



# **STRATEGIC STATEMENT OF PRIORITIES**

## **PUBLIC RIGHTS OF WAY**

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### **1. INTRODUCTION & PURPOSE OF REPORT**

In this document "Public Rights of Way" refer to those highways capable of being recorded on the Definitive Map and Statement

The County Council generally has no discretion whether or not to carry out certain functions, yet the resources required to do so fully and immediately would be unsustainably large. Highway authorities must ensure every public right of way is correctly recorded, signed and available for all legitimate users at all times. There are also a number of discretionary functions that it is expedient to carry out.

It is therefore necessary to prioritise the tasks so that we have a strategy that attempts to fulfil the duties over a number of years within the allocated budget, i.e. to determine the order in which the steps are taken towards that 100% target. It is paramount that when considering the various activities, the question of whether it is of the greatest benefit to the public should be at the forefront.

### **2. FUNCTIONS COVERED BY STATEMENT OF PRIORITIES**

#### **CUSTOMER SERVICE (SECTION 3)**

- Telephone calls
- Letters
- Emails
- Internal customers

#### **MAINTENANCE OF PUBLIC RIGHTS OF WAY AND REMOVAL OF OBSTRUCTIONS (SECTION 4)**

- Highway Authority repairs (steps, bridges, signposts, surface, etc.)
- Highway Authority and landowners' seasonal maintenance (vegetation)
- Landowners' repairs (gates, stiles, fences, etc.)
- Highway Authority improvement (new bridge, upgrading surface, etc.)<sup>1</sup>
- Ploughing or growing crops on paths
- Blocked or encroached paths (locked gates, fences, buildings, etc.)
- Intimidation (loose dogs, occupiers, deterrent notices, etc.)

#### **DEFINITIVE MAP & STATEMENT (SECTION 5)**

- Correcting known errors and anomalies
- Processing claims or discovered evidence for map modification
- Processing formal applications
- Reviewing the map for the whole county

#### **CHANGES TO NETWORK (SECTION 6)**

- for the benefit of the landowner<sup>2</sup>
- for school security
- for crime prevention
- for public benefit<sup>3</sup>
- to improve the network<sup>3</sup>
- to permit development<sup>2</sup>

#### **SUSPENSION OF RIGHTS (SECTION 7)**

- to enable works by a third party
- to enable highway repair
- to protect the public from danger
- to prevent damage to the highway or environment
- to prevent persistent antisocial or criminal behaviour

Except where noted <sup>1,2 or 3</sup> below, the above functions are mandatory (a duty rather than a power) and the responsibility to ensure they are fulfilled is that of the County Council even where the responsibility of carrying out the work lies elsewhere. This document only refers to those elements of work carried out by officers in the Environment Directorate primarily relating to maintenance of rural rights of way and Definitive Map work.

<sup>1</sup> This may be done with whole or part external funding, it may be to reduce future maintenance requirements, it may be to meet a demand or it may be to implement an action in the Rights of Way Improvement Plan.

<sup>2</sup> This is generally paid for by the applicant and normally requires no net Lancashire County Council resources except for dealing with objections.

<sup>3</sup> This may provide improved access whilst also reducing maintenance costs, it may be to meet a demand or it may be to implement an action in the Rights of Way Improvement Plan.

### **3 CUSTOMER SERVICE**

3.1 One element of work which has to take priority above and within each of the public rights of way functions is that of general customer service - answering the telephone promptly, courteously and helpfully; responding to emails and letters in a timely and professional manner.

3.2 This has led to the adoption of corporate standards which need to be followed in all contacts with the public. This covers use of corporate logos, timescales for answering correspondence, etc. This is covered by guidance on the Lancashire County Council intranet.

3.3 Customers are not only members of the public (external customers) but also elected members and staff from other departments within the County Council (internal customers) and from other authorities (which can be external or internal customers). This includes staff from departments or authorities which have not yet adopted appropriate standards of customer service themselves.

3.4 It is important to present a consistent and unified face to external customers and not pass the buck or blame. A member of the public should not be expected to know which department or authority is responsible for any particular service and not be passed around between sections but it is for the officer taking the call to find out who can deal with the issue and to ensure that the customer is called back from the right team.

3.5 This aspect of the work can lead to frustration for staff who are motivated to make a difference in actual access provision when time is taken up fielding misdirected telephone calls or emails or spending time providing information to persistent malcontents. Nonetheless most of our customers are reasonable, genuinely concerned about their particular issue and all should be treated with respect and professionalism.

### **4 MAINTENANCE OF PUBLIC RIGHTS OF WAY AND REMOVAL OF OBSTRUCTIONS**

4.1 The objective of the maintenance and enforcement work is to increase the percentage of public rights of way within Lancashire that is available, safe and easy for the public to use (formerly reported as a national performance indicator BVPI 178) and to do so in a 'smart' way.

4.2 Problems are dealt with according to their effect on the public rather than the cause, the person reporting or the age of the problem. It is a statutory duty of the

Highway Authority to ensure that all public rights of way are kept free from obstruction and that the surface of those public rights of way maintainable at public expense is maintained, whether or not any obstructions or defects are reported by members of the public.

4.3 Around 3000 such problems are identified each year. The ability to deal with all of these effectively and fully significantly exceeds the budget available, both in the physical works and the staff resource needed to manage such works and associated legal issues. Thus the necessity for a prioritised queuing scheme.

4.4 In assessing the priority of a problem, the nature of use of the path is taken into account and an appropriate level of care by users is assumed. Similar assumptions, within reason, are made about the users' ability to find and follow the route taking into account the effect on any disabled users in accordance with the Equality Act 2010.

#### 4.5 Scheme of Priority

The following provides an objective order of priority for addressing maintenance and obstructions on the public rights of way network. It is based on the principle that the priority for action is based on the effect on the public not on the cause of the problem.

Category	Description	Examples
High Risk	Defects that are likely to compromise public safety Defects reasonably likely to result in a claim for compensation against LCC	<ul style="list-style-type: none"> <li>fallen tree balancing precariously above path</li> <li>rotten deck on footbridge</li> <li>barbed wire on stile handpost</li> <li>threatening dogs loose on footpath</li> </ul>
High Impact	Defects that completely prevent public use by one or more classes of users	<ul style="list-style-type: none"> <li>building across path</li> <li>padlocked gate across bridleway</li> <li>impenetrable oil seed rape crop across path</li> <li>missing bridge</li> </ul>
Medium Impact	Defects that prevent some users from accessing the route and/or make the route significantly more difficult for the majority of users	<ul style="list-style-type: none"> <li>heavily ploughed field</li> <li>crop (above knee height) across entire width of path</li> <li>field-gate which has dropped and requires considerable effort to open</li> <li>farmyard slurry across path</li> <li>deterrent notice</li> </ul>
Low Impact	Defects which create some inconvenience but do not otherwise prevent public use	<ul style="list-style-type: none"> <li>stile with broken cross step</li> <li>missing signpost</li> <li>lack of waymarking through farmyard</li> <li>negotiable obstruction e.g. tree lying safely across path which must be climbed over,</li> </ul>

		<ul style="list-style-type: none"> <li>narrow ditch without ditch-crossing</li> <li>• gate tied with baler twine</li> <li>• reinstated cross-field path but without line marked on ground</li> <li>• cropped path cleared to only 50% of minimum width</li> <li>• sheathed, temporary electric fence</li> <li>• path narrowed by erection of parallel fences</li> </ul>
No Impact	Defects which are minimal, or which relate to technicalities and which have no noticeable impact upon users	<ul style="list-style-type: none"> <li>• occasional, light vegetation encroachment</li> <li>• small or shallow potholes</li> <li>• small encroachment of a wide path</li> <li>• easy to use but unauthorised gate</li> </ul>

4.6 In allocating a level of priority the following factors are also considered; these may change the priority up or down:

- 4.6.1 Local elected members will generally have a better understanding of the requirements and considerations of the local community and therefore where the County Councillor for that area has requested action over a particular issue this should be given a higher priority.
- 4.6.2 Parish councils have a statutory right to ask the County Council to remove any obstructions and they also represent the local community - therefore issues raised by parish councils should be given higher priority.
- 4.6.3 Number of people affected, which may be indicated by a large number of reports received or number of people seeking help from a local member or parish council.
- 4.6.4 Importance of the path (e.g. if the path provides an important route to school, an easy access route for older residents or one of the named recreational routes which are recognised by the County Council it may be allocated a higher priority) or which for other reasons is considered by the County Council to be an important route.
- 4.6.5 Available nearby alternative paths. Where there are adjacent public rights of way in good condition, clearly signed and that are at least as convenient for all users, a problem may be allocated a lower priority although this in no way suggests that such paths are unnecessary or condones obstruction. How far away such an alternative should be considered depends on circumstances - in an urban area 40 -50m may be an appropriate maximum but in a remote rural area this could be considerably more but in all cases it should be within sight or signed.

4.6.6 Available detour. Where there is a safe, convenient, available 'bypass' around the problem, for all users, the reported problem should take lower priority. This is only acceptable if the detour is close by and clear for non-local users to see from each direction.

4.6.7 Efficiency of work programme.

4.6.7.1 Where a landowner is being contacted to deal with a problem which is their responsibility, other problems relating to that land may be addressed at the same time even though they might be of lower priority if assessed in isolation. This is to gain the benefits of efficiency for both the landowners and the County Council and also to act as an encouragement to landowners to fulfil their responsibilities.

4.6.7.2 Where works are being ordered to deal with a problem, other problems in close proximity may be addressed at the same time even though they might be of lower priority if assessed in isolation. This is to gain the benefits of efficiency (in particular to ensure that works orders avoid any minimum order surcharge) and in order to present a coherent approach to the public.

4.7 Problems will sometimes change priority as circumstances (including weather or third party actions) change the effect on users. Some changes such as crop or vegetation growth can also be anticipated.

4.8 Completion of a Task.

4.8.1 In the interests of efficiency and also for the message that such action sends, once a matter is being addressed (rather than simply assessed), it should be taken to conclusion, wherever possible.

4.8.2 Once an appropriate enforcement notice has been served the matter should be taken to conclusion within a reasonable time wherever possible and if the offender reduces but does not remove the obstruction or nuisance, the problem should not be treated as lower priority and left until another occasion but, rather, the complete removal of the obstruction or nuisance should be sought.

4.9 The length of time a problem has been in existence or reported does not affect the priority. A complete obstruction that has only just occurred is a higher priority than a minor inconvenience that has been reported many months ago. However, the priority of any particular reported problem may be reviewed and changed where appropriate and if a newly reported problem is of the same priority as a problem that was reported several years ago, the older report may be given precedence but this must be assessed against all other factors.

- 4.10 If reports are assessed within the office, using local knowledge where appropriate, sometimes a subsequent site visit will reveal that the problem has been allocated an incorrect priority and unless the solution can be implemented 'on the spot' the priority will be adjusted and the report returned to the queue.
- 4.11 This function is carried out independently of the 'Changes to Network', 'Definitive Map & Statement' and 'Suspension of Rights' functions except where noted. However, other officers' involvement may affect the priority as it is common for an issue to become more complicated than first thought. This needs to be dealt with in conjunction with other officers whose workload is subject to its own scheme of priorities. In such cases a judgement has to be made, probably by the relevant manager, of the overall priority.
- 4.12 The prioritised queuing system described above is organised county-wide rather than within each area or district.
- 4.13 The problem is considered to be resolved in the following cases:
- 4.13.1 It was decided that the report was unfounded (no action required or appropriate even with limitless resources)
  - 4.13.2 The reported problem is solved such that the path can be satisfactorily used by all legitimate users with particular regard to disabled users in accordance with the Equality Act 2010.
  - 4.13.3 An acceptable public path order application has been submitted and the existing path made into a state suitable for the duration of the application (see section 8 for further information), again with regard to disabled users.
  - 4.13.4 A significant mapping query has been identified and this has been logged as an anomaly and passed to the Definitive Map Officer. The best possible interim solution should have been agreed.
  - 4.13.5 A statutory closure has been placed on the path - this is always only a temporary and partial resolution, typically it would be used to resolve a health and safety issue but in doing so creates a total obstruction, albeit a lawful one. It is generally only for the purposes of allowing a repair that cannot be done quickly.
- n.b. When a crop that was obstructing the public right of way is harvested the problem is only "resolved" in the sense that the path is no longer obstructed. It is not "resolved" in the sense that a resolution has been achieved and the report of that obstruction should be taken into account in dealing with any future related problems. A cropped path should not be treated as not requiring action just because it has been harvested - a letter should be written to the landowner explaining that allowing crops to grow on a public right of way is an offence and enforcement action may be taken if this is repeated.
- 4.14 Maintenance Implementation

Maintenance is carried out by contractors, parishes, landowners, volunteers and occasional practical works carried out by County Council staff. In certain parishes in Ribble Valley and Wyre and all of Pendle maintenance work is carried out through the District.

## **5 DEFINITIVE MAP AND STATEMENT**

5.1 The Definitive Map and Statement must be kept up to date, complete and correct both as a matter of statutory duty and to provide clarity for customers.

5.2 Identification of possible issues comes from:

- 5.2.1 Statutory applications under Wildlife & Countryside Act 1981 schedule 14.
- 5.2.2 Informal claims or information given to the County Council.
- 5.2.3 Anomalies list. Items identified by public rights of way officers and volunteers.
- 5.2.4 Other Statutory Orders affecting the Rights of Way network

5.3 Different methods of resolution, depending on circumstances are:

- 5.3.1 Determining that there is no error on the Definitive Map and Statement
- 5.3.2 Making an evidential Definitive Map Modification Order (DMMO) (with full consultation).
- 5.3.3 Making a Legal Event Modification Order (LEMO) (no further public consultation).

### **5.4 Definitive Map Modification Orders**

#### 5.4.1 Priorities of Definitive Map Modification Orders

The general principle is that applications are processed in chronological order of receipt and this is the way that the majority are treated. However certain cases are given greater priority because of special factors, as listed below but taking into account the power to make Temporary Closure Orders of routes presenting a danger to users. These are taken ahead of those in the main queue. It should be noted that in the following table the processing of a Definitive Map Modification Order is taken to include initial investigation which may result in a decision not to make an order and references to applications should be taken to include informal claims, evidence provided and anomalies discovered as well as formal applications under Wildlife and Countryside Act 1981 Schedule 14.

<b>Category</b>	<b>Description</b>	<b>Examples of Applications</b>
<b>1</b> Health and Safety	Danger to the public, posing a significant risk of injury or damage to property	<ul style="list-style-type: none"> <li>• Deletion of a hazardous route</li> <li>• Amendment improving a hazardous route</li> <li>• Addition of an alternative to a hazardous route</li> </ul>



<p><b>2</b> Rights of Way Improvement Plan</p>	<p>Applications which have been identified as a result of the ROWIP or which meet an objective of the ROWIP</p>	<ul style="list-style-type: none"> <li>• Addition/amendment of a link between disjoint parts of the bridleway network</li> <li>• Addition/amendment of an alternative to a road without a footway or verge</li> <li>• Addition/amendment of links which can encourage journeys on foot instead of car</li> </ul>
<p><b>3</b> Reduction of Conflict</p>	<p>Applications which seek to regularise or clarify rights in order to reduce the likelihood of conflict. Such conflict could be between users and land managers, other users or local residents.</p>	<ul style="list-style-type: none"> <li>• Likely conflict as a result of attempts to use a claimed public right of way denied by the landowner</li> <li>• Conflict between walkers and cyclists using a route shown on the map as a footpath</li> </ul>
<p><b>4</b> Large Numbers of People</p>	<p>Where a route is used, or has the potential to be used, by a large number of people or which affects a large number of landowners.</p>	<ul style="list-style-type: none"> <li>• A footpath through several gardens and/or houses of an estate built many years ago.</li> <li>• A route which has featured in a guidebook or on TV or otherwise is subject to high usage.</li> </ul>
<p><b>5</b> Planning Permission</p>	<p>Where a claimed public right of way is affected by land subject to a planning application there is often pressure to resolve the issue. However, it is generally not possible to process a definitive map modification order within the necessary timescale. Applications aimed at assisting the opposition to the planning application should not be given higher priority unless other factors apply to raise the priority.</p>	<ul style="list-style-type: none"> <li>• Correct depiction of a route on the Definitive Map and Statement provides certainty for potential purchasers of new-build houses</li> <li>• Correct depiction of a route on the Definitive Map and Statement assists protection of the public rights where a developer threatens to obstruct a public right of way</li> </ul>

5.5 The Definitive Map and Statement function is carried out independently of the 'Changes to Network' and 'Maintenance and Removal of Obstructions' functions except where noted.

## **6 CHANGES TO THE NETWORK BY AN ORDER UNDER THE HIGHWAYS ACT OR TOWN AND COUNTRY PLANNING ACT**

6.1 The majority of these are as a result of landowner applications which, in the medium term, are expected to be self-financing so that there will be no issue of allocation of budget between these and other rights of way work. These are taken in order of receipt of application unless there are reasons to justify promoting a particular application, such as that it also confers some public benefit or if it will assist other developmental work.

## 6.2 Priorities of Changes to Network

The following table summarises the categories of reasons for changes to the public rights of way network and lists the priorities that tasks within this area of work should be given. However, it is recognised that only category 8 applications can be processed at negligible cost to the public rights of way budget without specific funding from elsewhere and this means that it will often be legitimate to process landowner applications ahead of otherwise desirable changes to the network.

Category	Description	Examples
<b>1</b> Health and Safety	Danger to the public, posing a significant risk of injury or damage to property	<ul style="list-style-type: none"> <li>Exit at a dangerous road junction</li> </ul>
<b>2</b> Response to Consultations	Responding to consultation from district councils and other bodies about any proposal which may have an impact on a public right of way	<ul style="list-style-type: none"> <li>Planning application to District Council for housing estate</li> <li>District Council proposed public path order</li> </ul>
<b>3</b> School Security (CROW Provision)	Applications from schools on the grounds of school security	<ul style="list-style-type: none"> <li>Diversion of path from one side of playing fields to the other so that children do not have to mix with the public when moving between the school and the playing fields.</li> </ul>
<b>4</b> Crime Prevention (CROW Provision)	Application for designation of an area as high crime and subsequent application for public path order on the grounds of crime prevention	<ul style="list-style-type: none"> <li>Footpath being used as access to burgle or vandalise property</li> </ul>
<b>5</b> Unopenable Routes	Where there is a public right of way obstructed by something that cannot realistically be removed or remedied or alternative provision made (see section 9)	<ul style="list-style-type: none"> <li>Footpath with house over it where alternative requires substantial bridge which would only be put in if diversion succeeds</li> </ul>
<b>6</b> Development	Orders necessary to enable permitted development where the County Council is the Planning Authority.	<ul style="list-style-type: none"> <li>Diversion to enable gravel extraction</li> <li>Diversion to allow construction of an extension to a school</li> </ul>
<b>7</b> Network Improvement	Changes to the network to provide more convenient links to other access opportunities or facilities.	<ul style="list-style-type: none"> <li>Re-alignment of Pennine Bridleway</li> <li>Diversion to provide a route with improved view, ground conditions, etc.</li> <li>Creation of bridleway link</li> </ul>
<b>8</b> Landowner Applications	Changes to the network to allow better land use, privacy or other benefits to the landowner.	<ul style="list-style-type: none"> <li>Extinguishment of short link of footpath to front of house</li> <li>Diversion from cross-field to field-edge</li> </ul>

Category 2 - Most public path orders necessary to allow permitted development to take place are carried out by the district councils as the planning authorities and the only involvement of the County Council is to respond to consultations. This, together with responding to other local consultations, is regarded as a high priority as the effects can have a significant impact on the rights of way subsequently and hence on the resource requirements from the Public Rights of Way teams. It is also many times quicker to respond to consultations than to process such applications.

Category 6 - The County Council is the planning authority only for limited categories of development. The procedure for changes to the network under the Town and Country Planning Act 1990 is slightly different than that for other public path orders and the necessary time-scales shorter. These are therefore given higher priority than the general landowner applications, but will be similarly expected to be self-financing so that resources are not diverted from other public rights of way work. It should be noted that the nature of these often results in a more complex order being necessary.

Category 7 - Any changes to improve the network should be funded as part of that improvement initiative. The priorities of any such orders are assessed on an individual basis.

6.3 The method of making the proposed change, public path order or magistrates court application, will not affect priority.

## **7 SUSPENSION OF PUBLIC RIGHTS**

7.1 There are 5 reasons for suspension of public rights on a highway:

- to enable works by a third party
- to enable highway repair
- to protect the public from danger
- to prevent damage to the highway or environment
- to prevent criminal or antisocial activity

7.2 Closures to protect the public from danger take several forms - the danger might be where furniture on a path has become dangerous such as rotten decking on a bridge; where there has been a landslide such as alongside a river; where a wall or other structure is in danger of collapse. These will generally require an emergency closure which may need to be followed by a temporary closure to ensure the safety of the public until the path has been repaired.

7.3 It is often claimed that an emergency closure is needed because of danger from works by a utility company digging a trench along a footpath, or from the necessary machinery and materials being used on a building site through which a path passes, but whilst it is true that the such activities would present a danger to users of the

public right of way, this danger is normally easily avoided by not carrying out that activity until a temporary closure, with due notice given so that public inconvenience can be minimised, can be put in place. Hence it is more accurate to describe these as to allow works to take place rather than health and safety closures. Temporary closures to enable works to take place should also be self-funding, and should not compete for resources with other rights of way work. Closures to enable works to the public right of way also fall into this category except that the costs are not generally recoverable.

7.4 Closures, more usually partial closures, can also be made to prevent damage to the highway or the environment. These are most commonly used to prevent certain classes of vehicles using unsealed highways and these are indicated by the traffic sign with the so-called 'flying motorcycle' in a red circle. These are often long term measures which require a greater lead-time and remain in effect indefinitely but can be extremely flexible - for example prohibiting vehicular traffic at weekends or during winter months.

7.5 Gating Orders under the Clean Neighbourhoods and Environment Act 2005 can be used to prohibit the exercise of public rights with specified exceptions. This mechanism is intended to be used for "alleygating" in urban areas where the public right of way is facilitating persistent antisocial or criminal activity on adjacent land.

#### 7.6 CATEGORIES OF CLOSURES

Category	Description	Examples
1 Health and Safety	Danger to the public, posing a significant risk of injury or damage to property	<ul style="list-style-type: none"> <li>• Broken bridge</li> <li>• Gas leak</li> </ul>
2 Works on or near public right of way	Temporary closure to enable works to be carried out safely, either to the highway itself or to nearby property.	<ul style="list-style-type: none"> <li>• LCC resurfacing bridleway</li> <li>• Developers' machinery operating on path through building site.</li> </ul>
3 Protection of highway or environment & "alleygating"	Traffic regulation order to prevent use of a public right of way by certain classes of users e.g. in order to protect the fabric of the public right of way or its immediate environment. Gating Order to prevent access where it leads to persistent criminal or antisocial activity.	<ul style="list-style-type: none"> <li>• TRO preventing use of a byway by vehicles over 2 tonnes</li> <li>• TRO preventing use of a byway by horses or vehicles between November and May</li> <li>• Gating Order to allow gates to prevent night-time access between residential property on a problem estate.</li> </ul>

## 8 BALANCE BETWEEN FUNCTIONS

8.1 The preceding four sections describe how the priorities within each function are allocated on a day-to-day basis, but give no indication of relative priority between

very different types of public rights of way activities such as processing a Definitive Map Modification Order application or cutting back nettles on a path. These activities require completely different skills and are, in general, carried out by different specialist officers. Each function should not normally impose a different priority on another except where assistance is needed to allow a higher priority problem in one area to be resolved - as indicated previously. Balancing the priorities is a long-term resource allocation decision, but one which must be made in a reasoned way.

- 8.2 The issue of priorities, in particular between the duty to remove obstructions and the power to make public path orders, was brought to the forefront during the long-running dispute between Kate Ashbrook and East Sussex County Council involving obstructions by Nicholas van Hoogstraten (a.k.a. Rarebargain Ltd.) which ended at the Court of Appeal. East Sussex County Council lost the case primarily because it was decided that they had not followed their own policy, rather than because they had processed a public path order in preference to carrying out the enforcement for which they had served notice. It is in order to provide clarity for public rights of way officers, landowners and members of the public concerning the manner in which such matters, i.e. public path orders on obstructed routes, are dealt with in Lancashire that section 9 is written.
- 8.3 A common example of one function affecting another is where an enforcement or maintenance officer requires help from a mapping officer to determine the correct line of a path. A short amount of the mapping officer's time can allow the enforcement officer to progress with a high priority issue - the priority in such cases must be judged from a whole-team perspective. In practice a significant amount of the mapping officers' time is justifiably used in this way.
- 8.4 Before considering the priority of resource allocation to the different functions, those activities which could be self-funding could be excluded as they can be carried out independently. These include changes to the network (public path orders and magistrates court applications) for the benefit of the landowner or to allow permitted development, temporary closures for third parties such as utility companies or developers, searches for rights of way information and provision of copies of the Definitive Map. Whilst the cost of some enforcement work can be recharged to the offender, this is not a self-funding activity although costs should be recovered wherever they can be. The overall balance of resource allocation to the different functions must be to achieve reasonable progress in all areas.
- 8.5 All areas should have sufficient resources to carry out the fundamental level of service to ensure the health and safety of the public and to reduce the potential for Lancashire County Council to enter into litigation. However expectations should be considerably higher and this baseline can be extended to ensure that:
- health and safety reports are resolved within an agreed timescale, or made safe as an interim mitigation measure
  - most public rights of way are unobstructed and reasonably convenient to find and use

- processing of category 1-4 public path order applications usually begins within 3 months of receipt of a duly made application
- all relevant consultations will be considered, and where appropriate a response given, before the published deadline whenever possible
- emergency closures for health and safety reasons are put in place as soon as practicable and, where necessary, temporary closures follow without a gap

## 9 PUBLIC PATH ORDERS ON OBSTRUCTED ROUTES

9.1 It is stated as a condition of acceptance of an application for a public path order that the existing legal line should be unobstructed. This is clearly not always possible in the case of certain substantial obstructions without knocking down a house or filling in a quarry. In other cases obstructions on the path can be removed simply by the removal of a section of fence, cutting back of vegetation, removing deposited items from the path or other minor actions. In the case of the former it is accepted that it would be unreasonable to remove the obstructions whilst a public path order is being considered but in the case of the latter the application for an order should not be processed until the obstructions have been removed. The Ashbrook case\* has shown that it is necessary to make the guidance clear about how the distinction is drawn between these two different courses of action.

### 9.2 Obstructions

9.2.1 Obstructions which would not be removed prior to the processing of a public path order are those whose removal or modification would be unachievable at a cost comparable with the value of the property, such as restoring a major landslip, demolishing a dwelling or other building of traditional construction. The meaning of "value", in this sense, is not restricted to financial but might include a specimen tree, for example.

9.2.2 Other factors which would make it unreasonable to achieve an unobstructed route are difficult to predict because they would be exceptional cases. Such cases might include a significant security risk to the occupiers. This would only be on the advice of the police or security forces where the risk to persons, not only property, is believed to exist.

9.2.3 Whilst it is recognised that the obstruction should not be there, it is also considered that in the above circumstances, such actions to restore the path would be disproportionate and in practice this should continue to be interpreted as expecting the nearest practicable alternative to be unobstructed (e.g. where a house has been extended across a footpath the owner would not be required to knock down the extension but would be required

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\* Report can be found online at <http://www.bailii.org/ew/cases/EWCA/Civ/2002/1701.html>

to remove any fences or other obstructions alongside the building thus ensuring that members of the public could walk around the extension.)

- 9.2.4 Such exceptions to the expectation that the existing path should be clear before processing a public path order must be agreed with the Public Rights of Way Manager or more senior officer. In such circumstances the alternative provided should be the closest possible to the correct line of the path and not create any significant inconvenience, for instance if a path was obstructed by a house an alternative should be available close to the house (not 50m away in an adjacent field) and this alternative may be different from the diversion proposal. It is important that users of the path can easily find this alternative when approaching from either direction.
- 9.2.5 There may be exceptional circumstances where the previous paragraph applies but where there is no possible existing route to divert the obstructed path or that provision of such an alternative would require a disproportionate cost or be otherwise unreasonable to achieve prior to a diversion order being confirmed. Examples of such instances might be where significant engineering works would be required to fill in part of a quarry or pond, to stabilise a river bank or demolish an existing structure which would be required if the proposed diversion were successful but not required if the proposal was rejected - in such circumstances it would be reasonable to allow the delay until the outcome of the order was known. However, if the works would be required anyway, for instance if the structure on a possible alternative route was redundant or there was a need to support a failing bank, then this exception would not be appropriate.

### 9.3 Obstructions Removed

- 9.3.1 In most cases the removal of obstructions should be achieved before the public path order is processed. These, or other obstructions, should not be allowed to recur during the time the application for the public path order is being processed and the Ashbrook case makes it clear that deliberate flouting of the law is a significant consideration in whether the removal of the obstruction is reasonable before a diversion order would be processed.
- 9.3.2 It may be necessary or desirable for the applicant to put up temporary fencing adjacent to the public right of way or to carry out other works to protect property, ensure personal privacy or public safety in the period between the application and determination of the public path order. It is reasonable in most cases to expect such action to be carried out by the landowner or occupier in preference to preventing the public from using the path and from being able to assess the relative merits of the existing and proposed line of the path.

## 9.4 Mitigating Factors

9.4.1 In assessing whether a case falls into the category of requiring the removal of obstructions prior to a public path order being processed or whether it is more appropriate to allow temporary use of an adjacent alternative there are several mitigating factors to consider. These are only relevant to borderline cases however and should not be used, for instance, to justify not removing a light fence erected after the application was made, on the basis that an improved, adjacent path was available, nor to justify requiring the demolition of a house because there was no possible alternative route.

9.4.2 Mitigating factors include instances where:

9.4.2.1 the available alternative route is as close\*\* to the Definitive Map line as physically possible and which is safe and convenient to use.

9.4.2.2 the available alternative route is as convenient to use as the Definitive Map line would be if unobstructed.

9.4.2.3 the obstruction is due to natural causes (such as a landslip) rather than negligence (such as overgrowth) or a wilful act (such as erecting a fence).

9.4.2.4 the landowner has not been asked or required by a council, or court, to remove a wilful obstruction(s) before the application for the diversion was made.

9.4.2.5 the landowner acted to alleviate the problem.

9.4.2.6 the path is considered not to be a particularly important part of the regional or local network, nor well used by residents of the local area.

## 9.5 Enforcement Priority

Where the existing and proposed routes are further apart or of different character and aspect, it is possible that whilst perhaps being a low enforcement priority it would not allow members of the public to be able to respond to the consultation concerning a proposed public path order because they could not compare the two routes without access to the existing one. If this were the case a public path order would not be able to proceed. However, in some cases this argument could be countered because it may be possible to inspect the existing line by walking from each end even though there is an obstruction which prevents use as a through route.

9.6 The case-officer can ensure that the above conditions are met by not starting to process the application until the existing route or the nearest approximation is



usable. However, once the application is being processed, any subsequent obstruction by the applicant should not be given higher priority for enforcement action simply because there is a public path order in progress. If the obstruction is total then it will be high priority (category 2) for enforcement but if there is an available close alternative, which is often the case where a diversion is being proposed, it is likely to be lower priority. Whether an opposed order should be considered for submission to the Secretary of State for confirmation or not should be considered in the same manner as whether or not to start processing the application.

\*\* It is not possible to give an absolute value to "close" because it will depend on context. If a route is in an environment with many features such as a stream, steep bank, hedge, etc. 2 or 3 metres might be seen as the limit - e.g. the width of a hedge. On the other hand where a path crosses a wide area of ground of fairly uniform character and changes direction at points where no features exist 50m or more might be insignificant. It is envisaged that any deviation greater than 20m would be unusual, however.