

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CABINET**

DATE: **TUESDAY, 18 SEPTEMBER 2012**

REPORT BY: **DIRECTOR OF ENVIRONMENT**

SUBJECT: **RECOVERY OF COSTS FOR PUBLIC PATH ORDERS**

1.00 PURPOSE OF REPORT

1.01 To revise the County Council's policy on recovering costs for public path orders.

2.00 BACKGROUND

2.01 At its meeting on 29th February 2000, the Transportation and Planning Committee resolved that delegated power be granted to the Director of Transportation and Planning to promote appropriate extinguishment or diversion orders (under section 118 or 119 of the Highways Act 1980 respectively) at the Council's expense where there were long-term obstructions of public rights of way by residential and other development (also refer to para 3.05).

2.02 At the same meeting, the Council revised its policies on the making of public path orders, following Counsel's advice. It was resolved, *inter alia*, that applicants for such orders, under either the Highways Act 1980 or the Town & Country Planning Act 1990, would pay a fee of £1500 in advance at the application stage, in accordance with Regulations published initially in 1993 and revised in 1996. Any outstanding balance would be charged to the applicant prior to the making of an order. In other words, the applicant(s) for a public path order were expected to meet the costs in full.

2.03 The policy in relation to long-term obstructions was formulated as a result of a number of housing estates dating back to the 1950s and 1960s, when the existence of public rights of way was frequently overlooked prior to and during construction, with the result that the footpath became obstructed once the housing estate was built.

2.04 Since these policies were adopted, however, the County Council has experienced some difficulties in processing orders that do not fall within the definition of long-term obstruction, which has meant that the landowners have been expected to pay the costs in full of an order. The applicants may be equally deserving of financial support from the County Council, but appear to be ineligible under the terms of the

current policy.

- 2.05 The *specific* power to charge for orders was first introduced in 1993 by the *Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 SI 1993 No. 407*. This initially set a limit of £400 (plus £75 for each additional path) that each Authority could charge for public path orders. However, this ceiling was removed by Regulations published in 1996. This meant that Authorities could recover all their costs for making and advertising public path orders, except those for pursuing an opposed order to Public Inquiry.
- 2.06 However, the power to charge for public path orders is discretionary and the Authority could chose to pay some or all of the costs depending on the circumstances.
- 2.07 The most recent diversion order made (and subsequently confirmed) by the Council cost a total of just over £1700, comprising advertising costs of approximately £1100, the remainder consisting of legal fees and rights of way officers' administrative costs. All these costs were recovered.

3.00 CONSIDERATIONS

- 3.01 The current policies have enabled the County Council's Rights of Way Section to resolve a number of long-standing problems over the past few years, particularly in relation to obstructions by residential development.
- 3.02 There have been occasions, however, where the policy has not been sufficiently flexible to permit the County Council to make orders at its own expense, because the order does not fall within the above category of long-term obstruction.
- 3.03 This has meant that the Rights of Way Section has been unable to process orders that would clearly be in the public's interest, with the result that the footpath has remained obstructed.
- 3.04 Consequently, it would be helpful if there were more discretion to decide whether the costs associated with the making of public path orders should be waived.
- 3.05 In reviewing its list of long term problematic footpaths the Council has identified a total of 16 obstructed paths where the current policy on charging of orders is preventing the County Council from processing these diversions or extinguishments. This list is included at appendix A.
- 3.06 In relation to the list, it is proposed that the County Council make orders at its own expense, as all of the development or housing in respect of which those orders are sought predate Local Government

Reorganisation in 1996. The rationale behind this is that given the two-tier nature of local government before that date, it was more likely for situations like these to arise and the footpaths to be obstructed through no fault of the householder.

- 3.07 For any path that has become obstructed by housing or other residential development since 1996, and indeed those identified at Appendix A, each path would be assessed on a case by case basis and Officers would, in consultation with the Cabinet Member for Environment, prepare a delegated report which would include recommendations and costs, if any, to be charged in every given case.

4.00 RECOMMENDATIONS

- 4.01 The County Council's policy on recovering costs for public path orders be revised as recommended in paragraphs 3.04 to 3.07 above.

5.00 FINANCIAL IMPLICATIONS

- 5.01 There would be additional costs where the County Council opts to make an order at its own expense. However, these costs can be managed within existing resources, as there are likely to be efficiencies generated by a saving of officer time and reduced legal costs in attempting to resolve long-standing problems.

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 Positive in that it creates and improves the existing network, thereby encouraging more citizens to access the countryside, improving health, reducing pollution and carbon emission.

8.00 EQUALITIES IMPACT

- 8.01 There is always the potential to improve the rights of way network through any diversion order, by, for example, reducing the gradient, improving the surface or replacing stiles with kissing gates, thereby making the rights of way network more accessible to a greater proportion of the population.

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

10.01 None

11.00 CONSULTATION UNDERTAKEN

11.01 None

12.00 APPENDICES

12.01 List of Obstructed paths at Appendix A

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

Contact Officer: Neal Cockerton
Telephone: 01352 703169
Email: neal.cockerton@flintshire.gov.uk