

The concerns of the LAF are understood in respect of the policy, endorsed by members in 2011, of restraint with regard to the previous practice of automatic general promotion of orders on behalf of applicants. The policy has been operating well since then and has gained support from Inspectors when the opportunity has arisen to discuss it with them at public inquiries. When this policy was first introduced Inspectors privately expressed reservations but have since reported, in conversation, that it actually works well, gives those involved a sense of responsibility for their own actions and is far more equitable for all parties involved. As members of the LAF will appreciate, Planning Inspectors are experts in rights of way legislation and are aware of the information and evidence they require to make a decision. They are very skilled in retrieving such material from witnesses. It would also be fair to say that the policy has yet to result in orders being lost due to applicants having to take on the role of 'applicant' at public inquiries and field their own witnesses. Not many of the orders the Council has made over that period have been lost. In fact, the last order which was not confirmed followed an appeal, which was upheld by the Planning Inspectorate, against the Council's decision not to make an order on the basis that there was insufficient evidence of public use of the claimed footpath. The Council was directed to make an order by the Planning Inspectorate which was then subsequently considered at a public inquiry. It became apparent that the evidence of use was not up to scratch and insufficient to meet the legislative tests. The Inspector declined to confirm the order.

It is not known specifically how many other councils are operating this policy, but enquiries were received from at least two other Councils last year as to the operation of the policy.

Unfortunately, we do not have the information to hand to answer the query with respect to how many orders have been actively promoted since 2011. Clearly, in what are called 'own motion cases' the Council would have to promote the order as the Council would in effect be the 'applicant'. Such cases tend to be those based on archive and documentary evidence which are normally determined by the Planning Inspectorate by way of an exchange of written representations. Cases based on user evidence are normally referred to public inquiries and hearings.

Highways and Legal Orders and Registers Team

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