

## **Update on the Maintenance and Management of Public Rights of Way**

### **Executive summary**

The purpose of this report is to provide an update on the maintenance and management of the public rights of way network in Wiltshire.

Within the Wiltshire Council administrative area there are over 3,700 miles of public rights of way defined as public footpaths, bridleways and byways. As the Highway Authority, Wiltshire Council is responsible for the availability of this network.

The public rights of way network is a vital resource that offers numerous benefits to individuals, communities and the environment providing essential access to natural and cultural landscapes, fostering physical health and mental well-being, as well as social cohesion. It is a multifaceted asset that contributes to healthier, more connected, and environmentally conscious communities.

One of the most significant benefits of the public rights of way network is the promotion of physical activity. Walking, cycling, and horseback riding along these paths offer opportunities for regular exercise, which is crucial for maintaining good health and mental well-being.

Accessibility to outdoor spaces encourages people of all ages to engage in low-impact, enjoyable activities that can improve cardiovascular health, strengthen muscles, and reduce the risk of chronic diseases, and spending time in nature has been shown to reduce stress, anxiety and depression.

Additionally, the public rights network services as an important social space, encouraging community interaction by bringing people together, whether through organised group walks or chance encounters on the trail. This can strengthen social ties, reduce loneliness, and build a sense of community.

From an environmental perspective, the public rights of way network supports and enhancing biodiversity by providing corridors for wildlife and preserving natural habitats, as well as providing important links between settlements.

Both the level of maintenance of the network, and the number of outstanding Definitive Map Modification Orders (DMMO), have recently attracted comment within the local media. Whilst the number of DMMO requests is not dissimilar to other rural authorities across the country, officers are undertaking a review of best practice with a view to streamlining the process if possible.

**Proposal**

That the committee:

- a) Note the contents of the report and the progress that is being made in relation to the maintenance and management of public rights of way in Wiltshire;
- b) Request a further update to this Committee on the maintenance and management of the public rights of way network in 12 months time.

**Reason for proposal**

There are over 3,700 miles of public rights of way defined as public footpaths, bridleways and byways in Wiltshire providing a multi-faceted asset that contributes to healthier, more connected and environmentally conscious communities. As the Highway Authority, Wiltshire Council is responsible for the availability of this network. Whilst there are challenges given the extent of the network, performance in maintaining and managing the network is progressing well.

**Samantha Howell**  
**Director Highways and Transport**

# **Update on the Maintenance and Management of Public Rights of Way**

## **Purpose of report**

1. The purpose of this report is to provide an update on the maintenance and management of the public rights of way network in Wiltshire.

## **Background**

2. As a rural county Wiltshire benefits from an extensive network of public rights of way. Within the Wiltshire Council administrative area there are over 3,700 miles of public rights of way defined as public footpaths, bridleways and byways.
3. As the Local Highway Authority, Wiltshire Council is responsible for the availability of this network which is a vital resource that offers numerous benefits to individuals, communities and the environment providing essential access to natural and cultural landscapes, fostering physical health and mental well-being, as well as social cohesion. It is a multifaceted asset that contributes to healthier, more connected, and environmentally conscious communities.
4. There are specific duties and obligations placed upon the council relating to public rights of way. The Countryside Access Team that maintains and manages the network is divided between an operational team of Countryside Access Officers Team (CAO) and the Definitive Map and Highway Records Team (DMHRT) to fulfil these duties and obligations.
5. Historically there has been concern expressed by some bodies interested in the public rights of way network in relation to the level of maintenance provided by the Council and more recently, the number of outstanding Definitive Map Modification Orders (DMMO) has attracted comment within the local media.

## **Main considerations for the committee**

6. As Local Highway Authority Wiltshire Council has several key duties defined within the Highways Act 1980 and the Countryside and Rights of Way Act 2000. In general terms these relate to assuring that public rights of way remain accessible, safe, and properly recorded, allowing the public to enjoy their legal rights to walk, ride, and drive along these routes.

### Countryside Access Officers Team

7. There are a team of six Countryside Access Officers that work closely with the Local Highways Team which provides significant benefits due to similarities in the utilisation of legislation, as well as accessing engineering support for larger projects.
8. The CAOs cover geographic areas aligned to with those of the Local Highways Teams. Functions carried out are:

### Maintenance and Repairs

- surface maintenance: keeping the surface of the path in good condition, ensuring it is free from potholes, excessive mud, or other obstructions that could impede access; and
- clearing vegetation: regularly cutting back overgrown vegetation that could obstruct the path.

### Signposting and Waymarking:

- erecting and maintaining signs and waymarks to clearly indicate the route of the PROW.

### Ensuring Accessibility

- removing obstructions: ensuring paths are free from obstructions such as locked gates, fences, or illegally parked vehicles and taking enforcement action when necessary;
- maintaining accessibility features: ensuring stiles, gates, and bridges are in good condition and accessible to all users.

### Public Engagement

- providing information: offering information to the public about the network of public rights of way, including guidance on responsible use;
- responding to general enquiries: answering questions, investigating reports of problems from the public regarding the condition or accessibility of paths and dealing with complaints.

### Liaising with Landowners and Stakeholders

- consultation and engagement: working with landowners, local communities and other stakeholders to resolve issues and improve the network of public rights of way;
- agreements and permits: negotiating and issuing permits for activities that might affect public rights of way, such as temporary closures or rerouting during construction projects.

### Safety and Legal Compliance

- risk management: assessing and managing risks associated with public rights of way to ensure user safety;
- legal compliance: ensuring compliance with relevant legislation, such as the Highways Act 1980 and the Countryside and Rights of Way Act 2000. Including the execution of enforcement action

9. In addition to public rights of way, the Countryside Access Officers also maintain twenty four countryside sites: Listed in Appendix D
10. The investigation of issues on the network by CAOs can be extremely time consuming when compared to those on the general highway network as locations are often accessed by foot and over some distance.
11. Within the operational field there is potential to utilise volunteers to undertake tasks relating to maintenance functions. The scope and scale of tasks that can be undertaken vary greatly from undertaking inspections, asset data collection to assisting with the installation of small structures such as bridges, gates and walkways. The use of volunteers can provide a great deal of benefit to the council

in fulfilling its duties in this field, however, there are potential risks in operating in this manner, particularly in the area of health and safety. A recent prosecution undertaken by the Health and Safety Executive, of a charitable trust in Wiltshire, relating to an incident involving a volunteer provides context to the deployment of volunteers.

12. To develop this opportunity further a framework is being developed to provide governance and effective management of these resources and associates risks. This is important to minimise risk to individuals as well as the Council.
13. Currently the Council has limited information relating to the number and position of features such as signs, styles and gates across the network and development is underway to provide a software solution to collect and maintain asset information such as this. Testing has been attempted with volunteer groups; however, there is an issue with the interface between hardware and software and this is currently being worked upon, testing with staff will take place in September, with testing with volunteers currently scheduled for the end of October.
14. Currently there are 6 volunteer groups that actively work on rights of way projects in conjunction with CAOs. Tasks include routine maintenance and making improvements on the network. Appendix A provides illustrations of the works undertaken.
15. Work is currently underway on developing a hierarchical network structure, based on use and network connectivity to aide maintenance. In addition to this document, a comprehensive defect categorisation and prioritisation guide is being produced to provide improved clarity on the Council's maintenance and management regime. It is anticipated this will be in place by July 2025.

#### Definitive Map and Highway Records Team

16. The DMHRT are responsible for the discharge of a number of duties relating to the position of the council has the Highway Authority, the Surveying Authority and the Commons Registration Authority. Records relating to these duties are primarily managed by the 8 members of the Definitive Map and Highway Records team and their management, presentation, access to them, review and amendment is, in nearly all cases, strictly prescribed in law.
17. Records must be maintained according to statute and amended according to statute law and case law. The key records are:
  - The Highway Record which records linear and lateral extent of highway maintainable at the public expense (HMPE) and is a part of the List of Streets required to be held under s.36(6) Highways Act 1980;
  - The Definitive Map and Statement providing conclusive evidence in law as to what it contains and kept under continual review further to s.53(2) Wildlife and Countryside Act 1981. It may only be changed by legal order;
  - The Register of Common land – held under The Commons Acts of 1965 and 2006. It may be changed by application in limited circumstances.
  - The Register of Town and Village Greens held under The Commons Acts of 1965 and 2006. It may be changed by application in limited circumstances;

- The Register of Deposits made under the Commons Act 2006 and the Highways Act 1980 relating to records received and kept permitting the owners of land to protect their land from acquiring public rights in the future;
- The Register of Applications for definitive map modification orders (DMMOs) – a statutory register for all duly made applications for an order to modify the definitive map and statement. A central public resource for legal events affecting or proposed to affect highways (i.e. major road schemes or adoption plans).

**18. Highway Records** The highway record is the council's record of the extent of highways maintainable at the public expense. For Wiltshire Council it dates back to 1888 and 1929 and is a dynamic record of highway widths and lengths which is required by law to be on public deposit. Members of the public can view the highway record at County Hall on an almost daily basis and officers use it to respond to on average between 5000 to 7000 searches and queries, the majority of which are related to house sales and land transactions.

**19. Commons Register** It has been the council's duty to hold, maintain and make available the Register of Common Land since 1965. The Council has duties under the Commons Acts of both 1965 and 2006 and must process a number of applications to make amendments to the register. There are a low number of applications made every year; however, they often rely on records and rights recorded as far back as the middle ages in documents arising from the Lord of the Manor i.e. Manorial Courts. Registers record the extent of the registered land and the rights over it, rights sections include ancient rights to graze cattle and sheep (right of pasture), pigs in the autumn (right of pannage) to cut turf (right of turbary) to collect wood (right of estovers), fish (right of piscary) and so forth.

**20. Register of Town and Village Greens** In addition to its duty to hold, maintain and make available registers of town and village greens, the council also has a duty to process applications to register new greens. Town and Village Greens may be used for lawful sports and pastimes by the local inhabitants. One of the effects on land so registered is to prevent any activity that may harm the green (e.g. development) meaning that determining these applications is usually highly controversial with severe financial penalties for an affected landowner. A great deal of skill and knowledge to determine these is required and it is usual to also appoint an expert in this area of law to make a final recommendation. Applications can therefore be costly for the council (c.£20,000 each). The council currently has 2 of these applications under consideration and the time period to determine them is usually between 2 or 3 years as they often involve a number of committee decisions and a public inquiry.

**21. Definitive Map and Statement** This is the legal record of public rights of way in Wiltshire (excluding the Borough of Swindon) and is conclusive in law as to what it shows. It must be available to the public and must be kept under continual review, only being changeable by due process and legal orders.

**22.** Alongside the council's duties to continually review the record any person may make an application to modify it. Applications must be made in accordance with the Wildlife and Countryside Act 1981 and must adduce evidence which must

ultimately be judged to show on the balance of probability that the definitive map needs changing.

23. Applications are frequently based on historical documents and rely on the legal maxim "once a highway, always a highway". Applications may also be based on more recent use by the public, usually for a period of 20 years or more prior to the way being called into question. There are currently 369 of these applications registered, applications are prioritised against a published policy of considerations based on public benefit.
24. The number of applications awaiting consideration is a problem replicated in many other large shire counties or rural authorities with neighbouring Somerset Council having a greater number of outstanding applications than Wiltshire and Kent, Hertfordshire and Cornwall Councils having around the same number as Wiltshire as detailed in Appendix B.
25. This situation is not new and is the cumulative effect of failures to keep pace with the updating of the record since it was formed in 1952/1953. The backlog has been exacerbated by recent legislation closing the definitive map and statement to applications to add, upgrade or downgrade rights of way based on historical evidence at the end of 2030. There has been an upsurge in applications in recent years (over 100 received in just one year) as the result of national user based organisations, in the case of the British Horse Society supported by funding from Sport England, and many applications have been placed by professional researchers.
26. Not only is the procedure for determining these applications prescribed by law, it is lengthy and almost invariably requires recourse to the Planning Inspectorate (Secretary of State for Environment Food and Rural Affairs) for a decision. Although the examination and interpretation of historical evidence (which may include records leading back to the first highways Act of 1555) is carried out by officers expert in this, any party may object for any reason and although irrelevant objections will ultimately be disregarded by the Planning Inspectorate at the decision stage, the Council has no power to disregard them. This means they have a significant impact on resources and can also be subject to delays of over one year with the Planning Inspectorate (who also operate under a significant backlog). It is often difficult for people to understand that matters such as safety or the environment are not relevant factors for the recording of highways though they may be for the management of them, once recorded.
27. The team also processes applications to alter the existing rights of way network as the result of planning consents or for reasons of privacy and security. The Council can recoup costs for these and approximately 15 to 20 of these are processed annually. These can also be significantly affected by delays and objections.
28. In addition, the team maintains a register of deposits made under s.31(6) Highways Act 1980 whereby landowners may protect their land from the acquisition of additional public rights.
29. As an example of the detail required to determine many highways matters a recent investigation into the extent of highway has caused officers to look at over 127 individual historical documents (including extensive minute books) ranging in time

from 1603 to 1947. This led to the production of a 54-page report to be considered by senior officers and counsel.

30. Wiltshire Council has an excellent record of decision making in rights of way matters and the validity of its records have been upheld in several cases in both the high court and the court of appeal.

31. The previous government had worked with stakeholders to deliver different processes and legislation aimed at de-regulating definitive map procedures and to make it faster and easier for authorities to determine rights of way matters. Work by the Department for Environment, Food and Rural Affairs has been paused and it is currently not known whether any new legislation will be progressed to ease burdens before the end of 2030.

32. Accordingly, we are reviewing our processes for Definitive Map Modification Orders, seeking to identify best practice from other authorities that could potentially speed up the process.

### **Environmental impact of the proposal**

33. The Public Rights of Way network has the potential to enhance the county's ecology by creating corridors that facilitate wildlife movement. Additionally, by offering people access to the county's landscape, it supports educational and tourism opportunities, contributing to overall environmental value.

### **Equality and diversity impact of the proposal**

34. Public rights of way provide equitable access to natural spaces, which can benefit people from various socio-economic backgrounds. This is particularly important in enabling residents. The nature of some parts of the network can provide an obstacle to disabled access. The council does follow an approach that where possible stiles are replaced with gates, or where there is no requirement to retain, a gap is left.

### **Risk assessment**

35. Adoption of a hierarchical approach to maintenance and management complies with a risk-based approach and is one that is proven by its use on the wider highway network.

### **Financial implications**

36. There are no direct financial implications arising from this report. While it is possible that there are some benefits from efficiencies moving forward, any increase in the level of service is likely to require increased investment.

### **Legal implications**

37. The Council has a duty to maintain the Public Rights of Way Network and related infrastructure. Adopting an improved framework that encompasses a hierarchical



approach to prioritise works will assist in demonstrating meeting this duty and ensuring data led decision making.

### **Options considered**

38. Continual reviewing of current methodologies and best practice will ensure continuous service improvement.

### **Conclusion**

39. The public rights of way networks are a multifaceted asset delivering significant benefits to individuals, communities and fostering social cohesion.

40. The administration of the Definitive Map and Highway record is a complex and challenging area meaning that there is a significant resource demand to do this effectively.

41. While there is the potential to mitigate some of the backlog of definitive map modification orders by changes to the processes followed, it is likely that there will remain a substantive workload unless there are changes at a national level on the legislative approach to this area.

42. The delivery of operational maintenance functions is challenging given the level of resources currently deployed. Risks will be mitigated by adopting a hierarchy for further work.

43. There are further benefits that can be delivered by increased engagement with volunteers; however, this will not provide a complete solution to maintaining the network.

44. Given the Council's statutory responsibilities, the extent of the network and current resourcing levels, the performance in maintaining and managing the network is progressing well.

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### **Background papers**

The following unpublished documents have been relied on in the preparation of this report: None.

### **Appendices**

- Appendix A - Examples of Voluntary activity on the rights of way network
- Appendix B – Comparison of Outstanding DMMO requests with other authorities
- Appendix C – Breakdown of Network by classification compared to National Average
- Appendix D – List of Countryside Parks