

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member Countryside and Rural Affairs
Date:	14 January 2019
Title:	Definitive Map Modification Order Application Policy and Process
Report From:	Director of Culture, Community and Business Services

Contact name: Jo Heath

Tel: 01962 847717

Email: Jo.heath@hants.gov.uk

1. Recommendations

It is recommended that the Executive Member for Countryside and Rural Affairs:

- 1.1. Approve the new Policy for determining claims made under s53(5) Wildlife and Countryside Act 1981 known as Definitive Map Modification Orders
- 1.2. Support a review of the application process to ensure better quality applications, improved customer self service and more effective use of existing resources.

2. Executive Summary

- 2.1. The purpose of this paper is to present the context and the current issues concerning applications made under s53 Wildlife and Countryside Act.
- 2.2. This report seeks approval for a change in the current policy for dealing with claims to amend the definitive map of public rights of way (Definitive Map Modification Orders – DMMOs), which are made under s.53(5) Wildlife and Countryside Act 1981.
- 2.3. The recommendations build upon Hampshire County Council's existing claims policy, whilst introducing new provisions. These include the ability to consider network benefit, public safety improvements and the type of evidence provided in support of applications.

2.4. The new policy seeks to:

- Amend the format of the current claims list, splitting it into two lists containing historic and user-based applications.
- Update the mechanism for prioritising the order in which claims are processed

3. Contextual information

3.1. The Definitive Map and Statement are the legal record of public rights of way. Under the provisions of Section 53 Wildlife and Countryside Act (WCA) 1981, Hampshire County Council has a statutory duty to keep the Definitive map and Statement “*under continuous review*” and make any modifications to it that are necessary.

3.2. Section 53 of the Wildlife and Countryside Act 1981 enables any member of the public to make application to the County Council to modify the definitive map and statement if they believe there is evidence to show that it is in error, this can involve the recording of new unrecorded routes, or the amendment of existing ones (e.g. changing of status from footpath to bridleway).

3.3. The County Council has a statutory duty to investigate all applications made under Section 53 ‘as soon as reasonably practicable’, and determine whether or not to make a Definitive Map Modification Order (DMMO). There are two main types of application:

- User Claims, which generally have resulted from a conflict over access on a route, where members of the public feel that they have a public rights.
- Historic Claims, where evidence is identified that shows that the Definitive Map and Statement are incorrect and should show a currently unrecorded route or a path should be recorded at a different status.
- On occasions applications include a combination of both user and historical evidence.

3.4. The investigation process includes consultation with a wide array of consultees, the evaluation of forms or statements provided by path users and historic documentary evidence (or in some cases, both). The level of investigation varies depending upon the complexity of the case and the availability of certain sources of evidence – under current legislation, it is necessary for it to be ‘reasonably alleged’ that a public right subsists for a new route to be recorded on the definitive map.

- 3.5. Upon completion of the investigation, officers write a report recommending whether the application should be accepted and present their findings either to the Regulatory Committee or to senior managers (under the Countryside Service’s scheme of delegation).
- 3.6. If the application is to be determined by Hampshire County Council, the order is made and advertised. If objections to the order are received during this period, the application will be referred to the Secretary of State to determine. If the application is refused by Hampshire County Council, the applicant can appeal to the Secretary of State to determine.
- 3.7. Most county councils investigate claims in chronological order, according to the date they were received. Applicants who have been waiting for longer than twelve months for the determination of their claim can appeal to the Secretary of State, asking them to direct the authority to do so immediately.
- 3.8. Many authorities (including Hampshire County Council), have introduced ‘claims policies’ to enable claims to be taken out of order where they meet a stated public need – a claims policy does not eliminate the risk of an appeal, but does allow the Council to use its resources more effectively and target those claims with the greatest public benefit/interest.
- 3.9. When considering a Schedule 14 appeal the Secretary of State may consider any relevant policies that are in place, and a policy which provides greater clarity with regard to the targeting of resources will enable the Council to provide a more robust response to the Secretary of State, as and when such appeals are made.
- 3.10. Under the County Council’s current claims policy, new applications are by default added to a list which is processed in chronological order (‘List A’). The policy allows for prioritisation to be given to application routes which are at risk of being lost to development (‘List B’), or to applications which meet one or more objectives set out in the Council’s Countryside Access Plan (‘List C’).

List A	List B (priority)	List C (priority)
Chronological List (historic and user) in date receipt order.	Applications affected by development	Applications which meet criteria in CAP.

- 3.11. Under the current policy, the onus is on the applicant to demonstrate that their claim should be prioritised by identifying that one or more of the criteria is met (for example, improving connectivity of the rights of way network or taking users off busy roads).

4. Application Workload and Performance

- 4.1. Currently there are 119 applications awaiting investigation, 66 on chronological List A and 53 on priority List C (there are none in List B). The oldest application awaiting investigation was submitted in 2007.
- 4.2. The Countryside and Rights of Way Act 2000 introduced a 'cut-off date' for historic routes to be recorded on the definitive map (2026). As a result, the rate of historic applications being submitted has increased significantly as the cut off date draws nearer, and particularly during the last couple of years.
- 4.3. From 2011 to 2016 an average of 3 applications per year were received for historic claims. This has risen by 160% to an average of 26 applications in 2017 to 2018. Nationally many authorities are seeing an increase in applications, but this level of activity is unique to Hampshire and it is anticipated that it will continue at this pace until the cut off date in 2026.
- 4.4. In the majority of these cases, these applications have been placed in the priority list because the applicant has been able to identify criteria within the current policy. This has had a knock-on effect on the projected determination of other claims already awaiting investigation.
- 4.5. User claims will be affected the most by these further delays, as they are more challenging to investigate after a certain period of time (due to witness availability).
- 4.6. The Deregulation Act of 2015 made a number of changes to rights of way legislation. These amendments have not yet been introduced on account of the associated regulations not having been finalised, although Parliament has indicated this may occur in the first half of 2019. Changes will include the introduction of a 'Basic Evidential Test' for new applications (meaning that the County Council will be able to reject applications which do not meet a minimum standard) but also tougher penalties for authorities who fail to determine applications within the timeframe specified by legislation (and who will have to defend themselves at local magistrates' courts, rather than to the Planning Inspectorate).
- 4.7. User claims generally result from conflict over access to a route which local people may have been using for a number of years. In these instances, there is a widespread desire amongst users and the landowner for the matter to be

resolved promptly, and so the local community looks to the County Council to expedite the investigation of the claim. However, the current policy does not provide for such action to be taken but given the level of local interest (when compared with some historic claims for routes which may not have existed on the ground for a considerable period of time), it could be argued that these are the sorts of applications that the County Council should be prioritising.

5. Proposed Changes to Processing Applications

- 5.1. As a result of changes in legislation and the resulting impact on the numbers and types of Definitive Map Modification Order applications now been received, a LEAN review was commissioned. To achieve a target of reducing the waiting list to 5 years by 2024 the review made the following main recommendations:
 - a) Take steps to improve the quality of applications received
 - b) Review the level of research undertaken in investigating applications
 - c) Review and amend the current claims policy
- 5.2. With regard to recommendation (a) the Definitive Map team will review the guidance made available online with the aim of improving customer self-service and the quality of applications received.
- 5.3. A review of the investigation process will aim to target the existing resources more effectively. There is a balance to be achieved to ensure that the amount of effort invested by the determining authority (HCC) is proportionate and does not expose the authority to risk of challenge which could be costly and time consuming as well as have reputational impact.
- 5.4. A change to the existing claims policy would provide greater clarity for both officers and applicants and ensure that resources are channelled into applications which deliver the greatest public benefit. This change will not impact on the availability of resources within the service however, a policy that separates user and historic claims may enable resources to be targeted more effectively.
- 5.5. A draft of the proposed new Claims Policy is attached (Appendix 1). In drafting the proposed policy, officers have had regard to the models employed by other county councils but have also considered the unique pressures experienced in Hampshire. An illustration of the proposed amendment to the claims lists is shown below:

List A (User)	List A1 (User - Priority)	List B (Historic)	List B1 (Historic Priority)
Default list for new user claims - processed in chronological order	List for prioritised user claims – processed in chronological order	Default list for new historic claims - processed in chronological order	List for prioritised historic claims – processed in chronological order

5.6. The proposed policy **retains** the capacity to expedite claims where:

a route is at risk of being lost to development (and no provision has been made to deal with the route through the planning process), although it is considered that such claims no longer warrant their own list;

the investigation of a claim which involves the collation and appraisal of evidence that is also relevant to another claim on the list.

5.7. The proposed policy would **introduce**:

- i) a new 'user claim' list, for those applications that are partly or wholly supported by user evidence. It is proposed that, in light of the issues raised above, applications are taken from this list at a greater frequency than historic claims, at a ratio to be determined at various intervals;
- ii) a change in emphasis which would see all applications assessed by officers against specific criteria (including network benefit, potential safety improvements and anomaly resolution);
- iii) provision for applications which do not meet the specified criteria to nevertheless be taken out of turn if it is considered to be in the public interest (to be determined by Head of Service).

5.8. The proposed policy would **remove**:

- i) The specific waiting list associated with routes threatened by development, on account of it not having been used for a number of years;
- ii) the requirement for applicants to make a case for prioritisation.

5.9. It is considered that the fairest way to introduce the new policy is to apply the new system to all claims currently in the waiting list, as well as new applications. The result of introducing the policy in this way is that it is unlikely to have any effect on claims received by the authority prior to 2016 which had already been prioritised – based on preliminary modelling of the new policy.

These claims would remain in a priority list (although as a result of the addition of claims from the chronological list, they may be determined slightly later than originally projected).

- 5.10. Of the 53 applications currently in the priority list, 48 were submitted after 2016, and it is feasible that some of these claims would not retain priority status once the new policy is implemented. In these instances, there is a risk that the applicant may seek a direction to determine under Schedule 14, which may have a knock on effect on the rate at which claims that have risen to the top of the list can be taken up for investigation. However, this risk should be offset against the benefits a new policy would introduce (including the more robust investigation of user claims and consistent prioritisation process).

6. Consultation and Equalities

- 6.1. This proposal has been prepared following an initial consultation with the Hampshire Countryside Access Forum and The Ramblers. Both groups were generally supportive of a system which prioritised user-based claims, although The Ramblers have expressed concerns about historic claims, which could potentially add value to the network, being given less priority.
- 6.2. In preparing this report officers have reviewed and had regard to the policies at other local authorities (including Surrey, Buckinghamshire, Kent and Hertfordshire County Council).

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	no
People in Hampshire live safe, healthy and independent lives:	no
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	no

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

Definitive Map Modification Order Application Policy and Process, Reference: EIA99062764

2. Impact on Crime and Disorder:

2.1. No impact.

3. Climate Change:

N/A