

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **FLINTSHIRE LOCAL ACCESS FORUM**

DATE OF MEETING: **18th APRIL 2016**

REPORT BY: **CHIEF OFFICER (PLANNING & ENVIRONMENT)**

SUBJECT: **PUBLIC FOOTPATH AND PUBLIC BRIDLEWAY
MAINTENANCE STANDARDS**

EXECUTIVE SUMMARY

This report sets out the standards of maintenance that Flintshire County Council should apply to public footpaths and bridleways throughout the Council in accordance with its statutory duties under the Highways Act 1980 and relevant case law.

RECOMMENDATIONS

For the Forum to endorse the Council's approach to the maintenance of Flintshire's public footpaths and public bridleways (public paths).

REPORT DETAILS

1.00 EXPLAINING THE ISSUES

- 1.01 All public paths are highways, nearly all of which are maintainable at the public expense (the only exception being ones that have come into existence since 1959 from long usage and there appears to be only one example in Flintshire).
- 1.02 Under section 41 of the Highways Act 1980 (the 1980 Act), it is the duty of the Highway Authority to maintain all highways that are maintainable at the public expense. There is no further guidance in the 1980 Act as to what constitutes maintenance, though the 19th century case of R v High Halden provides some clarification. It held that the state of repair must ensure that the highway is 'reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year.'
- 1.03 In circular 5/93 concerning public rights of way, the Government confirms that is impractical to recommend standards of maintenance, but advises that the main consideration in determining the level of maintenance for public rights of way is that '[paths or ways] should serve the purpose for which they are primarily used...'

- 1.04 The level of maintenance will therefore depend on the circumstances, one relevant factor being the type of traffic that uses the particular path. A public footpath, for example, is maintainable to a standard suitable for pedestrians, whereas a public bridleway is maintainable to a standard suitable for pedestrians and equestrians.
- 1.05 Many public paths throughout the County are also used by motorised vehicles, usually by those exercising private rights to gain access to properties along such paths.
- 1.06 In recent years the County Council has received a growing number of complaints about the condition of public paths from residents using them in a vehicle. When they have been subsequently inspected they were almost invariably considered to be in a suitable condition for members of the public who would be exercising a public right over them. In other words, the County Council had fulfilled its statutory requirements in relation to them.
- 1.07 Remedies are available to anyone who alleges that a way that is maintainable at the public expense is out of repair through the service of a notice on the County Council, as Highway Authority, under the provisions of section 56 of the 1980 Act. This could be determined by the Magistrates' Court, which may require the highway authority to put the way into proper repair.
- 1.08 However, the Court would have to be satisfied that the way was out of repair for the public who were entitled to exercise rights over it. If it was a public footpath it would be not considered to be out of repair if it was passable by pedestrians even if vehicles might have difficulty in using it.
- 1.09 Whilst the level of maintenance of public paths might not be sufficient to satisfy residents exercising private rights over such ways, they might be liable themselves to maintain them to a standard suitable for vehicles. Indeed, there are examples of footpaths and bridleways throughout the County that have been surfaced by residents so that they can be used as a vehicular access to their properties.
- 1.10 Anyone wishing to carry out such works would be encouraged to do so, provided that the permission of the owner and the County Council had been sought beforehand and the work was carried out to the Council's and the owner(s)' satisfaction.
- 1.11 Whilst the County Council might have maintained some public paths to standards suitable for vehicles in the past, there has never been a requirement to do so. A clear and consistent approach would leave the public in no doubt as to the standards of maintenance they should expect.

2.00 RESOURCE IMPLICATIONS

2.01 This approach will ensure that resources are deployed more effectively in that the Council will carry out maintenance to a standard that it is statutorily obliged to do.

3.00 CONSULTATIONS REQUIRED / CARRIED OUT

User groups such as Ramblers Cymru and the British Horse Society.

4.00 RISK MANAGEMENT

None.

5.00 APPENDICES

5.01 None.