

**Report to the Environment, Economic Growth and Transport Scrutiny Committee**

Meeting to be held on Monday, 17 March 2025

**Report of the Director of Environment and Planning**

**Public Rights of Way**

<b>Part I</b>	<b>Corporate Priorities:</b> Thinking differently;
<b>Electoral Division(s):</b> (All Divisions);	
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**Summary**

**Purpose of the Report**

The report provides an overview of the responsibilities of the council in relation to Public Rights of Way and how these functions are delivered by the service.

**Recommendation**

The Environment, Economic Growth and Transport Scrutiny Committee is asked to formulate any recommendations to the Cabinet Member for Environment and Climate Change.

**Background**

1. The Public Rights of Way (PROW) Service is a small team of 15 officers and a service manager, managing over 5,500km of public rights of way. PROW are assisted by Legal Services Highways, Planning and Environment Team, a significant proportion of this legal team's work is PROW related. This includes a wide spectrum of different physical paths, tracks, and unmarked ground that provide access to the countryside across Lancashire and important walking routes that provide health and wellbeing benefits to many. Public Rights of Way, also known as minor highways, are or should be, recorded on the Definitive Map and Statement, which is the legal record of these public footpaths, bridleways, restricted byways, and byways open to all traffic.



2. Managing public rights of way is governed by the same statutory framework as the main (mostly vehicular) highway network but in practice is in many ways the opposite:
  - public rights of way generally run over private land whose owners do not benefit from them but have certain responsibilities,
  - the landowners are responsible for most gates and stiles, but the county council is responsible for most steps, bridges, handrails, and surfaces,
  - many, but by no means all public rights of way, are informal in appearance,
  - the majority are 'public paths', i.e. footpaths or bridleways, with no public vehicular rights and a few are byways,
  - many public rights of way are coincident with private vehicular rights, such as a drive to a farm, private dwelling, or business,
3. Lancashire County Council has several key responsibilities regarding PROWs that include maintenance and obstruction removal (enforcement), maintaining a legal record, handling requests to modify the Definitive map and handling requests for changes to public paths such as diversions and closures.

#### **Maintenance and Enforcement**

4. Maintenance and enforcement are done through a series of reactive enforcement actions to remove obstructions from the public paths and byways, reactive maintenance works and planned improvements to ensure those ways are safe and convenient to use. Large structures such as bridges and retaining walls are maintained by the county council's Asset Team.
5. Enforcement can take the form of simply asking the landowner or person concerned to carry out work, direct action under common law or statute, or serving Notice. The latter can be achieved by a pro-forma in that the format or template is standard and the location, owner and type of structure are filled in according to what the PROW officers find on site. Currently, the PROW team have limited delegations, which places a reliance on Legal Services to issue the Notices. This can cause delays. Prosecutions are very rare as they take a long time and often do not result in the obstruction being removed unless a court order is so made. Furthermore, the cost can be significant and not always recovered, the outcome of a criminal conviction can have an impact on the individual which may be considered disproportionate in some cases.
6. The number of outstanding reports of defects and obstructions on the Public Rights of Way database has always been a matter of interest to some PROW user groups across Lancashire. It is acknowledged that there are many apparently unresolved reports dating back many years on the database.
7. The data is, however, very unreliable due to historical changes in procedures and personnel as well as software changes and glitches over time. The numbers themselves also do not provide meaningful information on the state of the



network or on the performance of the service. For example, a great number of outstanding reports can reflect that priority, and resource, is being directed to more challenging difficult to resolve issues that have a greater impact on those wanting to use the network. The number of reports could be brought down by redirecting resources to resolve the easiest cases, which generally have the least impact on the public. Reports are not broken down into maintenance and enforcement and there is a broad area of overlap with relatively few being clearly maintenance (e.g. weeds on path need mowing) or clearly enforcement (e.g. padlock on gate).

8. It is also noted that more reports are received when the network is in good condition because expectations are raised and higher standards of public rights of way prevail. It is important to note that the number of reports on the database does not prevent the most important issues being addressed. The [Strategic Statement of Priorities](#) (which was written in 2013 and subsequent 'light-touch' reviews have not made changes) sets out the process for prioritising reports and tasks, with issues dealt with according to their effect on the public.
9. The network is too large for a proactive / scheduled safety inspection regime to be done by the small team within a meaningful time interval. Rather, officers react to members of the public reporting defects and obstructions. Reports are received via a variety of channels:
  - Love Clean Streets (LCS). LCS is currently not integrated with the PROW database, so the service receives an email once a report has been made. This means that PROW reports are not updated on the LCS App, however, customers receive an acknowledgement email if they have left their email address, and a further email to inform them when and how the issue has been resolved. The replacement to the Highway Asset Management System (HAMS) should provide better integration with PROW reports.
  - Telephone
  - Email
  - Letter
10. Customers sometimes ask for better information regarding progress of their reports of defects and obstructions but there is often very little relevant information between 'report received' and 'problem solved' because the maintenance issues tend to be relatively quick once the work is ordered. Enforcement issues are subject to UK General Data Protection Regulation (UK GDPR), and we are unable to give details of actions as it involves the personal details of another individual.
11. There is currently no annual condition survey of the network. There are different ways of conducting such surveys, and in Lancashire they have previously been carried out by volunteers from user groups or county council employees. Whilst this can be a low-cost approach resource is needed for administration and co-ordination and training of volunteers. The expectations of volunteers also need careful management, most want the defects and obstructions which they have



surveyed and recorded to be resolved within a short time of the survey, which is unrealistic within currently resourcing levels. Experience has been that in carrying out condition surveys some user groups have gone on to submit them all as individual reports which skews the data and does not assist in delivering better service.

12. Town and Parish Councils and community groups can get involved in minor maintenance work through the Local Delivery Scheme. This provides an annual grant of £500, plus access to materials, to encourage local involvement and enabling the local council to prioritise and address those issues of most concern to residents but would potentially not rank as a high priority across the county network. This scheme delivers some important intangible benefits, such as local prioritisation and a sense of 'ownership' of the local network, encouragement to use the local paths to improve health and wellbeing.
13. The Pennine Bridleway is a National Trail and is expected to be maintained to a higher standard than the main public rights of way network. A dedicated Ranger is employed by Lancashire County Council to manage the section of this trail through Lancashire, Rochdale and Calderdale.

### **Managing the impact of Development**

14. The impact of increased development across the county has rapidly become an important area of focus. If PROWs are not considered there is a risk that developments block or limit them, use of adjacent PROWs intensifies, and the County Council may incur the financial and resource expenses of dealing with legal challenges and / or correcting developments to allow PROW access.
15. A dedicated sub-team within the PROW service now focuses on issues related to planning consultations, temporary closures and related projects. This has improved efficiency in this area of work, especially protecting the network by advising planners concerning applications which affect existing public rights of way or on potential for network improvements. This ensures that as much as possible problems can be avoided at this stage rather than having to be resolved through enforcement and diversions after construction.
16. The PROW team primarily relies on local planning authorities informing the County Council that there is a planning application. A recent review by internal Audit found that the team responded to all planning applications passed to them, this amounted to 333 applications in 2023 and 212 in the period January to July 2024, the review period of the audit. The review found the main risk to be that the PROW team is not informed of relevant planning applications (or subsequent changes) by local planning authorities or developers; and that developers do not comply with the mitigations and conditions requested to protect public rights of way. Given the volume of applications referred and the resources required, proactively checking for planning applications and enforcement of conditions is not considered feasible.



17. It is often necessary for developers to exclude the public whilst work is ongoing, so a legal temporary closure order is required. The team is currently managing 46 live temporary closures across the county, with several also in the process of being issued. One part time Paralegal officer deals with all Notices for temporary legal closure.
18. Public path orders under the Town and Country Planning Act 1990, diverting or stopping up public rights of way to enable development for which there is planning permission, are within the power of the district councils where they are the planning authority, which is true for most applications. For the last few years one of the Public Path Order Officers has worked full-time drafting public path orders for the district councils on the basis that it is more satisfactory, produces better outcomes and is more cost effective than the district councils making orders, or failing to make effective orders, which either lead to an objection or enforcement action being taken after the development has been complete for some time.
19. This has, however, reduced the capacity for processing public path order applications for reasons other than development. Options are being considered to increase capacity, for example by charging the districts/applicants so the county council can provide this service either via consultants or a new self-funded post.
20. Diversions and extinguishments are made under the Highways Act 1980 by the County Council in the interests of the landowner, or occasionally the public. There is a backlog of requests for these and probably a suppressed demand both due to the length of time currently quoted and the number of landowners unaware of the public rights. All decisions to make these orders in Lancashire are currently made by Regulatory Committee even though many are very straightforward, and many other Authorities delegate these decisions to officers (subject to a 'call-in' to Committee where appropriate). The approach to making these decisions and the potential for any delegation to be made is currently under review with legal services.

### **Definitive Map and Statement**

21. The GIS (Geographical Information System) Officer maintains the digital working copy of public rights of way which is used by the county council (and some districts), by the public and other organisations. This is available on MARIO, the council's online mapping system. This is not the legal record (the Definitive Map and Statement) which exists in paper format originating in 1966. It would take a sizeable effort to make a digital Definitive Map but consideration to doing this should be given as having a widely used online working copy that is used as though it is the Definitive Map, for example to provide local search information, puts the county council at financial and reputational risk.
22. The Definitive Map and Statement, as the legal record, can only be corrected or updated by means of definitive map modification orders. Anyone has a right to apply for such an order, primarily but not exclusively to add a way to the record or



to add bridleway rights to a way recorded as footpath. Processing such applications is a specialist area and the Public Rights of Way team produce reports in conjunction with Legal Services for a Regulatory Committee decision. The current arrangement is that the Public Rights of Way officers research and analyse the documentary evidence and Legal Services research and analyse the user evidence. Around three or four of these reports are taken to each Regulatory Committee for a decision on whether to make definitive map modification orders and on the stance to be taken in the face of any objections. Where there is any objection, the matter is referred for independent decision. The decision maker is a Planning Inspector on behalf of the Secretary of State.

23. Over the last 9 months, a locum solicitor working for Legal Services and closely with the Definitive Map Modification Order officer has helped to prepare nearly 50 opposed orders to be submitted to the Planning Inspectorate for determination. At the time of writing 31 cases have been submitted, with 14 more in preparation with legal services and seven soon to be sent through to legal services from the PROW team. This has helped to address a backlog of orders waiting submission and bring the list down to a more manageable level.

24. It is recognised that the service has delivered savings over many years and is now providing a county-wide service with limited resource and increasing demand, particularly in responding to increased development affecting PROWs.

### **Options and Proposals**

25. The report provides an overview of the responsibilities of the county council in relation to Public Rights of Way. The report references potential changes in delegation for decisions on straight forward Public Path Orders from Regulatory Committee to officers and S143 Notices from Legal Services to PROW. These options are both currently under consideration by Legal Services who will advise accordingly.

### **Consultations**

26. There were no consultations.

### **Context and Implications**

#### **Legal (including Human Rights)**

27. Consideration has been given to any potential legal implications, and none have been identified.

### **Financial**

28. All functions described in this report are delivered through the PROW service budget. The report does not bring forward any new proposals so there are no financial implications associated.



## Equality and Diversity

29. The report does not contain any specific proposals; therefore, no equality and inclusion impacts have been identified.

## Risk Management

30. The report is for the committee to consider and comment as appropriate and no specific proposals are made, there are therefore, no risk management implications at this point

## List of Background Papers

Paper	Date	Contact/Tel
None		

## Part II Reason

N/A

