

Rights of Way Committee

Wednesday, 23 April 2014 at 14:00

County Hall, County Hall, West Bridgford, Nottingham NG2 7QP

AGENDA

- 1 Minutes of the last meeting held on 27 Nov 2013 5 - 10
- 2 Apologies for Absence
- 3 Declarations of Interests by Members and Officers:- (see note below)
 - (a) Disclosable Pecuniary Interests
 - (b) Private Interests (pecuniary and non-pecuniary)
- 4 Declarations of Lobbying
- 5 Code of Best Practice and Public Speaking Protocol Rights of Way 11 - 48

NOTES:-

(1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.

(2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

(3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Members or Officers requiring clarification on whether to make a declaration of interest are invited to contact Dave Forster (Tel. 0115 9773552) or a colleague in Democratic Services prior to the meeting.

(4) Members are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.

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Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 27 November 2013 (commencing at 10.30 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

Pam Skelding (Chairman)
Rachel Madden (Vice-Chairman)

Nicki Brooks
Steve Calvert
John Cottee
Richard Butler
Jim Creamer

Kevin Greaves
Darren Langton
Tony Roberts MBE
Gail Turner

OFFICERS IN ATTENDANCE

David Forster	- Democratic Services Officer
Steven Eastwood, Snr	- Principal Legal Officer, Legal Services
Dr Tim Hart	- Definitive Map Officer/Commons and Village Greens Officer
Neil Lewis	- Team Manager Countryside Access

MINUTES

The minutes of the meetings held on 16 October 2013 were taken as read and were confirmed and signed by the Chairman.

MEMBERSHIP

It was noted that Councillor Nicki Brooks had been appointed to the Committee in place of Councillor Sybil Fielding for this meeting only.

APOLOGIES FOR ABSENCE

None

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

Councillor Madden informed Committee that she had attended meetings of the ACCESS community interest group but had never expressed an opinion.

DECLARATIONS OF LOBBYING BY MEMBERS

None

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT TO ADD SEVEN FOOTPATHS AND A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN ANNESLEY AND KIRKBY IN ASHFIELD

Following the opening comments by Dr Hart a number of public speakers were given the opportunity to speak and a brief summary of those speeches are set out below:-

Mr Bob Collier Vice-Chairman of ACCESS (local community group) and local resident informed members that he has lived in the area since 1967 and has regularly walked these routes around Little Oak Plantation before and since. He stated that he had never been challenged by any of the allotment owners when he had walked the routes in the early 1980's. He also informed members that many people who worked in the area used the paths as safe walking routes to the Sherwood Business Park rather than walking along the busy A611. The paths have become a valued local facility for pleasure and for access.

Mr Bob Collier responded to members questions as follows

- Employees of the Sherwood Business Park, park along Forest Road and use the cut through on Little Oak Plantation which means there is less congestion along the A611.
- Section H as shown on the appendices to the report would mean that is a path to nowhere so the natural instinct is that these paths are linked for use.
- If this application is refused I will carry on researching archives to look for evidence that these paths were used in years gone by.
- There have never been any notices up stopping use of these paths. The only notices put up were the ones used to ask users of the path to submit user evidence forms to keep the paths open for public use.
- Natural England has designated the Little Oak Plantation a Plantation of Ancient Woodland Site (PAWS) which was probable connected to Annersley Woodland Plantation and therefore part of the Royal Estate.
- There are at least three access points around the Plantation.
- Since the Ashfield Local Plan was published Taylor Woodrow has been trying to use the site as a soak away area for buildings proposed in the area.

Mr Peter Olko Chair of ACCESS (local community group) and local resident informed members that he had an avid interest in the local countryside and wildlife. He stated that he had walked the routes in question at least 2-3 times a week. He informed members at no time had he been challenged whilst walking the routes, and had only

been stopped when logging operations were being undertaken. These walks have become more popular with both local residents and workers from the Business Park. He also informed members that previously stiles had been erected by Ashfield District Council to connect these paths with those of Ashfield District Council's Forest Road Nature Reserve.

Mr Peter Olko responded to members questions as follows

- The paths are still in use even after the sale of the land in 2010.
- It was not until further investigations were made did we realise that the paths were not included on the Definitive Map.
- The Little Oak Plantation is a site of importance for Nature Conservation.
- The footpaths have been shown on Maps dating back to the 1850's
- The footpaths are not firebreaks they traverse the area in a walkway style.
- When Eon moved onto the Industrial Park their employees use the paths to get to work from along Forest Road.

Following discussions Members felt that they did not have enough information to make a decision on recommendation 1 as set out in the report it was therefore moved by Councillor Calvert and seconded by Councillor Creamer and

RESOLVED 2013/019

1. That the Applications for routes A to G, as set out in the report, be deferred pending information for Committee to consider
2. That the application for part H, as marked on the plan attached to the report, which is outside Little Oak Plantation be approved and authorises the making of a Modification Order, for the reasons as set out in the report.

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT TO ADD SEVEN FOOTPATHS AND A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN TOLON IN THE PARISH OF BEESTON AND STAPLEFORD

Following the opening comments by Dr Hart a number of public speakers were given the opportunity to speak and a brief summary of those speeches are set out below:-

Mrs M Daykin, a local resident spoke in favour of the application, informed members that she had lived in the area since 1975 and had always thought the path a public footpath. It provides a safe walking route away from the main roads as well as a range of other leisure activities including rambling, dog walking running etc. She also highlighted that the Path is known locally as the Black Pad which crosses the Sidings from Bressell Lane, Stapleford to Long Eaton and is depicted in successive maps from 1921 to the present day.

There were no questions.

Mr Lewis MBE, a local resident spoke in favour of the application. He informed members that he lives in sight of the Toton Sidings and is the Chair of the “Friends of Toton Fields” and a member of the “Environmental Protection Society of Toton”, as well as having previously been Principal Conservation Officer for Nottinghamshire Wildlife Trust.

He also informed members that he regularly used the paths to keep fit as it avoided the dangerous roads around the area. He also highlighted the fact it is a well-used educational resource showing the bio-diverse nature of the area.

There were no questions.

Mrs Barbara Bakewell, local resident, spoke in favour of the application. She informed members that there was never any attempt by British Rail to stop people from using the path even after a young boy was killed and fences were erected, they were not erected in such a way as to stop public access to the paths. A bridge known locally as “Asda Bridge” has been provided thus assuming local people were able to use the path as access to the Superstore. The paths are also very well used by people going to work, the Doctors and shopping between Stapleford and Long Eaton. The paths can be seen clearly from aerial satellite photos both before trees were felled and prior.

There were no questions.

Mr Chris Martin on behalf of the landowner spoke against the application. He highlighted the fact that this land would be earmarked for possible future development regarding the HS2 route. He also questioned the validity of the user evidence forms because the copies they received had been redacted to protect individuals’ personal data. Mr Martin stated that the landowner seeks deferral of a decision on the path claim as there is an application for registration of the land as a Town or Village Green which, in the landowner’s view relies upon the same evidence.

In response to questions Mr Martin replied as follows

- It is felt that the evidence is not robust because the evidence forms they have seen do not show where the users come from and therefore it may not be local people using the routes.
- It is important to know where users come from to prove local people are using the paths daily.
- The site will become a site of significant importance if the HS2 Hub is given the go ahead.
- The trees in question were felled before Barton Willmore were acting for the Landowner. However a restocking order is in place.
- The fences which were put up to stop people have been vandalised and broken along with signage that was erected.

Councillor Richard Jackson with the consent of the Committee spoke in favour of the application. He informed members that he had walked these paths which were well

used by local residents. He also informed members that there was a replanting order served on the owner due to felling the trees and that this has not yet been fulfilled. This is a site that is not being suggested as a site for development by the Broxtowe Borough Council's Core Strategy.

There were no questions.

Following debate and on a motion by the Chairman duly seconded it was

RESOLVED 2013/020

1. That the Committee accepts the claim for Route A and authorises the making of a Modification Order to register it as a public bridleway, as for the reasons set out in the report the evidence demonstrates that public bridleway rights are reasonably alleged to exist.
2. That the Committee accepts the claim for Route B and authorises the making of a Modification Order to register it as a public bridleway, as for the reasons set out in the report the evidence demonstrates that public bridleway rights are reasonably alleged to exist.
3. That a report be brought to a future committee regarding the Application for Route C.
4. That the Committee does not authorise the making of a Modification Order to register the third section of the Application as a public bridleway, as for the reasons set out in the report the evidence does not demonstrate that public bridleway rights are reasonably alleged to exist either as of right or at common law.
5. That the Committee accepts the claim for Route D and authorises the making of a Modification Order to register it as a public bridleway rather than a public footpath, as for the reasons set out in the report the evidence demonstrates that public bridleway rights are reasonably alleged to exist.
6. That the Committee authorises the making of a Modification Order to register Route E as a public bridleway, for the reasons set out in the report that the evidence demonstrates that public bridleway rights are reasonably alleged to exist.

The meeting closed at 12.55 pm

CHAIRMAN

REPORT OF SERVICE DIRECTOR, HIGHWAYS**CHANGES TO THE COMMITTEE'S CODE OF BEST PRACTICE****Purpose of the Report**

1. To consider changes to update the Codes of Best Practice for the Planning and Licensing and Rights of Way Committees, to be approved separately by each respective Committee.

Information and Advice

2. The original Codes of Conduct and Best Practice for the Planning and Licensing and Rights of Way Committees were approved by those committees in January, 2010. The Codes provide that they will be kept under review and a report brought before the Committee/s to advise of any suggested changes. The Rights of Way Committee's Code has subsequently been revised on 21st December, 2011, to provide for officers to undertake a number of processes for non-contentious matters allowing the Committee to focus on opposed / contentious matters. This aspect has worked well and no changes to this are proposed.
3. Officers have identified that some changes to the Codes of Best Practice would be helpful as a consequence of changes to the Authority's Constitution and to the Code of Conduct for Councillors. Officers have also therefore taken the opportunity to revisit the current Codes to identify areas of the Code which would benefit from increased clarity by amendments to the layout and wording, to shorten and to streamline the document and to make the core provisions consistent between both committees. Officers have also sought to address areas where procedures and practices can be revised so that the committee can be more efficiently supported by officers as well as to make the Codes of Best Practice (and the incorporated Public Speaking Protocol) clearer and more accessible to members of the public.
4. This has resulted in a substantial rewrite of the Codes, and a revised version is attached as an appendix to this report. Where the changes are in the interests of clarity and accessibility only, and do not substantively change procedures, this report does not list each change. Where significant changes are recommended to the Code or Protocol, these are detailed below.
5. The Codes are essentially the same for both committees subject to some individual variations tailored to each committee. Both are quasi-judicial

committees and both already permit public speaking. As such, both therefore have a Public Speaking Protocol which sets out the relevant arrangements. This Protocol has historically been separate to the Code, but one of the suggested changes is to bring the revised and updated Protocol (as attached) within the Code and it is now attached as Appendix A to the Code.

6. Revised wording has been inserted into Section 2.3 of the Code in order to make clearer what matters will come before the committee for decision and when, as well as (in paragraph 3.4 of the Code) making plainer that the moving and seconding of officer Recommendations is simply a procedural requirement, often undertaken by the Chairman and Vice-Chairman, and does not indicate that a view on the matter has already been formed.
7. The Public Speaking Protocol has been revised in order to make it much more user-friendly to members of the public, and a number of changes are recommended as follows.
8. A key aim has been to increase clarity in relation to when an interest in speaking on an item must be registered (paragraph A2.1 of the Protocol). Members of the public will now, in response to making a written submission on a matter to the Authority, be invited to confirm whether they may wish to speak at the relevant Committee meeting. If they do, they will be contacted nearer the time and invited to register then. This significantly streamlines the process for registering for public speaking and helps to ensure that those parties who are most interested in speaking are given the opportunity to register.
9. While the order of public speakers is set out within the Public Speaking Protocol, an omission was noted in relation to an opportunity for a Member of Parliament to speak on a matter before the Committee, and it is recommended that, where they indicate their wish to speak, they be given a 3-minute slot (as with all other public speakers) towards the end of the public speaking session, before the local Member's opportunity to speak (paragraph A4.3 of the Protocol). Further, in order to correspond with the provisions within the Council's Procedure Rules, the Public Speaking Protocol now refers (at paragraph A6.3 of the Protocol) to the local Member having 20 minutes public speaking time.
10. It is usual for the Committee Chairman, at the close of public speaking, to ask the officer introducing the report to clarify any points arising from the public speaking. It is acknowledged however that, in some circumstances, it may be helpful to the committee for the officer to provide clarification in relation to an individual speaker before public speaking is resumed. The capability for the Committee Chairman to do this is now set out within the Protocol at Paragraph A8.1.
11. The Public Speaking Protocol has always stated that there would be no opportunity for public speaking where a matter was before the committee for information / noting rather than to make a decision (paragraph A1.3 of the Protocol). In relation to the Rights of Way Committee, it has also historically been stated in the Code that where another forum for public speaking is, was or would be available in relation to a matter currently before the committee, e.g. where a public inquiry is held, no public speaking would be permitted (paragraph 18.1). In

order to assist members of the public, the same provision is now proposed to be duplicated in the Public Speaking Protocol (paragraph A1.4) for ease of reference.

12. Additional procedural guidance has been inserted into Paragraphs 5.1-5.5 of the Code in relation to decision-making where committee are minded to decide contrary to officer recommendation, in order that all interested parties are better able to understand this in context. This also ensures that, where this occurs, Councillors have access to a more detailed framework of officer support and advice, and officers are better able to efficiently assist the committee in taking the committee's decision forward procedurally.
13. Appendix C to the Code sets out an overview of the work of the Committee, and this has been shortened and revised so as to make it more accessible to the public. Particular attention has been given to the section on Gating Orders to make it simpler as well as to reflect restructuring within the Council.
14. Section 2.3 of the Rights of Way Committee's Codes of Best Practice sets out which of the Committee's functions (listed in Appendix D to the Code) will prompt a report to come before the Committee, and which will be dealt with by officers on behalf of the Committee. While some rewording has been undertaken in relation to Appendix D, much of this was in order to better reflect where the work undertaken by officers on behalf of the Committee was purely administrative, and to insert some legal provisions which, while not yet in force, would, under the Committee's Terms of Reference, be exercisable by the Committee upon coming into force. As such, only the following substantive changes are proposed:
 - a. The power to register variation of rights of common will no longer require a report to committee as it involves a wholly administrative function in updating the register of recorded common land rights where these are transferred to a successor. It is therefore considered more efficient that this be undertaken simply by officers.
 - b. New reference has been included, for the avoidance of doubt, to the Committee's responsibility for determining whether to take enforcement action in relation to protecting rights of common, on the rare occasions it should fall to this Authority to do so.
15. As quasi-judicial Committees of the Council (i.e. making decisions based on findings of fact rather than policy) the decisions of both Committees can not only be highly controversial, but can also be highly technical. The attached proposed revised Code and Protocol, by being clearer, should help Councillors, Officers and the public alike with decision-making in this area.

Other Options Considered

16. Committee may wish to consider leaving the Code of Best Practice and the Public Speaking Protocol unchanged but revision has been proposed for the reasons set out below.

Reason/s for Recommendation/s

17. Revision of the Codes of Best Practice and the Public Speaking Protocol aids accessibility by the general public and improves the efficient transacting of business by the Committee, reducing opportunities for misunderstanding / ambiguity, and reducing the potential for challenges and complaints.

Statutory and Policy Implications

18. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) It is RECOMMENDED that Committee approves the revised Code of Best Practice (incorporating a revised Public Speaking Protocol) as attached to this report with immediate effect.

Andrew Warrington
SERVICE DIRECTOR, HIGHWAYS

For any enquiries about this report please contact:

Steven Eastwood, Principal Legal Officer (RoW Lead Advisor), Legal Services Division
Tel.: (0115) 977 4916

Constitutional Comments (SLB 27/03/2014)]

19. The Committee has authority to consider the matters set out in this report.

Financial Comments (SEM 27/03/2014)

20. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Rights of Way Committee Report on “Changes to the Code of Conduct and Best Practice” of 21st December, 2011. (Published)

Electoral Division(s) and Member(s) Affected

- All.



Rights of Way Committee Code of Best Practice (incorporating Public Speaking Protocol)

Introduction

- 1.1 This Code of Best Practice is designed to set out how 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 Councillors and officers.
- 1.2 This Code generally applies to both the Planning and Licensing Committee and the Rights of Way Committee and will be reviewed by both Committees on a regular basis. While each Committee's Code has bespoke amendments where necessary for each Committee, it is intended that each Committee's Code (and the corresponding Public Speaking Protocol) will remain essentially 'in step' with that of the other Committee.
- 1.3 This Code should be read in conjunction with the County Council's Constitution (incorporating the Codes of Conduct for Councillors and Officers, the Code on Councillor and Officer Relationships and the Council's Procedure Rules for meetings). This Code was last revised on ##### taking into account the Localism Act 2011, changes to the Council's Codes and Rules, and taking into account "Openness and Transparency on Personal Interests" (Department for Communities and Local Government, 2012).
- 1.4 The Council is committed to the highest standards of ethical behaviour and probity by its Councillors. As such, this Code applies to members of the Committee at all times in relation to rights of way matters and includes both decision-making meetings of the Committee as well as less formal occasions, such as meetings with the public, officers, or consultative meetings.
- 1.5 If Councillors do not abide by this Code of Best Practice, they *may* put the Council at risk of proceedings on the legality or administration of a decision; and may put themselves at risk of complaint. Following the Code should reduce the risk of successful challenge to the legality of decisions and of complaints.

- 1.6 Part 4(A) of the County Council's Constitution sets out the current terms of reference of the Committee which has responsibility for discharging functions relating to public rights of way, and for determining applications for the registration of common land and town and village greens. Non-regulatory matters for the management, maintenance and promotion of the rights of way network, including responsibility for the budgetary matters, are the responsibility of the Transport and Highways Committee. Full Council and Policy Committee are responsible for determining policy in relation to the Committee's functions.
- 1.7 The exercise of these functions can be very contentious so it is important that decision-making in these areas is seen to be open and impartial, consisting of sound judgments made for justifiable reasons.
- 1.8 This Code covers the following areas:
 2. The Work of the Committee
 3. Committee Administrative Procedures
 4. Taking the Decision
 5. Decisions against Officer Advice
 6. Challenges & Complaints
 7. The Role of Committee Members
 8. Acting as the Local Member
 9. Dual Membership of Local Authorities / other statutory bodies
 10. Predetermination and Predisposition
 11. Contact with the Media
 12. Lobbying
 13. Councillors' Interests
 14. Councillor Conduct – Disclosure and Hospitality
 15. Discussions with Applicants
 16. The Role of Councillors not on Committee
 17. The Role of Officers
 18. Public Speaking Arrangements
 19. Site Visits
 20. Councillor Training
 21. Annual Inspection
 22. Review of this Code of Best Practice

The Work of the Committee

- 2.1 The relevant legislation is complex and supplemented by Government Circulars, guidance, case law and advice issued by the Planning Inspectorate. Good decision-making relies upon ensuring that Councillors and officers act in a way which is both within the legal framework, and is clearly seen to be fair, open and impartial.
- 2.2 A brief overview of each of the types of work with which the Committee is concerned can be found at Appendix C

- 2.3 All of the functions of the Committee are set out at Appendix D together with its role as consultee with the functions listed in Appendix D, Table A delegated to officers as operational decisions and the remainder, listed in Table B, reserved to the Committee. The exercise of the Committee's functions will operate as set out in paragraphs 2.3.1 – 2.3.7 below.
- 2.3.1 A full report will be taken to Committee where the County Council proposes to exercise:
- (a) a Table B function which consists of deciding whether to make an order, and at the pre-order consultation stage objections or adverse comments are received;
 - (b) a Table B function which 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);
 - (c) either a Table A or Table B function which has been referred to Committee by the local Member and such referral has been agreed to by the Chairman;
 - (d) either a Table A or Table B function which is considered by the case officer to be exceptionally sensitive
 - (e) where the Chairman of the Committee requests that an officer not exercise their delegated power in any particular case (in which case a report will be brought to the next available meeting of the Committee for consideration).
- 2.3.2 The report to Committee will include all relevant material including the officer's recommendation(s). Additionally, Committee members will need to take into account any relevant comments made by supporters of, or objectors to, any application, should that application be the subject of public speaking at committee (as set out in paragraph 18 below).
- 2.3.3 If Committee authorises that an order be made under 2.3.1(a) above, 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.
- 2.3.4 Except where it falls within paragraphs 2.3.1(c) or 2.3.1(d) above a Table 1 function is delegated to the Corporate Director (Environment & Resources). This will enable 'day-to-day' / operational matters including those requiring prompt attention, such as enforcement matters, to be dealt with outside the usual Committee cycle. A progress report updating Committee members as to current or completed enforcement action and other operational matters will be brought to Committee regularly.
- 2.3.5 Except where it falls within paragraph 2.3.1 above, a Table 2 function is delegated to the Corporate Director (Environment & Resources). This will enable unopposed matters where the County Council 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, to be dealt with outside the usual Committee cycle. While

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, and the absence of any objections or adverse comments from any party at the pre-order stage is a useful indication that a proposal is likely to be widely / universally supported.

- 2.3.6 Except for Definitive Map Modification Orders, should objections be made to an order during the statutory period after it has been made then unless those objections are withdrawn, a full report in accordance with paragraph 2.3.1 above will be brought to Committee to determine whether to refer the order to the Secretary of State seeking its confirmation. 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 the statutorily-prescribed automatic referral of the opposed Order to the Secretary of State.
- 2.3.7 The reason for this distinction is that for orders other than Definitive Map Modification Orders the Council has a discretion as to whether to seek confirmation of the Order by the Secretary of State, and it is therefore appropriate that, should objections be received, a report be brought to Committee for a decision to be made. By contrast, if objections are received to a Definitive Map Modification Order then, unless the objections are withdrawn, the Council is required by law to refer the Order to the Secretary of State. In the absence of new information which may substantively affect Committee's view, there is therefore no decision for the Committee to make. Where any relevant new information is presented / discovered, a report will be brought before the Committee for a further decision.
- 2.3.8 Periodical progress reports on operational matters and on matters following a decision of the Committee will be reported to Committee regularly.

Committee Administrative Procedures

- 3.1 Very late representations cannot properly be considered. Any material information received after the written report has been published 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 if it is brief and can be readily conveyed to the Committee. If highly significant **relevant** new information comes to light within the above timescale, the Chairman may, after consultation with the appropriate officer, defer the item to a later meeting.
- 3.2 Generally, those items where public speaking is involved will be dealt with first and the order of the agenda may be altered to facilitate this.
- 3.3 Officers will introduce each report, noting any relevant late information that is not in the papers. This will be followed by any permitted public speaking on that item, followed by any officer clarification; after which the matter is open to debate by Committee members.

- 3.4. Officer Recommendations will be moved and seconded for discussion before they can be debated. This is a procedural requirement to enable debate and does not imply that the mover or seconder of any such Recommendation has formed a particular opinion.
- 3.5. Having debated the item, the Chairman will ask Councillors to vote in the normal way. The decision taken will be minuted, and the draft Minutes will normally be presented to the next available meeting for approval as a true record.

Taking the Decision

- 4.1 Matters deliberated by the Committee should be determined in an open and fair manner, in which Councillors taking the decision will take account of all the evidence presented to them before arriving at a decision. It is important for Councillors to demonstrate that they have not committed themselves one way or another before hearing all the arguments.
- 4.2 It is essential to bear in mind that complaints and challenges can be made not just about the decision itself, but also about the way a decision has been reached.

Decisions against Officer Advice

- 5.1 Councillors may be minded to make a decision contrary to the recommendation in the Committee report. In those circumstances, it is essential that steps are taken to ensure that decisions are legally sound and robust enough to withstand legal challenge.
- 5.2 It may sometimes be prudent for the meeting to be adjourned for a short time for Councillors to receive legal or other advice before they make a decision contrary to the recommendation. At the discretion of the Committee Chairman, the public may be excluded from the meeting room while this takes place.
- 5.3 Should the recommendation be to refuse an application, and Councillors are minded to approve the application, Committee may wish to defer the final decision on the matter to receive additional specific information, or may resolve to accept the application, authorising officers to implement the decision subject to officers investigating particular points and concluding that they would not materially affect Committee's decision. This can be done solely by officers, or, should Committee so resolve, in agreement with the Chairman, and Vice-Chairman.
- 5.5 Where a decision is made contrary to officer recommendation the Committee **must** provide relevant reasons for their decision **in full**. This step is essential

due to the quasi-judicial nature of decisions and will enable the Council to justify its position in any challenge to that decision.

Challenges & Complaints

- 6.1 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 can only be confirmed by the Secretary of State for Environment, Food and Rural Affairs (to whom the order must be sent for determination, even if the Council does not seek confirmation). These matters are processed through the Planning Inspectorate, and are inevitably heard at a local hearing or public inquiry or dealt with by submission of written representations.
- 6.2 If Committee members have decided contrary to the officer's recommendation, it could weaken the Council's case at public inquiry if the officer who made the original recommendation (or an officer involved in the production of the original report) was asked to defend it. In these circumstances, either the Chairman or another Committee member 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, however, provide administrative assistance and support to Committee members in such a position.
- 6.3 Any decision that is made is also open to challenge through the courts, although any such challenge would have to be on a point of law ('Judicial Review'). The Council can be liable for the costs of proceedings if the Council is found to have acted unreasonably. Unreasonable behaviour might be a failure to follow various procedural or legal steps, or to either fail to take into account relevant information or to give it inappropriate weight. This might, for example, be the case where an application has been refused for other reasons not being within the prescribed / relevant legal test/s.
- 6.4 This is not to say that any decision against officer advice will always be open to challenge. In making decisions, Councillors can come to whatever decision they feel is appropriate provided that their decision is based solely on sound rights of way considerations.

Respective Roles of Committee Members and Officers

The Role of Committee Members

- 7.1 Members of the Committee, in making decisions on items reported to them, must:
- 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.
- 7.2 Committee members also have a role on behalf of their electoral division to represent local views, but Councillors must make it clear when they are acting in that 'local Member' role. The decision-making role and its impartiality must not be prejudiced by any such action.

Acting as the Local Member¹

- 8.1 Committee Members need to recognise that they can only wear one hat at a time, be that as a member of the Committee or as the local elected representative, as follows:
- 8.2 If a member of the Committee wishes to take part in decision making regarding a matter in their electoral division, they can advise those members of the public who seek their support that they have been appointed to the Committee for the purposes of determining matters as a member of the County Council, and not solely to voice the concerns of their electorate. Councillors on the Committee can, of course, advise those members of the public to put their views in writing and send those to the relevant case officer.
- 8.3 Alternatively, if a Councillor wishes to put the concerns of their electorate forward as the local elected representative, they may do so, but may choose not to take part in the decision making process. Councillors may wish to make it clear at the beginning of the meeting that they will be acting in their role on behalf of their electoral division, representing local views.

Dual Membership of Local Authorities / other statutory bodies

- 9.1 Councillors may be elected to both the County Council and to a District / Borough Council. Councillors may also serve on a Parish Council. Councillors can, therefore 'wear more than one hat', but they may only wear one hat at a time!
- 9.2 Matters to be decided by the County Council may well be discussed in other forums such as at a district / borough / parish council, or at the Local Access Forum, even though it is the County Council's Committee which is the decision making authority. There is no reason why such 'dual membership' Councillors should not be a party to the decision at County level, or involved in the debate leading up to the decision, provided that they retain an open mind when considering the application at County level.
- 9.3 It is the individual Councillor's responsibility to consider whether their involvement with a particular matter, or their past conduct leading up to the decision making stage is such that it could give rise to a public perception that the Councillor might not have an open mind. **If in any doubt, early advice**

¹ 'local Member': a County Councillor whose electoral division is affected by the item under consideration

should be sought as far in advance of the meeting as possible. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias: not only must Councillors attend committee with an open mind, but must be aware of the need to demonstrate this when coming to their individual decision in committee.

Predetermination and Predisposition

- 10.1 It is almost inevitable that Councillors, whether lobbied or not, may form some kind of prior view about the merits of a particular proposal. Committee members may be *predisposed* towards a view one way or the other, but the law draws a clear distinction between a Councillor having expressed an intention to vote in a particular way before the meeting ('predetermination') and merely having a predisposition to an initial view. Where the Councillor demonstrates that they will listen to all the material considerations presented at the Committee before deciding on how to exercise their vote, this is acceptable. 'Predetermination', however, is not acceptable and would leave the decision open to challenge.
- 10.2 If a Committee member does express their views for a particular outcome prior to the meeting, by campaigning for or lending support to a particular cause, or by speaking for or against it in another forum, they must be very clear that in order to take part in decision making at County level they must have regard only to those considerations which are material to the County Council's decision-making role, and must have an open mind. Ultimately, the decision as to whether to vote or partake in the debate has to be made by the individual Councillor concerned. There may be some situations where involvement in a campaign is so strong that the Councillor should consider whether it would be preferable to speak openly at the meeting in favour of, or against the proposal (perhaps as the local Member) rather than taking part as a member of the Committee.
- 10.3 Bearing in mind the advice that Councillors should come to Committee "with an open mind", it is plain that it would be contrary to that principle if Councillors acting as a particular political affiliation had met in advance to decide how to vote. Political Whips / Business Managers must, therefore, not be used to influence the outcome of a matter before the Rights of Way and Planning & Licensing Committees.

Contact with the Media

- 11.1 Committee members may be approached by the media for a comment about a particular proposal. The general advice as to predetermination and predisposition above holds for such approaches.

Lobbying

- 12.1 Once a proposal is in the public domain, interested parties may seek to persuade Committee members, to either approve or refuse an application. Lobbying is a normal and perfectly proper part of the political process. However, unless care and common sense is exercised by all parties, lobbying can lead to the impartiality and integrity of a Committee member being called into question.
- 12.2 If approached about a particular matter, Committee members must take great care to avoid giving the impression that they have already made up their mind before they have been informed of all the relevant information in the committee report, in written or oral information given to them after the committee papers have been published (including clarification and arguments raised in debate during the relevant Committee meeting). Committee members should restrict themselves to giving factual advice about procedure, and should try to avoid expressing any opinion on the merits of a proposal. They should advise those members of the public who seek to lobby or persuade them to put their views in writing and send those to the relevant case officer.
- 12.3 In the event that applicants or other interested parties wish to discuss matters with Councillors at any stage, meetings may involve those Councillors acting in their role as the local elected representative. Where a Councillor is a Committee member great care should be taken to avoid compromising their position before they have received all the relevant information, evidence and arguments about a matter.
- 12.4 Therefore, where Committee members do choose to meet relevant parties, or are approached by them directly, either in writing or verbally, they should:
- 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 Councillors
 - Inform lobbyists or objectors of the importance of their views being submitted in writing to the Council
 - Advise the Committee Chairman or the Monitoring Officer if any party appears to be trying to apply undue or unreasonable pressure on them or other County Councillors.
- 12.5 Where Committee members have held discussions or meetings with applicants or interested parties, this should be declared at the relevant Committee meeting.
- 12.6 It is for Committee members to decide whether they have been lobbied. A general discussion about a particular matter, during which the relative merits or disadvantages of a particular proposal are **not** raised, would not constitute lobbying. However, if the merits or otherwise of a scheme are raised with a Councillor, then this could be declared as lobbying. Lobbying may also include any approaches from Councillors who are not members of the

Committee.

- 12.7 At the start of each committee meeting, Committee members are asked to declare whether they have been lobbied about any item on the Agenda, and this will then be recorded in the Minutes of the meeting.

Councillors' Interests

- 13.1 Councillors must not use their powers improperly to secure either a personal advantage or an advantage for some other person. This could be relevant to committee matters in a number of ways, such as through personal business interests, or by using their position to discuss an item which may affect their property personally when other members of the public would not have the opportunity to do so. Likewise, Councillors must not use their position to seek preferential treatment for friends or relatives, or for any business or organisation with which they are connected. Should a Councillor have an interest in respect of an item brought before Committee, they must abide by the provisions of the Code of Conduct for Councillors and co-opted Members and the Council's Procedure Rules for meetings.
- 13.2 Each Councillor is personally responsible for deciding whether s/he has an interest that should be declared, although initial advice should be sought **in advance** from the Monitoring Officer, or from the relevant Legal or Democratic Services Officers. **Councillors are reminded that the meeting should not be delayed while a Councillor is advised.**

Councillor Conduct – Disclosure and Hospitality

- 14.1 The Council's Code of Conduct for Councillors sets out the standards that are required from Councillors, which financial interests they need to formally register, which interests they need to declare in meetings and how this will affect their participation in meetings. Whilst there is no specific reference to hospitality, thought should be given to the public's perception of Councillors' actions in relation to any particular matter if some form of hospitality is accepted.

Discussions with Applicants

- 15.1 It is good practice for officer discussions with applicants to take place in advance of an application being lodged, and officers may be involved in discussion for some time before an application is finally put together and submitted. Dialogue and meetings with applicants at various stages is essential, but will normally only involve officers, and occasionally the local Councillor(s).
- 15.2 Members of the Committee may wish to ensure that they are accompanied by the case officer if they are to meet with applicants / interested parties.

- 15.3 Where meetings take place at a preliminary stage it must 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 final decision of the Council.
- 15.4 Notes of the discussions at all meetings will be taken and will be placed on the case file. Any follow-up correspondence will also be placed on the file.
- 15.5 Case files will be available for public inspection subject to the provisions of access to information legislation such as the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Role of Councillors not on Committee

- 16.1 The role of Councillors as locally elected representatives is an important part of the process. Subject to the Councillors' Code of Conduct, local Members will be given the opportunity in respect of matters falling within the remit of the Committee to fulfil that role within their electoral division by:
- Responding in writing to officers on the merits of a matter;
 - Attending any Committee site meetings for matters within their electoral division; and
 - Making representations to the Committee.
- 16.2 Councillors can expect officers to give them all due help and assistance in answering questions relating to matters falling within the remit of the Committee, though they should not give instructions to officers, nor should they place pressure on officers in order to secure a particular outcome to a matter.

The Role of Officers

- 17.1 In respect of matters to be determined by the Committee, Officers will:
- Provide professional and impartial advice
 - Ensure 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

Public Speaking Arrangements

- 18.1 The Council considers that there are benefits in allowing public speaking in appropriate matters at Rights of Way Committee meetings. This gives an opportunity for applicants and objectors, and other interested parties, such as parish councils, to make presentations to the Committee. The current Protocol is set out in **Appendix A** to this Code. It should be noted that in the case of applications for registration of town or village greens or common land, public speaking at Rights of Way Committee will not be permitted where a separate forum (e.g. a public inquiry) has been or will be employed for the application to be fully explored, as there is an opportunity for supporters and objectors to be heard at that forum.
- 18.2 In order that both Councillors and those who wish to speak gain the most benefit from allowing public speaking at Committee, there has to be a clear and well publicised system, easily understood by all who wish to partake of this service. Information on the public speaking arrangements is available to all those who make representations. Details of how the system operates are set out in **Appendix A** to this Code. Equal opportunity will be given to objectors and supporters of a proposal.

Site Visits

- 19.1 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 matter coming before the Committee for a decision.
- 19.2 In cases other than of determining Definitive Map Modification Orders based on historical documentary evidence (where the physical situation on-site today is irrelevant) if it may be helpful for Committee members to have a site visit, the procedure is laid out in **Appendix B**.

Councillor Training

- 20.1 Rights of Way Committee will deal with a wide range of complex legislative issues, and Committee members need to understand what issues they should or should not consider, before coming to a decision.
- 20.2 **Committee members must undergo training sessions before they can speak and vote on the Committee.** Sessions will cover the relevant legislation, and what factors Committee members may or must consider when making decisions.
- 20.3 Occasionally information reports will be brought to Committee advising of new legislation, policy guidance, and best practice or procedural matters and presentations may be made on particular aspects of general interest. Site visits for training purposes may also be arranged.
- 20.4 General information is also available on the Council's website, including

information about the progress of various orders in the system. Committee members also have the guidance on Rights of Way in their training packs and the Councillors' intranet pages.

Annual Inspection

- 21.1 Committee members may wish to visit paths to view the consequences of the decisions being made, or to see where improvements have been successfully implemented.
- 21.2 If requested by Committee, an annual tour will be arranged to view certain key sites. These will either reflect decisions taken previously by Committee, or give an opportunity for Committee members to see some particular aspect of the Committee's work in practice.
- 21.3 The arrangements for such an event will be agreed with the Chairman and reported to Committee in advance together with a request to seek any necessary approvals in relation to expenditure etc.

Review of the Code of Best Practice

- 22.1 This Code of Best Practice will be reviewed periodically, and a report brought to Committee to advise of any suggested changes, and to report on the operation of particular arrangements, such as those for public speaking or site visits.

PROTOCOL FOR PUBLIC SPEAKING AT RIGHTS OF WAY COMMITTEE

Introduction

This Public Speaking Protocol operates in respect of both the Planning and Licensing Committee and the Rights of Way Committee and will be reviewed by both Committees on a regular basis. The protocol is published on the Council's website and updated as necessary. While each Committee's Public Speaking Protocol has bespoke amendments where necessary for each Committee, it is intended that each Committee's Protocol will remain essentially 'in step' with that of the other Committee.

What happens if there is a dispute?

In the event of any dispute regarding the procedures or this protocol, the Committee Chairman's decision shall be final.

Part A – General public speaking arrangements

Who may speak?

- A1.1 Speakers may be either in favour of the proposal, or in opposition to it, and a maximum of three speakers will be entitled to speak in opposition to a proposal, and three in support. Organisations and bodies who have made a formal representation on a rights of way matter may speak as one of the three allocated slots either for or against a proposed course of action. Additionally to those individuals or groups, a representative of the Local Access Forum will be allowed to speak for three minutes.
- A1.2 Anyone who has made a valid written submission in connection with an item to be discussed at Committee (including by e-mail) will receive an acknowledgement giving an opportunity to register an interest in speaking at the relevant committee meeting, and an invitation to apply for a slot will subsequently be sent to persons who have registered such an interest when notifying them of the date of the relevant meeting. Please note that any written submission **must** have been received by the time the papers for the meeting are prepared – being no later than ten clear working days in advance of the meeting.
- A1.3 Public speaking is only allowed where the matter is being referred to Committee for a decision, (eg. to make or not make an Order). No public speaking is allowed in respect of other reports.

A1.4 No public speaking will be permitted in the case of applications for registration of town or village greens (or common land) as a separate forum (e.g. a public inquiry) has been or will be employed for the application to be fully explored, and there is therefore opportunity for all supporters and objectors to be heard at that forum.

How a request to speak must be made

A2.1 Anyone who has made a valid written submission and wishes to speak at a particular Committee must, having received their invitation to register under A1.2 above, first register their wish to speak with the relevant officer. Such registration must take place no later than three clear working days before Committee – for example if Committee were to meet on a Wednesday, the registration to speak must be with the relevant officer by 4:00pm on the preceding Thursday.

A2.2 Currently, such registration may be made on the official form supplied by the County Council, by telephone or by e-mail. Details of how to register a request are also posted on the Council's web site:
<http://www.nottinghamshire.gov.uk/rightsofway>

A2.3 Anyone wishing to speak will be chosen strictly on a "first come, first served" basis (see paragraph A2.1 above) so early registration is encouraged. Those registering to speak will be asked to supply contact details in case they need to be advised of any changes to arrangements.

A2.4 Where a group of representatives wish to speak, they should nominate a spokesperson to address the Committee on their behalf and that person should register their wish to speak as soon as possible.

How does the scheme operate on the day?

A3.1 Should a speaker not be able to attend in person, or is unable to speak for themselves for whatever reason, they can nominate, in writing, someone to speak on their behalf.

A3.2 If a registered speaker does not attend the meeting, Committee will continue to consider the matter on the basis of any written submission made by that person.

A3.3 Although it is not necessary for local residents to employ specialists or lawyers to speak on their behalf, they are permitted to do so. Similarly other groups may choose to employ someone to speak on their behalf if they so wish.

A3.4 Those persons who are confirmed as speakers must make themselves known to the relevant officer at the relevant building's Reception 30 minutes before the start of the Committee, so that they can be given instructions on procedure. Prior to the start of the meeting, all public speakers should hand to

the relevant officer a written summary or transcript of the points they will be making, solely to assist in the production of the Committee Minutes. These summaries **will not** be circulated to members of the Committee at the meeting.

A3.5 Those allowed to speak may not make additional written submissions to the Committee, nor will they be allowed to hand out any further documentation such as photographs or plans either before or during the meeting. **All** information or representations should have been made to the Council sufficiently in advance. The use of overhead projectors, slide projectors or PowerPoint displays by public speakers is not allowed.

A3.6 In accordance with the Council's Procedure Rules, other than any official recording carried out by approved Council staff, the use of cameras, tape recorders or any other types of recording equipment shall only be permitted where sufficient notice has been given to, and prior permission given by, the Chairman. Where permission has been given, the Chairman will notify the Committee at the start of the meeting and in the event of objection by Committee Members, a vote will be taken.

What happens in the meeting?

A4.1 The Chairman will introduce the item, and ask the relevant Officer to present the item, who will highlight any key points and add any further information relevant to the report.

A4.2 Each speaker listed under A4.3 below, whether speaking as an individual or on behalf of a group, will have a maximum of **three minutes**. Before speakers begin their address to Committee, they will be asked to say who they are, where they live and who they represent.

A4.3 The Chairman will invite public speakers to address the Committee in this order:

- a) Those speakers who have been properly registered to speak in opposition to the matter under debate (up to a maximum of 3 speakers);
- b) Those speakers who have been properly registered to speak in favour of the matter, including applicants and/or their agents (up to a maximum of 3 speakers);
- c) A representative from directly affected or adjoining Parish Councils;
- d) A representative from directly affected or adjoining District / Borough Councils;
- e) A representative from a County or Unitary authority which adjoins the area within which the item under discussion is located;

- f) The Member of Parliament for the constituency within which the item under discussion is located;
- g) The Local Access Forum in respect of matters referred to Rights of way Committee.

If a 'local Member' (i.e. the County Councillor whose electoral division is affected by the item under consideration) wishes to speak on the matter under debate, they will, with the consent of the Committee Chairman, be given an opportunity to speak at this point. (Subject to A6.3 below)

- A4.4 If a speaker from a Parish, Borough, District, or other County Council or Unitary authority is speaking on their own behalf as a private individual or on behalf of a group of local residents and is not speaking as a formal representative of an authority mentioned above, they should register to speak in the normal way as a private individual (A4.3 a) and A4.3 b) above) having first made a written submission.
- A4.5 Members of the Committee may request the speaker to clarify any particular point, although it is emphasised that Councillors must not enter into debate with the speakers on the merits or otherwise of the proposals at that point of the proceedings

How long may speakers take?

- A5.1 Each speaker, whether speaking as an individual or as part of a group (or deputation), will have a maximum of three minutes.
- A5.2 Speakers will be advised when the final minute of their allotted time has been reached, so that they may conclude their presentation ensuring all relevant points are made to Committee. They will be asked to end their speech once the three minute period has been completed.

County Councillors

- A6.1 Where the local Member (i.e. the County Councillor in whose electoral division the item under consideration is located) is not on the Committee but considers that the item may have a relevant impact on their Division, they may address Committee in line with the Council's Procedure Rules which allow Councillors to speak with the consent of the Committee.
- A6.2 Where the local Member is a member of the Committee, but wishes to speak on behalf of their electoral division, they may do so, and the procedures for this are set out in the Committee's current Code of Practice. The local Member may choose to leave the meeting room at the conclusion of the public speaking. Similarly, they may consider that it would not be appropriate to take part in the decision-making process for that item.

A6.3 Where the local Member speaks as the local Member representing local views they will be permitted, with the consent of the Chairman, to speak for a maximum of 20 minutes. Councillors should advise the Chairman or Democratic Services Officer well in advance of the meeting of their wish to speak as the local Member.

What can and cannot be said

- A7.1 Speakers must address only issues relevant to the matter in hand and its determination by the Committee.
- A7.2 For rights of way matters, speakers must restrict themselves to elaborating on the evidence either for or against a proposed course of action, and what will be relevant will depend on the type of proposal under consideration.
- A7.3 Speakers are not allowed to ask questions of Councillors, officers or other speakers.
- A7.4 If any speaker behaves inappropriately or in any way behaves so as to disrupt or delay the work of Committee, the Chairman has discretion to curtail the speaking opportunity and may ask one or more speakers to leave the room, or, in extreme circumstances may adjourn the meeting for any period considered necessary.

What happens next?

- A8.1 Following the public speaking and speeches by non-Committee members, the Chairman may ask the relevant officer to comment on any other matters of fact arising from what has been said. At the sole discretion of the Chairman, the relevant officer may, where the Chairman considers it would be helpful, ask the relevant officer to comment / clarify following individual speakers rather than at the conclusion of the public speaking.
- A8.2 Members of the Committee will then debate the matter, and will reach a decision without any further public involvement.
- A8.3 Speakers may remain in the room, but are not allowed to join in with the debate, unless specifically requested by the Chairman to clarify a matter that has arisen during debate, and which cannot be dealt with by officers.
- A8.4 Once the decision is made, speakers may remain in the room but usually choose to leave before the next item on the agenda.
- A8.5 In any event, the Committee's decision will be published on the County Council's website and anyone who has made a valid written representation will be notified of the decision where they have previously so requested.

What happens if the matter is deferred or postponed?

- A9.1 Should the matter be deferred for a site visit or for any other reason following debate at the meeting, no further opportunity for public speaking will be allowed unless a period of six months or more has elapsed since such deferral.
- A9.2 Only in exceptional circumstances will additional public speaking outside of the above arrangements be allowed, and that shall only be with the agreement of the Chairman. This may be when new evidence or information has come to light, or where substantial changes have been made to a proposal, which renders it significantly different from what had been previously considered. The test will be whether further public speaking will assist members of Committee to come to a more well-informed decision.
- A9.3 Should the item have been deferred before the public speaking period had commenced (or had been withdrawn from the agenda entirely, i.e. 'postponed'), those registered to speak will be notified of the date when the Committee will consider the matter and given the same opportunity to speak at the later meeting.

SITE VISITS

Informal Site Visits

1. Individual Councillors can visit a site themselves in advance of the Committee meeting, though Committee members wishing to visit sites on their own should seek advice from officers. While a landowner's permission is not required to visit rights of way already on the Definitive Map, permission from landowners should be obtained to inspect proposed routes or application areas whether unaccompanied or with an officer. If the site cannot be seen from existing public highway or other public land and involves going on to private land, Councillors should first contact the relevant case officer who can liaise with the applicant or landowner.
2. Ideally, Councillors should always be accompanied by the case officer, even on informal site visits. If Councillors wish to visit a County Council property (e.g. school, elderly persons' home, library etc.) they should always report first to its reception.
3. Any information obtained from a site visit should be reported back to Committee by the Councillor involved so other Councillors have the same information. Any discussions or lobbying that may occur during a site visit should be reported in accordance with the procedures described earlier in this Code.

Formal Site Visits

4. Formal site visits will be held only when they provide a material benefit, for example, to understand local conditions and the physical characteristics of existing and proposed routes of paths.
5. Where Committee members consider that there is substantial benefit to be gained from a site visit, a formal site visit can be proposed by Committee members at a committee meeting in advance of the relevant application coming before the Committee for a decision. The reasons for the request must be clear and minuted and whether a formal site visit will be undertaken will be at the sole discretion of the Chairman. Similarly, where officers consider it appropriate, a short factual report will be brought to an earlier committee recommending a site visit.
6. Once the decision to undertake a site visit has been confirmed, Democratic Services will liaise with the relevant officers, Chairman, Vice-Chairman and political groups' Business Managers to make arrangements. Transport arrangements will depend on the circumstances.
7. All members of the Committee will normally attend formal site visits, together with the appropriate local Member. If the proposal may have a significant

impact on adjoining areas, the invitation will be extended to Councillors representing adjoining electoral divisions.

8. Appropriate officer/s of the Council will accompany the Committee to advise Committee members as to the proposal and to point out salient features and highlight key issues. Councillors are advised to wear stout footwear and be prepared for adverse weather conditions, though relevant Personal Protective Equipment (PPE) will be provided where it is necessary for the site.
9. The purpose of a formal site visit is fact finding and no discussion of the merits of the matter should take place. During site visits Committee members should not make any comments that could give the impression that they had predetermined the application. Decisions on matters must only be made within the formal committee meeting when Committee Members have all the necessary information before them.
10. As the decision for a formal site inspection will have been made at an open Committee, it is possible that the visiting party may be met with 'protest groups' or a number of supporters or objectors. Lobbying of Councillors during site visits will not be allowed as the opportunity for making representations is as part of the consultation process and as part of any public speaking during the relevant Committee meeting.
11. There may be occasions on site visits when questions raised by Committee members cannot be satisfactorily answered or require further investigation. In this event officers will pursue these matters and report back to the Committee meeting.

Following the Site Visit

12. Wherever possible, details of the site visit will be included in any subsequent report to Committee.

OVERVIEW OF AREAS OF WORK OF COMMITTEE

(i) PUBLIC RIGHTS OF WAY

Public rights of way fall into four distinct categories:-

- 1) Footpath – Walkers only
- 2) Bridleway – Walkers, horseriders & cyclists (though cyclists must give way to walkers and horseriders)
- 3) Restricted Byway – All of the above, plus non-mechanically-propelled vehicles (i.e. horse & cart / buggy, etc)
- 4) Byway Open to All Traffic. – All classes of user, so pedestrians, equestrians, cyclists, and vehicles both horse-drawn and mechanically-propelled.

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 the Natural Environment and Rural Communities Act 2006. Most of the legislation affecting rights of way is either quasi-judicial or regulatory in nature, typically involving recognition of existing routes or changes to the network by the extinguishment, diversion or creation of new routes 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 reasonably be alleged to exist. This can be prompted by the discovery of evidence by the Council 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. Claims may be based on user or historical evidence or a combination of both. Claims are processed in accordance with the priorities set out in the Council's Rights of Way Improvement Plan (RoWIP). Upon receipt of an application, or on the discovery of evidence, officers will undertake research and make an assessment of the relevant information. The requirement to recognise the route by making a Modification Order is a quasi-judicial decision and depends only on whether the right of way exists or can reasonably be alleged to exist - there is no scope for consideration of matters such as community interests, desirability, safety, suitability &c..

Public Path Orders

The County Council has a discretionary power to make legal orders to divert, create or extinguish Footpaths, Bridleways and Restricted Byways. (For Byways Open to all Traffic, application must be made to the Magistrates' Court

instead.) These can arise from applications or requests from local residents, path users, developers, farmers, schools, or indeed the Council itself may propose to make a change. A request for a diversion is the most common of these.

(ii) GATING ORDERS

On 1st April, 2006, the Clean Neighbourhoods and Environment Act 2005 gave Highway Authorities the power to restrict the public's right to use a highway such as a street, footpath or alleyway at all times or for certain times or periods as may be appropriate in the circumstances, but can exclude designated persons, bodies or organisations from those restrictions (e.g. residents requiring access to maintain property boundaries, or utility companies). A gating order can only be made where the existence of the highway is facilitating high and persistent levels of crime and/or anti-social behaviour which is adversely affecting premises adjacent to or adjoining the highway.

The power does not extinguish public rights of way but simply restricts the exercise of those rights by restricting use. This means that it is possible to subsequently alter or revoke the restrictions and reinstate use of the public right of way. Regulations prescribe the procedures for making, revising or revoking gating orders, including consultation, notification and dealing with objections &c..

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 include Police Crime Incident information. The involvement of the relevant Community Safety Partnership 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.

The effectiveness of individual Gating orders is reviewed at intervals to establish whether variation or revocation is required. For metalled highways this is administered and managed by the relevant Area Highway Manager, and for Public Rights of Way, this is undertaken by the Team Manager (Countryside Access).

The Area Highway Manager and the Team Manager (Countryside Access) ensure that each other is kept appropriately informed and consulted at all relevant stages of each gating order.

Applications for gating orders are processed in accordance with the Council's Gating Order Policy (a copy of which can be accessed at: http://cms.nottinghamshire.gov.uk/gating_policy.pdf). Further information can be found in the Council's Gating Orders Guide (a copy of which is at:

http://cms.nottinghamshire.gov.uk/gating_orders_guide.pdf).

(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 limited circumstances under the 1965 Act, to take action to protect the registered land. (Action is normally taken by those whose rights are being infringed, i.e. the common rights owners.)

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 either do something on the land or to 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:

- **Estovers** – Taking wood, gorse or furze
- **Herbage** – Grazing sheep or cattle
- **Pannage** – Eating of acorns or beechmast by pigs
- **Piscary** – Taking of fish
- **Turbary** – Taking peat or turf

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.

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 (in which case, people had to 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 inclosure 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 the Secretary of State's consent being required for certain types of work 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 greens or village greens and, in limited circumstances, to act to protect the registered land. Town or village greens have a not dissimilar history to common land. They are, however, defined fundamentally separately for the purposes of registration.

Town or Village Greens are typically areas of land found in identifiable settlements or geographical areas where local people go to undertake 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 a village green, provided that the legal tests are met – the most crucial of which is 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 lawful sports and pastimes. This right to apply may, however, be excluded if any one of a number of Planning-related "trigger events" has occurred on the land, although the right may become exercisable again if a corresponding "terminating event" has occurred since the "trigger event".

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 Council as Registration Authority.

The decision as to whether or not to register the land can only be determined on the facts established and the law as 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 examining 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.

FUNCTIONS**TABLE A ('Day-to-Day' / Operational Functions undertaken by Officers)***(Italicised functions are not yet in force)*

Function	Provision of Act or Statutory Instrument
Power to grant a street works licence	Section 50, New Roads and Street Works Act 1991
Maintaining the register of landowners' Section 15A statements	Section 15B, Commons Act 2006
Maintaining the register of information with respect to maps, statements and declarations	Section 31A, Highways Act 1980
<i>Maintaining the register of applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980</i>	<i>Section 121B, Highways Act 1980</i>
Duty to assert and protect the rights of the public to the use and enjoyment of highways ²	Section 130, Highways Act 1980
Duty to serve notice of proposed action, if any, in relation to obstruction	Section 130A, Highways Act 1980
<i>Power to temporarily divert footpath or bridleway due to works presenting a danger to users of the way</i>	<i>Section 135A, Highways Act 1980</i>
<i>Functions relating to the making good of damage and removal of obstructions</i>	<i>Section 135B, Highways Act 1980</i>
Power to permit deposit of builder's skip on highway	Section 139, Highways Act 1980
Power to license planting, retention and maintenance of trees etc in part of highway	Section 142, Highways Act 1980
Power to remove structures from the highway	Section 143, Highways Act 1980
Power to authorise erection of stiles etc on footpaths or bridleways	Section 147, Highways Act 1980
Powers relating to the removal of things so deposited on highways as to be a nuisance	Section 149, Highways Act 1980

² This power is also delegated to the Committee as an overarching duty to be exercised by officers and/or Committee as appropriate.

Power to license temporary erection of structure which obstructs the highway in connection with works to buildings etc	Section 169, Highways Act 1980
Power to consent to temporary deposits or excavations in streets	Section 171, Highways Act 1980
Powers relating to the obligation to erect hoarding or fence during building works	Sections 172 & 173, Highways Act 1980
Power to consent to the placing of rails, beams etc. over highways	Section 178, Highways Act 1980
Power to restrict the construction of cellars etc under street	Section 179, Highways Act 1980
Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators	Section 180, Highways Act 1980
Power to enter into land management agreements with owners & occupiers of land	Section 39, Wildlife and Countryside Act 1981
Maintaining the register of applications made under section 53(5), Wildlife and Countryside Act 1981	Section 53B, Wildlife and Countryside Act 1981
Power to prepare map and statement by way of consolidation of definitive map and statement	Section 57A, Wildlife and Countryside Act 1981
Power to temporarily prohibit or restrict traffic on footpaths, bridleways, restricted byways and byways open to all traffic.	Section 14, Road Traffic Regulation Act 1984
Power to temporarily prohibit or restrict traffic on footpaths, bridleways, restricted byways and byways open to all traffic in connection with certain events.	Section 16A, Road Traffic Regulation Act 1984
Power to register variation of rights of common	Commons Registration Act 1965; Regulation 29, Commons Registration (General) Regulations 1966 (S.I. 1966/147); Commons Act 2006 and Regulations made thereunder

FUNCTIONS**TABLE B (The main Functions undertaken by Committee)***(Italicised functions are not yet in force)*

Function	Provision of Act or Statutory Instrument
Power to create footpaths and bridleways by agreement or otherwise	Sections 25 & 26, Highways Act 1980
Power to apply for the stopping up or diversion of a highway	Section 116, Highways Act 1980
Power to extinguish footpaths and bridleways	Section 118, Highways Act 1980
Power to make a rail crossing extinguishment order	Section 118A, Highways Act 1980
Power to make a special extinguishment order	Section 118B, Highways Act 1980
<i>Power to determine application by proprietor of a school for a special extinguishment order</i>	<i>Section 118C(2), Highways Act 1980</i>
<i>Power to determine application for public path extinguishment order for the purposes of agriculture, forestry, or the breeding or keeping of horses</i>	<i>Sections 118ZA, Highways Act 1980</i>
Power to divert footpaths, bridleways and restricted byways	Section 119, Highways Act 1980
Power to make a rail crossing diversion order	Section 119A, Highways Act 1980
Power to make special diversion order	Section 119B, Highways Act 1980
Power to require applicant for order to enter into agreement	Section 119C (3), Highways Act 1980
<i>Power to determine application by proprietor of a school for a special diversion order</i>	<i>Section 119C(4), Highways Act 1980</i>
Power to make an SSSI diversion order	Section 119D, Highways Act 1980
<i>Power to determine application for public path diversion order for the purposes of agriculture, forestry, or the breeding or keeping of horses</i>	<i>Sections 119ZA, Highways Act 1980</i>
<i>Power to decline to determine applications under Section 118ZA, 118C, 119ZA and 119C</i>	<i>Section 121C, Highways Act 1980</i>
Power to stop up private means of access to highways	Section 124, Highways Act 1980

Power to make Gating Orders	Section 129A to G, Highways Act 1980
Duty to assert and protect the rights of the public to the use and enjoyment of highways ³	Section 130, Highways Act 1980
Power to apply for variation of an order made under section 130B of the Highways Act 1980	Section 130B(7), Highways Act 1980
Power to authorise temporary disturbance of service of footpath, bridleway or restricted byway due to excavation or engineering works for the purposes of agriculture	Section 135, Highways Act 1980
Power to extinguish footpaths and bridleways where land acquired compulsorily or otherwise	Section 32, Acquisition of Land Act 1981
Duty to keep the definitive map and statement under review	Section 53, Wildlife and Countryside Act 1981
Power to include modifications in other orders	Section 53A of the Wildlife and Countryside Act 1981
Duty to reclassify roads used as public paths	Section 54, Wildlife and Countryside Act 1981
Power to convert footpaths into cycle track	Section 3, Cycle Tracks Act 1984
Power to seek approval to extinguish public right of way over land acquired for clearance	Section 295, Housing Act 1985 (c.68)
Power to authorise stopping-up or diversion of footpath or bridleway to enable development in accordance with planning permission	Section 257, Town and Country Planning Act 1990
Power to extinguish footpath or bridleway over land held for planning purposes	Section 258, Town and Country Planning Act 1990
Power to enter into agreements with respect to means of public access	Section 35, Countryside and Rights of Way Act 2000
Power to provide means of public access in absence of agreement	Section 37, Countryside and Rights of Way Act 2000
Power to register common land and town or village greens	Commons Registration Act 1965; Regulation 6, Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843); Commons Act 2006 and Regulations made thereunder

³ This power is also delegated to officers as an overarching duty to be exercised by Committee and/or officers as appropriate.

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, non-statutory public access routes & multi user access routes and protection of Common Land & Town or Village Greens