

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.
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- 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:

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Background Documents: None