

# Regulation Committee

## Thursday 9 May 2019

### 10.00 am Taunton Library Meeting Room



To: The Members of the Regulation Committee

Cllr J Parham (Chair), Cllr N Hewitt-Cooper (Vice-Chair), Cllr M Caswell, Cllr J Clarke, Cllr S Coles, Cllr M Keating, Cllr A Kendall and Cllr N Taylor

Issued By Scott Wooldridge, Strategic Manager - Governance and Risk - 1 May 2019

For further information about the meeting, please contact Michael Bryant on 01823 359048 or [mbryant@somerset.gov.uk](mailto:mbryant@somerset.gov.uk), or Peter Stiles on 01823 357628 or [pstiles@somerset.gov.uk](mailto:pstiles@somerset.gov.uk)

Guidance about procedures at the meeting follows the printed agenda **including public speaking at the meeting.**

This meeting will be open to the public and press, subject to the passing of any resolution under Section 100A (4) of the Local Government Act 1972.

This agenda and the attached reports and background papers are available on request prior to the meeting in large print, Braille, audio tape & disc and can be translated into different languages. They can also be accessed via the council's website on [www.somerset.gov.uk/agendasandpapers](http://www.somerset.gov.uk/agendasandpapers)



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# AGENDA

Item Regulation Committee - 10.00 am Thursday 9 May 2019

**\*\* Public Guidance notes contained in agenda annexe \*\***

1 **Apologies for Absence**

2 **Declarations of Interest**

3 **Accuracy of the Minutes of the meeting held on 4 April 2019** (Pages 7 - 16)

The Committee will consider the accuracy of the attached minutes.

4 **Public Question Time**

The Chair will allow members of the public to present a petition on any matter within the Committee's remit. Questions or statements about the matters on the agenda for this meeting will be taken at the time when the matter is considered and after the Case Officers have made their presentations. Each speaker will be allocated 3 minutes. The length of public question time will be no more than 30 minutes.

5 **Consultation on Amendments to Processing of Applications to Modify the Definitive Map** (Pages 17 - 28)

6 **Any Other Business of Urgency**

The Chair may raise any items of urgent business.

## Regulation Committee – Guidance notes

### 1. Inspection of Papers

Any person wishing to inspect Minutes, reports, or the background papers for any item on the agenda should contact Michael Bryant or Peter Stiles Tel: (01823) 357628, or Email: [mbryant@somerset.gov.uk](mailto:mbryant@somerset.gov.uk) or [pstiles@somerset.gov.uk](mailto:pstiles@somerset.gov.uk)

### 2. Members' Code of Conduct requirements

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed at: <http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

### 3. Notes of the Meeting

Details of the issues discussed and decisions taken at the meeting will be set out in the Minutes, which the Committee will be asked to approve as a correct record at its next meeting. In the meantime, details of the decisions taken can be obtained from Michael Bryant or Peter Stiles.

### 4. Public Question Time

At the Chair's invitation you may ask questions and/or make statements or comments about **any matter on the Committee's agenda**. You may also present a petition on any matter within the Committee's remit. **The length of public question time will be no more than 30 minutes in total.**

A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been signed. However, questions or statements about the matters on the agenda for this meeting will be taken at the time when that matter is considered.

The Chair will usually invite speakers in the following order and each speaker will have a maximum of 3 minutes:

1. Objectors to the application (including all public, parish council and District Council representatives)
2. Supporters of the application (including all public, parish council and District Council representatives)
3. Agent / Applicant

Where a large number of people are expected to attend the meeting, a representative should be nominated to present the views of a group. If there are a lot of speakers for one item than the public speaking time allocation would usually allow, then the Chair may select a balanced number of speakers reflecting those in support and those objecting to the proposals before the Committee.

Following public question time, the Chair will then invite local County Councillors to

address the Committee on matters that relate to their electoral division.

If you wish to speak either in respect of Public Question Time business or another agenda item you must inform Michael Bryant or Peter Stiles the Committee Administrator **by 5.00pm three clear working days before the meeting**. When registering to speak, you will need to provide your name, whether you are making supporting comments or objections and if you are representing a group / organisation e.g. Parish Council. Requests to speak after this deadline will only be accepted at the discretion of the Chair.

You must direct your questions and comments through the Chair. You may not take direct part in the debate.

Comments made to the Committee should focus on setting out the key issues and we would respectfully request that the same points are not repeated.

The use of presentational aids (e.g. PowerPoint) by the applicant/agent or anyone else wishing to make representations to the Committee will not be permitted at the meeting.

An issue will not be deferred just because you cannot be present for the meeting.

The Chair will decide when public participation is to finish. The Chair also has discretion to vary the public speaking procedures.

**Remember that the amount of time you speak will be restricted, normally to three minutes only.**

## **5. Substitutions**

Committee members are able to appoint substitutes from the list of trained members if they are unable to attend the meeting.

## **6. Hearing Aid Loop System**

To assist hearing aid users, the Luttrell Room has an infra-red audio transmission system. This works in conjunction with a hearing aid in the T position, but we need to provide you with a small personal receiver. Please request one from the Committee Administrator and return it at the end of the meeting.

## **7. Late Papers**

It is important that members and officers have an adequate opportunity to consider all submissions and documents relating to the matters to be considered at the meeting, and for these not to be tabled on the day of the meeting. Therefore any late papers that are to be submitted for the consideration of the Regulation Committee, following the publication of the agenda/reports, should be sent to the Service Manager – Planning Control, Enforcement and Compliance (Philip Higginbottom) via [planning@somerset.gov.uk](mailto:planning@somerset.gov.uk) in respect of Planning and Town and Village Green items, and to the Senior Rights of Way Officer (Richard Phillips) in respect of Rights of Way items, and should be received no less than 48 Hours before the meeting.

## **8. Recording of meetings**

The Council supports the principles of openness and transparency, it allows filming, recording and taking photographs at its meetings that are open to the public providing it is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings and a designated area will be provided for anyone who wishing to film part or all of the proceedings. No filming or recording will take place when the press and public are excluded for that part of the meeting. As a matter of courtesy to the public, anyone wishing to film or record proceedings is asked to provide reasonable notice to the Committee Administrator so that the relevant Chairman can inform those present at the start of the meeting.

We would ask that, as far as possible, members of the public aren't filmed unless they are playing an active role such as speaking within a meeting and there may be occasions when speaking members of the public request not to be filmed.

The Council will be undertaking audio recording of some of its meetings in County Hall as part of its investigation into a business case for the recording and potential webcasting of meetings in the future.

A copy of the Council's Recording of Meetings Protocol should be on display at the meeting for inspection, alternatively contact the Committee Administrator for the meeting in advance.

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## The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 4 April 2019 at 14.00 in the Meeting Room, Taunton Library.

### Present:

Cllr J Parham (Chairman)

Cllr M Caswell

Cllr J Clarke

Cllr N Hewitt-Cooper

Cllr M Keating

Cllr A Kendall

Cllr T Lock (Substitute for Cllr S Coles)

Cllr N Taylor

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, referred to the agendas and papers that were available and highlighted the rules relating to public question time.

### 1 **Apologies for Absence** - agenda item 1

Cllr S Coles

### 2 **Declarations of Interest** - agenda item 2

Reference was made to the following personal interests of the members of the Regulation Committee published in the register of members' interests which were available for public inspection in the meeting room:

Cllr M Caswell                      Member of Sedgemoor District Council

Cllr N Hewitt-Cooper              Member of Mendip District Council

Cllr A Kendall                      Member of South Somerset District Council  
Member of Yeovil Town Council

Cllr T Lock                         Member of South Somerset District Council  
Member of Yeovil Town Council

Cllr J Parham                      Member of Member of Mendip District  
Council  
Member of Shepton Mallet Town Council

Cllr N Taylor                        Member of Mendip District Council  
Member of Cheddar Parish Council

Cllr N Taylor further declared a personal interest by virtue of being acquainted with the the owner of Tout Quarry, Charlton Adam (agenda item 7).

**3 Accuracy of the Minutes of the Meeting held on 7 March 2019 - agenda item 3**

The Chairman signed the Minutes of the Regulation Committee held on 7 March 2019 as a correct record.

**4 Public Question Time – agenda item 4**

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda.

(2) All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

**5 Extraction of up to 400 Tonnes of Blue Lias Building Stone off Curnhill (Hitchens Hill Ground) over a 12 Month Period including the Temporary Use of Part of the 'Red Barn' for Processing and Storage and the Temporary Use of the 'Green Barn' for Stone Breaking at Worthy Farm, Worthy Lane, Pilton, Somerset BA4 4BY - agenda item 5**

(1) The Committee considered the report of the Strategic Commissioning Manager, Economy and Planning on this application which involved the extraction of approximately 400 tonnes of blue lias limestone over a 12 month period from an area of open farmland at Worthy Farm, Pilton for use in the construction of affordable housing in the Pilton area.

(2) The Committee were informed that the key issues for consideration were: the need for the development; and the impacts: on residential amenity, particularly noise; biodiversity; the highway; water resources; and the historic environment.

(3) The Case Officer outlined the application with the use of maps, plans and photographs, indicating that:

- Worthy Farm was located on the south east edge of the village of Pilton and the site was within the agricultural unit. To the north of the site, beyond an area of orchard planting, was the Grade 1 listed Tithe Barn (also a Scheduled Monument) and the Pilton Conservation Area, while there were residential properties to the north east, adjoining the proposed extraction area
- the extraction area measured 60m x 30m
- topsoil and subsoil would also be stored in this area
- extraction would be to a depth of 3m dug in north to south strips moving west to east
- the quarry would be progressively restored and backfilled at the end of each day;
- mineral extraction and all associated operations would take place between 9.00am - 4.30pm on Mondays to Fridays
- stone would be extracted using a slew and transported using a tractor

and trailer on private internal roads to nearby barns for processing, dressing and storage

- the material would then be transported, when needed, to an affordable housing site in Neat Lane, Pilton
- on completion the site would be returned to agricultural land and the original levels but, should any additional material be required to fill the void, surplus subsoil/topsoil from the farm would be used or topsoil would be purchased.

(4) The Case Officer pointed out that the applicant already extracted and processed stone for use around the farm under permitted development rights (using the barns included in the current application); and that planning permission had been granted for a similar application for the extraction of blue lias limestone at Worthy Farm to that now submitted, for use in a local affordable housing scheme, but that this permission had now expired.

(5) The Case Officer reported that following assessment under The Town and Country Planning (Environmental Impact Assessment) Regulations, it had been concluded that the proposed development was not likely to have significant environmental effects by virtue of its nature, size and location.

(6) The Case Officer reported on the consultations that had been undertaken with external consultees: Mendip District Council; Pilton Parish Council; Environment Agency; and internal consultees: Transport Development; Scientific Services (Noise); Scientific Services (Air Quality); County Ecologist; South West Heritage Trust; and Lead Local Flood Authority. No objections had been received from consultees, although conditions and other action had been recommended.

(7) The Case Officer reported that, as regards public consultations, three representations had been received, all of which raised concerns with the proposal based on the proximity to neighbouring properties and the impacts of noise and dust from extraction and processing operations. These representations included: a challenge to the accuracy of the submitted noise assessment, which had supported the previous application; suggestions to address the noise impacts; a query regarding justification for the development; and a proposal to relocate the operations elsewhere within Worthy Farm.

(8) The Chairman drew attention to a late representation received from Mr C Watt who was unable to attend the meeting to speak. It was noted that Mr Watt, who resided in a property that adjoined the field in which the extraction site was located, had expressed concerns about the increasingly intrusive nature of the noise from quarrying operations which were moving closer to his house; and had proposed reduced hours of operation; as well as relocating the operations and querying the justification for the development as above.

(9) The Case Officer concluded that, having taken into account the main issues referred to in Paragraph (2) above, Development Plan policies and

other material considerations, the extraction of blue lias stone would provide benefits to the local community and built environment. While the extraction might result in an impact on the amenity of neighbouring properties in terms of noise, this could be mitigated to an acceptable level through the use of conditions, and extraction was only likely to take place for a very short period through the 12 months permission.

(10) Cllr Hewitt-Cooper, the local Divisional Member, and the other Committee members fully supported the proposed development which they noted would meet a local need for blue lias limestone; was a small-scale operation of limited duration; and to which there were no objections from consultees, and considered that the application should be approved subject to appropriate conditions.

(11) Cllr Hewitt-Cooper, seconded by Cllr Taylor, moved the recommendation by the Strategic Commissioning Manager, Economy and Planning set out in the report.

(12) The Committee RESOLVED in respect of planning application no. SCC/3538/2018 that planning permission be GRANTED subject to the conditions set out in Paragraph 9 of the report, and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager, Economy and Planning.

**6 Single Storey Extension and Reconfigured Entrance to an Existing Classroom Block within the Existing School Curtilage to Provide an Additional Classroom (55sq.m approx.), a Small Break-out Space (7.5sq.m approx.) and a Classroom Store (3sq.m approx.) at Milborne Port County Primary School, North Street, Milborne Port, Somerset DT9 5EP - agenda item 6**

(1) The Committee considered the report of the Strategic Commissioning Manager, Economy and Planning on this application.

(2) The Committee were informed that the main issues for consideration were: the need for the development; and the impacts on: traffic generation; parking and the highway network; design, conservation and amenity; the historic environment; and ecology.

(3) The Case Officer, with the use of maps, plans and photographs, outlined the application, indicating that:

- Milborne Port County Primary School was accessed from Glovers Close (cul-de-sac) off North Street, near the centre of the village of Milborne Port
- the school site was within a primarily residential area and was bordered by residential properties on all sides
- the school was not Listed and lay just outside the Milborne Port

Conservation Area

- the school site had a variety of old and modern pitched-roof buildings, including the original gothic stone-built school
- the proposed development involved an 89 sq.m extension to an existing modern classroom block adjacent to the original school building to provide an additional classroom, a small break-out space and a classroom store
- the extension would provide space for an additional 30 pupils
- it would be located on an area of existing hardstanding that was currently only used for access between buildings and would not impact on any formal or informal hard and soft play areas, or external learning areas.

(4) The Case Officer reported that the development did not fall within the scope of The Town and Country Planning (Environmental Impact Assessment) Regulations, 2017 and an Environmental Statement was therefore not required.

(5) The Case Officer reported on the consultations that had been undertaken with external consultees: South Somerset District Council; Milborne Port Parish Council and internal consultees: Highways Development Management; County Ecologist; Somerset Historic Environment Service (Conservation and Archaeology); and County Acoustics Specialist. No objections had been received from consultees, although conditions and other action had been recommended.

(6) The Case Officer reported that two objections had been received from residents of nearby properties based on the following grounds: parents of schoolchildren parking on the pavements, obstructing driveways and otherwise inconsiderately, particularly at school pick-up and drop-off times as well as other school events; access for emergency services; and the need for a structured plan to address the parking problems before the school was given permission to extend further.

(7) The Case Officer concluded that, having taken into account the key issues referred to in Paragraph (2) above, Development Plan policies and other material considerations, there was a clear need for the proposed development to fulfil the County Council's statutory obligation to ensure that there were sufficient school places available. The Travel Plan required by condition would ensure that the traffic generation/parking issues associated with the increase in pupil numbers (and the estimated relatively small increase in pick-ups and drop-offs) would be suitably mitigated. The proposed development was in accordance with both local and national planning policy and should therefore be approved subject to appropriate conditions.

(8) The Chairman reported that Cllr William Wallace, the local Divisional Member, had written to express his full support for the application, having commented that no further delays should hinder this badly needed extension to the school.

(9) The Committee proceeded to debate during which Members acknowledged the need for the development given the increasing local demand for places at the school and for a School Travel Plan to mitigate the traffic/parking difficulties experienced by local residents. Members asked what might be covered in the Travel Plan; raised the question of its enforcement; and suggested that Travel Plans should be submitted at an earlier stage, when applications were considered by the Committee.

(10) At the Chairman's invitation, Mr R Lockey, Chairman of the Governors of Milborne Port County Primary School, described measures being taken by the school to alleviate the traffic/parking difficulties, which included encouraging parents to use a different access to the site. Mr Lockey referred to the spread of volume of collection due to after-school clubs.

(11) In response to matters raised during discussion, the officers outlined what the Travel Plan could be expected to include (the promotion of safe, active and sustainable travel by staff and pupils - walking, cycling car sharing, using public transport etc); and arrangements for the Plan's implementation, monitoring and review. It was also pointed out that the energy efficiency of building materials was covered by the Building Regulations rather than planning law.

(12) Cllr Hewitt-Cooper, seconded by Cllr Caswell, moved the recommendation by the Strategic Commissioning Manager, Economy and Planning set out in the report.

(13) The Committee RESOLVED in respect of planning application no. 18/04052/R3C that planning permission be GRANTED, subject to the conditions set out in Paragraph 9 of the report, and Condition 3 (Travel Plan) being amended to require the Chairman and Vice-Chairman of the Committee and the local Divisional Member to be consulted on the proposed Travel Plan.

The Committee further resolved that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager, Economy and Planning.

7 **Retrospective Application to Re-contour an Existing Screen Bund to Achieve a Uniform Height and Configuration and Planting with Trees and Shrubs at Tout Quarry, Tout Lane, Charlton Adam, Somerset TA11 7AN - agenda item 7**

(1) The Committee considered the report of the Strategic Commissioning Manager, Economy and Planning on this retrospective application.

(2) The Committee were informed that the key issues for consideration were: amenity considerations (noise and dust); landscape and visual impact; and biodiversity and green infrastructure.

(3) The Case Officer, with the use of maps, plans and photographs, outlined the application, indicating that:

- Tout Quarry had a long history of quarrying and stone related uses but had not itself operated as a quarry for some years since it became worked out
- the application site was the top part of an existing 10m high planted bund that formed the northern boundary of a stoneyard on the floor of the worked-out quarry
- the main purpose of the bund was to provide an acoustic and visual screen between the stone processing area and an adjoining blockworks, and nearby houses on the southern boundary of the village of Charlton Adam
- there were other similar large planted bunds screening the site
- the application related to a heightening and extension of the bund to provide a uniform boundary and an improvement to the acoustic screening
- the planting had already been carried out and had been growing for 2 - 3 seasons, weeds were being managed and the face was now greened up
- the applicant had stated that the strip of Leylandii along the top of the bund only provided a temporary screen until the broadleaved species attained more coverage after which the Leylandii would be removed.

(4) The Case Officer reported that the proposed development did not require a formal Environmental Impact Assessment and by virtue of its nature, size and location would not have significant environmental effects.

(5) The Case Officer reported that South Somerset District Council had raised no objections to the proposal and The Charltons Parish Council had recommended approval. An objection had been received from a neighbour in Chessels Lane who considered: that the bank was very large and the planting should be improved to reduce its visibility; the planting mix should include native shrub species rather than short-lived small tree species; the bank should be pushed further back into the site; and there should be a condition requiring the replacement of any trees that failed with more appropriate planting.

(6) The Case Officer concluded that, having taken into account the key issues referred to in Paragraph (2) above, Development Plan policies and other material considerations, the application should be approved subject to appropriate conditions. While the bund was visible from the north and some properties in Chessels Lane, its height played a significant role in mitigating the impact of noise from the site, both from the stonecutting in the stoneyard and the blockworks to the south. If the bund was removed, lowered or replaced the noise from these operations would be more apparent and be likely to lead to additional noise complaints. Any proposals to draw the bank south away from the adjacent residence would create considerable new disturbance, be likely to damage partially mature planting at the foot of the slope and lead to loss of growth on the remodelled face of the bund. It was not considered that the proximity of the bank to the neighbouring property was

of sufficiently detrimental impact to justify this course of action.

(7) The Case Officer drew attention to an amended recommendation by the Strategic Commissioning Manager, Economy and Planning (circulated in the 'late papers') involving:

- the insertion of a new Condition 1 (Completion of Development);
- the renumbering of Condition 1 as Condition 2; and
- the rewording of Condition 2 (Planting Maintenance Scheme) such that the second paragraph read:

'The scheme shall set out proposals for the management of the existing trees and shrubs, their protection and proposals for management including weed suppression, *and the removal of the existing Leylandii species and their replacement with native hedgerow species*'.

(8) Committee members supported the application subject to the proposed conditions, and to Condition 2 being further amended by the removal of 'hedgerow' in the second paragraph.

(9) Cllr Keating, seconded by Cllr Caswell, moved the amended recommendation set out above.

(10) The Committee RESOLVED in respect of planning application 16/05418/CPO that planning permission be GRANTED, subject to the following conditions:

(i) Completion of Development

The development hereby permitted shall be carried out in strict accordance with the approved plans listed below, and with any scheme or other details submitted to and approved in writing by the Mineral Planning Authority in pursuance of any condition attached to this permission:

- Drawing No. 16/219/035\_0 Rev01 - Site Survey dated 18/07/2016
- Drawing No. 16/219/036\_0 Rev00 - Cross Section A - A dated 30/06/2016
- Drawing No. 16/219/037\_0 Rev01 - Site Location Plan dated 14/07/2016

Reason: To enable the County Planning Authority to deal promptly with any development not in accordance with the approved plans.

(ii) Planting Maintenance Scheme

Within four months of the date of this permission, the applicant shall submit to the Mineral Planning Authority and have approved in writing a scheme for the

maintenance of the planting.

The scheme shall set out proposals for the management of the existing trees and shrubs, their protection and proposals for management including weed suppression, and the removal of the existing Leylandii species and their replacement with native species.

The scheme shall also set out proposals for the replacement of any specimen that dies, becomes diseased or is removed for a period of 5 years following the approval of the scheme.

Reason: To enable the Mineral Planning Authority to ensure that the planting provides the landscape and ecological benefits required by Policies DM1, DM2 and DM8 of the Somerset Minerals Plan.

The Committee further resolved that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager, Economy and Planning.

(The meeting closed at 14.49)

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Somerset County Council  
Regulation Committee  
Report by Service Manager – Rights of Way – Pete Hobley

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*Report Author:* **Pete Hobley**  
*Contact Details:* **01823 358185**  
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*Description of Report:* **CONSULTATION ON AMENDMENTS TO PROCESSING OF APPLICATIONS TO MODIFY THE DEFINITIVE MAP**

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

- 1.1 The backlog of applications to modify the Definitive Map is one of the largest nationally. An application submitted today, based on current resource levels, could experience a 30-year delay before being determined. Definitive Map Modification Order (DMMO) applications should be determined ‘as soon as reasonably practicable’<sup>1</sup>, however there is no set timescale. Over the last 5 years the average number of applications received per annum is 22.5, over double the current determination rate.
- 1.2 Further to a report presented to the Scrutiny for Polices and Place Committee last November following concerns raised about the delay in processing applications, a review of procedures has taken place and a number of efficiency proposals have been identified and recommended for consideration. These proposals will be presented to the Scrutiny for Polices and Place Committee on June 19<sup>th</sup>. It is recommended that the Regulation Committee consider all of these proposals and support those proposals highlighted below. It is also recommended that the Committee provide their support for more officer resource.

## **2. Background**

- 2.1 There are two main areas of concern relating to the backlog of applications awaiting determination:
- The authority is under a statutory duty to determine applications ‘as soon as *reasonably practicable*’ which, based on current resources and determination rates, may not be possible.
  - Directions issued by the Secretary of State to determine applications within a specified time frame means that the order in which applications are determined is affected, with determination of some of the oldest applications being delayed due to resources being redirected to focus on SoS directions .

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<sup>1</sup> Paragraph 3(1) of Schedule 14 to the Wildlife and Countryside Act 1981.

- 2.2 The appropriate response to address the above areas is to increase the determination/ referral rate, either through additional resource or a change to process. A streamlined process has been adopted and is largely still in place, however the levels of scrutiny that currently exist from applicants and objectors means that on most occasions a fully streamlined process is not achievable. A typical investigation will take approximately 6 months to determine (allowing for consultation periods).
- 2.3 The last 5 years has seen continuous process improvement with regard to report structure and being able to use standard text across similar applications. Previous staff turnover and vacant posts were not helpful with regard to service delivery, but recent stability in this area, coupled with the continuous improvement is beginning to pay dividends, but ultimately will not make a dramatic impact on the current backlog or long delays in investigating recently submitted applications.
- 2.4 For the purposes of the process review, consideration of where further efficiencies can be achieved was broken down into 3 distinct stages of dealing with applications; i) Investigation & Report (IR), ii) Decision-making (D), and iii) Post Determination (PD). The following sections summarise the proposals being recommended under each stage and the efficiency that each could deliver. Full details of all proposals, including those not recommended for implementation, can be found in Appendix 1.

## 2.5 Investigation & Report

ID	Proposal	Efficiency per application
IR4	Review both primary and secondary lists of documents	½ day
IR5	Use of volunteer resource to assist with the digitising of records to avoid repeat trips to Somerset Heritage Centre	Neutral in the short-medium term but ½ day in the long term
IR6	Only interview users by phone unless absolutely necessary to do it in person.	1 day (only applies to applications with user evidence)
IR8	Shortened investigation where there is conclusive evidence, eg: referenced as public in the Inclosure Award	2 days (likely to only apply to 12-15 applications)
IR10	Eliminate draft report consultation stage	3 days

## 2.6 Decision-making

ID	Proposal	Efficiency per application
D2	Minimise site visits for Committee decisions	½ day (only applies where decision is taken by the Committee)
D3	Redefine criteria for going to Committee to 'the evidence is borderline in terms of whether	½ day on average

	or not it meets the relevant legal tests'	
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## 2.7 Post Determination

ID	Proposal	Efficiency per application
PD1	Adopt neutral stance for opposed orders where we cannot contribute further to the process with regard to the evidence <i>NB: To be considered on a case by case basis</i>	10 days (only applies to applications resulting in opposed orders).
PD2	Minimal additional work for refusal appeals	2½ days (only applies to refusal appeals)
PD3	Minimal additional work for statement of case for opposed orders	5 days (only applies to application resulting in opposed orders)

- 2.8 The efficiencies per application will vary due to the different scenarios as outlined above but could vary from 5½ to 21 working days. There will undoubtedly be fluctuations either way with these estimates and it must be acknowledged that these proposals are not without risks, albeit they are considered to be calculated risks. Following any possible implementation of these proposals, should these risks present challenges and delays that outweigh the predicted efficiencies, then the proposal(s) will undoubtedly require review.
- 2.9 The proposals around decision-making will be of most interest to the Committee given that on occasions the Committee make decisions on applications to modify the Definitive Map. In relation to D3, currently the decision making is delegated to officers except those applications which in the view of the Economic & Communities Infrastructure Commissioning Director, in consultation with the Chair of the Regulation Committee, are contentious or controversial, shall be determined by the Regulation Committee.
- 2.10 'Contentious or controversial' could be interpreted quite widely and can result in applications being brought before Committee that on the face of the evidence are clear as to what the recommendation should be. It is considered that this would not necessarily be the best use of the Committee's time and it would be more appropriate for the Committee to consider those applications where the evidence supporting the officer recommendation is borderline in terms of whether or not it meets the relevant legal tests.
- 2.11 Other triggers for consideration by Committee have been considered, eg: potential for appeal / objection. However, given the significant level of appeals and objections to recommendations/ decisions, this sort of trigger would be highly unlikely to result in an efficiency and potentially all decisions coming to Committee.
- 2.12 Proposal D2 is also very relevant to the Regulation Committee. It is considered that site visits could be useful in relation to applications relying upon user evidence. However, these are in the minority with most applications currently based on documentary evidence. Some of the historic routes that are subject

to applications have changed physically and are not always suitable for the public use that may be being recommended by the case officer. Modern day suitability is not a matter that can be considered in determining whether rights exist or not, therefore it is felt that site visits for documentary evidence only applications should be minimised wherever possible to ensure that officer time can be focussed on processing applications.

- 2.13 Seven of the 17 proposals in Appendix 1 are not being recommended for taking forward. The efficiencies they could provide range from minimal to 3 days per application. The risks associated with each and commentary as to why they are not being recommended are detailed in Appendix 1.
- 2.14 The focus of the review has been on the efficient use of officer time, however the potential for cost savings should be considered also. Overall, any financial saving is quite minimal, with the main saving being achieved in relation to proposal PD1 (see 2.7 above). The costs of advocacy for public inquiries (c.£2000 per case) is currently borne by Legal Services, hence any saving in this respect wouldn't be reflected in the Rights of Way revenue budget.

### **3 Consultation**

- 3.1 As part of this process review, the Scrutiny for Polices and Place Committee were keen to understand what other authorities do. Contact has also been made previously with Northumberland County Council, and more latterly Norfolk County Council. Regional Surveying Authorities were also consulted on the various aspects of the process. Their approaches to determination of applications are shown in Appendix 1.
- 3.2 The comparison with Northumberland County Council is useful, as they had a backlog of applications with a similar level of resource. Over a period of 10 years or so, they have managed to eliminate the backlog. This comparison was covered in detail when the Committee were briefed in April 2018 (see Appendix 2).
- 3.3 The efficiency proposals being recommended are generally in accord with the approach of other authorities, with PD1 perhaps a notable exception. PD1: *'Adopt neutral stance for opposed orders where we cannot contribute further to the process with regard to the evidence'* is an approach currently taken by Norfolk County Council. Surveyng Authorities are generally expected to support their own orders when they are opposed, and if they don't then there is the risk for an application for costs should it be considered that we have acted unreasonably. Implementation of this proposal will need to be considered carefully on a case by case basis.
- 3.4 There are some proposals that are not recommended but which are adopted by other Surveying Authorities. The efficiencies these represent are relatively minimal and the risks associated with them are considered to be too great.

## **4 Conclusion**

- 4.1 If an average efficiency of 13 days per case is taken, with currently c.10 applications being determined a year, this could result in a total of 130 extra working days per year being freed up. Based on approximate calculations this could enable a further 3 applications to be determined a year reducing the approximate 30 year wait for an application submitted today to 23 years.
- 4.2 Whilst this is a considerable improvement, there would still be a substantial backlog and this highlights the need for additional resources if the rate of determination is to be dramatically increased. The Rights of Way Service will keep under review its processes for determining applications and how these can be improved alongside implementing the recommended proposals. However, a significant reduction in the backlog can only be achieved through increasing the officer resource, and the opportunity to do so in the current climate of budgetary constraints is limited
- 4.3 Continuous process improvement and the above proposals should improve the determination rate, but it doesn't necessarily follow that the backlog of applications will decrease as we have no control over the rate of incoming applications. Based on current average rates and if the above proposals are implemented the backlog is still likely to grow. It is highly likely that the current rate of incoming applications will remain at current levels, or increase further, as we get closer to the 'cut-off' date of 1<sup>st</sup> January 2026 for applications that are based on pre-1949 documentary evidence.
- 4.4 It should also be noted that there are other provisions within the Deregulation Act 2015 that may help with achieving efficiencies. However, regulations are still awaited, hence it remains to be seen as to what impact in reality the provisions will have once commenced.

## **5 Recommendation**

- 5.1 Following consideration of all the proposals, it is recommended that the Regulation Committee provide their support for; the proposed changes (coloured green in Appendix 1) to how applications to modify the Definitive Map are processed, and for an increase in officer resource.

## **List of Appendices**

- Appendix 1 Efficiency proposals
- Appendix 2 Briefing Paper 12<sup>th</sup> April 2018

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**DMMO EFFICIENCY PROPOSALS - PROCESS REVIEW 2018/9**

Proposal not being recommended for taking forward

Proposals recommended for taking forward

Stage	ID	Proposal	Current approach	Risks (Financial/ Legal/ HR/ Political/ Reputational/ 3rd party/ Other)		Potential efficiency		Interdependents	Required actions	Timescale for implementation	Others doing?	Comments	
				Actual risks	Perceived risks	Time	Financial						
Investigation & Report	IR1	No initial consultation on documentary evidence only applications	Initial consultation when file is picked up.	R - Recommendation could change due to evidence submitted.	P,R - Not being fair to those affected (primarily landowners)	3 days labour per case, but a month in overall timescale . This may be cancelled out later in the process, but it is felt that overall this will provide an efficiency of time.	Minimal postage costs saved where e-mail contacts are not known.	Cannot be done with IR3 or IR10.	Amend internal process.	Negligible	BANES	In light of IR10 being proposed this would not be an appropriate proposal. The actual and perceived risks are also other good reasons for not progressing this	
	IR2	Only look at evidence submitted	Verification of evidence submitted at Somerset Records Office. Primary list of documents are researched and when necessary some on the secondary list. What is researched is generally in excess of what is submitted.	L&R - Evidence could be meaningless and misinterpreted if not researched further to judge its context	3 - Applicants could be selective with what evidence they submit to secure the right recommendation.	3 days per case on average, but this could be readily lost due to later challenges		IR3, IR4	Amend internal process.	Negligible	None	With poorer applications this is a reckless approach that could be construed as abandonment of our statutory duty. With better applications it is prudent to validate the evidence	
	IR3	Only research evidence submitted	Verification of evidence submitted at Somerset Records Office. Primary list of documents are researched and when necessary some on the secondary list. What is researched is generally in excess of what is submitted.	L,R - The wrong recommendation could be reached if other primary sources are not researched	3 - Applicants could be selective with what evidence they submit to secure the right recommendation.	2 days per case on average, but this could be readily lost due to later challenges			IR2, IR4	Amend internal process.	Negligible	None	With poorer applications this is a reckless approach that could be construed as abandonment of our statutory duty.
	IR4	Review both primary & secondary lists of documents.	Primary list currently contains 10 sources of documentary evidence. Secondary list contains 13.	L,P,R,O - Unsound decisions may be made by officers and Councillors if the list of documents is shortened too much. Less evidence can make reports harder to write and more challengeable	3 - Disadvantaged parties would be more likely required to undertake their own research to substantiate their opposition to any decision.	Half a day per case. Efficiencies could soon be lost through greater levels of challenge.			IR2, IR3	Undertake review. Make it clear in initial consultation the research that SCC will undertake, but others are welcome to do more. Review application pack	1 week	BANES, Cornwall, N Somerset, S Glos., Northumbria have similar lists.	
	IR5	Use of volunteer resource to assist with the digitising of records to avoid repeat trips to Somerset Heritage Centre	Only some records are digitised. No volunteer assistance	HR - Officer resource is required to digitise the records. P,R - Accusation of partiality where the volunteers represent a particular interest group (users or landowners)	HR - Administration of volunteer work for specific case work would be intensive and would likely be more efficient for officers to undertake the work.	Neutral in the short-medium term, but should provide long-term saving of half a day per case			Further liaison required with Somerset Heritage Centre - AS	1 week to identify tasks and promote opportunity. Dependent upon level of interest and scale of tasks		N. Somerset have used a university student to help in holidays	To digitise all the records that we look at would be unrealistic (even if primary and secondary lists are reviewed). So a trip to the records office would still be necessary.
	IR6	Only interview users by phone unless absolutely necessary to do in person	Interview of users in person/ phone.	O - Discrepancies in statements will be harder to resolve over the phone, particularly if referring to features on the ground or on a map.	O - Interviewing by phone could prove difficult for those that are hard of hearing.	A day per user evidence case on average.	Approx £100-200 mileage costs per user evidence case.		Amend internal process.	Negligible		BANES, Cornwall, & S Glos	Will need to be reviewed on a case-by-case basis as to the benefits of this efficiency. Ultimately a limited impact on the overall determination rate due to the small number of user evidence cases
	IR7	Don't interview users		F,R - Potential exposure to costs at public inquiry, due to witnesses contradicting their statements under cross examination	R - Accusations from disadvantaged parties of not validating the evidence sufficiently.	2 days per user evidence case on average.	Approx £100-200 mileage costs per user evidence case.		Amend internal process.	Negligible		Devon & Wiltshire	Some validation or clarification is usually necessary to be able to come to a sound recommendation.

	IR8	Shortened investigation where there is conclusive evidence eg: referenced as public in the Inclosure Award.	Primary list of documents is researched for every case	R - evidence of subsequent change in status will be overlooked leading to flawed decisions. Longer delay for other applications where any such applications are batched.	P,R,3 - Investigation could be criticised as not thorough enough.	Potentially two days for every affected application. However, depending upon where the bar is set, it may only affect 12-15 applications.			Amend internal process. The next such application could be batched with all others with conclusive evidence.	Negligible	None	Need to be clear as to what documents are sufficient to negate the need for any primary list research.
	IR9	Reduce summary analysis	Detailed summary of how the case officer has arrived at their recommendation.	P,R - Any decisions taken will be less informed	R,3 - The less reasoned and comprehensive a recommendation is, the greater the potential any decision based upon it will attract opposition.	Half a day per case.	Officer time.		Amend internal process.	Negligible		Valuable to have a written record of the reasoning behind any recommendation.
	IR10	Eliminate draft report consultation stage	Draft report is prepared and consulted upon.	P,R,3 - Interested parties will have one less opportunity to make comment	P,R,3 - Disadvantaged parties will request extensions of time to find evidence to support their case. Deferral of committee items. Landowners will find it harder to respond in full as they may not appreciate the full case against them until they see the County Council's analysis.	3 days per case on average, but a month in overall timescale.	Minimal postage costs saved where e-mail contacts are not known.	Cannot be done with IR1 Will have greater impact if taken with D1.	Amend internal process.	Negligible	Cornwall, Devon, Dorset, N Somerset, S Glos, Wiltshire	The efficiency won't be delivered every time as late evidence may be submitted that requires consideration and a deferral of the decision.
Decision-making	D1	Full delegated powers, in consultation with County Solicitor		P,R - reduced transparency of decision-making process	R- Disadvantaged parties will make suggestions of officer bias and unprofessional decision-making.	1.5 days per case on average.	Officer and solicitor time.	D3	Amend constitution and code of practice.	6 months minimum	BANES & Wiltshire	Increased criticism of officers from disadvantaged parties.
	D2	Minimise site visits for Committee decisions	Following consultation with the Chair, 'contentious or controversial' applications go to Regulation Committee for a decision. Other applications are determined under delegated powers in consultation with the County Solicitor.	N/A	3 - Disadvantaged parties may feel that Councillors have not considered a case in full if they have not been to site.	Half a day per committee item.	Approx. £100-300 saving in mileage expenses per item.	D1	Agreement from Regulation Committee	1 month	Dorset, Devon, N Somerset & S Glos	Site visits are of most use in relation to some user evidence cases.
	D3	Redefine criteria for going to Committee to 'the evidence is borderline in terms of whether or not it meets the relevant legal tests'.		P,R - The Committee may have less RoW items.	3 - Change to the criteria may be viewed by some with suspicion. P,R - Fewer items may result in Councillors requiring more regular training	0.5 day per case on average due to possibly less items going to Committee.			D1	Amend constitution, code of practice and internal process.	6 months minimum	
Post determination	PD1	Adopt a neutral stance for opposed orders where we cannot contribute further to the process with regard to the evidence	Orders resulting from officer recommendation, which are subsequently opposed are supported at any subsequent process, generally a public inquiry. This usually means having an advocate.	F- exposed to costs if the objector is represented R - the expectation is that the Order Making Authority will support its own order.	R,3 - The success rate for opposed orders may fall due to a reliance on the applicant to provide any support and cross-examination that may be required.	Approx. 2 weeks per opposed order	Approx £2k saving as no advocacy required (usually outsourced).		Amend internal process.	Negligible	Norfolk	Given many orders are opposed this would represent a good efficiency and help minimise delays between the order making and any public inquiry. However, it is not without risk and if the objector is legally represented then SCC may become exposed to a costs application. Only aware of one authority that takes this approach. This would have to be looked at on a case-by-case basis.
	PD2	Minimal additional work for refusal appeals	Further work in addition to the case report is undertaken to counter any additional representation that has been put forward as part of the appeal.		R,3 - The success rate for appeals against refusal may fall due to not addressing any counter-arguments of new evidence submitted by the appellant.	Approx. half a week per appeal.		IR9 not progressing reduces the risk associated with this proposal	Amend internal process.	Negligible	Cornwall, Devon, S Glos., Wiltshire & Northumberland	This would have to be looked at on a case-by-case basis to ensure that any blatant inaccuracies are responded to.
	PD3	Minimal additional work for statement of case for opposed orders	Further work in addition to the case report is done as part of the statement of case, particularly where the objection introduces new evidence or interpretation that it is felt requires a response.	F, R - If we do not amend our case in the face of new evidence or arguments it could be deemed unreasonable in which case we would be exposed to costs	R - By not addressing any additional points in the statement of case it may affect the success rate at public inquiries. However, witness statements provide a further opportunity to do this.		Approx. a week per opposed order.		IR9 not progressing reduces the risk associated with this proposal	Amend internal process.	Negligible	Wiltshire & Northumberland



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# RIGHTS OF WAY DEFINITIVE MAP MODIFICATIONS

## Briefing Paper 12<sup>th</sup> April 2018

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### The Backlog

We currently have around 330 applications to modify the Definitive Map. Having a backlog of applications is not a new situation for SCC and it is one that has worsened as staff resource has been reduced in previous years to assist with delivery of revenue savings. When faced with a mismatch of workload to resource it is logical to look at the process as to how it can be made more efficient.

### The Process

In general terms, when it comes to determining modification applications, the legislation and case law does constrain what is achievable in dramatically increasing productivity. Work was done a number of years ago to streamline the investigative process for modification applications and this work was shared across the region. In summary it involved only looking at the most relevant documents (a primary list), providing summary reports for the Regulation Committee and setting rigid timescales for each application.

Current procedures are still very much in line with the streamlined approach, however Committee reports have returned to the full investigation report. This has occurred largely due to the scrutiny of summary reports and the need to provide the Committee members with greater level of detail in order that there was greater confidence when making a decision.

As you may be aware, the increasing backlog has begun to generate a number of appeals against non-determination as well as other contact. It was suggested by one of the applicants that we could benefit from looking at how Northumberland County Council have managed to address their backlog. The context of the 2 authorities is summarised below for your information.

<b>Aspect</b>	<b>SCC</b>	<b>NCC</b>
<i>Resource</i>	<i>2 case officers</i>	<i>2 case officers</i>
<i>Backlog</i>	<i>c.330</i>	<i>Minimal, but c.140 in year 2000</i>
<i>Application receipt rate p/a</i>	<i>c.30</i>	<i>8-15</i>
<i>Determination rate of modifications p/a</i>	<i>c.10 . Extremely variable due to high staff turnover and high profile challenges/ cases.</i>	<i>c. 20-30 The 2 officers are long-established in post.</i>
<i>Approx. turnaround from pick-up to determination</i>	<i>c. 6-12 months</i>	<i>c.12 months</i>
<i>Approx. objection/ appeal rate</i>	<i>In excess of 90%</i>	<i>60-70%</i>
<i>Committee</i>	<i>Regulation Committee (9 members)</i>	<i>Rights of Way Committee (8 members)</i>

As you will note there are a couple of distinct differences which belie the current position of the two authorities. In Somerset the application determination to receipt relationship is a negative one, whereas in Northumberland it is positive. The percentage of determinations/ orders challenged is also far higher in Somerset. The latter will naturally have an adverse impact on the determination rate.

Having a stable long-established workforce cannot be underestimated in terms of the impact on NCC's productivity, which is an area where SCC have struggled. Another reason for the difference in determination rate is that at NCC their workload includes as many anomaly cases as modification applications, and more often than not anomalies will be far quicker to process and don't require as detailed an investigation or report.

It is fair to say that SCC considers evidence in more detail than at NCC, albeit this level of analysis is often warranted to address the degree of comment that is regularly received in relation to SCC reports.

### **Current context**

It has been useful to look at NCC's context but it needs to be acknowledged that there are differences between the authorities and there is no quick-fix to the backlog. Where possible we will consider where the length of reports can be reduced, while not compromising their robustness for officer or Committee decision-making. Also, due to a number of the applications having a similar evidence base, there is increasingly a degree of standard analysis which can be usefully transferred from case to case, where deemed appropriate.

### **Committee reports**

It is an option to provide summary reports for the Committee, as per the streamlined approach that was attempted some years ago, however this would actually create additional work for officers and may create a perception of withholding wider information relating to each case.

Officers are keen to achieve efficiencies in process where possible, however we also need to ensure that all available evidence is considered when coming to a recommendation / decision. For these reasons the current reporting format will continue, however **officers would welcome any feedback that Committee members wish to make on the style, length and format of reports.**

### **Statement of Priorities**

The Statement of Priorities is due a refresh and it is intended that the Committee will be consulted on this in due course. Any revision will consider in greater detail how the investigation of the backlog is prioritised.