

Public Rights of Way Committee

Agenda

Date:	Monday, 1st June, 2009
Time:	2.00 pm
Venue:	Main Hall, Sandbach Town Hall, High Street, Sandbach

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Note: In order for officers to undertake any background research it would be helpful if questions were submitted at least one working day before the meeting.

4. **Public Rights of Way Position Statement (Pages 1 - 10)**

To consider a report on the work planning targets and current workload of the Public Rights of Way Team for the forthcoming year.

For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

Contact: Rachel Graves

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5. **Legal Orders Team: Statement of Priorities for Definitive Map Modification Orders** (Pages 11 - 20)

To consider a report seeking approval for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations.

6. **Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches** (Pages 21 - 24)

To consider a report seeking approval for the fees and charges levied by the Legal Orders Team for Public Path Orders, Temporary Closures and other work from 1st April 2009 onwards.

7. **Adoption of and Amendments to the Public Rights of Way Enforcement Protocol** (Pages 25 - 58)

To consider a report on the Public Rights of Way Enforcement Protocol, including its effectiveness and to seek approval for its adoption in the new authority, with the proposed amendments.

8. **Update on the Current Rights of Way Improvement Plan (2006-2011) and an Introduction to the Next (2011-2026)** (Pages 59 - 60)

To consider a report on the progress of the current Cheshire County Council Rights of Way Improvement Plan (2006-2011) and to provide an introduction to the next Cheshire East Rights Of Way Improvement Plan 11-2026).

9. **Highways Act 1980 – Section 119: Application for the Diversion of Public Footpath No. 1 (Part) Parish of Batherton** (Pages 61 - 66)

To consider the application to divert Public Footpath No. 1 in the Parish of Batherton.

10. **Highways Act 1980 – Section 119: Application for the Diversion of Public Footpath No. 26 (Part) Parish of Bollington** (Pages 67 - 72)

To consider the application to divert part of Public Footpath No. 26 in the Parish of Bollington.

11. **Proposal for Permissive Paths for Horse Riders in the Parish of Peckforton** (Pages 73 - 78)

To consider a report on the agreement to grant permissive paths for horse riders on condition that liability for the surface of the routes and liability for personal injury of users is assumed by the Council.

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009

Report of: Mike Taylor, Green Spaces Manager

Title: Public Rights of Way Position Statement

1.0 Purpose of Report

- 1.1 The report is intended to brief the Public Rights of Way Committee regarding the work planning targets and current workload of the Public Rights of Way Team for the forthcoming year.

2.0 Recommendations

- 2.1 Members endorse the “Milestones” approach to setting work programme targets and gathering local performance indicators and note the workload of the Public Rights of Way Team.

3.0 Financial Implications

- 3.1 None arising.

4.0 Legal Implications

- 4.1 Applicants and respondents to various legislative procedures encompassed within rights of way operations may appeal to the Secretary of State, or in other circumstance the High Court against decisions made by the Council.

5.0 Risk Assessment

- 6.1 Given the opportunities for legal appeal encompassed within the legislative processes, it is important that the Council has procedures, protocols and schemes of priorities in place to minimise the opportunities for appeal.

6.0 Background and Options

- 6.1 The work undertaken by the Rights of Way Team falls into three discipline areas. The protection and maintenance of the network, the development of access and the production and implementation of the Rights of Way Improvement Plan and lastly, the processing of legal orders associated with changes to the path network. This report provides a brief position statement for each area of work.

“MILESTONES” AND CHESHIRE TARGETS

- 6.2 The Rights of Way Team have been operating towards targets for

2008/9 set by the County Council Rights of Way Committee on 18 April 2008. The targets were set in the context of the former Countryside Agency's (now Natural England) National Targets for public rights of way, which have as their aim that the rights of way network in England and Wales should be;

- Legally Defined
- Properly Maintained
- Well Publicised

It is anticipated that these will remain as the targets for Cheshire East.

- 6.3 In addition to those targets, and reflecting the range of new work imposed by the Countryside and Rights of Way (CROW) Act 2000, this report also briefly includes details regarding the implementation of the Rights of Way Improvement Plan.

NETWORK MANAGEMENT

- 6.3 The Network Management team comprises three officers who deal with the protection and maintenance of the network. They operate on an area basis, with each officer responsible for approximately 600 kilometres of the network. Within that area they are responsible for maintenance and enforcement to remove obstructions and keep the network available for use.
- 6.3 Although Councils are no longer required to report on Best Value Performance Indicator 178 (percentage of the PROW network deemed "easy to use"), the national group, the County Surveyors' Society is keen that authorities continue to collect this data and in Cheshire it has been collected as local indicator LTP 13¹. It is anticipated that this performance information will continue as a local indicator and means of benchmarking progress and the first of two annual random surveys for Cheshire East will be implemented by the team in June.
- 6.4 An outline work programme for the Network Management Team is attached at Appendix 1. The component tasks represent the "Milestones" identified in the former Countryside Agency's National Targets.

RIGHTS OF WAY IMPROVEMENT PLAN AND ACCESS DEVELOPMENT PLAN

- 6.5 The Rights of Way Improvement Plan is part of the Local Transport Plan and provides the strategic framework for the work of the Rights of Way Unit with the objective of improving the rights of way network to meet the current and future needs of the public.
- 6.6 Officers will continue to work alongside colleagues responsible for the Local Transport Plan in Cheshire East, the Area Highway Teams and the Safer Routes to School officer in order to deliver LTP targets, access LTP funding and develop the new LTP due in 2011. Similarly,

¹ LTP = Local Transport Plan

cross-service working relationships will be developed and consolidated with colleagues in Planning, Regeneration, Tourism and other services and organisations, in order to access funding for improvements in order to achieve common objectives.

- 6.7 A range of specific objectives and projects are in train or have been identified for future development and these will be reviewed and developed in the context of the priorities of Cheshire East. A summary of projects undertaken in 2008/9, some of which will continue into 2009/10, are identified in Appendix 2.

DEFINITIVE MAP AND LEGAL ORDERS

- 6.8 The legal orders team comprises three officers who operate on a caseload basis and deal with public path orders, (diversions and extinguishments), definitive map modification orders, (changes to the definitive map) emergency and temporary closures, land searches, planning applications and alley gating orders.
- 6.7 Details of the outstanding workload are attached at Appendix 3 and includes a summary of this year's work and future work. A Statement of Priority has been prepared for approval by the Rights of Way Committee to guide future work programmes relating to Definitive Map Modification Orders.

CONCLUSION

- 6.9 The Rights of Way staff will develop strategic plans and appropriate policies and protocols for approval by Cheshire East Council with the aim of continuing to implement and share best practice and to deliver an excellent Rights of Way service within the context of the vision and corporate priorities expressed by Cheshire East Council.

7.0 Reasons for Recommendation

- 7.1 The Public Rights of Way Team provides both a statutory and discretionary range of activities. The work planning, target setting procedures and schemes of priority are well-established and have produced efficient and high levels of output and protection against appeal opportunities provided by the various legislative processes, which operate within the rights of way discipline.

For further information:

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Background Documents: Appendices 1-3 attached

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NETWORK MANAGEMENT: MAINTENANCE AND ENFORCEMENT

Component Task		Source	Targets 2009/10
No	Measure of Success		
3.1	All footpaths, bridleways and byways correctly signposted where they leave a metalled road	C/side Act 68 NERC Act 06	<ul style="list-style-type: none"> Installation of additional signs and replacement signs following loss and damage to ensure the requirements of Countryside act 1968 s 27 are fulfilled.
3.2	All PROW clear of obstructions, misleading notices, other hindrances or impediments to use	HA 80 s130	<ul style="list-style-type: none"> Adoption of County Council's protocols on enforcement by Cheshire East. Carry out necessary enforcement work in line with adopted protocols to ensure that the duty set out in Highways act 1980 is fulfilled
3.3	Bridges, stiles, gates etc are in place where required; all are safe and convenient to use	HA 80 s41 and s146	<ul style="list-style-type: none"> Adoption of the current policies in relation to boundary structures. Renew and repair structures to ensure that they adequately allow the public to access all public paths in the county. Assist owners and occupiers to repair and replace stiles and gates on public rights of way
3.4	Surface of every PROW is in proper repair, reasonably safe and suitable for the expected use	HA 80 s41	<ul style="list-style-type: none"> The routine maintenance programme will be extended as new paths requiring routine maintenance are encountered. Officers will continue to work with colleagues in other departments and other partners in order to facilitate additional funding for special projects in relation to rights of way wherever possible.
3.5	All PROW inspected regularly by or on behalf of the authority	HA 80 s58	<ul style="list-style-type: none"> The inspection programme will be reviewed this year. The maintenance officers will hold bi-annual meetings with the relevant representatives of the walking, equestrian and other user groups to agree work priorities.
3.6	The authority is able to protect and assert the public's rights and meet other statutory duties (e.g. to ensure compliance with the	HA 80 s130	<ul style="list-style-type: none"> Adoption by Cheshire East of the protocols in relation to the enforcement of "cropping and ploughing" offences" All officers will devote a proportion of their time to ploughing and cropping and in addition all reports from the public will be investigated

Component Task		Source	Targets 2009/10
No	Measure of Success		
	Rights of Way Act (1990)		
3.7	Waymarks or signposts are provided at necessary locations and are adequate to assist users. Waymarking scheme/initiative in place	C/side Act 1968 s27	<ul style="list-style-type: none"> Waymarking and signposting will be undertaken as appropriate.

Abbreviations:

C/side Act 68: Countryside Act 1968

HA 80: Highways Act 1980

NERC Act 06: Natural Environment and Countryside Act 2006

APPENDIX 2

COUNTRYSIDE ACCESS DEVELOPMENT: WORK ACHIEVED 2008 / 2009

No	Component Task	ROWIP Target	Work Achieved
2	Weaver Way Project. Development of access improvements between Frodsham and Audlem.	ROWIP 2,4,5,8	<ul style="list-style-type: none"> Partnership project to install heritage and wildlife interpretation boards. Development of a circular "Nantwich Riverside Route" through Nantwich adjacent to the river Weaver. Resurfacing of the route through Northwich as part of the Sustrans Connect 2 Project.
3	Partnership working with Sandstone Ridge Econet Partnership.	ROWIP 2,4,8	<ul style="list-style-type: none"> Permissive access developed for equestrians in the Peckforton Hills.
4	Kissing Gate Scheme using LAGBI resources in partnership with parish councils.	ROWIP 4,12	<ul style="list-style-type: none"> Gates installed in 6 parishes across Cheshire East.
5	Parish small grants scheme.	ROWIP 4, 12	<ul style="list-style-type: none"> Access development, interpretation and information projects undertaken in 11 parishes across Cheshire East.
6	Discovercheshire.com website	ROWIP 3	<ul style="list-style-type: none"> Development of 7 circular walks associated with "Cheshire's Year of Gardens 2008". Continued audit of website content for accessibility.

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APPENDIX 3

DEFINITIVE MAP AND LEGAL ORDERS WORK

SUMMARY OF WORK TO JAN 2009 AND WORK OUTSTANDING

Definitive Map /Legal Orders - Completed and Projected Work		
Area of Work	Work completed/in progress April 08 – January 2009	Projected/Outstanding Work from Jan 2009
Planning Application consultations	147	*213
ROW searches	42	*112
Highways Act S.31 deposits	8	*8
Temporary & Emergency closures RTA 84	24	**33-51
Gating Orders HA80 s.129A	1	Not known
Public Path Orders:		
HA80:	23	16
TCPA 90:	2	Not known
Contested Orders: Referral to PINs.		
HA80:	1	8
WCA81:	2	3
Definitive Map: “List A”		
WCA81 s.14 Applications	4	22
D.Map Anomalies; investigation/legal orders required		*** 230+
Definitive Map “List B” (PROW unit priorities)	5	23
Abbreviations: * Estimated figure (% on previous years total) ** Range estimate based on 06/07 (48), 07/08 (75) *** Identified through map consolidation checks. PINs = Planning Inspectorate HA80 Highways Act 1980 TCPA Town & Country Planning Act 1990 RTRA = Road Traffic Regulation Act 1984 WCA81 =Wildlife & Countryside Act 1981, “Schedule 14”		

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CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Legal Orders Team: Statement of Priorities for Definitive Map Modification Orders

1.0 Purpose of Report

- 1.1 To seek approval from Members for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations.

2.0 Recommendations

- 2.1 That the revised Statement of Priorities outlined at Appendix 2 be approved.

3.0 Financial Implications

- 3.1 There are no specific financial implications arising from the report.

4.0 Legal Implications

- 4.1 The proposed prioritisation system which is the subject of the report will facilitate the Legal Orders Team’s ability to carry out the statutory duties conferred by the Wildlife and Countryside Act 1981.

5.0 Risk Assessment

- 5.1 n/a

6.0 Background and Options

- 6.1 Cheshire East Council as Surveying Authority for the Definitive Map & Statement has a duty to keep it under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modifications Orders¹ (Circular 2/93 para.24²). The former Rights of Way Committee for Cheshire County Council previously considered and approved interim statements

¹ Referred to as ‘DMMOs’ for brevity

² Now replaced by Circular 1/09

of priorities on 3 April 2000, 29 March 2004 and most recently on 23 January 2006 (**Appendix 1**).

- 6.2 The future demands on the Legal Orders Team, who deal with DMMOs, has increased in recent years due to national initiatives, such as the Rights of Way Improvement Plan, and local pressures, such as the need for the completion of a consolidated Definitive Map and Statement. The team also now process large volumes of Public Path Order applications.
- 6.3 A revised statement of priorities is therefore proposed to permit a systematic yet flexible approach to dealing with a potentially large volume of DMMO applications and matters requiring detailed investigations.
- 6.4 Under Section 53 of the Wildlife & Countryside Act 1981 ("the Act"), the Council is under a duty to keep the Definitive Map & Statement under continuous review and to make modifications as required. Changes are effected by means of DMMOs, which may be triggered by the Council on the discovery of evidence which shows that the map and/or statement is in error, or by any individual making a formal application for a DMMO under the provisions of Schedule 14 to the Act and presenting evidence to show that there is an error in the legal record.
- 6.5 The Secretary of State recognises that the task of bringing Definitive Maps up to date is considerable and Surveying Authorities have been recommended to publish periodic Statements of their priorities for doing so, this being a demonstration of an Authority's acknowledgement of its duty, and of a determination to get on with the work. Under Schedule 14 of the Act (paragraph (3)(2)) an applicant has a right of appeal to the Secretary of State if an application is not determined within 12 months of registration.
- 6.6 In considering such appeals from applicants, the Secretary of State takes account of any statement of priorities adopted by the Authority, the reasonableness of such priorities, action taken by the authority or expressed intention of further action on the application and the importance of the case compared to others. A successful appeal will result in the Secretary of State making a direction to an Authority to determine an application.

THE CURRENT SYSTEM OF PRIORITISATION

- 6.7 At the moment, a mixed system of prioritisation is employed (see **Appendix 1**) comprising parallel lists, each star-rated against certain criteria, namely:
 - a) A master list ("List A") of Schedule 14 claims from individuals/organisations listed chronologically in order of receipt/registration
 - b) "List B" – internal priorities & investigations

- c) ROWIP priorities (items from the work programme or other identified improvements, e.g. safe routes to schools/ strategic links/ improvements to safety etc).
- d) Discovering Lost Ways applications.³

6.8 Star ratings are also attributed to the following criteria:

- Date of receipt / length of time on the register (say, one star each year or six-month period following registration; this being dependent on the scale of any backlog)
- Impending development threatening the claimed route

6.9 Applications are then addressed according to the highest star ratings and in date order. Periodic reviews would continue to be made of outstanding applications and progress is monitored on a monthly basis in any case.

APPRAISAL OF CURRENT SYSTEM

6.10 The current system is clearly complex, in that it attempts to combine a chronological approach with other qualitative criteria. As a result, it is difficult to apply and was never fully implemented.

6.11 Furthermore, a moratorium was placed on all DMMO work in early 2007 to enable the Legal Orders Team to deal with a large backlog of Public Path Order work and to concentrate on the consolidation of the Definitive Map and Statement in advance of Local Government Reorganisation. This further prevented the prioritisation system from being put into practice.

FUTURE DEMANDS & CONSIDERATIONS

Rights of Way Improvement Plan (ROWIP)

6.12 Many other Local Authorities operate a prioritisation system for DMMOs which takes account of the objectives of their ROWIP. This has the advantage of being defensible (all ROWIPs are subject to wide consultation and input from a diverse range of groups) and of actually helping with the implementation of that document; DMMOs may add routes which are useful to the public, by providing a link to a school, say, or by providing access for a group of users with little current provision, such as horse riders or cyclists.

Consolidation of the Definitive Map

6.13 The consolidation process is well underway and as a result the Definitive Map and Statement are known to contain at least several hundred anomalies and while it is generally understood that these cannot all be rectified prior to publication of a consolidated map, an

³ Members are advised that the 'Discovering Lost Ways' Project was abandoned nationally by Natural England, but that claimed routes which coincide with routes identified through that project will be given additional weighting – see Appendix 2.

unspecified number are likely to require investigation and correction by means of DMMOs. Some anomalies will be more important than others and a system of prioritisation should be applicable to these too.

PROPOSED NEW CRITERIA FOR PRIORITISATION

- 6.14 The method for prioritising Schedule 14 applications and investigations which may lead to changes in the Definitive Map and Statement needs to be: -
- Simple, transparent and fair, and applicable to potentially large numbers of applications.
 - It must allow some flexibility and not be a “bottleneck” or a constraint to the development of new initiatives or to the Council’s legal duty to maintain and enforce public rights of way.
 - It must be seen to be reasonable and justifiable in view of the statutory right to seek a direction from the Secretary of State for the Council to determine the application after 12 months.
 - It is also desirable and expedient in the context of the Rights of Way Improvement Plan to be able to reflect improvements to the network & consequently benefit to the public.
- 6.15 The advantages of reverting to a priority system based solely on date of receipt are that it is inherently fair, ranking is simple and does not discriminate between applicants, nor are applications judged on merit or quality of evidence. The disadvantages are that it is inflexible, and that the relative merits of the application or the potential benefits of a successful application are disregarded.
- 6.16 It is evident that some means of ranking or weighting of applications is required to enable the Council to effectively target its resources.
- 6.17 There must also be some recognition of the length of time on a waiting list. It would be generally unacceptable and a breach of the Council’s duty to determine registered claims for any particular application to be of such a low priority that there was no realistic chance of it being determined. An increased number of directions from the Secretary of State (see 6, above) would inevitably disrupt any priority system and reflect badly on the Council.

7.0 Reasons for Recommendation

- 7.1 Bearing 6.12-17 in mind, a new scoring system is proposed, whereby all new Schedule 14 applications and internally generated cases will be given a score, based on applying the system shown in **Appendix 2**. All DMMO case work would thus be prioritised according to that score. The criteria are based on the objectives of the Council’s Rights of Way Improvement Plan.
- 7.2 In the interests of fairness to our existing applicants, however, it is also proposed that the applications in the current backlog, of which there are 22, will be dealt with in chronological order of receipt, lest

the new scoring system push some long-standing claims even further down the list.

For further information:

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Background Documents: Appendices 1 & 2

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DEFINITIVE MAP REVIEW: REVISED STATEMENT OF PRIORITIES January 2006

This statement of priorities for Definitive Map investigations and applications made under schedule 14 of the Wildlife & Countryside Act 1981 was considered and approved by the Rights of Way Committee on 23 January 2006 and minuted:

Background

The County Council, as Surveying Authority for the Definitive Map and Statement, has a duty to keep it under continuous review and make modifications as required. The Secretary of State recommended that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modification Orders. The demands on the Definitive Map team were anticipated to increase due to national initiatives such as the Rights of Way Improvement Plan (ROWIP), the Discovering Lost Ways Project and the consolidation of the Definitive Map. This had been recognised in the provision of an additional two officers, who took up post in May / June 2005. A revised Statement of Priorities was proposed to permit a systematic yet flexible approach to dealing with a potentially large volume of applications and matters requiring detailed investigations.

Previously, all applications for amendment of the Definitive Map were dealt with in strictly chronological order. It was now proposed that a combined system be employed comprising parallel lists, each star rated with provision for star rating certain criteria, namely:

- (a) a master list ("List A") of Schedule 14 claims from individuals / organisations listed chronologically in order of receipt / registration;
- (b) "List B" – internal priorities and investigations;
- (c) ROWIP priorities (items from the work programme or other identified improvements, e.g. safe routes to schools / strategic links / improvements to safety etc);
- (d) Discovering Lost Ways applications.

Star rating would also be attributed to the following criteria:-

- Date of receipt / length of time on the register (e.g., one star each year or six month period following registration; this being dependent on the scale of any backlog);
- impending development threatening the claimed route.

The report had been presented to the Cheshire and Warrington Local Access Forum for discussion at its meeting on 16 December 2005. The Forum endorsed the report and commented that there were big cost implications in terms of researching claims, which had to be borne by the Authority as it was incumbent on it to investigate all evidence.

January 2006.

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APPENDIX 2

Cheshire East Council

**DEFINITIVE MAP MODIFICATION ORDERS: PROPOSED REVISED
STATEMENT OF PRIORITIES
June 2009**

Background

Cheshire East Council, as Surveying Authority for the Definitive Map and Statement, has a duty to keep it under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modification Orders.

A revised prioritisation system is proposed here, which takes into consideration the 4 thematic objectives of the Council's 'Rights of Way Improvement Plan', plus a fifth 'cross-cutting' objective to cover network considerations. It is based (with modifications) on a prioritisation system originally designed for ranking 'improvement' projects, considered and approved by the Cheshire and Warrington Local Access Forum in March 2005.

The scoring system is designed to permit a systematic yet flexible approach to dealing with a potentially large volume of applications and matters requiring detailed investigations.

N.B. Any claimed route threatened by development will be taken out of turn regardless of the score it initially received.

The higher the total score for a route, the higher priority it will be given for processing.

Application of scoring

- 1 = objective not met
- 2 = not met, but potential to meet
- 3 = partially met
- 4 = met
- 5 = met, with potential added value

ROWIP objective	Score (1-5)
Health	
Route would provide new or enhanced opportunity for exercise from home (e.g. helps form a new circular route, close to where people live).	
Route reduces traffic/vulnerable road user interaction.	
Tourism/economics	
Route would benefit local businesses in the area (e.g. by attracting walkers to local shops/pubs etc).	
Route would attract visitors from local area.	
Route would attract visitors from wider area.	
Sustainable travel	
Route would allow greater linkages between PROW network and Public Transport (e.g. termination point close to a bus stop).	
Route would provide pragmatic alternative to a car journey.	
Route would benefit people without access to a car (e.g. provides direct link from where people live to shops and services).	
Social inclusion	
Route would benefit people with mobility/visual impairments (e.g. route	

flat and accessible with surfacing potential).	
Cross-cutting considerations	
Route improves overall provision for horse riders and off-road cyclists.	
Addition would increase path density in an area of recognised poor provision.	
Improvement would increase path connectivity (e.g. a town-country link, link to an attractive area, link to an amenity, or link between two or more communities).	
Application coincides with existing ROWIP suggestion which has come from interest groups (e.g. riders, walkers, Parish Council, landowners etc.).	
Application has been on waiting list for more than 12 months (automatically add 5 points for every year on the waiting list).	
Application would resolve a mapping anomaly (automatically add 5 points).	
Claimed route coincides with a Discovering Lost Ways case route (automatically add 2 points).	
TOTAL	

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches

1.0 Purpose of Report

- 1.1 To seek approval from Members of the Rights of Way Committee for the fees and charges levied by the Legal Orders Team for Public Path Orders, Temporary Closures and other work from 1st April 2009 onwards.

2.0 Recommendations

- 2.1 Subject to any departmental review of charging policy, or the implementation of statutory regulations relating to local authority charges, that the charges outlined at 6 below be approved.
- 2.2 That increases in the charges outlined at 6 below relating solely to inflation be implemented by Officers without the need for Committee approval.

3.0 Financial Implications

- 3.1 Future charges levied by the Legal Orders Team for processing Public Path Orders and Temporary Closures shall be conducted according to the figures outlined in the report.

4.0 Legal Implications

- 4.1 The charging policy proposed here complies with "The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993" as amended by "The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996".

5.0 Risk Assessment

- 5.1 n/a

6.0 Background and Options

- 6.1 Charges are made to landowners and occupiers making applications for Public Path Orders to divert and extinguish paths and also for

implementing temporary & emergency closures of public rights of way. These charges are made in accordance with “The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993” as amended by “The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996”. Charges are also made for written responses for public rights of way searches.

- 6.2 A review of the charges and staff costs took place in July 2008 to reflect full cost recovery. The hourly rate was calculated at the average spinal column point for grade 8 plus an additional 26% to cover overheads (approx. £17.30 per hour in total). Value Added Tax (VAT) is added at 15%, except for searches. From 1st April 2009 a mandatory increase of 2.5% on all rechargeable services is to be levied by the Council and this is reflected in the charges cited below. There is no profit element to these charges and none may be levied.
- 6.3 **Public Path Diversion Orders:** The charge from 1st April for a straightforward public path diversion application resulting in a confirmed order is £1304.88 (£1134.68 plus VAT) plus the actual advertising costs. Two advertisements are required for i) making and ii) confirming the order. The average cost of advertising a public notice is between £350 and £450 each.
- 6.4 In circumstances where the Council has contributed to a situation which gives rise to the necessity for an Order, or where the current landowner is not responsible for creating the situation, the administrative costs of the diversion/extinguishment may be waived by the Council, with the advertising costs being met by the applicant.
- 6.5 Where the Council initiates a diversion/extinguishment in the interests of the public and/or in the interests of public safety, the Council bears the full costs involved.
- 6.6 Section 5.37 of DEFRA guidance 01/09 sets out that it is not reasonable for a Local Authority to charge an applicant for pursuing an opposed Order and all costs relating to referral to the Secretary of State are excluded from the power to charge.
- 6.7 **Emergency and Temporary Closures:** Emergency and Temporary Closure Order charges have previously been based on those levied by the Highways Engineering Services. The present charge to an applicant for an emergency 5 day or 21 day closure (not requiring press advertisement) is £189.78 (£165.03 plus VAT) and a further £95.58 (£82.51 plus VAT) to extend the closure for a further 21 days. A temporary closure may also be extended for up to 6 months and is currently charged at £189.78 (£165.03 plus VAT) plus advertising costs.
- 6.8 A 6 month temporary closure is charged at £477.39 (£415.13 plus VAT) plus two advertisements.

- 6.9 There is presently an anomalous situation in respect of the charge made to *extend* a temporary 5 or 21 day closure for up to 6 months as opposed to implementing a 6 month closure from the outset. Extending a closure for up to 6 months is presently £85 cheaper than the charge for implementing a single 6 month temporary closure; £477.39 (£415.13 plus VAT), which is the correct procedure for programmed works affecting the path, as opposed to emergency works. It is proposed to rectify this by increasing the charge for a 6 month extension to £287.50 (£250 plus VAT).
- 6.10 A temporary closure may be extended to up to 18 months by the Secretary of State.
When this is required, an administrative charge of £358.34 (£311.60 +VAT) is made for submission of an application.
- 6.11 A temporary closure may be extended to up to 18 months by the Secretary of State.
When this is required, an administrative charge of £358.34 (£311.60 +VAT) is made for submission of an application.
- 6.12 Where the Council initiates a temporary/emergency closure in the interests of the public and/ or in the interests of public safety, the Council bears the full administration and advertising costs involved.
- 6.13 **Gating Orders:** Applications for Gating Orders (“Alleygating”) may be made to the Public Rights of Way office in respect of paths which are recorded in the Definitive Map & Statement. Charges are made at the same rate as public path diversion orders; £1304.88 (£1134.68+VAT).
- 6.14 **Property Searches:** Since 2008, a flat rate charge consistent with that levied by the Highways Engineering Service has been made for Rights of Way search requests which require a written response from solicitors, developers and other commercial interests. The charge for searches is £61.50. They are not subject to VAT.

7.0 Reasons for Recommendation

- 7.1 To enable the Legal Orders Team to continue levying charges for these areas of work at the levels previously applied by Cheshire County Council, incorporating the mandatory 2.5% increase applied by Cheshire East Borough Council.

For further information:

Officer: Amy Rushton, Public Rights of Way Manager (acting)
Tel No: 01606 271827
Email: amy.rushton@cheshireeast.gov.uk

Background Documents: None

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CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Adoption of and Amendments to the Public Rights of Way Enforcement Protocol

1.0 Purpose of Report

- 1.1 To provide Members with information on the Public Rights of Way Enforcement Protocol, including its effectiveness and to seek approval for its adoption in the new authority, with the proposed amendments.

2.0 Recommendations

- 2.1 That:
- (i) The enforcement protocols contained in Appendices 1-4 are approved.
 - (ii) The amendments to the protocols contained in Appendix 5 are approved.
 - (iii) Further amendment to the protocols and booklet "Public Paths A Guide to Problems and Protocols" be submitted to the ROW Committee for approval from time to time.

3.0 Financial Implications

- 3.1 None

4.0 Legal Implications

- 4.1 None

5.0 Risk Assessment

- 5.1 n/a

6.0 Background and Options

- 6.1 In July 2000 a comprehensive "protocol" in relation to enforcement for Rights of Way (ROW) was adopted by the ROW Committee of the former County Council. A copy of that report can be found at **Appendix 1**. The details of the protocol were incorporated into a booklet "Public Paths a Guide to Problems and Protocols" (also known as the "A-Z").

- 6.2 Further reports about the effectiveness of the protocol and amendments to the A-Z were made in July 2001 (**Appendix 2**), January 2003 (**Appendix 3**) and July 2007 (**Appendix 4**). Members will note that the amendments were made following changes in caselaw and legislation. Changes have also been made because in order to be effective, protocols and guidance must be responsive to changing circumstances and the experience of officers.

- 6.3 Members must be aware that the primary duty of the Highway Authority is:

“..to assert and protect the rights of the public to use and the enjoyment of any highway for which they are the Highway Authority....” Highways Act 1980 s130.

For the purposes of the Highways Act the Highway Authority is now Cheshire East Council and the word “highway” includes all classes of public rights of way.

If the Highway Authority fails to carry out this duty effectively, a legal notice can be served on the Authority requesting that the problem is remedied. Failure to comply with such a notice can lead to Magistrates’ Court proceedings being taken against the Council. This situation has arisen in the past, but has not occurred since the adoption of the Enforcement Protocol. “User Groups” and other interested parties will, no doubt, be scrutinising the actions of the new Authorities in this regard. An effective Enforcement Protocol will be a useful tool in mitigating against this sort of action being taken against the new Authority.

- 6.4 An open, available, easy to use ROW network with good quality, accessible path furniture is essential in order to meet the strategic targets of the Health and Wellbeing Service and the priorities of Cheshire East; for example, increasing the health and well-being of the community and enhancing the rural economy. Members will be well aware of the rise in obesity, obesity related disease and mental health problems. The ROW network is an evident and valuable resource which will assist in meeting these challenges. The ROW enforcement protocol is a crucial tool in preserving the network for the public to use.
- 6.5 The foot and mouth disease restrictions of 2001, where the whole ROW network was closed, illustrated that the network is not merely the preserve of a small number of “user” groups, but a fundamental part of the recreational and economic life of the community. At that time, the ROW team were inundated with queries from members of the public. It is estimated that foot and mouth disease led to a reduction in the gross output of the Cheshire economy to the tune of £33-£48 million. A loss of £48 million in household disposable income. As with other areas of the UK e.g. Cumbria, it was shown that the closure of the ROW network had a massive impact on the local economy.

- 6.6 In 2003, the Ramblers' Association commissioned a survey which indicated that walking is the most popular active recreation in the country. 738 million trips were made to the countryside in 2002-3 and in that same year it is estimated that walking trips supported 180-245,000 full time jobs in England. The single most important means of access to the countryside for both walkers and riders is the ROW network. It is also free to use at the point of access.
- 6.7 One of the national targets for ROW is for the network to be properly maintained; this includes ensuring that the network is open and available for use. A Best Value Performance Indicator¹ measures the percentage of the network which is "easy to use". Enforcement is an essential tool of last resort in ensuring that these targets can be achieved.

EFFECTIVENESS OF THE PROTOCOL:

- 6.8 In 2001 it was estimated that the interference of the network by ploughing and cropping resulted in the loss of up to 30% of the network for a considerable part of the year.
- 6.9 In 2000-1 Officers dealt with over 200 cases of ploughing and cropping on ROW and were obliged to serve legal notice on offenders on 114 occasions despite concerted efforts to avoid this.
- 6.10 It is telling that last year only 15 notices were served in relation to the same offences. It is submitted, therefore, that by working with the landowning community and by being robust in implementing this protocol in the past, landowners have become more aware of their duties and obligations in relation to keeping the ROW network clear.
- 6.11 The original A-Z booklet was published in 2001. It was very well received; indeed several other authorities have adapted it for their own procedures and policies. It is nationally seen as best practice in this specialist area. The booklet has also proved extremely useful to officers, assisting them in dealing effectively with a wide variety of ROW queries. Because it is written in "lay man's" terms the booklet has also assisted landowners and users in ensuring that they are clear about their rights and obligations.
- 6.12 Members may note that the main representative organisations for farmers and landowners the National Farmers' Union (NFU) and the Country Land and Business Association (CLA), give a clear message to their members that ROW law should be respected and that no interference with ROW should take place without lawful authority.

¹ No longer collected by the Audit Commission, but still applied locally by most Local Authorities e.g. through the Local Transport Plan

AMENDMENTS:

- 6.13 As has already been stated, Members will be aware that the enforcement protocols and A-Z booklet are dynamic and are intended to develop in response to changing circumstances in order to be effective.
- 6.14 A number of changes to the protocols and booklet are suggested for the next reprint and are detailed at **Appendix 5** of this report. There will also need to be immediate adjustments to the introduction and contact details section of the booklet in order to incorporate changes following Local Government Reorganisation.

7.0 Reasons for Recommendation

- 7.1 A clear, unambiguous protocol on enforcement will enable the Cheshire East ROW team to carry out its duties effectively, in an even-handed, fair, consistent manner. Furthermore, it will mean that the community of Cheshire East is provided with an excellent service, based on national best practice.

For further information:

*Officer: Amy Rushton
Tel No: 01606 271827
Email: amy.rushton@cheshireeast.gov.uk*

Background Documents: Appendices 1-5

COMMITTEE
DATE

RIGHTS OF WAY SPECIAL SUB
10 JULY 2000

REPORT OF
Contact
Officer

COUNTY RECREATION OFFICER
Michael Taylor
Tel: (01606) 301482

①

PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY (RWSS 36/00)

INTRODUCTION

1 The current enforcement policy, detailed below, was agreed by the Rights of Way Special Sub-Committee as part of a work programme report received on 3 April 1995. This report explains how the policy is working and seeks confirmation of that policy.

BACKGROUND

2 The public rights of way network throughout Cheshire are not only highways in law but also a very major recreational resource by which local people and visitors enjoy Cheshire's countryside. The County Council has a common law right to remove anything from a public right of way that it believes constitutes an obstruction, danger or encroachment without consulting any other party. Furthermore, the County Council has a statutory duty to remove all obstructions and encroachments to public rights of way. Various powers are available to the Council under the Highways act 1980 to enable it to perform its statutory duty, including prosecution and service of legal notice empowering the Council to carry out remedial work and recover costs from the offender. Although the Council has these duties, in the first instance the approach is always to advise and assist landowners to fulfill their legal obligations. Additionally, the Council uses discretionary powers to assist landowners with their obligations to rights of way wherever possible. However, this approach has to be underpinned by an enforcement policy and this policy is intended to utilize the powers available to the council in a fair and even handed way in order to ensure the Council complies with its statutory duty and achieves best value.

INTERFERENCE BY PLOUGHING AND GROWING CROPS

3 This is a serious problem throughout the county wherever arable crops are grown and, despite the efforts of the public rights of way maintenance staff, a considerable proportion of the network can be unavailable at certain seasons of the year due to illegal obstruction by ploughing and crops.

4 The remedies available to the Council extend to prosecution upon discovery of an offence and service of legal notice allowing a minimum of 24 hours for the offender to put matters right before the Council is empowered to carry out the work and recover costs.

5 Wherever such an offence is discovered the County Council will, if it is the first offence, explain the law to the offender and allow seven days for them to put matters right. Upon expiry of that period, if the path has not been reinstated to a satisfactory standard, the Council will serve legal notice upon the person responsible requiring them to reinstate the path within seven days. If the path is still not reinstated to a

6 On occasions where an occupier has responded to the first request but repeats the offence in subsequent years, the Council will serve legal notice requiring the reinstatement of the path within seven days, as set out above.

7 On occasions where an occupier re-offends after service of legal notice, the Council will again serve legal notice and, additionally, consider prosecution.

8 All recipients of enforcement notices in any one year will be sent letters setting out the law and reminding them of their obligations before the next cropping season commences.

GENERAL OBSTRUCTION TO AND ENCROACHMENT ON PUBLIC RIGHTS OF WAY

9 The service encounters a multitude of obstructions encompassing everything from deposited piles of material to structures and buildings of varying nature.

10 In all cases the first approach is one of consultation and dialogue, explaining the legal issues involved and the Council's duty in these matters. The offender is requested to remove the obstruction within seven days or within a reasonable time limit determined by the Council for obstructions of a substantial nature. If this approach fails, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the Council will remove the obstruction and recover costs from the offender.

11 If the obstruction recurs the Council will consider prosecution.

12 Whenever the Council is obliged to resort to service of notice in these matters the local Member will be informed.

CONCLUSION

13 The service will monitor the effectiveness of this policy and bring a further report to the Sub-Committee if it feels that it is failing to fulfill the Council's statutory duty in respect of public rights of way or failing to achieve best value. The service will also produce a short leaflet setting out the various problems that occur on public rights of way and the Council's policy towards them. The leaflet will be available to the public in general and it will be provided to all offenders in order that they are aware of the response they can expect from the Council.

RECOMMENDED:

That the policy outlined above be endorsed.

complete item

DECISION PAPER 3

MEETING DATE	RIGHTS OF WAY COMMITTEE 19 JULY 2001
REPORT OF Contact	COUNTY RURAL AND RECREATION OFFICER MR M TAYLOR - RIGHTS OF WAY MAINTENANCE MANAGER
Officer	(01606) 301 483)

PUBLIC RIGHTS OF WAY ENFORCEMENT PROTOCOL (RWSS/0301)

INTRODUCTION

1 A report on Rights of Way Enforcement Policy was submitted to the Rights of Way Special Sub-Committee meeting on 10 July 2000. A copy of that report is attached to this report at Appendix 2. At that meeting, Members resolved to endorse the policy.

2 The purpose of this report is to provide an update about how the current policy operates in practice, as requested by the Sub-Committee. It will also give details of how the policy may be revised in order that the County Council can carry out its duties in relation to Public Rights of Way Enforcement more effectively. The protocol, incorporating proposed amendments and additions is attached to this report as Appendix 1.

BACKGROUND

3 The Public Rights of Way network is a significant and valuable resource for the community. The recent restrictions in respect of foot and mouth disease have emphasised the importance of Rights of Way for the people of Cheshire. It is clear from the thousands of queries that the County has received, that the Rights of Way network is not merely the preserve of a small number of user groups, but a fundamental part of the recreational and economic life of a considerable section of the population.

4 One of the National Targets for Public Rights of Way, detailed in the Annual Report, is for the network to be properly maintained, and this includes ensuring that the network is open and available for public use. One of the Best Value Performance Indicators measures the percentage of the network which is signed from a metalled road and is easy to use. Enforcement is an essential tool in ensuring that these targets can be achieved.

5 Rights of Way enforcement issues can be divided into three distinct parts and each aspect of enforcement will be discussed in turn;

- Interference by ploughing and growing crops.
- Obstructions and encroachments which can be readily removed

Obstructions and encroachments which are more permanent.

INTERFERENCE BY PLOUGHING AND GROWING CROPS

6 This problem currently results in the loss of up to 30% of the network for a considerable part of the year in certain parts of the county, where arable farming predominates. Problems are at their greatest in parts of the Vale Royal area, City of Chester area and the southern area of Crewe and Nantwich.

7 During 2000/1, officers dealt with over two hundred cases of ploughing and cropping offences and had cause to serve legal notice on 114 occasions. It is apparent that the frequency of ploughing and cropping offences is not declining, despite the concerted efforts of officers. This year, with the closure of the network due to foot and mouth disease during the first quarter of the year, the failure of landowners to comply with obligations in relation to public rights of way is much more general and the percentage of the network that is obstructed is significantly greater than in other years.

8 The proposed amendments to the protocol are intended to

- increase the profile and seriousness of this offence in the minds of the farming community.
- reduce the incidence of re-offending.
- Minimise the risk of failure whenever the County Council is obliged to prosecute in order to provide an effective deterrent.

OBSTRUCTIONS AND ENCROACHMENTS WHICH CAN READILY BE REMOVED

8 When dealing with this type of problem, officers are frequently accused of various malpractices and some offenders lodge formal complaints with the County Council and others such as the Local Government Ombudsman. It should be noted that no complaints have ever been substantiated, but investigating and responding to complaints costs considerable time and effort.

9 The proposed leaflet "An A to Z of paths problems and protocols" is intended to explain to offenders the treatment they can expect from the County Council and to minimise the number of complaints against officers by "de-personalising" the management of the problems. A copy of the leaflet is attached to this report at Appendix 3.

OBSTRUCTIONS AND ENCROACHMENTS WHICH ARE MORE PERMANENT

10 Permanent obstructions, very often with informal diversions in place, are regularly encountered by rights of way officers. Most of these are dealt with quite amicably, with the landowner applying to divert the path, often formalising the existing unofficial diversion.

11 However, from time to time landowners refuse or are reluctant to apply to divert the path and the County Council is left with the problem of dealing with an obstruction which it is impractical to remove. The proposed additions to the

enforcement protocol is intended to make use of new legislation in the Countryside and Rights of Way Act 2000 which amended Highways Act 1980 with S137Z. This legislation provides courts with new powers to order the removal of obstructions and impose significant fines if offenders fail to comply.

12 By using these new powers it is hoped that in all circumstances where a path has a more permanent obstruction then the County Council will be able to achieve a resolution to the problem.

CONCLUSIONS

13 The implementation of a clear and unambiguous Enforcement Protocol is an essential part of ensuring that the Council Council can fulfil the statutory duty contained in Section 130 of the Highways Act 1980:

“It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...”

14 The proposed amendments to the existing protocol have been made in the light of experience and also taking account of best practice in other authorities. The protocol, if approved, will provide firm support for officers in carrying out a potentially difficult duty.

RECOMMENDED : That

The Enforcement Protocol contained in Appendix 1 be approved

complete item

Local Member	N/A	
Background Documents	Enforcement files	
Available for Inspection at	Whitegate Station, Marton, Winsford	

RIGHTS OF WAY ENFORCEMENT PROTOCOL

The County Council, as Highway Authority, has a duty both at Common Law and under Statute (S130 Highways Act 1980) to keep Public Rights of Way open and available for use by the public.

A clear, unambiguous protocol on enforcement, enables the County Council and the Rights of Way Enforcement team in particular to carry out its duties effectively and in an even-handed, fair and consistent manner. It is the intention of the Rights of Way Enforcement team to publicize details of the protocol in the form of a leaflet entitled: "An A-Z of path problems and protocols" and this will be widely available to the farming community and to the public. The leaflet will be provided to all parties in disputes in order that they are aware of their rights and responsibilities in relation to Public Rights of Way at the outset of any investigation. The Rights of Way pages on the County Council website will also carry the same information. A copy of the leaflet is attached to this report at Appendix 3.

It is worth noting that the main representative organisations for farmers and landowners, the NFU (National Farmers' Union) and the CLA (Country Landowners and Business Association), give the clear message to their members that rights of way law should be respected and that no interference with rights of way should take place without lawful authority.

ENFORCEMENT ISSUES

Rights of Way enforcement issues can be divided into three distinct parts;

- interference by ploughing and growing crops.
- obstructions and encroachments which can be readily removed.
- obstructions and encroachments which are more permanent.

Each aspect of enforcement protocol is dealt with in turn. Details of the current enforcement policy and how it may be revised in order that the County Council's duties can be carried out more effectively will also be given.

INTERFERENCE BY PLOUGHING AND GROWING CROPS

Interference by ploughing or by growing crops are offences under the Highways Act 1980 as amended by the Rights of Way Act 1990. The ploughing and cropping of paths has a serious effect on the Rights of way network.

In carrying out its duty to keep Rights of Way open and available for public use, the County Council has a range of powers to deal with offenders, starting with the service of legal notices, carrying out the work itself and recharging the landowner and prosecution of an offender for ploughing and cropping offences. The County Council follows an approach which is as conciliatory

5

as possible, with the Rights of Way Enforcement team providing information and advice to the offender and prosecution being used as a last resort.

The main objective in introducing the following protocol is to minimise re-offending by increasing the profile of the offences and bringing home their seriousness.

The policy approved by the Rights of Way Special Sub-Committee on 10 July 2001 is set out below, with proposed amendments in italic type:

Wherever an offence of ploughing or cropping is discovered, the County Council will, if it is a first offence, explain the law to the offender and allow seven days for them to put matters right.

INFORMAL INTERVIEW FORM

At the informal warning stage an informal interview will be carried out. The interview will be recorded in writing following a specified format and at the end of the interview the offender will be issued with a carbon copy of the interview form. A specimen "informal interview form" is attached at Appendix 4. The form will give details of offences, penalties and Council protocol. It is hoped that the use of the form will raise the awareness of the seriousness of the offence and increase the likelihood of compliance with re-instatement of the path. This procedure is used by other authorities.

Upon expiry of the seven day period, if the path has not been reinstated to a satisfactory standard, (including the minimum legal width), the Council will serve legal notice upon the person responsible requiring them to reinstate the path within seven days.

If the path is still not reinstated to a satisfactory standard, the Council will carry out the necessary works, using contractors, and will recover the costs of doing so from the offender.

FORMAL INTERVIEW UNDER CAUTION

At the stage when the County Council has completed the sequence of warnings above and direct enforcement and prosecution is being considered, the offender will be invited to take part in an interview under caution. It is intended that this interview should be recorded and follow the procedures laid down in the Police and Criminal Evidence Act 1984 (PACE). The interview transcript can then be used as part of the evidence against the offender and will avoid the failure of cases for technical reasons, for example where a false name is given. It may also raise the awareness of the seriousness of the offence in the eyes of the Court.

Interviews under PACE are used as a matter of course by County Trading Standards officers.

6

OBSTRUCTIONS AND ENCROACHMENTS WHICH CAN READILY BE REMOVED

The Rights of Way Enforcement Team also encounters a large number of situations where a Public Right of Way has been obstructed by means other than ploughing or cropping and is, therefore, unavailable for public use. Obstructions are offences under the Highways Act 1980 S137 and S137Z as amended by the Countryside and Rights of Way Act 2000. Obstructions encompass everything from deposited piles of material to structures and buildings of varying nature.

In all cases, the first approach is one of conciliation and dialogue, explaining the legal issues involved and the Council's duty in these matters. The offender is requested to remove the obstruction within seven days or, if the structure is more substantial in nature, within a reasonable time limit determined by the officer concerned.

The informal notice for removal of the obstruction is confirmed in writing together with a summary of the meeting, the legislation involved and the County protocol.

If the obstruction is not removed the local member is informed and formal legal notice is served under Highways Act 1980 S 143 giving the offender one month to remove the obstruction.

If the obstruction is not removed on expiration of the S 143 Notice the obstruction is removed by County Council contractors and the costs of the works involved are sought from the offender.

If the obstruction recurs, the Council will consider prosecution.

It is proposed that a leaflet be produced which will set out the County Council's protocol with regard to certain issues. It will give guidance to the offender about the nature of the offence and what is likely to happen if they fail to comply with either an informal or formal notice to remove an obstruction. (Please refer to the A-Z of path problems and protocols at Appendix 3).

OBSTRUCTIONS AND ENCROACHMENTS WHICH ARE MORE PERMANENT

A large number of permanent obstructions on Rights of Way are encountered each year, often permanent structures are erected on Rights of Way (sometimes with planning consent) and an unofficial diversion put in place by the owner of the land. The usual course of action in situations such as this is to require the landowner concerned to apply to divert the path. The procedure for obstructions and encroachments which are more permanent is as follows:

Obstructions and encroachments which are more permanent

A large number of permanent obstructions on Public Rights of Way are encountered, often permanent structures are erected on Public Rights of Way and an unofficial diversion put in place by the land owner or occupier. The County Council has a duty at statute law to remove all obstructions and encroachments to public rights of way. *The Highways Act 1980 SS137 & 137Z as amended by the Countryside and Rights of Way Act 2000.*

Cheshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue with the landowner/ occupier who will be given the opportunity to apply for a diversion of the path. If, after a certain period of time, no application is forthcoming enforcement proceedings will be commenced against the offender in the Magistrates Court. The Magistrates can make an Order requiring the offender to remove the obstruction within a specified time period and impose an ongoing fine if the offender fails to remove the obstruction

PLOUGHING AND CROPS ON PUBLIC RIGHTS OF WAY.

Ploughing

In some circumstances occupiers of land are entitled to plough public rights of way if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. All field edge public rights of way and cross-field Roads used as Public Paths (RUPPs) and byways should never be ploughed.

Where a cross-field footpath or bridleway is ploughed it must be reinstated within the "*statutory time limit*" otherwise a criminal offence is committed.

Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use to not less than the statutory minimum width. In respect of footpaths the minimum width is 1m and 2m for bridleways. The "*statutory time limit*" is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling.

Rights of Way act 1990 section 134.

Crops

Where a crop (other than grass) has been planted or sown on land crossed by a public right of way the occupier has a duty to ensure that the line on the ground of the public right of way is indicated to not less than the minimum width (1m for footpaths and 2m for bridleways). Additionally the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season.

Failure to fulfil this duty is a criminal offence.

Rights of Way Act 1990 section 137A.

Enforcement of ploughing and cropping protocol

Interference of public rights of way by ploughing and cropping is a major problem and the County Council has adopted the following protocol to deal with it.

For a first offence the County Council will, explain the law to the offender and an informal interview will be carried out which will be recorded in writing. At the end of the interview the offender will be issued with a carbon copy of the interview form giving him 7 days to re-instate the path. Upon expiry of that period if the path has not been reinstated to a satisfactory standard the Council will serve formal legal notice upon the offender requiring them to reinstate the path within a further 7 days. If the path is still not reinstated satisfactorily the Council will carry out the necessary work with contractors and recover costs from the offender.

On occasions where an occupier has responded to the first informal interview request but repeats the offence in subsequent years the County Council will immediately serve formal legal notice requiring the reinstatement of the path within 7 days as set out above and inviting the offender to accept a formal caution.

On occasions where an occupier re-offends after service of formal legal notice the County Council will again serve legal notice and additionally will consider prosecuting the offender. The offender will also be required to attend a formal interview session when s/he will be interviewed under caution.

All recipients of enforcement notices in any one-year are sent letters setting out the law and reminding them of their obligations before the next cropping season commences.

PUBLIC RIGHTS OF WAY.

There are four main categories of Public Rights of Way:

Public Footpaths – where the public has a right of way on foot and in an invalid carriage.

Public Bridleways- where the public has a right of way on foot, on horseback, leading a horse, with an invalid carriage and on a bicycle.

Road Used As a Public Path – (RUPP) where the public has a right of way on foot on horseback, leading a horse, with an invalid carriage and on a bicycle and may have vehicular rights.

Byway Open to All Traffic –(BOAT) where the public has a right of way on foot on horseback, leading a horse, with an invalid carriage, on a bicycle, in or on a vehicle and driving a horse or other animal.

As public highways Public Rights of Way enjoy the same protection, provided by the Highways Act as “proper roads”. They also enjoy additional protection provided by other legislation namely the 1949 National Parks and Access to the

Countryside Act, 1968 Countryside Act, 1981 Wildlife and Countryside Act and Countryside and Rights of Way Act 2000.

STILES AND GATES ON FOOTPATHS AND BRIDLEWAYS.

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The County Council's duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

The County Council has a discretionary power to extend this grant and will, in normal circumstances provide a 100% grant by arranging to carry out all the work at no cost to the landowner. This discretionary grant will be withdrawn if landowners fail to co-operate or are obstructing other rights of way. *Highways Act 1980 section 146.*

If an occupier of land wishes to install additional stiles or gates on footpaths or bridleways they must apply in writing to the County Council for authority to do so. To erect stiles or gates without this authority is an unlawful obstruction and is a criminal offence (**see obstructions**). The only circumstance for which the County Council can provide authorisation for the erection of new stiles/ gates is that the structures are required for stock control purposes. (This does not include horses.)

Highways Act 1980 section 147.

Stiles and gates cannot be erected for security or other purposes and may be regarded as obstructions to the highway. (**See obstructions**).

Stiles and gates cannot be erected on RUPPs (restricted byways) and byways

SURFACE OF PUBLIC RIGHTS OF WAY.

The County Council as the highway authority owns the surfaces of all public rights of way, the landowners interest only extends to the sub soil. It is an offence to interfere with the surface of a public right of way to the detriment of users and the County Council has a duty to protect the interests of users and the public right of way. The County Council will take enforcement action to ensure the surfaces of public rights of way unlawfully disturbed are reinstated. (**See also enforcement and ploughing and crops**).

Occupiers of land can disturb the surface of a right of way by special licence if they first apply to the County Council to do so and by statutory licence in respects of ploughing. (**See ploughing and crops**).

(10)

TREE BRANCHES AND LIMBS ACROSS PUBLIC RIGHTS OF WAY.

If a branch of a tree has fallen across a public right of way such that the way is obstructed the County Council has adopted the following policy. It will contact the owner of the tree and request that the branch is removed within a predetermined time. If the owner fails to comply with this request the County Council will serve notice on the owner of its intention to remove the branch and recover from the person the costs incurred.

Highways Act 1980 section 150 (4) (c).

WIDTH OF PUBLIC RIGHTS OF WAY.

There is no general rule applying to the width of public rights of way and the width is a matter of fact to be determined on each occasion based upon the following. The width may be set out in an historical document or it may be the width of the way between boundaries such as hedges or fences. Alternatively the width may be that which the public have customarily enjoyed. In the absence of the foregoing the County Council will require a reasonable width to be made available which would be sufficient for two users to pass. In the case of a footpath, this can be regarded as 2 metres. In the case of a bridleway 3 metres and in the case of a byway 5 metres.

An encroachment into the width of a public right of way is an obstruction and a criminal offence and the County Council will deal with encroachments according to protocols. **(See also encroachment, obstruction and enforcement).**

Statutory default widths apply to all rights of way but only in relation to ploughing and reinstatement following ploughing. These are as follows. (See also ploughing and crops.)

	Headland path	crossfield path
Footpath	1.5 metres	1 metre
Bridleway	3 metres	2 metres
Road used as public		
Path (restricted byway) and byway		3 metres
<i>Rights of Way Act 1990 Schedule 12A</i>		3 metres

If you have any queries about the above matters or if you would like further advice about Public Rights of Way please contact the Rights of Way Maintenance Manager, Mr Michael Taylor at:

Whitegate Station
Whitegate Way
Clay Lane
Marton Winsford



DANGEROUS LAND ADJOINING A PUBLIC RIGHT OF WAY.

From time to time the County Council encounters unfenced dangers on adjoining land which present hazards to path users. The County Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him to remove or adequately fence the danger. The County Council can require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice the council may carry out the work and recover the costs from the owner.

Highways Act 1980 section 165.

DEFINITIVE MAP

Definitive Maps are a legal record of the public's right of way. The County Council is responsible for the Definitive Map. If a way is shown on the Definitive Map then it is conclusive evidence of public rights along the way unless there has been a legally authorised change.

There may also be additional public rights over land which have not yet been recorded on the map or there may be rights which have been incorrectly recorded. The Definitive Map can be amended by legal order if evidence of missing rights of way is discovered or to correct errors in previously recorded information.

DOGS ON PUBLIC RIGHTS OF WAY.

Dogs are allowed on public rights of way but they must be kept under close control at all times. There is no requirement in law for a dog to be on a lead. A path user who allows a dog to wander off the right of way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path or to worry livestock the owners are advised to keep the dog on a lead.

ELECTRIC FENCES.

Electric Fences across a Public Right of Way

An electric fence erected across a public right of way without a safe means of crossing is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way. The protocol the County Council has adopted in these matters is firstly to ask the owner of the electric fence to remove it immediately or if it is necessary for agriculture to provide an adequate means of crossing it on the line of the path. The latter will require authorisation by the County Council as it would constitute a new stile, (see stiles and gates). If the owner fails to agree to either of these

courses of action the County Council will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature the County council will consider prosecution for obstruction.

Highways Act 1980 section 137, 137Z, 143 and 149.

Electric Fences alongside a Public Right of Way

Where an electric fence runs alongside a public path it may be a danger to and a nuisance to members of the public. If in the opinion of the County council this is the case then the County Council has a protocol of firstly asking the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in the County Council removing the fence and recovering costs from the owner.

Highways Act 1980 section 165.

ENCROACHMENT.

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred or alleged to have occurred the County Council is duty bound to investigate and the following action will be taken.

Consideration will be given towards whether the encroachment has actually occurred and is materially affecting the way or may do so in the future. This may require considerable research including historical research to establish the legitimate width of the highway, **(see width of public rights of way)**. If it is demonstrated to the County Council's satisfaction that encroachment has occurred but it is not materially affecting the path or the rights of users the County Council may regard it as *de minimis*. In these circumstances the County Council will inform the person responsible that their actions are unlawful and any additional encroachment will result in enforcement action to remove all the encroachment.

If the encroachment has been found to the County Council's satisfaction to be materially affecting the right of way and the rights of users the following approach will be taken to have it removed. Firstly the circumstances will be brought to the attention of the person responsible and they will be asked to remove the encroachment within a reasonable time-scale to be determined by the County Council. If this fails to secure the removal of the encroachment the County Council will commence enforcement action in respect of the obstruction. **(See Obstructions).**

GATES, (SEE STILES AND GATES).**HEDGES AND TREES ADJACENT TO PUBLIC RIGHTS OF WAY.**
(SEE ALSO TREE BRANCH ACROSS PUBLIC RIGHT OF WAY).

In most circumstances the responsibilities of the County Council do not extend to the maintenance of hedges and trees at the side of public rights of way. Where a hedge overhangs or obstructs a public right of way the County Council has a right to remove so much of the overgrowth to prevent obstruction to pedestrians. Additionally the council has a power to require the owners of overhanging hedges to require them to lop or cut back the hedge within a period of 14 days. *Highways Act 1980 section 154.*

If a byway open to all traffic is being damaged by the exclusion of light and air due to adjacent hedges or trees the County Council has a power to seek an order at a magistrates court to require the owner to cut back sufficient to prevent such damage. However before employing this power the County Council will discuss the matter with adjacent landowners and request that the hedges or trees be cut back or agree to carry out the work in conjunction with the owner as part of a larger project.

Highways Act section 136

LIABILITY FOR PATH USERS.**Landowners**

Owners and occupiers of land crossed by public rights of way can be liable for injuries caused to path users by their negligence. For example if a stile were to collapse under a walker or if a path user were to be injured by an electric fence placed across a path then the injured party may pursue a claim against the occupier of the land.

Occupiers Liability Act 1957

The County Council

As Highway Authority the County Council is responsible for the surface of Public Rights of Way. In certain circumstances the County Council will be liable for injury caused to person using a Public Right of Way if the injury is due to a negligent act with regard to the surface of the path.

MISLEADING SIGNS AND NOTICES ERECTED ON PUBLIC RIGHTS OF WAY.

Misleading and unlawful signs can deter people from lawfully exercising their right to use paths and the County Council has a duty to prevent such occurrences. Signs erected on a Public Right of Way can be removed by the County Council. Signs erected affecting a public right of way but on adjacent land can be dealt with on application to the Magistrates Court. The Magistrates may impose a fine or order the offender to remove the sign on pain of a continuing fine for each day it remains.

Highways Act 1980 section 132. National Parks and Access to the Countryside Act 1949 section 57.

OBSTRUCTIONS

Obstructions and encroachments which can be readily removed

The County Council has a duty at statute law to remove all obstructions and encroachments to public rights of way. *The Highways Act 1980 SS137 & 137Z as amended by the Countryside and Rights of Way Act 2000.* The County Council also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Cheshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. Depending on circumstances, offenders are normally given 7 days to comply. This informal notice will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the County Council will remove the obstruction and recover costs from the offender.

The County Council has a protocol of prosecuting for obstruction for any subsequent offence as well as taking the direct action outlined above.
Highways Act 1980 S143

In certain circumstances the County Council will consider prosecution rather than direct enforcement action for example if it is impractical to take enforcement action. In such circumstances the council will pursue a conviction and a magistrates court order to instruct the offender to remove the obstruction within a specified time. Magistrates may impose an ongoing fine if the offender fails to remove the obstruction within the time specified.

Highways Act 1980 section 137Z as amended by the Countryside and Rights of Way Act 2000.

The problem is discussed with the offender, the law and the County Council's protocol is explained.

An appointment is arranged with the Rights of Way Enforcement Officer and the Rights of Way Diversions Officer. The offender is given the opportunity to apply for the diversion of the path.

The meeting is confirmed in writing together with a summary of the legislation involved and the County protocol.

If no application is forthcoming after a three month period, a letter is sent to the offender allowing a further twenty eight days to submit the application.

If after the twenty eight day period, the offender has still not submitted an application, a final letter is sent. This explains that, if an application is not submitted within the next fourteen days, enforcement proceedings will be commenced under the Highways Act 1980 S137Z (as amended by the Countryside and Rights of Way Act 2000). The offender's local Member will also be informed of the situation at this stage, if he/she has not been involved already.

Recent changes in the law now mean that, in cases where the offender will not comply with a request to apply for the diversion of a path, a Court may order the offender under Highways act 1980 S137Z as amended by Countryside and Rights of way Act 2000 to remove the obstruction within a specified time period. If the obstruction is not removed during that time period, the offender may be fined (currently up to £20,000) and, if the obstruction still remains, the offender liable to a further fine equivalent to one twentieth of the original fine for each day the obstruction remains in place (currently up to £1000 per day).

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MEETING : RIGHTS OF WAY COMMITTEE
DATE : 27 JANUARY 2003

REPORT OF : JULIAN PELLATT, COUNTY RURAL AND RECREATION
OFFICER

Contact : Mike Taylor, Public Rights of Way Maintenance Manager
Officer (01606) 301482

AMENDMENTS TO THE PUBLIC RIGHTS OF WAY ENFORCEMENT PROTOCOLS

INTRODUCTION

1 Members will recall that following adoption by committee on 19 July 2001 of the enforcement protocols the booklet "Public Paths an A to Z of Problems and Protocols" has been published. The booklet has been largely well received, indeed requests have been made by several other authorities to adopt it for their procedures and protocols. The booklet has proved extremely useful to officers and has greatly assisted officers in dealing more effectively with a wide variety of rights of way infringements and queries.

BACKGROUND

2 Members will recall that the content of the publication was largely based on officer experience in dealing with real Rights of Way issues. It was, therefore, foreseeable that new matters would come to light leading to new material being added to the leaflet.

3 There have been several matters that have led officers to believe that amendments need to be made to the leaflet. In addition there have been some comments about the sections dealing with obstructions, (page 9 and 10) both by offenders and user group representatives which officers believe need clarification. Furthermore, recent case law regarding the serious obstructions caused by Mr Van Hoogstraten, (*The Queen in the matter of Kate Ashbrook and East Sussex County Council, 2002*) has provided guidance which needs to be taken into account when the Council determines how to deal with obstructions.

4 The current stock of the booklet is considerably depleted but it is proposed that until the stocks are sufficiently drawn down to warrant a reprint these amendments will be added as an addendum.

5 The proposed amendments to the booklet are attached in the Appendix to this report.

RECOMMENDED:

That the amendments to the enforcement protocols contained in the Appendix be approved.

Local Member	N/A
Background Documents	N/A
Available for Inspection at	N/A

ADDITIONS AND AMENDMENTS TO PUBLIC PATHS AN A-Z OF PROBLEMS AND PROTOCOLS.

Rope Across a Path.

This is an infrequent problem but can be dangerous to path users. There is special provision in the 1980 Highways Act s162 to make this a specific offence. It is intended to amend the protocols to include a section dealing with this problem as follows:

*Where a rope has been placed across a public right of way, the rope will be removed by officers and the owner contacted. If removal of the rope will cause livestock to stray, rather than remove the rope immediately, the landowner will be contacted and asked to remove the rope. Failure to comply with the request to remove the rope or if the offence reoccurs following the removal of the rope and contact by officers the Council will consider prosecution of the offender. The Council will also remove the rope if encountered by officers on subsequent occasions.
Highways Act 1980 s162.*

Obstructions.

A closer definition of permanent obstructions as set out on page 10 of the booklet and of the way they are treated by the County Council is proposed.

Permanent obstructions will be regarded as substantial buildings and structures, which would require specialist engineering resources and considerable cost to remove. Fences, walls, timber and small buildings such as garages, sheds etc would not fall within this category. The decision as to whether or not an obstruction is permanent will be taken by officers of the Council.

Following judicial guidance given in the recent case of *Kate Ashbrook and East Sussex County Council 2002* it is clear that it is now necessary to weigh all the circumstances of the case when the Council determines how to respond. This will include the attitude of the offender to the offence. The amendments to the protocols currently dealt with in the section entitled “**Obstructions and encroachments which are more permanent**” on page 10 of the booklet are set out below:

Obstructions which are longstanding.

Obstructions of public rights of way are regularly encountered. The obstructions have often occurred through the ignorance of the landowner and/or the failure of the planning process. Indeed, many such obstructions are historical and have been inherited by the current owners. In these circumstances the Council will deal with the problem in the following manner:

Where the obstruction is minor it must be removed by the owner. If the owner fails to remove the obstruction within a period of time deemed reasonable by Council officers, enforcement action using powers available in Highways Act 1980 s143 will be taken and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender. If the offence recurs prosecution of the*

offender will also be considered. The County Council will only consider a request to divert the path following the removal of the obstruction.

Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.*

If the owner fails to acknowledge the problem, or does not co-operate with the Council to remedy it either by diverting the path or removing the obstruction then this failure will be given considerable weight. In these circumstances consideration will be given to prosecution and seeking a magistrates order to remove the obstruction.

If an application to divert the path fails then the Council will expect the original route to be made available by the owner. If the owner fails to do this then the Council will consider prosecution and seek a magistrates order to remove the obstruction.

Highways Act 1980 s137, 137ZA and 143.

**Council officers will determine whether an obstruction is minor or substantial.*

Obstructions which are more Recent.

From time to time obstructions occur during or as a consequence of development. Very often the offender has received advice from the County Council and planning officers but has chosen to ignore it. In these circumstances greater weight will be given to the behaviour of the offender before considering any proposal to divert the path.

Obstructions which are minor and can be readily removed will be dealt with by taking direct and immediate enforcement action using powers available in Highways Act 1980 s143 and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender and consideration will be given to prosecution.*

Where the obstruction is more substantial and it is costly and less practical to remove it then consideration will be given to prosecution and seeking a magistrates order to remove the obstruction.*

Highways Act 1980 s137, 137ZA and 143.

**Council officers will determine whether an obstruction is minor or substantial.*

MEETING : RIGHTS OF WAY COMMITTEE
DATE : 27 JULY 2007

REPORT OF : COUNTY MANAGER - TRANSPORT AND REGENERATION
 Contact Officer : Mike Taylor, Maintenance and Enforcement Manager
 Tel. (01606) 541811. Email: mike.taylor@cheshire.gov.uk

PUBLIC RIGHTS OF WAY ENFORCEMENT PROTOCOLS, PROPOSED AMENDMENTS.

INTRODUCTION

1 Members will be aware that the enforcement protocols and the booklet based on them, "Public Paths a Guide to Problems and Protocols" are dynamic and are intended to change and develop in response to changing circumstances.

2 Members will also appreciate that to remain effective the Protocols and associated guidance must be responsive to changing circumstances and carry the endorsement of this committee.

3 The need for additions to the protocol have been identified following specific enforcement circumstances involving obstructed rights of way and following the statutory implementation of the right for members of the public to apply for public path diversion orders (PPDOs).

SUMMARY OF PROPOSALS

Removal of obstructions when the existence of a path is disputed:

4 Highways Act 1980 s130 sets out the duty to protect public paths and remove obstructions.

5 Officers have had to deal with instances where landowners acknowledge that paths have been obstructed and are unavailable. They have refused to remove the obstructions on the basis that the path was incorrectly added to the Definitive Map and they intend to make an application to have the path deleted from the Definitive map.

6 In these circumstances the County Council may remove the obstructions citing in support the advice in DOE Circular 2/1993. Paragraph 30 of that circular states:-

"Evidence may be available to suggest that a public right of way shown on the definitive map does not exist. However, the map is conclusive as to the rights of way shown to exist on it (without prejudice to the existence of other rights-see section 56 (1) of the 1981 Act) and the path or way must remain open and available for use until the definitive map has been amended, or closure procedures have been complied with."

7 It is therefore proposed to add at Section x, paragraph y, the following paragraphs to the enforcement protocols. These are also intended to address the

exceptional circumstances where the county council acknowledge from the evidence within its own records that there is a manifest error on the Definitive Map:-

“In circumstances where obstructions are being kept in place on a public path by an occupier on the basis of an assertion that the path has been added to the Definitive Map in error, for example an assertion that the path is not in fact a public right of way or that it has been recorded in the wrong location, the Council will act upon the advice contained in paragraph 30 of DOE Circular 2/1993 and re-open the path and make it available for use. This action will be taken notwithstanding any pending or intended applications which may result in an amendment to the Definitive Map. This means that the path must be re-opened and kept open and available for public use until such time as it is conclusively established, through due legal process, that the path in question is not a public right of way.

In exceptional circumstances where there is clear evidence contained within County Council records of a manifest error in the Definitive Map, at the discretion of the Officers, it may be decided that no action will be taken to re-open the path and make it available for use. In reaching such a decision Officers, in addition to any other considerations deemed to be relevant, shall consider:-

- *The strength of evidence indicating that a mistake has been made when recording the path on the Definitive Map*
- *Whether the obstruction in question is substantial and the cost and practicality of securing its removal; and*
- *the availability of an alternative route”.*

Right to apply for Public Path Diversion Orders:

8 Another report being considered by this committee sets out the details of this important new provision. The current system of dealing with PPDOs forms an important part of the County Council’s enforcement protocol.

9 Members will recall that part of the protocol states that where there is a minor obstruction to a path (e.g. a fence or hedge) the landowner is required to remove the obstruction before an application to divert the path is accepted. There is a concern, therefore, that in similar situations where there is now a “right to apply” the landowner may refuse to remove the obstruction and seek a direction from the Secretary of State to ensure that the County Council determines his application.

10 In these circumstances it is envisaged that enforcement proceedings will commence against the landowner immediately on his application and it is proposed to add the following paragraph to the enforcement protocols:-

“Where an obstruction is minor and the owner intends to make an application to divert the path under the provisions of Highways Act 1980 s119ZA the County Council will immediately initiate enforcement proceedings to ensure that the path is made available.”

CONCLUSION

11 These amendments to the enforcement protocols are necessary to ensure that the protocols are kept up to date with changing circumstances and legislation and are

able to remain as an effective part of the County Council's implementation of it's duty of protection.

RECOMMENDED:

That Members endorse and authorise the amendments to the enforcement protocols.

This report has been prepared with regard to the Checklist for Members Reports and due consideration has been given to the relevant matters in its preparation.

Local Member	N/A
Background Documents	N/A
Available for Inspection at	N/A

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APPENDIX 5Amendments to “A-Z” “Public Paths a Guide to Problems and Protocols”**INTRODUCTION;**

It is intended to amend the introduction to the leaflet in order to reflect the changes since Local Government Re-Organisation. It is also felt to be important to include a “rider” in relation to the legalities included in the booklet.

Proposed wording:

This leaflet is intended to provide a guide to the Cheshire East Council’s protocols regarding issues and queries, including enforcement, which are commonly associated with Public Rights of Way. It is hoped that it will assist members of the public, landowners, path users and other interested parties to understand more readily some of the legislation which applies to Public Rights of Way and the manner in which Cheshire East Council is obliged to apply to legislation to the various issues.

The effectiveness of the legislation in protecting the Public Rights of Way network and the rights of the public depends crucially on the compliance of those regulated. In creating this leaflet and endorsing the Public Rights of Way Enforcement Protocol, the Cheshire East Council has adopted the central and local government “Concordat on Good Enforcement”.

The Public Rights of Way team is happy to provide advice and information in relation to Public Rights of Way issues. We are also open about how we go about our work. We will always be keen to discuss general issues or specific problems. We believe that prevention is better than cure and that our role involves actively working with both landowners and users. We will provide a courteous and efficient service and our staff will always identify themselves by name. Our staff will also provide contact details. In cases where disputes cannot be resolved without formal enforcement any right of appeal or complaints procedure will be explained, with details of the process and the likely timescale.

This document is intended as a guide only and is not an exhaustive document on Public Rights of Way legislation and case law. You are entitled to seek independent legal advice on any aspect covered by this booklet; it is not intended as a substitute for that advice.

SURFACE:

It is intended to alter the current wording in the booklet in order to make the Council’s and landowner obligations clearer in relation to the surface of Public Rights of Way. It will outline the steps that will be taken by Officers should the surface be unlawfully “disturbed”. It is also felt necessary to include new information regarding the enclosing of a route because if a path is enclosed

(i.e. by a fence or hedge etc) the responsibility for the surface of the path will alter. Information will also be given about when it will be appropriate for the Council to contribute to the re-surfacing of a route which is also used for private vehicular access.

Proposed Wording:

Surface:

“Ownership” of the surface; The Cheshire East Council is the Highway Authority and as such, ordinarily, the surface of any Public Right of Way is “vested” in the Council. Effectively, the Council owns the surface in most cases. (*See below Enclosure of a Public Right of Way).*

“Disturbance” of the surface; The majority of Public Rights of Way do not have a bound or metalled surface and as such can be susceptible to damage by motor vehicles.

It is an offence to interfere with the surface of a Public Right of Way to the detriment of users. This means that a landowner/occupier may not dig up or even re-surface a Public Right of Way without the prior authorisation of the Council. Landowners/occupiers must ensure that their private use of the route; for example in motorised vehicles, does not damage the surface of the path. If damage is caused it must be re-instated by the landowner/occupier. (see also Ploughing)

How the Council will deal with this offence; For a first offence the Council will explain the law to the offender and advise about re-instatement of the surface. The offender will then be given an appropriate period to re-instate the surface to the satisfaction of the Council. *The period given will be at the discretion of the Officer concerned and will be dependent on the level of damage and the works required. If there is a danger to the public immediate re-instatement will be required.*

If the offender fails to re-instate the path or if the re-instatement is unsatisfactory a notice will be served giving a reasonable period for the surface to be properly reinstated. Failure to comply with the notice will result in the Council’s contractors carrying out the works with the costs being re-couped from the offender.

If the offence recurs the Council will immediately serve a formal notice requiring re-instatement, it will also consider prosecuting the offender.

Enclosure of a Public Right of Way; Where a Public Right of Way crosses previously unenclosed land and the landowner/occupier encloses his land e.g. by erecting a fence or planting a hedge alongside the path, he then becomes responsible for the maintenance of the surface of the route. He will also be responsible if an accident occurs due to problems with the surface.

If a path is enclosed in this way, particularly if the path is made very narrow, there can be problems with the surface falling into disrepair very quickly. If the surface does fall into disrepair the landowner/occupier will be required to make it good for example, by providing a better surface, carrying out drainage works or by increasing the width available.

STILES AND GATES:

On an enclosed route (e.g. a lane enclosed by hedges or fences), it was generally the case that a field gate across the route, should remain unlocked even though it may have a stile/gate available as an alternative alongside. This is because the full width of the route should be available to users at all times. Recent caselaw has indicated, however, that this is no longer the case. Where such a path leads directly onto the vehicular highway and there is a danger of livestock escaping onto that highway due to the field gate being left open, the landowner concerned is entitled to lock the field gate provided that there is alternative means of access alongside. That alternative means of access should be no more difficult to use than the field gate next to it. Therefore it should consist of a kissing gate or pedestrian gate, rather than a stile.

Proposed Additional Wording:

Where a field gate crosses an enclosed Public Right of Way (e.g. a lane enclosed by hedges) it should remain unlocked even if there is a stile or gate alongside it. The locking of the field gate will generally be construed as an obstruction to the highway and dealt with as such.

There is an exception to this however: If the path in question leads directly to a vehicular highway and the locking of the field gate will prevent livestock escaping onto the road no action will be taken in relation to the locking of the gate provided that an alternative means of access, such as a kissing gate or pedestrian gate, is provided alongside.

“CROSS COMPLIANCE” SINGLE PAYMENTS SCHEME:

From 1 January 2005 eleven direct subsidy schemes for farmers were replaced with one new scheme; the Single Payment Scheme (SPS). The Rural Payments Agency (RPA) - an executive agency of the Department of Environment, Food and Rural Affairs (Defra) - is responsible for making payments under the scheme as the accredited paying agency in England. It has also been designated as the Competent Control Authority for the purpose of administering the cross-compliance arrangements.

To qualify for SPS payments farmers must meet a range of ‘Good Agricultural and Environmental Condition’ standards (GAECs). They must also comply with a number of specified legal requirements relating to the environment, public and plant health, animal health and welfare and livestock identification. These are referred to as Statutory Management Requirements (SMRs).

There are a total of 17 GAECs and 9 SMRs which, together, make up the cross compliance standards and requirements. Most of these reinforce existing law and do not require the farmer to do anything new.

Where breaches are identified, RPA as the paying agency may need to apply a reduction to the farmer's SPS claim. The size of this reduction will depend on the severity, extent and permanence of the breach, and whether or not the failure to comply with the requirements was intentional.

One area in which the RPA feel would be particularly beneficial is that of Public Rights of Way (GAEC 8). The RPA has observed that Public Rights of Way seems to attract much public interest and requires a significant amount of enforcement work. Reporting of breaches identified during the course of the Council's normal work would enable RPA to include consideration of such breaches in the approval process for SPS payments. This may be viewed also as being of benefit to the Council in the context of our responsibilities under the Highways Act 1980, by increasing the deterrent effect and, thereby, helping to maintain access and amenity value for the public.

It is suggested therefore, that where a landowner/occupier fails to comply with Public Rights of Way legislation e.g. by ploughing a path, by planting a crop across a path or by obstructing a path, it would be appropriate and useful for this breach to be reported to the RPA. Officers have considered the stage at which they feel it would be appropriate and even-handed to report an offender to the RPA. It is felt that it would not be reasonable to send a report at first instance and that it would be more equitable to do this if the landowner/occupier failed to comply with an enforcement notice. This means that the offender would have already been given the opportunity to comply on two occasions. In this way Officers would avoid the possibility of sending a report to the RPA about a landowner/ occupier who had unintentionally broken the law. The only offenders we would report are those who had been made aware of the requirements on two occasions and were clearly flouting the legislation.

Proposed Wording:

Cross Compliance; Single Payment Scheme:

If a landowner/occupier breaches legislation in relation to Public Rights of Way he may also be in breach of the Department for Environment Food and Rural Affairs (DEFRA)'s Good Agricultural and Environmental Condition Standards (GAECs) and/Statutory Management Requirements (SMRs). DEFRA requires that these standards are met by landowners/occupiers in order for them to qualify for the Single Payment Scheme (SPS). If a landowner/occupier fails to comply with an enforcement notice issued by the Council in relation to Public Rights of Way, details of the offence will be sent to the Rural Payments Agency (RPA) and their SPS may be affected. Landowners/occupiers will be notified of the intention to report them to the RPA in the event of an offence in advance, so as to encourage co-operation.

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Genni Butler, Countryside Access Development Officer (Acting)
Title: Update on the Current Rights of Way Improvement Plan (2006-2011) and an Introduction to the Next (2011-2026)

1.0 Purpose of Report

- 1.1 To update Members on the progress of the current Cheshire County Council Rights of Way Improvement Plan (2006-2011) and to provide an introduction to the next Cheshire East ROWIP (2011-2026).

2.0 Recommendations

- 2.1 That the report be noted.

3.0 Financial Implications

- 3.1 None arising at present, though there will be a cost associated with the publication of the new ROWIP for Cheshire East in 2010/2011.

4.0 Legal Implications

- 4.1 None arising.

5.0 Risk Assessment

- 5.1 None arising.

6.0 Background and Options

- 6.1 Section 60 of the Countryside and Rights of Way Act (CROW) 2000 requires local authorities to prepare and publish a rights of way improvement plan and to assess and review the plan at intervals of not less than 10 years.
- 6.2 The aim of a ROWIP is to assess:-
- the extent to which local rights of way meet the present and likely future needs of the public;

- the opportunities provided by local rights of way for exercise and other forms of open-air recreation and the enjoyment of the authority's area; and,
- the accessibility of local rights of way to blind and partially sighted persons and others with mobility problems.

6.3 Projects currently being undertaken under the ROWIP include:-

- Nantwich Riverside Loop: development of a circular route under the Weaver Valley Regional Park banner;
- Wilmslow Newgate Landfill Site: creation of new bridleways following requests from users;
- Crewe-Nantwich Connect2: development of a new cycle route in conjunction with Sustrans and Highways;
- Middlewich Vision: improvements in public rights of way and cycling routes between residential areas and places of work under the Weaver Valley Regional Park banner;
- Peckforton Permissive Paths for horse riders: as described in a decision paper to be presented to this Committee.

6.4 It is a statutory requirement that the ROWIP will be fully integrated with the Local Transport Plan (LTP) being developed for the period 2011-2026. The LTP3 will consist of a 15 year strategy comprising five 3 year delivery plans. It is intended that ROWIP and LTP representatives are included within the governance structures of the respective plans.

6.5 Whilst the Council is tasked to publish a ROWIP, there is no legal duty to implement the proposals contained therein. The value of the document is seen in the fact that the ROWIP research, consultation and development encourages new ways of thinking about, and improving, both statutory and permissive rights of way networks and their linkages with green space and where people live. It is anticipated that funding for any projects identified by the ROWIP shall be sourced from the LTP, external funds and other partnerships.

7.0 Reasons for Recommendation

7.1 No decision is required by Members at present.

For further information:

Officer: Genni Butler
Tel No: 01606 271817
Email: genni.butler@cheshireeast.gov.uk

Background documents:

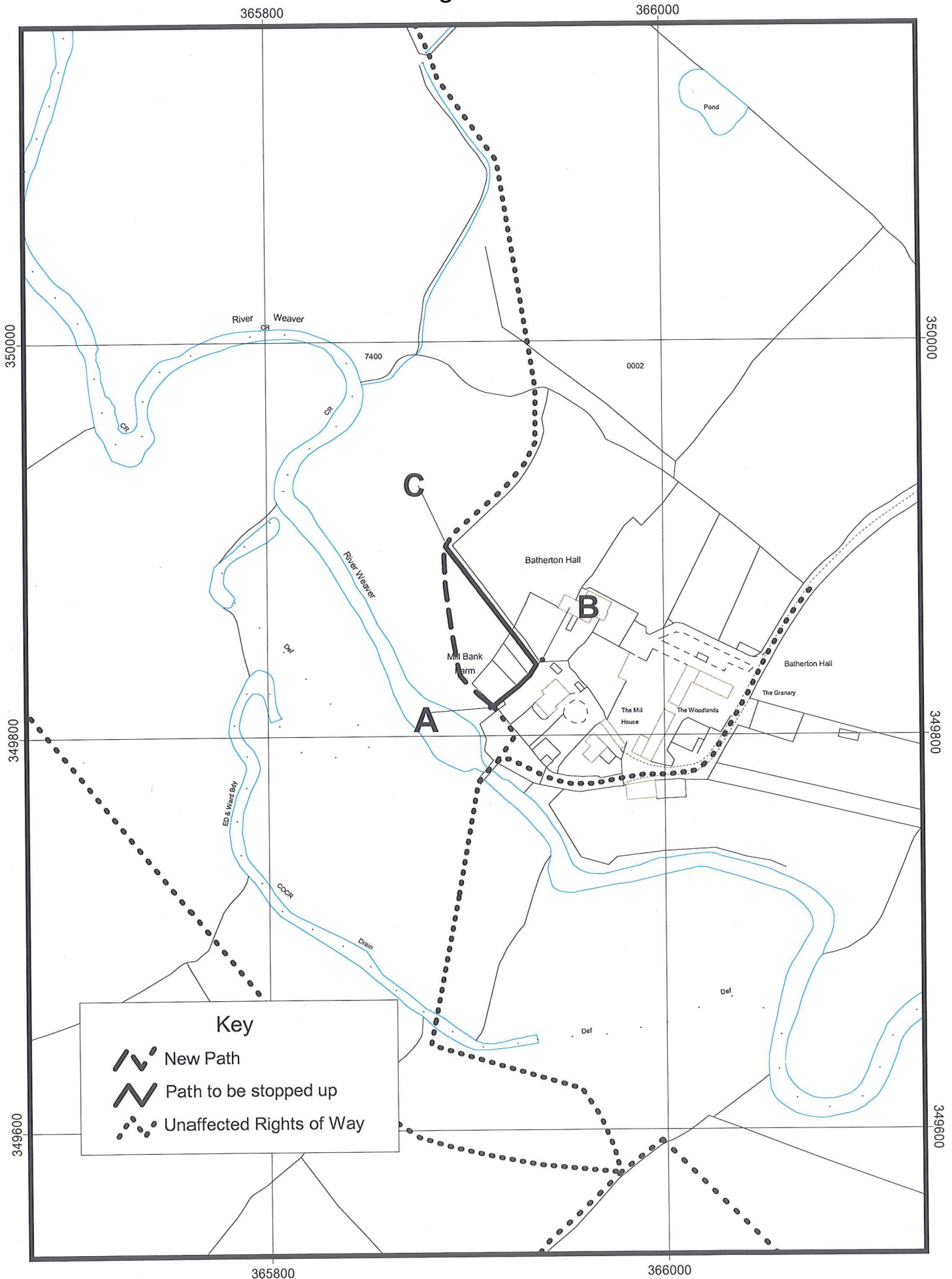
Cheshire County Council Rights of Way Improvement Plan 2006-2011, available on line at:

http://www.cheshire.gov.uk/countryside/Prow/rowip_final_document.htm

Background documents held at Public Rights of Way Office, Phoenix House, Winsford.

HIGHWAYS ACT 1980 Section 119

**Application for the Diversion of
Public Footpath No. 1 (Part) Parish of Batherton**



Proposed Diversion of Footpath No. 1 Batherton

Scale
1:2500

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Plan No.
HA/043/FP1/001

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CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Highways Act 1980 – Section 119
Application for the Diversion of Public
Footpath No. 1 (Part) Parish of Batherton

1.0 Purpose of Report

- 1.1 The report outlines the investigation of an application to divert Public Footpath No. 1 in the Parish of Batherton. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to divert the footpath.

2.0 Recommendations

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 1 Batherton as illustrated on Plan No. HA/043/FP1/001 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Financial Implications

- 3.1 None

4.0 Legal Implications

- 4.1 None

5.0 Risk Assessment

- 5.1 N/A

6.0 Background and Options

- 6.1 An application has been received from Mr G Horton of Millbank Farm, Batherton ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the Parish of Batherton.
- 6.2 Public Footpath No. 1 Batherton commences at its junction with Footpath No. 28 Nantwich at OS grid reference SJ 6553 5085 and runs in a generally south easterly direction to join Public Bridleway No. 3 Batherton at OS grid reference SJ 6591 4978 at the River Weaver. The section of path to be diverted is shown by a solid black line on Plan No. HA/043/FP1/001 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C.
- 6.3 The applicant owns the land over which the current path runs and also the land over which the proposed diversion would run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the applicant to make an order diverting the footpath.
- 6.4 The current definitive line of footpath no. 1 (A-B-C) runs through the applicant's garden and is currently obstructed by a wall and fence. The applicant constructed the wall and created his garden many years ago without realising this was the definitive line of the route; as people have always walked diagonally across the field as a more direct route. It was only recently that he was made aware of the correct line of the footpath.
- 6.5 The proposed diversion (A-C) would benefit the applicant as the garden to his property would then remain private. It would be inconvenient for the applicant and undesirable for the public to have to walk through the private garden if the definitive line was reinstated. The proposed diversion runs along the outside of the garden wall then cuts diagonally across the field to rejoin the definitive line. It is a more direct route and is currently in use by walkers.

7.0 Consultations

- 7.1 The local Councillors have been consulted about the proposal. Councillor Brickhill responded by asking questions to which Officers have replied. He asked whether the applicant owns the field onto which the path is to be diverted; the applicant has confirmed that he does own this field. It was asked if the field is in the flood plain of the River Weaver; the applicant states it is not as the proposed route is ascending between points A and C on Plan No. HA/043/FP1/001, it is the other side of the river that is in the flood plain. It was asked if crops are ever planted in the field; the field is currently used to graze sheep and the applicant has no intention of this changing. Finally Councillor Brickhill asked how it is proposed to mark this new footpath; Officers stated the new footpath should not require any new signage except for a new waymarker near to point A on Plan No. HA/043/FP1/001.

- 7.2 Stapeley and District Parish Council have been consulted about the proposal; no response has been received.
- 7.3 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 7.4 The user groups have been consulted. No comments have been received.
- 7.5 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals. Natural England has been consulted and has indicated they have no comment to make at this time.
- 7.6 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion will have no detrimental affect on use of the way.

8.0 Reasons for Recommendation

- 8.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraphs 6.4 and 6.5 above.
- 8.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 8.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

- 8.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 8.2 above.
- 8.4 There are no objections to this proposal. It is considered that the proposed footpath will be more enjoyable than the existing route due to the existing route being obstructed and that the new route is not 'substantially less convenient' than the existing route. It will also be of benefit to the landowner in terms of his privacy. It is therefore considered that the proposed route will be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

For further information:

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Background Documents: PROW file 043D/383

HIGHWAYS ACT 1980 Section 119

**Application for the Diversion of
Public Footpath No. 26 (Part) Parish of Bollington**



CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Mike Taylor, Greenspaces Manager
Title: Highways Act 1980 – Section 119
Application for the Diversion of Public
Footpath No. 26 (Part) Parish of Bollington

1.0 Purpose of Report

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 26 in the Parish of Bollington. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to divert the footpath.

2.0 Recommendations

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 26 Bollington as illustrated on Plan No. HA/028/FP26/002 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Financial Implications

- 3.1 None

4.0 Legal Implications

- 4.1 None

5.0 Risk Assessment

5.1 N/A

6.0 Background and Options

6.1 An application has been received from Mrs C. Drake of Swanscoe Farm, Kerridge ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 26 in the Parish of Bollington.

6.2 Public Footpath No. 26 Bollington commences at its junction with Footpath No. 8 Higher Hurdsfield at OS grid reference SJ 9395 7594 and runs in a generally north westerly direction to join Public Footpath No. 39 Bollington at OS grid reference SJ 9376 7650. The section of path to be diverted is shown by a solid black line on Plan No. HA/028/FP26/002 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C. On the Plan the proposed diversion appears to run through a field boundary, however this is not the case, this boundary is not in place on the ground.

6.3 The applicant owns the land over which the current path runs and also the land over which the proposed diversion would run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the applicant to make an order diverting the footpath.

6.4 The application has been made in the interest of the landowner due to security and safety concerns. The current line of footpath no. 26 (A-B) takes the public down the driveway towards Swanscoe Farm, it goes through the working farm yard, alongside a barn, then continues in a northerly direction along a field edge. The applicant has been the victim of burglary on a number of occasions and having already taken other preventative measures, now wishes to secure the area around the property and outbuildings. The applicant also has safety concerns about the public walking through the working farm yard. The existing path skirts around the corner of a barn, runners and walkers turn the corner to be confronted by a working farm yard with tractors and moving machinery being a potential hazard. The applicant also breeds a rare breed of sheep and the diversion would also be of benefit in terms of stock management.

6.5 A letter of support has been submitted with the application from Mark Cotton, Crime Reduction Advisor from Cheshire Constabulary. Mr Cotton has visited the property to discuss security arrangements with the applicant. He states, *'I note that the present location of the footpath allows any member of the public (regardless of intent) access to your farm and its buildings. This by its very nature gives persons a legitimate excuse to be on the grounds of your farm and increases their anonymity. It is clear that the proposed diversion, as you discussed*

with me carries no significant disadvantage to members of the public, whilst having a significantly high impact on the safety and security of your property. On this basis I support your application.'

- 6.6 The diversion (A-C) would benefit the applicant as the public would no longer need to walk through the farm yard. The proposed route is currently in use as a permissive footpath running through an adjacent field. It is similar in length, offers easier access with 2 pedestrian gates rather than field gates and stiles and provides a better view. Taken as a whole it is considered that the proposed diversion is not 'substantially less convenient' than the existing route.

7.0 Consultations

- 7.1 The local Councillors have been consulted about the proposal. No comments have been received.
- 7.2 Bollington Town Council have been consulted about the proposal. In a letter dated 13th May 2009 the Town Council recommend the proposed diversion for approval on the condition that the new footpath is constructed to the same standard as the existing path.
- 7.3 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 7.4 The user groups have been consulted. The only response came from The Ramblers Association who state they have no objection to the proposed diversion provided the surface of the path will be suitable for walking in all seasons.
- 7.5 The field in which the proposed footpath runs is regarded as a site of Biological Importance, however the Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals. Natural England has been consulted and has indicated they have no comment to make at this time.
- 7.6 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area. Due to the natural terrain across the field between points A-C, there are some small sections where there is a steeper gradient than on the current route. The applicant is happy to do the necessary works to level the path where required, it is therefore considered that the proposed diversion will have no detrimental affect on use of the way.

8.0 Reasons for Recommendation

- 8.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner,

lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraphs 6.4, 6.5 and 6.6 above.

8.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 8.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

8.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 8.2 above.

8.4 There are no objections to this proposal. It is considered that the proposed footpath is not 'substantially less convenient' than the existing route. It will also be of benefit to the landowner in terms of security and safety. It is therefore considered that the legal tests for the making and confirming of a diversion order are satisfied.

For further information:

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Background Documents: PROW file 028D/382

**Proposal for Permissive Paths for Horse Riders in the
Parish of Peckforton**



CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 1 June 2009
Report of: Genni Butler, Countryside Access Development Officer (Acting)
Title: Proposal for Permissive Paths for Horse Riders in the Parish of Peckforton

1.0 Purpose of Report

- 1.1 A landowner has agreed to grant permissive paths for horse riders on condition that liability for the surface of the routes and liability for personal injury of users is assumed by the Council. It is for this reason alone that the matter is being presented to the Rights of Way Committee; permissive path matters are not usually brought to the Committee for consideration.

2.0 Recommendations

- 2.1 That approval be given for the Council to enter into a permissive path agreement with the landowner to create permissive paths for horse riders in the Parish of Peckforton.

3.0 Financial Implications

- 3.1 The maintenance costs associated with the proposed permissive paths for horse riders can be considered to be minimal; the paths are woodland tracks with surfaces of firm mud and compacted stone.

4.0 Legal Implications

- 4.1 The current legal status of the routes is public footpath. This would not change as a result of the proposed permissive path agreement.

5.0 Risk Assessment

- 5.1 The Council's Risk Management and Insurance advisors have indicated that the addition of the proposed permissive paths for horse riders would not incur any additional costs in relation to the Council's insurance.
- 5.2 There is a short section (100 metres) of cobbles on a gradient on one of the proposed routes. Signage and mounting blocks will be installed to recommend to users that they dismount to cross this section. Drainage works will be undertaken to reduce the ice cover that may develop over this section.

6.0 Background and Options

- 6.1 The Countryside Access Development Team were approached by the Habitats and Hillforts Landscape Partnership Scheme Team with regard to a proposal to create two permissive paths for horse riders through the Peckforton Estate. The Habitats and Hillforts Landscape Partnership Scheme is a partnership of local organisations and residents who are working together to improve the hillforts of the sandstone ridge which runs through Cheshire. Amongst the aims of the scheme is the enhancement of access to the hillforts area.
- 6.2 The first route runs from OS grid reference SJ 5327 5829 to the south of Horsley Lane, Beeston, and along public footpath No. 1 in the Parish of Peckforton in a south-westerly direction for a distance of 1551 metres to its junction with Pennsylvania Lane (UX1639) at OS grid reference SJ 5272 5698 at the Borough boundary.
- 6.3 A decision paper is to be presented to the Rights of Way Committee of Cheshire West and Chester Council at its meeting on 29th July 2009, recommending that a permissive path agreement be entered into for the short section of the route at the northern end of this proposed permissive path, connecting with Horsley Lane in the Parish of Beeston.
- 6.4 The second route runs from Hill Lane (UX1848) at OS grid reference SJ 5266 5657 along public footpath No. 15 in the Parish of Peckforton, in an easterly direction for a distance of 714 metres to its junction with Hill Lane (UX781) at OS grid reference SJ 5333 5669.
- 6.5 Some surface drainage and furniture improvements would be undertaken with funding from the Habitats and Hillforts Landscape Partnership Scheme in order to bring the proposed routes up to standard suitable for horse riders.
- 6.6 A permissive path agreement is essentially a private agreement between the Council and the individual(s) concerned and therefore it is not necessary for a formal consultation to be carried out.

7.0 Reasons for Recommendation

- 7.1 The proposed permissive paths for horse riders would offer users a traffic-free route for the riding and the enjoyment of the area, from which a circular route could be easily designed using relatively quiet roads.
- 7.2 Consultation undertaken for the published Rights of Way Improvement Programme (ROWIP) of the former Cheshire County Council identified the need for an increase in the number of routes available to horseriders, particularly in this area of the Borough which has a very limited existing network available to such users.

- 7.3 The proposal is also in line with the published Equestrian Strategy of the former Cheshire County Council and meets one of the aims of the Habitats and Hillforts Landscape Partnership Scheme supported by the former Cheshire County Council.
- 7.4 In comparison to the length of the existing rights of way network the additional liabilities in respect of the proposed permissive paths for horse riders would be minimal.

For further information:

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Background documents:

Case File available at Public Rights of Way Office, Phoenix House, Winsford.

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