

Report to Cabinet

22 June 2022

Subject:	Proposed West Bromwich Definitive Map and Statement for Public Rights of Way
Cabinet Member:	Cabinet Member for Environment Services Councillor Zahoor Ahmed
Director:	Director – Regeneration & Growth Tony McGovern Director – Law & Governance & Monitoring Officer Surjit Tour
Key Decision:	Yes
Contact Officer:	Strategic Planning & Transportation Manager Andy Miller andy_miller@sandwell.gov.uk

1 Recommendations

- 1.1 That the Director of Regeneration and Growth and the Director Law & Governance & Monitoring Officer be authorised to make representations to the Secretary of State requesting formal abandonment of the West Bromwich Draft Map under section 55 (1) (b) of the Wildlife and Countryside Act 1981.
- 1.2 That the Director of Regeneration and Growth and the Director Law & Governance & Monitoring Officer be authorised to take the necessary steps under section 55 of the Wildlife and Countryside Act 1981 to create the West Bromwich Definitive Map and Statement.



1.3 That the Director of Regeneration and Growth be authorised to procure external support to carry out this work as required.

2 Reasons for Recommendations

2.1 Since the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) came into force, every Highway Authority outside of London has a statutory duty to ensure that it has a Definitive Map and Statement (or a collection of Definitive Map and Statements) covering the authority area is kept up to date. This provides conclusive evidence of Public Rights of Way within that area.

2.2 Public Rights of Way (PRoW) form part of the highway network and those in the Borough typically include footpaths, bridleways and restricted byways.

2.3 The process for preparing a Definitive Map and Statement under the 1949 Act required the Council to:

- Undertake a survey of all land in its area over which a right of way was alleged to exist and to prepare and publicise a draft map and statement where representations and objections could be made. Any representations and objections made to the draft map and statement will ultimately be the subject of a hearing, with a right of appeal to the Secretary of State.
- Following the hearing the Council would prepare a provisional map and statement considering any modifications made as a result of objections which was to be duly publicised.
- Finally, the Council would be required to prepare the definitive map and statement. Thereafter, the 1949 Act required periodic reviews of the Definitive Map and Statement to ensure that it was kept up to date.

2.4 Because most definitive maps were prepared in the decade or so following the 1949 Act, they were prepared by the local authorities that existed prior to the major reorganisation of 1974. Sandwell therefore has nine definitive maps which cover the majority of the Borough. The exception is the former West Bromwich County Borough area which is at draft map and statement stage.



- 2.5 A draft map was published by West Bromwich CBC in 1954 and several objections were received. These objections were not resolved at the time and the process stalled. This means that the recorded routes on the Draft Map are not 'definitive' highways and so do not automatically benefit from protection under the Highways Act 1980 and the council is in breach of its statutory duties.
- 2.6 There are 159 recorded PRowS in the West Bromwich area and recorded on the Draft Map and Statement. Of these, 51 are currently obstructed in some way. The most extreme cases include PRowS that have been developed over so that buildings sit on the line of the recorded route.
- 2.7 These routes should have been diverted or extinguished as part of the planning process for the developments concerned however this did not occur. In almost all cases this occurred prior to the formation of Sandwell in 1974.
- 2.8 By not having a Definitive Map for West Bromwich the Council is in breach of its statutory duties. It is possible, and indeed increasingly probable, that this will result in interested parties resorting to legal action
- 2.9 The current legislation in relation to the mapping of public rights of way is contained in Wildlife and Countryside Act 1981 ("the 1981 Act"). Section 53(2) of the 1981 Act imposes a statutory duty on each surveying authority to bring its Definitive Map and Statement up to date as soon as reasonably practicable after its commencement date and a further statutory duty to keep that Definitive Map and Statement under continuous review and up to date.
- 2.10 The Council took legal advice from a leading Barrister and the Council was advised that "as the survey under the 1949 Act was undertaken over 60 years ago and is thus inevitably significantly out of date, as are the objections and other representations made to it. It would be much easier to abandon that survey and to proceed to prepare a Definitive Map for West Bromwich under the 1981 Act,"



2.11 In order to protect the draft map routes for the future and clarify their status, the Council would need to either;

- Progress the 1954 Draft Map to a Definitive Map under the 1949 Act or;
- Abandon the stalled 1954 process under the 1949 Act and commence the creation of a new Definitive Map & Statement under the 1981 Act.

2.12 The Council proposes to abandon the draft map and statement under the 1949 Act and commence the creation of a new Definitive Map & Statement under the 1981 Act. To do this, the Council is required to make an application to the Secretary of State seeking a direction to abandon the survey carried out under the 1949 Act in relation to West Bromwich in its entirety. If the Secretary of State approves the abandonment under section 55, the Council will be required to prepare a new draft map and statement for the West Bromwich area in accordance with the 1981 Act.

2.13 The abandonment process and subsequent creation of the definitive map and statement for the West Bromwich area will allow the Council to comply with its statutory duty of having a Definitive Map and Statement and keeping it up-to-date and under continuous review as required by the 1981 Act. Furthermore, once the West Bromwich Definitive Map and Statement is confirmed, the Council can consolidate the nine separate maps into a single Sandwell Definitive Map and Statement.

2.14 The Definitive Map and Statement will also give much greater certainty for property search enquiries in the West Bromwich area. The map will also allow a more robust method of managing the public right of way network, particularly where issues are raised in relation to lack of maintenance or obstructed routes. The Definitive Map will also allow formal map modification to remove routes that have been legally stopped up or diverted. Current legislation does not allow formal modification of a draft map.



3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well: The PRow network provides routes for local people and visitors to walk, cycle and ride both for leisure and fitness and also for sustainable active travel. It provides both physical and mental health benefits.</p>
	<p>Strong resilient communities: Successful communities need access to jobs, services and facilities to enable them to remain healthy and vibrant. The PRow network provides links and cut-throughs to make active travel easier and encourages people to get out in their local area.</p>
	<p>Quality homes in thriving neighbourhoods: The pandemic has highlighted the importance of being able to get outside for exercise and many people have enjoyed walking and cycling in their local neighbourhoods. The PRow network is a significant enabler to getting out on traffic free routes and connecting to green spaces.</p>
	<p>A strong and inclusive economy: Good PRow routes will add to the existing highway network making active travel easier and more attractive reducing journey times and improve journey reliability. It also leads to better health and reduced absenteeism and strains on health services.</p>
	<p>A connected and accessible Sandwell: PRow have been used for hundreds of years and should not be underestimated in the use they provide for easy access to services and also connections to spaces that are important for health such as the canal towpath network.</p>

4 Context and Key Issues

- 4.1 As this is an unusual situation, advice was sought from a leading PRow Barrister. The advice received was very clear; by not having a Definitive Map for West Bromwich the Council is in breach of its statutory duties and legal action is possible.
- 4.2 The best course of action is to formally abandon the 1954 process under the 1949 Act and commence a new survey leading to a new Definitive Map and Statement under the 1981 Act. This should be done as soon as is practically possible. The Council are required to



apply to the Secretary of State seeking a direction to abandon the 1954 survey. This requires Cabinet approval.

- 4.3 Once approved, the Council creates a new Definitive Map and Statement by transferring (via statutory order) all rights of way from the previous draft map, where no representations or objections were made or where such objections were withdrawn onto the newly created map and statement. These routes would take effect when the order was made but not open for public consultation. This could be done in one single order, in batches or individually.
- 4.4 The Council begins the process of stopping up/diverting obstructed routes through s116 or s118/119 on a priority basis. The Council may also need to make the relevant orders to add routes onto the new Definitive Map and Statement.
- 4.5 Whilst the actions set out in paragraphs 4.3 and 4.4 are relatively straightforward procedural processes which can be carried out within existing resources, the final stage set out in Paragraph 4.4 requires significant staff and financial resources. The Council does not at present employ a dedicated Public Rights of Way Officer. Steps are being taken to recruit this post from within existing budgets. However, it is recognised that there is a national shortage of suitable qualified people.
- 4.6 It may therefore be necessary to commission a specialist organisation or individuals to carry out this work which will have additional funding implications. In addition, there will be costs associated with the legal work associated with orders described in 4.4
- 4.7 The overall costs for the entirety of the work described above are estimated at around £340k spread over five financial years. This includes the salary costs associated with the PRow Officer post or alternatively procuring external support. The actual costs will depend on the number of legal orders ultimately required following a full investigation of each of the routes believed to be in existence in 1954.



5 Alternative Options

- 5.1 In September 2016 members were briefed on the West Bromwich draft map and statement situation. Officers were instructed to consider an alternative approach which would see the stopping up/diversion of all obstructed routes taking place prior to the request for abandonment. The perceived merit of this approach would be that for the many routes obstructed by properties, the highway rights will have been extinguished before the Definitive Map (which is required to show the routes) is published.
- 5.2 In November 2016, advice was sought from a leading PRow Barrister on this alternative approach and how best to proceed. The advice from the Barrister states that the principal risk of the alternative approach is the significant delay in preparing the Definitive Map for West Bromwich. This is because the Council would continue to be in breach of its statutory duty as it would be neither completing the process of preparing its Definitive Map under the 1949 Act, nor will it be abandoning that process and proceeding to prepare a Definitive Map under the 1981 Act. Instead, pursuing the extinguishment/diversion of obstructed highways is undertaken using legislation entirely separate from that of preparing the Definitive Map. Consequently, whilst pursuing the stopping up and diversion orders, the Council would not be actively preparing its Definitive Map and so would continue to be in breach of its statutory duty, with no real defence against judicial review.
- 5.3 In addition, the advice identifies that stopping up and diversion of highway must be held in the public domain, with newspaper advertising and site notices (with plans) inviting comments. Therefore, the issue of property blight could be raised by the public at any time for any stopping up or diversion application. This risk is heightened by the number of individual routes to be stopped up.



- 5.4 The advice concluded that “the alternative proposal...has the benefits which have been identified by the Council and which I acknowledge...but the Council [would be] protracting the already lengthy period over which it is in breach of its statutory duty and for a significant period. [Therefore] I am unable to advise that the Alternative Proposal be pursued” (para. 11, page 5).
- 5.5 Until the Council formally abandons the survey undertaken under the 1949 Act, it is under a statutory duty to either complete the process of preparing the Definitive Map, or to abandon the survey and create a new Definitive Map under the 1981 Act – and to do so as soon as reasonably practicable.

6 Implications

<p>Resources:</p>	<p>The creation of the West Bromwich Definitive Map will allow the council to fulfil its statutory duties and give greater certainty and clarity to conveyancing queries relating to PRow. Staff time can be used more effectively and provide a firmer basis for dealing with issues such as claims, disputes and route improvements.</p> <p>However, the creation of the definitive map will require a survey of all 159 claimed PRow. The stopping up or diversion of the 51 obstructed routes will each require an Order under s116 of the Highways Act to be heard by a magistrate. The preferred approach is for the Council to appoint a permanent Public Rights of Way Officer for whom this work would form part of their core duties. Funding is in place for this recruitment from within the Directorate’s existing budgets. However, there is a national shortage of PRow officers and should this recruitment prove to be unsuccessful, it may be necessary commission the work from an external provider. The costs associated with this are detailed in Paragraphs 4.5 – 4.7 above.</p>
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	<p>There is also a cost associated with the legal process which is estimated at £250k. This represents an annual budget pressure of £50k.</p>
Legal and Governance:	<p>The Council's West Bromwich Definitive Map and Statement under the 1949 Act remains in draft form and therefore the Council is in breach of its statutory duty. The Council is under a statutory duty to either complete the process under the 1949 Act provisions, or to abandon that survey and to prepare a new Definitive Map under the 1981 Act, The Council is under a statutory duty as the surveying authority in accordance with Section 53 of the ("1981 Act") to bring its Definitive Map and Statement up to date as soon as reasonably practicable and a further statutory duty to keep that Definitive Map and Statement under continuous review and up to date. It is not open to the Council to "do nothing", as to do so would be to continue to act in breach of its statutory duties and without any reasonable excuse for so doing</p> <p>The lack of a Definitive Map and Statement for West Bromwich puts the Council in breach of its statutory duty and results in the Council not having any reliable record of public rights of way in that area.</p> <p>It also exposes the Council to the risk of having legal action taken against it.</p>
Risk:	<p>There are no direct risk implications resulting from the course of action recommended in this report.</p> <p>PRoW will be assessed individually for risk in line with the Council policies as part of the review.</p>
Equality:	<p>The PRoW network is open to all and requires no skills or special equipment to use it. It therefore doesn't distinguish from who benefits from it.</p>



Health and Wellbeing:	The physical and mental benefits of exercise, being outdoors and having access to traffic-free spaces in local communities is well documented. In an urban environment such as Sandwell PRow are even more valuable as places for leisure, exercise and active travel.
Social Value	The PRow network provides social value through the significant benefits it brings to residents and the environment.

7. Appendices

None

8. Background Papers/ Source Documents

Countryside and Rights of Way Act - 2000

Wildlife and Countryside Act - 1981

Highways Act – 1980

National Parks and Access to Countryside Act - 1949

Rights of Way Improvement Plan – 2007

