

## **The Royal Borough of Windsor and Maidenhead Local Access Forum**

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[http://www.rbwm.gov.uk/web/prow\\_local\\_access\\_forum.htm](http://www.rbwm.gov.uk/web/prow_local_access_forum.htm)

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### **LOCAL ACCESS FORUM - 6TH DECEMBER 2012**

#### **ITEM 1: MATTERS ARISING FROM LAST MEETING**

#### **APPENDIX A**

#### ***Consultation Response: Improvements to the policy and legal framework for public rights of way***

*Due to the level of complexity of the consultation, the Royal Borough of Windsor and Maidenhead Local Access Forum set up a working group of interested members to respond to the consultation on behalf of the Forum.*

*The working group consisted of 3 members of the forum and 2 substitutions. The group discussed the proposals and agreed the following comments :The two substitutions and two of the forum members represented land management interests. Walkers were represented by one member. No cycling or horse riding interests were represented.*

#### **Claims**

1. The cut-off deadline to claim historic public rights of way should be brought forward to 2020, however this should be for the registration of claims and not a deadline for the resolution of a claim.
2. Claims based on use over time (either by common law or by Section 31 Highways Act 1980) should be limited to being made within 2 years of the date that the right has been brought into question, either by blockage or other means. It was considered by the majority of the group that the 20-year rule should not be taken back to any previous interruptions. This would leave the maximum investigation period of any claim to be 22 years prior to the receipt of a claim.
3. In the interests of balance it was proposed that there should be an ability for landowners to apply to extinguish existing public rights of way after evidence of 20-years of non-use. However, the group felt that this should not apply where there has been deliberate obstruction and barring of the public right of way.
4. Where paths are proposed to be diverted, it was suggested that as a temporary measure landowners should be encouraged to create the proposed alternative as a permitted path and then apply for a diversion order. When permitted paths are created in this way there should be a written agreement over responsibilities for maintenance and for how long the path will be open.
5. There was some discussion regarding the final arbiter of claims for public rights of way or for extinguishment. Some members of the group felt that all claims should be made to the relevant local authority who will decide the outcome of the claim, and others felt that the local authority may not be in an impartial position and suggested that the Secretary of State should be the decision maker. Others felt that the system proposed in Annex B of the consultation document would be suitable.

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### **Evidence**

6. It was suggested that all evidence should be given by a sworn affidavit and that all those supplying evidence should be available for cross-examination under oath at an inquiry. If such a requirement was imposed the Inspector should also be able to have separate procedures to hear and test the evidence of those people who are not able to be cross examined. This should be in an open and transparent way.

### **Costs**

7. In terms of costs, it was felt that it was not appropriate to ask members of the public to pay a fee to make a claim for public rights. It was recognised that this created an imbalance because landowners are generally asked for fees to process diversion or extinguishment orders. Therefore it was felt appropriate that landowners should not have to pay to apply for diversion or extinguishment orders. However it was felt that the local authority should be able to discard 'vexatious' claims, diversion applications or extinguishment applications. If an authority did make such a decision there should be a right of appeal.
8. For appeals against a decision, it was suggested that the deadline for all appeals should be within 3 months of the making of an order. This would give more time for people to respond to an order.

### **General Comments**

The ability for landowners to register the public rights of way over their land under Section 31(6) Highways Act 1980 should be retained.

The group in general agreed that walkers who want to walk everywhere and landowners who want nobody walking on their land are both unjustified positions. Users of public rights of way should keep to the paths and landowners should not obstruct the paths. Both should try to work together; users of public rights of way and landowners should be given similar equal and fair rights. The land management interests of the group suggest that both farmers, users and local Councils should work together to create permitted paths which can be more flexible, allowing for closure or re-routing as needed.

**This letter constitutes formal advice from the Royal Borough of Windsor and Maidenhead. The Royal Borough of Windsor and Maidenhead Council is required, in accordance with section 94(5) of the Countryside and Rights of Way Act 2000, to have regard to relevant advice from this forum in carrying out its functions.**