

DERBYSHIRE COUNTY COUNCIL

CABINET

26 January 2016

Report of the Strategic Director – Economy, Transport and Environment

**REPORT ON THE OUTCOME OF CONSULTATION REGARDING THE
PROPOSED REVIEW OF THE RIGHTS OF WAY CHARTER (HIGHWAYS,
TRANSPORT AND INFRASTRUCTURE)**

(1) **Purpose of Report** To advise Cabinet of the responses to public consultation and initial consultation with relevant staff and Trade Unions regarding the proposed review of the Rights of Way Charter.

(2) **Information and Analysis**

Context

The Comprehensive Spending Review and associated Local Government Finance Settlement, announced in December 2015, provide clear indications of likely levels of Government support up to 2019-20.

The ability of the Council to fund services is influenced by a number of factors, one of the most significant of which is the availability of support from Government in the form of Revenue Support Grant (RSG). Throughout the current period of cuts in public sector spending, since the global financial crisis in 2008, the Government has consistently reduced its support to local authorities and by 2019-20 it is forecast by the Department for Communities and Local Government that the Council's support through RSG will have fallen to around £13m and the Council is expecting this support to end in totality in the following year (2020-21). By way of comparison the Council received £98.050m of RSG in 2015-16.

This will bring to an end decades of support to local authorities through the allocation of a large non-ringfenced Government grant; other, less significant, grant streams are also expected to reduce and some to end over the forthcoming five years. By 2021-22 it is envisaged the vast majority of the Council's funding will come from Council Tax and Business Rates, topped up by direct charges for services where appropriate.

The reduction in Government grants is only part of the problem faced by the Council; there are significant pressures, particularly in Adult Care which require the Council to allocate approximately £20m to that service alone in each of the next five years and probably around £15m a year thereafter. The pressures in Adult Care are a combination of additional cost arising from the Chancellor of the Exchequer's announcement about the introduction of a National Living Wage and increasing numbers of clients requiring support and the increasingly complex needs of those clients.

In mitigation, the Government have announced that councils will be able to increase their Council Tax by an additional 2% per annum in each of the next four years and there is provision for further payments to be received from the Better Care Fund, potentially reaching £25m per annum by 2019-20. However, neither of these measures will offset the pressures in Adult Care on an annual basis and are not available to help prevent savings being required in other service areas.

Overall, the Council's revised Five Year Financial Plan which is also on the agenda for approval at this Cabinet Meeting indicates significant cuts are still required from 2016-17 until 2020-21. This is in addition to cuts identified in the period 2010-11 to 2015-16.

Background Information

On 7 July 2015, Cabinet gave approval for formal consultation to be undertaken on the proposal to revise the Rights of Way Charter (the Charter) and a review of the staffing structure (subject to the outcome of the consultations in the Charter), to meet financial targets set out by recent budget reductions (Minute No. 261/15 refers). A separate exempt report to this meeting will address the review of the staffing structure.

This report details the outcome of the consultation, and proposals for redesigning and reprioritising the work of the Rights of Way Team in line with a revised Rights of Way Charter which, where possible, has been amended to reflect issues raised in the consultation.

Widespread consultation on the proposed review of the Rights of Way Service commenced on 27 July 2015, including key stakeholders and Countryside Service staff. A press release was published and an online questionnaire created to receive comments. Members of the Rights of Way Team each received a letter explaining the context for the review, along with a copy of the report, as approved on 7 July 2015. Staff briefings were held in July 2015 and September 2015, at which the Trade Unions were present, and the staff were encouraged to discuss the proposals with managers or their respective Trade Union if further questions arose.

Just over 500 responses were received to the online consultation which focused on changes to the Charter. The results indicated, via the online questionnaire, that 15 County Council employees have also contributed to the survey.

In addition to these responses, a number of individuals and the Council's key stakeholders, including the Derby and Derbyshire Local Access Forum (DADLAF), the Peak District Local Access Forum (Peak LAF) and the Peak and Northern Footpaths Society, all registered their concerns as to the proposals to cut resources and lengthen response timescales.

The headline themes that emerged from the consultation are set out below, along with a commentary on each issue:

1. A greater use of volunteers

Comment: Volunteer groups are already being supported across the County by the Countryside Service. In 2015, 583 volunteer days were recorded for work on public rights of way between January 2015 and the end of September 2015. The Service has a strong track record of providing volunteering opportunities which it is keen to maintain and, wherever possible, extend, however, supporting volunteers incurs costs, by way of staff support and training. The extent to which more volunteers can be supported is therefore limited.

2. Increasing the timescale for responses will only encourage a backlog of complaints to build up

Comment: To reduce the impact on the service and to ensure that staff time on site carrying out inspections is maximised, current procedures will be reconfigured. An asset management approach, coupled with location independent working, should provide opportunities to deliver back office efficiencies, reduce administrative overheads and staff mileage. Combining new working practices with targeting priority issues will ensure that the County Council continues to meet its statutory duties (including the new duties imposed by the Deregulation Act which requires the Council to meet strict deadlines for determining applications for Modification and Public Path Orders).

In addition to this, parish and town councils will continue to be encouraged to take a proactive role in dealing with problems on rights of way, using the current powers available to them. Working with volunteers will continue as detailed above.

3. The Council will not fulfil its statutory duties if it extends timescales

Comment: Whilst it may take longer to deal with some enquiries, the County Council will continue to meet its statutory duties. With a declining budget, there are potential revenue implications in respect of the repair of routes, however, all repairs will be assessed and public safety given the highest priority in accordance with the revised Charter.

4. Rights of way are important to Derbyshire and tourism

Comment: The County Council recognises the significance of rights of way to the tourism economy, as well as a key component of the health agenda. Partnership working with the Peak District National Park Authority will continue as it will with parish, town, district and borough councils across the County. It is intended that through the County Council's continued support to these organisations, new ways of working together can be explored to improve the experience of visitors to the area for example, and where resources permit, the joint promotion of activities, assisting parishes with rights of way improvements. Work will continue with volunteers and stakeholder groups to improve the network.

Broad Analysis of Responses

Consultees were asked if they agree or disagree with the proposal to increase the amount of time enquiries are dealt with.

Agree	Disagree	Don't know
22%	70%	8%

Consultees were asked how the proposals to increase response times would affect them.

There is clear concern that by extending response times, this would lead to a neglected network and reduce the overall enjoyment of users. Whilst it is recognised that the changes will have an impact on the network as a whole, every effort will be made to prioritise enquiries in accordance with their location and popularity.

Further comments suggest that the growth of vegetation on paths will discourage use. In recognition of this, the number of paths cut will be increased by reprioritising existing resources.

Consultees were asked for suggestions on how the Council can continue to keep Rights of Way open.

There is measurable support for more involvement of volunteers which has already been addressed in this report. Other suggestions include a re-engineering of procedures and a review of current policies to see if savings can be made; these last two points are discussed in detail below.

The consultation asked the contributors to identify their top three issues from a list of frequent reports received by the Council. The outcome of responses is set out in the table overleaf:

Obstructions on paths	90%
Clearance of vegetation	69%
Improving access by ensuring gates and stiles are in good working order	60%
Reinstating ploughed and cropped paths	45%
Waymarking paths	35%

Using these results as a guide, it is recommended that the Charter, set out at Appendix One, is adjusted to reflect the importance of these priorities and focus on maintaining access, e.g. obstructions and maintenance. The revised Charter targets, which focus mainly on the Council's core statutory duties, are set out at Appendix Two to the report. Targets have been set out in Appendix 1 which will be reviewed year on year as key performance indicators.

The biannual survey of paths will continue and be reported via the departmental Service Plan. This will give an indication of the state of the network on a year on year basis.

It is important to note that the target timescales are a maximum, not a minimum, and it is therefore anticipated that a large proportion of enquiries will be concluded well within the projected target period in acknowledgement of the cooperation most landowners offer when approached by officers. Subject to approval by Cabinet, the Charter will be published as soon as practicable. It is proposed that discretion to adjust the details of Level 3 (the detailed nature of the enquiry) is delegated to the Strategic Director – Economy, Transport and Environment, in consultation with the Cabinet Member – Highways, Transport and Infrastructure.

As detailed on page 1 of the report, in addition to the broad consultation responses, specific and more detailed comments have been received from the Peak LAF, DADLAF and from the Peak and Northern Footpath Society.

The responses from these key stakeholders are set out below.

Peak District Local Access Forum

The Peak LAF recognises the pressure placed on the County Council's budget but wishes to stress the following key points that Rights of Way provide:

- The enjoyment Rights of Way bring to users;
- The economic benefits they bring across the whole of the County;

- The health agenda and benefits of increased activity (where the Authority has a key role and budget);
- The scope for developing further partnerships, involving volunteers more and attracting external funding and sponsorship; and
- The desire to build on very good practice and achievements to date.

In addition to this, the Peak LAF has requested the Council to consider the following:

No extension to timescales for obstructions.

- It feels that there should be no extension to the timescale for obstructions as these are crucial in the interests of safety and usability of the network.

Comment: Priority will always be given where public safety is potentially compromised. However, an extension to timescales will allow the Council to manage its response to enquiries in an ordered way.

The Rights of Way Improvement Plan (ROWIP) is a great credit to the Authority and needs continued staff support to go forward successfully.

- The Forum makes a further point that the integration of the ROWIP with the Local Transport Plan has led to improvements to the network.

Comment: These points are fully acknowledged and are to be welcomed. The integration of the ROWIP into the Local Transport Plan will continue.

Linking Public Health and Rights of Way work.

- The Forum suggests linking with public health initiatives as a part of joined up working.

Comment: The Countryside Service currently works with Public Health colleagues to promote walking as part of a healthy lifestyle. This will continue where possible within the wider Countryside Service, resources permitting.

Work with user groups/town and parish councils.

- The Forum advocates continuing to work with user groups and town and parish councils.

Comment: The Council will continue to work with parish and town councils.

Volunteer Policy.

- The Forum suggests that the Council should review the effectiveness and future potential of the Volunteer Policy.

Comment: The County Council's Volunteer Policy is subject to regular review and the Fora's comments on the Policy would be welcomed as part of this review process.

- **Development of an Accord on Rights of Way matters with the Peak District National Park Authority.**

Comment: An excellent working relationship exists with the Peak District National Park Authority and therefore, Cabinet is advised that there would be no significant advantage to either party to make the arrangements more formal at this point in time.

Derby and Derbyshire Local Access Forum

The DADLAF supports the response made by the Peak LAF and makes the following additional comments:

- **The Forum expressed concern about the extended length of time proposed for dealing with ploughing and cropping related issues.**

Comment: Revisions to priorities in the Rights of Way Charter giving greater priority to obstructions should ensure that these are dealt with as soon as possible.

- **Timescales for dealing with faulty gates and stiles.** The Forum requested that these should not be increased.

Comment: As above.

- **Waymarking of paths.** The placement of marker discs along paths to indicate the line of a path should be given a higher priority.

Comment: The majority of consultees suggested this is one of the lower priorities and therefore, although requests will receive attention, they will be addressed, as and when resources permit.

- **The extension of timescales will not produce budget savings.**

Comment: The extension to timescales is not intended to produce budget savings but to rationalise the demands placed on the Council whilst meeting the Council's statutory obligations.

- **Impact on work patterns.** The Forum suggests that the Council may have to adjust work patterns to accommodate the workload.

Comment: Redesign of how the Council meets its obligations within the revised Charter will automatically require adjustments to how the service is delivered.

- **Increased use of volunteers.**

Comment: Every effort is being made to sustain existing volunteers and where possible, recruit new ones.

- **Closer working arrangements with parish and town councils to ensure the best use of the minor maintenance money.**

Comment: The Parish Path Maintenance Scheme is currently subject to review to ensure best use of the available funding going forward.

In recognition of the advice provided by both LAFs, more challenging targets have been set by reducing the timescales in the Charter originally specified in the consultation. These are set out in Appendix Two.

In addition, the Council will continue to work with the LAFs to support its Rights of Way work in the future. A letter has been sent to both Fora thanking them for their respective comments.

Peak and Northern Footpaths Society

The Society has outlined the importance of the following in relation to the rights of way network; the health and wellbeing of the County's residents, sustainable methods of transport, supporting local economies, likelihood that that Council will not be carrying out its statutory duty.

Comment: The proposed adjustments to the Charter will not limit activities in the countryside and support will remain a priority for popular routes connecting facilities, communities, etc. The planned cuts are not expected to have a severe impact on sustainable methods of transport, although it is feasible that there will be a delay delivering the rights of way service at busy times of the year. The Council will continue to meet its statutory obligations.

The Society has offered several recommendations to improve the current way the Council delivers its Rights of Way Service.

- **Resolve problems quickly using the Council's enforcement powers.**

Comment: The Council currently operates in the way the Society has recommended, however, there are elements of the work of the Inspectors that require discretion rather than the immediate serving of notices.

- **Officers to work to a consistent standard with good communication.**

Comment: This is in place and part of day to day operations.

- **Increase in the use of volunteers for path maintenance.**

Comment: As discussed above, this is already and will continue to be part of the way in which the service will work in the future.

- **Effective processes for accepting offers of financial assistance.**

Comment: The Council has procedures in place to accept financial contributions. Such contributions are welcome.

- **Reduce the priority given to making Public Path Orders in the landowner's interests, that full, actual costs of Officer time are recovered.** The Society suggests that the Council is placing a power above its legal duty to assert and protect the rights of users.

Comment: Costs are recouped in line with the current regulations. Charges will be reviewed in 2016. The power granted under the Highways Act 1980 allows for the diversion of a right of way either in the public interest or in the interests of the owner/occupier of the land. Both provisions allow solutions to be provided to certain circumstances, for example, an applicant may have genuine concern over the location of a path and wish to see it diverted, i.e. in his/her interest. It is recommended that the Council continues to provide a service to all applicants for Public Path Orders.

- **Cease the current practice of diverting paths out of farmyards and private premises to save Officer time and dedicate that time to resolving intractable obstruction problems.**

Comment: The current Policy provides a discounted rate to landowners/occupiers of premises to divert a path away from buildings. It is considered that this minor concession supports landowners who may have safety concerns or wish to secure premises. It should be noted that this is not an automatic right and that the standard legislative tests apply. It is not guaranteed, therefore, that a path will be diverted

on application. It is recommended that the Council continues to provide a service to all applicants for Public Path Orders.

- **Reduce the contribution paid to landowners for the maintenance of stiles to the statutory minimum of 25% instead of the current rate of 50%.** The Society goes on to say that this contribution should be greater than 25% where a stile is replaced by a gate.

Comment: Current Policy allows for a grant of 50% to be paid for the replacement of a gate or stile. The Council is obliged to pay a statutory maximum of 25% towards “expenses incurred by the owner in keeping the structure in a safe condition”. The Council chooses to make a 50% contribution, amounting to approximately £800 additional expenditure in 2014-15, in order to offer encouragement to landowners to maintain the landscape, for example, stone stiles in the White and Dark Peak areas of Derbyshire. Officers have found that this small incentive does encourage structures that are more appealing and suit the landscape. It is recommended that the Council continues to provide 50% grant aid given the benefit outweighs the current cost.

- **The Society suggests that the Council should review its separation of the current work on the Definitive Map and Statement from the practical protection of the network to ensure interaction between officers and the sharing of knowledge.**

Comment: The review of the Definitive Map and Statement sits within the Rights of Way Team. The Director of Legal Services provides a specialist service researching and promoting Definitive Map Modification Orders. Interaction between the two teams is positive and a regular activity. There is no evidence that combining the two service areas would achieve a beneficial outcome given the current working regime.

- **The Society does not support the lengthening of timescales and points out that the backlog of problems will escalate. It also adds that there is no reasonable redress if targets are not met.**

Comment: Reporting of the success or otherwise of the service against the Charter is undertaken at departmental performance clinics. Where targets are not met, measures to mitigate this are considered.

- **The Society expresses concern about the Definitive Map and Statement being out of date.**

Comment: The County Council has an up-to-date digital representation of the Definitive Map. To complete the legislative process, the County Council is required to publish the Map and Statement. This is a severe

resourcing issue and is not achievable at present. However, maintenance of the digital version of the Definitive Map will continue which takes into account all changes to the network up to present.

Consultation response from the Rights of Way Team

The Rights of Way Team has jointly written to the Strategic Director about the proposed changes to the Service raising a number of concerns outlined below.

- **That the consultation for the Charter is flawed owing to a lack of consultation with key stakeholders.**

Comment: The consultation was published on the Council's website and in the public domain between 27 July 2015 and 30 September 2015. It received wide publicity, including local Radio and Television. Importantly, the two LAFs, both statutory bodies set up to advise the County Council on matters relating to access to the countryside, responded with expressions of concern. It is considered therefore that the consultation reached a sufficiently wide audience.

- **That by extending response timescales it will not prevent the build-up of complaints received from the public owing to the Team having limited capacity and the timescales for dealing with complaints remaining unaltered.**

Comment: If Cabinet approves the proposed budget reductions recommended within this report, a review of processes and procedures will be undertaken immediately. Included within this package of reforms will be a close examination of precisely what the service provides at present. The anticipated outcome of this review will be to increase the efficiency of the Service by:

- Removing redundant processes.
- Improving back-office communication.
- Reviewing current policies and procedure to ensure they are fit for purpose.

In addition, it is recommended that further powers are delegated to the Strategic Director – Economy, Transport and Environment to speed up delivery, however, this would require further Cabinet approval and will be the subject of a separate report.

- **That the Team supports the concerns expressed by the Peak and Northern Footpath Society, the Ramblers Association and the Open Spaces Society, which have publicly expressed concern that a reduction in service will have a serious effect on the network.**
- **That the public will resort to serving Notices on the Council to force it to take action.**

Comment: The public has a right to serve a Notice on the County Council where a highway is in disrepair or a Council has failed to remove an obstruction. The consequence of a Council failing to respond to such a Notice is that it could be forced to appear before a Magistrates Court and if the Court finds in favour of the complainant, the Council will be ordered by the Court to either repair the highway or remove the obstruction, depending on the circumstances. In order to reduce the risk of this occurring, the revision to the Charter has taken account of vulnerable areas of the Council's management of Rights of Way and it is considered that the risk is relatively low at present.

- **That public expectation will not diminish and how this will be managed in an environment where resources have been reduced.**

Comment: This will be a challenge for the Council and its employees, however, there is much to be gained by having a clear work programme for staff, as well as revised policies that support the work of the Council, aimed at keeping the network open.

- **The Team has pointed out that the review of the Rights of Way Service ahead of the wider Countryside Service does not make sense since its work is a statutory function, that some of the work of the wider Countryside Service is non-statutory.**

Comment: The Council is faced with making substantial cuts. The wider Countryside Service is under review at present and proposals to alter this service area is being considered in a separate report to this Cabinet meeting.

- **The Team has suggested that the Council should focus on income generation and cost savings.**

Comment: Every effort will be made to maximise income generation where practicable and opportunities are to be explored in the future. Any opportunity to invest in the service through income generation will be explored and, in particular, where there is an opportunity to expand the service in the future.

Whilst it is accepted that there is potential for a backlog of enquiries to build up, given the proposed reduction in staff, planned changes underway to streamline operations should help to mitigate this concern. These changes include, but are not restricted to:

- A review of attendance at meetings where other forms of communication will suffice.
- Sharing back-office support to streamline administration.
- Encouraging the use of location independent working to reduce travelling.
- Seeking investment in the service where efficiency gains can be demonstrated.
- No pro-active investigations.
- No further development of or support to promoted routes.
- Advice restricted to the internet only.
- Focussed agenda on priority issues to keep the network open.
- Implementation of zero tolerance with certain types of obstruction.

All of the above measures should enable the Rights of Way Service to maintain a high level of service whilst delivering key components of the ROWIP and meet statutory obligations. Extended timescales will serve to assist the Council with the effective deployment of staff to meet public and stakeholder expectations.

(3) **Financial Considerations** Financial savings of £136,005, plus on-costs, have been identified as a consequence of redesigning of staffing resources. It is also anticipated that through revised working practices and sharing back-office support, for example, further efficiency gains may be realised over time.

(4) **Legal Considerations** The Cabinet report of 7 July 2015 included details of the implementation of the Deregulation Act 2015 in 2016 as it affects Public Rights of Way. At the time of writing this report no Commencement Order has been published. The new legal requirements will, however, need to be taken into account in ensuring the Council continues to meet its obligations.

(5) **Human Resources Considerations** Staffing implications of the changes are set out in a separate exempt report to this meeting.

(6) **Equality and Diversity Considerations** Consideration has been given as to whether it is necessary to carry out an Equality Impact Assessment into the changes, however it is not considered necessary to carry out an Equality Impact Assessment under the Equality Act 2010, as on an initial assessment, no such implications arise.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, environmental, health, property and transport considerations.

(7) **Key Decision** No.

(8) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(9) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Peter J White, extension 39673.

(10) **OFFICER'S RECOMMENDATIONS** That Cabinet approves:

10.1 The revised Rights of Way Charter.

10.2 The level of detail to be incorporated within the Rights of Way Charter is delegated to the Strategic Director – Economy, Transport and Environment, in consultation with the Cabinet Member – Highways, Transport and Infrastructure.

Mike Ashworth
Strategic Director – Economy, Transport and Environment

Appendix One – Current Charter Targets

1.1. *Priority A Enquiries*

Definition: Emergencies, public safety, non-rights of way issues

- Public Safety
- Harassment and intimidating behaviour or notices
- Potentially dangerous bridge or structure on a right of way
- Not within the power of the Public Rights of Way Team to resolve. These will be passed to a responsible agency for action. Some examples given below:
 - Abandoned vehicles on paths
 - Fly-tipping
 - Litter
 - Dog fouling.

Target: within 10 working days

1.2. *Priority B Enquiries*

Definition: Issues directly affecting or limiting access.

- Drainage and flooding issue
- Obstruction and encroachment
- Surface damage, vegetation preventing use by public
- Ploughed path or obstruction by crops
- Stile or gate fault
- Electric fencing
- Erection of a signpost
- Commence processing Public Path Order applications.

Target: within 12 weeks

1.3. *Priority C Enquiries*

Definition: Issues that do not affect access to a significant degree.

- Cattle grids
- Request for barriers
- Handrail repairs
- Unauthorised use by vehicle/horses/bicycles
- Willful removal of a signpost in order to mislead the public
- Waymarking.

Target: 26 weeks

1.4. Priority D Enquiries

Definition: A group of issues which will be dealt with as soon as practicable.

- Misleading Notices
- Path improvement requests not covered by higher priorities
- De minimus obstruction/encroachment with alternative route
- Major works funded by capital bids
- Enquiries relating to non-definitive paths.

Target: Dealt with as soon as practicable but not as a priority

Appendix Two

Revised Rights of Way Charter Targets

The calculation for assessing compliance with the targets will run from the date of receipt to the date when the stage described in the definition is reached. The customer will be informed of the closure of their enquiry.

Percentage target success is calculated from the date of receipt.

Category	Level 1 Enquiry Type	Level 2 Target		Level 3 Detail	Level 4 Measurement
A	1. Emergency.	2 workings days	100%	a. Danger to the public.	1. Site made safe or issue resolved. 2. Customer informed.
B	1. Non-Public Rights of Way function.	2 weeks (10 working days)	80%	a. Fly-tipping. b. Dog Fouling. c. Bridges on rights of way. d. Illegal use.	1. Passed to responsible agency. 2. Response to customer.
	2. Planning Applications		80%	a. Comment on applications affecting rights of way.	1. Response to Planning Authority.
	3. Temporary Closure request.		100%	a. Application to close a route to allow works to take place.	1. Application validated. 2. Customer informed.

C	1. Obstructions.	16 weeks	75%	<ul style="list-style-type: none"> a. Any object placed across a path or erected in a path without consent so as to form an impediment. b. Ploughed or cropped path. c. Vegetation obstructing passage. d. Gates or stiles in disrepair. 	<ul style="list-style-type: none"> 1. Obstruction removed. 2. Customer informed of outcome.
	2. Applications for a Public Path Order or Traffic Regulation Order (TRO)		80%	<ul style="list-style-type: none"> a. Diversion / Creation / Extinguishment. b. TRO 	<ul style="list-style-type: none"> 1. Informal consultations commenced on receipt of a valid application to divert / extinguish / create a public right of way. 2. Decision made whether to proceed to consultation with a request for a TRO.
D	1. Maintenance	26 weeks	100%	<ul style="list-style-type: none"> a. Repairs to paths and infrastructure (excluding bridges) b. Signposting c. Waymarking 	<ul style="list-style-type: none"> 1. Decision made whether work is necessary or not. 2. Customer informed.