



## RIGHTS OF WAY CABINET COMMITTEE – 27<sup>TH</sup> MARCH 2025

**SUBJECT: DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS –  
POLICY FOR PRIORITY AND PROCEDURE**

**REPORT BY: COUNTRYSIDE ACCESS AND RIGHTS OF WAY OFFICER**

--

### **1. PURPOSE OF REPORT**

- 1.1 This report provides background information in relation to the revision of a policy to determine the order in which applications under Schedule 14 of the Wildlife and Countryside Act 1981 are investigated and subsequently determined.

### **2. SUMMARY**

- 2.1 A policy was implemented in 2014 following consideration by the Rights of Way Cabinet Committee to prioritise applications to modify the Definitive Map and Statement by recording unrecorded rights of way, altering the Definitive Statement and amending the alignment or status of recorded routes. Following 10 years of implementation, it is evident that this policy is no longer serving the intended purpose to effectively prioritise the growing number of applications under Schedule 14 of the Wildlife and Countryside Act 1981. A revision of the policy has therefore been developed, which considers a wider range of factors. This revision will modernise the policy and make it more effective at prioritising cases for the foreseeable future. The policy also sets out a method to steadily reduce the existing backlog of applications.

### **3. RECOMMENDATIONS**

- 3.1 It is recommended that Members approve the replacement of the 2014 policy with the procedure and prioritisation scheme attached as **Appendix 1**.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 The revised policy contains more criteria and is expected to prioritise applications in a fairer manner, and in a way which considers criteria not previously included or considered. The policy also states how we will deal with the existing backlog of applications.

#### **5. THE REPORT**

- 5.1 On 15<sup>th</sup> September 2014, the Rights of Way Cabinet Committee considered a report and approved to make a policy to prioritise Schedule 14 of the Wildlife and Countryside Act 1981 (WCA81) applications for modifying the Definitive Map by
- 1) adding previously unrecorded routes.
  - 2) altering the status of existing routes or amending the Definitive Statement,
  - 3) removing recorded routes which had been recorded in error.
- 5.2 The 2014 policy (recorded as Document No. 5) is included as **Appendix 2**.
- 5.3 After consideration, 13 highly relevant points were incorporated into a test system and applied to the current backlog of applications.
- 5.4 The factors considered relevant include those from the 2014 policy as these factors are still relevant, but also adding other factors of significance in the process, and these are detailed below.
- 5.5 **Where development threatens the existence of route.**  
There is a need to determine the status of a route ideally prior to an application for planning consent, or at least prior to construction affecting the route. This provides clarity on what is subsequently required of the developer.
- 5.6 **Where the uncertainty can demonstrate an effect on the saleability of land (blighted land).**  
The effect of an unknown route over private land can greatly affect the saleability and value of land. Clarity can again provide certainty, which in turn allows an owner to accommodate or deal with the route appropriately.
- 5.7 **Where the route is unavailable, obstructed or blocked in some way.**  
Obstruction of a route is often how a way 'comes into question'. The fact that it may not be available is inconvenient at best but still holds potential to be restored (subject to the final determination and legal process).
- 5.8 **Where an application is submitted in defence of enforcement action (an attempt to stall enforcement action).**  
There are instances where a landowner / occupier disagrees with our position for any number of reasons and may submit a Schedule 14 WCA81 application

to counter the authority's actions, or to significantly delay the process. Increasing the priority of such cases, means officers can deal with them in a more timely manner, and set a clear position that submission of such applications will not unduly delay enforcement action.

**5.9 Where a route has a significant community benefit.**

Where a route is used or has been used by a significant proportion of the community (e.g. to local facilities or amenities), these routes will be given additional weight.

**5.10 Where pre-existing deposits made under s31 of the Highways Act 1980 are recorded.**

Where a landowner makes a deposit under section 31 of the Highways Act 1980, they are effectively stating that they do not dedicate any public right of way over the land shown on the included plan(s). This brings into question the status of the route and ends the period over which the public can state they have used it 'as of right'. Any areas covered by a s31 deposit, may therefore be dealt with quicker if the land was covered by such a declaration.

**5.11 Where a route coincides with a subsequently or recently created highway/cycleway (for a significant proportion of the route's total length).**

In some instances, applications have been made to record a public right of way, and this route has subsequently been 'adopted' as a higher status highway i.e. a cycleway (in the case of footpaths) or a carriageway (vehicular road) (in all other cases). If this is the case, significant amounts of evidence and research may possibly be avoided if the claimed right now already exists. We may narrow the workload to any parts unaffected by the current highway.

**5.12 Where a route is affected by subsequent development (a large-scale obstruction e.g. a housing development).**

Large scale obstructions, like that in 5.7, are inconvenient, but hold potential to prevent access on a larger scale and potentially in a way which cannot be reinstated in practice (such as a housing, or industrial development).

**5.13 Any legal matters such as Commons Act registrations or Public Path Orders etc.**

These are matters which are important and should not be delayed. It is therefore important, that Schedule 14 applications are determined as soon as possible to allow other processes to be carried out with full awareness of the existence of any public rights of way.

**5.14 Where the route is on land controlled by the Authority (entirely or partially).**

As the owner is a public body, use may be 'by right' rather than 'as of right' (see *Barkas v North Yorkshire County Council and another (2014)*). Schedule 14 applications may not be appropriate or necessary, and consideration may be possible under other legislation e.g. a Creation Order under section 26 of the Highways Act 1980.

**5.15 Where the route crosses a railway (active or disused).**

Certain railway legislation makes walking on railway land an offence, and as such would preclude the acquisition of a public right of way. In such circumstances, significant parts, or indeed all of a claimed route may not be recordable, and the case may potentially be concluded quicker.

**5.16 Any 'Quick Wins' e.g. where previous work has substantially progressed the case or the evidence is substantially the same as another case.**

In some cases, work has already been carried out by previous officers and may require relatively little additional work to progress to a conclusion. Dealing with these cases will potentially reduce the current backlog.

**5.17 Where consideration of a Creation Agreement (s25 HA80) would reduce investigation time and have the same result. This will be presumed and scored accordingly until proven otherwise.**

A landowner may or may not be prepared to accommodate a route in a Schedule 14 application, however, they may be prepared to accommodate a similar route, and if agreed by the applicant and supporters, an Order under section 25 of the Highways Act 1980 could avoid the time-consuming research and case preparation required for a Schedule 14 WCA81 Application.

**5.18 Conclusion**

The revised policy contains more criteria, is expected to prioritise applications in a fairer manner, and in a way which caters for factors not previously included or considered. It is considered appropriate for modern conditions and demonstrates a method of dealing with present applications as well as the existing backlog.

**6. ASSUMPTIONS**

- 6.1 The report assumes that Schedule 14 WCA81 Applications will continue to be submitted in the future, and that no additional resources will be made available to the Rights of Way department to deal with this area of work.

**7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 The proposal is intended to improve an existing policy. It is intended to prioritise cases over a larger number of relevant factors, the most significant in relation to protected characteristics is Age, and ensuring applications are dealt with promptly is vital to secure and retain evidence from first-hand knowledge. Age is therefore one of the determining factors in the revised policy. It has been demonstrated that the proposal is otherwise equal across all other factors and is not detrimental to existing corporate policies or aims. This has led to the decision to implement without amendments.

**[Link to full Integrated Impact Assessment](#)**

**8. FINANCIAL IMPLICATIONS**

- 8.1 The revised policy makes a commitment to determine applications more regularly. This will ultimately result in increased costs in advertising; however, these increased costs will be financed from existing budgets. Unopposed Modification Orders incur approximate costs of £2,500 - £3,000 for advertising the Order and Confirmation of the Order.
- 8.2 Opposed Orders are sent to PEDW for determination, and legal costs are difficult to predict – a recent Public Inquiry incurred legal costs of over £7,000 and these are covered by the Legal Department. The level of costs incurred by opposed Orders, may impact the number of cases concluded annually.

**9. PERSONNEL IMPLICATIONS**

- 9.1 The proposal will be carried out within current staff allocation. No new posts are proposed as a result of this report.

**10. CONSULTATIONS**

- 10.1 Draft reports and the proposed policy have been circulated to specific consultees / interested parties. No comments were received within the allocated time.

**11. STATUTORY POWER**

- 11.1 This is Corporate Policy and directly relates to the Public Rights of Way area of work and is therefore the responsibility of the Rights of Way Cabinet Committee under the Council's constitution.

Author: Stefan Denbury, Countryside Access and Rights of Way Officer,  
denbus@caerphilly.gov.uk

Consultees: Rob Tranter, Head of Legal Services and Monitoring Officer,  
Open Spaces Society Local Representative

Background Papers:  
None

Appendices:

Appendix 1 Procedure and Prioritisation of Schedule 14 WCA81 (DMMO) applications.

Appendix 2 Document No.5 – 2014 policy.

**Procedure for dealing with Definitive Map Modification Order applications – 2025 (PROW/DMMO/2025v1a)**

- When the existence or status of a route is questioned, we will provide a small amount of advice – enough sufficient to enable a person to determine whether they wish to apply for a change.
- If an individual wishes to apply for a change to the Definitive Map (by adding, removing or altering the recorded status of a route) we will send (by email preferably, but by post if necessary) an application pack which includes the necessary forms in the correct format.
- The applicant (as they will become) will complete the application form (WCA5) and will also need to serve a notice (WCA6) on **all** landowners. Once notice has been served on the landowners, the applicant advises the Authority through a notice (WCA7) that this has been done. The application form (WCA5) is often submitted along with user evidence forms (UEFs) – Form WCA8a, can be reproduced as often as is necessary.
- Once received, we will examine the application to ensure it is in the proper format and ensuring it includes the necessary plan(s).
- If all is present and correct, we will acknowledge receipt within 2 weeks, and we will assign the case two numbers – 1) a ‘Claim reference number’ which is a simple sequential number and 2) a path reference number or ‘route code’ (for addition of paths this will be a new number – sequential within the district, ward or community); for removal or change of status of a path, it will be the number as recorded on the Definitive Map. We will also prioritise the case according to the prioritisation method (PROW/DMMO/2025v1b - below) and assign it a position in the waiting list.
- We aim to determine the application within 12 months of acknowledging receipt, unless we have a high volume submitted in a relatively short space of time, in which case we will determine as soon as possible, but we will notify the applicant of an anticipated date.
- If the resolution of the Committee is to make an Order, this will be drafted and published as soon as possible after the determination, and this will usually be 4 to 6 weeks following the decision. Following the making of an Order, there will be a period of public consultation lasting 42 days.
- At this point there are various possible outcomes, and this document cannot cover all eventualities.

Further information on the process can be sought from the Welsh Government’s guidance at <https://www.gov.wales/sites/default/files/publications/2019-04/public-rights-of-way-guidance-for-local-authorities.pdf> Annex 4 and 5.

To deal with our existing backlog, we will:

- Review the backlog of applications, identifying any which are incomplete or do not meet the requirements of the legislation and return to the applicant with details of what is required,
- We will prioritise the remaining applications in line with the tests identified below,
- We will aim to determine a maximum of 4 cases a year in total (at least one of which will be an existing case to reduce the backlog steadily).

**Prioritisation of Schedule 14 applications (Definitive Map Modification Order applications) (PROW/DMMO/2025v1b)**

Applications made to record previously unrecorded routes, to reclassify routes believed to have an incorrect status, or to seek the removal of a route partially or entirely from the Definitive Map will be filtered and prioritised in line with the following tests and dealt with accordingly.

- 1) For a change to be considered, there must firstly be an application – applications are required to be in a set format (we have forms available to assist), or considerably to the like effect.
- 2) The application must be correctly recorded as above and comply with the prescribed format and stages as described in Schedule 14 to the Wildlife and Countryside Act 1981.
- 3) Only those cases meeting the above tests will be accepted and prioritised. There are 13 factors used to score points (one point for each factor) – the more points gained will give a higher priority and these factors are (in no particular order):
  - a. Where development threatens the existence of route,
  - b. Where the uncertainty can demonstrate an effect on the saleability of land (blighted land),
  - c. Where the route is unavailable, obstructed or blocked in some way (minor obstructions e.g. a single fence, a gate, or similar),
  - d. Where an application is submitted in defence of enforcement action (an attempt to stall enforcement action),
  - e. Where a route has a significant community benefit,
  - f. Where pre-existing deposits made under s31 of the Highways Act 1980 are recorded,
  - g. Where a route coincides with a recently created highway/cycleway (for a significant proportion of the route's total length),
  - h. Where a route is affected by subsequent development (an obstruction larger in scale to 3(c)) (e.g. housing development),
  - i. Any legal matters such as Commons Act registrations or Public Path Orders etc.,
  - j. Where the route is on land controlled by the Authority (entirely or partially),
  - k. Where the route crosses a railway (active or disused),

- l. Any 'Quick Wins' e.g. where previous work has substantially progressed the case or the evidence is substantially the same as another case,
  - m. Where a landowner accepts the status of the route or agrees to a similar, acceptable alternative route (acceptable to the applicant), making the necessary Orders could (subject to resources) occur immediately. This will be presumed and scored accordingly until proven otherwise.
- 4) Should any cases have equal points scores, they will be dealt with in the order in which they were submitted.
- 5) Officers shall have ultimate discretion in prioritising cases should there be any conflict not considered by this policy and this will be recorded and may form the basis of a subsequent revision in the future, but in making a decision, the officer shall consult the appropriate Head of Service and Cabinet Member, and their decision shall also be recorded.

## **PROCEDURE FOR DETERMINING APPLICATIONS UNDER SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981**

Applications to be dealt with on a date order basis.

Officers be given discretion to prioritise the following applications in order to prevent possible litigation and the loss of evidence to support the applications: -

### **PLANNING APPLICATIONS**

Should a planning application be received which affects the route of the claimed route then it is considered to be appropriate to investigate the claim and resolve it before any building works commence.

### **LAND FOR SALE**

If the ground over which the claimed route crosses is in the process of being sold (searches do not reveal such applications) but this can have an impact on both the vendor and purchaser if the application is brought to the attention of the purchaser. Also, the loss of evidence relating to the use of the land before the application was made, could be lost.

### **USEFUL LINK TO THE COMMUNITY/ELDERLY USERS**

The Authority has a number of claimed routes which are blocked and had previously been well used by the local community. These claimed routes have the support of the local community some of which may be elderly and are suffering as a result of the removal of a short cut. Sadly, if some applications are not dealt with for a few years it could mean the loss of very useful evidence when some of the supporters die before the claimed route is dealt with.

### **STATUTORY DECLARATIONS**

If there is evidence to negate the claimed route such as a statutory declaration in respect of any dedicated paths through the land.

### **CREATION AGREEMENTS**

Where an agreement can be reached between the landowner and the users to agree a footpath, which may or may not be on the line of the claimed route.