

NFAF 33/1

Item 4 – Officer’s Report (Cath Hart)

This paper covers:

- Cranborne Chase AONB Management Plan
- New sub-group: Asserting and Protecting Public Rights
- Rights of Way Training Session 30th September
- The Deregulation Bill
- Developer’s Contributions: S106 changing to CIL

Cranborne Chase and West Wiltshire Downs AONB Management Plan

Members are invited to comment by the end of September on the AONB’s draft Management Plan, which can be found at www.ccwwdaonb.org.uk . Particularly relevant is the ‘Access and Wellbeing’ section on pages 53-56 of the document. Ruth has kindly agreed to collate comments and make a response through the surveymonkey form.

New cross-Forum sub-group: Asserting and Protecting Public Rights

Along with HCAF and South Downs Access Forum, New Forest Access Forum is invited to provide one or more representatives to a new sub-group, tackling long-term obstructions of rights of way. In New Forest District, around a quarter of reported faults on the network in the last two years have been obstructions.

The following has been provided by HCC explaining why this group is needed:

Hampshire County Council, as Highway Authority, has a statutory duty to assert and protect the right of the public to use and enjoy public rights of way. As part of this duty, the County Council must prevent the obstruction of rights of way.

In the context of this paper, obstructions might take the form of some sort of structure or building which completely or partially blocks the public right of way, crops growing on a cross field path which have not been sprayed out, misleading signs or notices, the unauthorised diversion of a public path, unauthorised gates or barriers and other nuisances which prevent people using paths freely.

The County Council prefers to work with landowners and land managers to prevent the obstruction of rights of way. This positive approach has been commended by landowners and, in many cases, proves effective. Normally, where a problem is reported, the local team will inspect the route and if there is a problem, inform the landowner with a view to seeking the removal of the obstruction. If no action is forthcoming, the County Council issues a follow up letter which requires the obstruction to be removed and if no action is forthcoming

at this stage, the case may be passed to solicitors in the Chief Executive's department for formal action.

Our figures indicate that whilst an element of problem reports related to obstruction and nuisance are resolved within a relatively short period, there is a larger backlog of long term unresolved cases which are building. This suggests that whilst we are tackling the 'quick wins', we are not making inroads into the more difficult cases to resolve. In addition, the County Council keeps a list of 'anomalies'. This is not just a list of technical anomalies, but a list of instances where the route on the definitive map does not match the route used on the ground. Our current approach to this list is that we do not have the resources to proactively work through it, but where an opportunity arises to tackle a problem, we will do so.

Although the County Council has various measures and processes in place to deal with the obstruction of public rights of way, we would like to develop a more strategic approach to tackling the problem. We feel that the following are factors which need to be addressed:

- *An enhanced policy on enforcement which includes a statement of priorities*
- *More streamlined processes for handling obstruction and nuisance cases*
- *Improved education and preventative measures*
- *Increased staff capacity*
- *A plan for dealing with the backlog of cases*

We would therefore welcome the advice of all the Local Access Forums on this matter and request that each LAF consider having representation on a sub group which will be formed to address the issues raised.

Rights of Way Training session

Forum members are invited to join members of HCAF on 30th September for a half-day training session given by the Institute of Public Rights of Way Management (IPROW) to address the more technical issues surrounding Rights of Way and the Definitive Map. This is the national body for rights of way officers, so the training will be well-informed. Members who are interested are invited to contact Vicki Gibbon Vicki.Gibbon@newforestnpa.gov.uk

Deregulation Bill

The Countryside and Rights of Way Act 2000 (CROW) contained a provision that, after a cut-off date of 2026, an unrecorded right of way could not be claimed if based solely on evidence that it existed pre-1949 ('historical evidence'). This is what gave rise to the national Discovering Lost Ways project and the local PATHH project.

However, further legislation was needed to bring this element of CROW into force. A national 'Stakeholder Working Group', representing much the same range of interests as a LAF, was formed to decide how this should be done. They produced a set of 32 proposals, in a document named ['Stepping Forward'](#). Importantly, for fairness across the interests, the 32 proposals are intended to operate together as one entity and the working group stressed that they should not be 'cherry-picked'.

The Deregulation Bill contains those of the 32 proposals which need primary legislation; the remainder, to be delivered through either secondary legislation or guidance, will follow.

The Ramblers have produced a helpful summary of the effects in England of the draft Deregulation Bill on rights of way, which is reproduced below:

The material parts are Clauses 12–18 (pages 18-23) and Schedule 6 (pages 76-92).

Clause 12 will, after the cut-off date, give extra protection to already-recorded rights of way by preventing the making of a deletion [extinguishment] order in respect of any way if deleting it would affect the use of a definitive path and the only basis for deleting it was evidence that it did not exist prior to 1949. It will therefore lower the number of deletion applications.

Clause 13 contains provisions which will empower the Secretary of State to make regulations which will delay or otherwise mitigate the effect of the cut-off provisions.

Clause 14 safeguards the position of landowners, etc, who rely on what may be a public right of way to reach their properties; so that if such a way is extinguished under CRWA 2000, they will retain a private right of way over it for the purposes of reaching their properties.

Clause 15 concerns the right of landowners to apply for extinguishment and diversion orders under HA 1980. The right was introduced by CRWA 2000 but the provisions were never commenced. Clause 15 will extend the type of land on which the path has to be to 'any land of a prescribed description' (i.e, prescribed by regulations). There are other procedural changes, but the right to object will be unaffected.

Clause 16 empowers the authorisation of gates on both kinds of byway. Though 'stiles' is in the title it does not empower the authorisation of stiles on these ways.

Clause 17 empowers recovery of the order-making authority's full costs of public path orders.

Clause 18 gives effect to Schedule 6, which makes changes to the procedures for 'ascertaining rights of way' in England. These include

- a simplified procedure for dealing with 'obvious' errors in the definitive map and statement; special diversions for ways which have fallen into disuse whose existence has been proven by documentary evidence, so that these can be realigned by agreement, subject to certain conditions;
- a new system for determining applications for definitive map modification orders, in which appeals to the Secretary of State against decisions by a surveying authority not to make an order can involve a full public inquiry into the entire matter (instead of the prima facie issue being determined purely on the papers followed by direction to make an order followed by public inquiry where objections are placed);
- a right to apply to the magistrates' court where the surveying authority is slow determining an application; a means of transferring applications for definitive map modification orders from one person to another.

Schedule 6 also enables order-making authorities to dismiss irrelevant objections, and so confirm an opposed order if the objections do not relate to the law, and to sever composite orders so as to confirm the unopposed parts and submit to the Secretary of State for determination only the parts which attracted unwithdrawn objections.

Developer's Contributions: S106 changing to CIL

Developers building new dwellings, for example, currently pay various contributions to mitigate for the effect of their development.

For rights of way and access, S106 contributions can pay for new road layouts, bus shelters, rights of way improvements and new rights of way. S106 is a site-specific agreement drafted to make it possible to approve a planning proposal that might not otherwise be acceptable in planning terms.

In the next few years, the Community Infrastructure Levy (CIL) will largely replace S106. CIL will be a general levy on all development, calculated as a £ per square metre levy on all new housing/retail/etc to be spent across a wide area rather than the S106 system of mitigating specifically for that development. Rates will be set by the District/Borough and CIL can be spent on provision, improvement, operation and maintenance of a wide range of infrastructure and services. There is likely to be a much smaller pot of money available under CIL (perhaps 10%?), and so a strong case will be required. Parishes and the local community will receive 15% of the CIL (rising to 25% if they have a Neighbourhood Plan, but this is complex to produce) – so good relations with Parish and Towns Councils will be important.