

Decision Report – Lead Member Decision



Decision Date – 18/03/2024

Key Decision – no

Revised Rights of Way Statement of Priorities approval

Executive Member(s): Cllr Richard Wilkins, Lead Member for Transport and Digital

Local Member(s) and Division: N/A

Lead Officer: Andrew Saint, Senior Rights of Way Officer

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Summary / Background

1. The Council currently has a backlog of 373 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 Rights of Way Statement of Priorities.
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.
3. It has been over five years since the Statement was last reviewed. On the whole the Statement is considered to work well. It is therefore suggested that the broad approach to prioritisation should remain unchanged. 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. This will provide greater opportunity to gather first-hand evidence from those familiar with the application route. It is also recommended that applications which are not compliant with certain procedural requirements should be given less priority. This will ensure that the Council’s resources are focused on those applications which it has a duty to determine as soon as reasonably practicable.

Recommendations

4. That the Lead Member for Transport and Digital:
 - i) approves the revised Rights of Way Statement of Priorities at appendix 2 and that it becomes policy with immediate effect; and
 - ii) authorises the Rights of Way Service Manager to make further minor editorial amendments to the Statement of Priorities where those amendments have no bearing on the overall mechanism for prioritising applications.

Reasons for recommendations

5. To enable cases which rely on user evidence to be investigated as a high priority while individuals are still alive and can recall their experiences of a route and any events are fresher in their minds.
6. To give greater priority to applications which have been certified thus allowing the Council to focus its resources on those applications which it has a duty to determine as soon as reasonably practicable.
7. The opportunity is also taken to tidy up and/or clarify existing wording. The intention being to make the policy more concise.

Other options considered

8. There is no statutory requirement to produce a Statement of Priorities. It would therefore be open to the Council to abandon the policy altogether. However, its purpose is to set the framework for how applications are to be prioritised. This ensures fairness and transparency for applicants. The policy is also central to the Council's response when requests are made to the Secretary of State for an application to be determined within a specified timeframe¹. For these reasons it is generally considered good practice to have a Statement of Priorities in place.
9. It would also be open to the Council to continue with the current Statement of Priorities and not make any revisions to it. The reasons why the proposed

¹ Such requests are made under paragraph 3(2) to Schedule 14 of the Wildlife and Countryside Act 1981.

amendments are being put forward are set out in the 'Background' section below.

Links to Council Plan and Medium-Term Financial Plan

10. The Council Plan includes the following priorities:
 - i) A Greener, More Sustainable Somerset; and
 - ii) A Healthy and Caring Somerset

11. The rights of way network is central to providing active and sustainable travel options. It has also been shown to be hugely beneficial in terms of improving health and wellbeing. However, in order to fully realise these benefits the network needs to be clearly defined. It is the Definitive Map, and the associated mechanisms for updating it, which enables members of the public and decision makers to have confidence as to the extent of the current network. The Statement of Priorities is the policy which dictates the order in which potential errors in the Map and Statement are addressed and therefore assists in delivering the two priorities referred to above.

12. Furthermore, one of the principles underpinning the Council Plan is 'A council with evidence based and open decision-making'. The Statement of Priorities ensures that the Council is open and transparent in its approach to prioritising the large backlog of applications which exist. By giving greater priority to applications supported by public use, the Council will be able to better interrogate the evidence while it is still available and fresh in the public's mind.

13. The proposed revisions to the Statement of Priorities are not considered to have a direct impact on the Medium Term Financial Plan. The decision aims to alter the order in which the Council investigate applications. In itself it would have no impact on the number of outstanding applications or the investigation/determination process. It therefore has no income or expenditure implications.

Financial and Risk Implications

14. The proposed revisions to the Statement of Priorities are not considered to have any financial impacts. The decision aims to alter the order in which the Council investigate applications. In itself it would have no impact on the number of outstanding applications or the investigation/determination process. It therefore has no income or expenditure implications.

15. Any substantive update to the Statement of Priorities will lead to some applications being given greater priority and moving up the queue. Other applications will become less of a priority and will move down the queue. Anyone with an interest in applications falling into the latter camp may well be disappointed and, in some circumstances, may look for ways of challenging the decision. One option available to many of them would be to request the Secretary of State to direct the Council to determine their application by a specified date. If such a request were successful it would trigger the application being moved to the top of the queue and being dealt with as a priority. The impact of this occurring in a small number of cases is low. However, were such appeals to be made in relation to a large number of applications then it would put a considerable strain on the service's already stretched resources. Other options available to a dissatisfied applicant would be an ombudsman complaint or seeking negative press coverage. In both cases the associated risk to the Council would largely be reputational.

Likelihood	2	Impact	2	Risk Score	4
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16. There is also a risk that applicants will attempt to abuse the proposed system. Applicants may choose to include minimal user evidence with their applications, not because they believe that this adds anything to their case, but simply because it will lead to it being given greater priority. As discussed below, the revised policy is worded so that only applications which were supported by five or more user evidence forms will be taken out of turn and prioritised. The intention here is to make it harder for the policy to be abused.

Likelihood	2	Impact	1	Risk Score	2
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Legal Implications

17. Under the revised policy uncertified applications would typically be held in abeyance when they reach to top of the queue. The only instance in which that would not be the case would be if the application had reached the top of the queue on account of it being taken out of the normal order in accordance with other provisions within the Statement of Priorities.
18. Most uncertified applications would therefore remain in abeyance until such time as they are certified or until all uncertified applications had been determined.

One of the benefits of this approach is that it will further encourage applicants to complete the whole of the application process.

19. It has been suggestion by some that it would not be lawful for the Council to determine applications which have not been certified. However, legal advice received by the Council has confirmed that we are able to waive the requirement for an application to be certified where this does not cause substantial prejudice to the parties involved.

HR Implications

20. There are no HR implications of the proposed revisions to the Statement of Priorities.

Other Implications:

Equalities Implications

21. The Statement of Priorities dictates the order in which applications to modify the Definitive Map and Statement are prioritised. The proposed amendments to the policy will result in some applications receiving greater priority while others will be of a lower priority. However, all applications will ultimately be determined. This will provide greater clarity as to the extent of the rights of way network and have a positive impact on access.
22. Equality and Diversity impacts are detailed in the Equalities Impact Assessment below. However, in summary, there is no reason to believe that the policy change will disproportionately affect any protected group.
23. There are no known Human Rights implications of this decision.

Community Safety Implications

24. The current Statement of Priorities includes provision for applications to be given greater priority where an affected party is experiencing exceptional problems due to an application that impacts on their property. Whether any specific application would be taken out of turn in accordance with that provision would need to be considered on a case by case basis. However, factors such as the application route being used to facilitate crime or having a negative impact on quality of life would certainly be relevant. It is proposed to retain this provision within the revised policy.

25. None of the proposed changes to the are thought to have community safety implications.

Climate Change and Sustainability Implications

26. This decision is not considered to have any climate change or sustainability implications.

Health and Safety Implications

27. Previous iterations of the Statement of Priorities scored applications against a set of criteria which included health and safety factors. Those cases with a higher score received greater priority. Applications which were scored but which have not yet been determined will continue to be prioritised in that way. However, no scoring has taken place for applications received since 2011 and it is not proposed to return to that mechanism for prioritising. While there are no doubt benefits to adopting such a policy, assessing an application in this way is time consuming and will lead to longer delays for some applicants compared to a chronological system, which in the context of the number of applications awaiting determination is untenable regarding applicant expectations. Furthermore, the process is subjective which inevitably leads to a certain amount of disagreement with members of the public who believe an application should have received a different score. As a result it can lead to resources being unnecessarily diverted away from determining the applications themselves.

28. This decision is not considered to have any health and safety implications.

Health and Wellbeing Implications

29. This decision is not considered to have either a positive or negative impact on health and wellbeing.

Social Value

30. This decision is not considered to have any social value costs or benefits.

Scrutiny comments / recommendations:

31. The proposed decision has not been considered by a scrutiny committee. However, the former County Council's Regulation Committee was consulted in

March 2023. It was that Committee which, prior to 1 April 2023, was responsible for determining applications which did not fall within powers delegated to officers. Since 1 April, that responsibility has transferred to the Strategic Planning Committee.

32. The Regulation Committee supported all the proposed changes to the Statement of Priorities.

Background

33. The 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 error².
34. 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 Council must determine it as soon as reasonably practicable.
35. The Council's Statement of Priorities sets the framework for how applications are to be prioritised. This ensures fairness and transparency for applicants.
36. 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.
37. As part of the last review of this policy in 2018 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 This duty can be found in section 53(3)(c) of the Wildlife and Countryside Act 1981.

38. 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.

Key proposals

39. 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.
40. 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

41. 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.
42. Broadly speaking the evidence supporting any given case falls into one of two categories; documentary or user evidence. The majority of the Council's applications are based solely on documentary evidence. However, there is a significant minority which include user evidence.
43. 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.

44. The size of the 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.
45. 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

46. 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.
47. Having made the application the applicant must then serve notice on affected landowners/occupiers. Finally, they must certify to the Council that those notices have been served. Once certification has taken place the Council has a duty to determine the application and it must do so 'as soon as reasonably practicable'.

48. While the majority of applications in the 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.
49. The 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.
50. 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).
51. By altering the policy in this way the 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 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.
52. 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 for various policy reasons. To then deprioritise those applications by holding them in abeyance would seem illogical.
53. 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 affected landowner(s) and certify that they have

done so). However, that option is not open to other affected parties such as landowners.

54. 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 awaiting investigation 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.
55. 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. It will also further encourage applicants to follow the current application process in full.
56. Furthermore, it should be noted that the Deregulation Act 2015 will pass the burden of serving notice on affected landowners 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 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 are likely to fall away.
57. In addition to requiring the Council to serve notices on affected landowners, the Deregulation Act 2015 will also make a number of other changes which are intended to reform 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.

Background Papers

58. None

Appendices


1. The current Statement of Priorities
2. Statement of Priorities with proposed changes

Report Sign-Off (if appropriate)

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	22/09/2023
Communications	Peter Elliott	11/01/2024
Finance & Procurement	Nicola Hix	22/09/2023
Workforce	Alyn Jones	22/09/2023
Asset Management	Oliver Woodhams	22/09/2023
Executive Director / Senior Manager	Mickey Green	22/09/2023
Strategy & Performance	Alyn Jones	22/09/2023
Executive Lead Member	Cllr Richard Wilkins - Lead Member for Transport and Digital	27/02/2024
Consulted:		
Local Division Members	N/A	
Opposition Spokesperson	Cllr Diogo Rodrigues - Opposition Spokesperson for Transport and Digital	25/09/2023
Scrutiny Chair	Cllr Martin Dimery - Chair of Scrutiny Committee: Climate and Place	08/10/2023

Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer or
www.somerset.gov.uk/impactassessment

Organisation prepared for (mark as appropriate)	 Somerset Council					
Version	1		Date Completed	08/09/2023		
Description of what is being impact assessed						
Proposed revisions to the Rights of Way Statement of Priorities						
Evidence						
What data/information have you used to assess how this policy/service might impact on protected groups? Sources such as the Office of National Statistics , Somerset Intelligence Partnership , Somerset's Joint Strategic Needs Analysis (JSNA) , Staff and/or area profiles ,, should be detailed here						
A brief assessment of application data has been made. However, as this does not include data in relation to any of the protected characteristics, it was of little assistance.						

Who have you consulted with to assess possible impact on protected groups and what have they told you? If you have not consulted other people, please explain why?

The Somerset Local Access Forum (whose members represent a variety of interests including landowners, users and other backgrounds) were consulted on amending the Statement of Priorities on 13 October 2022. At the time the proposals around holding uncertified applications in abeyance were not being considered. However, 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.

Individual user groups such as the British Horse Society were also consulted on, and supportive of, greater priority being given to applications with user evidence.

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
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<p>Age</p>	<p>Under the present policy it can be many years (even decades) between written user evidence being gathered and individuals having the opportunity to give their evidence orally. This disproportionately impacts upon the elderly who are more likely to die in the intervening years.</p> <p>The proposed policy addresses this situation by reducing the time between receipt of an application and the collecting of statement from users.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Disability</p>	<p>Some applications in the backlog will offer greater benefit to those with disabilities than others. Without fully assessing all 375 applications is it not possible to know which would be most beneficial and how these are likely to be affected by the proposed changes to the policy. However, there is no reason to think that they would be disproportionately affected.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Gender reassignment</p>	<p>Having considered gender reassignment we do not foresee any disproportionate positive or negative impact</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Marriage and civil partnership</p>	<p>Having considered marriage and civil partnership we do not foresee any disproportionate positive or negative impact</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Pregnancy and maternity	Having considered pregnancy and maternity we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race and ethnicity	Having considered race and ethnicity we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	Having considered religion or belief we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	Having considered sex we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	Having considered sexual orientation we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Armed Forces (including serving personnel, families and veterans)	Having considered the impact on the armed forces we do not foresee any disproportionate positive or negative impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<p>Other, e.g. carers, low income, rurality/isolation, etc.</p>	<p>Low income or rural areas are not known to be affected by</p> <ul style="list-style-type: none"> i) applications supported by user evidence; or ii) uncertified applications <p>to a greater or lesser extent to any other area.</p> <p>As such we do not foresee any disproportionate positive or negative impact</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Negative outcomes action plan

Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
	Select date			<input type="checkbox"/>

If negative impacts remain, please provide an explanation below.

Completed by:

Andrew Saint

Date	08/09/2023
Signed off by:	Andrew Saint
Date	08/09/2023
Equality Lead sign off name:	Tom Rutland
Equality Lead sign off date:	25/10/2023
To be reviewed by: (officer name)	Andrew Saint
Review date:	Every 5 years or when the policy is reviewed should that be sooner