

Report to Cabinet Member for Planning and Environment

Decision to be taken on or after 3 May 2019

**Decision can normally be implemented at least
3 working days after decision has been signed.**

Cabinet Member Report No. PE05.19

Title:	Definitive Map Charging Review
Date:	25 April 2019
Author:	David Sutherland, Head of Planning and Environment
Contact officer:	Helen Francis, Interim Definitive Map and Local Land Charges Team Leader
Local members affected:	All

For press enquiries concerning this report, please contact the media office on 01296 382444

Summary

This paper is a review of charging for Definitive Map Services and makes recommendations for revising the charging policy for public path order applications ("PPO"s) and landowner deposits.

The Council has powers to make PPOs under the Highways Act 1980 and under the Town and Country Planning Act 1990 to divert or extinguish public rights of way at the request of a landowner. This will result in the Council making changes to the Definitive Map and Statement if the PPOs are confirmed and brought into effect. Under Section 53 of the Wildlife and Countryside Act 1981 the Council as the surveying authority has a duty to keep the Definitive Map and Statement under continuous review and by order make such modifications to the map and statement as appear to them to be requisite.

In relation to landowner deposits, from 1 October 2013, under section 31(6) of the Highways Act 1980 (HA 80) and Section 15A (1) of the Commons Act 2006 (CA 06) a landowner may deposit with the highway authority a map, statement and statutory declaration showing the ways (if any) that he admits are dedicated as highways, and also any land that he admits to be village green. It enables landowners to rely on the deposits as evidence that the landowner



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had no intention to dedicate any further ways. Where the deposits are repeated at intervals, as required by statute, they assist in preventing new rights being established. From 1 December 2016, The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016 came into force which removed the requirement to post notices for landowner deposits/declarations under section 31(6) of the Highways Act 1980. However, the amendment did not cover any deposits/declarations made under section 15A(1) Commons Act 2006; so if a combined deposit was made, then a site notice would still need to be erected.

This paper will review the charges for (a) Public path applications &
(b) Landowner deposits

Recommendation

That the Cabinet member:

- a) Approves the proposed increase to the contribution to charges for public path order applications from £1583 to £2452.50 – £2898, which includes an increase to the non-refundable deposit from £100 to £252. Additional to this fee is the required newspaper advert costs and also new signage costs.**
- b) Approves the proposed increase to the charges for combined Section 31(6) Highways Act 1980 and Section 15A(1) Commons Act 2006 landowner deposits (up to 4 parcels of land) from £272.56 to £319, with an increase of processing a declaration from £26 to £31. Also approves the proposed increase from £26 to £31 for each additional parcel of land.**
- c) Approves the proposed increase to the charges for a Section 31(6) only landowner deposit (up to 4 parcels of land) from £169 to £201, with an increase of processing a declaration from £26 to £31. Also approves the increase from £13 to £15.50 for each additional parcel of land.**
- d) Authorise the Head of Planning and Environment, in consultation with the Cabinet Member to review and revise the policy one year after and at appropriate intervals thereafter.**

A. Narrative setting out the reasons for the decision

Public Path Order Applications (“PPOs”)

1. The current charge for making PPOs is £1483 plus a non-refundable deposit of £100 for an individual path, plus the actual costs of the required newspaper advertisements; three advertisements are required if an order is confirmed and these can vary in cost from £250 to £450 (current prices) depending on the newspaper and size of the advert. A further charge of £75 applies for each additional path involved. These charges were set in 2014 and do not cover all of the County Council’s costs for this service.
2. The power which allows the authority the right to charge is The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993. This empowers

authorities to charge applicants the costs of making and advertising orders, including the costs of consultation prior to making the Order. The 1993 Regulations were amended in 1996 to remove any maximum fee.

3. Authorities may charge for the administrative costs incurred in the making of an Order.

Examples of the costs which authorities may incur in making an Order are:

- notifications to landowners, statutory undertakers, prescribed organisations, other local authorities and other persons;
- posting notices on site and elsewhere;
- an advertisement in one local newspaper for each of the stages of the Order; namely making the Order, confirming the Order and the coming in to force of the Order;
- site inspections;
- research into the status and previous history of the way;
- negotiations with applicants and other interested parties before making the order; and
- preparing Orders and notices.

4. Authorities can recover from applicants the costs of informal consultations (such as negotiations between authorities, applicants, landowners, user groups and any other interested parties) where they lead to Orders being made. It is for the authorities themselves to decide what services are necessary to the making of a particular Order and applicants should be made aware that these may vary according to the circumstances of the particular case.
5. DEFRA guidance (Rights of Way Circular 1/09) states objections to an Order, and the decision taken by the Secretary of State on whether or not the Order should be confirmed, fall within the public domain and, as such, are outside the applicant's control. It is considered unreasonable to expect the applicant to bear the extra expense incurred by the local authority in pursuing opposed Orders through to confirmation. All costs relating to the submission of an Order to the Secretary of State and the subsequent decision on whether or not it should be confirmed have therefore been excluded from the power to charge.
6. Authorities are advised to consider waiving all or part of their charges where proposed changes to the public path network would benefit the local community. This discretion has been exercised by Buckinghamshire County Council on occasion.
7. The costs incurred vary with each application, although each application follows a similar legal process. The attached Schedule of Costs **[Appendix 1]** is based on averages calculated for the elements common to all applications. The minimum cost of an unopposed order is in the region of £2452.50 plus two newspaper adverts (on occasion, it may be possible to combine the Order confirmation stage and the bringing into effect stage thus saving the applicant the cost of one newspaper advert and also 3x site visits to display notices at a cost of £445.50, which gives rise to the minimum cost

of £2452.50). In addition applicants are liable for the costs of two (possibly 3) advertisements in the relevant local newspaper. These costs are recovered in full. An hourly rate has been calculated for the team effort involved with processing a PPO **[Appendix 2]**. A percentage of time taken by a Range 5, 6, 7 and 9 Officer has been calculated which has given rise to an hourly rate of £63 per hour. The upper and lower limits of the charge for a PPO is set out at **[Appendix 3]** and shows the expected invoice stages, separating out the charge if the confirmation and effect stages were combined, or not combined. This table also shows indicative prices for newspaper adverts and also signage costs for which the applicant is liable to cover.

8. Comparative data has been obtained from other authorities, which shows that out of 6 Authorities, we currently rank as 2nd cheapest. With the proposed changes, we will rank as 3rd cheapest, which seems a reasonable position. This information is summarised in the table attached at **[Appendix 4]**.
9. The increase in fees for PPOs represents an increase of between 54.9% and 83% depending on whether the confirmation and bringing into effect stages of the process are combined. Due to this % increase, it will not be necessary to add the additional 3% corporate price uplift in April 2019; but the 3% will be applied in future years.

Landowner Deposits

10. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 do not provide any fee amounts: instead the authority has the power to set fees. A fee specified by the authority must be reasonable for the application of that type. The authority is advised to keep fees under review to ensure that amounts are commensurate with the authority's costs.
11. The initial fee for processing these was set in 2013, with a light touch review being undertaken in 2017, following the change in legislation in 2016 (referred to earlier in this report). This current review is seeking to implement a team hourly charge rate. As with PPOs, processing a Landowner Deposit does not necessarily fall to one Officer in the Council, there is one Range 5 Officer and one Range 7 Officer who contributes to the process. The hourly rate calculation can be found at **[Appendix 5]**, and provides for a rate of £31 per hour. This hourly rate has given rise to the new charging schedule **[Appendix 6]** which in summary sees an increase from £272.56 to £319 for combined deposits and an increase from £169 to £201 for Section 31(6) Highways Act 1980 only deposits.
12. The increase in fees for Landowner Deposits represents an increase of 17.03% for combined deposits and 18.93% for Section 31(6) Highways Act 1980 only deposits. Due to this % increase, it will not be necessary to add the additional 3% corporate price uplift in April 2019; but the 3% will be applied in future years.

B. Other options available, and their pros and cons

Two alternative options have been considered:

Option 1: Recover full cost of legal and administrative work for each application

13. Some local authorities seek full reimbursement of the actual legal and administrative costs involved. The disadvantage of doing this is that the charge would have to be calculated on a case-by-case basis, depending on the time input of the Definitive Map Team and Legal Services staff on the particular case. This would be more complex to administer for the County Council and less equitable for the applicant as it is not always possible to estimate fees at the outset. There would be additional problems with collecting the charge as a debt rather than a payment in advance as is currently the case.

Option 2: Scale charge to reflect whether the Public Path Order is subject to objection

14. One of the County Council's neighbouring authorities has different fees depending on whether the Public Path Order is subject to objections. However, this appears to go against the DEFRA guidance in that the objections are outside the applicant's control and it would be unreasonable to expect the applicant to bear the extra expense incurred by the authority.

C. Resource implications

Public Path Applications

15. At present applicants are charged a contribution towards public path application costs. The revised charges will cover the costs of an unopposed application as set out in **[Appendix 1]**.
16. The true team costs will be recovered by applying the new hourly rate calculation, this will ensure a more accurate cost recovery which the County Council is legally able to do.
17. One potential impact of increasing the charges for public path applications might be to deter applicants from making applications. It should also be noted that the County Council has the discretion to reduce the charge appropriately where there is a clear public benefit (see paragraph 6 above). Only the County Council and in some cases, the District Councils can process PPOs therefore there is no market competition for this work. By increasing the fees will potentially only attract sensible applications with public need and reduce the number of applications that have very little benefit to the landowner or public. This will hopefully streamline the work of the team. As the fees can only seek to recover costs, there is no concern for an effect on income as no profit can be made.

Landowner Deposits

18. Since the charge was introduced in October 2013 and amended in 2017 it has become apparent that the charge does not cover the County Council's costs for a large proportion of the deposits received; therefore a review is required. An increase in the charge may decrease the number of deposits received; but as they are made solely in

the interests of the landowner with only full cost recovery permitted, this should not be an issue for the County Council.

D. Value for Money (VfM) Self Assessment

Value for money has been considered through the assessment of options and by undertaking a comparison with the charges operated by other local authorities. This complies with the Value for Money Strategy.

E. Legal implications

Charging for public path applications is permissible under The Local Authorities (Recovery of Costs for Public Path Orders) Regulation 1993. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 does not provide any fee amounts: instead the authority has the power to set fees. There are no other legal implications

F. Property implications

Whilst public rights of way are public highways in law, they impact on private land. Landowners can apply for routes to be diverted (under the Highways Act 1980) if it is in their interest to do so, and (under the Town and Country Planning Act 1990) to allow development to take place for which planning permission has been granted. Landowner Deposits provide a mechanism for landowners to confirm the presence of existing public rights of way across their land and to place on record that there is no intention to dedicate further ways, thereby preventing new rights being established.

G. Other implications/issues

Equality and Diversity Issues

Equality Act 2010, Section 149 states:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to-
 - (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The proposal would not conflict with the requirements of the Equality Act 2010 or the Council's policy on equality

H. Feedback from consultation, Local Area Forums and Local Member views

There is no policy change in relation to the charges. Cabinet Member for Planning and Environment, Bill Chapple, has been consulted as part of the development of these proposed changes.

I. Communication issues

Applicants will be informed of the costs when they inquire about the procedure for making either public path applications or landowner deposits. The BCC website will also be updated.

J. Progress Monitoring

Income will be monitored as part of existing financial procedures.

K. Review

The revised policy forming part of this decision will be reviewed after one year and at regular intervals thereafter.

Background Papers

The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993.

The Recovery of Costs for Public Path and Rail Crossing Orders Amendment Regulations (Department of the Environment Circular 11/1996).

The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013.

The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016.

Your questions and views

If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.

If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on 2 May 2019. This can be done by telephone (to 01296 382343), or e-mail to democracy@buckscc.gov.uk