



<b>Environment Scrutiny Committee</b>	
<b>Report Title:</b>	Update on pressures surrounding Definitive Map Modification Orders service
<b>Meeting Date:</b>	11 January 2023
<b>Chair:</b>	Cllr Vernon Smith
<b>Presenting Officers:</b>	Karen Pearman and Philip Williams
<b>Purpose of Report:</b>	To provide members with contextual information and an update on the Definitive Map Modification Orders service
<b>Planned Dates</b>	n/a
<b>Background documents:</b>	<a href="#">Budget Consultation 2023-24</a>
<b>Appendices</b>	n/a
<b>Recommendations</b>	To note the report

## 1. Background

- 1.1. 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.
- 1.2. 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.
- 1.3. Anyone may apply for a Modification Order if they believe the DM&S is inaccurate or incomplete, including User Groups, Parish Councils or individuals.
- 1.4. 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.

1.5. The County 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.

## 2. Brief outline of how applications are prioritised and processed

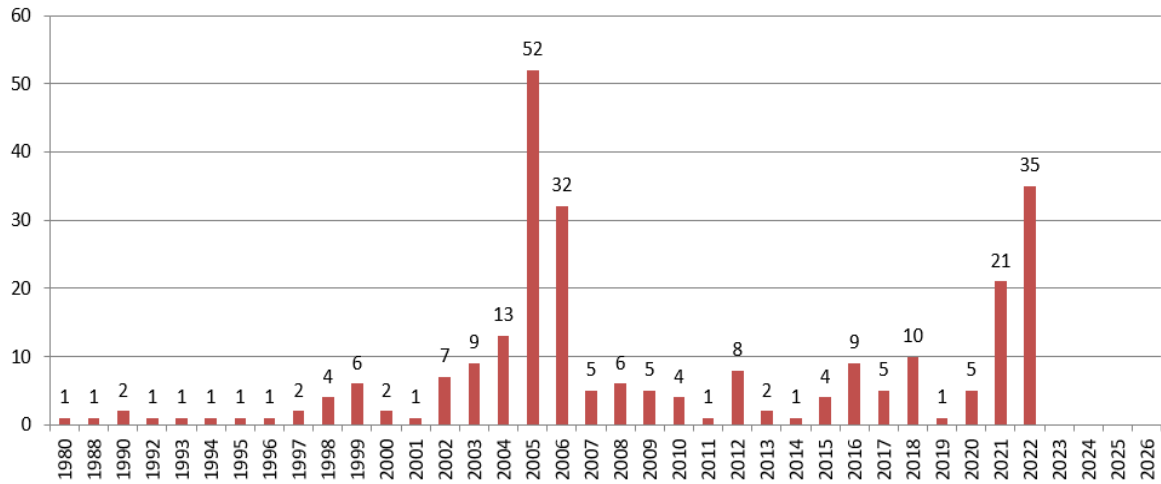
- 2.1. On receipt of a valid application it is logged onto the Statutory Register of Applications and queued for processing in accordance with its priority rating based on criteria as set out in the Rights of Way Improvement Plan (ROWIP) and the amended in July 2016 to further prioritise 'undetermined' applications.
- 2.2. The criteria as set out in ROWIP 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 ROWIP outcomes
  - F - Development
- 2.3. Each application is researched against the submitted evidence and officers will carry out further investigations to establish its merit engaging with the Applicant, user groups, and the Landowner.
- 2.4. 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, we 'make' an Order.
- 2.5. If an Order is 'made' and published, a consultation period ensues. If no objections to the 'made' Order are received, the Order can be 'confirmed'. After a further 6-week period, the route becomes a recorded Public Right of Way on the DM&S.
- 2.6. 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 County Council does not have the power to override objections, even legally 'irrelevant' ones.
- 2.7. At this stage, the Secretary of State will apply a higher test than that considered by the Authority, i.e. whether the right "subsists", rather than it is "reasonably alleged to subsist". For this reason, officers must carry out a thorough investigation for the 'determination' Report, especially when, during the investigation, officers become aware that objections to any 'made' Order are likely.

## 3. Staffing levels

3.1. This was reduced from 2011 during the austerity budget period when other essential services were prioritised. In 2015 staffing levels were increased to 3 staff and last year Council approved one off funding for an additional 1.5 FTE. As a niche area we were unable to recruit staff with Rights of Way experience so new recruits are being trained by others in the team. The draft 2023/24 budget includes provision to extend these positions for a second year. Funding beyond 2023/24 is subject to future budget rounds.

## 4. Number of applications received each year since the 1980s

4.1. 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.



## 5. Current number of outstanding DMMO applications

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

- Undetermined (those applications which are 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 applications 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 applications that have been completed and are no longer ‘live’)

### 5.2. Status of workload in mid-December 2022:

Total number of ‘unresolved’ applications:	210
No. of new ‘min.14(1) compliant’ applications received in 2022 to date	35 (21 in 2021)
Number of applications ‘resolved’ in 2022 to date	5 (10 in 2021)
Number of routes added to DM&S by ‘other means’ in 2022 to date	4 (3 in 2021)

### Number of all ‘undetermined’ applications, as at 15 December 2022:

	Undetermined	Undet-Archived	Undet-Non14(2)
No.	50	52	72

“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 15 December 2022:

	Apps at publication/confirmation stage	Apps with unresolved objections	
		Submitted to SoS	Awaiting submission
No.	1	1 - on 30/6/222	34

### Recent CROW Committee / Internal Officer Panel determinations:

Previous CROW Ctte / IOP in 2022	<p>1 App on 29 March - decision to make Order for additional FP - objection received</p> <p>1 App on 16 May - decision to make Order for additional FP - objection received, but now withdrawn - Order now being confirmed.</p> <p>1 App on 4 Oct 2022 - decision to make Order for additional RB and FP - Made Order published and in objection period.</p> <p>1 App on 14 Dec 2022 - as application superseded by S25 Creation Agreement, DMMO resolved not to make additional Order</p>
Next CROW Ctte/IOP	<p>Jan 2023 - proposed Internal Office Panel to determine 2 applications (subject to change)</p> <p>March 2023 - next CROW Committee</p>

## 6. Current pressures surrounding the DMMO service

### 6.1. Changes to legislation

- 6.1.1.** As shown in Section 4 there have been two main spikes in application numbers - 2005-06 and 2021-current, triggered by changes in legislation.
- 6.1.2.** For the 2005/06 applications, the change in legislation concerned:
- (a) Section 47 of the Commons & Rights of Way (CROW) Act 2000, which reclassified all Roads Used a Public Path (RUPPs) to Restricted Byways as of 2 May 2006. (A Restricted Byway being usable on foot, horse, horse & cart, and latterly pedal cycles, but not for motor vehicles, and
  - (b) Part 6 of the Natural Environment & Rural Communities (NERC) Act 2006, which extinguished all unrecorded public motor vehicular rights, subject to five exceptions, making it much more difficult to record public motor vehicular rights
- 6.1.3.** This caused 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”.
- 6.1.4.** For the current influx of applications (2021-current), the change in legislation concerns:
- (a) The Countryside and Rights of Way (CROW) Act 2000, which introduced procedures which intended to provide certainty for landowners by putting a final closure date on applications based on pre-1949 documentary evidence.
  - (b) The Deregulation Act 2015, which, in addition to making substantial changes to the way that Definitive Map Modification Order applications are determined, confirmed that the 2026 cut-off would become law, subject to certain exceptions.
- 6.1.5.** This caused the start of an influx of applications ‘to beat the deadline’. Despite DEFRA announcing in February 2022 their intention to repeal the 2026 provision, this has not yet been done. Even if the repeal is completed, the main User Groups have signalled their intention to continue making applications to record these currently unrecorded or under-recorded ways.

### 6.2. Timescales for processing

- 6.2.1.** 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. of an application].
- 6.2.2.** The only stated timescale mentioned is in relation to the ‘determination’ of applications, which should be completed within 12 months (i.e. whether to ‘make’ an Order), 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.
- 6.2.3.** As a consequence, the Authority prioritises “Undetermined” applications and higher score applications over medium and lower score applications.
- 6.2.4.** Following the appointment of additional fixed term staff last year it has been decided that in the short to medium term the most productive use of the skills and resources of the team is by training one of the new officers on evidentially less-complex ‘Archived’ claims. Whilst these are likely to be ‘lower priority’ applications this approach will help to reduce the overall number of outstanding applications.
- 6.2.5.** Focusing resources upstream on undetermined applications does mean that applications ‘post determination’ are given a lower priority.

### 6.3. Contested Orders

- 6.3.1.** Determination rests with the Secretary of State, who will in turn ask an Inspector of the Planning Inspectorate (PINS) to decide on his behalf.
- 6.3.2.** There is no deadline for the submission of a contested Order, but the process is covered by the general duty mentioned at 6.2.1. The submission requires Officers to compile and write reports giving reasons why 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. 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 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 more efficient than a Hearing, which - in turn - is more efficient than a Public Inquiry, which typically costs in the region of £25k
- 6.3.3.** Once the 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).
- 6.3.4.** 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 applications 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..
- 6.3.5.** The Authority has recently submitted applications to the Planning Inspectorate; these have been mostly those with less complex or controversial objections where progress can hopefully be achieved quickly.

#### **6.4. Review of template documentation and Register of Applications**

- 6.4.1.** During the past 12 months, officers have invested considerable time working with ICT to review the official Register of Applications. The enhanced Register, which includes the names and addresses of Applicants and has increased search functionality, went live in March 2022.
- 6.4.2.** The Team is also currently reviewing the standard 'help sheets' and template documentation to use "plain English" where possible. This work is expected to be completed in the last quarter of 2022/23.

#### **6.5. Definitive Map enquiries and new applications**

- 6.5.1.** 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.
- 6.5.2.** The main interest groups, the Ramblers ('Dont lose your way') and the British Horse Society ('Dobbin'), have campaigns to search for un- and under-recorded ways; considerable officer time is also spent managing enquiries from a few very active individuals.

### **7. Longer term matters for consideration**

- 7.1. GCC Instigated orders:** In addition to submitted the applications, 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.
- 7.2. Consolidation of the Definitive Map of Public Rights of Way:** Gloucestershire's Definitive Map 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 the Map 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 described earlier in this report.

## **8. Key points**

- 8.1.** The processing of DMMOs is statutory duty, not a 'discretionary power'
- 8.2.** The challenges facing the DMMO service in the past and in the future cannot be viewed in isolation but must be considered in the wider context of the priorities set out and agreed in the Council Strategy and significant budgetary pressures on councils. Prior to 2020, the number of applications being fully 'resolved' roughly matched the number of new applications received.
- 8.3.** Despite challenging budgets additional investment was secured for the team last year and funding is included in the 2023/24 draft Budget. However this is a specialist area where recruitment is difficult and it takes time to train staff. It is likely that even with this additional resource the volume of DMMO applications received will continue to grow in anticipation of the 2026 cut-off date. If DEFRA repeal this provision this may affect demand for new DMMO application although there will still be a backlog for officers to tackle.