

<b>MEETING:</b>	<b>ENVIRONMENT SCRUTINY COMMITTEE</b>
<b>DATE:</b>	<b>28 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>UPDATE ON PUBLIC RIGHTS OF WAY</b>
<b>REPORT BY:</b>	<b>Parks, Countryside and Leisure Development Manager</b>

**CLASSIFICATION:** Open

## **Purpose**

To provide an update on progress and issues set out in the Public Rights of Way report considered by Environment Scrutiny Committee on 13<sup>th</sup> July 2010.

## **Recommendation**

**THAT: The report be noted.**

## **Key Points Summary**

- Environment Scrutiny Committee considered a review of the Public Rights of Way Service performance and outcomes in July 2010. A request was made for an update in February 2011.
- An update of current issues and performance around Definitive Map Modification Orders, public path orders and maintenance is set out.
- An update is provided on the list of issues presented by Mr. McKay at the July Environment Scrutiny Committee meeting.

## **Alternative Options**

There are no alternative options.

## **Reasons for Recommendations**

- 1 This is an information report for Scrutiny Committee.

## **Introduction and Background**

- 2 At the Environment Scrutiny Committee meeting of 13<sup>th</sup> July 2010, Members received a comprehensive report setting out:
  - an overview of the service including its transfer to Amey;
  - the responsibilities of Amey and the Council;
  - the public rights of way legal order functions including performance in achieving those orders; statistics on the outstanding legal order work; the method of prioritisation and how the backlog was being tackled.

- the historic position regarding maintenance of the network, the current backlog position, the method of prioritisation of works, the involvement of the parish councils, and initiatives to tackle the backlog.
- benchmarking against other authorities
- the methods that the Council and Amey use to communicate, promote and engage with local communities and the wider public.
- the characteristics, differences and questions raised by members of the public concerning the List of Streets and the Definitive Map.
- the designation and inspection of unsurfaced county roads.

3. The committee resolved that:

- the list of suggested issues for scrutiny submitted by Mr McKay be forwarded to officers. Following consideration of the officer's response the Chairman and Vice-Chairman be authorised to decide whether any issue(s) should be brought to Committee for consideration as part of the Committee work programme.
- the Parks, Countryside & Leisure Officer investigate the possibility of obtaining funding from other 'partners' who benefit from the public using the rights of way network e.g. NHS, tourism;
- further consideration be given to how the public are informed about route closures, particularly major tourist routes, on the PROW network;
- consideration be given to approaching the NFU to urge them to remind their members of their responsibilities concerning any Public Right of Way over their property; and
- should the Herefordshire Local Access Forum extend an invitation to Herefordshire Council to meet with the Minister and MPs to discuss PROW issues, the Executive be requested that the Chairman and Vice-Chairman be invited to represent the views of the Committee.

## **Key Considerations**

4. An update, mainly in tabular form, has been set out below showing progress for legal orders and maintenance

### Orders Performance

5 The table below was presented to the committee in July 2010 and sets out the key stages of processing legal orders and the performance since 2007. A 2010 column has been added to show performance over the last year.

	Highways Act Orders				Town and Country Planning Act Orders				Definitive Map Modification Orders			
	2007	2008	2009	2010	2007	2008	2009	2010	2007	2008	2009	2010
Number of determinations per year	11	4	9	19	5	4	4	1	7	13	0	3
Number of orders made per year	12	3	2	7	5	4	4	1	0	0	5	4
Number of confirmed orders per year	6	7	4	5	6	3	3	2	0	0	0	1

Current position

6 The table below sets out the outstanding legal order work facing Herefordshire Council as at 1st February 2010 (as reported to Scrutiny in July 2010) and as at 1<sup>st</sup> January 2011

	Highways Act Orders		Town and Country Planning Act Orders		Definitive Map Modification Orders	
	01/02/2010	01/01/2011	01/02/2010	01/01/2011	01/02/2010	01/01/2011
No. of applications received but not yet determined	63	57	1	1	85	83
No. of applications determined but awaiting order making	1	8	0	1	16	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	0	1	0	7	6
No. of applications received during previous 12 months	1	4	1	1	2	1

7. The progress in tackling the backlog of Highways Act orders has been particularly significant. This has been achieved by hard work on the part of the staff and a more robust approach to dealing with contentious applications and those lacking sufficient support. At the July 2010 Scrutiny meeting, a new procedure for dealing with such public path order applications was outlined that would have involved applicants appointing their own independent consultant to manage the application process. As so much progress has been made and it now appears likely that all future public path order applications can be managed by one (part-time) member of staff by mid 2011, thus enabling the other staff resources to be redirected to work on DMMO issues, the need for such a radical change in procedure has been reassessed. It is now proposed that the Public Rights of Way team will continue to manage the public path order process on behalf of applicants; applicants will be issued with enhanced guidance making it clear what level of service the Public Rights of Way team will be able to provide. They will still be free to appoint a consultant if they wish but this is unlikely to be necessary except in the most complex cases. The charging level and structure will also be revised to ensure that charges more accurately reflect the cost of providing the service and that the Public Rights of Way team minimise the amount of work they carry out in this area that is not rechargeable.

Since the July 2010 ESC meeting, the PROW Team has been asked to undertake two new areas of work. The first of these is to research applications for amendments to the Council's statutory List of Streets. The List of Streets is a document that records all highways maintainable at public expense. Unlike with Definitive Map Modification Orders there is no prescribed mechanism for seeking or implementing changes to the document but nonetheless the Council is required to act reasonably in this manner and modify the document when justified by evidence. Due to the close similarities in the type of evidence likely to be presented to the Council and the legal tests to be addressed in both List of Streets and Definitive map modification order applications, it has been decided that the Public Rights of Way definitive map modification order staff are best placed to deal with this additional work flow. The number of List of Streets "applications" is currently small but may have some impact on the availability of staff to deal with definitive map modification orders.

Of greater impact is the need to implement a solution to the Ordnance Survey's Positional Accuracy Improvement (PAI) programme. This was, in essence, a resurvey of the Ordnance Survey (OS) base mapping and has resulted in an apparent shift in the relative positions of some PROW and nearby physical features. Unfortunately the effect has not been uniform across the county and to correct this it is necessary to check every individual PROW and in some cases re-digitise its alignment. This project is a corporate GIS priority for the Council and again the staff able to do the work are the PROW DMMO staff. A plan has been drawn up that envisages a project duration of 10 - 15 months with the staff devoting approximately 20% of their time to PAI work. This will clearly have a direct impact on the number of determinations that the team is able to achieve whilst the PAI project is going on.

Finally, the PROW Team are also starting to deal with some of the contested orders that have been made but not yet resolved. This involves submitting the orders to the Secretary of State to determine, normally by means of a public inquiry. A three day inquiry is planned for June 2011 to determine such a contested order and this type of work will also impact on the number of existing applications that can be determined. In the light of these factors the suggested revised target numbers for 2011 are shown in bracket below

	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 (3)	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 (2)	3	4

## Maintenance

- 8 At the July Committee meeting, the tables below were presented to show the current maintenance position as of the 31<sup>st</sup> May 2010. These tables have been updated to show the current position. Bridges have been removed from the table and dealt with under paragraph 9.

	Outstanding as of 31 <sup>st</sup> May 2010	Outstanding as of January 2011
Long Term Obstructions	108	113
General Service requests*	6682	6159

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

Examples of outstanding maintenance work**	Outstanding as of May 2010	Outstanding as of January 2011
Stiles	778	733
Gates	389	319
Signposts	758	671
Surface vegetation for strimming	667	Figures not available

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

## Bridges

- 9 The poor condition of the bridge stock has resulted in a growing number of temporary closure orders whilst defective structures await replacement or repair. More detailed analysis of the work required to deal with these problems indicates that there are a total of 72 bridges that require replacement now or within the next few years. This figure excludes ditch crossings and small bridges of 4m span or less. Additionally, every year further structures are identified that also require replacement. Of the 72 currently recorded, 32 have been costed and programmed for replacement at a cost of approximately £228,000. The entire PROW capital budget is £45,000 per annum of which £25,000 is identified for bridge works and other large capital schemes. It can be seen that without significant investment the bridge stock is likely to deteriorate further.

## Enforcement

- 10 During the period, July 2010 – January 2011, the Enforcement Officer has issued a total of 26 legal Notices, 21 of which have been for ploughing and cropping offences. 25 of these were complied with by the 7 day deadline, with only one landowner receiving an invoice for some enforcement costs.

The remaining 5 Notices have been in respect of other miscellaneous obstructions, of which 2 were long-term obstructions where all previous attempts at persuasion and co-operation had failed. Only one Legal Notice has expired without resolution, but it has involved extensive negotiation and site visits with several landowners and legal representatives, and there is confidence that it will be resolved in the medium term by way of a Diversion Application.

All matters that were initially earmarked for consideration for prosecution have been resolved either through negotiation or the service of Legal Notices. The need for prosecution is always treated as a last resort, and it is a testament to the success of the enforcement strategy over the past 6 months that this has not yet been necessary. However, prosecution will always be considered in appropriate cases. If and when it becomes necessary in a particular matter, then we will seek to maximise publicity in order to achieve greatest impact among the landowner community.

The Amey Enforcement Officer and the Council's Parks, Countryside & Leisure Manager attended a meeting of the County branch of the National Farmers Union in January 2011. There was lively discussion and it provided a useful opportunity to stress the importance of a well maintained and useable PROW network to the rural community and to develop a closer working relationship with the NFU.

## **List of issues raised by Mr P. McKay**

- 11 At the July meeting, Mr. McKay presented a list of issues he felt should be considered by the Scrutiny Committee. The committee resolved that rather than go through the issues, the list should be handed over to officers to deal with and if the Chair felt any particular item needed to be addressed by the committee it could be at a later date. The updated list along with comments made by both officers and the Local Access Forum are attached. Rather than bring any of the listed issues back to the committee, any outstanding matters should be worked through by the local access forum or officers as set out.

## **Communications**

- 12 Since the July Committee meeting the website has been further developed to include copies of all current public notices and orders including emergency and temporary closures and

PPOs and DMMOs. The DMMO online register of orders has also been extensively improved and complies with statutory requirements.

## **Community Impact**

- 13 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**

- 14 No financial implications identified

## **Legal Implications**

- 15 No legal implications

## **Risk Management**

- 16 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**

- None for this report

## **Appendices**

- Issues list from Mr. Mckay

## **Background Papers**

- None