

Meeting:	General overview and scrutiny committee
Briefing Note :	Parish councils and public rights of way
Date:	27/11/2015

Key considerations

- 1 The public rights of way network (PROW) in Herefordshire is approximately 3347 km in length and comprises 3019 km of footpaths, 418 km of bridleways, 6 km of restricted byway and 31 km of byways open to all traffic (BOATs).
- 2 The PROW network is part of the wider highway network and is subject to similar legal requirements and restrictions as the ordinary road network. (There are specific legal requirements as to how PROWs are recorded which do not necessarily apply to roads). Herefordshire Council (HC) is the highway/surveying authority for the area and, in brief, has the following principal duties.
 - To ensure the PROW are properly maintained (Section 41, Highways Act 1980).
 - To assert and protect the rights of the public to use PROW and prevent any obstructions to them (section 130, Highways Act 1980).
 - To keep the Definitive Map & Statement (DMS), the legal record of PROW, accurate and up-to-date (Part III, Wildlife and Countryside Act 1981).
- 3 The PROW service is delivered by the council's service provider, Balfour Beatty Living Places, as part of the public realm contract. Strategic objectives for the service are contained in a statutory document, the rights of way improvement plan (ROWIP). The current ROWIP contains annexes setting out relevant policies and procedures – <https://www.herefordshire.gov.uk/transport-and-highways/footpaths-byways-and-bridleways/rights-of-way-improvement-plan>
- 4 Whilst the duties listed above apply to Herefordshire Council only, local parish councils have a range of powers available to them with regards to the PROW network these include:

	Description of power	Legislation
Powers applying to local councils and to parish meetings where there is no council	To make representations to the highway authority that a highway has been unlawfully stopped-up or obstructed. The authority must act unless satisfied that the representations are incorrect	HA 1980 s 130(6)
	To hold for public inspection a copy of the definitive map for the parish, and copies of orders made to modify it	WCA 1981 s 57(5)
	To veto a proposal by a highway authority to apply to a magistrates' court for an order stopping-up or diverting a highway	HA 1980 s 116

	To be consulted by a surveying authority on every application for a definitive map modification order	WCA 1981 Sch 14
	To be consulted by a surveying authority before a definitive map modification order is made	WCA 1981 Sch 15
	To object to a public path order or a definitive map modification order. A copy of every such order, both when made and when confirmed, must be served upon the council	HA 1980 Sch 6 para 1(3)(b)(ii), WCA 1981 Sch 15 para 3(2)(b)(ii) and TCPA1990 Sch 14 para 1(2)(b)(ii)
Powers applying only to local councils	To undertake the maintenance of any footpath, bridleway or restricted byway	HA 1980 ss 43 and 50
	To erect lighting on any footpath or bridleway	Parish Councils Act 1957 s3
	To erect notices on footpaths and bridleways warning of local dangers	RTRA 1984 s 72
	To erect seats and shelters in, or on any land abutting on, any road within the parish	Parish Councils Act 1957 s1
	To prosecute anyone who wilfully obstructs the free passage along any highway	HA 1980 s137
	To prosecute an occupier who fails to ensure that crops do not inconvenience users of footpaths, bridleways and unmetalled carriageways	HA 1980 s137A
	To prosecute if a footpath or bridleway has been lawfully ploughed or disturbed, but not restored, or if any highway has been unlawfully ploughed or disturbed	HA 1980 ss131A and 134
	To insist to the highway authority that a particular footpath, bridleway, restricted byway or byway should be signposted where it meets a metalled road	CA 1968 s 27
	To signpost and waymark footpaths, bridleways, restricted byways and byways on behalf of, and with the consent of, the highway authority	CA 1968 s 27
	To create new highways by agreement with the landowner over land in their own and adjoining parishes or communities	HA 1980 s30

- 5 The development of parish/neighbourhood plans provides the basis for parishes to adopt a considered and strategic approach to the management of the PROW in their area. Where appropriate the neighbourhood plan can seek to protect and enhance their networks of PROW as key assets for its recreational/tourism/health/landscape and wildlife value.
- 6 In particular, there appear to be two areas where parishes are best placed to contribute to a coherent and functional network:
- An accurate and up-to-date definitive map and statement of PROW (DMS).
 - An open and well-maintained PROW network.

- 7 Legislative change was introduced by the Countryside & Rights of Way (CROW) Act 2000, which meant that the DMS is to be closed in 2026 to claims for recording pre-1949 rights of way. There are believed to be a significant number of routes that carry public rights that are not currently recorded on the DMS, or are shown but the rights are under-recorded (e.g. a bridleway is only recorded as a footpath). Many of these rights will be extinguished unless they are recorded on the DMS by 2026 or are the subject of compliant formal applications (schedule 14 Definitive Map Modification Order (DMMO) applications) to be added to it.
- 8 Following the passing of the Countryside and Rights of Way Act, the Department for the Environment, Food and Rural Affairs (Defra), the government department responsible for PROW legislation and policy, sponsored several projects to examine how the proposed closure of the DMS in 2026 could be equitably and efficiently implemented. This led to the establishment of a stakeholder working group (SWG), comprising representatives of PROW user groups, landowning and farming organisations and local authority interests, with the clear remit of bringing forward a set of proposals, based on a consensus, for reform of DMS legislation to enable the 2026 closure to happen. The SWG's final report, "[Stepping Forward](#)", was published in March 2010 with a list of 32 recommendations. The recommendations were accepted by government and a set of measures were included within the [Deregulation Act 2015](#) to give effect to a number of them. Many of the recommendations and much of the detail will however be implemented through secondary legislation and guidance which is still to be developed and published. The government's stated aim is to have this in place by April 2016.
- 9 The Herefordshire Local Access Forum (HLAF) is a statutory, independent group of PROW stakeholders that provides advice on PROW and access to the countryside. The HLAF is concerned by the potential extinguishment of public rights and supports the council to take a proactive approach to this issue and agrees that parishes have a key role to play in this regard.
- 10 Parish councils have access to local knowledge of their PROW network and of any valuable missing links in it. The PROW team is able to advise parish councils and local volunteers to research and submit high quality, formal applications to record valuable lost ways/missing links in the network.
- 11 Whilst these would be processed in priority order within limited resources available, as long as the applications are properly made then any rights identified should be protected from automatic extinguishment in 2026. Thereby protecting the asset for future generations.
- 12 In order to support parish councils, the PROW team will:
 - Run regular briefing sessions at the Herefordshire Archives and Record Centre for parish volunteers to explain the process of making a DMMO and to familiarise them with sets of records that they may commonly encounter.
 - Make available key sets of records held by the council.
 - Encourage parishes to adopt a systematic and targeted approach to the research of unrecorded rights