

## APPENDIX 1

### CODE OF CONDUCT AND PRACTICE

#### Introduction

1. This Code of Practice is designed to set out clearly the way in which the Council deals with those matters which come within the remit of the Rights of Way Committee. It sets out the role of the Committee, how Committee operates and the respective responsibilities of Members and officers.
2. This Code should be read in conjunction with the Council's Constitution including the Model Code of Conduct for Members, the Code of Conduct for Officers, the Code on Member and Officer Relationship and the Council's Standing Orders. It was considered by the Rights of Way Committee on (date) and was amended and adopted by Committee on (date). It is to be seen as the aim or aspiration of the Committee in how it conducts its work, and a failure to follow this Code should not give rise to any challenge against the Committee's decisions. The Standing Orders for the Rights of Way Committee, approved by a meeting of the County Council on 24 September 2009 state that "it shall be the aim of the Rights of Way Committee to undertake activities in line with the Code of Best Practice on Rights of Way from time to time approved by Rights of Way Committee".
3. Officers reporting to Committee are equally bound by the Council's Code of Conduct, as well as any code of professional conduct which may apply.
4. The Council has responsibility under various legislative provisions for discharging functions relating to rights of way, and for determining applications for the registration of common land and town and village greens. The exercise of those functions can be contentious and the subject of impassioned debate. Because of this it is important that the system of making decisions in these areas is seen to be open and impartial, consisting of sound judgments made for justifiable reasons.
5. The terms of reference of the Rights of Way Committee, which was established by a resolution of the County Council on 18 June 2009, requires that it deals with areas of work which previously came within the remit of the Planning and Licensing Committee, the Cabinet Member for Transport and Highways and within powers delegated to officers.

6. Non-regulatory matters for the management, maintenance and promotion of the rights of way network, including responsibility for the budgetary matters, remain within the responsibility of the Cabinet Member for Transport and Highways.
7. This Code covers the following areas:
  - The Work of the Committee
  - Committee Administrative Procedures
  - Taking the Decision
  - Respective Roles of Members and Officers
  - Public Speaking Arrangements
  - Site Visits
  - Disclosure of Interests and Hospitality
  - Challenges
  - Member training
  - Complaints
  - Performance and Monitoring
  - Annual Inspection
  - Review of this Code

### **The Work of the Committee**

8. The legislation which governs the exercise of those functions with which the Rights of Way Committee is concerned is complex. It is supplemented by Government Circulars, case law and advice issued by the Planning Inspectorate. Within the context of the legal provisions, the successful operation of the system relies upon ensuring that Member and officers act in a way which is not only fair but is clearly seen to be so. The respective roles of officers and Members are set out in this Code of Practice.
9. A brief overview of each of the types of work with which the Rights of Way Committee will be concerned can be found at Appendix 1C.
10. As a result of the County Council's resolution on 24 September 2009, all of the functions which are set out at Appendix 1D are within the Rights of Way Committee's terms of reference together with its role as consultee on other non-statutory access routes prior to their consideration by the relevant Cabinet Member or other body of Council. All those functions listed at Appendix 1D are also, by virtue of that County Council resolution, delegated to officers. In this Code, the functions have therefore been classified according to type, with those listed in Appendix 1D – Part 1 comprising routine, day-to-day operational functions and those listed in Appendix 1D - Part 2 comprising all other functions. The exercise of those functions will operate as follows:

- a Part 1 function will, unless the particular matter has been referred to Committee by a local Member and referral has been agreed by the Chair, or is considered by the case officer to be exceptionally sensitive, be delegated to the Corporate Director, Communities, This will enable straightforward matters – and those requiring urgent attention, such as enforcement requests – to be dealt with outside the usual Committee cycle. A progress report updating Members as to current or completed enforcement action will be brought to Committee every six months;
  - A Part 2 function will be the subject of either a full or an abbreviated report to the Committee, as described in paragraphs 11 and 12.
11. Where the County Council proposes to exercise a Part 2 function which consists of deciding whether to make an order, it engages in a process of pre-order consultation to gauge the views of a number of different parties including Parish and District Councils, local elected Members, user groups and utility companies. Although there is no legal requirement to do so, it also consults the owner and / or occupier of any of the affected land at this stage. Should there be no objections or adverse comments at this pre-order stage, an abbreviated report (which will outline the proposal and the relevant legal tests and will include a map) will be presented to the Committee with a recommendation either that the making of the order should be authorised, or that the application should be turned down. If Committee authorises that an order be made, and no objections are made to that order during the statutory period after it has been made, officers will proceed to confirm the unopposed order without referring the matter back to Committee.

If Committee considers that further information is needed before a decision can be taken, it may request a full report in which case the procedure will be as described at paragraph 12.

In the case of orders other than Definitive Map Modification Orders, should objections be made to that order during the statutory period after it has been made (notwithstanding that no objections or adverse comments were made at the pre-order stage) then unless those objections are withdrawn, a full report in accordance with paragraph 12 will be brought to Members prior to seeking confirmation of the order from the Secretary of State. In the case of Definitive Map Modification Orders, should a similar situation arise (no objections or adverse comments at pre-order stage but objections to order once made) then the matter will be included in the periodical progress report brought to this Committee, but will not be the subject of a report prior to referral to the Secretary of State. The reason for the distinction in handling types of orders is that for the first category of

orders (other than Definitive Map Modification) the Council has a discretion as to whether to proceed to refer the opposed order to the Secretary of State, and it is therefore considered appropriate that, once objections have been received, that a report should be brought to this Committee for that decision to be made. By contrast, if properly made objections are received in relation to an order falling into the second category of orders (Definitive Map Modification Orders) then, unless the objections are withdrawn, the Council has no discretion as to its course of action but is required to refer the order for confirmation to the Secretary of State, and there is therefore no decision for the Committee to make.

12. Where the County Council proposed to exercise a Part 2 function which consists of deciding whether to make an order, and at the pre-order consultation stage objections or adverse comments are received, or the Part 2 function is something other than the making of an order (for example the creation of a bridleway by agreement, or the registration of land as a village green) a full report will be taken to Committee. This will include a map showing the proposal, the views of those who have been consulted on the proposal, the substance of objections, an explanation of the relevant legislation, other relevant information as appropriate, the officer's assessment and a recommendation.

### **Committee Administrative Procedures**

13. Rights of Way Committee will meet on a regular basis, at an interval of around four to six weeks, dates being set according to the Council diary. Meetings will normally be held during the working day in County Hall. Papers for Committee are published five working days in advance of the meeting, as required by the Access to Information Act 1995.
14. A pre-agenda meeting will be held a fortnight before each Committee meeting. Wherever possible, drafts of the reports for the relevant meeting will be provided at or before that pre-agenda meeting, which will normally be attended by the Chair and Vice-Chair, and officers from Communities, Legal Services and Governance team.
15. Committee Meetings may be cancelled should there be insufficient business.
16. Any material information which is received after the written report has been prepared but more than 24 hours before the start of the Committee meeting will be presented orally by officers. Information received within 24 hours of the start of the meeting will only be presented where it is brief and can be readily conveyed to the Committee.

17. The Chair may, after consultation with the Head of Planning Services, withdraw any item from the agenda of the Committee.
18. Following standard items – approval of minutes of the last meeting, apologies for absence, declarations of interest by Members and officers - the Order of business will vary depending on circumstances. Generally, those items where public speaking is involved will be dealt with first.
19. Officers will introduce each report, noting any relevant late information that is not in the papers. This will be followed by any period of public speaking relevant to that item, followed by any officer clarification, after which the matter is open to debate by Members of the Committee.
20. The Council's Standing Orders require that recommendations arising from reports shall be moved and seconded. This is a procedural requirement to aid debate and ensure orderly conduct. It does not imply that the mover or seconder of any item has formed an opinion before hearing the debate.
21. If Members are minded to make a decision contrary to an officer's recommendation, the Committee may be advised to defer that matter to the next meeting of the Committee to allow the opportunity for further consideration. Where a decision is made contrary to officer recommendation, Members will be requested to provide their reasons for the decision as this will assist the Council in formulating its position in any challenge to that decision whether via public inquiry or otherwise.

## **Taking the decision**

### **Discussions with Applicants and lobbying**

22. Dialogue and meetings with applicants at various stages in the progress of matters are essential and may be protracted, but will normally only involve officers, and occasionally the local Member.
23. Under exceptional circumstances where meetings to discuss items do involve Members appointed by the Committee at least one officer will be present at all such meetings.
24. Where meetings take place at a preliminary stage in any matter it will be made clear that:
  - Only officers' initial and provisional views can be given, based upon the provisions of the legislation;

- No decisions can be made which would bind or otherwise compromise the decision of the Council.
25. Notes of the discussions at all meetings will be taken and will be placed on the case file. Any follow-up correspondence shall also be placed on the file.
  26. Information will be available for public inspection subject to the provisions of the Access to Information Act.
  27. A note will be taken of all telephone conversations involving either Members or officers where advice on the merits of a proposal has been given.
  28. In the event that applicants or other interested parties wish to discuss matters with Members at any stage in the progress of those matters, meetings may involve Members acting in a representative role. Members should take care to avoid compromising their position before they have received all the relevant information, evidence and arguments about a matter. Members of the Rights of Way Committee may choose as a matter of principle not to meet applicants and other lobbying parties.
  29. Where Members do choose to meet relevant parties, or are approached by them directly, either in writing or verbally, they will:
    - Not express an opinion which could be taken as firm support or opposition to a proposal
    - Not organise support or opposition for a proposal or lobby other members
    - Inform lobbyists or objectors of the importance of their views being submitted in writing to the Council
    - Advise the Chair of the Rights of Way Committee or the Rights of Way Officer of the existence of any party that appears to be trying to exercise undue or unreasonable pressure on Members of the Council.
  30. Members are asked to complete a 'Notification of lobbying' form, setting down the circumstances of them being lobbied, and to forward that to the appropriate Governance Officer. At the start of each committee meeting, Members are asked to declare that they have been lobbied, and a Register of such events will be updated at each Committee.

## **The Role of Members in Committee**

31. Members of the Rights of Way Committee, in making decisions on items reported to them, will:
  - Act fairly and openly
  - Approach each item with an open mind and on its own merits
  - Carefully consider the grounds for a decision
  - Carefully weigh up all the material considerations
  - Ensure that reasons for decisions are clearly stated.
32. Committee Members will be free to vote on matters however they consider appropriate within the context set by the relevant legislation, caselaw and guidance, as appropriate, and shall not have pre-judged the outcome prior to their consideration of all relevant available information at the Committee meeting.
33. If Committee Members have, prior to the meeting, given an undertaking as to the stance they will take on the determination of an application, e.g. at a Town or Parish Council meeting, or to an interested party, they should refrain from voting but may fulfil their representational role, subject to compliance with the statutory Code of Member Conduct.
34. Committee Members also have a role on behalf of their ward to present local views, but Members must make it explicit when they are acting in that role. The decision-making role and its impartiality must not be prejudiced by any such action.

## **The Role of Non-Committee Members**

35. The representational role of local Members is a part of the process. Subject to compliance with the terms of the Members' Code of Conduct, Members will be given the opportunity in respect of matters falling within the remit of the Rights of Way Committee to fulfil that role within their ward by:
  - Responding in writing to officers on the merits of a matter;
  - Attending any Committee site meetings for matters within their ward; and
  - Making representations to the Committee.

36. Members shall not give instructions to officers, nor should they place pressure on officers in order to secure a particular outcome to a matter.
37. Members can expect officers to give them every help and assistance in answering questions relating to matters falling within the remit of the Rights of Way Committee.

### **The Role of Officers**

38. In respect of matters to be determined by the Rights of Way Committee Officers will:
  - Provide professional and impartial advice
  - Make sure that all information necessary for a decision to be made is given, including the views of those consulted and the substance of any objections
  - Set the matter in the context of any other considerations
  - Provide a clear and accurate written analysis of the issues
  - Be responsible for carrying out the decisions of the Committee
39. When the Committee determines a matter, the reasons for the decision will be clearly stated at the meeting and recorded in the minutes. Members need to be sure that their decisions are based on sound reasons and made with respect to the requirements of the relevant legislation. Members shall be aware that they may be required themselves to justify their decision at a public inquiry or hearing, for instance if an opposed order is referred to the Secretary of State for determination.

### **Public Speaking Arrangements**

40. The Council considers that there are benefits in allowing public speaking in appropriate matters at Rights of Way Committee meetings and a Standing Order stating that “Public speaking shall be permitted at Rights of Way Committee subject to the Protocol for Public Speaking approved from time to time by Rights of Way Committee” was approved by the County Council at its meeting on 24 September 2009. A summary of that Protocol is set out in the Appendix 1A of this Code.



41. In the case of applications for registration of town or village greens or common land where a separate forum (e.g. a public inquiry) has been or will be employed for the application to be fully explored, with the opportunity for supporters and objectors to be heard at that forum, public speaking at the Rights of Way Committee meeting is not considered appropriate and will not be permitted.

### **Site Visits**

42. All sites are visited by officers as part of their preparations and investigations, and meetings involving officers, applicants and consultees may be held on site as part of the consultation and negotiation process prior to the determination of a matter.
43. The procedure for Member site visits is laid out in Appendix 1B.

### **Challenges**

44. Where the Council decides not to make an order, or to confirm an unopposed order, there is a right of appeal against that decision. Where an order is made and receives objections, the Council cannot confirm it unless the objections are withdrawn. Should they remain not withdrawn, the order cannot be confirmed other than by the Secretary of State for the Environment and Rural Affairs. These matters are processed through the Planning Inspectorate, and are inevitably heard at a local hearing, public inquiry or by written representation.
45. If Members have voted to make or confirm an order against officer advice, it may weaken the Council's case at public inquiry if the officer who made the original recommendation not to make or confirm the order is then asked to defend it. In these circumstances, either the Chair or another Member of Committee should speak in support of the order at any public inquiry or hearing, or instruct a third party to present the case for them. Officers would provide assistance and support to Members in such a position and officers would be able to present all the factual evidence.
46. Members are also reminded any decision that is made is open to challenge through the courts, although any such challenge would have to be on a point of law, and to be successful would have to prove that the Council erred in law in coming to its decision.

## Member Training

47. Rights of Way Committee will deal with a wide range of complex legislative issues, and Members need to understand what issues they should or should not consider, before coming to a decision.
48. It would be impracticable to expect Members to become acquainted with every nuance of law relevant to those areas of work within the remit of the Rights of Way Committee, or to be familiar with all aspects of the relevant policy and guidance documents. The Committee report will provide information, but Members do need to have at least a rudimentary grasp of the system, and what it entails.
49. As soon as possible after the membership of Rights of Way Committee is announced, those Members must attend a training session, covering, in broad terms, the relevant legislation, and what factors Members may or must consider when making decisions about matters within the Committee's remit. No Member shall be allowed to vote on any matter coming before Rights of Way Committee until they have attended such a session. Any Member joining Rights of Way Committee at some point after the initial training session shall undergo an individual training session with the relevant officer(s) of the Council before he/she may vote at Committee.
50. From time to time, information reports will be brought to Committee advising Members of new legislation, policy guidance, and procedural matters or on best practice. Occasionally it may be helpful for presentations on particular aspects of general interest to be given to Committee Members, outside of the Committee meeting itself. From time to time it may be appropriate to arrange for the Committee to visit sites for the purposes of training (see sections on site visits).
51. Should Members attend individual training events such as seminars or workshops to gain some procedural or technical competence, not only must appropriate authorisation be obtained, but the knowledge gained needs to be shared with other Members of Committee.

**IT SHALL BE A REQUIREMENT THAT A MEMBER WHO ATTENDS A TRAINING EVENT SHALL PREPARE A WRITTEN REPORT ON THAT EVENT, TO BE PRESENTED TO THE NEXT AVAILABLE MEETING OF THE COMMITTEE.**

52. Should individual Members wish to discuss any aspect of an area of work with which the Rights of Way Committee is concerned in a less formal way, there is no reason why they should not approach an appropriate officer and seek further guidance. General information is available on the

Council's website, including information about the progress of various orders through the system.

53. Members are also alerted to the guidance on Rights of Way in their training packs and the Members intranet pages.

## **Complaints**

54. Complaints may be made against officers or against Members. Initially complaints against officers are dealt with within the Department, but may progress to a more formal complaint made via the Corporate Complaints Procedure. There is a well-established procedure for dealing with such complaints.
55. Complaints against Members might be made in respect of how Members acted in the run-up to a Committee, or at the meeting itself. Again complaints would initially be handled through the Chief Executive's Department. Should the matter not be resolved to the satisfaction of the complainant, the matter could ultimately be referred to the Standards Board for England.
56. It is also possible that a complaint may be made against the Council to the Local Government Commissioner - the Ombudsman. If that is the case, it is possible that Members may be required to provide statements to the Ombudsman as to how certain events unfolded. The Ombudsman will encourage the complainant to follow the Council's internal complaint procedures first.
57. The Ombudsman may uphold a complaint, and find maladministration in the way a particular case was handled. The Ombudsman can also recommend an award of costs to a complainant where maladministration has been found that has led to an injustice. However, that will not alter the decision that has been made.

## **Performance and Monitoring**

58. Members will wish to know how the Committee is operating. Information reports will be brought to Committee advising Members of new submissions, and decisions taken under delegated powers. Such reports will include other relevant topics such as new legislation or policy guidance.

## **Annual Inspection**

59. Members may wish to visit sites or paths to view the consequences of the decisions being made, or to visit sites or paths where some improvements have been successfully implemented.
60. If requested an annual Committee tour will be arranged to view certain key sites or paths. These will either reflect decisions taken previously by Committee, or will give an opportunity for Members to visit sites to see some particular aspect of the Committee's work in practice. This will also include work under Cabinet Member responsibilities, such as the establishment of new or upgraded paths.
61. The arrangements for such an event will be agreed with the Chair and will be reported to Committee in advance of the event, together with a request to seek the necessary approvals from Administration Committee.

## **Review of the Code of Best Practice**

62. The workings of this Code of Best Practice should be reviewed periodically, and a report brought to Committee to advise Members of any suggested changes, and to report on the operation of particular arrangements, such as the arrangements for public speaking or site visits.

### **PUBLIC SPEAKING PROTOCOL**

#### **Who may address the Committee?**

- Objectors to an application / proposal
- Supporters of an application / proposal (includes applicant, agent or supporters)
- The local Member for an application / proposal
- A representative of a Parish or Town Council
- A representative of the District / Borough / adjoining Council
- Representative of the Local Access Forum

An objector or supporter (representatives from the following groups; applicant, agent or supporters of the application / proposal) may exercise their right to speak through representation by another person (e.g. rights of way consultant or solicitor).

#### **Procedural matters**

Those wishing to speak may do so in accordance with this protocol. Anyone who intends to speak must register their intention to do so by written communication no later than three clear working days before Committee. A written summary of the points to be covered by the speaker is requested. Speakers should confine their presentation to points which are relevant to the item under consideration.

Objectors and supporters are not allowed to ask questions of Members or officers. Members may only ask questions of speakers for the purpose of clarification and should not enter into debate about the merits of the proposal in question.

Once the period of public speaking has finished the application will be debated in the normal way, and a decision made by the Committee. Should the decision be deferred, no further public speaking is allowed when the application is brought back to a later meeting.

### **Time limits for presentations / order of speakers**

- County Council Case Officer to present the report (no time limit)
- Objectors to the application / proposal (the first three objectors to register will be allowed three minutes each to address the Committee (preference will be given to landowners directly affected). Details of those objectors may be given to any other objectors who wish to contact those who will be presenting objections to the Committee)
- Supporters - the first three to register (preference will be given to the applicant) will be allowed to address the Committee for three minutes each
- The local Member for an application / proposal (no time limit).
- A representative of a Parish or Town Council (three minutes)
- A representative of the District / Borough / adjoining Council (three minutes)
- Representative of the Local Access Forum (three minutes)
- County Council Case Officer to deal with any errors of fact or clarification of points or policy (no time limit).

## APPENDIX 1B

### SITE VISITS

1. While there is no need for authority for visits to existing rights of way, all parties will need authority from landowners to inspect proposed routes or application areas whether unaccompanied or with an officer.
2. Members wishing to visit sites on their own should be aware of this and should seek advice from officers before undertaking unaccompanied site visits. Any lobbying that may occur during a visit should be dealt with in accordance with procedures described in this Code.
3. Formal site visits by the Committee will be held when they provide a material benefit, for example, to understand local conditions and the physical characteristics of existing and proposed routes of paths.
4. All Members of the Committee (including substitutes who may attend at a subsequent meeting) will normally attend formal site visits, together with the appropriate ward Member(s).
5. Formal site visits by the Committee shall be accompanied by an appropriate officer of the Council.
6. The purpose of a formal site visit by the Committee is fact finding. No discussion of the merits of the matter will be permitted.
7. During formal site visits the Members of the Committee should not make any comments that could create an impression to an outside party that they had already formed a view on the merits of an application. Decisions on matters should only be made within a formal meeting of the Committee, when Members have before them all the necessary information.
8. There may be occasions on site visits when questions raised by Members cannot be satisfactorily answered or require further investigation. In this event officers will pursue these matters and report back to the Committee meeting.

## OVERVIEW OF AREAS OF WORK OF COMMITTEE

### (i) **PUBLIC RIGHTS OF WAY**

Public rights of way fall into four distinct categories, footpath, bridleway, restricted byway and byway open to all traffic. The legislation which deals with rights of way activities is quite complex, and includes a number of important statutes, such as the National Parks and Access to the Countryside Act 1949, Countryside Act 1968, Highways Act 1980, Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000 and Natural Environment and Rural Communities Act 2006. Most of the legislation affecting rights of way is regulatory in nature, typically involving changes to the network by the extinguishment, diversion or creation of routes, the recording of an existing route or changing its status. Frequently-occurring areas of work for the Committee will be the following:

#### **Definitive Map Modification Orders**

The County Council has a statutory duty to make a Definitive Map Modification Order where a highway exists or can be reasonably be alleged to exist. This can be prompted by the discovery of evidence or as a result of a formal application being made. The Definitive Map may be modified by the addition of a previously unrecorded route or the deletion of a route currently recorded, or by the upgrading or downgrading of a currently recorded route to that of a route of higher or lower status. Claims may be based on user or historical evidence or a combination of both. Claims are normally processed chronologically by order of receipt. Upon receipt of an application, or on the discovery of evidence, officers will undertake research and make an assessment of the relevant information.

#### **Public Path Orders**

The County Council has a discretionary power to make legal orders (Public Path Orders) to divert, create or extinguish footpaths, bridleways and restricted byways. These can arise from applications or requests from local residents, path users, developers, farmers, schools or the Council itself may propose to make a change. A request for a diversion is the most common order. Claims are normally processed chronologically by order of receipt.



**(ii) GATING ORDERS**

The Government introduced measures in the Countryside and Rights of Way Act 2000 (CROW Act) to stop up or divert highways which were subject to, or aided, criminal activity. These types of highways were envisaged as being located in urban, rather than rural, areas and were often alleyways or interconnecting routes on estates. Its use required a pre-designation by the Secretary of State and (as with public path orders and DMMOs) any unwithdrawn objection prevented the relevant authority confirming the order, which would need to be referred to the Secretary of State so the process was lengthy and uncertain in outcome. Also, this legislation did not address antisocial behaviour in that it did not enable highways to be closed expressly to prevent anti-social behaviour and it did not extend too many alleyways that are public highways but were not yet recorded as public rights of way. The only remedy available to highway authorities under these provisions was the complete and irrevocable removal of public rights by extinguishment.

Accordingly, new legislation was introduced in the Clean Neighbourhoods and Environment Act 2005. This came into force on 1 April 2006 and its effect was to give highway authorities the power to gate certain types of highway restricting the public right of way at all times or for certain times or periods as may be appropriate to the circumstances, but can exclude designated persons, bodies or organisations from the restrictions (e.g. residents requiring access to maintain property boundaries, or utility companies). A gating order may be made in respect of a highway which is facilitating high and persistent levels of crime and/or anti-social behaviour, which is adversely affecting local residents or businesses.

The power does not permanently extinguish public rights of way. This means that it is possible to subsequently alter or revoke the restrictions and reinstate the public right of way.

The Policy and Procedures for this were approved by the County Council's Cabinet on 8 November 2006, where it was appreciated that the then recently introduced legislation was still in its infancy throughout the country and that there may be some teething problems and lessons to be learned. Accordingly, the County Council is initially trialling the procedures on a small number of sites, assessing the benefits to the community and the administrative and financial impacts before producing a regular programme for making gating orders. Prior to the establishment of the Rights of Way Committee, the decision-maker for gating order applications was the Cabinet Member for Transport and Highways, who dealt with gating order applications. That Cabinet Member will be a consultee, particularly in relation to budgetary implications, on any gating order applications considered by the Rights of Way Committee.

To meet the relevant legal tests, all applications for a gating order must contain appropriate supporting evidence that the highway is an intrinsic contributor to the levels of crime and disorder in that locality and accordingly the application must also include Police Crime Incident information. The involvement of the relevant District Crime and Disorder Reduction Partnerships is seen as being crucial to the achievement of satisfactory outcomes to the justification, assessment and review stages of gating orders. Similarly, the engagement and support of the local Member and the local community are considered vital for the ultimate success of gating orders in reducing crime and disorder.

Regulations cover the details of making, revising or revoking gating orders, including consultation, notification and dealing with objections etc. which provide powers to erect, or permit to be erected, a barrier (gate) to restrict public access to a highway over which the public would normally have the right of passage. Such highways may range from narrow footpaths or alleyways to those capable of accommodating vehicular traffic.

Gating orders on all highways for metalled Rights of Way are administered and managed by the relevant Area Highway Manager, who is to review their effectiveness at intervals to establish whether variation or revocation is required.

Gating orders on unmetalled Rights of Way, are similarly administered, managed and reviewed by the Countryside Team Manager. The Area Manager and the Countryside Team Manager must ensure that each other is appropriately informed and consulted at relevant stages of each gating order.

Applications for gating orders are processed in accordance with an internal Gating Orders Guide (dated December 2006) which is available via the following link:

<http://intranet.nottscc.gov.uk/index/departments/communities/coms-yourdivision/coms-highways/>.

### **(iii) COMMON LAND**

The County Council is a Registration Authority for the purposes of the Commons Act 2006 and the Commons Registration Act 1965. The 1965 Act established, for the first time, registers to conclusively record the existence of common land. The Council is responsible for keeping and maintaining this statutory register and, in certain circumstances, to act to protect the registered land e.g. where there is encroachment onto the land.

Common land is land, usually in private ownership, which has registered rights of common over it. These rights of common are held by persons other than the owner of the land and are rights to do something on the land or take something from it. Such rights do not have a recreational aspect.

Generally, the main features of common land are that it is open, unfenced and often remote.

Those persons who are able to exercise the registered rights are generally known as "commoners". Common land and commoners rights constitute a very ancient institution. They arose as part of the fabric of life in England and Wales and have their origins in the manorial system. Most common land and commoners rights have fallen into disuse and, being forgotten, were lost over the centuries. It is generally in the more remote areas that common rights have survived in their use. The rights are held in common with the land owner. This means that a land owner cannot do anything which would restrict the exercise of a common land right.

Rights of common can include the following:

- Grazing sheep or cattle (herbage)
- Taking peat or turf (turbary)
- Taking wood, gorse or furze (estovers)
- Taking of fish (piscary)
- Eating of acorns or beechmast by pigs (pannage)

The Countryside and Rights of Way Act 2000 (CROW Act) provides for the public to have access to open countryside and this includes access to common land. The Countryside Agency have published maps for all areas indicating the land (including common land) to where the public now have open access rights.

Common land is generally in private ownership and either in modern times or in the distant past has had common rights over it.

It was popularly believed that every person had a right to go onto any common land. Before the Countryside and Rights of Way Act 2000 came into effect, the public in general did not have rights to go onto common land unless that land was in the area of an Urban District, or was crossed by public rights of way (people must then stay on the route of the right of way).

Registration was first carried out in the late 1960s. Some areas are quite small: such as an ancient pinfold, being a circular piece of land with a diameter of six feet (where one or two animals could be kept, perhaps overnight for safety). Larger areas run into several acres and can support the grazing of substantial numbers of animals of various kinds. These areas might also have been waste land of the manor. Some were allotted under enclosure awards in the 18th or 19th centuries for digging sand or gravel for road maintenance.

There are also a number of green lanes which are quite properly registered as common land.

Where a right of common has been registered, the commoner has the legal entitlement to the peaceful enjoyment of that right, and action which impedes the exercise of that right, for example the erection of fencing, will be unlawful. Registered common land is protected from development by statutory controls, with consent from the Secretary of State being required for certain types of work proposed to be carried out on the land.

#### **(iv) TOWN OR VILLAGE GREENS**

As with its duty to register common land, the County Council has duties to register new town or village greens and, in certain circumstances, to act to protect the registered land e.g. where there is an encroachment onto the land. Town or village greens have a not dissimilar history to common land. They are, however, defined fundamentally separately for the purposes of registration.

Village greens are typically areas of land found in identifiable settlements or geographical areas where local people go for their lawful sports and pastimes.

These sports and pastimes can include a wide variety of organised or ad hoc games, picnics, dog walking, observing wildlife and other similar activities. Although town or village greens may be owned by individuals, many of them are owned and maintained by local Parish Councils.

Town or village greens have statutory protections under two 19th century Acts: the Inclosure Act 1857 (section 12) and the Commons Act 1876 (section 29). The main protection has the effect of preventing works, including building works, taking place on the land.

It is possible for any person to apply to register another person's land as a town or village green, provided that for a period of at least 20 years a significant number of local inhabitants have used the land as of right to indulge in local sports and pastimes.

Typically, an application may be prompted where there is either some early intention to develop the land or development works are about to start. Local people may wish to act to prevent development happening and so keep the land for recreational use.

When an application is received, it may then be given publicity which will invite objections. Depending on the complexity and the volume of evidence for and against, it may be necessary to appoint an independent inspector to hold a public inquiry to establish the facts. The inspector does not make a decision but makes a report with a recommendation to the registration authority.

The decision as to whether or not to register the land is made by the registration authority and can only be determined on the facts established and as the law is applied to those facts. There is no scope allowed for consideration of matters such as desirability or community interests. The Registration Authority's decision can only be made by testing the evidence to see if the facts show that all of the criteria are met.

Failure to meet even one of the criteria means that an application must be rejected on the facts.

A provision introduced in the Commons Act 2006, makes it possible for a land owner to register their own land voluntarily as either common land or a town or village green. This does not involve objection or public inquiry.

## APPENDIX 1D

### **FUNCTIONS** **PART 1**

Function	Provision of Act or Statutory Instrument
Power to grant a street works licence	Section 50 of the New Roads and Street Works Act 1991
Duty to serve notice of proposed action in relation to obstruction	Section 130A of the Highways Act 1980
Functions relating to the making good of damage and removal of obstructions	Section 135B of the Highways Act 1980
Power to permit deposit of builder's skip on highway	Section 139 of the Highways Act 1980
Power to license planting, retention and maintenance of trees etc in part of highway	Section 142 of the Highways Act 1980
Power to authorise erection of stiles etc on footpaths or bridleways	Section 147 of the Highways Act 1980
Powers relating to the removal of things so deposited on highways as to be a nuisance	Section 149 of the Highways Act 1980
Power to license works in relation to buildings etc which obstruct the highway	Section 169 of the Highways Act 1980
Power to consent to temporary deposits or excavations in streets	Section 171 of the Highways Act 1980
Power to dispense with obligation to erect hoarding or fence	Section 172 of the Highways Act 1980
Power to restrict the placing of rails, beams etc. over highways	Section 178 of the Highways Act 1980
Power to consent to construction of cellars etc under street	Section 179 of the Highways Act 1980
Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators	Section 180 of the Highways Act 1980

**FUNCTIONS**  
**PART 2**

Function	Provision of Act or Statutory Instrument
Power to create footpaths and bridleways by agreement or otherwise	Sections 25 & 26 of the Highways Act 1980
Duty to keep register of information with respect to maps, statements and declarations	Section 31A of the Highways Act 1980
Power to stop up footpaths and bridleways	Section 118 of the Highways Act 1980
Power to make a rail crossing extinguishment order	Section 118A of the Highways Act 1980
Power to make special extinguishment order	Section 118B of the Highways Act 1980
Power to determine application for public path extinguishment order	Sections 118ZA and 118C(2) of the Highways Act 1980
Power to divert footpaths and bridleways and restricted byway	Section 119 of the Highways Act 1980
Power to make a public path diversion order	Sections 119ZA and 119C (4) of the Highways Act 1980
Power to make a rail crossing diversion order	Section 119A of the Highways Act 1980
Power to make special diversion order	Section 119B of the Highways Act 1980
Power to require applicant for order to enter into agreement	Section 119C (3) of the Highways Act 1980
Power to make an SSSI diversion order	Section 119D of the Highways Act 1980
Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980	Section 121B of the Highways Act 1980
Power to decline to determine certain applications	Section 121C of the Highways Act 1980
Power to make Gating Orders	Section 129A to G of the Highways Act 1980 (pursuant to section 2 of the Clean Neighbourhoods and Environment Act 2005)

Duty to assert and protect the rights of the public to use and enjoyment of highways	Section 130 of the Highways Act 1980
Power to apply for variation of order under section 130B of the Highways Act 1980	Section 130B (7) of the Highways Act 1980
Power to authorise temporary disturbance of service of footpath or bridleway and restricted byway	Section 135 of the Highways Act 1980
Power temporarily to divert footpath or bridleway	Section 135A the Highways Act 1980
Power to extinguish certain public rights of way	Section 32 of the Acquisition of Land Act 1981
Duty to keep a definitive map and statement under review	Section 53 of the Wildlife and Countryside Act 1981
Power to include modifications in other orders	Section 53A of the Wildlife and Countryside Act 1981
Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981	Section 53B of the Wildlife and Countryside Act 1981
Duty to reclassify roads used as public paths	Section 54 of the Wildlife and Countryside Act 1981
Power to prepare map and statement by way of consolidation of definitive map and statement	Section 57A of the Wildlife and Countryside Act 1981
Power to designate footpath as cycle track	Section 3 of the Cycle Tracks Act 1984
Power to extinguish public right of way over land acquired for clearance	Section 295 of the Housing Act 1981 (c.68)
Power to authorise stopping-up or diversion of footpath or bridleway	Section 257 of the Town and Country Planning Act 1990
Power to extinguish public rights of way over land held for planning purposes	Section 257 of the Town and Country Planning Act 1990
Power to enter into agreements with respect to means of access	Section 35 of the Countryside and Rights of Way Act 2000
Power to provide access in absence of agreement	Section 37 of the Countryside and Rights of Way Act 2000
Various	Powers under the Natural Environment and Rural Communities Act 2006



General	Powers under all other legislation associated with the County Council's functions in respect of Public Rights of Way
Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to – an exchange of lands effected by an order under section 19(3) of, or paragraph 6(4) of Schedule 3 to, the Acquisition of Land Act 1981 (c.67) or an order under section 147 of the Inclosure Act 1845	Commons Registration Act 1965 Regulation 6 of the Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843) Commons Act 2006 and Regulations made thereunder
Power to register variation of rights of common	Commons Registration Act 1965; Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/147); Commons Act 2006 and Regulations made thereunder

**PUBLIC SPEAKING ARRANGEMENTS AT COMMITTEE FOR OTHER AUTHORITIES**

**Buckinghamshire County Council**

They have just introduced public speaking to an existing committee under the new administration. The procedure will mirror that of our Development Control Committee, so our time limit is 4 minutes.

**Warwickshire County Council**

They do not have a ROW committee but Public Path Orders with objections have to go before an area committee before going to Planning Inspectorate. Area committees also consider road TROs and other matters from anywhere in the authority relevant to their area - schools, fire station closures etc). Area committee papers state the following:

“Public Question Time:-

Up to thirty minutes is allowed for the public to ask questions on any matter relevant to the business of the Committee. Members of the public may speak for up to three minutes”.

**Wakefield Council**

In Wakefield path orders go to Planning and Highways Committee. Only just been had agreed that people can speak on highway matters Before August it was limited to planning applications. The speaking time 3 minutes each - one person for / one against and the local ward member if wanted. As part of the recent changes, members of the committee can ask questions to clarify points raised by speakers.

**Devon County Council**

They have speakers for 3 minutes each and in total no longer than 30 minutes. Also request that if there are more, they nominate a speaker from the group. This doesn't include the local member or the committee.

**West Sussex County Council**

5 minutes

Maximum of three for and three against

## **Suffolk County Council**

One landowner, plus one for the proposal, one against, maximum of three minutes each.

## **Pembrokeshire**

All speakers will be allowed a maximum of 3 minutes to speak. The public speaking shall take place after the item has been introduced by the Planning Officer. The order of speaking shall be :

1. Town or Community Council representative
2. Applicant (or their agent) or supporter
3. Objector.

Neither Committee Members nor other speakers will be able to ask any of the speakers addressing the Committee any questions concerning the comments they have made.