

REPORT FROM: CENTRAL AND REGENERATION SERVICES
ENGINEERING AND SPECIAL PROJECTS MANAGER

TO: COLNE AND DISTRICT COMMITTEE

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PROTOCOL ON SUPPORT FOR CONCESSIONARY PATHS

PURPOSE OF REPORT

This report has been requested by the Chairman of Colne and District Committee to consider whether a protocol for concessionary paths should be adopted as Council policy.

RECOMMENDATION

That members consider the report.

REASON FOR RECOMMENDATION

To enable members to consider the proposals.

BACKGROUND

1. The Countryside Access Forum and the public rights of way manager at Lancashire County Council were consulted on and gave their support to a protocol on Council support for concessionary paths, which is attached as Appendix 1. The protocol was devised in 2009 but it has not been formally approved by an elected body of the Council.

ISSUE

2. A concessionary path is a footpath or bridleway where the public does not have a legal right of way but the owner of the land has given his or her permission for the public to use the path.

These are sometimes known as permissive paths.

3. Concessionary paths can be very useful if a landowner is willing to allow the use of the land to provide a missing link in the rights of way network, or to open up access across land where there is no public right of way. Sometimes local authorities enter into formal agreements with

a landowner for a five or ten-year period for members of the public to use such a concessionary path.

4. The problem which this protocol seeks to address is where the line of a footpath or bridleway is inconvenient for the land manager, and a concessionary path has been or is proposed to be set up to encourage members of the public to use an alternative route. For example, where the public right of way runs through a garden or a farmyard.
5. In these circumstances the public right of way may be more convenient than the concessionary path. However, the concessionary route signage, a lack of public rights of way signage, or other issues affecting the public right of way can discourage people from using the public right of way.
6. Whenever we are consulted about concessionary footpaths of this nature we inform land managers of the legal position that the public right of way must be kept open for public use. However, our experience is that over time the legal right of way can fall into disuse, waymarkers for the official path can be deliberately removed, and the land crossed by the footpath or bridleway can become obstructed.
7. The protocol, in essence, is that the Council will support the establishment of concessionary footpaths when the route in question enhances the rights of way network but it will not support concessionary paths which have been set up to divert people because the landowner would prefer the public to use an alternative route to the public right of way.
8. The correct way for a land manager to set up an alternative path for a footpath or bridleway is to apply to the Council to make a diversion order. Then a proper legal process is followed to ensure that the new footpath is not substantially less convenient and is fit for public use. Where valid grounds apply, the Council has always been supportive of applications to divert rights of way out of gardens and farmyards. A diversion will typically increase the value of a property but the cost of making an application can be prohibitive to some: typically the total costs are in the range of £1,500–£3,000.

CONCLUSIONS

9. Land managers generally find that a public right of way which runs through a farmyard or a garden can be inconvenient for reasons of privacy or security. The protocol is designed to ensure that we have a clear and consistent approach if the landowner has or intends to set up an alternative path. Our message is that the Council has a duty to protect the right of way and keep it open, and the right of way should be well signposted. We will not give any practical support or encouragement to set up alternative routes because these may be less convenient, and in the long run these arrangements may lead to confusion and unforeseen problems for the public, the Council and the land manager themselves. However, we welcome applications from the owners and occupiers of such land to apply to divert the right of way in question.

IMPLICATIONS

Policy: The Protocol is consistent with the Council's Public Rights of Way Enforcement Policy and the Countryside Access Strategy which were introduced in 2013 and 2014 respectively. The Countryside Access Strategy includes a specific action that "when we are waymarking public rights of way through farmyards and gardens we will install regular waymarks along the path".

Financial: None arising directly from the report.

Legal: The Council, on behalf of the highway authority, has a duty established by legislation “to assert and protect the rights of the public to the use and enjoyment of any highway”.

Risk Management: None arising directly from the report.

Health and Safety: None arising directly from the report.

Sustainability: None arising directly from the report.

Community Safety: None arising directly from the report.

Equality and Diversity: None arising directly from the report.

APPENDICES

Appendix 1: Protocol on Council Support for Concessionary Paths.

LIST OF BACKGROUND PAPERS

None.

Protocol on Council Support for Concessionary Paths

Introduction

Pendle has an extensive network of public rights of way. However, there are occasions where informal routes have come into existence. Some of these have come about through use by the public, some have been created by landowners or occupiers, and some have come into existence by agreement with countryside staff and the landowners concerned.

The reason why a protocol is required for concessionary paths is because some concessionary paths have come into existence to informally divert people away from using the definitive public right of way.

The Council has a duty to “assert and protect the rights of the public to the use and enjoyment of any [public right of way]” (Highways Act 1980, Section 130). The Council should therefore ensure that by its actions it does not inadvertently discourage the use of any public rights of way.

The aim of the Protocol is to determine in which cases it is appropriate to provide signage and other practical assistance for concessionary rights of way.

The Protocol

1. The Council **will support** the establishment of concessionary footpaths or bridleways by agreement with the landowner where:
 - (a) the route in question will provide a missing link in the public rights of way network;
 - (b) the proposed concessionary route is substantially more convenient than a definitive footpath or bridleway (eg the route provides a shortcut, or the route is stile-free and can therefore be more easily negotiated by people with disabilities);
 - (c) the proposed concessionary route will have wider possible benefits relating to wildlife, biodiversity, conservation or similar environmental issues;
 - (d) action to resolve problems on the definitive route would raise possible challenges to the definitive route itself;
 - (e) such a route is needed on a temporary basis whilst action to resolve a significant long-term problem with the definitive line is being actively pursued. A significant problem would include buildings erected across a right of way, for example, which could not easily be removed; or
 - (f) the definitive public right of way is subject to a temporary closure order.

2. The Council **will not support** the establishment of concessionary footpaths or bridleways where:

(a) the route in question is to be used as an alternative to a definitive footpath or bridleway which may affect the security and privacy for residents:

REASON: The existence of an alternative route in these circumstances may deter people from following the definitive path. The Council should not be party to any works or signage which may discourage use of the public right of way. The owners in question should be informed of the application process to divert the footpath or bridleway;

(b) the route in question is provided as an alternative due to minor problems with the existing public right of way which may discourage the public from using the route. A minor problem would include a fence, wall, hedge or other problems which could be relatively easily resolved using powers delegated to officers:

REASON: The Council has a duty to ensure that problems affecting the use of the public right of way are properly dealt with. The Council should not be party to any works or signage which may appear to legitimise an obstruction or nuisance; or

(c) the route in question is provided as an alternative due to problems with the existing public right of way which may discourage the public from using the route and which are capable of being resolved.

3. Where landowners have themselves created a concessionary footpath or bridleway which does not agree with the criteria in Section 1, the Council will ensure that the definitive right of way is well signposted and waymarked.

REASON: The public are made aware of the line of the definitive footpath or bridleway. Good signposting will allow the public to enjoy use of the legal route with confidence.

4. Where Countryside Staff have previously installed signage and waymarking for a concessionary route, each site to be reviewed in line with the protocol, and taking into account any relevant local circumstances, in order to determine whether signage should remain, be modified, or be removed.

REASON: To ensure a consistent approach across District and County.

August 2009