It is recommended that the Regulation Committee provide their support for the proposed changes which will need to be approved by the Cabinet Member for Highways & Transport prior to their adoption.

## **2. Background**

- 2.1 Legislation requires that applications for Definitive Map Modification Orders (DMMO's) should be determined as soon as reasonably practicable. In addition, if an application has not been determined within 12 months of receipt, the applicant is entitled to request that the Secretary of State direct the County Council to determine their application within a specified time period. Due to the current backlog it is rarely possible to determine an application within 12 months, and the County Council's Statement of Priorities sets the framework for how applications are to be prioritised. This ensures fairness and transparency for applicants
- 2.2 Where an appeal is lodged by an applicant for non-determination within 12 months of receipt, the Secretary of State in considering whether to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the Definitive Map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant.
- 2.3 Historically, such appeals were uncommon, and when received the Statement of Priorities was sufficient to reassure the Secretary of State as to the process for determining the order of investigation of applications, resulting in appeals being dismissed. However, in the last couple of years, the number of appeals has increased considerably (possibly in relation to the appeal process soon to be changing under the Deregulation Act 2015, once provisions commence). In all of the recent appeal cases the Secretary of State has departed from his previous approach and made directions for all of them, varying from 6 months to 4 years for determination. This change in approach is replicated across the country.
- 2.4 Where possible the Service has been doing its utmost to comply with the directions from the Secretary of State, and the proposed Statement of Priorities reflects this practice by prioritising such directions (Appendix 2, section 5ii).
- 2.5 The scoring system was introduced primarily to prioritise those applications that, if successful, could be of most benefit to the network. Whilst in 2011 applications weren't being determined within 12 months of receipt, it was still deemed reasonable to have a scoring system, which has resulted in the lowest scoring applications having to wait longer than they would have done if dealt with chronologically.

- 2.6 Since 2011, when the last revision to the Statement of Priorities was undertaken, the backlog of applications awaiting determination has increased by over 50% and the amount of officer resource has decreased for this type of work. If the current scoring system was to continue then the extent to which some applicants would be disadvantaged would be compounded as a result of the magnitude of the current backlog. Therefore the merit of this approach has to now be balanced with the expectation of an applicant that an application should be investigated within a reasonable timeframe. This change is reflected in the proposed draft (Appendix 2, section 3).
- 2.7 In no way is it envisaged that abandoning the scoring system for unscored applications will result in appeals to the Secretary of State being dismissed. However, at least it provides applicants of unscored applications with clarity as to the approach that will be taken once the scored applications have been determined.
- 2.8 Those applications which have already been scored will continue to be investigated in that order. Applicants were notified of their scored position in the queue for determination and would be understandably frustrated were the Council to now change the basis on which those applications are prioritised particularly were this to be to their detriment.
- 2.9 It is not uncommon for the Council to initiate its own investigations, however the vast majority are Schedule 14 Wildlife & Countryside Act 1981 applications. Custom and practice has been to treat internal investigations as 'applications'. The proposed draft has been updated to reflect this custom and practice (Appendix 2, section 1ii).
- 2.10 Reference to the decision maker for out of turn requests has been removed from the current Statement. This was to avoid any confusion between the Constitution and the Statement of Priorities.
- 2.11 The current Statement has provision for prioritising first applications over second and subsequent applications (Appendix 1, section 2). This provision was intended to prevent cases consuming considerable officer time, as and when a disadvantaged objector or applicant keeps finding new evidence to substantiate a new application. Whilst this provision may have been well-intended, it is no longer deemed appropriate, and the point at which [new] evidence/ application is submitted should be the overriding factor in the priority given to an unscored application.
- 2.12 The Service has been acutely aware to ensure that any revision to the policy is necessary, light-touch, maintains a fair and balanced approach, and does not become overly cumbersome to administer to ensure resources are not unnecessarily diverted away from dealing with the current outstanding applications. We predict further changes may be required as and when regulations are published for the Deregulation Act 2015, but in the meantime these changes help to reflect current practice and provide clarity for applicants of unscored applications.

2.13 A number of other provisions and systems were considered and discounted (eg: multi list approach based on applicant or type of evidence), however it is contended that the appended draft is the most equitable approach to the situation. The most powerful alternative to the proposed draft, is to give greater priority to applications which are supported by user evidence. User evidence can be powerful evidence when given at a public inquiry in person, and with the current delays such persons may not survive to be able to attend any possible public inquiry. However, where this is the case the applicant will usually be representing the user base and is thus able to appeal to the Secretary of State against non-determination within 12 months of receipt.

### **3 Consultation**

3.1 The Somerset Local Access Forum were consulted on amending the Statement of Priorities in August 2017. A workshop was held to debate the various approaches that could be taken with views recorded. There was no clear recommendation from the Forum, but there was general agreement that time spent on revising the Statement and the subsequent administration of it should not unduly distract from the critical work of determining the applications.

3.2 The Forum has recently been consulted on the proposed draft. Any comments received will be taken into account prior to the Cabinet Member taking the decision to amend the Statement.

### **4 Conclusion**

4.1 It is timely to update the Statement of Priorities to reflect current practice as well as giving clarity to applicants of unscored applications.

4.2 The policy has been reviewed to ensure that the approach for the future is easy to administer and as equitable as possible. The ability to batch applications is retained to ensure that efficiencies in determination of applications can be achieved.

### **5 Recommendation**

5.1 It is recommended that the Regulation Committee provide their support for the proposed changes to the Statement of Priorities that will be approved by the Cabinet Member for Highways & Transport.

### **List of Appendices**

1. Statement of Priorities 2011
2. Draft Statement of Priorities 2018