

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

1st March 2010

DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS - POLICY REVIEW

(Report of the Director of City Development)

(Ward: Citywide)

Purpose of Report

1. To report for information on the current policy governing applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981; and to provide a comparison with other authorities' published policies for the purpose of reviewing the current policy in the light of best practice.

Background

2. At a meeting of this Committee on 3 August 2009, Members considered a request from Councillors Hopkins and Rogers that the application for a modification order to add the claimed footpath from Blackberry Hill to FP153 (aka 'Grove Woods') to the Definitive Map be given priority above all other claims waiting to be determined.
3. The Committee decided that Officers should not depart from the Public Rights of Way (PROW) Strategy adopted in 1998, which stated that applications for modification orders (DMMOs) should be prioritised in chronological order of receipt. However, it was also resolved that the Strategy should be reviewed and that Members would give the matter further consideration at this meeting.
4. As Members will be aware the duty to keep the Definitive Map and Statement under review, and to determine Section 53 applications for modification orders, is a regulatory function of the city council as Surveying Authority and comes within the terms of reference of this Committee.
5. If an authority fails to make a decision within 12 months of receiving the application, the applicant may apply to the Secretary of State for the authority to be given a deadline for its determination of the application. The SoS will consult the authority before deciding whether to set a deadline. In respect of the Grove Woods claim referred to above, the applicant applied to the SoS for a direction on 10 October 2009 and the Council is awaiting a decision.
6. At the time of Local Government reorganisation in 1996, all PROW policy and strategy was contained within the 'Milestones Statement' published by Avon County Council. In 1998 Bristol City Council approved a revised PROW Strategy that included a priority system for determining applications for DMMOs, principally to ensure that officer time was shared fairly between this and other public rights of way functions.
7. The PROW Strategy was further amended in 1999 to deal with claims in chronological order of receipt of a valid application, with the exception of

claims affected by a planning application that may be taken out of sequence at the discretion of the rights of way officer.

8. In 2007 a Joint Rights of Way Improvement Plan (ROWIP) was published for Bath & North East Somerset, Bristol City and South Gloucestershire unitary authority areas, in accordance with the Countryside and Rights of Way Act 2000. The Joint ROWIP is intended to guide the three councils in developing and improving the PROW network and will be reviewed in 2010/11 as an integral part of rolling forward the Joint Local Transport Plan.
9. The Joint ROWIP includes Statement of Actions that fall to the three councils to implement in their role as highway and surveying authorities. Action 1.5 is to "Develop an improved strategy for managing the Definitive Map and Statement and legal order work". Devising a system and guidelines for determining claims will be considered as part of this work. Members may therefore wish to take into account the views of their key partners and stakeholders such as members of the Public Rights of Way Liaison Group before considering any further revisions to Bristol City Council's PROW strategy.

Benchmarking survey

10. Officers have undertaken research of other authorities' published policies or established priority guidelines for determining DMMO applications. A table of results from 11 responding authorities is appended.
11. The results of this research show that the majority of these authorities (8 out of 11), which includes the Council's Joint ROWIP partners BANES and South Gloucestershire, determine DMMO applications in chronological order of receipt. In common with Bristol, applications may be taken out of sequence at officers' discretion but only in exceptional circumstances based on specified criteria. In North Somerset, requests to prioritise an application out of sequence is considered by the PROW Sub Committee.
12. The three remaining authorities assign a priority level to applications prior to deciding the sequence in which they will be investigated. Gloucestershire assign a priority level based on specified criteria which is published in the annex to their ROWIP. Sheffield's prioritisation system is dependent on the resources available to undertake all Definitive Map work, as the other work areas have equal priority. Somerset have devised a 'Scorecard' system which is set out in their published ROWIP.

Options:

13. Officers propose the following options:-
 - (a) Status Quo – i.e. to continue with Bristol City Council's existing PROW Strategy as amended in 1999 (see para. 7 above);
 - (b) to undertake a review of the Council's Strategy in consultation with its stakeholders;
 - (c) not to undertake an independent review, but instead to participate in the joint authority review which aims to formulate and consult on joint Definitive Map policy and strategy in order to implement the ROWIP Statement of Action

1.5 (i.e. “to develop an improved strategy for managing the Definitive Map and Statement and legal order work” – see para. 9 above).

Summary

14. The results of the survey indicate that the methodologies used by the majority of Surveying Authorities to prioritise applications for DMMOs are broadly in line with Bristol’s policy. It is clear that attempts to prioritise applications out of date sequence are not encouraged and that applications gaining priority will be the exception rather than the norm.

RECOMMENDATION:

That Members endorse Option (c) above, for Officers to participate in the Joint Authority Review of Definitive Map Policy and Strategy and consult this Committee and the Council’s stakeholders on the outcome of the joint review.

Appendices: Appendix A - Table of Survey Results

Consultation

Internal – Legal Division, Central Resources

Legal and Resource Implications:

Legal:

The legal implications are as set out in the report above. (Kevin Hill, Senior Solicitor, Legal Services).

Financial:

None arising directly from this report

Other Approvals Necessary None

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985

Background Papers:

1. ‘Public Rights of Way Work Plan and Strategy for 1999/2000’ – Report to the Planning, Transport & Development (Public Rights of Way) Sub-committee of 5 July 1999.
2. ‘Joint Rights of Way Improvement Plan 2007-2011’, published by The West of England Partnership in July 2007.
3. Letter from DEFRA dated 14.10.09 on the application to the SoS for a direction in respect of the ‘Grove Woods’ claim.
4. Results of survey of methodologies used by other authorities to prioritise applications for DMMOs.
5. Minutes of the Public Rights of Way and Greens Committee meeting of 3 August 2009.

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TABLE OF SURVEY RESULTS – METHODOLOGIES USED BY OTHER AUTHORITIES TO PRIORITISE APPLICATIONS FOR MODIFICATION ORDERS UNDER SECTION 53 OF THE WILDLIFE & COUNTRYSIDE ACT 1981

AUTHORITY	Published Policy	PROCEDURE FOR PRIORITISING APPLICATIONS		Other matters to consider
		In chronological order of receipt of application	Other Criteria	
BATH & NORTH EAST SOMERSET	No	Yes.	Officers have discretion to take a case out of order based on following criteria: <ul style="list-style-type: none"> - path obstructed - current or anticipated high level of use - issues of public safety - significant positive impact on network - development issues 	Length of time since application was made.
CORNWALL	Yes - 2006	Yes	Except for exceptional circumstances the Council considers cases in the order they are received subject to the following criteria: <ul style="list-style-type: none"> - path is categorised as or links with a 'Gold Path' (ref. Public Path Improvement Programme) - is within the 'Coastal Corridor' (see SW Coast Path Strategy) - links to 'Open Access'/public access land (as defined by DEFRA) - links to Public Open Space and other sites with promoted access (defined in Council's Countryside Access Strategy) 	Any application not meeting agreed criteria will be considered as and when resources permit in the order they are received.

AUTHORITY	Published Policy	PROCEDURE FOR PRIORITISING APPLICATIONS		Other matters to consider
		In chronological order of receipt of application	Other Criteria	
GLOUCESTERSHIRE	Yes (Annex to ROWIP 2006-11)	Yes – once assigned a priority level, the application will be processed in chronological sequence within that level.	Applications within each level prioritised according to: <ul style="list-style-type: none"> - Landowner interests - Public interests - Council interests - Nature and level of usage - Environment and sustainability 	ROWIP - Appx.F/Annex C - 'Priority guidelines for DMMOs' used for assigning the level of priority.
HAMPSHIRE	Yes - 2005	Yes. In order to be fair to all applicants and affected parties, there is a strong presumption against investigating claims in anything other than chronological order.	Applications that are adversely affected may be expedited subject to the following Claims Policy guidelines: <ul style="list-style-type: none"> - if path is in danger of being lost due to development, etc. - it is in the interests of the public to expedite the claim - it will meet actions identified in Countryside Access Plan or other Council policy, strategy or initiative. 	Where it is clearly more efficient or economic to do so, claims involving the same or substantially the same evidence will be dealt with simultaneously.
LEEDS		Yes	'Definitive Map Statement of Priorities' outlines the priorities for all Definitive Map work. Claims are dealt with in order of receipt unless: <ul style="list-style-type: none"> - urgent action is required to safeguard a PROW - the area is being reviewed. 	Prioritisation of work in one category does not necessarily exclude work in any other category.
NORTH SOMERSET	-	Yes	Applicant must state reasons why their claim should be given priority, for consideration by the PROW Sub Committee.	-
NOTTINGHAM	-	Yes	-	-

AUTHORITY	Published Policy	PROCEDURE FOR PRIORITISING APPLICATIONS		Other matters to consider
		In chronological order of receipt of application	Other Criteria	
SHEFFIELD	Yes - 2007	-	'Definitive Map Statement of Priorities' on Definitive Map work states that authority will: - determine and classify all new applications to modify the Definitive Map, within a reasonable timescale, but dependent on resources available.	Statement of Priorities notes that – 'All other work has equal priority'.
SOMERSET	Yes – 'Statement of Priorities'	No	Applications for DMMOs are given a priority rating under the ROWIP 'Scorecard' system, which is used to decide the sequence in which applications will be investigated. Criteria include: - whether route is part of a circular route - provides safe route away from roads - needed as a community route	The need for a DMMO may be removed if the claimed route is secured through other means.
SOUTH GLOUCESTERSHIRE	No	Yes		
WILTSHIRE	Yes, 2008	Yes	Applications based on user evidence are dealt with in date order of receipt, with the following exceptions: - where route is obstructed - major conflict due to discrepancies between routes on the ground and those shown on the definitive map - where route is at risk of being lost - to resolve anomalies - application is in line with aspirations of ROWIP	Applications gaining priority will be the exception and must conform to stated criteria.