

# CHESHIRE EAST COUNCIL

## REPORT TO: RIGHTS OF WAY COMMITTEE

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Date of meeting:	June 2010
Report of:	Greenspaces Manager
Title:	Public Rights of Way Annual Report 2009/10 and Work Programme 2010/11

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### **1.0 Report Summary**

- 1.1 This report records the achievements of the Council in terms of its public rights of way functions during the year 2009/10 and sets out the proposed work programme for the year 2010/11. Details are set out in Appendices.

### **2.0 Recommendations**

- 2.1 That Members note the Annual Report for 2009/10 and approve the proposed Work Programme for the Public Rights of Way Team 2010/11.

### **3.0 Reasons for Recommendations**

- 3.1 As set out in the background and options section of the report (section 11).

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All Members

### **6.0 Policy Implications including - Climate Change - Health**

- 6.1 The Rights of Way Improvement Plan (see Appendix 2) contributes towards the Council's policies relating to climate change, social inclusion, sustainable travel and health and wellbeing.

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

- 7.1 None arising

## **8.0 Financial Implications 2010/11 and Beyond (Authorised by the Borough Treasurer)**

8.1 None arising

## **9.0 Legal Implications (Authorised by the Borough Solicitor)**

9.1 Contained within the body of the Report.

## **10.0 Risk Management**

10.1 Members are requested to note the fact that the Public Rights of Way Team does not currently have the resources to carry out path inspections under section 58 of the Highways Act 1980 (see 11.5.1. below). The County Council lost the 2 posts of 'survey assistant' under the 'Transforming Cheshire' restructure in 2007. These posts assisted the County Council in defending against insurance claims where individuals had accidents on public rights of way. For example, a claim for an accident on Sound FP6 was successfully defended in 2004, because the path had been inspected by the survey assistant. It has not been possible to continue the survey in such a systematic and meticulous fashion ever since the posts were lost. Bridges continue to be surveyed every 2 years, but paths in general do not.

10.2 There was one claim against the Council in 2009/10 for a defect on the surface of a public right of way (claims relating to structures are referred to the landowner). The claim has not yet been settled. Liability has been admitted, but the Council's external claims handlers are still waiting to receive detailed medical evidence from the claimant's solicitors before an agreement on damages can be reached.

10.3 As described below at 11.7.2, one member of the Legal Orders Team left to go on maternity leave in March 2010, due to return March 2011. Insufficient funds are available within the Greenspaces Service to allow the recruitment of maternity cover. The work of the Legal Orders Team will suffer as a result; in particular, applications for Definitive Map Modification Orders will not progress very far and will certainly fail to be determined within the statutory 12 month timeframe. One result of this may be that applicants seek directions from the Secretary of State against the Council<sup>1</sup>, to have their applications determined within a given time. A number of such directions being issued against the Council would have extremely negative results from a public relations perspective. It would also place existing staff under even more pressure.

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<sup>1</sup> Schedule 14 paragraph 3 (2), Wildlife and Countryside Act 1981

## **11.0 Background and Options**

11.1 The work programme for the Public Rights of Way Team is usually approved by the Rights of Way Committee each April, in the form of a series of targets. Targets are set in the context of the 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

11.2 In addition to those targets, and reflecting the range of new work imposed by the Countryside and Rights of Way (CROW) Act 2000, targets in relation to four other areas are also set:

- Implementation of the Rights of Way Improvement Plan
- Implementation of the CROW Act 2000: New Duties and Powers
- Countryside Access Development and Initiatives
- General Support and Administration

11.2 Because of Local Government Reorganisation (LGR), the County Council's Rights of Way Committee was not able to set such targets for the new authorities at its last meeting on 23<sup>rd</sup> January 2009.

11.3 Cheshire East Council's Rights of Way Committee met for the first time on 1<sup>st</sup> June 2009. At that meeting, it considered a 'position statement' for the Public Rights of Way Team, which included targets for 2009/10 loosely covering the same areas as in previous years. Each area is examined individually, below, with the successes of 2009/10 and targets forming the 2010/11 work programme contained within the relevant appendices. However, it should be recognised that the 2009/10 targets were set at a time of great uncertainty, with unknown quantities in terms of structures, staff and financial resources.

## **11.4 Network Management – Maintenance and Enforcement**

11.4.1 The Maintenance and Enforcement Team comprises three full-time officers who deal with the protection and maintenance of the network. They operate on an area basis, with each officer responsible for approximately 630 kilometres of the network. Within their area, they are responsible for maintenance and enforcement to remove obstructions and keep the path network available for use.

11.4.2 Since the implementation of LGR, the maintenance and enforcement officers have found their workload increasing, due to

the fact that the disaggregation of the path network into East and West resulted in a longer area network to look after (an additional c.90km each). Conversely, their area budgets have decreased, meaning that officers have more paths to look after, with less money.

- 11.4.3 An outline report and work programme for the Maintenance and Enforcement Team is attached at Appendix 1. The component tasks represent the “Milestones” identified in the former Countryside Agency’s National Targets.

## **11.5 Path Inspection**

- 11.5.1 The Public Rights of Way Team does not have dedicated staff to carry out path inspections under section 58<sup>2</sup> of the Highways Act 1980 (see above at 10.1). Another form of path inspection exists in the form of the former national Best Value Performance Indicator 178: percentage of paths deemed ‘easy to use’. Although councils are no longer required to report on BVPI178, the national group, the County Surveyors’ Society, is keen that authorities continue to collect this data and in Cheshire it has been collected as a local indicator for the Local Transport Plan - LTP 13.
- 11.5.2 The team duly carried out the BVPI178 inspection this year: the percentage pass rate was 84%, which compares very favourably with a pass rate of 69% for the County Council’s last survey in 2008.

## **11.6 Rights of Way Improvement Plan - Access Development**

- 11.6.1 There is one full-time member of staff dedicated to the implementation of the existing ROWIP and access development projects. They are also jointly responsible for the administration of the Cheshire Local Access Forum and for writing the new ROWIP for Cheshire East Council, to be published as part of the Council’s third LTP in 2011. This post sits outside the Public Rights of Way Team and is line-managed by the Visitor Services and Community Manager.
- 11.6.2 A Project Board and Steering Group have been established to assist with the process of developing Cheshire East’s new ROWIP. The Project Board consists of a broad range of officers from different Council services, who all contribute their expertise and knowledge in helping define the scope and focus of the new document, and (it is anticipated) in identifying resources to implement the ‘Statement of Action’ once it is adopted. The Steering Group consists of elected Members from the Rights of Way Committee, together with the portfolio-holder for Health and

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<sup>2</sup> Section 58 HA80 = “Special defence in action against a highway authority for damages for non-repair of highway”. Under this section it is a defence to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the path of the highway to which the action relates was not dangerous to traffic. In other words, systematically inspecting the network for defects (and subsequently repairing them) provides the Council with a defence against claims for damages.

Wellbeing. Their role is to direct the project programme and to monitor progress against the project time plan.

- 11.6.3 Against the background of developing the project management framework for the new ROWIP, work has continued this year in delivering access projects from the existing one. Appendix 2 contains an outline report and work programme for Access Development. Project delivery will inevitably be curtailed 2010/11 as the demands of developing ROWIP2 take precedence.

#### 11.7 **Legal Orders Team**

- 11.7.1 The legal orders team comprises three officers (2 x full-time, 1 x part-time) 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 day to day enquiries.

The team has an income target relating to public path orders and temporary closures (£43,316), which is an erroneous 'hangover' from the County Council in the days when there was a dedicated income-generating post for this area of work – the income provided the salary for the post. In the absence of such a post in the structure for Cheshire East, this target could not be met. At the time of writing, the income generated by the team for the financial year 2009/10 stood at £26,649. This is impressive in the absence of a dedicated income generation officer. An income-generation post is currently being recruited on what will initially be a fixed 1 year contract to address this.

- 11.7.2 One member of staff from this team has recently left to go on maternity leave, due to return March 2011. As there is insufficient budget within the Greenspaces Service to permit the recruitment of maternity cover, it is inevitable that the work of this team will suffer as a result, and it is likely that backlogs of Public Path Orders and Definitive Map Orders will increase as the remaining staff try to keep on top of the daily demands of responding to enquiries, dealing with planning applications (which are time-limited) and their existing case-loads.
- 11.7.3 Details of the outstanding workload and the forecast work programme for the Legal Orders Team are attached at Appendix 3 which includes a summary of this year's work.

#### 11.8 **Policy development**

- 11.8.1 Cheshire East Council inherited a raft of County Council policies relating to the public rights of way function. Where necessary, these were amended for the new authority and approved by the Rights of Way Committee: -

- Amendments to the Maintenance and Enforcement Protocol
- Statement of Priorities for Definitive Map Modification Orders
- New Charging Policy for Public Path Orders, Searches & Temporary Closures
- Policy for Structures on Public Rights of Way
- Standard Response Times for Different Categories of Problem on the Network

## 11.9 **Local Access Forum**

11.9.1 Following LGR, both authorities formally decided to continue with one, pan-Cheshire Local Access Forum. The Cheshire and Warrington Local Access Forum held its last meeting on 18<sup>th</sup> September 2009 (the LAF year runs from September to September), following which Warrington Borough Council formally decided to withdraw from the Forum and to join forces with the Halton Local Access Forum. The last Annual Report of the Cheshire and Warrington Local Access Forum is attached as Appendix 4.

11.9.2 Therefore the first meeting of the new 'Cheshire Local Access Forum' was held on 18<sup>th</sup> December 2009. This included an induction session for the 7 new members of the Forum. The agenda included: -

- Election of Chair and Vice-chair
- Approval of the annual report
- Post-LGR update from CEC and CWAC
- Consideration of the draft Cheshire East Policy on Structures on Public Rights of Way
- A presentation on the CWAC Local Transport Plan 3
- A report on DEFRA Circular 1/09 (implications for LAFs and Local Authorities)
- ROWIP updates from CEC and CWAC
- Feedback from the north-west regional LAF chair's meeting

11.9.3 The Cheshire Local Access Forum is still to decide its priorities for 2010, but will continue in its role as a statutory advisory body for matters relating to countryside access. It will respond to consultations on corporate policy (e.g. the Local Transport Plan, Sustainable Communities Strategy etc.) and will be closely involved in the development of the new CEC and CWAC ROWIPs. Its next meeting is on June 18<sup>th</sup> 2010.

11.9.4 The Cheshire Local Access Forum is to be complemented by 2 new Rights of Way Fora for CEC and CWAC. These liaison groups will be based on the model for the former Cheshire Rights of Way Forum, and will meet twice a year, meeting for the first time in June 2010. They will be constituted:

- To enable interest groups (users, landowners and others) to engage in constructive debate and discussion about issues of law, policy, principle and work programming with members and officers of the Council;
- To encourage understanding of each others' concerns;

- To participate in the consultation process associated with the new Rights of Way Improvement Plan for Cheshire East.

As was previously the case, the Forum will not meet to discuss the facts, merits or demerits of individual cases, which should be dealt with direct with the relevant officers.

## 11.10 **Budget**

11.10.1 The team has suffered, along with the rest of the Greenspaces Service, from a lack of clarity over the exact budget available to it in the financial year 2009/10, which can be attributed to the disruption caused by LGR and the difficulties experienced by the finance teams over the amalgamation of County and Borough resources, which has taken priority. The table below represents our 'best estimate' as to what our resources were (and thus what were our spending limits), based on the high-level budget information provided to us at the start of the financial year.

Centre	Type Costs	2009 - 10
		Budget £
<b>Countryside Access Development</b>	Employees	37,446
	Transport	3045
	Supplies/Services	8643
	Capital (from LTP)	24,000
<b>Maintenance and Enforcement Team</b>	Employees	184,039
	Transport	11,396
	Contractors	99,621
	Materials	23,241
	Capital	0
	Income target (enforcement charges)	-4050
<b>Legal Orders Team</b>	Employees	137,791
	Transport	2410
	Contractors	13,574
	Materials	0
	Capital	0
	Income target (from PPOs and Temp closures)	-43,316
		360,049

11.10.2 The base revenue budget for contractors and materials has not increased over the past 6 years (there was a one-off capital element last year under the County Council). The increasing demands on the budget after LGR (see 11.4.2 above) resulted in funds being almost completely expended by December 2009 and work other than planned pre-allocated commitments has had to be

cut back. In addition, a moratorium on all non-essential spending was imposed over the Health and Wellbeing service in October 2009 and remains in place.

- 11.10.3 It is of great concern that Cheshire East has inherited a base level of budget committed to the maintenance of the network that is falling well short of meeting current and future expectations. This is especially so in a climate of severe budgetary pressures which the authority faces across all service areas.

#### **11.11 Conclusion**

- 11.11.1 The Cheshire East Public Rights of Way Team began 2009/10 with sense of anticipation; a sense of a new beginning with new opportunities and challenges that despite the hard work that it would undoubtedly create, had an appeal to all of us. Indeed after the seemingly unending pressures of firstly the Single Status Review and secondly the Transforming Cheshire structural review, staff felt that the new authority would offer a period of consolidation, allowing us to concentrate on what we do best, continuing to develop our services.
- 11.11.2 As well as continuing with the “day job” the team have been concentrating on the disaggregation of the last remaining unit assets and this process is now complete. I would like to take this opportunity to pay tribute to the group of people whose professionalism and effort has done so much towards making the rights of way network in Cheshire East what it is today.
- 11.11.3 The continuing interest and support from Members, senior officers, the Cheshire Local Access Forum and the various user group representatives has been greatly appreciated. This operating partnership provides a template for other authorities and has enabled our high standards of service delivery to be continued.

### **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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