

Countryside and Rights of Way Panel - Friday 11 August 2023

Audit and Standards Committee - Tuesday 19 September 2023

Proposed addition to the Scheme of delegation in relation to the Handling of S53 Applications under the Wildlife and Countryside Act 1981

The following recommendations were agreed at the last meeting of the Countryside and Rights of Way Panel and are now referred to this Committee for approval.

Recommendation

I recommend:

- a.** That the Panel support the proposed measures set out in paragraph 10 of this report.
- b.** That the proposed addition to the Scheme of Delegation be referred to the Audit and Standards Committee and Full Council, with the recommendation that it be approved, and that the Constitution and Scheme of Delegation be updated accordingly.

Local Member Interest:

N/A

Report of the Deputy Chief Executive and Director for Corporate Services

Report

Summary

1. Under the County Council's Constitution this Panel is authorised to carry out the duties of the County Council in respect of S53 of the Wildlife and Countryside act, 1981. In addition, the Constitution enables this Panel to delegate its functions to another Authority.
2. The Panel is being asked to approve an addition to the Scheme of delegation in relation to S53 applications.

Background

3. Staffordshire County Council is the authority responsible for maintaining the Definitive Map and Statement of Public Rights of Way as laid out in section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). Determination of applications made under the Act to modify the Definitive Map and Statement of Public Rights of Way, falls within the terms of reference of the Countryside and Rights of Way Panel of the County Council's Regulatory Committee ("the Panel").
4. At present the Council deals with and works on applications, as far as is practicable, in the order in which applications were originally received. This is considered to be the fairest and most equitable mechanism with regard to all parties in the current circumstances.
5. This mechanism has been affected in recent years by the number of applications which the Council has been directed to determine by the Secretary of State. Consequently, directed applications are dealt with in the order of the date determined by the Secretary of State or as close to that schedule as feasible.
6. At the 23 June 2023 meeting of this Panel members approved a new Priority Criteria for prioritising the *Determination* stage of S53 applications and I was granted delegated powers to exercise the Council's discretion to apply that new Criteria.
7. This delegation together with the additional resources allocated to this function means that whilst we are processing initial applications for determination more speedily, it is creating a backlog of Definitive Map Modification Orders (DMMO) to be made. That backlog currently stands at 83. I am concerned that in some circumstances the backlog is not in the overall interest of the Council itself, in particular:
 - a) where an application has been the subject of Court proceedings requiring the Council to obtain such a level of legal expertise and advice, that any potential delay in making an order might result, over time, in the loss of that knowledge.
or
 - b) Where pending cases are linked to routes which may be affected by major projects such as HS2.

8. To address these specific issues, I'm requesting a further delegated authority to prioritise the making of Orders in either of the above two instances.

Proposed updates to Scheme of Delegation.

9. To remind members I am currently authorised:
 - a. *To determine applications for Modification Orders under the Wildlife and Countryside Act 1981 unless, after consultation with the local County Councillor(s) for the area concerned and the Director for Economy, Infrastructure and Skills, they decide that the matter in question ought to be determined by the Countryside and Rights of Way Panel.*
 - b. *To determine whether an applicant's details should be removed from the Register of Applications made under Paragraph 2(3) of the Public Rights of Way (Register of Applications under Section 53(5) of the Wildlife and Countryside Act 1981)(England) Regulations 2005.*
 - c. *To exercise the County Council's discretion as set out in section 3 of the Priority Scheme.*
 - d. *To delegate the County Council's surveying authority powers in respect of any cross-boundary application to the appropriate neighbouring authority as and when such action would prove beneficial both in terms of the effective use of resources and processing of the s53 application.*
10. Members are asked to approve the inclusion of the new Delegation:
 - e. *To prioritise the making of Definitive Map Modification Orders in circumstances where:*
 - a. *an application has been the subject of court proceedings which has required the Council to obtain such a level of legal expertise and advice, that any potential delay in making an order might result, over time, in the loss of that knowledge, or*
 - b. *routes may be affected by major projects, such as HS2.*
11. At its meeting on 11 August 2023 the Countryside and Rights of way Panel supported the above request and referred the matter on to the Audit and Standards Committee and Full Council for approval.

Resource and Financial Implications

12 The proposal aims to make best use of the councils' resources.

Risk and Legal Implications

13 The delegation of decision-making powers need to be properly justified and authorised to avoid challenge to any proposed action on a DMMO application.

List of Background Documents/Appendices:

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