

**SUPPLEMENT TO THE AGENDA FOR**

# **General Overview & Scrutiny Committee**

**Wednesday 4 May 2016**

**9.00 am**

**Committee Room 1, The Shire Hall, St Peter's Square,  
Hereford, HR1 2HX**

	<b>Pages</b>
<b>5. SUGGESTIONS FROM THE PUBLIC</b>	<b>3 - 6</b>
To consider suggestions from the public on issues the committee could scrutinise in the future.	
(There will be no discussion of the issue at the time when the matter is raised. Consideration will be given to whether it should form part of the committee's work programme when compared with other competing priorities.)	
<b>6. QUESTIONS FROM THE PUBLIC</b>	<b>7 - 12</b>
To note questions received from the public and the items to which they relate.	



## General Overview and Scrutiny Briefing Note

### Recording of Highway Rights

**22<sup>nd</sup> April 2016**

This briefing note builds upon information set out in previous briefing notes to the GO&SC during the autumn of 2015 about Public Rights of Way issues and the role of Parish & Town Councils. A meeting was also held to discuss these topics on 14<sup>th</sup> March 2016 involving members of the Herefordshire Local Access Forum (HLAF), the Chair of the GO&SC, the Cabinet Member for Transport & Roads and officers of Herefordshire Council and BBLP. A set of meeting notes for this is available.

The discussions centre on the need for Herefordshire Council to produce accurate records of highways in the county, maintainable at public expense or otherwise. HC is required to maintain four slightly different sets of records; the Definitive Map & Statement (DMS) of public rights of way, the List of Streets (LoS), the Street Works Register (SWR) and the Local Street Gazetteer (LSG). This is in the context of the imminent implementation of legislation from the Countryside & Rights of Way Act 2000 and the Deregulation Act 2015 which will have the effect of extinguishing certain categories of public rights of way that not already recorded on the DMS by 2026.

It is anticipated that exemptions will be set out preserving rights not recorded on the DMS as long as they are shown as a highway on one of the other sets of highway records referred to above although the exact form of the exemption is not currently known. Implementation of the new legislation is expected to take effect on 1<sup>st</sup> July 2016 and thus the form of the exemptions should become clear at that point.

It is common ground that there are many roads and paths with highway rights that are not currently recorded in Herefordshire. This is a national problem and many other local authorities already have long backlogs of existing applications to modify the DMS.

The process to apply for a modification to the DMS is prescribed and can be lengthy and bureaucratic (a DMMO application under Schedule 14, Wildlife & Countryside Act 1981). In contrast, amendment of the other records is not set out in legislation and the process is at the discretion of the local authority. However, in essence the same questions have to be answered: is a particular route a highway, and if so, is it maintainable at public expense? In order to ensure robustness and consistency, HC has adopted a Highways Records Protocol, to set out how requests to amend its highway records are considered and processed. In essence it requires those requesting the amendment to provide evidence to enable those questions to be answered and provides a means of prioritising the processing of such applications alongside DMMO applications.

Some members of the HLAF have consistently lobbied HC to adopt a much less rigorous approach and to record routes on the SWR and / or LSG effectively as highways of unknown status and maintenance responsibility based primarily on alleged observed current patterns of public use. They consider that this would entail a quicker and more efficient use of resources.

It is the view of officers that such an approach would be inappropriate for a number of reasons:

- As a matter of law, HC must consider whether a particular route is a highway on the balance of probabilities. This requires an assessment of all the readily available evidence of which current patterns of use would only be a part.

- Declaring a way to have highway status necessarily imposes obligations and restrictions on the owners and others with an interest in the land over which it passes. The rules of natural justice require that these parties are provided with an opportunity to provide evidence of their own as to the status of the route. HC's Highway Records protocol allows for this whilst the proposals for a less robust recording process do not.
- The current guidance and requirements for the LSG do not allow for the recording of alleged / unknown highway rights.
- To create a less robust system of recording rights would create an incentive to avoid the statutory DMMO process, distorting the allocation of staff resource and is considered unfair to those that have made legitimate DMMO applications.

Officers have been advocating for some time, that volunteers submit properly researched and evidence-supported applications either for a DMMO or, where the nature of the alleged highway is not capable of being recorded on the DMS, for a Highway Records Protocol amendment. On April 18<sup>th</sup> 2016, HC / BBLP Officers supported the HLAf in the delivery of a training session at the Herefordshire Archives and Records Centre to parish volunteers in how to research and make such applications. Approximately 50 people attended indicating a level of interest in this area of work.

HC is in the process of writing to the relevant government departments and agencies (Defra, DfT and GeoPlace) seeking clearer guidance but as the law currently stands, it appears that the only way rights at risk of extinguishment in 2026 can be protected is by making a full DMMO application. Officers believe that people interested in protecting such rights should therefore be encouraged to make such applications and not to follow some less robust approach with no certainty as to outcome.

Should the emerging regulations and guidance, particularly with regards to the framework of exemptions from extinguishment of rights, indicate that a different approach is required then this can be reviewed in light of that new information. However, to try and second guess what that framework might be now is considered premature.

It is therefore recommended that members of the public and organisations that have identified routes that they think should be recorded follow the protocols and procedures identified above. This would involve the submission of properly researched and evidence-supported applications either for a DMMO or, where the nature of the alleged highway is not capable of being recorded on the DMS, for a Highway Records Protocol amendment.

The Council and Balfour Beatty are keen to work with voluntary organisations directly or through the Local Access Forum to support work on the ground to improve and maintain the public rights of way network for the benefit of the local community and visitors.

**In attendance:**

**Mr Duncan green, Mr Peter McKay, Richard ball (Assistant director, commissioning) Cllr Bowen (Chairman, General Overview and Scrutiny) , Cllr Rone (Cabinet Member, Roads), Spencer Grogan (Parks and Leisure commissioning manager), Will Steel (Balfour Beatty Living Places), Sam Tweedale (Democratic Services Officer)**

Mr Duncan Green and Mr Peter McKay introduced their position as members of the public and members of the Local Access Forum. A significant number of unregistered highways had been identified in Herefordshire. Members of the public had been encouraged to submit DMMO applications in order to have these highways registered appropriately. The process of a DMMO application involved a lengthy legal process with associated resource and officer time costs.

- There was a deadline of 2026 for the registration of these highways. Under Herefordshire Council's current procedure, this would represent a significant cost in combined legal fees and officer time in order to process a large number of DMMO applications ahead of 2026. It was argued that in an environment of limited resources, it would not be prudent to allow this level of cost.
- As such an alternate process for the registration of highways was presented. It was argued that instead of using the DMMO process, the procedure could be simplified by listing all unregistered highways as privately maintained public highways accessible for all traffic. It was proposed that highways could be registered voluntarily by a number of parties, notably including parish councils.

Officers agreed that the processing of large numbers of DMMO applications would have resource and officer time implications and that this was a national issue shared by many other local authorities. It would be of benefit were this process to be simplified, however the feasibility of this was limited for a number of reasons:

- Herefordshire Council, as with most local authorities does not maintain a single digitised list of highways; there are various databases maintained. The unregistered highways referred to were largely listed under a code meaning their status was yet to be identified.
- The bulk processing of highway registrations as proposed would reduce the officer and resource implications of processing DMMO applications. However this would be likely to prompt a large number of complaints and objections from local residents in affected areas. It was initially argued that the resource and officer time implications of these approaches would be broadly equal. In opposition it was argued that the number of objections would be much smaller than the number of DMMOs to be processed otherwise, and so the costs of handling objections would be less significant.
- While a national issue shared by many local authorities, Herefordshire Council would be the first in pursuing an alternative to DMMO applications. This was in large part due to other local authorities sharing an interpretation that processing unregistered highways through DMMO applications was the correct approach as implied by central government guidance. It was acknowledged that relevant central government guidance was very short in length.
- It was noted that a system of self-application for DMMOs had been in place for some time, however this had not generated any interest from the public in registering highways through a simplified procedure.

- Work identifying highways in Herefordshire conducted in the 1950s had not been done with a high degree of accuracy. As a result Herefordshire Council was limited in its ability to resolve highway registration issues quickly. Previous issues in accuracy meant that many highways registrations would need to be examined in detail regardless of the procedures adopted.
- Herefordshire Council as a local authority was bound closely by statute. The extent to which Herefordshire Council could act proactively according to specific interpretations of legislation and guidance was limited as a result.

There was discussion of the wording of Department for Transport Guidance. There was debate over the implications of the council being required to act on all unregistered highways of which it was 'aware'. It was argued that as the council was effectively aware of all highways concerned due to them being listed on at least some council databases, the council should respond proactively. It was explained that the council being 'aware' of an unregistered highway in such cases was complicated due to legal definitions classifying when the council was 'aware' of such issues.

The group agreed that guidance from central government was not comprehensive enough to clarify the procedure which should be followed.

The group agreed that the registration of highways was unnecessarily complicated by multiple levels of bureaucracy.

It was noted that many of the points raised around simplifying the process were valid. However, a lack of specific guidance from central government, as well as restrictive legislation limited the council's ability to act with initiative.

The group agreed that in an environment of limited resources in local government, the prioritisation of work was appropriate. It was accepted that the registration of highways, with an eventual deadline of 2026, while significant, did not necessarily supersede other priority work.

It was noted that the issue raised were relevant to the work of a House of Lords committee.

Review of the highways registration process would require the cooperation of a number of organisations. Notably, DEFRA, and the LGA and government associated software provider Geospace would need to develop an agreed procedure.

**Resolved that:**

- i) Herefordshire Council would contact the secretariat of the relevant House of Lords Committee in regard to amending the guidance available for the registration of Highways ahead of 2026. This would be done with the intention of lobbying DEFRA and Geoplace, as well as any other relevant bodies on the development, clarification, and improvement of guidance provided to local authorities in reference to the registration of highways.**
- ii) Legal advice on matters related to the registration of highways provided to Mr Duncan Green be circulated with relevant attendees of the meeting.**
- iii) A briefing note would be produced in relation to matters raised for the benefit of the General Overview and Scrutiny Committee**



<b>MEETING:</b>	<b>General Overview and Scrutiny Committee</b>
<b>MEETING DATE:</b>	<b>4 May 2016</b>
<b>TITLE OF REPORT:</b>	<b>Questions from members of the public</b>
<b>REPORT BY:</b>	<b>Governance Manager</b>

## Wards Affected

County-wide

## Purpose

To receive any questions from members of the public deposited no later than 5pm on Friday 29 April 2016.

## Introduction and Background

- 1 Members of the public may ask the Committee one question so long as the question is directly related to an item listed on the agenda. A deadline for the submission of questions will be identified in the agenda; this is to enable officers to provide responses within a reasonable timeframe. Written answers will be circulated to Members, the press and public prior to the start of the meeting. Questions subject to a Freedom of Information request will be dealt with under that separate process.
- 2 The preparation of responses to questions will be prioritised based on the relevance to the agenda item and the order in which they were received. Where several members of the public have lodged similar written questions, these will be dealt with together. Where possible, questions and responses may be published in a supplement to the agenda in advance of the meeting.
- 3 At the Chairman's discretion, a member of the public may ask one supplementary question only and this must relate to the original question. However, this opportunity will depend on the number of questions received and the amount of business that the committee needs to get through. If a verbal response cannot be provided at the meeting, a written reply will be provided.

## QUESTIONS

- 7 Seven questions have been received and accepted by the deadline and they are attached at Appendix 1.

## Background Papers

- None

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Further information on the subject of this report is available from  
Governance Services on Tel (01432) 260659





## Public questions to General Overview & Scrutiny Committee – 4 May 2016

### Task and Finish Group Report: Community Infrastructure Levy

Question from Mr J Crippin

Given the large number and scale of Intensive Animal Husbandry Units in Herefordshire, their impact on the environment and their continuing proliferation I and others expressed the proposal during the recent consultation that such developments should be subject to the levy. I now understand that this proposal which would in some way help to offset the impact of these developments is not even to be considered by the Committee.

Given the concern and disquiet amongst rural residents over this form of agricultural activity what justification can there be for our elected representatives to not even debate and consider the issue?

It is well known that Herefordshire Council is desperate for additional income, if for no other reason, to help repair our disintegrating roads which can only be further damaged by the volume and weight of HGV's generated by intensive agriculture.

I would formally request that this matter be brought to the Committee's attention at its meeting next week as part of their considerations of this matter.

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Question from Ms M Scott

Why are Intensive Livestock Units (they are not farms) exempt from the Community Infrastructure Levy? Unlike factory units this size who do pay rates this is a very unfair disadvantage. They make no financial contribution to the Community and as we can see from the increased number of these units going up there is more traffic on the roads – again making no contribution at all! No wonder Northern Herefordshire is becoming awash with these units.

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Question from Mrs E Tucker

I would like to enquire why there will be no levy on intensive livestock units in Herefordshire. They are the biggest, most intrusive and numerous planning applications in the county which only favour a few with wealth but have a much more detrimental effect on the majority of the population which is clearly recorded in the number of objections and complaints these units stimulate. They provide little if any new employment, have been shown to inhibit the development of more diverse and sustainable businesses and are killing off the small farms so much admired in the country as well as communities and the counties biggest industry, tourism.

If any business in the county needs a levy this is it. The council is already being criticised for its close relationship with the companies responsible for these developments. It seems they have had a free hand to develop when and where they wish and the tax payer is questioning how this could possibly benefit them – could an inability to act impartially explain why the country is now over saturated with intensive units and how this elitist policy is failing the majority of the community who now find it harder to earn a living or experience a good quality of living?

As there is little transparency on this issue with an unwillingness for the council to justify its actions it is not surprising how these matter never makes it through any debate. A perfect example of this is the recent rejection of the council to develop a much more specific planning structure in regards to intensive units as not surprisingly none has been built into the new planning policy.

If the wider community are forced to have these units through what appears to be an undemocratic process then surely they should get at least some return to make up for the devastating effect it has on their investments and lifestyle. In fact I propose you also request a set aside fund to support

those who are living with the awful effects of these buildings and compensate them for the devastating loss in their own property values which prevents them from moving away.

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Question from Mr C Westhead

There have been many comments put forward at consultation for the CIL that Intensive livestock units are exempt from the CIL. The comments made are in agreement that this is an outrage because these units contribute nothing to the communities in which they are placed; quite the contrary. Making them pay a sensible amount to the parishes, via the CIL, has simply got to be introduced. All other business pay the levy - why not them?

Yet, these views are not even considered in the recommendations to the committee.

There seems therefore, a case for the Council to answer. Why consult with the public if their views are not being considered?

Should the Scrutiny Committee be turning their attention to the Council's practices?

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Question from Mr A Tucker

Despite several proposals to include intensive livestock projects in the Community Infrastructure Levy, why has the Council deemed that such projects should be exempt from CIL, business rates and council tax?

Intensive farming units have a serious detrimental impact on the community, environment and infrastructure. Should the council be irresponsible enough to agree to such development then the local communities should benefit in a positive way.

Not only should the developer pay the levy, in line with any other developments, a substantial contingency sum should be held, for a period of time, in order to correct any deficiencies that might arise.

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Question from Ms P Johnson

Please can you give me an explanation as to why livestock units are exempt from any levy? They are a business and use all the utilities etc

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Question from the Herefordshire Branch of the Campaign to Protect Rural England (CPRE), relating to its response to the Council's recent CIL consultation

Failure to charge CIL on intensive livestock units

The development of intensive livestock units imposes significant costs on Herefordshire Council as the highways authority. These costs arise from the detrimental impact on the local highways network caused by the volume and weight of HGV movements generated by each unit.

So why is Herefordshire Council failing to charge CIL on intensive livestock units, which means that no contribution to these significant and additional public highways costs is being made by private developers?

**Herefordshire CPRE response to CIL Consultation  
CIL preliminary draft charging schedule consultation Thursday 17 March to Thursday 28  
April 2016**

In 2011 DCLG confirmed that the purpose of CIL is to create "...a fairer system, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development."

Herefordshire CPRE therefore requests that CIL is charged on intensive livestock units, in view of the significant detrimental impact these units have on the surrounding highways network, which is due to the volume and weight of HGV movements generated.

Yours sincerely,  
Ben Nash  
For CPRE Herefordshire

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Answer:

The Community Infrastructure Levy (CIL) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area. CIL is charged on the basis of ability to pay, as measured by the viability evidence. CIL is predicated on there being a meaningful uplift in land values which will be realised at the time of granting of planning permission.

New agricultural and forestry buildings are not specifically amongst the types of buildings exempted from CIL by DCLG<sup>1</sup> unless they fall into the specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules.

Charging authorities are obliged set a rate which does not threaten the ability to viably develop the sites and scale of development identified in the Local Plan and should strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.

The National Planning Policy Framework (NPPF) states that viability should consider "competitive returns to a willing landowner and willing developer to enable the development to be deliverable." A charging authority must use 'appropriate available evidence' to inform their draft charging schedule.

The regulations allow charging authorities to apply differential rates in a flexible way, and differences in rates need to be justified by reference to the economic viability of development. Differential rates should not be used as a means to deliver policy objectives<sup>2</sup>. If the evidence shows that the area includes low viability for particular types and/or scales of development the charging authority should consider setting a low or zero levy rate.

There is no national evidence of other charging authorities having applied CIL on agricultural and forestry buildings. However the exception to the rule is South Norfolk Council who impose a CIL of £5/sqm for 'all other uses' and agricultural buildings are not exempt<sup>3</sup>, with separate clarification that includes reference to agricultural buildings<sup>4</sup>. That charging schedule was based upon 2010 viability evidence, but it notably did not specifically test agricultural buildings, but concluded that office and industrial uses were able to support a modest CIL of £5/sq m. In the 2012 examination this was considered a nominal charge averaging 0.5% of average build costs for office and industrial uses with no specific consideration given to agricultural building viability<sup>5</sup>.

### **How does this apply to agricultural and forestry buildings in Herefordshire?**

The context above sets out that in order to support a CIL charge a development type would need to be able to pay CIL and remain viable. As part of the CIL viability research, transactional evidence for a range of uses, was considered but none was available for agricultural and forestry buildings by themselves (although there was evidence of values for complete farms for sale or rent) as they are

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<sup>1</sup> Agricultural buildings are not exempt from CL as generally they would be regarded as buildings that people will normally go (i.e. not exempt under regulation 6(2)(a))

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397586/2015-01-21\\_-\\_redaction.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397586/2015-01-21_-_redaction.pdf)

<sup>2</sup> Planning Practice Guidance Paragraph: 021 Reference ID: 25-021-20140612

<sup>3</sup> [http://www.south-norfolk.gov.uk/planning/media/Charging\\_schedule\\_updated.pdf](http://www.south-norfolk.gov.uk/planning/media/Charging_schedule_updated.pdf)

<sup>4</sup> [http://www.south-norfolk.gov.uk/planning/media/Guidance\\_Note\\_1\\_Do\\_I\\_need\\_to\\_pay\\_CIL.pdf](http://www.south-norfolk.gov.uk/planning/media/Guidance_Note_1_Do_I_need_to_pay_CIL.pdf)

<sup>5</sup> <http://www.south-norfolk.gov.uk/CARMS/meetings/cou2014-02-24ag10app3.pdf>

generally an integral part of the wider enterprise, and are therefore not (commonly) sold separately as standalone developments.

In order to charge CIL on agricultural and forestry buildings it would be necessary to use evidence about their values and costs (currently not available as discussed above) and then check to see whether there is sufficient viability headroom to support a CIL.

The closest comparison for agricultural and forestry buildings was industrial and warehouse buildings, and here the evidence suggested that there was insufficient viability to support a CIL.

Without this evidence a separate CIL for agricultural buildings would not comply with the Regulations governing CIL and run the risk of being challenged at Examination.