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Comments for Defra consultation on Improvements to the policy and legal framework for public rights of way

The Leicestershire Local Access Forum (LAF) is an independent statutory body, set up as a result of the Countryside and Rights of Way Act (CRoW) 2000, and exists to represent the interests of everyone concerned with access to the countryside and the public rights of way network including footpaths, bridleways and byways, cycleways and areas of open access.

Section 94 of the CROW act makes it a statutory function of the forum to give advice to a range of bodies, including local authorities, on access issues in respect of land use planning matters. The Secretary of State advised that in particular forums were to focus on the impact and options for minimising possible adverse effects of planning policies and development proposals, in respect of future public access to land. Forums are tasked with identifying and expressing support for opportunities to improve public access, or associated infrastructure, which might be delivered through planning policies or new developments.

As such the Forum welcomes the review of the procedures, but does not think they go far enough.

We do however acknowledge the practicalities of the situation and take the pragmatic view that it is better to go forward with what can reasonably be expected to be agreed than to delay, hoping for even more dramatic changes.

There are a few basic essentials and concerns not directly addressed by the questions posed.

It is essential that applications made before the cut-off date should not simply fall due to non-determination by the surveying authority.

We do feel the consultation is slanted towards paths etc in the countryside and the same concerns and considerations apply to urban paths and cut-throughs. Since all footpaths and bridleways which were in existence in 1949 are maintainable at public expense, they should be shown on the list of streets; and where they are so shown they will be exempt from the cut-off provisions. This is likely to have the effect of saving many urban paths which might otherwise have been lost.

In response to your various questions these are our combined views.

1. Do you agree that there should be a brief, post cut-off period during which applications that pass the basic evidential test can be registered?

Yes to accommodate oversight etc but for a limited period and we would suggest nine months.

2. Do you agree that during this period, local authorities should be able to register rights of way by self application, including any self applications made in the past, subject to the same tests and transparency as for any

other applications? Yes and that Local Access Forums could have a major monitoring role in this process. We feel that LAFs should also be able to make applications in their own right

3. **Are there any other categories of rights of way that need to be protected by exceptions set out in regulations?** Cycle ways - We also feel that Government should recognise the inherent problems where an authority has no list of streets or definitive map/statement.

4. **Do you agree that the [Stakeholder Working Group's] proposals [in paragraphs 6.1-6.12] would be effective in improving the process of recording rights of way?** Yes but feel the legislative process is still too complex and time consuming. In the event of non determination we feel that reference should still be made to the Secretary of State (SofS) rather than a magistrates court but that the SofS be given powers to enforce instructions to authorities.

5. **Do you think that more use could be made of electronic communications, for example, to make definitive map modification order applications online and to serve notice of rights of way orders?** Yes, we feel that the current rigid procedure for paper advertising is not cost effective for the Highways / Surveying Authority and we feel the present system fails to achieve its objective of informing users adequately and delays the process. We are also conscious that if you miss something in a paper it is gone from sight whereas items can remain available on a web site. It should however remain the position that it will be possible for anyone to visit an authority's offices to view orders and plans in person. We see no reason why it should not be possible to offer the option to make an application for a definitive map modification order etc., on-line in the same way that it is possible to make a planning application on-line.

6. **Are there any particular issues associated with these proposals which have not been captured and which we should consider?** To avoid waste of resources should the applicant for an order be unable to support his or her application through to determination we see no problem with the application being taken forward by another party and suggest would be helpful if the regulations made clear that such a transfer is acceptable.

We also support the view of the working party that applicants should not need to provide copies of documents that are held by the surveying authority or are readily available in a public archive.

Any lost route identified where the status is unclear should be allocated the minimum of bridleway status. If evidence can only confirm footpath usage it is more than likely that horses would have traversed the route or been allowed to travel the route if a rider wished to do so. If however, the lost route identified is linking two public footpaths, unless there is clear evidence that the route was a bridleway then it would retain footpath status.

Given there are substantial numbers of errors and anomalies on definitive maps, including discrepancies between what is shown on the definitive map and what is recorded in the statement, as well as discrepancies between what is shown on the map and the line which is used by the public on the ground and of paths stopping at parish boundaries because one parish council recorded a path and the next parish failed to do so and paths stopping short of a road by oversight etc. and surveying authorities not having the capacity to correct these by 2026 we fully support the working party recommendations and wish to see Defra introducing some mechanism to provide for such changes, without necessitating the full definitive map modification order process.

7. **Do you think that the mechanism [proposed in paragraph 6.2 and annex B], would work effectively?** Yes but we have a number of issues. First is the buck-passing which has been identified, where the SofS is involved too soon. The other is a suggested intermediate step. When the appellant appeals or a landowner objects, the papers to go to the SofS should include an advice from the LAF providing the SofS with a view based on local knowledge from a balanced panel of members in line with the 'localism' agenda. To this end we do think that LAFs should be statutory consultees for Map Modification orders, Town & Country Planning Act orders, Public Path orders, and Traffic Modification orders etc. In

addition as finding the identity of the owner of land affected by an application may be difficult, any requirement for an applicant to notify landowners and occupiers of his application is a burden on applicants wishing to add to the record of the public's rights constituted by the definitive map and statement and as such this requirement should be waived.

8. **Do you think that there would be a residual risk that it would be in a local authority's interests to decline to make an order in the first place?** Yes

9. **Do you think that the alternative mechanism set out [in paragraph 6.3] would work effectively?** It would go some way to alleviate the risk but whilst workload is high there would still be a temptation. If a submission to the SofS had to be accompanied by a local advice from the LAF the activities of the local authority would be locally evident.

10. **Do you have any other suggestions for ensuring that cases go to the Secretary of State only once?** Where the local authority was minded to say yes to an application it could again be offered to the LAF for an advice which would support the views of the authority (or otherwise) and perhaps reduce risk of an objection.

11. **Do you agree that applicants and affected owners should be able to seek a court order requiring the authority to determine an outstanding definitive map modification order application?** Yes or a ruling of the SofS, after 12 months or any other predetermined period. The authority should have the right to go to the court within 3 months of an application to ask for up to 18 months where they can demonstrate complexity etc.

12. **Do you think this is an appropriate way to resolve undetermined definitive map modification order applications?** Yes to an extent

13. **Do you have any suggestions for alternative mechanisms to resolve undetermined definitive map modification order applications?** The 1949 National Parks & Access to the Countryside Act made use of land tribunals to speed up the process and was fairly effective. The present system even with the proposed changes might well be overwhelmed and the introduction of a similar land tribunal system could work again if it was properly reflective of all local views and we feel the LAF could fulfil this role or act as advisor to some other composition of tribunal.

If an authority refuses to determine an application within the period specified by the S of S, then the authority should be fined a meaningful and deterrent amount. Alternatively or additionally and despite the fact that it should perhaps be unnecessary, authorities could be given an incentive to determine orders within twelve months could be given a financial reward.

14. **Do you have any suggestions on how a process might work, which would enable an appropriate diversion to be agreed and put into effect before the way is recorded and brought into use?** Where there is clear evidence of an existing if unused right of way it should be recorded. However rather than going through the various steps of the landowner then applying for a diversion order there is a strong case for allowing the authority and landowner to agree a diversion. However where a route is used however lightly but is not recorded any suggested diversion should be published to allow users the opportunity to make representations. This seems another area where the LAF could advise as to the reasonableness of any suggested diversion. The subsequent 'agreed' route could still be the one that is recorded formally provided that both parties and the LAF were all in agreement

15. **What aspects of data management systems for recording public rights of way need to be tackled?** We do feel the definitive map and statement should be available online, in a format that can be printed. When as volunteers we are to help we often have to look at the online map to get an enlarged view of a complicated area. There must be a national standard and must be updated regularly. This register should also include the list of streets and existing Traffic Regulation Orders. IF this is adopted as the standard then amalgamating these into a national data base should be fairly straightforward and would be welcome.

16. **What are the key outcomes that need to be achieved in terms of data management systems?** Clarity and ease of use and consistency. Mapping is now so sophisticated and versatile that one of the main requirements is to ensure that historic legislation does not prevent it being used to its full potential. It is essential that data provision is user friendly

17. **Do you agree that the proposals identified in [Part 2] should be applied to the policy and legislation governing public path orders?** Proposal 10 should be extended to have all surveying authorities web site entries collated onto a national web site and under Proposal 13, the review of cases could start in LAFs with their recommendations to be attached to the papers then studied by the Surveying Authority - this impartial assessment would ease the role of the Surveying Authority. We therefore agree but with these extensions.

18. **Do you think that more use could be made of electronic communications for public path orders, in similar ways to those suggested for definitive map modification orders in Question 5?** Given advances in communications there has to be a cheaper and yet more effective way of dealing with this issue. Many authorities already have an informal system for pre-consulting user groups (e.g. the Ramblers Association and the British Horse Society) about proposed orders relating to the Definitive Map. The same and additional, groups/people could be consulted / informed about orders, perhaps by an email directing them to a website.

19. **Do you agree that enabling local authorities to recover their costs in full would incentivise them to pursue public path orders requested by landowners or managers?** Given they are supposed to be protecting a public asset it should not, but in the present financial climate it may well do. We would go further and acknowledge that a neutral cost/income situation will not discourage but will not encourage action either. We would think it perhaps more effective if there was a charge of £100 plus all costs; such charge and costs to be waived, where a clear public benefit accrues.

20. **Would local authorities be incentivised sufficiently to enable retention of a right of appeal to the Secretary of State without the risk of local authorities shifting the burden and cost of order-making onto the Secretary of State?** See answers to questions 7, 8, 9 and 19 for definitive map orders.

21. **Should the proposed arrangements apply to all public path orders and not just to land used for agriculture, forestry, or the keeping of horses?** Why should the arrangements be restricted to certain types of land? We have many examples of paths that cross playing fields, quarries, etc. In addition it is much simpler to have one process covering all cases. Changes of use of land would otherwise cause difficulties

22. **How could it be made clear what charges are levied for each stage of the public path order-making process and that the charges reflect the costs actually incurred?** Broad indications should be published on the authority's web site but an estimate issued upon receipt of the £100 fee suggested in answer to question 19

23. **Do you think that landowners should have the option of outsourcing some of the work once a public path order is made in order to have more control over the costs?** Yes but to an agreed standard

24. **Might this [full cost recovery for public path orders] have an impact on other aspects of rights of way work?** Yes paid for work is likely to given precedence over unpaid work.

25. **Are there any alternative mechanisms [to full cost recovery for public path orders] that should be considered?** Rebating of costs where the outcome is clearly in the public interest.

26. **Under Option A [in Part 4], how do you think wider adherence to existing guidance might be achieved?** Not convinced it can be by encouragement - some developers do consult at the early stage but many do not and merely encouraging will probably not change this. One possible way might be for LAFs to consider such matters as many do now

but to then issue a formal advice note to accompany the planning application. Planning form 1 APP should be expanded to require information on RofW on or near to the site.

27. What do you think would be the best option to minimise the cost and delay to developers while safeguarding the public interest on public rights of way? Option C seems by far the best way forward. One area of doubt is in asking that it define the existing RofWs on or adjoining the site and proposed RofWs. Many of the best options involve creating links to the wider network by not blocking potential future links or by use of section 106 monies off-site to create links. The bigger picture does need to be considered and the Highways Authority's RofW teams and / or the LAFs would be well placed to input into this debate. We understand and share the desire to make procedures more streamlined but if a developer wants to change the route of a right of way to his financial advantage the price paid for the land will usually have been reduced because of that need, so bearing the full cost is not unreasonable. The RofWs should not be viewed by the developers as just a bit of a problem but as an opportunity to do something positive about the RofWs that cross a site and to seek to enhance the route and the overall network. If they do that they'll usually get a smooth ride but if they only want to do the basics, they shouldn't really be too surprised if the whole process takes a lot longer to nobody's benefit.

28. Are there other options that should be considered [to minimise the cost and delay to developers while safeguarding the public interest on public rights of way]? All potential developments of more than 10 domestic properties and all commercial developments could be sent to the Highways Authorities RofW teams and the LAFs early in the process, preferably as part of a pre-application consultation. Whilst this will add some minor delay it should save more time further down the planning process if their advices are included in subsequent submissions. There could be a 21 day limit on responses.

29. Do you think that enabling a single application form to be submitted through the Planning Portal would improve the process? Probably but there would have to be an easily accessible data base where interested parties and user groups could monitor and respond, possibly backed up by email alerts to subscribing groups.

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Chairman