

NORTH YORKSHIRE
LOCAL ACCESS FORUM

WEDNESDAY 27th JUNE 2012

DEFRA CONSULTATION – ‘IMPROVEMENTS TO THE POLICY &
LEGAL FRAMEWORK FOR PUBLIC RIGHTS OF WAY’ – DRAFT
RESPONSE OF THE FORUM

1.0 PURPOSE OF THE REPORT

1.1 The purpose of this report is to set out and agree the response to be made by the Local Access Forum to DEFRA on the consultation issued in May 2012.

2.0 RESPONSE TO THE QUESTIONS IN ANNEX A OF THE CONSULTATION

Annex A – List of questions on the consultation proposals

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
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
3. *Are there any other categories of rights of way that need to be protected by exceptions set out in regulations?*
Yes. Ratione Tenurae routes
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
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, but not the sole way.

6. *Are there any particular issues associated with these proposals which have not been captured and which we should consider?*
The issue is the clarity of the way in which the revised legislation is worded and presented. We recommend a single new piece of legislation replacing and consolidating the existing law and regulations.
7. *Do you think that the mechanism [proposed in paragraph 7.2 and annex B], would work effectively? (There is a typo here in Annex A - in the document this question refers to para 6)*
There are slight inherent risks.
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 7.3] would work effectively? ? there is no para 7.3 in the document This should be para 6(3)*
Probably. It might encourage the making of opposed orders more quickly.
10. *Do you have any other suggestions for ensuring that cases go to the Secretary of State only once?*
No
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
12. *Do you think this is an appropriate way to resolve undetermined definitive map modification order applications?*
Yes, but we do not like the word 'resolve' as the courts must not become involved in the merits of the case, just the moving on of it.
This would impose a time limit for the making of an order but the court should not be involved with the merits of the application.
13. *Do you have any suggestions for alternative mechanisms to resolve undetermined definitive map modification order applications?*
No but we are not clear what the issue is that causes this question to be asked
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?*

We think that it would require a legal agreement to be drawn up between the LA, the landowner & tenant and the applicant (possibly with the agreement of user bodies) setting out the unrecorded route, the proposed route, the procedures to be followed and the position if the unrecorded route is not found to be a RoW at the end of the procedure.

15. *What aspects of data management systems for recording public rights of way need to be tackled?*
We do not think we are qualified to advise.
16. *What are the key outcomes that need to be achieved in terms of data management systems?*
Any system should be comprehensive and standard over all authorities. Ease of use including internet accessibility and accuracy are essential. Both the Definitive Map and Statement should be included and where no statement was included when the map was established a new statement should be added with the date when it was surveyed.
17. *Do you agree that the proposals identified in [Part 2] should be applied to the policy and legislation governing public path orders?*
Yes The simplifications set out in para 20 should include a simple system for dealing with small anomalies in the existing Definitive Map and Statement
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?*
Yes
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?*
Yes. Public path orders, but not DMMOs
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?*
Yes
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?*
Yes

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?*
A definitive (single?) tariff made available at the time of application
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 with the proviso that any remedial work would be chargeable if the work fell below required standard or does not comply with the order and if it is not completed within an agreed timescale the LA should be required to do the work and charge accordingly. The existing route to remain usable until the new work is completed and certified.
24. *Might this [full cost recovery for public path orders] have an impact on other aspects of rights of way work?*
**Yes I think we should say how ie more money coming into the RoW budget should allow more other works to be carried out. However some LA will then reduce the budget and or expect RoW to be self supporting.
So this could be good or bad!**
25. *Are there any alternative mechanisms [to full cost recovery for public path orders] that should be considered?*
No
26. *Under Option A [in Part 4], how do you think wider adherence to existing guidance might be achieved?*
By tighter wording, or guidance becoming mandatory.
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. We do not consider the cost or delay to developers should in any way be of greater consideration than the protection of public access. We like the idea of encouraging developers to consult on options for RoW before submitting formal plans or applications.
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]?*
No
29. *Do you think that enabling a single application form to be submitted through the Planning Portal would improve the process?*

Probably. It is important that somewhere (possibly on the planning application form or on the planning permission or diversion order) that it should be made clear that if a development fails to take place, then the diversion or extinguishment of the right of way should be deemed invalid and the original way remain.

There were also a further 33 questions arising from the Stakeholder Working Group, many of them about costs, assessments and impacts that this Local Access Forum considered it has not the necessary knowledge or expertise to make valid comments.

**The North Yorkshire Local Access Forum
June 2012**