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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’¹, 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 19th. 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 .

¹ 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 1st 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 12th April 2018