

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:

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Background Documents: Appendices 1-5