

# Report



Meeting: COUNTY COUNCIL

Date: 24 September 2009

Agenda Item Number: 12

## **REPORT OF THE MONITORING OFFICER**

### **FOOTPATHS AND RIGHTS OF WAY COMMITTEE**

#### **1. Purpose of the Report**

- 1.1. To seek approval of the terms of reference for Rights of Way Committee and consequential amendments to the County Council's Constitution.

#### **2. Background Information**

- 2.1. At its meeting on 18<sup>th</sup> June 2009 the County Council established the Footpaths and Rights of Way Committee. It was agreed that there should be further discussion between the Monitoring Officer, the Corporate Director and the Chair of the new Committee regarding the practical operation of the Committee, and that a further report should be brought to Council as soon as possible.
- 2.2. Further discussion took place and a report was prepared for the new Committee's consideration. At its first meeting on 2<sup>nd</sup> September 2009 the Footpaths and Rights of Way Committee considered the report; this set out proposed terms of reference. The Committee approved the proposed terms of reference and resolved to recommend them for approval by the County Council together with consequential amendments to the Constitution.
- 2.3. The Committee also resolved to recommend an alternative title of "Rights of Way Committee" for approval by the County Council.

### **3. Terms of Reference**

- 3.1. The proposed terms of reference for the “Rights of Way Committee” are included at **Appendix A** to this report. If approved these will be incorporated into the Council’s Constitution at Part Three, Responsibility for Functions, following the terms of reference for Planning and Licensing Committee.
- 3.2. Providing these terms of reference are approved, some consequential amendments to the terms of reference for Planning and Licensing Committee will also be required. The proposed revised terms of reference are included at **Appendix B** to this report. For the sake of brevity the associated Tables have not been included in the Appendix.
- 3.3. Minor consequential amendments will be required elsewhere in the Constitution, to ensure the new Committee is referenced as necessary in the Officer Scheme of Delegation and the Delegation to Cabinet Members.
- 3.4. In addition to the terms of reference, brief standing orders for the Rights of Way Committee have been drafted, which are included at **Appendix C**. Those standing orders will enable the new Committee to approve a Code of Practice for managing matters which come before the Committee which will cover, for example, any arrangements for public speaking at the Committee. This Code will be developed over the forthcoming weeks with the aim of bringing it for approval at the next available meeting of the Rights of Way Committee.

### **4. Statutory and Policy Implications**

- 4.1. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder, human rights and those using the relevant service. Where such implications are material they have been described in the text of the report.

### **5. Recommendations**

It is recommended:

- 5.1. that the title of the Footpaths and Rights of Way Committee be amended to the Rights of Way Committee;
- 5.2. that the terms of reference and standing orders set out in the Appendices to the report be approved for incorporation into the Council’s Constitution;

- 5.3. that the Monitoring Officer be granted delegated authority to make the necessary further consequential amendments to the Constitution.

**Legal Services Comments**

The recommendations within the report give rise to changes in the Council's Constitution which is a matter reserved to Full Council. [HD – 4/9/09]

**Financial Comments of the Service Director (Finance)**

There are no specific financial implications arising from the report.

**Background Papers Available for Inspection**

Report to Footpaths and Rights of Way Committee dated 2<sup>nd</sup> September 2009, "Terms of Reference"

**Electoral Divisions Affected**

All

**APPENDIX A**  
**TERMS OF REFERENCE FOR RIGHTS OF WAY COMMITTEE**

**1. DELEGATION TO RIGHTS OF WAY COMMITTEE**

- 1.1 The Rights of Way Committee is a regulatory committee of Council discharging statutory functions with responsibility for the regulatory powers of the County Council relating to Public Rights of Way (Footpaths, Bridleways, Restricted Byways and Byways Open to all Traffic), Cycle Tracks, Gating Orders and Common Land and Town or Village Greens. The exercise of the powers and functions contained in Table 7 – Highways (insofar as they affect Public Rights of Way, Cycle Tracks and Gating Orders only) and Common Land and Town or Village Greens are delegated by the County Council to the Rights of Way Committee and are expressly excluded from the delegation of authority to Cabinet.
- 1.2 Rights of Way Committee shall have the following terms of reference:
- 1.2.1 Where there are proposals for orders or court applications relating to orders, to consider action on:
- 1.2.1.1 The creation, extinguishment and diversion of footpaths, bridleways, restricted byways, byways open to all traffic and unclassified and unsurfaced roads and
- 1.2.1.2 The conversion of footpaths to Cycle Tracks
- 1.2.1.3 Applications for Gating Orders
- 1.2.2 To consider proposals for the modification of the definitive map and statement which could be the subject of appeal or orders.
- 1.2.3 To receive reports on and make representations relating to other non-statutory access routes prior to their consideration by the relevant Cabinet Member or other body of Council.
- 1.3 All functions listed in table 7 are also delegated to the Corporate Director, Communities who may designate in writing such other officers as s/he thinks fit to exercise any authority delegated to him/her under this scheme of delegation or otherwise.
- 1.4 The Committee shall receive reports on the exercise of powers delegated to officers in relation to functions for which this Committee is responsible.

**Table 7 – Highways (Rights of Way and Cycle Tracks)**

A	Functions relating to Highways	Provision of Act or Statutory Instrument
	(only insofar as they relate to Public Rights of Way, Cycle Tracks or Gating Orders)	
22	Power to grant a street works licence	Section 50 of the New Roads and Street Works Act 1991
23	Power to permit deposit of builder's skip on highway	Section 139 of the Highways Act 1980 (c.66)
24	Power to license planting, retention and maintenance of trees etc in part of highway	Section 142 of the Highways Act 1980
25	Power to authorise erection of stiles etc on footpaths or bridleways	Section 147 of the Highways Act 1980
26	Power to license works in relation to buildings etc which obstruct the highway	Section 169 of the Highways Act 1980
27	Power to consent to temporary deposits or excavations in streets	Section 171 of the Highways Act 1980
28	Power to dispense with obligation to erect hoarding or fence	Section 172 of the Highways Act 1980
29	Power to restrict the placing of rails, beams etc. over highways	Section 178 of the Highways Act 1980
30	Power to consent to construction of cellars etc. under street	Section 179 of the Highways Act 1980
31	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
32	Power to create footpaths and bridleways by agreement or otherwise	Sections 25 & 26 of the Highways Act 1980
33	Duty to keep register of information with respect to maps, statements and declarations	Section 31A of the Highways Act 1980
34	Power to stop up footpaths and bridleways	Section 118 of the Highways Act 1980
35	Power to determine application for public path extinguishment order	Sections 118ZA and 118C(2) of the Highways Act 1980

A	Functions relating to Highways	Provision of Act or Statutory Instrument
	(only insofar as they relate to Public Rights of Way, Cycle Tracks or Gating Orders)	
36	Power to make a rail crossing extinguishment order	Section 118A of the Highways Act 1980
37	Power to make special extinguishment order	Section 118B of the Highways Act 1980
38	Power to divert footpaths and bridleways and restricted byway	Section 119 of the Highways Act 1980
39	Power to make a public path diversion order	Sections 119ZA and 119C (4) of the Highways Act 1980
40	Power to make a rail crossing diversion order	Section 119A of the Highways Act 1980
41	Power to make special diversion order	Section 119B of the Highways Act 1980
42	Power to require applicant for order to enter into agreement	Section 119C (3) of the Highways Act 1980
43	Power to make an SSSI diversion order	Section 119D of the Highways Act 1980
44	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
45	Power to decline to determine certain applications	Section 121C of the Highways Act 1980
46	Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980
47	Duty to serve notice of proposed action in relation to obstruction	Section 130A of the Highways Act 1980
48	Power to apply for variation of order under section 130B of the Highways Act 1980	Section 130B (7) of the Highways Act 1980
49	Power to authorise temporary disturbance of service of footpath or bridleway and restricted byway	Section 135 of the Highways Act 1980
50	Power temporarily to divert footpath or bridleway	Section 135A the Highways Act 1980
51	Functions relating to the making good of damage and removal of obstructions	Section 135B of the Highways Act 1980
52	Powers relating to the removal of things so deposited on	Section 149 of the Highways Act 1980

A	Functions relating to Highways	Provision of Act or Statutory Instrument
	(only insofar as they relate to Public Rights of Way, Cycle Tracks or Gating Orders)	
	highways as to be a nuisance.	
53	Power to extinguish certain public rights of way	Section 32 of the Acquisition of Land Act 1981
54	Duty to keep a definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981
55	Power to include modifications in other orders	Section 53A of the Wildlife and Countryside Act 1981
56	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
57	Duty to reclassify roads used as public paths	Section 54 of the Wildlife and Countryside Act 1981
58	Power to prepare map and statement by way of consolidation of definitive map and statement	Section 57A of the Wildlife and Countryside Act 1981
59	Power to designate footpath as cycle track	Section 3 of the Cycle Tracks Act 1984
60	Power to extinguish public right of way over land acquired for clearance	Section 295 of the Housing Act 1981 (c.68)
61	Power to authorise stopping-up or diversion of footpath or bridleway	Section 257 of the Town and Country Planning Act 1990
62	Power to extinguish public rights of way over land held for planning purposes	Section 257 of the Town and Country Planning Act 1990
63	Power to enter into agreements with respect to means of access	Section 35 of the Countryside and Rights of Way Act 2000
64	Power to provide access in absence of agreement	Section 37 of the Countryside and Rights of Way Act 2000
65	Power to make Gating Orders	Highways Act 1980 Section 129A to G and Regulations made thereunder and Section 2 of the Clean Neighbourhoods and Environment Act 2005
66	Various	Powers under the Natural Environment and Rural Communities Act 2006
67	General	Powers under all other legislation associated with the County Council's functions in respect of Public Rights of Way

B	Functions relating to common land	Provision of Act or Statutory Instrument
20	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	<p>Commons Registration Act 1965</p> <p>Regulation 6 of the Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843)</p> <p>Commons Act 2006 and Regulations made thereunder</p>
21	Power to register variation of rights of common	<p>Commons Registration Act 1965</p> <p>Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/147)</p> <p>Commons Act 2006 and Regulations made thereunder</p>



**APPENDIX B**  
**TERMS OF REFERENCE FOR PLANNING COMMITTEE**

**1. DELEGATION TO PLANNING AND LICENSING COMMITTEE**

- 1.1 The Planning and Licensing Committee is a regulatory committee of Council discharging statutory functions with responsibility for the regulatory powers of the County Council relating to development control, highways (excluding the exercise of those regulatory powers for discharging the County Council's statutory functions in respect of Public Rights of Way, Cycle Tracks, Gating Orders and Common Land and Town or Village Greens which are delegated to Rights of Way Committee) and Licensing. The exercise of the powers and functions contained in Table 4 – Development Control and Highways(insofar as they do not relate to Public Rights of Way, Cycle Tracks Gating Orders and Common Land and Town or Village Greens) and Table 5 – Licensing are delegated by the County Council to the Planning and Licensing Committee and are expressly excluded from the delegation of authority to Cabinet.
- 1.2 The Planning and Licensing Committee is not responsible for:
  - 1.2.1 The preparation, approval and adoption of development plans under the Town and Country Planning acts either solely or jointly with the City of Nottingham;
  - 1.2.2 Providing observations on behalf of the County council in its capacity as County Planning Authority, on statutory and non-statutory plans and proposals of other authorities.
- 1.3 Subject to the provisions of table 6 within this delegation, all functions listed in tables 4 and 5 are also delegated to the Corporate Director, Communities (except number 69 in table 5 which is delegated to the Corporate Director, Children and Young People).
- 1.4 Corporate Directors may designate in writing such other officers as they think fit to exercise any authority delegated to them under this scheme of delegation or otherwise.
- 1.5 The Committee may receive reports on the exercise of powers delegated to officers in relation to functions for which this Committee is responsible.

**APPENDIX C  
STANDING ORDERS**

**13. RIGHTS OF WAY COMMITTEE**

- 13.1 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.
- 13.2 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. However, nothing within the Code of Best Practice or any failure to comply with its contents shall provide any grounds to challenge against any decision of the Rights of Way Committee whether by judicial review or otherwise.