



RIGHTS OF WAY CABINET COMMITTEE – 15TH SEPTEMBER 2014

SUBJECT: REVIEW OF PROCEDURE FOR APPLICATIONS RECEIVED UNDER THE WILDLIFE AND COUNTRYSIDE ACT 1981

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 A Cabinet Member has queried the way in which applications are dealt with and asked that a report on the subject be submitted to the next Rights of Way Cabinet. To consider the way in which applications are dealt with under Section 53 of the Wildlife and Countryside Act 1981 to add, delete or amend particulars contained with the Definitive Map and Statement within the Borough. Once an application is submitted in the prescribed manner the Authority has a statutory duty to investigate the application to its conclusion to agree whether or not the application is supported or rejected.

2. SUMMARY

- 2.1 The report sets out the way in which applications under the Wildlife and Countryside Act 1981 are dealt with.
- 2.2 Under the terms of the Wildlife and Countryside Act 1981 members of the public and landowners may make application to modify the Definitive Map of Public Rights of Way and/or Statement to add, delete or amend particulars contained therein. This process is called “a claim” in this report. This is a continuous exercise and therefore the Definitive Map and Statement is under continuous review.
- 2.3 There is a backlog of claims, some of which pre-date Local Government Reorganisation in 1996. Due to the complexity of some claims the time taken to investigate one claim and submit it to the Rights of Way Cabinet for determination can be in the region of one year. However, this may be extended if either the applicant or the landowner challenges the decision, which could result in a Public Inquiry.
- 2.4 To change the way in which applications are dealt with which would have a positive impact on the network.

3. LINKS TO STRATEGY

- 3.1 The Wildlife and Countryside Act 1981 places a duty on the Council to maintain an up to date the Definitive Map and Statement.
- 3.2 Keeping the Definitive Map and Statement under continuous review as detailed within the Rights of Way Improvement Plan.

4. THE REPORT

4.1 Background

This Cabinet has delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981. This report relates to the procedure in dealing with such applications. Document No. 1 gives an explanation of the term “public rights of way”.

4.2 Introduction

The Authority has a statutory duty to investigate and fully consider applications under the aforementioned Act.

4.3 The process in dealing with “claim” applications is as follows:-

1. Investigate the evidence provided with the application, which also involves interviewing the applicant; evidence users, landowner and interested parties. Research historical maps and any other evidence that could be used in connection with the application.
2. Prepare draft report and distribute to applicant, landowner and interested parties for comments.
3. Append comments to the report.
4. Report submitted to Rights of Way Cabinet in order that Members are able to consider the evidence and make a decision on the claim.
5. A Modification Order, if appropriate, is made public.
6. Objections may be lodged and orders and objections forwarded to the Welsh Ministers for determination.
7. A Public Inquiry may be held and the Order confirmed with or without modification.
8. The order is finalised.

4.4 Due to the complexity of some claims it is very difficult to put a timescale to determining a particular case. On average however, 12 months is an approximate period from investigation to reporting the claim to the Rights of Way Cabinet. In some instances a Creation Agreement has been used to resolve some of the claims if the landowner and claimants are agreeable. Others need to be dealt with by Modification Order if proven.

4.5 If an application to add a path to the Definitive Map and Statement is approved by the Rights of Way Cabinet and there are no objections from landowner or interested parties the path is accepted in its current condition. However, once it becomes a public right of way the Authority has a statutory duty to maintain the surface of the path. Funding from other sources might become available to improve the surface, if necessary. Alternatively it may be possible to include it as a Rights of Way Improvement plan (ROWIP) for improvements.

4.6 In 1996 a report was submitted to the Rights of Way Sub-Committee (Document No. 2) recommending that all claim applications be dealt with in order of receipt with the exception of those claims affected by development, which are given priority.

4.7 If a claim is not determined within 12 months, then the applicant may apply to the Welsh Ministers for a direction requiring the local authority to determine the claim. The Welsh Ministers will have regard to the Council’s procedure for dealing with claims in considering requests for a direction (Schedule 14 Wildlife and Countryside Act 1981).

4.8 A few years ago a landowner challenged the lack of progress with the Welsh Assembly. The Authority provided a copy of the procedure for dealing with such applications to the Welsh Assembly, which states that applications are dealt with by date order unless a planning application affects the site. The Welsh Assembly were satisfied that the Authority were dealing with the application in line with its procedure and dismissed the request to deal with the application within a 12 month period.

- 4.9 Upon Local Authority Reorganisation in 1996 Caerphilly Council inherited claims from the previous county councils covering the Rhymney Valley area and Islwyn area, the backlog at that time being 56.
- 4.10 This procedure has been in place since 1996 and there is still a backlog of claims. The current backlog now stands at 37 applications (which includes 10 applications affecting existing public rights of way shown on the Definitive Map and Statement).
- 4.11 It is believed appropriate to review the current procedure in view of complaints received by the Authority that recent applications are not being dealt with due to the current date order procedure.
- 4.12 The Authority has a statutory duty to continuously review the Definitive Map and Statement and also maintain the surface of public rights of way. Therefore applications from landowners who wish to either extinguish or reclassify the public rights of way, which cross land within their ownership and which are not available to members of the public, are given priority over "claim" applications.
- 4.13 It should be noted that a number of claims have been dealt with outside the date order basis, some through Creation Agreements but others that have not. Several have resulted in Public Inquiries to determine the applications, which has cost the Authority a considerable amount of money in officers' time (both Rights of Way and Legal) together with the cost of the Public Inquiries. Due to the foregoing the Authority could be criticised for not adhering to the current date order procedure.
- 4.14 Consultation with other local authorities in the area has found that there are various methods of dealing with applications including a points system; priority system and on a date received basis. The majority of local authorities give priority to any applications affected by a proposed development of the land in question.
- 4.15 In England the Draft Deregulation Bill is proposing that if a Modification Order is based on historical evidence and the landowner is in agreement then a Modification Consent Order could be raised. This can only be done if it would satisfy the landowner and the Authority is satisfied that the path will not be substantially less convenient. This is very similar to an approach this Authority has where it has entered into Creation Agreements with the landowners where the route might have been amended with the agreement of both the landowner and the applicant and supported by users.
- 4.16 The Draft Deregulation Bill also recommends that surveying authorities carry out a preliminary assessment of applications received within 3 months of receipt. When the applications are received applicants are assisted in making sure the application are in the prescribed manner. If a preliminary assessment is made it could identify those applications where it is believed the application will fail (for instance where there is a statutory declaration stating that there are no other rights of way on a parcel of land where the claimed right of way crosses). A decision on such applications will need to be made by the Rights of Way Cabinet.
- 4.17 Document No. 4 details a Priority List/Criteria, which, if adopted, would change the priority from date order of receipt. This system allocates points for various criteria e.g. age of users, number of users, links to community, etc. This would involve a great deal of time in researching the available data for each claim to allocate the points to prioritise the claims.
- 4.18 Document No. 5 details a more basic Priority List based on planning applications; where the claimed route would provide a useful addition to the rights of way network and is in line with the aims of the Rights of Way Improvement Plan. All other applications would be dealt with on a date order basis.
- 4.19 The Authority has ten applications under the Wildlife and Countryside Act 1981 from landowners who wish to either extinguish or reclassify the public rights of way which cross land within their ownership. Document No. 3 details the list of applications.

- 4.20 Due to the fact that the Authority has a statutory duty to maintain all public rights of way shown on the Definitive Map and Statement any applications received which involve existing public rights of way, which is not available to the public, are given priority.
- 4.21 The remainder of the applications are to add a footpath/bridleway to the Definitive Map and Statement. Some of the paths referred to are still available to members of the public but others are not. Document No. 3 details the foregoing applications in date order with details as to whether or not the claimed route is available and in use or not.
- 4.22 A review of the applications with the applicants and users has resulted in 2 or 3 being withdrawn as no longer required. There are a number of applications where the routes in question are heavily overgrown and have obviously not been used for many years. If the routes have been blocked purposely by a landowner to prevent its use then this is understandable. However some are totally overgrown probably through lack of use which sheds doubt as to whether members of the public wish to use them now. Attempts will continue to be made to locate the applicant and supporters to see if they wish the application processed. Discretion should be allowed to suggest that some applications are closed if they are no longer required by the local community. If there are others which would provide a useful link again discretion should be allowed to progress these. All such applications should be submitted to the ROW Cabinet for the final decision.
- 4.23 If the outstanding applications are dealt with in line with the Priority List in Document No. 4 this would allow applications which would benefit the local community and have a significant impact to the public to be dealt with.
- 4.24 A broad SWOT analysis has been undertaken on the various methods of dealing with these applications.
- 4.25 Some applications include "claims" that are totally impassable due to overgrowth rather than being blocked by a landowner. It could be argued that although there may have been a twenty-year period of continuous use at one time this is no longer the case and the "claim" has no use now. Attempts should be made to identify such "claims" and seek their withdrawal if it is discovered that the local community no longer requires them.
- 4.26 However, where a "claim" has been blocked by a landowner and those who support the application are elderly it is proposed to give these priority to ensure that supporting evidence is gathered. (In some cases supporters have sadly passed away before the application can be dealt with). A number of the routes claimed by elderly residents are unable to be used and this has an impact on those supporters who have used the routes for well over 20 years. They are prevented from using the route and for some it is difficult to find an alternative to a much used and loved walk.
- 4.27 With regard to the points system the Authority could be challenged in the way it allocates points and prioritises the applications whereas as mentioned in 4.11 the current procedure has been upheld following a challenge.
- 4.28 In respect of the procedure identified in Document No. 5 this is quite clear to understand and implement. It would appear to be a reasonable procedure and less time consuming on officers time in collecting data to prioritise claims but would allow the Authority to deal with applications that have a positive impact on the network. It would also allow those applications which appear to have little chance of succeeding to be dealt with and closed and not added to the backlog of applications.

5. SUMMARY

- 5.1 The Authority's current procedure in dealing with applications on a date order basis, with the exception of those affected by a planning application has been challenged and the procedure has been withheld.

- 5.1.1 The Authority has been criticised for not dealing with recently received applications but the date order basis precludes this happening.
- 5.1.2 The points system could be used to prioritise applications received but this would take up a lot of staff time and could result in low prioritised applications remaining at the bottom of the list for lengthy periods. However, it would enable some applications to take priority where the application could assist the local community.
- 5.1.3 The process identified in Document 5 would allow the Authority to deal with applications which are of most benefit to those members of the public.

6. EQUALITIES IMPLICATIONS

- 6.1 there are no potential equalities implications on this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report. However, this has not been considered by the Equalities Officer.

7. FINANCIAL IMPLICATIONS

- 7.1 The Authority incurs the cost of paying for the Modification Orders; Creation Agreements and Public Inquiries if required. The cost of Modification Orders is in the region of £2,500. The Authority pays any legal costs incurred as a result of the Creation Agreements but sets a maximum amount for this. A Creation Agreement only needs to be advertised once and is in the region of £500 depending on which local paper the advert is placed in.
- 7.2 Wherever possible if objections to the Modification Orders are received they are dealt with by written representation rather than at a Public Inquiry to keep the cost to a minimum. It is difficult to estimate the cost of a Public Inquiry as some could be dealt with by written representation, which is then a staffing cost only. However if a Public Inquiry is held a meeting room is required, there is the element of staffing costs in attending and preparing documentation together with the possible need for a Barrister. This could result in a cost of £5-£10,000.

8. PERSONNEL IMPLICATIONS

- 8.1 None.

9. CONSULTATIONS

- 9.1 For List of Consultees see Document No. 18.

10. RECOMMENDATIONS

- 10.1 It is recommended that in future applications are dealt with in line with the proposals in Document No. 5 and reviewed whenever necessary.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 To comply with its duty to keep the definitive map and statement under continuous review.

12. STATUTORY POWER

12.1 Wildlife and Countryside Act 1981. This is a Council function delegated to this Committee.

Author: Mrs. June E. Piper, CROW Support Officer
Consultees: Legal Services

List of Documents

1. Explanation of the term “public rights of way” (Document No. 1)
2. Report submitted to Rights of Way Sub-Committee. (Document No. 2)
3. List of applications received in date order. (Document No. 3)
4. Priority List/Criteria for dealing with applications using points system. (Document No. 4)
5. Procedure for determining applications received under Section 53 of the Wildlife and Countryside Act 1981 (Document No. 5)
6. SWOT Analysis (Document No. 6)

ETP/ROW/ held at Pontllanfraith Offices

CONSULTEES COMMENTS

1. Upon receipt of application preliminary investigation be undertaken to discover whether or not the application has a reasonable basis and likelihood of success. If it is discovered that there is sufficient evidence available to negate the application such as Statutory Declaration (Section ??) or licensed agreement for use of the of the footpath by the landowner then a report should be prepared for ROW Cabinet. The report should indicate that there is sufficient evidence to negate the claim and therefore no further investigation is necessary. The ROW Cabinet should then consider the evidence and decide whether or not the application should be supported or not. This would prevent a backlog of such applications which have little or no chance of success.
2. Longstanding applications should be investigated to discover whether the applicant and supporters still wish to progress it. This could result in a reduction of the number of outstanding applications.
3. If the applicant and users are no longer resident in the area and therefore are not able to support the application then a report on the application should be submitted to the ROW Cabinet to agree whether or not the application should be closed.
4. However, if the applicant and supporters cannot be traced but where the claimed route would be of benefit to the local community then the application should be considered and processed to its conclusion.