



**CONSULTATION ON AMENDMENTS TO THE
RIGHTS OF WAY STATEMENT OF PRIORITIES**

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1. Summary of Key Issues and Recommendation

1.1. The County Council currently has a backlog of 375 undetermined applications to modify the Definitive Map and Statement. The policy which dictates the order in which those applications are investigated is known as the Statement of Priorities.

1.2. Applications received prior to November 2011 were scored against a range of criteria set out in the Rights of Way Improvement Scorecard. Under the current Statement of Priorities (appendix 1) those applications are investigated in their scored order. Applications which have been received since November 2011 have not been scored and are to be dealt with in chronological order. The policy also allows for applications to be 'taken out of turn' in certain circumstances.

1.3. It has been over four years since the Statement was last reviewed. On the whole the Statement is considered to work well. However, following continued concerns and discussion with user representatives, it is now recommended that greater priority should be given to those applications which are supported by user evidence. It is also recommended that applications which are not compliant with certain procedural requirements should be given less priority.

1.4. A copy of a draft Statement, including the proposed changes, can be found at appendix 2. It is recommended that the Regulation Committee provide their support for the proposed changes which will need to be approved by the Lead Member for Environment and Climate Change.

2. Background

2.1. The County Council has a duty to keep the Definitive Map and Statement under continuous review. An order must be made to modify the Map and Statement where evidence is discovered which, when considered with all other available evidence, shows that they are in error¹.

2.2. The duties described in the above paragraph apply irrespective of whether an application has been made. However, there is provision within the legislation which allows for any member of the public to make an application for a Definitive Map Modification Order. Where such an application is made in accordance with the legislation, the County Council must determine it as soon as reasonably practicable.

2.3. The County Council's Statement of Priorities sets the framework for how applications are to be prioritised. This ensures fairness and transparency for applicants.

¹ This duty can be found in section 53(3)(c) of the Wildlife and Countryside Act 1981.

2.4. Historically, the County Council scored applications against a series of criteria. They were then investigated in scored order, those with the highest scores being given higher priority. The policy of scoring new applications was removed from the Statement of Priorities when it was last reviewed in 2018. However, at that time it was also decided that those applications which had already been scored should continue to be dealt with in scored order. Those applications which had not been scored (i.e. those received after 28 November 2011) would be investigated in chronological order.

2.5. As part of the 2018 review the County Council considered various other options for prioritising the applications it received. One such option was to give greater priority to applications which were supported by user evidence. While this was considered a strong option at the time, no consensus could be reached and there were concerns that it would be open to abuse.

2.6. The Statement has operated well since 2018 but this is felt to be an opportune time to undertake another review and consider possible changes to further improve the policy.

3. Key proposals

3.1. The changes now being proposed are set out in the draft version of the Statement of Priorities at appendix 2. Many of those changes form part of a tidying up exercise and/or clarify the existing wording. Of particular note in this respect is that paragraphs 2 and 3 in the existing Statement would be merged into a single paragraph (paragraph 2 of the proposed new Statement). The intention here is to make the policy more concise without changing the overall meaning. Changes have also been made to reflect the move to a new unitary council.

3.2. In addition to the minor amendments referred to above there are two proposals with wider reaching implications. The first of those proposals relates to applications supported by user evidence while the second concerns uncertified applications. Each of these proposals is discussed in more detail below.

User Evidence

3.3. The current review does not propose to alter the general approach to prioritising applications; those applications which were scored prior to 2011 would continue to be ranked in that order while later applications would be ranked in chronological order. However, the Statement of Priorities includes a number of factors which allow for an application to be dealt with out of the normal order. It is recommended that these factors should be updated to allow applications based on user evidence to be given greater priority. The rationale for this is that it would

provide greater opportunity to gather first-hand evidence from those familiar with the route in question.

3.4. Broadly speaking the evidence supporting any given case falls into one of two categories; documentary or user evidence. The majority of the County Council's applications are based solely on documentary evidence. However, there is a significant minority which include user evidence.

3.5. User evidence is typically formed of first-hand witness accounts of the route. It can sometimes be collected on user evidence forms or letters/emails. However, evidence given in person (either by way of an interview with an officer or at a public inquiry) can be incredibly useful in adding to the written accounts. It will often draw out information which would not otherwise have been apparent from the written evidence. Furthermore, evidence given in this way normally carries more evidential weight.

3.6. The size of the County Council's backlog of applications means that it can be many years between the receipt of an application and it being investigated. As time passes interested parties (e.g. users, landowners etc) tend to move away or become unavailable for other reasons such as ill health or death. As a result, the opportunity to gather and verify evidence diminishes. Documentary evidence tends not to suffer from this problem to the same extent. Furthermore, even where witnesses are still available when investigation comes to take place, the passing of time inevitably makes their recollection of events less detailed and, sometimes, less reliable. It is primarily for these reasons that it is proposed to prioritise applications which are supported by user evidence. Investigating them sooner will give the Council a greater opportunity to gather valuable evidence from users, landowners and other interested parties.

3.7. It will be noted that the amended Statement is worded so as to prioritise those applications which, at the time of their submission, were accompanied by five or more user evidence forms. This is to avoid applicants abusing the system by submitting a very small amount of user evidence with the sole intention of pushing their application up the list (i.e. the concern that was raised when this policy change was considered during the 2018 review).

Uncertified applications

3.8. Schedule 14 to the Wildlife and Countryside Act 1981 sets out how an application to modify the Definitive Map and Statement should be made. First, the applicant must complete an application form detailing what changes they are seeking and what evidence they are submitting in support of their application. Having done this, the application is added to a public register.

3.9. Having made the application the applicant must then serve notice on affected landowners/occupiers. Finally, they must certify to the County Council that those notices have been served. Once certification has taken place the County Council has a duty to determine the application and it must do so 'as soon as reasonably practicable'.

3.10. While the majority of applications in the County Council's backlog comply with the requirements of Schedule 14, there are a significant minority for which the second and third steps in the application process (i.e. notice serving and certification) have not yet been completed.

3.11. The County Council's current practice is to strongly encourage applicants to fully comply with the application requirements as set out in Schedule 14. However, the lack of a certificate has not thus far been a factor in determining the priority given to an application.

3.12. The proposed revisions to the Statement of Priorities alter this approach. When uncertified applications reach the top of the queue they would be held in abeyance until such time as a certificate had been received from the applicant or all other certified applications had been investigated (see paragraph 3 of the revised Statement).

3.13. By altering the policy in this way the County Council will be sending a stronger message to applicants that they ought to be complying with all of the statutory requirements. It also ensures that resources are focused on those applications which the County Council has a duty to determine as soon as reasonably practicable. That is not to say that the uncertified applications should not be considered. However, they would typically be treated under the new policy as a lower priority than those applications which had been certified.

3.14. The proposed Statement of Priorities includes an exception to the general rule of holding uncertified applications in abeyance. That rule would not apply to those applications which had been taken out of the normal order in accordance with paragraph 4 of the revised Statement. In such cases the applicant would still be strongly encouraged to certify their application. However, where that step is not taken the Council would not immediately suspend investigation. The reason for this is that, by definition, applications which are taken out of the normal order are considered to be of higher priority. Having accepted the need to investigate such cases ahead of others in the queue, it would seem illogical to then deprioritise them as a result of a failure in the application process.

3.15. It should be noted that the approach set out above is not without disadvantages. If the applicant is dissatisfied with their application being held in abeyance then it will normally be within their gift to rectify the situation (i.e. they can serve notice on the landowner and certify that they have done so). However, that option is not open to other affected parties such as landowners.

3.16. Holding an uncertified application in abeyance is likely to lead to further delays in the affected landowner(s) being informed of the existence of that application. Furthermore, unless the application meets one of the criteria for being taken out of turn, it is likely to remain uninvestigated while newer certified cases continue to take priority over it. The affected landowner(s) will therefore have longer to wait for a resolution to the issue. During that time the application would remain on the Council's register and would need to be disclosed to potential buyers conducting local searches.

3.17. However, as mentioned above, de-prioritising uncertified applications will allow the Council to focus its resources on those cases which it has a duty to determine as soon as reasonably practicable.

3.18. Furthermore, it should be noted that the Deregulation Act 2015 will pass the burden of serving notice on the landowners affected from the applicant to the Council. The relevant provisions of that Act are yet to be commenced but it is understood that Defra are looking to bring them into force later this year and that the intention is that they would apply retrospectively (i.e. there would be a duty on the Council to serve notice on the landowners affected by applications in our backlog as well as those affected by new applications). If this is the case then all applications will become certified in due course. At that time any issues surrounding the prioritisation of uncertified applications is likely to fall away.

3.19. In addition to requiring the Council to serve notices on landowners, the Deregulation Act 2015 will also make a number of other changes which are intended to streamline the application process. It is hoped that this will assist in reducing the size of the current backlog. It may also necessitate further changes to the Statement of Priorities. Any changes which would affect the way in which applications are prioritised would need to be agreed by the Lead Member. However, it is recommended that officers be authorised to make minor editorial amendments to the Statement where those amendments have no bearing on the overall mechanism for prioritising applications. The intention of this is to allow reference to the relevant sections and schedules of the Wildlife and Countryside Act 1981 to be updated as these are changed by the Deregulation Act 2015.

4. Consultation

4.1. Over the previous two years a number of user representatives have made strong representations that user evidence applications should be given greater priority. The reasons given are much the same as those set out above.

4.2. The Somerset Local Access Forum (whose members represent a variety of interests including landowners and users) were consulted on amending the Statement of Priorities on 13 October 2022. However, at the time the proposals around holding uncertified applications in abeyance were not being considered. The Forum have not met since October 2022 and so it has unfortunately not been possible to seek their views on that particular proposal.

4.3. The Forum were supportive of each of the other changes being proposed. They also suggested that applications for routes which have become obstructed should be given greater priority. This is considered to already be addressed within paragraph 6(ii) of the revised Statement which allows for applications to be taken out of turn in exceptional circumstances having had regard to the likelihood of a route being obstructed by a development.

5. Conclusion

5.1. Officers have been acutely aware to ensure that any proposed revision to the policy is necessary, light-touch, maintains a fair and balanced approach, and does not become overly cumbersome to administer. This final point is considered to be critical to ensuring that resources are not unnecessarily diverted away from dealing with the current outstanding applications.

5.2. It is proposed that the policy be amended to enable cases which rely on user evidence to be investigated as a high priority while individuals' experiences of a route are fresher in their minds. In addition the proposed revisions would, in most cases, give greater priority to those applications which have been certified. In doing so the Council will be better able to focus its resources on those applications which it has a duty to determine as soon as reasonably practicable.

5.3. The decision as to whether or not to adopt any amendments to the current policy will be made by the Lead Member for Environment and Climate Change.

5.4. Should the proposed changes to the policy be adopted officers will continue to monitor their effectiveness in order to identify and address any unintended consequences.

6. Recommendation

6.1. It is recommended that the Regulation Committee provide their support for the proposed changes to the Statement of Priorities.

List of Appendices

Appendix 1. The current Statement of Priorities

Appendix 2. Draft Statement of Priorities with proposed changes