

REVIEW OF THE BACKLOG OF DEFINITIVE MAP MODIFICATION ORDERS

Report By: Director of Environment and Culture

Wards Affected

County-wide

Purpose

1. To consider the current backlog of Definitive Map Modification Orders

Financial Implications

2. An investment of £200,000 per year over 3 years would be needed just to clear the current backlog up to determination stage. Beyond determination stage, a further £300,000 per year would be required to employ extra legal support and open up the routes on the ground.

Background

3. At the Community Services Scrutiny Committee in December 2008, it was resolved that the Parks and Countryside Service undertake an urgent review of the backlog of Definitive Map Modification Orders, with a view to eradicating them within 3 years and to provide a progress report to the Committee.

Current Situation

4. The Council currently has a backlog of 82 modification order applications awaiting determination. The number of new applications being made per year is quite variable, but over the past 8 years it averages 7.6 applications per year. At present there are 13 high-priority applications, 33 medium-priority applications, and 36 low-priority applications awaiting determination.
5. Currently, two full-time officers are employed to deal with these applications. They are able to complete approximately 4 determinations per officer per year (8 in total). Many of these will give rise to formal objections which will lead to Public Inquiries – placing additional pressure on staff resources. This means that with current levels of resources, it is likely to take over 10 years to clear the current backlog, and with new applications being received at a rate of 7 – 8 per year, it is probable that there will continue to be a significant number of applications awaiting determination.

Recent Performance

6. Over the last 4 years the two officers dealing with modifications have dealt with 35 applications which is an average of 8.75 per year. The work in determining an order is similar whether or not the decision is to make an order. There is often an appeal when a decision is made not to support an order, which will involve the Secretary of State. The table below indicates that there is now a need to start turning determinations into

orders. As stated, most of these orders will result in objections and will need to be determined by the planning inspectorate, usually through a public Inquiry.

	Report completed – awaiting determination	Determined – No Order	Determined – awaiting order	Order Made
2005 - 06	0	2	2	2
2006 - 07	0	8	0	0
2007 - 08	0	3	4	0
2008 - 09	1	2	11	0

Benchmarking

7. The table below sets out a benchmarking exercise carried out in 2007 with a number of other local authorities. All authorities, other than Shropshire, have large backlogs of undetermined DMMO applications. Numbers of determinations made per year are broadly similar but Herefordshire Council is down on the number of orders made per year.

	Staff	Determinations made	Orders made	Backlog of applications
Herefordshire	2	8	0	100
Worcestershire	2	3	3	118
Shropshire	3	6	8	56
Warwickshire	3	9	5	162
Staffordshire	N/K	7	N/K	230

Authorisation Procedure

8. Upon receipt of an application, officers will prioritise and place it at the appropriate point in the queue. When it is time to deal with the application, the officer will carry out the necessary research and submit a decision report to the Assistant Director with responsibility for Public Rights of Way for determination. If the decision is to make an order, it is advertised and sent out for public consultation. If no objections are received, the order is confirmed and the route added to the Definitive map and opened up on the ground which can in it self be very costly. If an objection is received, and the majority of orders do result in an objection, the order is submitted to Secretary of State for determination which quite often ends up at a public inquiry.

Although it would be possible to cut down on the time spent on a determination report, this would expose the council to criticism, greater risk and result in having to commit more officer time later on the in the process. Beyond determination stage, it is limited as to how much impact the rights of way service has on the speed an order is processed. If the order has objections, the whole matter is referred to the Secretary of

State for determination. It can take over a year before the Secretary of State either decides on the report or decides whether or not to hold a Public Inquiry.

Service Delivery Review

9. Herefordshire Council are currently undergoing review of a number of Services including Public Rights of Way with our service delivery partners, Amey. Amey currently have two contracts with Herefordshire Council to deliver a number of Services including Rights of Way and the contracts allow for other elements of those Services to be included within the scope. Herefordshire Council have decided that it is in the Council's best interest in terms of saving money and improving Services to commission out all aspects of Public Rights of Way leaving only those areas that cannot be delegated, plus contract monitoring and strategic development. In effect Amey will be responsible for all areas of the Service including Definitive Modification Orders. When Amey take over the service it may be appropriate to explore a number of options including revisiting the current policy. We will be discussing this with both our Partners and various Stakeholders.

National Context

10. Natural England has set up a task group to look at the Definitive map Modification Order procedure following the collapse of the Discovering Lost Ways Project. This may result in some fundamental changes to the way modification orders are processed or prioritised.

Conclusion

11. The Council is very constrained in its flexibility to deal with the current backlog due to legislation and statutory process. Whilst the clearance of the backlog of Definitive Map Modification Orders up to determination stage within 3 years is possible, it would take considerable investment and would in all likelihood result in the backlog being shifted along rather than cleared. The service is currently concentrating on high priority applications which are those that provide the most benefit to the community. Beyond order making stage, considerable parts of the process are out of the Council's control so it would not be possible to completely clear the backlog within 3 years as it is unlikely that either the council's Legal services or the Secretary of State would be able to deal with a dramatic increase in orders and the subsequent objections. The service should however ensure that some orders are made this year. The service delivery review will provide the opportunity to review the resources committed to this area of work and to possibly re visit the current statement of priorities.

RECOMMENDATION

That;

- (a) The Report be noted**

and;

- (b) A further update is provided to the Committee by Amey in 18 months time.**

BACKGROUND PAPERS

- None