

Annex 4 – Review of staffing levels and budgets

Review of Staffing levels

- A. The council currently has 1 DMO in post. Processing DMMO applications is a complex legal process which means there is a great deal of uncertainty about how long a specific DMMO application will take to complete. That being said, processing a DMMO can be divided into 3 broad phases of work, namely;
 - i. pre order investigation, consultation, and determination;
 - ii. making the DMMO and consultation with the public; and
 - iii. sending opposed DMMOs to the SoS.
- B. The legislation currently requires that the council carries out the first of these phases within 12 months of the application being duly made. The Deregulation Act 2015 (see para 81 below) will have the effect of reducing this period to 3 months, therefore putting additional pressure on the existing staff member.
- C. Working under the provisions of the current SoP the DMO may resolve between 1 and 2 applications each year. This means that the current backlog will be eliminated some time between 2028 and 2037 assuming no new applications are received.
- D. A DMO concentrating on the first phase of work can determine up to 26 applications per year (allowing 2 weeks to investigate, send out an informal consultation and respond to any queries raised). The determination of an application does not include the making of a DMMO or statutory consultation with the public. Although the current backlog of DMMO applications would be determined, the backlog would just be shifted back to the beginning of phase 2, which is the position of the DMMO application that led to the LGO complaint.
- E. A DMO concentrating on the above first two phases of work can process up to 10 applications per year. In this case the current backlog would be shifted back to the beginning of phase 3, leading to many if not all applications waiting to be submitted to the SoS.
- F. A DMO concentrating on all 3 phases of work can complete 3 DMMO applications per year (assuming all the DMMOs are opposed and are sent to the SoS).

- G. Note that the above involves the DMO only doing DMMO applications. None of the other duties (such as the FCB investigations, responding to planning applications, updating and producing definitive maps, making legal event modification orders and investigating queries over route alignments) will be done.
- H. Bearing the above information in mind, this means that with the current staff member focusing only on DMMO applications the current backlog can be eliminated by the end of 2025. This assumes that none of the cases are particularly complex or involve a large body of evidence and no further DMMO applications are received. In addition it assumes no further time consuming appeals for undetermined DMMOs are received, although it must be noted that the council will remain extremely vulnerable to such appeals until the backlog has been eliminated.
- I. Effects of the Deregulation Act 2015 and 2026 cut off on staffing levels:
The focus of this report is on the immediate risk that the LGO will make a finding of maladministration. However, the anticipated implementation of the Deregulation Act 2015 will also exert additional pressures on the council's definitive map function, especially in regard to staffing levels and should therefore be taken into account in any decision made.
- J. In addition to the reduction in time allowed to determine an application (from 12 months to 3 months) the Deregulation Act 2015 also introduces a new procedure to the DMMO application process called a preliminary assessment (PA). The PA requires the council to assess the application. If the council concludes that the application shows there is a reasonable basis for the applicant's belief that a PRow exists then the council is required to serve notice of the application on all affected land owners and occupiers. The council does not hold details of landownership and so these would have to be researched and identified before notice is served, all of which adds to the pressure of meeting the 3 month timescale allowed for determining the application.
- K. Under the current system it is the applicant, not the council who is required to identify and serve such notice on all owners and occupiers of the affected land. The understandable desire on the part of the applicant not to upset land owners or occupiers who are often their neighbours frequently causes applications not to be sent to the council.
- L. Whilst the degree to which having to serve notice stops members of the public making DMMO applications is hard to quantify, it is possible to get some sense of it by examining the Rights of Way Team's records. The

team keeps records of enquiries made about potential DMMO applications. This can then be compared to the number of applications received to give a conversion rate.

- M. The conversion rate for DMMO enquiries varies from year to year but is generally around 1 in 8. For every DMMO application the council receives, there will have been 8 enquiries.
- N. Whilst it is impossible to ascribe all the enquiries that went no further to the requirement to serve notice, it is reasonable to assume that the change in procedure will lead to more applications being made.
- O. At the moment any DMMO application received needs to meet or exceed the evidential test of a PRow being “reasonably alleged” to exist. The Deregulation Act removes this evidential standard meaning that when the Act comes into force, all applications must show that a PRow exists “in the balance of probabilities” before a DMMO is made.
- P. The combination of the increased burden of proof and increased number of applications (because the procedure is less onerous for the applicant) is inevitably going to lead to an increased number of applications being rejected.
- Q. Where an application is rejected, the council is required to set out its reasoning for the rejection. This means that DMMO application rejection notices are very similar to the reports the Executive Member receives at the moment. This will lead to officer time being needed to write these rejection notices (approximately 1 week per DMMO application rejection).
- R. In addition, when the council rejects an application after the PA is complete, the applicant has the right to appeal the rejection to the Magistrates’ Court. With more applications being made and more applications being rejected there is a danger that the council will be required to defend rejection decisions in court. This again will take up officer time.
- S. As indicated by the title of this section there is an additional complication facing the council’s definitive map function, this is the 2026 cut off date. The Countryside and Rights of Way Act 2000 introduced a cut off date where all unrecorded public rights that existed prior to 1949 would be extinguished.

- T. As the cut off date gets closer many user groups and other bodies with interests in PRow are implementing plans to investigate as many of these pre-1949 unrecorded PRow as possible. Where evidence is found indicating that public rights exist they will be making DMMO applications. In fact some organisations have secured funding to pay volunteers for every application that is made.
- U. Whilst the area covered by the council is relatively small, its long history means that it is likely that a number of unrecorded ways will be found and the council will receive more DMMO applications. If these applications are received after the implementation of the Deregulation Act then the PA process will also need to be applied to them.
- V. In addition, as public awareness of the 2026 cut off date increases there will be an inevitable increase in pressure on the council to proactively look for unrecorded PRow and get them protected before they are extinguished in 2026.
- W. The Deregulation Act and the 2026 cut off date are both likely to significantly reduce the rate at which the current DMMO application backlog is eliminated.
- X. Bearing the above in mind it is recommended that an additional Rights of Way post is created to be engaged in a technical support role rather than as an experienced DMO. This could be a role that is suitable for consideration under the council apprentice schemes. The reasons for taking this approach are twofold. First, a technical support officer/apprentice will be less costly to employ than an experienced DMO. Second, dealing with DMMO applications is a highly specialist role so attracting experienced officers is usually a case of poaching one from another authority.
- Y. Having said that definitive map work is specialised, there is a significant amount of the process that, although still specialised is more administrative in nature, for example sending out, collating and responding to consultation responses, interpreting historical documents, transcribing relevant sections of inclosure and tithe awards, conducting archival research, checking orders for accuracy and legislative compliance, addressing concerns raised by land owners affected by DMMO applications, recording data within the council GIS, and generating maps from that GIS . Moving this part of the process to a less costly technical/apprentice role means that the DMO is being used far more efficiently especially in regard to the preparation of papers to be

submitted to the SoS and representing the council as expert witness at any subsequent local public inquiry or hearing. This maximises their value to the council.

- Z. The cost of employing an additional member of staff in a support role would be in the region of £31,000. Employing an apprentice/trainee in this role would cost in the region of £25,000.
- AA. The creation of a temporary post over varying periods of time has been considered. However, regardless of whether the post was for 1, 2, or 3 years the effect is to simply move the backlog to another stage of the process. Therefore the danger of the council being subject to additional appeals or LGO complaints is not removed. If the post was permanent rather than temporary the problem of just shifting the backlog to another phase would be avoided.
- BB. As the LGO's decision in the current case has been made public, it seems highly likely that some of the existing applicants, particularly those from user groups or other bodies, will use the same approach to try and get their applications processed faster. Therefore there remains a significant risk that valuable officer time will be used answering such LGO complaints instead of eliminating the backlog. A permanent member of staff would greatly assist in ameliorating the additional work that such complaints cause.
- CC. It should also be borne in mind that dealing with as many as 18 opposed DMMOs will take the SoS a considerable amount of time (several years) to resolve and there is a possibility that members of staff who had originally dealt with an application may have left the authority. There are administrative measures that can be put in place that will largely eliminate the danger from this loss of expertise.
- DD. The council is in the unusual position where the likely future demand for the definitive map statutory function can be predicted with a higher than usual degree of certainty. The combination of the urgent need to eliminate the current backlog of DMMO applications and the changing legislative framework mean that at least until 2026 there is an obvious sustained increase in the demand on the definitive map function that is beyond the current available staff resources.
- EE. Therefore adding an additional member of staff in a support role or an apprentice would allow all the existing applications to be determined, have all relevant orders made, complete the required public consultation,

send all opposed DMMOs to the secretary of state, and increase the team's ability to meet the demands that the legislation changes will bring.

FF. As noted above, definitive map work is a highly specialised role and there are an extremely limited number of experienced officers available. Even in a support role the additional member of staff/apprentice would gain valuable experience in definitive map work. In the event the current DMO leaves the council, the additional member of staff would be able to step into that role, minimising disruption to the service and preventing appeals and complaints.

Review of Definitive Map Budget

GG. The current definitive map budget is £16,000. This budget is used to place the legally required adverts in the press and to fund any subsequent public inquiry or hearing should an order be opposed. By resolving the existing 18 applications some expense will inevitably be incurred.

HH. The current legislation requires that an unopposed DMMO is advertised in the local paper on two separate occasions. Such adverts today cost approximately £900 each. Eliminating the DMMO backlog will result in an increased need for advertising which means that the current definitive map budget (£16000) is likely to be overspent each year until the backlog has been dealt with. The resolution of all 18 applications, if unopposed, will lead to a total advertising expense of approximately £32,400.

II. Whether this expense is incurred over 1 year or more will depend on the decision taken with regard to staffing levels. However, it is likely that most, if not all the applications, will be opposed and this will inevitably lead to additional expense.

JJ. In dealing with opposed DMMOs there are a number of options available to the SoS, all of which the council is required to fund. The most expensive option is to hold a full local public inquiry which requires an additional (third) notice to be placed in the local newspaper (approx £900) and a venue to be found and staffed.

KK. If the inquiries are all held at West Offices then for each opposed DMMO there will be an additional spend of approx £1,400 (including the required third advert), leading to a total cost of clearing the backlog of approximately £57,600.

LL. If the inquiries are required to be held at an external venue then for each opposed DMMO there will be an additional spend of approximately £6000 (including the required third advert) , leading to a total cost of clearing the backlog of £140,400.

MM. There is a great deal of uncertainty over what will be required in order to eliminate the backlog. The figures set out above illustrate only a small number of possible scenarios. Consequently it may be prudent at this stage to commit to keeping the budget under review and consider additional expenditure as and when it is required.

Options for the review of staffing levels and budget

NN. Review of staffing levels and budgets (SLB).

- a. SLB Option 1: Develop an apprentice/trainee role for rights of way initially concentrating on DMMO applications commencing in April 2020.
- b. SLB Option 2: Keep further resources under review to ensure the commitment set out under SoP option 1 can be achieved.
- c. SLB Option 3: Take note of the review of staffing levels and budgets but not authorise any changes.

OO. Options 1 and 2 are the recommended options.