

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting:	1 March 2010
Report of:	Greenspaces Manager
Title:	Proposed Policy for Structures (Path Furniture) for Public Rights of Way

1.0 Report Summary

- 1.1 The Council has the discretionary power to authorise the erection of structures (stiles and gates) on public rights of way where it is satisfied that these are necessary to prevent the ingress or egress of animals on land which is used, or is being brought into use, for agriculture or forestry or for the breeding or keeping of horses. Structures that were in place when the Definitive Map was first compiled (in the 1950s) are deemed to be automatically authorised, but any additional structures, including those on any sections of path created through a public path diversion or creation order, offer the opportunity for the Council to define a specification.
- 1.2 In February 2009 the Department for Environment, Food and Rural Affairs issued draft guidance relating to structures on Public Rights of Way.
- 1.3 As a result of the production of this and in anticipation of the final guidance, the informal policies on structures currently operating in the Rights of Way Team were reviewed. It is hoped that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

2.0 Recommendations

- 2.1 That Members approve the proposed policy relating to structures erected on Public Rights of Way. This includes newly authorised structures and structures which are put in place following the making of a Public Path Order (usually Diversion Orders made under the Highways Act 1980 and Town and Country Planning Act 1990). The policy comprises the following four principle points: -
- Wherever possible, structures which are erected on Public Rights of Way will comply with the British Standard BS5709:2006. Where this is not possible, structures will comply with the local "Cheshire East Standard for Path Furniture" identified in the Appendix to this report.

- Where a new path is created following the making of a Public Path Order, gates or gaps will be used rather than stiles as boundary structures. Gates or gaps must comply with either BS5709:2006 or the “Cheshire East Standard for Path Furniture”.
 - Where an application is made under s147 Highways Act 1980 by an owner, lessee or occupier of agricultural land for the erection of a structure to prevent the ingress or egress of animals, permission will be given for the erection of a gate and not for a stile¹. The gate must comply with either BS5709:2006 or the “Cheshire East Standard for Path Furniture”.
 - Where an owner, lessee or occupier wishes to replace an existing stile on their land, the Council will use its best endeavours to facilitate a less restrictive option by replacing the stile with a gate or a gap².
- 2.2 That Members approve the appended local “Cheshire East Standard for Path Furniture” for the specification of structures to be used by the Council on Public Rights of Way in the future.

3.0 Reasons for Recommendations

- 3.1 The decision to adopt this policy will help to fulfil the Corporate aims of improving the health and wellbeing of the community by improving accessibility to the Rights of Way network and thus encouraging greater use. The policy is in line with the statement of intent 11.5 in the ROWIP to ensure the option of ‘least restrictive access’ and the policy will go some way to fulfilling the Council’s obligations under Disability Discrimination legislation.
- 3.2 It is hoped, therefore, that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Members

¹ Provided that the criteria of s147 are met and it is considered appropriate to authorise a structure. Authorisation may be subject to such conditions as Officers see fit.

² See note on historic structures at 11.6 below.

6.0 Policy Implications including - Climate Change - Health

- 6.1 A decision to adopt this policy will align with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles), the Local Area Agreement (National Indicator 8 Adult participation in sport and active recreation) and the Health and Wellbeing Service commitment to the Change4Life initiative.
- 6.2 The policy is in line with the statement of intent 11.5 in the Rights of Way Improvement Plan (ROWIP) to ensure the option of 'least restrictive access'. It also accords with the British Standard on Gaps, Gates and Stiles BS5706:2006 and it is hoped that this policy will go some way to fulfilling the Council's obligations under current Disability Discrimination legislation.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None arising

8.0 Financial Implications 2009/10 and Beyond (Authorised by the Borough Treasurer)

- 8.1 The costs of installing furniture on a new path as the result of the making of a Public Path Order will be borne by the applicant except where the Order is made in the interests of the public.
- 8.2 Under s146(4) of the Highways Act 1980, the Council is obliged to contribute 25% of the costs reasonably incurred by a landowner in the installation of a gate or stile across a footpath, bridleway or restricted byway. Where a new structure is authorised under s147 Highways Act 1980, the costs of the structure will normally be borne by the applicant, with the costs of installation borne by the Council. Effectively this is a 75%/25% split of the total costs and thus meets the Council's obligations under s146(4). Installation by the Council's contractors will also ensure that the furniture is installed well and in the correct location.
- 8.3 Where budgets allow, Officers will exercise their discretion in offering more than the statutory 25% contribution, as this has proven to be an effective incentive towards securing more accessible structures on the network.

9.0 Legal Implications (Authorised by the Borough Solicitor)

The relevant legal considerations are set out below.

- 9.1 The Disability Discrimination Act 1995 and 2005 (DDA) places a duty on the Council to promote equality of opportunity for access to services and to encourage participation by people with disabilities, and makes it unlawful to discriminate against people with disabilities in the provision of goods, facilities and services without a justifiable reason. The Council is required to consider

the needs of disabled users in the work it carries out and to review existing policies, procedures and practices that make it impossible or unreasonably difficult for people with disabilities to use or access a provided service.

- 9.2 In producing a Rights of Way Improvement Plan (ROWIP) an Authority must give specific consideration to the accessibility of local Rights of Way to blind or partially sighted people or those with mobility problems (DEFRA, Statutory Guidance 2002).
- 9.3 The Highways Act 1980 (s146 (1)&(4)) states that any stile, gate or other similar structure across a footpath, bridleway or restricted byway shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath, bridleway or restricted byway. The appropriate authority shall contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred in compliance with subsection (1) above and may make further contributions of such amount in each case, having regard to all the circumstances they consider reasonable.
- 9.4 The Highways Act 1980 (s147(1) & (2)) states that:

“The following provisions of this section apply where the owner, lessee or occupier of agricultural land.....represents to a competent authority, as respects a footpath or bridleway that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, its expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.”

and

“Where such a representation is made the authority to whom it is made may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other work.”

Section 69 of the Countryside and Rights of Way Act 2000 adds a new section (147ZA) to the Act which empowers a highway authority to enter into an agreement with the owner, etc, to carry out work for replacing or improving a stile or gate that will result in it being safer or more convenient for persons with mobility problems, and the authority agrees to pay the whole or part of the cost.

- 9.5 The Highways Act 1980 (s137) states that:
- “(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.”

10.0 Risk Management

- 10.1 It is anticipated that the adoption of this policy will reduce the risk of legal challenge against the Council and against landowners under the DDA. It may also reduce the likelihood of objections to Public Path Orders, which are time consuming and costly to deal with.
- 10.2 Because it is less likely that an accident will occur with a gate than with a stile, it is reasonable to assume that the adoption of the policy will reduce the potential risk for landowners in relation to the possibility of claims being made against them for personal injury.

11.0 Background and Options

- 11.1 The Department for Environment, Food and Rural Affairs' draft guidance on structures on Public Rights of Way documented the conclusions of a subgroup of the Rights of Way Review Committee, which was convened in order to address the implications of the DDA for structures on public rights of way. The subgroup comprised representatives from:-

- Department for the Environment, Food and Rural Affairs
- Ramblers' Association
- Byways and Bridleways Trust
- Institute of Public Rights of Way and Access Management
- County Surveyors' Society
- British Horse Society
- Natural England
- Open Spaces Society

Drafts of the document were also circulated to the Disabled Ramblers and to the Fieldfare Trust in the course of development. This guidance gives advice to local authorities, relevant bodies and interested individuals on recording, authorising, managing and maintaining, structures on public rights of way.

- 11.2 As a result of the production of the guidance the informal policies adopted by the Rights of Way Team were reviewed. As stated in the introduction to this report, it is hoped that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

Fundamental to this is the understanding that any restriction imposed by a structure on the free exercise of public rights of the lawful user on any right of way is an offence under section 137 of the 1980 Act and also a common law nuisance **unless** :

- it is recorded on the Definitive Map and Statement as a limitation;
- it meets the specification and constraints of an authorisation made under section 66, 115B, or 147 of the 1980 Act or;
- it can be shown to have existed at the time that the way was dedicated (i.e. represents an unrecorded limitation).

11.3 Four areas were looked at in detail:

- The erection of path furniture (i.e. stiles and gates etc.) on new paths following the making of a Public Path Order (usually a diversion made under the Highways Act 1980 or the Town and Country Planning Act 1990).
- The erection of path furniture on Rights of Way as a result of an application for authorisation made under s147 Highways Act 1980.
- The replacement of existing path furniture on the network.
- The specification of structures.

Each area will be looked at in turn.

11.4 Structures erected following the making of a Public Path Order:

Members will be aware that it is possible for members of the public to apply to divert Public Rights of Way provided that certain legal criteria are met and the correct legal process is followed. Where a path is diverted, the new route provided must not be substantially less convenient or enjoyable than the original. The new route must also be brought up to a suitable standard having regard to the DDA and the Statement of Intent 11.5 in the ROWIP: *“We will ensure that wherever landowner/environmental constraints allow the option of “least restrictive access” is applied whenever new path furniture is installed.”*

In practice this means that gates will be erected or gaps will be left in boundary structures (e.g. fences or hedges) on newly diverted paths. Because they are more difficult to use and prohibit some individuals from walking Rights of Way, stiles will only be installed in exceptional circumstances; for instance, if ground conditions make it impossible for gates to be installed. Stiles cannot be used where, for instance, the landowner simply has a preference for stiles over gates, or because there are other stiles on the same route.

Diversion Orders will only be confirmed and made operative once suitable works are carried out on the new path, including the erection of gates rather than stiles.

11.5 Applications made under s147 Highways Act 1980:

Under s147 a Competent Authority (in this case Cheshire East Borough Council as Highway Authority) has the discretion to allow the erection of structures across footpaths or bridleways in order to prevent

the ingress or egress of animals. The application can only be made by the owner, lessee or occupier of agricultural land.

Structures cannot be erected across Rights of Way for other reasons for example; personal/individual privacy or security.

Where structures are authorised by the Council under s147, this may be done on a conditional basis, for example; for enabling the Right of Way to be exercised without undue inconvenience to the users. In order to increase accessibility therefore, it is suggested that where a structure is licensed under s147 a gate should be used rather than a stile. Again, stiles will only be installed in exceptional circumstances for instance, if ground conditions make it impossible for gates to be installed.

Authorisation for structures may be revoked if the conditions of authorisation are breached, or if there is no longer a need for the structure (e.g. the land ceases to be used for the keeping of stock).

11.6 The Replacement of Existing Path Furniture:

It is the responsibility of the landowner concerned to ensure that path furniture which is already in place on the network is maintained in a safe condition and to a suitable standard, so as to prevent unreasonable interference with the public using the path (s146 Highways Act 1980).

It is not possible for the Council to insist that existing stiles are replaced with gates, however, in accordance with the aims of the ROWIP and the DDA, Officers will endeavour to persuade landowners to replace stiles with gates where possible, employing the “least restrictive option”.

In undertaking this, Officers will be aware that some historic structures may be listed, and that others which are not listed may nonetheless be considered by local people to constitute “heritage features”. In such cases, local feeling will need to be balanced against the needs of people with limited mobility and a record kept of how the decision to replace, or not to replace, was made.

If a suitable funding source can be found, for example, it may be possible to resurrect the popular ‘Kissing Gate Scheme’ whereby Parish Councils could secure landowner agreement and nominate paths in their area to have the stiles replaced with Kissing Gates, which were provided by the Council. Alternatively, an increase in the Public Rights of Way Team’s materials budget would allow gates to be funded.

11.7 Specification of Structures:

British Standard for Gaps, Gates and Stiles BS5709:2006 covers most, but not all, structures on Public Rights of Way. One of the eight “rules” for the application of the standard refers to the use of “least restrictive

option” and says that “the selection of a gap, gate or stile which permits people to use a path crossing a field boundary such as a hedge or fence shall result in as little restriction as possible for potential users whilst meeting the actual agricultural needs of the landowners”.

Wherever possible, Officers will utilise British Standard specification furniture; however, not all path furniture is specified by the standard and not all British Standard path furniture will be appropriate in every situation; for instance, where environmental conditions make installation difficult. There are also situations where the Council uses path furniture which is more accessible and an improvement on the British Standard. For example, the BS5709:2006 specification for a “narrow stile” is narrower than the usual stile which we would use on Rights of Way and is therefore more difficult to use.

It is therefore suggested that the Council adopts a “local standard”. The DEFRA draft guidance on Structures on Rights of Way states:

“The sole duty placed upon highway authorities that is discussed within this document (other than those that have existed for some time under the 1980 and 1981 Acts) is to meet the requirements of the DDA. Although recommendations are put forward here it is for each authority to specify their policies, procedures and standards to a level such that they can demonstrate adherence to the DDA”.

A local “Cheshire East Standard for Path Furniture” would therefore accord with this guidance. A list of specifications for structures which are commonly used on Public Rights of Way in Cheshire East is appended to this report. Many of the structures comply with BS5709:2006, some improve on it, and some are not covered by the British Standard.

11.8 Consultations

- 11.9 As set out at 6.1, this policy represents a local response to the objectives of the DEFRA guidance on structures. The guidance was prepared with input from various bodies representing a variety of user groups.

On a local level, the policy accords with the principles of the Cheshire ROWIP, which was subject to a wide public consultation, including specific focus groups with people with mobility difficulties and learning disabilities. One of the recommendations arising from that research was that the Council should:

“...ensure that PROW have the easiest to use physical barriers (where these are unavoidable) such as kissing gates or wicket gates, paying attention to the types of latches used.”

- 11.10 A draft of the policy was also presented to the Cheshire Local Access Forum on 18 December 2009. The Local Access Forum is a statutory advisory body representing a range of users of rights of way (including

people with disabilities), elected Members and landowners. Highway Authorities must have regard to their advice in matters relating to access to the countryside.

11.11 The Forum had a range of views on the draft policy: -

- There were some comments for and against the use of galvanised steel structures in the countryside. Some members were against the use of galvanised steel on account of its appearance. Other members were supportive of galvanised steel because of its durability and better value for money than timber. The Forum noted that galvanised steel structures may be powder-coated black or green, though this is more expensive.
- The Forum also thought that there should be an exception to the general principle of replacing stiles with more accessible structures where a stile constitutes a heritage feature (e.g. some stone “squeeze” stiles are part of historic dry stone walls). In practice, it will be difficult to determine when a stile may or may not constitute a heritage feature unless it is listed. Where heritage may be an issue, officers will check whether a particular structure is listed; if not, then replacement will be a decision for the landowner and the maintenance officer to make together, taking into account the character of the surrounding area and local feeling.
- The Forum felt that the standard for a stile should mention that anti-slip treatments are available for the tread-boards.
- There was general support for the principle of increasing the accessibility of the path network for people with limited mobility. One member felt that where proactive stile replacement was undertaken, this should be done in priority areas first, on well-used paths. This is the type of approach that has been applied in previous years under the ‘kissing gate scheme’ and can be applied again if funds are found to run a similar scheme in the future.

12.0 Overview of Year One and Term One Issues

12.1 None arising

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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