

<b>MEETING:</b>	<b>ENVIRONMENT SCRUTINY COMMITTEE</b>
<b>DATE:</b>	<b>13<sup>TH</sup> JULY 2010</b>
<b>TITLE OF REPORT:</b>	<b>A REVIEW OF THE RIGHTS OF WAY SERVICE PERFORMANCE AND OUTCOMES</b>
<b>REPORT BY:</b>	<b>Parks, Countryside and Leisure Development Manager</b>

**CLASSIFICATION:** Open

## **Purpose**

To inform of the scope of the key areas of the rights of way service, clarify Amey and Council roles, outcomes and progress towards those outcomes. This report also sets out to address or clarify some of the regular rights of way related queries raised by members of the public, including the relationship between the List of Streets and the definitive map.

## **Recommendation**

**THAT:** subject to any comments the Committee may wish to make the report be noted.

## **Key Points Summary**

- Community Services Scrutiny Committee and Environment Scrutiny committee have looked at elements of public rights of way in the past
- Due to the number of detailed queries coming in from the public, along with the existing backlogs of work, Environment Scrutiny Committee requested a full report on the Public Rights of Way service.
- Amey Herefordshire have recently taken over the rights of way service and improvements in some can areas already be identified
- The pressures on the rights of way service are considerable but it is not currently identified as a high priority service area for the council
- A number of regularly used terminology are defined and explained (Appendix A)

## **Alternative Options**

A number of options are available and some are discussed in the report.

## **Reasons for Recommendations**

- 1 This is an information report for Scrutiny Committee.

## **Introduction and Background**

- 2 Due to the number of queries raised by members of the public, the committee requested a

report setting out details of the main rights of way functions, current pressure and backlogs and plans setting out improvements. The report, on request from the committee, has been extended to include information regarding the list of streets and unsurfaced roads, both of which have been queried by the public. Past Community Services scrutiny committees have looked at elements of the public rights of way service such a definitive map modification Orders, following a change of Cabinet Member portfolios, the responsibility for public rights of way now rests with the cabinet member for Highways and transportation.

## Key Considerations

### Overview of the service including current set up

- 3 Herefordshire is crossed by a network of 2100 miles (3358 km) of Public Rights of Way consisting of 1840 miles (2942 km) of footpaths, 250 miles (394 km) of bridleways and 13 miles (22 km) of byways open to all traffic (BOATS). There is also currently 1km of restricted byway. The council is responsible for ensuring that the whole of rights of way network is kept clear of obstructions and that the network is promoted and can be enjoyed by all those wishing to use it.
- 4 Herefordshire Council also has a responsibility to ensure the Definitive Map and statement are kept up to date which involves making changes when evidence is produced which shows there is an error or omission. The council also has powers to make changes to individual paths either following an application from a landowner or through its own application.

### Service Transfer

- 5 Public Rights of Way were one of a number of services transferred to Amey Herefordshire in September 2009.

### Amey Herefordshire's Responsibilities

- 6 Amey Herefordshire is responsible for the end to end running of the service. The details of what services are being delivered by Amey Herefordshire Council are set out in the service definitions attached at appendix B. To enable them to deliver these services in the most efficient way and meet the Key Performance Targets, Amey has taken on the management of the revenue and capital budgets for the service which currently equates to:

Revenue £557,000  
Capital £45,000

These budgets are broken down as follows:

Expenditure	
Staffing (salaries, pensions, Nicks)	£306,000
Maintenance	£205,000
Publicity and Promotion	£1,700
Parish Paths Partnership	£45,000
Capital Improvements	£45,000
Income	
	£5,600

- 7 The work Amey carries out on behalf of the council is monitored through a number of key performance indicators, service standards and service definitions. Officers from Amey and Herefordshire Council meet every other week to discuss outputs, progress, indicators, higher level operational matters and strategic developments.

- 8 Since the transfer, Amey has recruited 5 new members of staff bringing the service back up to a full complement of 14. Improvements include a review of legal order processes, consideration of a new approach to dealing with applications and a restructuring of the team to enable the appointment of a dedicated enforcement officer.
- 9 For the first 10 months of the contract a number of key performance indicators were agreed as set out in appendix C. All indicators have been achieved

#### Herefordshire Council's Responsibility

- 10 Herefordshire Council are responsible for the strategic development of the service, authorising legal orders and notices, ensuring outcomes are met, setting service standards, monitoring performance and ensuring value for money. The Parks, Countryside and Leisure Manager is responsible for this area of work in conjunction with the council's service delivery team.

#### **Key Strategic Documents**

- 11 The key strategy document is the Rights of Way Improvement Plan (ROWIP). The ROWIP is a statutory document introduced as part of the Countryside and Rights of Way Act 2000. Although Government required local authorities to produce a ROWIP, there was no requirement to implement its recommended actions. Herefordshire's ROWIP was published in 2007 The plan sets out Herefordshire Council's strategic direction, linked to corporate aims and ambitions up until 2011. The plan also includes policies for definitive map modification orders (DMMO', public path Orders (PPO's), Inspection and Maintenance and Enforcement.

#### **Details of main service including backlogs and proposals**

#### **Public Rights of Way Legal Order functions**

- 12 Herefordshire Council has powers and duties arising from, amongst other things, its role as Highway Authority, Planning Authority and Surveying Authority. In terms of Public Rights of Way this means that it can make legal orders under the Highways Act 1980, Town and Country Planning Act 1990 and the Wildlife & Countryside Act 1981.

The main, although not only, types of order are as follows:

	Order	Relevant legislation
1	Public Path Creation Order	S26, Highways Act 1980
2	Public Path Extinguishment Order	S118, Highways Act 1980
3	Public Path Diversion Order	S119, Highways Act 1980
4	Public Path Stopping Up Order	S257, Town & Country Planning Act 1990
5	Public Path Diversion Order	S257, Town & Country Planning Act 1990
6	Definitive Map & Statement Modification Order (DMMO)	S53, Wildlife & Countryside Act 1981

*(1-5 above are collectively termed Public Path Orders (PPO)).*

13 Characteristics and differences of the types of orders:

<b><i>Public Path Orders (PPO's):</i></b>	<b><i>Definitive Map Modification Orders (DMMO's):</i></b>
<ul style="list-style-type: none"> <li>• create new rights of way and extinguish existing rights</li> </ul>	<ul style="list-style-type: none"> <li>• correct the legal record of PROW (the definitive map and statement) but do not actually create or extinguish rights</li> </ul>
<ul style="list-style-type: none"> <li>• are a discretionary power</li> </ul>	<ul style="list-style-type: none"> <li>• Are a statutory duty. Herefordshire Council must make a DMMO where sufficient evidence exists of an error in the Definitive Map and Statement</li> </ul>
<ul style="list-style-type: none"> <li>• Herefordshire Council can charge applicants for the making of PPOs</li> </ul>	<ul style="list-style-type: none"> <li>• Herefordshire Council is required to meet the costs of determining applications and making DMMOs</li> </ul>
<ul style="list-style-type: none"> <li>• There is no statutory process setting out how an application for a PPO should be made; instead authorities devise their own forms and systems.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a statutory process setting out how an application for a DMMO should be made.</li> </ul>
<ul style="list-style-type: none"> <li>• Are an essential tool for Herefordshire Council for resolving problems on the network and enabling the network to evolve to meet current demands both for users and land owners / managers.</li> </ul>	

Whilst the legal tests relating to PPOs and DMMOs are fundamentally different, the format of the process is similar:

Application received - Application determined - Order Made –

Order Advertised - Order Confirmed and comes into effect

- 14 Highways Act PPOs are determined by the Regulatory Committee whilst Town and Country Planning Act PPOs and DMMOs are determined by the Assistant Director Highways, Transportation and community services based on a report prepared by the Public Rights of Way team. If an objection is made to an Order, Herefordshire Council may not confirm it; it may abandon a PPO (but not a DMMO) or refer the order to the Secretary of State for a decision on whether to confirm or not. This process is normally carried out by the Planning Inspectorate on behalf of the Secretary of State by means of written representations, a public hearing or a public inquiry.

Orders Performance

- 15 The table below sets out the key stages of processing legal orders and the performance since 2007. The service inherited a backlog following local Government reorganisation in 1998 and still retains a backlog. There have been no increases in staff resources to manage demands on this area of the service since 1998.

	Highways Act Orders			Town and Country Planning Act Orders			Definitive Map Modification Orders		
	2007	2008	2009	2007	2008	2009	2007	2008	2009
Number of determinations per year	11	4	9	5	4	4	7	13	0
Number of orders made per year	12	3	2	5	4	4	0	0	5
Number of confirmed orders per year	6	7	4	6	3	3	0	0	0

### Current position

- 16 As at 31st May 2010 the outstanding legal order work facing Herefordshire Council is as follows:

	Public path orders (Highways Act 1980)	Public path orders – (Town and country planning act 1990)	Definitive map modification orders
No. of applications received but not yet determined	63	1	85
No. of applications determined but awaiting order making	1	0	16
No. of applications for which an order has been made and to which objections have been lodged and is awaiting a decision from Secretary of State	5	1	7
No. of applications received during previous 12 months	1	1	2
Total	70	2	108

- 17 There are about 300 anomalies which are unresolved discrepancies on either the definitive map, definitive statement or both. Anomalies need to be investigated and resolved either through minor amendments to documentation or through a formal modification order process. The total number of anomalies has recently been reduced from 595 to 360 due mainly to the digitisation of the definitive map. However the outstanding anomalies are likely to require

extensive research and in many instances a legal order to correct them

- 18 It is very difficult to calculate reliable average times for the various stages of the process and for each type of order. However whilst Town and Country Planning Act applications are normally determined and made within a reasonable period of about 6 months, both Highways Act and DMMO applications from receipt of an application through to a change on the definitive map typically take many years to complete, certainly the best part of 15 years is not unknown.
- 19 Currently, 2.8 officers are employed to deal with legal order applications. They are able to complete approximately 10 PPO or 4 DMMO determinations per officer per year. Many of these will give rise to formal objections which will lead to Public Inquiries – placing additional pressure on staff resources.
- 20 Since September 2009, the number of Highways Act PPO applications awaiting determination has fallen from 80 to 63. As staff resources have been allocated to tackling this area of work it has been found that a number of the older proposals no longer have the active support of the original applicant, either because there is no longer the need for the change, the applicant has moved away or they have simply have dropped the idea. However, this rate of "attrition" of the backlog is unlikely to continue as more recent applications reach the top of the pile. This issue does not arise with the consideration of DMMO applications; as long as the original application was correctly made then the Council has the duty to consider it and make an order, if justified, whether or not the original applicant still support it.

#### Prioritisation

- 21 Herefordshire Council's Rights of Way Improvement Plan, published in 2007 set out policies to prioritise applications both for PPOs and DMMOs. Until that point applications were largely dealt with in order of receipt.
- 22 PPO applications are now prioritised according to whether they are required to enable development to proceed (Town and Country Planning Act applications) and then broadly whether there any public benefit arising from the proposed change. An example of a public interest diversion is a footpath that is in danger of eroding into the river and the most cost effective option for saving that footpath is to divert it.
- 23 DMMOs are prioritised according to whether the proposed modification is likely to lead to the recording of a useful route and on the strength of the evidence submitted in support of the application. At present there are 15 high-priority applications, 33 medium-priority applications, and 37 low-priority applications awaiting determination.
- 24 With existing resources, it is technically possible that all outstanding DMMO high-priority applications could be determined within the next 2 – 3 years, and that thereafter any new application which is assessed to be high priority could then be determined within 12-18 months of receipt. However, this could only be achieved if there were no other competing demands on officer time, and this is unlikely, given the prospect of future public inquiries and the need to deal with medium and low priority applications. New applications which are not categorised as high priority will take their place in the waiting list according to their priority grading. This means that the Council would still be unable to comply with the legal requirement to determine a DMMO application within 12 months.

## How to tackle the backlog

- 25 The extent of the backlog is determined both by the flow of new applications being submitted to the council and the speed with which the council processes those applications. Some aspects affecting the flow of new applications can be influenced by the council although most are largely beyond its control.
- 26 Whilst the Council has a statutory duty to accept and process applications for DMMOs there is no such duty as regards PPOs. A number of authorities have in the past refused to accept landowner interest applications for Highways Act PPOs on the basis that they have insufficient resources to deal with them. However, they are an essential tool for resolving problems on the network and enabling the network to evolve to meet current demands both for users and land owners / managers and this option is not considered practical or viable.
- 27 The costs involved in the making of applications will also affect the number of applications made. Councils are not allowed to charge for the processing of DMMO applications. Councils may charge for processing PPOs. The charge may cover all costs incurred in the consideration of the application up to and including the making and advertising of the order (and the advertising of the confirmation and coming into operation if required). The charge cannot include the costs of pursuing an opposed order - for instance at a public inquiry. The charges may not exceed the actual costs incurred. Costs are currently set at a fixed fee of £880 plus advertising costs. The fees were last reviewed in 2006. Consequently any fixed fee system should have a fee which is equal to the minimum cost incurred and obviously less than the average cost incurred. HC's fees are also probably slightly below the average currently charged by nearby authorities. A variable fee system would reflect more closely the actual costs incurred in the process and as these would generally be greater than the current fixed fee may act to dampen demand for PPOs. However, such a system is administratively more complex and leaves applicants with a degree of uncertainty as to the costs they may be facing.
- 28 There appears to be little that can be done to control the flow of DMMO applications. There are probably minor improvements that can be made to the method and monitoring of the processing of applications. The bottom line is that such applications are always going to be very time-consuming to manage and the only way the current backlog is going to be significantly reduced is by applying additional resources to this area of work or a change in legislation.
- 29 Whilst the extent of this problem varies between authorities it is nonetheless a nation-wide problem. A working group made up of representatives of the major interested parties and sponsored by DEFRA and Natural England, "the Stakeholder Working Group" (SWG) has recently issued its final report with a series of recommendations as to how this problem could be tackled. In reality the recommendations even if adopted will streamline the process but will not radically shorten it, at least as far as the existing backlog of DMMO applications is concerned. The future of the SWG report is uncertain given the recent change in government. There is still a possibility that a proposed 2026 cut off date for DMMO applications will be commenced by Central Government which could have a considerable impact on the number of new DMMO applications received by Herefordshire Council.
- 30 On the basis that such additional resources are not available, the only alternative is to find them from within the existing PROW team. The staff most likely to have the skills necessary to tackle this type of work are those already working on legal orders, the PPO staff, although

additional training would be required.

- 31 Given that much of their time is currently being spent pursuing landowner interest applications probably at less than economic cost, Landowner interest PPOs applications will be contracted out to an independent consultant, the costs of which would have to be met by the applicant, and using the officer time thus freed up to work on DMMO applications.
- 32 Under the new system the applicant would have to submit an initial proposal to the PROW Team so that it could give an outline assessment of whether it was viable. For instance, at an early stage the PROW Team will weed out proposals which might lead to additional burdens on its future maintenance budget or ones that obviously disadvantage path users. It will also prepare a plan for use in consultations and order making and would probably involve a site visit.
- 33 Once the application had passed this assessment, the application will be returned to the applicant with a covering letter of approval and the applicant will be invited to contact the consultant. They will be directed to a list of consultants listed on the IPROW Website although it will be emphasised that inclusion on the list is not an endorsement of their expertise or standard of work
- 34 The consultant will then carry out full pre-order consultations, prepare a report and a draft order according to the Herefordshire Council specification. The information will be returned to the PROW Team and a decision made on whether or not to make the order. If an order is made, the PROW Team will seal and advertise the order in the press. The consultant will be expected to serve notice on all statutory consultees and place and maintain on site for the statutory period. Should objections be received then these will be forwarded to the consultant to resolve on the basis that the Council are unlikely to proceed with the order unless the objections are withdrawn.
- 35 The cost to an applicant of using a consultant would vary depending upon the consultant used and the complexity of the case. One company who specialises in this area of work advertises a fixed fee service for local authorities for single order / single owner / single path proposals of £3210 + VAT. It is reasonable to assume that smaller firms and independent consultants may well have a lower charging structure.
- 36 The Public Rights of Way Team will still require the payment of a fee from the applicant for the work that it is required to carry out on each proposal. This will include initial site visit, plan preparation, checking of draft report and order, sealing of order and potentially posting and renewal of site notices. It is suggested that a fee of £150 - £300, payable on order making, would be appropriate. Clarification will be needed on any costs from legal services.
- 37 The PROW Team will prepare a comprehensive guidance pack available to applicants. This will include detailed guidance on the process and responsibilities for each element of this, specifications and pro-formas for consultations, draft reports and draft orders and an explanation of the charges that the PROW Team will still be required to levy along with a set of service standards.
- 38 The table below sets out the estimated performance improvements from this changed method of dealing with the various types of legal order applications. These numbers may need to be refined as the system beds but they will be monitored and challenged by Amey Herefordshire and the client monitoring team through the contract.

	Highways Act Orders			Town and Country Planning Act Orders			Definitive Map Modification Orders		
	2011	2012	2013	2011	2012	2013	2011	2012	2013
Estimated number of determinations per year	15	20	20	4	4	4	6	8	10
Estimated number of orders made per year	10	15	15	4	4	4	5	6	7
Estimated number of confirmed orders per year	8	12	12	4	4	4	3	3	4

## Maintenance

- 39 Section 36 of the Highways Act 1980 charges Herefordshire Council, as the Highways Authority for the county, to maintain all publicly maintainable highways which includes almost all rights of way. Section 130 of the act sets out a further duty to assert and protect the rights of the public to the use and enjoyment of any highway and to prevent their stopping up or obstruction.
- 40 The responsibility for maintaining the network falls to both landowners and Herefordshire Council. Landowners are responsible for maintaining stiles, gates and other structures used to enable access through hedges and fences. Landowners are also responsible for ensuring rights of way do not become blocked by obstacles such as crops, trees, and overgrowth. The council is responsible for maintaining signposts, waymarking, watercourse crossings, steps and surface vegetation. They are also responsible for ensuring landowners meet their legal obligations.
- 41 The rights of way maintenance staff receives reports of problems on the network and investigates them. At the same time they also identify potential access improvements such as replacing stiles with gates or improving the surface. Once work has been identified either the landowner will be requested to carry out the work or the work will be carried out by Amey Herefordshire pending on the nature of the problem.
- 42 Over the past few years as access along the network has improved, the nature of defects has moved from reports of missing stiles, gates, bridges etc. to routine maintenance of existing structures, waymarking and improvements.
- 43 Legislation such as the Disability Discrimination Act 1995 and Countryside and Rights of Way Act 2000 has seen a move towards making the rights of way network more accessible to a wider section of the community. This includes replacing stiles with gates; making promotional material more accessible to those with visual impairment and bringing furniture (stiles and gates) up to the British Standard.
- 44 As demand on the rights of way network has increased so too has the expectation for a well maintained network. However, resources are limited and thus need to be properly targeted to maximise effectiveness.
- 45 Using Local Transport Plan (LTP) Funding over the past five years, and in accordance with

the Rights of Way Improvement Plan programme, a great deal of time has been dedicated to improving access. Specific initiatives include 'The Ross Buggy Route' and "Miles without Stiles" which have created strong focal points in the relevant parishes. The 'Miles without Stiles' (removing stiles and replacing with gates) initiative is being rolled out across the County, with its own logo and supporting leaflets.

- 46 PROW maintenance is resourced from the core budget. It has to be stressed that without the latter the service would be under considerably more pressure. However, these budgets continue to be under pressure due to inflation as they have not been increased in line with the cost of contract prices, in accordance with the approach taken in the Medium Term Financial Management Strategy which has only applied inflation to staffing budgets.
- 47 Some defects are easier to deal with than others and the outstanding maintenance backlog falls into either short term maintenance defects or long term obstructions. Short term maintenance defects can usually be dealt with in a matter of weeks. Long term obstructions, which may involve for example structures being built over a right of way, can often take a considerable time to resolve as the council must consider all available options and would only remove a building as a very last resort. The service receives a considerable number of reported defects each year and until fairly recently the clearance rate has been quite good.

	April 1998 – March 2002	April 2002 – March 2006	April 2006 – March 2010
Long Term Obstructions	Received 79	Received 120	Received 103
	Cleared 7	Cleared 27	Cleared 49
General Service requests*	Received 6594	Received 19378	Received 12829
	Cleared 5950	Cleared 15522	Cleared 7067

### Current position

- 48 As of 31 May 2010 the outstanding maintenance issues for the council were:

	Current outstanding
Long Term Obstructions	108
General Service requests*	6682

\* General Service requests covers all requests for PROW services currently recorded

Examples of outstanding maintenance work**	Outstanding as of May 2010	Responsibility	Cost to clear
Stiles	778	Landowner/ Herefordshire Council	£82,468
Gates	389	Landowner/ Herefordshire Council	£194,500
Signposts	758	Herefordshire Council	£73,526
Bridges	26	Herefordshire Council	£94,000
Ditch crossings	31	Herefordshire Council	£3,348
Surface vegetation for strimming	667	Herefordshire Council	£50,000

\*\* The nature of the work can be missing, broken, request for upgrade or requiring repair

- 49 Bridges are becoming a particular issue for the service as the number of outstanding defects relating to bridges is increasing. A problem with a bridge will often require a path to be closed which has knock on advertising costs for the legal closure order and the inconvenience to users. The costs associated with repairing or replacing a bridge can be considerable for the public rights of way budget and as a consequence paths are sometime closed for 2 – 3 years before funds are identified to carry out the required works. This problem is increasing as much of the existing bridge stock is coming to end of its useful life. The extent and scope of the problem is unknown as a full inventory of the existing bridges has not been made. There are currently 11 paths closed due to bridges.

### Prioritisation

50. Herefordshire Council agreed an Inspection and Maintenance policy in 2006 which essentially prioritised the whole of the network into categories based on their usage and importance to the public. At the top are paths that are part of promoted routes such as the Wye Valley Walk, and at the bottom are routes that are dead ends or serve no real purpose. The types of defects are also categorised with those being identified as a danger at the top and those identified as being an inconvenience (a missing waymarker for example) at the bottom. Time scales are identified to deal with the defects. However in light of continuing lack of resources these timescales may need to be extended and the proposed future Key Performance Indicators amended accordingly. Due to the lack of investment in the rights of way service and the age of much of the furniture, it is anticipated that the condition of the network will deteriorate at an increasing rate. This can be evidenced by the increasing number of bridge failures and associated long term path closures as there is insufficient budget to fund all the new bridges required.

### Parish Councils

- 51 Town and parish council's have various powers relating to the management of public rights of

way, primarily under the Highways Act 1980. Using these powers, parish council's can take over some of the maintenance duties from the local authority. Such as the maintenance of footpaths and bridleways They may also take action in their own name or require the Highways Authority to take action to protect and assert the rights of the public and the seek the removal of obstructions..

- 52 Herefordshire Council and Amey Herefordshire works in partnership with 84 parish and town council's through the parish paths partnership (P3) scheme. This involves the Herefordshire Council providing a grant in return for the local council agreeing to carry out certain maintenance and improvement works on behalf of the local authority. The table below sets out the further details of the P3 scheme including the net savings.

Parish Paths Partnership details

	2007	2008	2009
No. parishes in the scheme	60	75	84
Kms covered by P3 schemes (out of 3400)	720	988	1079
No. Gates installed / repaired	45	73	66
Length in metres of surface vegetation clearance	79,422	103,246	93,471
No. Signposts installed / repaired	53	60	65
No. Cross steps installed / repaired	82	102	106
Financial savings on above work	£62,370 gross save	£84,386 gross save	£78,444 gross save
P3 cost	24,946	£35,000	41,989
Net Save	38,000	49,386	36,455

The scheme is very successful and engages the local community, provides healthy exercise for many volunteers, allows parish councils to focus on the routes they know best and provides exceptional value for money. However we have now reached the stage where we have inadequate budget to expand P3 without taking revenue and capital away from the responsibilities that must remain with herefordshire council such as bridges, or spending on the wider network and in parishes that do not wish to be part of the P3 scheme.

Tackling the backlog

- 53 Since the transfer of the PROW function to Amey, a number of new small initiatives have been developed with the aim of maximising the efficiency of the existing maintenance budget.

- A potential supplier and installer of large PROW bridges has been identified and a pilot scheme is being trialled. Should this be successful then not only will [there be financial savings] [it be possible to install a greater number of bridges than would otherwise have been possible], but the replacement time will also be reduced thus minimising disruption for users. The supplier is also local to Hereford.
- A “Parish Blitz” whereby instead of the usual one dedicated gang carrying out PROW routine and reactive works, 5 gangs are directed to a specified area to achieve maximum impact in a day, has been arranged for the Titley area at the end of June 2010. The result should be that the Titley Loop Walk, one of Herefordshire Council’s key promoted routes is made stile free and much more widely accessible to users.
- Parish Councils have been involved in a scheme to identify and validate many older defects recorded on the Council’s PROW Management System, J-Walk. Consideration will be given to developing a more permanent scheme involving Parish Councils and Parish Footpath Officers to help the PROW Team by ensuring the availability of accurate and up-to-date information about the state of the network. This has contributed to the clearance of almost 600 defects already this year.
- The administration of temporary closures is now routinely carried out by the staff who deal with general road closures rather than the PROW Team. This will free up a staff resource that whilst mainly being directed to tackling the legal order backlog can also contribute to other areas of PROW work

## Benchmarking

- 54 Attached at appendix D is benchmarking data relating the public rights of way PPO’s DMMO’s, maintenance, enforcement, staffing and budgets. Shropshire, Gloucestershire, Warwickshire and Monmouthshire were the only authorities who have responded to date. It is quite difficult to compare authorities as there are variations on how services are delivered, data collected and assessments made. The information does demonstrate however, that Herefordshire Council is not alone in its backlog of work and pressures but there are areas where we can learn from other authorities. Our performance against other authorities will continue to be monitored and with the improvements identified it is hoped that in some areas we will be able to compare more favourably.

## Communications

- 55 Herefordshire Council and Amey have a number of ways of communicating, promoting and engaging with local communities and the wider public. There are a number of free walking guides which have recently be redesigned so they provide members of the public with the information needed about the walk. These were produced following discussions with the council’s diversity team to ensure they met current DDA guidelines and requirements. The public rights of way web pages have recently been the subject of a complete review and make over with more relevant information being added. A number of suggestions were received about what should be added to the website which were all considered but in some cases rejected as the information would not be factual, not be of interest to the wider public and could potentially cause unnecessary anxiety to landowners and householders. One such example was publishing the list of known anomalies on the website. It is unlikely that people using the path in question would be aware of any problem and the anomaly itself may only be an administrative issue which needs to be resolved. Putting a list, including locations, on the website may potentially causes problems for the landowner.

- 56 The council also communicate through the local access forum, press releases, directly with Parish Councils and through the PACT meetings and information and interpretation boards.

### List of Streets

- 57 Many of the questions raised by members of public refer to the list of streets rather than the definitive map. The characteristics and differences between the two document is set in the table below

Definitive Map	List of Streets
Shows legally defined footpaths, bridleways, byways open to all traffic and restricted byways	Shows A, B, C and unclassified roads along with footways and cycleways
Conclusive evidence of the status of a route	Non conclusive as to the status of a route
Requires legal order to amend	Does not necessarily require legal order to amend
Legal duty to maintain in map form	Legal duty to maintain in either map and / or list form
Formal legal process in place to change	No formal process in place to change
Managed by the rights of way team	Managed by the highways team
Cannot show all routes on the list of streets	Can show most routes shown on the definitive map

The main issues and queries can be summarised as:

- a) There is a view that it is easier to add a new route on to the list of streets as there is no statutory procedure involved and should therefore be much quicker.
  - b) Many of the routes currently used by vehicles but not shown on either document could be either a public right of way and added to the definitive map or a highway and added to the list of streets, or both.
  - c) Parts of the unclassified road network shown of the list of streets are obstructed and some members of the public would like to see these routes opened up and promoted.
- 58 A list of streets is kept under section 36(6) of the Highways Act 1980. The purpose of this list is to record all highways maintainable at the public expense, irrespective of the public rights over them. It is possible that errors may exist in the electronic versions of this list, those errors having come about through the transfer of information from the original paper mapping and/or insofar as the Council tended only to list roads on their listing when they were subject to vehicular rights. If errors are identified the Council should investigate accordingly and bearing in mind its statutory duty to maintain the list of streets and correct the list as appropriate. There is no particular requirement on the Council to put any particular procedure in place to undertake this task following suggestion that any particular way should be added or removed from the list of streets. However, given the duty to maintain the list and a need to manage the process to ensure that all such suggestions for change are dealt with consistently and

appropriately and in line with quality assurance standards, a procedure is being developed to do this. This procedure shall take account of national best practice and it is proposed that it be formally installed by the end of the 2010/11 financial year.

- 59 When determining whether or not a way is in fact a public highway the Highway Authority or if its decision is subject to challenge, the Courts would be required to consider all available evidence and on the basis of that evidence reach a decision on the balance of probabilities that the way is in fact a public highway. Evidence pertaining to the ownership or usage of the way by the public may come from many sources and can vary depending upon the circumstances of the site. There is a legal maxim that states “once a highway always a highway” To add a lost highway onto the list of streets it is necessary to demonstrate past maintenance at the public’s expense and that the route was utilised and regarded as public.
- 60 The Council’s Highway Maintenance Plan covers all categories of publicly maintainable highways; it is underpinned by the 2005 national code of practice for highway maintenance management “Well Maintained Highways”. Whilst this plan does describe many criteria in terms of the metalled highways that form the majority of the public highway network within its scope; the core principles, such as risk based prioritisation apply to all network categories.

### **Unsurfaced County Roads**

- 61 Unsurfaced county roads are included under the heading of Rural Access Roads in the Highways maintenance Plan. Rural Access Roads are defined as “Roads sometime serving rural properties, often unmetalled and providing access to the countryside carrying only access traffic. These roads often do not have a sealed surface”. The designation is only a local one and not statutory. Herefordshire Council has a general duty for all highways which is to maintain them in accordance with their character and usage. There are 144 miles of roads without a sealed surface within the county. The unsurfaced roads are inspected once a year by the Highways Service at Amey Herefordshire, in a vehicle if they are accessible or on foot if they are not. They are inspected for the risk they pose to the public and as such are regarded as low priority in the overall category rating of highways. The way unsurfaced roads are inspected is being reviewed so that it fits in with the contractual arrangements with Amey but the risk based inspection regime will essentially remain and these revisions will feature on the updated Highways Maintenance Plan Therefore if there is a defect on an unsurfaced road and that defect is such that it poses little risk to the public, the action carried out and the associated timescales will reflect the level of risk. Unsurfaced roads are depicted on the county road map in purple and shown on Ordnance survey maps as red dots and described in the legend as “other routes with public access”. They are generally not signposted on the ground and there is no legal requirement to do so. Any requests to sign a route would be considered against the merits such as usage, condition and public benefit. Therefore members of the public who do not live in the local area would only know they were public highways from looking at an Ordnance Survey map.
- 62 The condition of unsurfaced roads varies considerably as does the maintenance required to make them drivable or in some cases passable. To open up the whole network of unsurfaced county roads would require considerable investment for routes which are a very low priority.

### **Community Impact**

- 63 The public rights of way network is used extensively by local communities for walking, cycling, horse riding, driving etc. and any improvements will be of direct benefit. The network also provides considerable income for tourism local tourist related businesses and an open, accessible and well promoted network will also bring much needed income into the local economy.

## **Financial Implications**

64 No financial implications identified

## **Legal Implications**

65 Legal services have an important role to play in rights of way work and any increase in the number of orders being made or enforcement action taken will have a direct impact on the service. In regards to legal orders, Legal services are responsible for checking over a legal order and sealing it. If objections to legal orders are received legal services are required to support the rights of way team in submitting the application to the secretary of state for determination. Ultimately legal services would need to support rights of way officers at a public inquiry including presenting the case, employing a barrister if required and providing detailed guidance and legal advice.

## **Risk Management**

66 A number of improvements have been set out in this report and are currently being implemented. If there is any delay in the implementation, there is a risk of formal complaints which will tie up staff time and damage the reputation of the council. There is also a risk that continued financial budget restrictions will cause the maintenance backlog to increase and the network to deteriorate further. These risks will be added to the service risk register be monitored on a regular basis.

## **Consultees**

Herefordshire Local Access Forum.

## **Appendices**

Appendix A - Terminology

Appendix B – Service Definitions

Appendix C – Key Performance Indicators

Appendix D – Benchmarking details

## **Background Papers**

Rights of Way Improvement Plan

Highways Maintenance Plan

# Appendix A

## Terminology

There are a number of common terms used in rights of way and associated work:

*Public footpath* (Often confused with Footway which is a pavement) – routes that can only be used by pedestrians

*Public bridleway* – routes that can be used by pedestrians, cyclists and horse riders

*Byway Open to all traffic* (BOAT) – routes that can be used by mechanically propelled vehicles, horse riders, cyclists, carriage drivers and pedestrians

*Restricted byway* – routes that can be used by carriage drivers, horse riders, cyclists and pedestrians but not by mechanically propelled vehicles.

*Definitive Map* – A statutory document that sets out the location of all public rights of way within the county. The definitive map is considered conclusive evidence of the existence and status of a right of way in a court of law and any changes to it must go through due legal process

*Definitive statement* – The statutory document which accompanies the definitive map and sets out the extent of and limitations on rights of way recorded on the definitive map. In Herefordshire, in most instances, the definitive statement only gives the start and end points of a particular right of way which was how the original statement was set out.

*Quiet Lanes* – non-statutory designation used to describe roads with little vehicular traffic (not used by Herefordshire Council);

*Green lanes* – a descriptive term used to describe many un-sealed routes (with or without a stone surface). “Green lane” has no legal significance and it cannot be assumed that these routes carry vehicular or indeed any other public rights.

*Private Street* – a highway that is not publicly maintainable.

*Private Road* – a route over which there are no highway rights

*RUPP's – Roads Used as Public Paths.* A type of highway recorded on the original definitive map. The right of the public over RUPP's was unclear and remaining RUPP's were reclassified as restricted byways in 2006.

*CRF* – carriage road used as a footpath – A non-statutory term used during the compilation of the first definitive maps for some routes that were subsequently recorded as RUPP's to describe a route that was considered to carry vehicles but in actual fact used mainly by the public as a footpath.

*CRB* – Carriage road used as a bridlepath – as CRF but also with public equestrian usage.

*“Without prejudice to higher rights”* – a commonly used phrase reflecting the legal position that the depiction of, for instance, a footpath on the definitive map is not conclusive evidence that there are not currently unrecorded higher rights (bridleway or byway) (see modification orders);

*List of Streets* – a list of all highways that are publicly maintainable; Herefordshire Council is required by law to keep a list of streets but it is not a legal record of highways status. Almost all rights of way

are publicly maintainable and so technically should be recorded on the list of streets but, as in the majority of councils, they are not generally included on the Herefordshire Council list of streets. There is no defined format for the list of streets and it can be either a map or a simple list. In Herefordshire Council the official list of streets is regarded as the Digital Map All roads layer and a print-out of that layer's attributes.

ROWIP – Rights of Way Improvement Plan – statutory strategic public rights of way document produced in 2007 and due for review in 2011

DMMO – Definitive Map Modification Order – legal order which changes the definitive map and statement following the production of evidence to demonstrate it is in error. Statutory duty

PPO – Public Path Order- legal order which changes the definitive map and statement following a request from the landowner or the local authority based on landowner and public interest.

IPROW – Institute of Public Rights of Way Officer – professional body representing public rights of way officers and those with an interest in public rights of way

## Appendix B

### Service Definition – Public Rights of Way

<b>Service Area</b>	<b>Definition</b>	<b>Policies Procedure/ Legislation Guidance</b> /	<b>Risks</b>
Inspection and Maintenance	Carry out inspections and organise maintenance as per inspection and maintenance policy set out in appendix IM1		<p>Defined Outcomes not met.</p> <p>Risk to users of badly maintained network</p> <p>Deterioration of network furniture</p> <p>Impact on Tourism</p> <p>Judicial review – failure to meet legal duty.</p> <p>Clarity required in terms of legal support</p> <p>Clarify delegated authority</p>
<p>Parish Paths Partnership Scheme</p> <p>Scheme designed to promote local ownership of paths (maintenance) and community engagement.</p>	<p>This area of work to be promoted and developed in line with the HC corporate objectives.</p> <p>Run scheme in accordance with P3 guidelines and Inspection and Maintenance policy</p>	P3 Handbook - to follow	<p>Lack of Community engagement</p> <p>Deterioration in Network</p> <p>Insurance provision for volunteers</p>

<p>Enforcement</p>	<p>Carry out enforcement process as set out in Enforcement Policy subject to below.</p> <p>Authorisation required from client before proceeding to either legal notice stage or prosecution</p> <p>All legal notices to be signed off by Client.</p> <p>Full case file to be compiled in all enforcement cases</p> <p>In the event of enforced notice, all recharges to be used to cover costs incurred by Amey and Client as allowed by statute.</p> <p>In the event of a successful prosecutions, any costs awarded used to cover costs incurred by Amey and Client</p>		<p>Clarify delegated authority</p> <p>Increased obstructions on Network.</p> <p>Short term problems becoming long term problems</p> <p>Judicial review – failure to meet legal duty</p> <p>Need to clarify legal support</p> <p>Loss of reputation for both Amey and Herefordshire Council through inappropriate use of powers</p>
<p>Highways Act Diversions</p>	<p>Diversions to be carried out in accordance with Diversion Policy and appropriate process notes subject to below:</p> <p>Decision on whether to proceed to order making stage to be taken by relevant committee, officer of Cabinet member in line with Client standing orders</p> <p>All Legal orders to be signed by Client Legal Services</p> <p>Charge levied for this service in</p>		<p>Unresolved obstructions to the network</p> <p>Impact on outcomes</p> <p>Loss of income</p> <p>Back log not reduced</p> <p>Complaints to Ombudsman</p>

	line with costs summary		Clarification of legal support required  Vacant post to be transferred
Closures (Emergency)	<p>Attend site and inspect reported danger.</p> <p>Assess risk and place emergency closure on path if it concluded there is a risk of injury or death to people or damage to property.</p> <p>Closure procedure is to physically isolate danger if possible, complete emergency closure notice template and place on site. Update path closure database.</p> <p>Aim to mitigate risk within term of emergency closure and re open path.</p>		<p>Danger to users</p> <p>Need to clarify legal support</p>
<p>Closures (Temporary)</p> <p>Occasionally there is a requirement to close a path for a longer period for health and safety grounds of to facilitate works taking place over or along the path.</p>	<p>Procedure for temporarily closing paths set out in the attached</p> <p>A charge is levied for this work covering administration and statutory advertising</p>		<p>Danger to public.</p> <p>Impact on permitted development</p> <p>Need to clarify legal support</p>

<p>Closures (Works)</p> <p>Path closures for no longer than five days and needed to facilitate works are sometimes required.</p>	<p>Full procedures are set out in the attached</p> <p>A charge is levied to cover administration</p>		<p>Impact on works by statutory undertakers.</p> <p>Danger to users</p>
<p>Closures (Events)</p> <p>Path closures are sometimes required to facilitate events (Big Chill for example).</p>	<p>Full procedures are set out in the attached</p> <p>A charge is levied to cover administration.</p>		<p>Danger to users</p> <p>Increased risk for event managers</p>
<p>Publicity and Promotion</p>	<p>Work with Tourism to organise and promote events such as the Walking festival and UGO.</p> <p>Promote walking, cycling and horse riding through appropriate media</p> <p>Advice on suitability of proposed promoted routes.</p> <p>Work with AONB to promote and develop the Wye Valley walk</p> <p>Research and develop new promoted routes.</p> <p>Review and update current portfolio of promoted routes</p> <p>Apply for funding opportunities and ensure all grants are monitored and spent in accordance with appropriate</p>		<p>Loss of Tourism Income</p> <p>Effect on Health related outcomes</p> <p>Reduction in number of grants available to Amey as private company. Grant applications to come through client</p>

	<p>financial requirements.</p> <p>Take all opportunities to promote the work of the PROW team.</p> <p>Work with parish councils and promote and support the funding of schemes such as Parish Notice boards</p>		
Modification Orders	<p>Process modification order applications in line with procedures and statement of priorities set out in the attached</p> <p>Decision on whether to proceed to order making stage to be taken by relevant committee, officer of Cabinet member in line with Client standing orders</p>		<p>No reduction in backlog</p> <p>Judicial review – failure to meet legal duty</p> <p>Need to clarify legal support</p>
Town and Country Planning Act Diversions	<p>Diversions to be carried out in accordance with Diversion Policy set out in the Diversion Policy subject to below:</p> <p>Decision on whether to proceed to order making stage to be taken by relevant committee, officer of Cabinet member in line with Client standing orders</p> <p>All Legal orders to be signed by Client Legal Services</p>		Impact on permitted development
Development	Implement prioritised actions set out in ROWIP		Failure of service to progress
Definitive map review	<p>Transformation from paper based maps to computerised (GIS) Definitive Map &amp; Statement of the County of Herefordshire.</p> <p>Ongoing requirement to keep the Definitive Map and Statement under continuous review (in digital or paper format) as specified in</p>		<p>Judicial review – failure to meet legal duty</p> <p>Out of date information</p>

	sections 53 to 57A of the Wildlife and Countryside Act, Incorporate legal events (including HA and TCPA orders, dedications, side-roads orders, admin boundary orders).		Need to clarify legal support
Parish Paths Officer scheme	<p>Appoint volunteers nominated by the Parish to the Parish Paths Officer Scheme.</p> <p>Volunteer Officers to inspect local paths and carry out minor work and report faults to the Rights of way team.</p> <p>Meet with Volunteer officers on a regular basis.</p> <p>Monitor Scheme and encourage participation</p> <p>Provide financial support to individual volunteer officers in terms of expenses</p>		Community engagement
Volunteers	<p>Encourage and work with groups (e.g. Ramblers, Probation Service) to carry out work under the general supervision of the Rights of Way maintenance section.</p> <p>Provide and monitor financial support in terms of expenses payments.</p> <p>Arrange suitable training.</p> <p>Provide suitable support, attend meeting etc.</p>		Community engagement
Open Access	<p>Keep records of any access restrictions or exclusions that have been granted by Natural England</p> <p>Erecting signage at access points to land.</p> <p>Respond to general enquiries about the location and usage of Open Access land and providing advice about permitted activities, where issues or conflicts of</p>		Restricted access

	<p>interest arise.</p> <p>Refer queries to Natural England or the Council's Commons Team.</p>		
Property Searches	<p>Provide paper and electronic mapping facilities to members of the public, specialist searches companies, solicitors and potential buyers</p> <p>Provide definitive map information to other council departments</p>		Increased possibility of PROW being built on
Dedications	<p>Discuss dedication procedure with landowners as required.</p> <p>Carry out any prescribed consultations</p> <p>Consult with Client on proposal</p> <p>If client is in agreement:-</p> <p>Agree payment to landowner if required</p> <p>Map and prepare order plan of new route</p> <p>Carry out statutory advertising</p> <p>Register change with land registry</p> <p>Amend Definitive Map and Statement</p>		Popular routes not legally recorded – potentially lost
Planning consultations	<p>Provide recommendations and advice to the Council's Planning Services by commenting on planning applications and planning policies on public rights of way matters.</p> <p>Consider and apply for S.106 monies to develop the rights of way network in line with Herefordshire Council's S106 SPD.</p>		<p>Impact of development on Public Rights of Way</p> <p>S106 opportunities not realised</p>

Local Access Forum	Provide secretariat role for the Forum, attend meetings, draw up minutes, agendas, organise and provide training, recruit members, and providing advice, support and information to the Forum when and where necessary.		Failure to meet Statutory duty.  Loss of Community Engagement
Foot and mouth procedures	In the event of a foot and mouth outbreak take instruction and guidance from Herefordshire Councils Animal Health and Welfare team.		Spread of disease
Performance Inspections	Hereford Council are currently in the process of establishing a new tool for measuring the usability of the rights of way network in terms of ease of use		Effect on outcomes
Section 31(6) deposits	<p>Discuss with landowners the process of s.31 (6) deposits.</p> <p>Accept, register and record deposits in line with current legislation and official guidance</p> <p>Hold and keep a register of all deposits made, which should be available for public inspection</p> <p>Make an up to date copy of the register available on the Council's website.</p> <p>Provides advice and suitable proformas for the making and renewal of deposits.</p>		<p>Failure to meet legal duty.</p> <p>Need to clarify legal support</p>

## Appendix C

By 30th June 2010 to have achieved the following in respect of PROW:

		Progress as of 30 <sup>th</sup> June 2010
<i>PPI03 – Defect Management</i>	100% of defects reported as hazards to be identified and made safe within 48 hours	Achieved
	90% of defects reported on category 1 route to be inspected and prioritised within 14 days, 100% within 3 months	Achieved
	All other defects to be risk assessed, prioritised and repaired or incorporated into known programmes of work	Achieved
<i>PPI04 – Route Categorisation</i>	To have categorised all PROW routes by 30th June 2010	Achieved
<i>PPI05 – PROW Standards</i>	A set of PROW Standards will be agreed between HC and Amey Herefordshire by 30th June 2010. These standards will apply and be measured from 1st July - 31st December 2010	Achieved
<i>PPI10 - Life Cycle Management Plans</i>		A Life Cycle Management Plan for PROW assets is due to be developed as part of a wider project to produce Life cycle management plans for all transport assets