



meeting **ENVIRONMENT AND SUSTAINABILITY SELECT COMMITTEE**

date **30 JANUARY 2006**

agenda item number

REPORT OF THE DIRECTOR OF ENVIRONMENT

POLICY FOR THE MANAGEMENT OF MOTORISED VEHICLE USE ON PUBLIC RIGHTS OF WAY IN THE COUNTRYSIDE

Purpose of Report

1. To seek the views of Environment and Sustainability Select Committee on the policy framework set out in the report in order to ensure a consistent approach to the management of vehicles on public rights of way by the County Council as Highway Authority, prior to submission to the Cabinet Member for Environment and Sustainability for approval.

Policy/Budget Framework

2. As Highway Authority, Nottinghamshire County Council, by virtue of its statutory duty under the Highways Act 1980 Section 130, has to ensure that the use and enjoyment of public rights of way is asserted and protected. With increased use of vehicles in the countryside a policy is needed to clarify the Authority's position in managing these rights. Power to approve the policy is delegated to the Cabinet Member for Environment and Sustainability.

Background

3. Over the last decade or so, vehicle use in the countryside has increased considerably with the availability of 4x4s, off road motorbikes and more recently mini motorbikes. Use of such vehicles can be legal, for people accessing agricultural land or residential property, or illegal – an act of trespass. Some of this use can involve public rights of way.

The Need for a Policy

4. This increase in access to vehicles has happened in tandem with a growing public feeling of annoyance towards such use of vehicles, arising from noise, pollution, aggressive behaviour, security of property and the impact on the character of the countryside. Research by DEFRA (January 2005) concludes that this public feeling is a mixture of perceived and real concern. A policy is

needed to deal positively with these concerns, but at the same time acknowledge the constraints of established legislation.

The Legal Position

5. Section 34 (Road Traffic Act 1988) makes it an offence to drive a motor vehicle anywhere other than on a road. Some public rights of way also have vehicle rights either because of their historic legal status, or through a wayleave granted to an occupier of land or property. Vehicles may also cross or use public rights of way by permission of the owner of the path (not normally the County Council). These constraints will need to be considered in any policy statement.

The Role of the County Council as Highway Authority in Managing Vehicles on Rights of Way

6. As Highway Authority, Nottinghamshire County Council is responsible for the surface of most rights of way and has powers to undertake improvements. Where wear and tear can be attributable to those using paths to gain access to land or properties the Authority will endeavour to secure a percentage cost of the repairs from third parties.
7. Additionally the Highway Authority can erect or authorise structures such as stiles, gates and barriers. Sometimes, such requests are made by land managers and residents in a response to what they believe to be unauthorised use of such routes by motorised vehicles. Such requests need to be given careful consideration because:
 - Rights of way, particularly byways, are an important resource for people with disabilities. Erection of such structures is almost certainly going to conflict with the Disability Discrimination Act 2000, and the Department's own policy on the authorisation of structures on rights of way.
 - 90% of byways and many footpaths and bridleways provide access to farm land.
 - Barriers often inconvenience land managers and the less able whilst doing little to deter the illegal motor vehicle user who will find another weak point in the boundary nearby to access the same route.
 - Barriers may displace unwanted vehicle access to nearby traffic free routes.

A Key Role for the Police Authority in Managing Illegal Use of Vehicles

8. Motoring offences committed under the Road Traffic Act are matters for the Police Authority, including the offence of driving a motor vehicle anywhere other than on a road, for example woodland and agricultural land. Nottinghamshire County Council can and does work with the police, particularly in hot-spot areas such as the "Desert" in Clipstone Forest, and on rights of way that clearly carry no vehicle rights.

9. Under Section 59 of the Police Reform Act 2002, a police officer has powers to stop vehicles (including those used on rights of way) if he/she believes the vehicle is being used in a manner which is causing or is likely to cause alarm, distress or annoyance to members of the public. This officer will also have the power to seize and remove the vehicle after giving a warning. This provision has already been used in Nottinghamshire with some success with recent press reports of vehicles being seized on land in the Netherfield/Colwick area..
10. Some vehicle routes are currently obstructed by vegetation or vehicular barriers. To ensure that the authority complies with its duties under the Highways Act to keep public rights of way open and available, and there is no infringement of the Disability Discrimination Act, such obstructions will need to be removed. The policy sets out procedures to be followed which include consultation with the police and local communities in enforcing this policy.

National Guidelines for Formulating a Policy for Vehicles on Public Rights of Way

11. DEFRA are currently reviewing the publication, "Making the Best of Byways: a Practical Guide in Managing the use of Vehicles on Public Rights of Way" (DEFRA 1987). The revised publication will continue to identify three key problem areas, which will be addressed in the policy statement:
 - Uncertainty of status of routes. Problems frequently arise as a result of uncertainty of the legal status and therefore the type of access permissible, ie pedestrians, cyclists, horseriders and vehicle users. The Authority will therefore continue to meet its duty under the Wildlife and Countryside Act 1981 to clarify the status of all rights of way. Clarification of status will then allow unambiguous signposting of such routes in terms of permissible access.
 - Conflicts between users. Better information through correct signposting, waymarking, and up-to-date information on where all types of users can legitimately go will form part of a programme carried out by the Environment Department to address misunderstandings. Work with the police, parish councils and local communities will be key to its success.
 - Physical deterioration of routes. Routes such as Byways and unsurfaced rural County roads tend to be used by all classes of user. Most of these routes have unsealed surfaces and receive little or no maintenance with motor vehicle traffic in mind. Surfaces can deteriorate through vehicle use, particularly where there are steep gradients. Some vehicle damage is due to agricultural vehicles and those accessing property. DEFRA states that 90% of byways have private vehicle rights. It is therefore not always possible to determine who or what has caused erosion. Damage may also be caused by significant numbers of horse riders and cyclists.

Consultation

12. As part of the process of involving stakeholders, land owners and users before coming to a final conclusion on a new policy, opportunity was taken to discuss

this issue at the Rights of Way Conference held at Boughton Pumping Station on 25 November 2005. This took the form of a Topic Group Workshop, at which many of the issues covered in this report were raised. Of particular concern was the lack of provision for off-road users of all categories. The workshop felt that this problem needs addressing urgently through the provision of an appropriately regulated facility and that the County Council has a role in bringing this about.

POLICY STATEMENT

13. Nottinghamshire County Council has to ensure, by virtue of its statutory duty under the Highways Act 1980 Section 130, that where the public has a proven right, or there are reasonable grounds to assume that such a right exists, to drive a motor vehicle on a public right of way, or unsurfaced highway maintainable at public expense, the right to the use and enjoyment of such highways be asserted and protected. Therefore the County Council will:

- Seek to resolve doubt that may be held over the types of rights existing over such routes on an individual basis, through investigation of the available evidence to determine the nature and extent of those rights. If the County Council believes there is sufficient evidence to suggest public vehicular rights, then an order will be made under the appropriate sections of the Wildlife and Countryside Act 1981. Traffic Regulation Orders (TROs) will not be used as a means of determining status on disputed routes.
- Under current Government legislation, and in line with Government advice, investigate any applications for BOAT (Byways Open to All Traffic) status in accordance with the Council's statement of priorities in dealing with applications to modify the Definitive Map. This statement sets out that all claims will be dealt with in chronological order of receipt. Exceptions to the priority given to an application may be made if there is a particular need, eg if a route is affected by potential development.
- Where necessary ensure that routes are signposted and waymarked at their correct legal status. To ensure clarity to the user, this may include creating dual status for some routes currently recorded in the County Council "List of Streets", to allow its recording on the Definitive Map and Statement, and thus its depiction on the popular Ordnance Survey map series.
- Use appropriate management techniques to deal with the physical deterioration of these routes in accordance with the advice contained in the DEFRA publication 'Making the Best of Byways', and other published good practice guides, to ensure that the standard of maintenance is consistent with the purposes for which they are used by the general public.
- Carry out maintenance, as on all rights of way, on a priority basis, given that resources are limited. Attention will be paid to those routes where public safety, in using the route, is deemed to be at risk, but also taking into consideration such factors as:

⇒ an objective assessment of the condition of the route surface;

- ⇒ the importance of the route to the whole network, in line with guidance to be provided in the forthcoming Rights of Way Improvement Plan (November 2007);
 - ⇒ the source of the damage. Where surface damage is reasonably attributable to private use (including agricultural vehicles) then the Authority will endeavour to secure a percentage of the cost of repair from third parties.
 - ⇒ the recorded level of complaints from members of the public including users;
 - ⇒ the level of use by the general public;
 - ⇒ whether it is part of a County Council promoted route;
 - ⇒ its potential as a route for those with mobility problems including the use of "motorised mobility scooters".
- Work closely with the Police Authority, seeking their support in dealing with vehicle use that is in contravention of the Road Traffic Act and encourage use of Section 59 of the Police Reform Act (2002) where appropriate.
 - Where there is a need to prevent further surface damage resulting from continuous use with motor vehicles, and remedial maintenance measures have failed or are considered not to be suitable, seek to involve vehicle users (and on occasions horseriders and cyclists) in voluntary restraint agreements, in line with guidance issued by DEFRA. Such voluntary restraint may include encouraging occupiers and land managers to use alternative more sustainable routes to access land and property.
 - Seek to impose Traffic Regulation Orders, after appropriate consultation, including all statutory consultees, and in accordance with Government advice, procedural regulations and DoE Circular 2/93 only where practical measures to alleviate problems and voluntary restraint agreements are considered inappropriate or have failed.

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