Improvements to the Public and Legal Framework for Public Rights of Way: Consultation Response

The NFU represents more than 55,000 farming members in England and Wales. In addition we have 41,000 countryside members with an interest in farming and the country.

The Defra consultation is based on proposals made by Natural England’s Stakeholder Working Group (SWG) on unrecorded rights of way. The NFU was part of the SWG and is committed to the proposals as set out within the report.

The NFU is of the view that Government should take every opportunity to make improvements to rights of way policy and legislation in particular to address the fact that the current network is demonstrably out of date in some areas, as a result of land use/management changes having occurred and the processes for making changes to the network are complex, lengthy and costly. There is a clear need to simplify the legislation and implementation in this area to reduce the timescales involved in processing applications, either Definitive Map Modification Order or public path orders. This will reduce costs to all those involved and uncertainty for businesses affected by applications. It cannot be acceptable to Government or society that, for example, an application for a Definitive Map Modification Order made in 1993 is still to be determined in 2012, but that is the experience of one of our members.

Part 1: Unrecorded Rights of Way/ SWG Recommendations

The NFU and other organisations are committed to the SWG recommendations on the understanding they are implemented as agreed by the group and, particularly, that they are implemented as a package and are not selectively implemented.

It is clear from the consultation document that some proposals will be easier to implement than others. Proposals requiring changes in legislation will be more difficult to achieve than those that require guidance or a change in practice. However, it is important to ensure that those more difficult proposals are implemented, as many of the changes requiring new legislation have the potential to offer significant benefits to all interested parties.

It is a concern that the package will not be fully implemented as a whole as this reflected a consensus across stakeholders and a balance of benefits as well as costs. There is justification for this concern: The Countryside and Rights of Way Act 2000 contains measures which have not yet been implemented, some 12 years after the legislation came into effect. The NFU needs a clear and unequivocal commitment that all measures will be implemented. Defra needs to set out a clear workplan that identifies how the more complex recommendations are to be implemented before other recommendations are taken forward.
Question 1: do you agree there should be a brief, post cut-off period during which applications that pass a ‘basic evidential test’ can be registered?

The Countryside and Rights of Way Act 2000 provided for a cut-off date in 2026, so that unrecorded rights of way would cease to exist if not specifically preserved by regulations. The purpose of the CROW Act introducing the cut-off date was to provide an incentive to complete the definitive map and statement before the 2026 deadline. Proposals for a post cut-off period for registering applications simply extends the cut-off deadline contrary to the intentions of the CROW Act. In this instance the cut-off date is well established and potential applicants are fully aware of the proposal. Therefore, the need for a post cut-off registration period is unnecessary.

Provided there is certainty as to the latest date for submitting an application in order to protect a route from the cut-off date, there is no justification for any further extension to the well publicised 2026 cut-off date. By way of section 56(6)(b) of the Countryside and Rights of Way Act 2000, the Secretary of State has the power to make regulations containing certain transitional provisions and savings for, amongst other things, dealing with the operation of the cut-off date in respect of routes for which an application for an order under section 53(2) of the Wildlife and Countryside Act 1981 is pending. These provisions provide a mechanism for achieving this certainty. However, the steps taken should also safeguard the needs of landowners, and potential purchasers of land, who require certainty as to the rights of way crossing a particular parcel of land.

The suggestion made by the stakeholder working group was that applications included on the register maintained by Local Authorities under section 53B of the Wildlife and Countryside Act 1981 should be protected from extinction, until the application has been determined. In order to provide greater certainty to applicants as to the deadline for submitting an application in order for it to be protected under this exemption, Local Authorities could be required to register applications within a certain period (say 28 days) of receiving the application. This approach means that, immediately on the cut-off date, there will be a degree of certainty as to routes which are recorded and routes which subject to registered applications which have to be determined. The situation is clear and a degree of certainty is immediately achieved. This is particularly important to those involved with the sale of land, where the existence of a right of way, or pending application to add a route to the definitive map, may impact on the value of the land.

Allowing any extension beyond the cut-off date would risk undermining the certainty promised by the cut-off date, as well as potentially causing confusion amongst potential applicants regarding the latest date for submitting an application. Consequently, there should be no period for registering applications after the cut-off date.

Question 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 test and transparency as for any other applications?

Local authorities already have the ability to register rights of way through self application. Therefore, for reasons of consistency across all types of applicants, the local authority should not have an extended period post cut-off during which they can bring forward applications.

Question 3: Are there any other categories of rights of way that need to be protected by exemptions set out in regulations?

In the interests of certainty, there should be as few exemptions from the effect of the cut-off date as is possible. However, the NFU acknowledges that the aim of the cut-off date is to eliminate the uncertainty caused by the resurrection of old, unused, rights of way, rather than to extinguish routes which are in regular use at the time of the cut-off date. In view of this, the NFU supports the proposals in the Stakeholder Working Group report, which suggested exempting rights of way which are in
“regular, continuous use at the time of the cut-off date” and also those routes identified on the list of streets/local street gazetteer.

The NFU supports proposal [SWG 26] which would protect claims for rights of way that could meet the prescriptive rights of way test

The NFU does not, however, believe that there should be any further categories of exempted routes.

**Question 4: Do you agree that these proposals would be effective in improving the process of recording rights of way?**

The proposals contain a number of improvements to the process of recording public rights of way. Ultimately, they need to deliver a pragmatic approach to the process, whilst delivering a fair outcome in a reasonable timescale.

The NFU is supportive of the proposal for the landowner to be approached by the surveying authority, not the applicant [SWG proposal 5], when there is a claim for an unrecorded right of way after the ‘basic evidence test’ has been passed. At this time the Local Authority should outline the process that the application will go through and explain when the landowner can have some input into the process to inform the outcome. The Local Authority should actively seek views and evidence from the landowner to inform the decision making process. The Local Authority should provide full information about the application, including who the application has been made by; landowners currently have this information as the applicant is required to notify the landowner of the application, and it is right that this continues to be the case. This approach provides an opportunity for informal consultation and dialogue through which agreement could be reached, potentially reducing costs for all parties.

The surveying authority should also approach the occupier or manager of the land concerned, if different to the landowner, as the outcome of the claim will affect his business. However, we have seen a number of situations where Local Authorities provide incorrect or misleading information to Landowners, and in some instances potential applicants, about the existing process. This can cause a great deal of stress and confusion for those involved, who may also have incurred costs or invested time pursuing the issue on the basis of that incorrect advice. So, it will be important to ensure that Local Authorities are provided with sufficient resources to employ sufficient, trained and experienced, staff to deal with rights of way issues. Local Authorities should also be provided with good quality guidance about how all aspects of the process should work, and the tests to be applied at each stage. It may also be useful to produce guidance for applicants and landowners about the process at a national level, which can then be used by Local Authorities when communicating with landowners and potential applicants.

As members of the SWG the NFU is supportive of the proposal [SWG 4] to allow applicants not to provide copies of documents held by the surveying authority in public archive, provided sufficient information is given to ensure that the Local Authority can locate and identify the documents relied on quickly and easily. However, we want to see provision that on request the land owner and/ or manager is provided with copies of these documents, without incurring costs to the business, by the surveying authority when he is notified of the application, so that he has all of the information necessary to consider his position.

The proposal [SWG 14] for the Secretary of State to only review the aspects of a case that are objected to seems eminently sensible. However, there need to be safe-guards in place to ensure that that the outcome is sensible and practical. The outcome should mean that only usable routes are recorded on the definitive map, not partial routes that for example a) lead to a dead-end or b) cannot be reached by existing rights of way.

The NFU welcomes the introduction of the basic evidence test [SWG proposal 5], which will enable applications which clearly have no prospect of success, for example because the evidence supporting
the application falls below the standard required to support an application, to be rejected at an early stage in the process. Rejecting applications before registration, without notifying landowners of the application, will save landowners the stress, uncertainty and cost currently incurred in preparing to object to applications which never had any realistic prospect of success. The removal of these weak applications at an early stage should free up Local Authority resources to deal with other, stronger, applications, and so should also speed up the system overall. However, as the basic evidence test is a new concept, it will be important to ensure that Local Authorities are provided with sufficient guidance to enable them to confidently reject applications which fall below the required standard, and to ensure a degree of consistency in the approach taken nationwide.

The best evidence test should be introduced in respect of all applications to add routes to the definitive map, not just those relating to historic evidence, in order to maximise the benefit to be gained from these provisions.

The consultation does not provide a definition of the ‘best evidence test’. Stepping Forward does provide a starting point in paragraphs 5.10 and 5.11 which needs to be developed. Local Authorities will need to be supported with good guidance and sufficiently rigorous legal framework to enable the proposed changes to be effective.

The provision [SWG proposal 29] to allow factual corrections and clarifications to the definitive map and statement, even after the cut of date, subject to clear guidance and appropriate safeguards is welcomed. Clearly, the NFU wants land owners and managers involved in the process, at the appropriate time, to ensure it captures the true nature of the right of way. This provision should be extended to allow for minor amendments, rather than going through the full Definitive Map Modification Order process. This would reduce time and costs for all parties involved in this process. Good guidance will be required to support Local Authorities through the process.

The NFU is supportive of the proposal [SWG 32] to allow an owner to apply to erect new gates on restricted byways and byways open to all traffic. Clearly this provision should apply to both the occupier and owner, as is currently the case for applications to erect stiles and gates under section 147 of the Highways Act 1980.

Current legislation only allows gates to be erected to prevent the “ingress or egress of animals”. As well as allowing gates to be erected on restricted byways and byways open to all traffic, it would be useful to enable landowners/occupiers to apply for permission to erect gates, or other structures in other circumstances also. For example, one area which is of concern to landowners/occupiers and lawful users of rights of way is the unlawful use of footpaths and bridleways by mechanically propelled vehicles (such as four wheel drive vehicles and off-road motorcycles). Enabling gates or other barriers to be erected which would prevent or deter this unlawful use would assist landowners and improve the safety of those lawfully using public rights of way.

**Question 5:** Do you think that more use could be made of electronic communications, for example, to make definitive map order applications online and to serve notice of rights of way orders?

The NFU is supportive of wider use of electronic communications, with suitable safeguards in place. For example, there is a need to ensure correct versions of documents are shared; we have heard reports from our members of the hard copy versions of documents/maps provided being different to the electronic version, which is not acceptable. There are many areas of the country where broadband is not adequate, or the rural locations of farm holdings mean signals are not strong enough. Therefore, at the very least, the NFU expect paper copies of everything to be sent through to the land owner and manager until such a time as they have indicated that they are happy to receive future correspondence about a particular application in an electronic format.

**Question 6:** Are there any particular issues associated with these proposals which have not been captured and which we could consider?

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There should be a clear end point by which all unrecorded rights of way DMMOs will need to have been determined. Whilst the 2026 cut-off date provides some certainty to landowners and managers that no further unrecorded rights of way will be claimed, it does not ensure cases have been handled in a reasonable timescale. The NFU suggests all cases should be determined within a reasonable timescale after registration i.e. four years by 2030.

Current arrangements allow for new DMMO applications on the same route as one that has already been subject DMMO application to be made on discovery of new evidence. This starts the whole process again over the same area of land putting the landowner/occupier under renewed uncertainty and additional costs defending a case. The new processes for handling DMMO applications, for example bringing in the basic evidence test, should start to address this. However, additional consideration needs to be given to prevent repeated applications on the same route where a decision has been made except in exceptional circumstances, to ease the burden on Local Authorities and create certainty for land owners and occupiers.

The width of a public right of way is an issue which frequently results in disputes, and this is particularly the case with historic routes which have fallen out of use, as there may be little, or no, evidence regarding the width on the route on the ground. The difficulties posed by this were most recently considered in the case of R(on the application of Elveden Farms Limited) v Secretary of State for Environment Food and Rural Affairs, where the decision of an inspector was overturned because of deficiencies in the inspector’s reasoning regarding the precise route, and the width, of the right of way. This highlights the need for better training and guidance for inspectors dealing with these issues. Where the route of the right of way is clear, but the precise width is not, there needs to be some mechanism which will provide a fair, and certain, result for all concerned. Disputes regarding the width of routes can also arise when the definitive map and statement do not give a clear indication of what the width of the route is. One option that could, perhaps, be considered is to make use of the minimum widths contained in schedule 12A of the Highways Act 1980, which are currently used only in certain situations, e.g. when re-instating cross-field paths, in situations where there is no other evidence regarding the width of the right of way.

Local authorities are already faced with a backlog of applications awaiting determination, and it is clear that the system needs to be reformed and streamlined, where possible, so that applications can be determined within a reasonable period of time. The introduction of the basic evidence test and the early removal of applications that have no prospect of success should help to improve the efficiency of the system, allowing resources to be focused on stronger applications. Other changes, such as the first approach to the landowner being made by the Local Authority rather than the applicant, also have the potential to reduce conflict, and therefore allow the process to be completed more smoothly. However, the system can only work if Local Authorities are provided with sufficient resources to enable them to process applications within a reasonable period of time.

The proposal that, generally speaking, applications based on historic documentary evidence should be dealt with on the basis of written representations is also sensible. However, applicants and objectors should be given the opportunity to request an oral hearing if they feel that it is necessary in their particular situation. If such a request is refused, basic reasons should be given to explain why it is not considered appropriate to hold an oral hearing.

Landowners have raised the issue of spurious applications for rights of way being made across their land creating uncertainty and costs for the landowner to defend his position. The Basic Evidence Test proposed will help to address this. However, there has to be benefit to reducing the number of applications made in the first instance. This could be done through an application fee, which could be refundable if the application is successful to discourage weak or spurious applications. This approach was recently suggested in the consultation of proposed changes to the application process for new

1 [2012] EWHC 644 (Admin)
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Town or Village Greens, for the same purpose. Any such fee should apply to all applications to add routes to the definitive map, in the interests of consistency and also to maximise the gains from the proposal. Local Authorities could invest retained fees in the rights of way network, or use them to resource the application determination process.

**Question 7: Do you think the mechanisms set out above would work effectively?**

The proposals to simplify the dispute process as written down are not clear and do not appear to be balanced. Increasing the evidence test to ‘balance of probability’ for the Local Authority to make a decision to make an order, does assist in streamlining the process. However, the process does need to provide clear opportunities for landowners to submit evidence at appropriate times to inform both the ‘basic evidence test’ and ‘balance of probability’ test and to counteract the applicant’s evidence. As currently set out, the proposals suggest that landowners may lose some of the opportunities they currently have to set out their case.

To protect the rights of landowners, the proposed process after the Secretary of State makes an order should be as similar as possible to the process that would be undertaken if a draft Order was made by the Local Authority. In particular, it is important to ensure that the proposed Order is given sufficient publication, and that sufficient time is permitted for objections to be lodged. The proposal to use the procedure set out in schedule 15 of the Wildlife and Countryside Act 1981, with the necessary modifications to reflect the fact that it will be the Secretary of State making the draft Order and leading the process, is sensible as it ensures that landowners are treated in the same way regardless of the route taken to reach this point.

It will be important to ensure that all Inspectors dealing with rights of way issues on behalf of the Secretary of State are given proper guidance about how to proceed under the new system, and the tests that they should be applying when considering applications.

**Question 8: Do you think 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?**

The residual risk relates to how much of the process can be deferred to Secretary of State by the Local Authority or where the Local Authority is avoiding making a contentious decision. The process can be designed to mitigate against these risks. However, it is important that the process is fair to the applicant and objector. The referral to Secretary of State should be a last resort, as this has cost implications for the objector (often the landowner) who may not be able to afford to defend his position through formal a Planning Inquiry preventing his objections from being fully articulated, putting him at a disadvantage.

**Question 9: Do you think the alternative mechanisms set out above would work effectively?**

Giving the Secretary of State the power to reject applications where he does not consider that the right of way application fails the ‘basic evidence test’ at appeal, without going through the process of making an order, would provide a suitable safeguard to ensure that time and resources are not unnecessarily spent on applications that should have been rejected at this stage.

If the Local Authority is charged for work undertaken by the Secretary of State, it should negate any cost benefit to the Local Authority of allowing the application to be referred. However, if there are staff shortages at the Local Authority, the Local Authority may be forced down this route. There may also be a risk that Local Authorities would leave applications perceived to be difficult to go down this route, so that their staff are freed up to deal with simpler applications that can be dealt with more quickly.

**Question 10: Do you have any other suggestions for ensuring that cases go to the Secretary of State only once?**
The NFU would welcome the opportunity to work with Defra on a clearer streamlined process. There should be a system in place that encourages Local Authorities to meet their statutory duties of processing DMMOs. This could include penalties where Local Authorities fail to process applications in a reasonable time or there are high levels of requests being forwarded to the Secretary of State to make the order.

Consideration should be given to other approaches such as a tribunal of first resort, which is now being used for NVZ appeals.

**Question 11:** Do you agree that applicants and affected land owners should be able to seek a court order requiring the authority to determine an outstanding definitive map modification order application?

Yes, it is right that landowners/manager and applicants have the same rights. The NFU would support the ability to seek a court order after 12 months of the application to force the Local Authority to make a decision and act.

The Magistrates Court already has various powers in respect of obstructions on rights of way. These should be extended to enable applicant or objector to apply to the Magistrates Court if the Local Authority fails to make a decision to make an order within 12 months. The Magistrates could direct the Local Authority to make the draft Order within a certain period of time, or if not they could direct the Local Authority to reject the application and decline to make the order.

**Question 12:** Do you think this is the most appropriate way to resolve undetermined definitive map modification order applications?

Yes, this is one way of determining unresolved DMMO applications.

**Question 13:** Do you have any suggestions for alternative mechanisms to resolve undetermined definitive map modification order applications?

At the moment the NFU does not have alternative suggestions, but would be happy to participate in further discussions on how this issue could be resolved.

**Question 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?

Ensuring that routes reflect current land management uses is crucial as it will reduce landowner/manager objections to routes. This will speed up the process of recording paths and the NFU would be happy to engage in further discussions of how this could be done.

Implementing any process would have to give consideration to:

- Discussions with the landowner about appropriate diversions should be without prejudice to the land owners right to object to the existence of the right of way. Landowners may be reluctant to enter into such discussions if they feel that doing so would prejudice their right to object to the existence of the route?
- Site visits are an important tool, allowing the local authority to see the situation on the ground and develop a level of understanding about the business involved, and the way it operates, safety of rights of way users and other issues created by a right of way.
- Allowing gates/stiles to be recorded at this stage, as well as making adjustments to the line of the route to accommodate current practical use.
- Where appropriate, including the applicant in the discussions so that their concerns can be understood, and they also understand the changes the landowner wants to make.
- Ensuring that there is a proper record of all such agreements so that disputes do not arise as to whether a route was properly recorded at a later stage.
Question 15: What aspects of data management systems for recording public rights of way need to be tackled?

Question 16: What are the key outcomes that need to be achieved in terms of data management systems?

The Local Authorities are best placed to comment on these questions.

Comments on Part One Impact Assessment
The CROW Act introduced a cut-off date with the intention that this would remove uncertainty for landowners. As a consequence the impact assessment should be able to articulate improvements for the landowner through reduced time taken to process an application through to its conclusion and reduced costs of defending an application, including those referred cases to Secretary of State.

Part 2: Extending the SWG Proposals from Definitive Map Modification Orders to Public Path Orders

Question 17: Do you agree that the proposals identified in the section above should be applied to the policy and legislation governing public path orders?

The NFU welcomes the suggestion that modifications made to the process for unrecorded rights of way are carried over to public path orders, where appropriate. In a similar way where the NFU has made positive suggestions for change in responding to the questions above, these should also apply to public path orders, where appropriate, to make the two processes consistent and more streamlined. The proposal to make more effective use of electronic communications [question 5] has the potential to reduce the advertising costs currently part of the process, provided the right safeguards are in place for landowners.

There does need to be some consideration to the time frame when a prescriptive right of way can be applied for. This should be based on the 20 year usage of the route being in recent years i.e. the last two years. This will prevent claims for historic periods e.g. 1950 – 1970, where it is difficult to obtain evidence to prove or disprove the case.

In a similar way to DMMO’s [SWG proposal 29] there should be the ability to make factual corrections and clarifications to public path orders.

Also, it should be possible to erect gates on all restricted byways and byways open to traffic. The need for a new gate in these circumstances should address current land use practices and go beyond reasons related just to the prevention of the ingress or egress of animals [SWG proposal 32, question 4].

Considering the proposals in Part 3 of the consultation there should be a review of the Public Path Order applications process to ensure a simplified process is developed which delivers efficiencies whilst providing a fair process for applicants and objectors. This includes introduction of changes in this consultation and provides an opportunity to identify other improvements.

Question 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, there is more scope for electronic communication. Our answer to question 5 applies here.
**Part 3: An Alternative Approach to the ‘Right to Apply’ for Public Path Orders**

**Question 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?

The NFU welcomes the discussion on developing a clear, fair process to enable a diversion or extinguishment of a public path. One of the aims of these discussions should be to drive out any inefficiency in the process. Any process that is developed should be time bound and the Local Authority should have a clear requirement to act. Full cost recovery may incentivise the Local Authorities to act, overcoming that barrier. However, this could act as a disincentive for the land owner/manager and reducing the opportunity for public path improvements for users.

In addition, the case is not well made for full cost recovery from the business. Diverting the path may make business activity easier, but it is difficult to provide a cost benefit analysis as the impact assessment demonstrates. Also, a diverted path could have clear benefits for the path user from improved scenery, a shorter more user friendly path. The NFU would be happy to work with Defra on understanding the actual costs and benefits from the proposed approach.

**Question 20:** Would Local Authorities be incentivised sufficiently to enable retention of a right of way appeal to the Secretary of State without the risk of local authorities shifting the burden and cost of order making on to the Secretary of State?

The right of appeal is a process that should be retained. However, the cost of the appeal should not be passed back to the applicant. The applicant has no control on whether the case goes to appeal and the process is costly, acting as an additional barrier to the landowner defending the application.

**Question 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, the process should be accessible to all land owners/users.

**Question 22:** How could it be made clear what charges are levied for each stage of the public path order making process and that the charge reflect the costs actually incurred?

The NFU does not support the full cost recovery approach proposed. We would support partial cost recovery with an upper cap, around £1,000, on costs recovery and expect the application of the following principles:

- There should be a national framework of costs to prevent different charges between different Local Authority areas.
- The cost base should be transparent, fair and provide value for money. As the Local Authority will be the sole provider of the service, i.e. there is no choice or market pressure to reduce charges, then there needs to be a transparent charging system.
- There needs to be an agreed service standard which sets out timescales for processing an application, including the timescale to determine a case, and ensure the service reflects the costs being charged.

These principles need to be applied because the Local Authority is the sole provider of the service and has no requirement to deliver an efficient service, as would be the case in the open market. It is not right for the applicant to pay for inefficiencies.

The process a public path order application follows could be quite different incurring different costs depending on the number and nature of objections submitted. This fact will be outside the control of the
landowner, and objectors could try to push the costs up to force the landowner to withdraw the application. Therefore, the charges need to be capped. This helps prevent the applicant bearing the costs of spurious objections. Where there has been a spurious objection then consideration should be given to recovering costs from the objector.

The application charge will be price sensitive because the business benefits are intangible and cannot be quantified financially.

**Question 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?**

Outsourcing of the whole process should be an option. Some authorities have already trialled such work.

**Question 24: Might this have an impact on other aspects of rights of way work?**

It is likely to have a positive impact on local authorities as they will be able to retain staff that otherwise might be lost.

**Question 25: Are there any alternative mechanisms that should be considered?**

The NFU suggests (above) a partial cost recovery approach which is capped at a reasonable level i.e. £1,000.

**Comments on Part 3 Impact Assessment**

The Impact Assessment makes the assumption that the expected benefits from applying must be at least equal to the charge that they pay. However, the assessment has not been able to identify quantifiable business benefits. The benefits identified are based on risk management and reducing hassle on farm which is difficult for business to quantify, because they are intangible. For example:

- Lower direct land management costs: This cannot be demonstrated for diversions, where a right of way is maintained.
- Improved security: This is about the business managing risk. It is hard to quantify the value.
- Flexible land use: These are minimal, as a diversion still has associated costs of management.

This indicates price would be a factor to whether an application is submitted by a landowner.

The assessment implies there is not a significant impact on the public from an extinguishment or diversion. If this was the case then there would be little objection to such applications. Anecdotally, there are objections to Public Path Orders.

The impact assessment is based on 2007 data, which has assumptions that may or may not be accurate. Before this data is used it does need to be tested, if not updated, to ensure evidence based policy making is implemented.

Within the impact assessment and consultation the case is made that cost recovery will help Local Authorities retain staff. That should not be a driver for changes proposed. It will not encourage efficiencies in processing of applications required.
Part 4: The Penfold Review of Non Planning Consents

Question 26: Under option A, how do you think wider adherence to existing guidance might be achieved?

The stronger implementation of guidance will not resolve the conflicts between the planning system and amendments to rights of way.

Question 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?

See q28.

Question 28: Are there other options that should be considered?

Of the options proposed Option C ‘create a new integrated process that would require the local planning authority to consider and decide upon the development proposals and any changes to rights of way as a single package’ would be the most logical. However, the aspiration should be for the whole process to be combined including that of objections. It would not be sensible to have separate objection processes for planning and rights of way as proposed in the Defra text.

Question 29: Do you think that enabling a single application form to be submitted through the planning portal website would improve the process?

The potential of using the planning portal for a single application is welcomed. However there still must remain the ability to submit paper applications.

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