

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE
1 December 2022

REPORT BY: HEAD OF HIGHWAYS, TRANSPORT AND RECYCLING

SUBJECT: Public Path Orders: Working Practice and Charges

REPORT FOR: Consultation

Background:

The making of public path orders is a discretionary power of the Council. The Council policies, working practices and protocols associated with this work are:

- A charging policy, setting out the fees payable;
- A working practice for prioritisation of the caseload;
- A protocol for public speaking, for rights of way matters presented to Committee.

This report is asking you to assist in supporting a review of the charging policy and working practice to strengthen the administrative process and enable the Council to recover costs incurred. The review will help to address the current backlog of public path order cases and bring us in line with other authorities. As the charges are a policy matter, the views of the Committee will be communicated to the Portfolio Holder for a Greener Powys via a Portfolio Holder decision report.

The charging policy for public path orders was last formally reviewed by the Rights of Way Committee on 23rd September 2010 [Appendix A]. The prioritisation of applications made to Powys County Council for public path orders was reviewed at the same meeting [Appendix C]. As stated in the minutes of the meeting [Appendix C], it was agreed that the decision as to the priority of individual cases should continue to be made by the officer who processes them using a working method of priorities. The priorities are published in the Council's Rights of Way Improvement Plan and are based on the likely public benefits in terms of network gain and any health and safety considerations. The highest priority is attributed to applications made under the Town and Country Planning Act 1990, to ensure that legal time limits are adhered to.

Officer prioritisation of the public path order workload continues to be effective, and Members are asked to continue to support this. However, public path order applications are received at a rate faster than they can be currently processed so a significant backlog of applications persists, of which applications related to permitted development take up significant officer time. In addition, there has been a 60% reduction in staff capacity allocated to this work area from the Countryside Access budget as compared to 2010.

Current Situation:

There are a total of 200 applications (compared to 144 in 2010) currently on file, which fall into the following groups:

1. Applications for which there are felt to be significant public benefits and for which the administration fee is waived: 111

- Of these, 56 are proposals that would move paths out of existing working farmyards and cattle handling areas;
- The remaining 55 proposals have other significant public benefits, for example those that resolve irretrievable loss of a path due to natural causes, such as riverbank erosion or resolve definitive map anomalies.

2. Applications that are felt to be primarily in the interests of the applicant: 89

- Of these, 30 applications are related to permitted development;
- The remaining 59 applications are other 'landowner-interest' proposals, with the most common reason for application being to move paths away from residential property.

A large proportion of applications are initiated by the area Rights of Way and Access Officers through their work. Some applications are instigated as a pragmatic method of resolving situations where landowners have failed to meet their legal responsibilities, for example by an obstruction of a right of way for which there is no other solution e.g. house built on a path. In other cases, there would be significant public benefits, in terms of the maintenance and accessibility of the rights of way network. These proposals may reduce the Council's maintenance liabilities in the longer term and increase the amenity of the path for the public.

The current working system does maximise the benefits to the public, in terms of the way in which the resources available to process public path order applications are used. Nevertheless, a backlog of applications remains. This causes significant delays as some of the oldest applications were accepted over twenty years ago. This does lead to understandable frustration for applicants. Given the length of time for which many applications have been on file, it is possible that some applicants may no longer be interested in pursuing a public path order.

The delay is made clear to applicants from the outset. They are also reminded of the method of prioritisation and that the making of public path orders is a discretionary power of the Council, rather than a statutory duty.

Considerations for new approach to public path Order casework:

As a result of the backlog of applications and limited staff resource, considerable delays are likely to continue to be experienced for non-development related applications.

In recognition of the priority received for applications made under the Town and Country Planning Act 1990, applicants are already required to undertake the pre-order consultation with statutory consultees. This arrangement works successfully and is considered necessary to progress the making of more orders under the Highways Act 1980.

As the making of a path order is discretionary, the Council may recover all or part of the costs but may not recover any costs incurred by a public inquiry procedure. It is not unusual that objections are made to a proposed change; these may be lodged for any reason that the individual sees fit and are not necessarily relevant to the legal tests. As the law currently stands, the Council does not have the option to discount objections that it considers irrelevant or that do not address the legal tests. It must either abandon the Order or refer the case to the Planning Inspectorate. The Council must bear the cost of the preparation of bundles and Statements of Case to the Planning Inspectorate and attending any hearing or public inquiry.

An administration fee is payable for proposals that are felt to be primarily in the applicant's interest. This fee rises with inflation each year but is fixed at the time of application. As such, older applications currently only recover a proportion of the cost of officer time and other expenses incurred; these applications are therefore subsidised from Council resources. The current estimate for processing the 111 applications for which the cost is to be subsidised by the Council is £188,367 in officer time not being recovered through fees and £99,990 in unrecovered advertising costs.

The list of occasions where a charge should not be applied for a public path order has not been amended since 2005 [Appendix B]. It is recognised that some Local Authorities do allow for the discretionary waiving of fees or a reduction in fees in certain circumstances, but it is unusual for no charge to be levied in cases where a landowner has requested for a path to be diverted away from an existing working farmyard. The charging of full fees in these cases would bring the Council in line with neighbouring authorities, including the Brecon Beacons National Park and Ceredigion County Council who no longer offer free farmyard diversions.

Changes to dealing with public path order casework:

The proposed change in policy, as detailed below will enable a more efficient use of council resources.

1) Implement a moratorium on accepting new public path order cases, for a period of five years. This will allow the current caseload to be reviewed and steps to be taken to address the backlog. Otherwise, it will simply continue to increase. After the five-year period, progress can be assessed, and any lessons learnt considered.

There would need to be certain exceptions to this moratorium, as below:

- If planning permission is granted that would result in development over a public right of way, the Council would then need to process a request for the path to be diverted under the Town and Country Planning Act 1990.
- Some proposals are primarily in the interests of and have a demonstrable benefit to the public e.g. moving a path that is subject to landslip or river erosion. Another example would be resolving an anomaly (e.g. dead end) that might otherwise generate an application for a Definitive Map Modification Order, which is much more costly to process than a diversion and the costs cannot be recovered.

2) Introduce a system where all applicants are required to take more responsibility for the Order making process, with much less staff input. This includes:

- Applicants meeting the legal requirement to ensure that all rights of way over land in their ownership are free from obstruction; if that is not possible e.g. due to a building on the path, by making sure a permissive route is in place;
- Applicants undertaking the informal pre-order consultation and negotiating to deal with any objections themselves.
- Should an Order be required to be sent to the Planning Inspectorate, the applicant to be responsible for producing a robust Statement of Case and attending any hearing or public inquiry. It should be noted that the Council may exercise its discretion to not proceed with PPO applications where it believes that it will take a disproportionate amount of resource to process. For example, where there are objections, particularly at the informal consultation stage that cannot easily be resolved by the applicant, or the Council.

New guidance for applicants will be produced and a small number of pilot cases undertaken to establish efficient working methods.

3) Undertake a phased review of all applications held, in chronological order by the date received. The aim is to seek to close files where applicants no longer wish to pursue a diversion and to allow applicants who are willing, to take up the new process so that they can expedite their application.

Officers will write to applicants, setting out the reason for the review, details of the options available and a request for a response within three months, otherwise the case file may be closed. The three options to be offered, are as follows:

- Application remains on file at the fee agreed at the time of original application, but with no time guarantee as to when it will be processed.
- Applicant chooses to undertake pre-Order consultation and subsequent negotiation to deal with objections, so that the case can be progressed. Unless the application is primarily for demonstrable public benefit, as set out above, then full current administration and advertising fees would be payable.
- Public path Order is no longer required, and the file is closed. (This will only be possible for cases where the right of way is free from obstruction.)

4) To ensure full cost recovery through the fees charged for applications by:

- Continuing to increase the public path order administration fee annually, in line with up-to-date staff costs and cost of inflation (see Appendix E for most recent assessment of costs).
- Reserving the right to charge additional fees based on officer hourly rates, if staff input into the application has been greater than anticipated. For example, for making additional site visits or providing further legal advice.
- Introduce a system whereby the administrative fee is estimated at the time of application, then confirmed at the point of commencing pre-Order consultation. This will ensure that full costs are recovered for all applications, irrespective of how long they have been on file.

5) Should the Council be able to accept new public path diversion order applications after the 5-year moratorium period, the general approach will be that there will be a full cost recovery administration fee payable as well as advertising costs.

RECOMMENDATION:

That the Planning, Taxi Licensing and Rights of Way Committee supports the new method of dealing with public path orders as outlined above, as a basis for a decision report to the Portfolio Holder for a Greener Powys.

Appendices:

Appendix A	2010 Rights of Way Committee Report – Charging Policy
Appendix B	2005 Rights of Way Committee Report – Charging Policy
Appendix C	2010 Rights of Way Committee Report – Workload & Prioritisation
Appendix D	23/09/2010 Rights of Way Committee Minutes
Appendix E	Powys County Council estimated Public Path Order processing costs, as at July 2022