

# Code of Good Practice in Rights of Way

## 1. INTRODUCTION

- 1.1 The Council has powers under the Highways Act 1980 and the Town and Country Planning Act 1990 to make orders for the creation, diversion and extinguishment (or stopping up) of public footpaths and bridleways, and to enter into agreements for the creation of footpaths and bridleways. The changes made by such orders and agreements affect the right of the public to cross private land and so can be contentious and the subject of impassioned debate. Because of this it is important that the system of making decisions on changes to the public rights of way network is seen to be open and impartial, consisting of sound judgements made for justifiable reasons.
- 1.2 This Code of Practice has been drawn up to set out clearly the way in which the Council deals with applications for public path orders and agreements.
- 1.3 It complements the statutory Local Code of Member Conduct and the Council's Code of Officer Conduct which address a range of aspects of members' and officers' conduct in carrying out official duties. All members of the Council have given a written undertaking to observe the Code of Member Conduct. Further information on the provision of the Code can be obtained from the Council's Monitoring Officer, telephone 01394 444336, or e-mail [hilary.slater@suffolkcoastal.gov.uk](mailto:hilary.slater@suffolkcoastal.gov.uk)

## 2. BASIC PREMISE

- 2.1 The Highways Act 1980 and the Town and County Planning Act 1990 both lay down precise criteria to be met for the making and confirmation of public path orders. The legislation is supplemented by advice contained in Department of Environment Circular 2/93 "Public Rights of Way" and other Circulars and Regulations. The basis premise is to ensure that appropriate balanced consideration is given to the impact of changes to the network upon both the landowner's / occupier's interests and the public's right.
- 2.2 Within the context of the legal provisions, the successful operation of the system relies on ensuring that members and officers act in a way which is not only fair but is clearly seen to be so. The respective roles of members and officers are set out in this Code of Practice.

## 3. DECISION MAKING ON APPLICATIONS

### The Role of Committee Members

- 3.1 Members of the Rights of Way Committee, in making decisions on public path order applications, will:
  - Act fairly and openly
  - Approach each application with an open mind
  - Carefully consider the grounds for order making
  - Carefully weigh up all the material considerations
  - Ensure that reasons for decisions are clearly stated.

- 3.2 Committee members will be free to vote on applications however they consider appropriate within the context set by the Highways Act or Town and Country Planning Act, as appropriate, and shall not have pre-judged the outcome prior to their consideration of all relevant available information at the committee meeting.
- 3.3 If committee members have, prior to the meeting, given an undertaking as to the stance they will take on the determination of an application, e.g. at a town or parish council meeting, or to an interested party, they should refrain from voting but may fulfil their representational role, subject to compliance with the statutory Code of Member Conduct.
- 3.4 Committee members also have a role (see 3.6 below) on behalf of their ward to present local views, but members must make it explicit when they are acting in that role. The decision-making role and its impartiality must not be prejudiced by any such action.

### **The Role of Members**

- 3.5 The representational role of members is a part of the process. Subject to compliance with the terms of the Members' Code of Conduct, Members will be given the opportunity in respect of all rights of way applications to fulfil that role within their ward by:
- Responding in writing to officers on the merits of an application;
  - Attending any committee site meetings for applications within their ward; and
  - Making representations to the committee.
- 3.6 Members shall not give instructions to officers, nor should they place pressure on officers in order to secure a particular outcome to an application.
- 3.7 Members can expect officers to give them every help and assistance in answering questions relating to rights of way matters.

### **The Role of Officers**

- 3.8 In respect of applications to be determined by the Rights of Way Committee Officers will:
- Provide professional and impartial advice
  - Make sure that all information necessary for a decision to be made is given, including the views of those consulted and the substance of any objections
  - Set the application in the context of any other considerations, for example a planning application or highway authority policy and practice
  - Provide a clear and accurate written analysis of the issues
  - Be responsible for carrying out the decisions of the Committee
- 3.9 In respect of decisions that are taken under delegated authority the Rights of Way Officer, given the appropriate delegated authority by the Head of Legal and Democratic Services, may exercise that authority to determine an application. A brief written resume of key issues, the decision and reasons for it will be prepared and placed on the application file. Details of all current applications, and of all public path orders and agreements made by the Council, are also contained in the Rights of Way Manual for Members.

- 3.10 The District Council recognises that Rights of Way Officers shall not make or subscribe to any statements or reports which are contrary to their own professional opinions.

#### **4. CONSULTATIONS**

- 4.1 The Council is required by legislation to consult statutory undertakers and other affected councils on applications for public path orders. In addition the Council follows national best practice to achieve unopposed orders wherever this is possible, as recommended by the Rights of Way Review Committee Practice Guidance Note No 1. Upon receipt of a technically correct application the Council therefore consults widely with representatives of user groups and other bodies and individuals it considers may be affected by or interested in proposals as appropriate.
- 4.2 In all instances consultees and interested parties are asked to submit their views in writing in order that a true record can be placed on the appropriate file and used in informing the decision-making process. A period of 28 days is usually allowed for consultation responses, but this can be extended at the discretion of officers if consultees require extra time. Responses can be submitted electronically or in hard copy form.
- 4.3 At the end of the consultation process it is usual procedure for the views of the consultees to be forwarded to applicants for consideration. Officers are responsible for managing such subsequent negotiation as is deemed useful in respect of the Council's intention to achieve unopposed public path orders wherever possible.
- 4.4 Negotiation may result in changes to the original proposals and re-consultations will be carried out as appropriate.

#### **5. DISCUSSIONS WITH APPLICANTS AND LOBBYING**

- 5.1 The Rights of Way Manual for Members details current public path order and agreement applications and is updated every two months by Officers. The manual includes details and plans of each proposal, with a summary of the history and current position for the benefit of members.
- 5.2 Prior to application submission, application determination and order making, dialogue and meetings with applicants are essential and may be protracted, but will normally only involve Officers.
- 5.3 Pre-application meetings should not involve members of the Rights of Way Committee, other than where the committee has by resolution determined that a meeting shall exceptionally involve members and where the meeting is limited to providing advice on the proper process to follow and / or which officer to contact for further advice. Where meetings to discuss proposed or submitted applications do involve members appointed by the committee at least one officer will be present at all such meetings.
- 5.4 It will be made clear at all pre-application meetings that:
- Only officers' initial and provisional views can be given, based upon the provisions of the legislation

- No decisions can be made which would bind or otherwise compromise the decision of the Council.
- 5.5 Notes of the discussions at all meetings will be taken and will be placed on the application file. Any follow-up correspondence shall also be placed on the file. Information will be available for public inspection subject to the provisions of the Access to Information Act.
- 5.6 A note will be taken of all telephone conversations involving either members or officers where advice on the merits of a proposal has been given.
- 5.7 In the event that applicants or other interested parties wish to discuss applications with members, either before applications are submitted, prior to their determination or after the order making stage, meetings with applicants may involve members acting in a representative role. Members should take care to avoid compromising their position before they have received all the relevant information, evidence and arguments about an application. Members of the Rights of Way Committee may choose as a matter of principle not to meet applicants or interested parties and may wish to pass applicants on to a neighbouring District Councillor.
- 5.8 Where members do choose to meet relevant parties they will:
- Not express an opinion which could be taken as firm support or opposition to a proposal
  - Not organise support or opposition for a proposal or lobby other members
  - Inform lobbyists or objectors of the importance of their views being submitted in writing to the Council
  - Advise the Chairman of the Rights of Way Committee or the Rights of Way Officer of the existence of any party that appears to be trying to exercise undue or unreasonable pressure on members of the Council.

## 6. COMMITTEE PROCEDURES

- 6.1 Rights of Way Committee papers will be available, in accordance with the Access to Information Act provisions, at least five clear working days prior to the meeting.
- 6.2 All applications presented to the committee for determination will have a full written report from the Rights of Way Officer. This will include a map showing the proposal, the views of those who have been consulted on the proposal, the substance of objections, an explanation of the relevant legislation, other relevant information as appropriate and a reasoned consideration of the proposal.
- 6.3 Any material information which is received after the written report has been prepared but more than 24 hours before the start of the committee / sub-committee meeting will be presented orally by officers. Information received within 24 hours of the start of the meeting will only be presented where it is brief and can be readily conveyed to the committee.
- 6.4 The Head of Legal and Democratic Services will have the discretion to withdraw any item from the agenda of the committee subsequent to the preparation of the report, but prior to a discussion by the committee if the circumstance of the application has changed within that period.

- 6.5 When the committee determines an application, the reasons for the decision will be clearly stated at the meeting and recorded in the minutes. Members need to be sure that their decisions are based on sound reasons and made with respect to the requirements of the relevant legislation. Members shall be aware that they may be required themselves to justify their decision at a public inquiry or hearing, for instance if an opposed order is referred to the Secretary of State for determination.
- 6.6 The Council considers that there are benefits in allowing public speaking at Rights of Way Committee meetings. A summary of the procedure to be followed is set out in the Appendix to this Code.

## 7. **SITE VISITS**

- 7.1 All sites are visited by officers as part of the application process, and meetings involving officers, applicants and consultees may be held on site as part of the consultation and negotiation process prior to the determination of an application, and in accordance with the provisions of Section 5 of this code.
- 7.2 While there is no need for authority from applicants for visits to existing rights of way, all applicants are requested to give authority for consultees to inspect proposed routes, either unaccompanied or by prior appointment, when submitting an application.
- 7.3 Members wishing to visit sites on their own should be aware that they do not have authority to visit land or routes which are not public rights of way and should seek advice from officers before undertaking unaccompanied site visits. Any lobbying that may occur during a visit should be dealt with in accordance with the procedure described in Section 5 above.
- 7.4 Formal site visits by the committee will be held when they provide a material benefit and the committee requests that a visit be held, for example, to understand local conditions and the physical characteristics of existing and proposed routes of paths.
- 7.5 All members of the committee (including substitutes who may attend at a subsequent meeting) will normally attend formal site visits, together with the appropriate ward member(s).
- 7.6 All members attending formal site visits by the committee shall be accompanied by an appropriate officer of the Council.
- 7.7 The purpose of a formal site visit by the Committee is fact finding. No discussion of the merits of the application will be permitted. Applications will not be determined during site visits.
- 7.8 During formal site visits the members of the committee should not make any comments that could create an impression to an outside party that they had already formed a view on the merits of an application. Decisions on applications should only be made within a formal meeting of the committee, when members have before them all the necessary information to be able to make an informed decision.
- 7.9 There may be occasions on site visits when questions raised by members cannot be satisfactorily answered or require further investigation. In this event officers will pursue these matters and report back to the committee meeting.

7.10 Further details of the procedures at formal site visits are contained in the Appendix attached to this code.

## **8. DISCLOSURE OF INTERESTS AND HOSPITALITY**

8.1 Members and officers are required to comply with the requirements of the Suffolk Coastal Codes of Conduct, including registration of their interests and making appropriate declarations - whether a "personal" or "prejudicial" interest.

8.2 Members and officers are discouraged from receiving hospitality from people with an interest in a rights of way proposal. If receipt of hospitality is unavoidable, members and officers will ensure that it is of the minimum level and will declare its receipt as soon as possible by entering details in the appropriate hospitality book. Hospitality books for members and officers are retained by the Council's Monitoring Officer. When hospitality is offered but not accepted this will also be recorded in the appropriate hospitality book.

8.3 In the event that significant hospitality has been offered and accepted by officers or members this should be declared at the relevant committee meeting.

## **9. DISTRICT COUNCIL APPLICATIONS**

9.1 Where the District Council wishes to make alterations to the rights of way network, for instance across land within its own ownership/occupancy, it will need to make an appropriate application. The application will be submitted by the appropriate Strategic Director or duly authorised nominee, and will be dealt with by the Council in the same way as those submitted by private applicants.

9.2 No District Council application will be determined under delegated authority by an officer, but will be determined by the Rights of Way Committee.

## **10. APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS**

10.1 All applications which are submitted by or on behalf of members, or any officers of the Council or their spouse / partner in their private capacity, will be reported to the Rights of Way Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.

10.2 The member / officer concerned will inform the Rights of Way Officer of the submission of their application to ensure that the above mentioned procedure can be adopted.

10.3 No member or officer concerned will take part in the processing or determination of the application, and, if normally present at the determining committee meeting, will declare a prejudicial interest in the normal manner and leave the meeting for the consideration of that item of business.

## **11. TRAINING**

11.1 The Rights of Way Manual for members contains information on rights of way principles and legislation, particularly as relevant to the Council's rights of way role, and is updated every two months.

- 11.2 To facilitate effective working, all members of the Council will also be offered training in the principles of rights of way and the procedures followed by the District Council in determining applications for public path orders and agreements. The precise contents of this training will be determined from time to time by officers in consultation with members.
- 11.3 Members of the Rights of Way Committee will be expected to have undertaken training on current rights of way principles and public path order and agreement procedures. When significant changes to rights of way legislation or policy occurs which is relevant to the Council's rights of way function updated information or training as appropriate will be offered to all members of the committee. All members of the Council will be invited to benefit from it if they so wish.
- 11.4 Members who have not participated in appropriate training would not be expected to be members of the Rights of Way Committee. Only in the most exceptional cases when there are no trained members available and a committee would be potentially inquorate, should a member who has not received training take part in making a decision on a rights of way application.
- 11.5 A record of member training in rights of way will be maintained. The training and provision of information undertaken and provided each year will be reviewed.

## 12. **COMPLAINTS**

- 12.1 If there is concern that this Code of Practice has not been adhered to you should contact your local ward councillor or you should write to the Head of Legal and Democratic Services at the Council Offices, or e-mail [hilary.slater@suffolkcoastal.gov.uk](mailto:hilary.slater@suffolkcoastal.gov.uk)
- 12.2 In the event that the concern is a matter that relates to the Council's Statutory Code of Conduct for Members or its Officer Code of Conduct, then concern should be made in writing to the Monitoring Officer at the Council Offices, or e-mail [hilary.slater@suffolkcoastal.gov.uk](mailto:hilary.slater@suffolkcoastal.gov.uk)
- 12.3 The Council has adopted a Complaints Procedure which may be followed in the event that the initial enquiry is not resolved to the complainant's satisfaction. A copy of the Complaints Procedure is available on the Council's web-site, or from the Council Offices.

## APPENDIX

### **PROCEDURES FOR PUBLIC SPEAKING AT RIGHTS OF WAY COMMITTEE MEETINGS AND SITE VISITS**

#### **1. ON SUBMISSION OF A RIGHTS OF WAY PUBLIC PATH ORDER / AGREEMENT APPLICATION**

When submitting an application to the Council applicants are made aware that in the event of the application being referred to the Rights of Way Committee there will be the opportunity for public speaking.

#### **2. PRIOR TO THE DETERMINATION OF AN APPLICATION OR CONSIDERATION OF AN OPPOSED ORDER BY THE RIGHTS OF WAY COMMITTEE**

As soon as it is known that an application will be determined by the Rights of Way Committee, or that the committee is to consider an order which the Council has made and to which objection and / or representation has been received, letters will be sent to all those who have expressed an interest in the matter stating that the item will be considered by the Rights of Way Committee and advising of the date, time and place of the meeting. Recipients will be advised that there will be the opportunity for public speaking at the meeting and sent a copy of the Council's leaflet 'Have Your Say on Changes to Rights of Way' which explains procedures.

Those given the opportunity to speak at the meeting will be:

- representative of town / parish council
- objector / interested party
- applicant or agent
- affected landowners / occupiers
- relevant District Council ward member(s)

The intention is that only one person will speak from each of the above parties. In exceptional circumstances the Head of Legal and Democratic Services or his representative may, after consulting the councillor who will preside at the committee meeting:

- (i) allow more than one parish council to send a representative by prior agreement, where a proposal has a significant effect upon more than one parish
- (ii) allow more than one objector / interested party to speak, where it is clear that conflicting views cannot be effectively presented by one representative. Copies of the agenda for the meeting will normally be sent to all those who have expressed an interest in the matter.

It will not be necessary to make any arrangements to speak before the day of the meeting. Those wishing to speak should attend on the day of the meeting and make their wish known to the officer servicing the committee before the commencement of the meeting.

### **3. PROCEDURES AT COMMITTEE MEETINGS**

Interested parties will be invited to attend half an hour before the start of the committee meeting in order that the officer servicing the committee can ascertain who wishes to speak, and upon which item. This information will be relayed to the Chairman and it will then be a matter for the Chairman to determine any re-ordering of the agenda in conjunction with the officer servicing the committee.

Anyone who arrives after the start of the meeting will not be in a position to insist upon speaking on an item.

District Council ward members should also attend prior to commencement of the meeting, both to alert the Chairman to their wish to speak and to avoid an item being brought forward in their absence.

### **4. ORDER OF SPEAKING**

The order of debate will be as follows:

- (i) Introduction by appropriate District Council officer
- (ii) Representation by objector / interested party
- (iii) Representation by applicant or agent
- (iv) Representation by affected landowners / occupiers
- (v) Representation by relevant town or parish council
- (vi) District Council ward member(s)
- (vii) Rights of Way Committee general debate
- (ix) Adjournment for Site Visit (if required)
- (x) Rights of Way Committee general debate and conclusion

### **5. ARRANGEMENTS FOR SPEAKING**

Speakers will be asked to leave the public seats and occupy a seat especially set aside before speaking. They will also be asked to state who they represent.

Speakers should confine their statements to matters of fact or opinion. It is to everyone's benefit if speakers:

- Are brief and to the point
- Limit opinions to the merits of the proposal under consideration
- Address only relevant rights of way issues

### **6. DURATION OF SPEAKING**

As stated in item 2 above it is the intention that only one person will speak from each of the interested parties. Speakers will be given a maximum of three minutes to speak in presentation, with the Chairman having absolute discretion as to how many and in what form questions are allowed over and above the three minute presentation. No speaker will be given a second opportunity to speak to ensure equality of representation. All questions should be based upon matters of fact only, and channelled exclusively through the Chairman. There will be no general debate involving those engaged in public speaking, given that the purpose of allowing public speaking is to make appropriate representations and to tease out matters of fact.

## **7. ILLUSTRATIVE MATERIAL**

If a speaker wishes to refer to illustrative material, which they wish to be displayed at the meeting, then this must be provided to the officers in advance of the meeting so that appropriate arrangements can be made for its display. Ideally a spare copy of such material should be deposited for Council retention on the relevant application file.

## **8. PROCEDURES AT SITE VISITS**

Formal site visits by the committee will be held when they provide a material benefit and the committee requests that a visit be held, for example, to understand local conditions and the physical characteristics of existing and proposed routes of paths.

It is the committee's usual procedure to adjourn a meeting while it undertakes a site visit. When adjourning the committee will state the time at which the meeting will reconvene, allowing sufficient time for it to travel and inspect the site in question.

The site visit is not part of the consideration of the merits of an application and therefore public rights to attend do not apply. However, the committee will invite representatives of the interested parties present at the committee meeting to attend. Where access to private land is necessary (for example to inspect the proposed route of a path to be diverted) officers will secure the prior agreement of the landowner.

The purpose of the site visit is fact finding. Officers will be able to point out relevant features of the site and surroundings. Members will be able to see the physical features of existing and / or proposed routes and ask questions through the Chairman or the officer to seek clarification.

At site visits all questions from members will be carried out through the Chair or, at the Chairman's discretion, directed at the relevant officer. There may be occasions when questions raised by members are not able to be answered or require further investigation, in which event officers will pursue these matters and report back to the committee.

No discussion of the merits of the application will be permitted on a site visit. Members will not make any comments that could create the impression that they have already formed a firm position on the merits of the application. The decision on the application will be made within the formal meeting of the Rights of Way Committee, when members have all the necessary information before them to make an informed decision.

The Chairman may ask any interested party representative present at the site visit if there are any physical features of the existing and / or proposed routes that have not been visited that they consider should be seen by the members. The Chairman will then determine whether to accede to any requests for those routes to be visited.

The visiting party will stay together as a group. No lobbying will be allowed. If any party persists in attempting to lobby, the Chairman may determine to curtail the site visit and return on another occasion.

A written record will be kept of the site visit and placed on the application file.