



meeting **FOOTPATHS AND RIGHTS OF WAY COMMITTEE**

date **2 SEPTEMBER 2009**

Corporate Director (Communities)

agenda item number

5

TERMS OF REFERENCE

Purpose of Report

1. To set out the terms of reference for the Committee. The report covers in broad terms how the Committee will operate. The recommendation is to note the terms of reference and revised Committee title and recommend them for approval by Council.

Introduction

2. The County Council, as Highways Authority, has the responsibility for discharging a number of rights of way functions, contained in various legislation. The Council has the duty to ensure that the legal record of public rights of way – the Definitive Map and Statement – is accurate and kept up to date by the addition, deletion or modification of public rights of way following prescribed statutory procedures.
3. The Council has the power to determine applications to extinguish, create or divert public rights of way, as well as a duty of maintaining and improving the network and asserting and protecting the public's right to enjoy the use of the rights of way network.
4. There are almost 4000 public rights of way throughout the County, extending for some 2700 km. These vary from urban 'jitties' to field edge and cross-field paths, woodland trails, right up to long-distance paths such as the Trent Valley Way.
5. Rights of Way fall into four distinct categories:

Footpath – for use by walkers only (including pushchairs, wheelchairs and mobility scooters where that is practicable).

Bridleway – for use by walkers, cyclists and horse-riders.

Restricted Byway – for use by walkers, cyclists, horse-riders and horse-drawn carriage drivers.

Byways open to All Traffic (BOAT) – for use by walkers, cyclists, horse riders, carriage drivers and road legal motorised vehicles.

6. On a public right of way the users have the right to pass and repass without let or hindrance, across someone else's land and it is the County Council's duty to protect this right.
7. The legislation that deals with Rights of Way activities is quite complex, and includes a raft of important Acts of Parliament, such as:-
 - National Parks and Access to the Countryside Act 1949
 - Countryside Act 1968
 - Highways Act 1980
 - Wildlife and Countryside Act 1981
 - Road Traffic Regulation Act 1984
 - Road Traffic Act 1988
 - Town and Country Planning Act 1990
 - Rights of Way Act 1990
 - Countryside and Rights of Way Act 2000
 - Clean Neighbourhoods and Environment Act 2005
 - Natural Environment and Rural Communities Act 2006

Role of the Committee

8. Most of the legislation affecting rights of way is regulatory in nature. Full Council, at its meeting on 18 June 2008, resolved to establish a Footpaths and Rights of Way Committee. Broad terms of reference were established. Since that date it has been proposed that this Committee would also be a more appropriate venue for determining applications to the Council in its capacity as Commons Registration Authority for Common Land or Town or Village Greens as well as for considering applications for Gating Orders under the Highways Act 1980.
9. It is suggested that 'Rights of Way Committee' is a simpler name, better reflecting the full range of routes, rather than highlighting just one of them.
10. Before an Order can be made to change the public rights of way network in some way, a round of pre-order consultation takes place. Local Members are notified at this stage. Officers will examine evidence, either historical evidence from old maps and documents, or user evidence submitted in support of a proposal.
11. If there are no objections to the proposal, officers will proceed to make the necessary legal order. Once an order is made, formal advertisement and consultation takes place. If this results in objection from a member of the

public, interest group or landowner, this can result in a public inquiry, the final decision resting with the Secretary of State.

12. The role of the Committee, therefore, will be to receive reports involving modification to the Definitive Map dealing with extinguishment, diversion, or creation of routes, and upgrading or recording of existing routes. These will be where there have been objections raised to a pre-order consultation, or where there is a risk of compensation being payable if an Order is confirmed.
13. Where reports are brought to Committee, Members will be asked to decide whether an order should be made or not. If the decision is not to make an order, those promoting that order, with the exception of those proposing the creation of a new public right of way, have a right of appeal to the Secretary of State.
14. Much of the decision making process in rights of way matters is of a quasi-judicial nature and is framed by case law. The same applies to decisions regarding Common Land and Town or Village Greens. Decisions, therefore, have to be taken on the facts of the case, not on any individual's judgement on the merits of the proposal, or the benefits or disbenefits that might arise. The legislation dictates that decisions must be taken with reference to very strict criteria, these will be set out in reports and Members will be given appropriate guidance. Decisions regarding Gating Orders will also need to follow the relevant statutory procedure.
15. The proposed terms of reference for the Committee will be brought before committee as a verbal update for noting prior to being taken to County Council for approval and for incorporation into the County Council's Constitution.

Code of Practice

16. In order that the Committee can run smoothly, it is proposed that a Code of Practice be established. This will cover how the Committee will best operate, including the rules governing public speaking. This document is in the course of preparation, and will be brought to the Committee at the next meeting for endorsement and approval.

Member Training

17. Given the quasi-judicial nature of this Committee, it is important that Members receive specific training in rights of way matters. Accordingly training is being organised, to take place in the coming weeks. Further training or guidance for members will be provided to cover decision making across the range of Committee's responsibilities.

Rights of Way Improvement Plan

18. In November 2007, the County Council adopted its first Rights of Way Improvement Plan (ROWIP). This is a statutory document and not only assesses the extent to which the rights of way network meets the present and likely future needs of the public, but also assesses the opportunities that might exist for the use and enjoyment of the countryside, and the accessibility of local rights of way to those people with access difficulties.
19. Furthermore, the ROWIP contains a Statement of Action outlining the strategic actions the Council proposes to take for the management of its rights of way, and for securing improvements to the network. The ROWIP has also offered an opportunity for the Authority to prepare and present a summary of key rights of way policies and procedures. These will guide the County Council, land managers and all other stakeholders in the maintenance and management of public rights of way in the County.
20. Much of the work around management, maintenance and promotion of the network will be matters for the Cabinet Member for Transport and Highways, but where appropriate, the relevance of ROWIP and its policies will be brought to the attention of this Committee in reports.

Enforcement and Compliance

21. The Council has a duty to protect the public's right to use and enjoy the network and therefore has to maintain the various paths to an appropriate standard. It is a statutory duty to ensure the network is suitably sign-posted and way marked.
22. Equally a landowner across whose land a public right of way might run, has a duty in law to keep the route open and free from obstruction. On farmland, this means ensuring field-edge paths are not cultivated, and reinstating cross-field paths after ploughing, ensuring cross-field paths are kept clear of crops and keeping gaps through hedgerows maintained. Landowners have a responsibility to cut back vegetation which might overhang or block a particular path - a situation that can arise both in towns and in the countryside.
23. From time to time it is necessary for the Council to take action to ensure the network is kept open and free from obstructions. This follows set guidelines, but can result in formal legal action being taken. In common with enforcement action taken on planning matters, it would not be practicable for Committee approval to be sought each time formal action is deemed necessary.
24. Accordingly a report will be brought to Committee at quarterly intervals, detailing any formal enforcement action that may have been taken in the preceding months.

Temporary Closures

25. It is sometimes necessary to close a path in order that work be carried out on or under the path, or to cater for some particular event. Because by law paths must remain open, to close them, even for a temporary period, requires formal action. These matters will not be brought to Committee, but dealt with as day-to-day operational business, unless there are particularly sensitive or high profile issues which warrant a report being brought.

What Happens Next

26. Prior to the decision made by Council on 18 June, the responsibility for rights of way matters fell to the Planning and Licensing Committee. Now those powers are to be dealt with by this Committee, it will be necessary to amend the Council's Constitution to reflect this change. It will therefore be necessary for full Council to approve the relevant changes to the Constitution.

Statutory and Policy Implications

27. The report has been completed after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder, and users. Where such implications are material, they have been brought out in the text of the report.

RECOMMENDATIONS

28. It is RECOMMENDED that the proposed title of the Committee as the Rights of Way Committee and the terms of reference of the Committee are noted and recommended for approval by the County Council, together with consequential amendments to the Constitution.

TIM MALYNN

Corporate Director (Communities)

Legal Services' Comments

The Committee is authorised to receive this report and to make the recommendations set out. [HD – 13/08/09]

Comments of the Service Director - Finance

The contents of this report are duly noted, there are no financial implications. [DJK – 11/08/09]

Background Papers Available for Inspection

No background papers.

Electoral Division(s) and Member(s) Affected

All.

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PSP.NH/RH/ROW1
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