

Derbyshire County Council

Meeting of Cabinet Member – Sustainable Communities

11 May 2006

Report of the Strategic Director – Environmental Services

Revised Policy in Respect of Infringements Under the Rights of Way Act 1990

(1) **Purpose of Report** To seek the Cabinet Member's approval to revise the County Council's approach to reports of ploughing and cropping of Public Rights of Way.

(2) **Information and Analysis**

Background

The County Council receives upwards of 100 complaints per annum about public paths being obstructed or difficult to use as a consequence of farming activities.

Landowners are required by law to reinstate a public right of way within 14 days of disturbing the surface of the path. Although some landowners comply with this requirement across the County a significant number of paths are reported to the County Council for action.

Pre Sent Procedure

The Council last reviewed the process of dealing with Rights of Way Act issues at a meeting of the Highways and Transport Committee on 21 April 1993 (Minute Number 337/93). The revised procedures endorsed by Committee are set out below:

Following initial contact with the occupier of the land, the Chief Planning and Highways Officer shall:-

- (a) Request the reinstatement of the path or the removal of crops by means of a 14 day notice.
- (b) Notify the Local Member of the action taken.
- (c) Notify the Head of Legal Services in the event of the matter being pursued through a Magistrates Court.

In the event of non-cooperation the Chief Planning and Highways Officer shall be authorised to enter onto the occupier's land to reinstate the line of the path or remove crops in pursuance of the County Council's duty under the Act and initiate action to recover the County Council's costs. If entry onto the land is refused the Head of Legal Services shall be authorised to commence proceedings in the Magistrates Court.

This process has worked well and 559 Notices have been served since the implementation of this procedure. However, the County Council has to expend resources by following up non-compliance with the Notices to the extent that there are many occasions throughout the year where landowners have been threatened with default action by the County Council only for this to be aborted at the last moment when the landowner complies with the Notice.

Landowners are invariably aware of their duty to reinstate paths and there are genuine reasons why paths are not reinstated, weather and ground conditions being two examples. It is becoming clear that officers are contacting landowners on an annual basis to reinforce the message.

In 2005 an advisory leaflet was sent to all landowners on whom the Council has served Notice. Copies of this leaflet will be made available at the meeting. This leaflet stipulates the responsibilities of a landowner and will be sent out twice a year. First indications suggest that this leafleting exercise has been reasonably successful. However it is felt that a revision to the Council's current practice is necessary to take account of the Council's own aims, particularly those cited in the Council Plan 2005 -2009.

BVPI Targets

The Council has set a target of 70% for Best Value Performance Indicator 178 – Ease of Use of Rights of Way for 2006-07. In 2005–06 the target of 65% was passed and the final reported figure was 67.7%. The Council's annual reporting against this BVPI suggests that the ploughing and cropping of paths is now our weakest area and there is room for improvement with only 65% of paths passing the survey.

To improve upon this figure the Council will need to take a more assertive stance in respect of offenders.

Proposed Procedure

The Council has a power to prosecute where a landowner fails to reinstate a path within 14 days of disturbing the land. Equally, it has a power to prosecute where crops obstruct a right of way. The Council has yet to

proceed to a prosecution in respect of this legislation. Officer time spent reminding a minority of landowners of their responsibility in respect of repeat offences wastes many hours that could be used more proactively elsewhere on the network.

It is recommended that the Council revises its approach by way of prosecuting repeat offenders. The recommended trigger for prosecution would be the second year where a landowner has failed to voluntarily reinstate a path. If a failure to reinstate at any point in the second year is noted then this will lead to a formal caution and prosecution if compliance is not achieved.

Single Payment Scheme

The Single Payment Scheme has been introduced to simplify the application arrangements for subsidy payments by replacing ten major Common Agricultural Policy payment schemes with one new single payment. The scheme places a requirement on applicants to ensure that rights of way are available. An extract of the handbook has been reproduced in Annex 1 for information.

The Rural Payments Agency (RPA), which manages this scheme, contacted all Highway Authorities in October 2005 requesting reports of non-compliance. At that stage it was felt not to be an effective use of officer time to report every failure and notice served to the RPA without knowledge of those receiving payment and the RPA is not able to supply a list of persons receiving payment in Derbyshire.

Commission Regulation (EC) No: 796/2004 refers in part to penalties incurred by non-compliance with the scheme. Although it is likely that penalties will only be invoked where non-compliance is sufficiently serious or regular, it does state that:-

A 'repeated' non-compliance shall mean the non-compliance with the same requirement, standard or obligation referred to in Article 4 determined more than once within a consecutive period of three years, provided the farmer has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance.

The consequence of non-compliance effectively means the payment could be withdrawn. This Regulation is therefore a strong incentive for the landowning community to abide by the law.

There is a positive benefit to working with the RPA in the light of their request for information, the legislative requirements placed on applicants and the Council's overall objective of improving access to the countryside. Reminding

landowners of non-compliance appears to be working, however it is recommended that the Council forwards information about non-compliance in respect of the ploughing and cropping of rights of way in line with the revised prosecution process described above, so that a copy of the Notices and correspondence will be forwarded in the second year to the RPA.

(3) **Financial Considerations** There is no significant expenditure attached to this revision of practice.

(4) **Legal and Human Rights Considerations** The Rights of Way Act 1990 amends the Highways Act 1980 and places a duty on the owner of land to ensure that paths are available following seasonal cultivation of the land. An offence under this Act may result in a fine not exceeding level 3 (£1000). It is the duty of the County Council to enforce the provisions of this Act.

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

(5) **Background Papers** None.

(6) **Key Decision** Yes.

(7) **Officer Recommendations** That:-

7.1 The County Council shall investigate and where appropriate, prosecute landowners who fail to comply with their statutory duty under the Rights of Way Act 1990 to reinstate public paths after seasonal cultivation of the land where they were served with notice to reinstate the same public path following cultivation in the previous calendar year.

7.2 Cases of failure to reinstate paths under the Rights of Way Act 1990 shall be forwarded to the Rural Payments Agency if a repeat offence is recorded.

Extract from Cross Compliance Handbook for England 2006 Edition

These rules reinforce existing legislation under the Highways Act 1980. If you already comply with the legislation, you will be compliant with these rules.

61. 'Public rights of way' is an umbrella term for all legal rights of way, including footpaths, bridleways, roads used as public paths (shortly to become restricted byways) and byways open to all traffic. The cross compliance requirements apply to visible public rights of way only and include any rights of way which would be visible if the farmer had not breached the Highways Act 1980.

62. You must not without lawful authority or excuse:
 - Disturb the surface of a public right of way that crosses your land so as to render it inconvenient to pass over it; or

 - Block the free passage along a right of way (such as by locking gates, growing crops, allowing overhanging vegetation, or blocking the route with electric or barbed wire fences).

63. You are permitted to disturb the surface of a footpath or bridleway across a field (that is, not a field-edge footpath or bridleway) in order to plough the land, or to bring the land into agricultural use when it would not be convenient to avoid disturbing the surface of the path. However, if you do this, you must: make good the surface of the path or bridleway to not less than its minimum width, and indicate the route to members of the public; and do this within 14 days of the first disturbance if you are sowing a crop, or within 24 hours in all other circumstances.

64. Where maintenance is your responsibility, you must:
 - Maintain any stile, gate or similar structure across a footpath or bridleway in a safe condition, and to the standard of repair needed to ensure it is reasonably easy to use; and

 - Trim hedges and other growth to facilitate access, taking due account of other Regulations (specifically GAECs 14 and 15 – Hedgerows and SMR 1 – Wild birds). Where there is a potential conflict with other legal requirements, advice should be sought from RPA.

65. Public rights of way may form part of 1-metre or 2-metre margins. The requirements of GAEC 14 will apply as far as practical.

66. Further information on public rights of way can be obtained from Defra (see Appendix 4 for details) and relevant maps are held by your local Highways Authority.

H:\H9\SUSC277.doc