



Environment Scrutiny Committee	
Report Title:	Update on pressures surrounding Definitive Map Modification Orders service
Meeting Date:	17 July 2024
Chair:	Cllr Chloe Turner
Presenting Officers:	Karen Pearman and Philip Williams
Purpose of Report:	To provide members with contextual information and an update on the Definitive Map Modification Orders service
Planned Dates	None
Appendices attached	App1. What is a DMMO? App2. Brief outline of how applications are prioritised and processed. App3. Brief outline of how “contested orders” are prioritised and processed. App4. List of ‘determined’ applications in 2023 and 2024.
Recommendations	To note the report

1. Summary of position

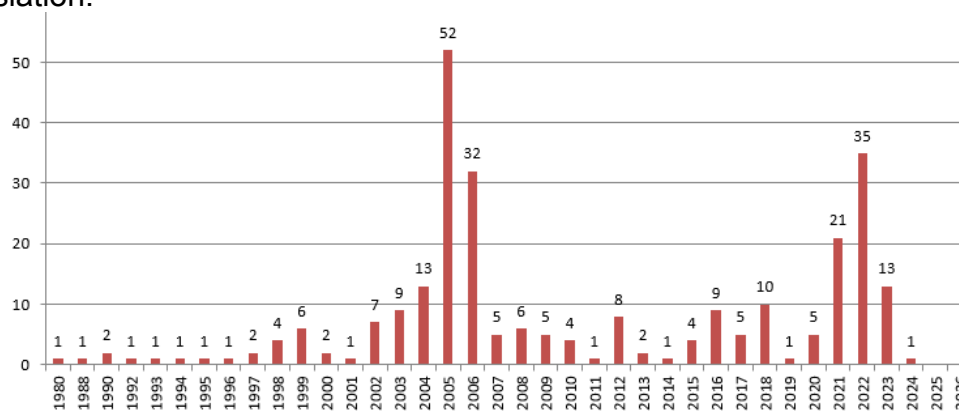
- 1.1. A Definitive Map Modification Order (DMMO) is how rights which are not currently recorded on the Definitive Map & Statement can be formally added to the same as a public right of way. (See also Appendix 1.)
- 1.2. The processing of Definitive Map Modification Orders (DMMO) is statutory duty, not a ‘discretionary power’. We have a statutory obligation to accept and process lawfully made applications.
- 1.3. Prior to 2007, the level of funding received by the DMMO team was not sufficient to prevent the creation of a large backlog of outstanding applications. The number of applications being fully ‘resolved’ between 2007-2020 roughly matched the number of new applications received; therefore, the backlog was not reduced.
- 1.4. Some additional permanent investment has recently been secured for the team - the confirmation of the 2024/25 budget amendment for an additional 1FTE Officer has

put the team in a slightly better position, but this has to be balanced against the rise in applications from 2021, which has added to the backlog.

1.5. Without the investment of additional resources, the position regarding the backlog of applications will continue.

2. Number of applications received each year since the 1980's

2.1. The following graph shows the number of valid applications received each year. Spikes in 2005/6 and in 2021/22 have been predominantly triggered by changes in legislation.



3. Current Status of outstanding DMMO applications

3.1. Applications are categorised according to where they are in the process:

- Undetermined - those awaiting investigation and 'determination' by either CROW Committee or under Officer Delegated Powers; including those applications defined as 'Archived' and those which aren't fully compliant in relation to the submission criteria.
- Determined - those which have been researched and been 'determined' and are either in their publication/confirmation/appeal stage, or those where the published Order has unresolved objections.
- Resolved - those that have been completed and no longer 'live'.

3.2. Status of applications up to mid-June 2024:

No.	End of 2020	End of 2021	End of 2022	End of 2023	In 2024
Total number of 'unresolved' applications:	168	171	210	213	204
No. of new 'min.14(1) compliant' applications received:	5	21	35	13	2
No. of CROWC / Delegated Officer determinations: (see Appendix 4 for details)	4	8	6	17	6
Number of applications 'resolved':	3	13	5	11	8
Number of routes added to DM&S by 'other legal orders/mechanisms':	n/a	3	4	3	0

Number of all 'undetermined' applications (up to mid-June 2024):

No.	End of 2020	End of 2021	End of 2022	End of 2023	In 2024
Undetermined	23	21	50	53	52
Undet-Archived*	54	52	52	44	41
Undet-Non14(2)*	57	61	72	74	73

* "Archived" applications are whereby the intended effect of the application is likely to be nulled by a subsequent change in legislation (for example, the NERC Act); "Non14(2)" applications have not been 'fully made' but are still valid applications in terms of needing determination.

Number of all unresolved ‘determined’ applications as at mid-June 2024:

	Apps at publication/ confirmation stage	Apps with unresolved objections	
		Submitted to SoS	Awaiting submission
No.	3	1 pending	35

4. Staffing levels

- 4.1. Staff numbers were steadily reduced from 3.6FTE experienced staff down to 1FTE experienced staff between 2003 and 2011 despite a rise in applications. This remained the position during the c.2011 austerity budget period when other Council and Highway services were prioritised.
- 4.2. In 2015, staffing levels were increased to 3FTE (2x Officers, 1x Technician).
- 4.3. In the 2022/23 budget year, the DMMO team was given a 2-year fixed term budget increase of £55k (supported by other revenue resources), which allowed for the employment of an additional full-time Officer level member of staff, and an additional part-time Technician level member of staff. These 2 posts are due to end July/August 2024.
- 4.4. The DMMO team was given a permanent budget increase of £50k from April 2024, which allows the Team to continue with the additional full time Officer level member of staff.
- 4.5. This is a specialist area where recruitment is difficult, and the availability of trained staff is low. This is replicated nationally.
- 4.6. Due to the complexity of the applications and case law, it takes time to train staff, and any new staff are unlikely to be effective immediately. If additional resource is considered, “career grade” progression roles ought to be considered (which should also assist with succession planning).

5. Current pressures surrounding the DMMO service

5.1. Changes to legislation

- 5.1.1. As shown in Section 2 there are two main spikes in application numbers (2005-06 and 2021-current) triggered by changes in legislation:
 - For the 2005/06 applications: An influx of applications to record motor rights over ways that were either currently recorded as a lower status, or not recorded at all. This group of applications are mainly contained in the sub-category of Undetermined applications called “Archived”.
 - For the current influx of applications (2021-current): An increase in applications ahead of the “2031 cut-off” for applications based on pre-1949 documentary evidence. Numbers are expected to continue to increase.
- 5.1.2. On 10th May 2024, DEFRA issued an update to say that work on the Statutory Instruments and guidance associated with the enacted 2031 cut-off had ceased.
- 5.1.3. No further timetable has yet been announced.
- 5.1.4. The delays have been a cause of concern and confusion in Rights of Way circles, with questions being raised whether another u-turn will repeal the legislation and/or when work will recommence. The result of the July 2024 General Election may also impact.
- 5.1.5. As a consequence, it is felt that the Council should continue to plan for the Regulations as currently made, even if that means it has to continue to “best guess” the effects of the Statutory Instruments and Guidance.
- 5.1.6. The main User Groups have signalled their intention to continue making applications to record currently unrecorded or under-recorded ways.

5.2. Timescales for processing and penalties for non-determination

- 5.2.1. There is a general duty to keep the Definitive Map under continuous review, and that should be done “*as soon as reasonably practicable after the occurrence*” [i.e. receipt of application]. The only stated timescale mentioned is in relation to the ‘determination’ of applications (i.e. whether to ‘make’ an Order), which should be completed within 12 months, as stated under Schedule 14(3)(2) WCA1981. If this deadline is not met, the applicant can appeal to the Secretary of State for non-determination.
- 5.2.2. A proposed change under the Deregulation Act will mean that applicants will need to appeal to the Magistrates’ Court (rather than the Secretary of State), which could result in an unknown level of fines and direction to comply within a set timescale. Obviously, if multiple applicants appeal, this could cause issues.
- 5.2.3. As a consequence, the Authority prioritises “undetermined” applications, and higher score applications over medium and lower score applications.
- 5.2.4. Focusing resources on ‘undetermined’ applications does mean that applications ‘post determination’ are given a lower priority. The numbers of these are consequently rising.

5.3. Contested Orders

- 5.3.1. Determination of Contested Orders (i.e. those ‘made’ Orders which receive objections that weren’t withdrawn) rests with the Secretary of State, who will in turn will ask an Inspector of the Planning Inspectorate (PINS) to decide on his behalf. **See Appendix 3** for more information about ‘Contested Orders’.
- 5.3.2. The Authority has recently submitted some Contested Orders to the Planning Inspectorate. These recent submissions have been those with less complex or controversial objections where progress was achieved relatively quickly (c.10-14 months from submission). However, the next submission will involve a more complex case, which could result in the need for a Public Inquiry (and associated costs).

5.4. Review of template documentation and Privacy Notice

- 5.4.1. In conjunction with a Governance Adviser in the Information Management team, Officers have recently completed a review of the Privacy Notice and template documentation, to try to increase use of “plain English” to help better explain this complex area and how submitted User evidence may be used and shared (including with the affected landowner). The changes were implemented in May 2024.

5.5. Definitive Map enquiries and new applications

- 5.5.1. The Team also deals with enquiries about the Definitive Map of Public Rights of Way, requests for advice about ‘missing’ routes and issues DMMO application packs. In addition, it receives queries from Parish Councils, User Groups, and individuals about the process for making applications.
- 5.5.2. The main interest groups, the Ramblers (“Don’t lose your way”) and the British Horse Society (“DOBBIN”) have campaigns to search for un- and under-recorded ways.

6. Longer term matters for consideration

6.1. GCC Instigated orders:

In addition to applications submitted by the public / User Groups, Officers also identify anomalies in the records (for example, where the Map and Statement disagree, or where there is a 'gap' between the end of the right of way and the next county highway). These also require a 'modification order' to resolve. There are currently at least 350 known examples, which have been identified during the course of other work since c.1994.

6.2. Consolidation of the Definitive Map of Public Rights of Way:

Gloucestershire's Definitive Map & Statement has never been 'consolidated', i.e. it has not had all the previous Orders which have been made since the original publication combined into a new 'base map' and republished. This means that any legal changes to the network can only be currently shown on an 'overlay' to the Definitive Map. The consolidation of DM&S is a large piece of work so, given the resources available and level of demand for DMMO work, this is a low priority in comparison with other work undertaken by the team.

Appendix 1: **What is a “DMMO”?**

- App1.1 The Definitive Map & Statement of Public Rights of Way (DM&S) is the legal record of all known public rights of way in the county. It is subject to change as routes are added, deleted or changed in status or position. Routes may be diverted or extinguished by a Public Path Order under s.118/9 of the 1980 Highways Act, where change is made in either the landowner's or the public's interest. Routes may also be added, deleted or their status changed by a Definitive Map Modification Order (DMMO) which requires evidence that the Definitive Map should be changed. This Report relates to DMMOs.
- App1.2 DMMOs can only be made on the basis of evidence; they are not about whether it is a good or a bad thing that a right should be added, amended or deleted, but about whether particular rights exist.
- App1.3 Anyone may apply for a Modification Order if they believe the DM&S is inaccurate or incomplete, including User Groups, Parish Councils or individuals.
- App1.4 No charge can be made for making a Modification Order application; however, an applicant is expected to submit copies of any evidence which they consider supports their application.
- App1.5 The Council has a statutory duty to keep the DM&S under continuous review and must appropriately investigate all claims for modification which meet the minimum standard for submission as defined by the Wildlife & Countryside Act 1981.

Appendix 2: **Brief outline of how applications are prioritised and processed.**

- App2.1 All lawfully made applications are logged onto the Statutory Register of Applications and queued for processing in accordance with its priority rating based on criteria as set out in the Rights of Way & Countryside Access Improvement Plan (ROW&CAIP) and as amended in July 2016 to further prioritise 'undetermined' applications.
- App2.2 The criteria as set out in ROW&CAIP for any given priority score are based on an assessment of: A - Quality of evidence, B - Public safety, C - Level of use, D - Positive impact on the Network, E - Meeting ROW&CAIP outcomes, F - Development
- App2.3 Each application is researched individually against the submitted evidence and Officers will carry out further investigations and documentary research, engaging with statutory bodies, the Applicant, user groups, and the Landowner (as applicable).
- App2.4 The research is not intended to establish that a right definitely exists, just whether there is sufficient evidence to 'determine' whether the right is "reasonably alleged to subsist". If there is, the County Council, as the "Order Making Authority (OMA)", will 'make' an Order.
- App2.5 If an Order is 'made' and published, a consultation period ensues. If no objections to the 'made' Order are received (or are received but later withdrawn), the Order can be 'confirmed'. A further 6-week period commences where the confirmation/order is subject to Judicial Review (JR). If no JR is lodged, the route becomes a recorded Public Right of Way on the DM&S.
- App2.6 If objections to the Order are received (known as a 'contested order'), the matter must be referred to the Secretary of State for direction. The OMA does not have the power to override objections, even legally 'irrelevant' ones. Similarly, if a JR is lodged.
- App2.7 At this stage, the Secretary of State will apply a higher (harder) test than that considered by the OMA, i.e. whether the right "subsists", rather than it is "reasonably alleged to subsist".
- App2.8 For this reason, it is considered prudent that Officers carry out a thorough investigation for the 'determination' Report, especially if they become aware that objections to any 'made' Order are likely.

Appendix 3:
Brief outline of how “contested orders” are prioritised and processed.

- App3.1 There is no deadline for the submission of a Contested Order, but the process is covered by the general duty to keep the Definitive Map under continuous review, and that should be done “*as soon as reasonably practicable after the occurrence*”.
- App3.2 The submission requires Officers to compile evidence and write reports giving reasons why it is considered that the Order should/should not be confirmed/varied, etc., and it must include copies of most aspects of the process from the initial application to the making of the Order.
- App3.3 PINS will make an assessment of the objections and other submitted information and correspond with the objectors and agree the format to be used, whether Public Inquiry, Hearing or Written Representations. The Council is usually required to prepare a statement of case, interview and help prepare witness statements, employ an advocate, and arrange a venue. A case determined by Written Representations is usually more time efficient/less costly than a Hearing, which - in turn - is more time efficient/less costly than a Public Inquiry, which typically costs in the region of £25k.
- App3.4 Once a Contested Order is submitted to PINS, the timescale of determination is wholly directed by them, and the Council must be ready to act on the decision (to ‘make’ a further Order or hold a Public Inquiry etc).
- App3.5 When deciding when to submit Contested Orders to the Secretary of State, the Council not only has to be mindful of the number of undetermined applications held, but also of the ‘clock’ which starts ticking in relation to each submission. As a result, the Council cannot just submit all Contested Orders in quick succession, as it needs to be sure it can appropriately manage the consequence of that submission whilst still processing other applications at the earlier ‘determination’ stage.

Appendix 4:
List of recent “determinations” of DMMO applications.

Determinations in 2023: Total = 17

Reference	Date	Decision
573/11/231(1)	08/02/23	decision not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006.
573/11/141(10)	08/02/23	as application was superseded by S119 Diversion Order, DMMO resolved not to make additional Order.
573/11/246(6)	28/03/23	decision to Make an Order.
573/11/222(1)	06/06/23	decision to make an Order for RB (ex rail line near Tetbury Goods Shed). e
573/11/169(24)	24/07/23	application was superseded by S26 Creation Order, DMMO resolved not to make additional Order.
573/11/141(9)	18/07/23	Stowfield. Application was superseded by S26 Creation Order, DMMO resolved not to make additional Order
573/11/110(2)	19/07/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/231(2)	19/07/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/190(2)	20/09/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/190(3)	20/09/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/141(6)	03/10/23	Decision to make order for footpath
573/11/159(1)	03/10/23	Decision to make order for footpath
573/11/182(6)	17/11/23	Decision to make order for Restricted Byway
573/11/048(3)	17/11/23	Decision to refuse to make Order on insufficiency of evidence

573/11/049(4)	17/11/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/193(1)	17/11/23	decision to not to make an order, on the grounds that public motor vehicle rights have not been retained under NERC2006
573/11/201(6)	12/12/23	decision to make Order for Restricted Byway

Determinations in 2024 (to date): Total = 6

Reference	Date	Decision
573/11/042(1)	04/03/24	Decision to refuse application for RUPP to BOAT as NERC considered to extinguish MPV and no exceptions considered to apply
573/11/055(1)	04/03/24	Decision to refuse application for RUPP to BOAT as NERC considered to extinguish MPV and no exceptions considered to apply
573/11/214(29)	04/03/24	Decision to refuse application as S26 used instead to achieve the same result
573/11/137(10)	22/03/24	Decision to make Order to upgrade FP to RB and for additional RB.
573/11/115(1)	26/03/24	Decision to refuse application for RUPP to BOAT as NERC considered to extinguish MPV and no exceptions considered to apply
573/11/138(1)	04/06/24	Decision to refuse application for additional FP as there was regarded to be insufficient "as of right" use over the route over the qualifying period(s).

Next... (subject to change if late rebutting evidence is submitted/discovered)

- Summer 2024 - Officer Delegated to determine 1-2 applications.
...plus work ongoing bringing other applications forward for determination, etc.