

MEETING : RIGHTS OF WAY COMMITTEE
DATE : 27 JULY 2007

REPORT OF : COUNTY MANAGER - TRANSPORT AND REGENERATION
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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 its 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
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Background Documents	N/A
Available for Inspection at	N/A