

MINUTES of the meeting of Environment Scrutiny Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 13 July 2010 at 2.00 pm

Present: Councillor RI Matthews (Chairman)
Councillor PJ Watts (Vice Chairman)

Councillors: WU Attfield, CM Bartrum, DJ Benjamin, JW Hope MBE, TW Hunt, PM Morgan and A Seldon

In attendance: Councillors: WLS Bowen, TM James, JG Jarvis and RV Stockton.

21. APOLOGIES FOR ABSENCE

Apologies were received from Councillor DW Greenow. Apologies were also received from Councillor DB Wilcox, Cabinet Member (Highways & Transportation).

22. NAMED SUBSTITUTES

There were no named substitutes.

23. DECLARATIONS OF INTEREST

No interests were declared.

24. SUGGESTIONS FROM MEMBERS OF THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY

The Chairman reported that Mr P McKay had submitted a list of 22 areas for scrutiny. As they all related to the Public Rights of Way Service he proposed dealing with the list under that agenda item.

25. THE HEREFORDSHIRE LOCAL ACCESS FORUM

The Chairman introduced Mr R Gething (Chairman) and Mr N Barnes, (Vice-Chairman) of the Herefordshire Local Access Forum (HLAF) who informed the Committee of the work of the HLAF.

Mr Gething thanked the Committee for the opportunity to address the meeting. An outline of the areas they wished to cover had been set out in the agenda, including the terms of reference for the HLAF.

The principal points highlighted during the brief presentation by Mr Gething were:

- HLAF was a statutory body set up under the Countryside and Rights of Way Act 2000 to give independent advice to the local authority and other specified bodies on access, rights of way and other associated matters, at a strategic level;
- In addition to the main body HLAF also has a number of working groups to look at legislation, route development and rights of way improvement plans (ROWIP);
- They worked with neighbouring authorities e.g. Brecon Beacons National Park Authority, to achieve cross border initiatives;

- They had been one of five LAFs in England that took part in a National Pathfinder Project on recording rights of ways - part of the Discovering lost ways project – which had resulted in a report to the government minister.
- Contributions had been made through consultation processes to a number of important local and regional strategic policy issues.
- The HLAF would continue to work with the Council on the review of the ROWIP, provide an independent focus and promote the adoption of best practice in the management of rights of way.
- An indication was given of the range of issues considered at HLAF meetings noting that main meetings were open to the public.

In response to questions the following principal points were noted:

- HLAF meetings were advertised through the Rights of Way section of the Council's web site. While greater publicity was being looked at this had to be balanced against the costs involved. A suggestion was made that meeting dates could be included in Herefordshire Matters.
- Public rights of way provided many benefits to the public e.g. through health promotion and tourism income.
- Greater national awareness of the work in Herefordshire had been achieved through taking part in the National Pathfinder Project.
- Noting that parish councils had a large number of footpaths through them, the Forum would welcome being contacted on any general or strategic issues. The Forum also wished to see further support to the Parish Paths Scheme and would welcome Parish Footpath officers attending the Forum meetings.
- HLAF were satisfied that reports and advice given to the Council were being adequately dealt with.

The Chairman thanked Mr Gething and Mr Barnes for the presentation and for answering the Committee's questions.

RESOLVED: That the presentation be noted and the Herefordshire Local Access Forum thanked for the work they undertake.

26. UPDATE ON OPERATION OF PLANNING COMMITTEE AND ENFORCEMENT FUNCTION

The Committee received an update on the progress of both the single Planning Committee and the planning enforcement function.

The Assistant Director – Environment, Planning and Waste, presented a two part report. The first part outlined the background, introduction and current operation of the new Planning Committee including statistics on the number of applications considered and duration of meetings. The report also set out a number of key issues for the future which he briefly expanded upon.

The Cabinet Member (Environment and Strategic Housing) commented that the issues raised by the Audit Commission and the Committee's own scrutiny review and subsequent comments by Councillors had been taken into account. He emphasised that proper ground rules were in place to ensure that planning decisions were in accordance with the law. Based on evidence of concern raised by the local community, Councillors had a defined process to enable applications to be redirected to Planning Committee. Councillors were also now able to become more involved in applications at a ward level.

The Assistant Director - Environment Planning and Waste, presented the second part of the report which set out that the recent restructuring of the Planning Service had brought about the creation of a dedicated planning enforcement team with the objective of raising the level, intensity and monitoring of the enforcement regime under the Town and

Country Planning Acts. The report also set out recent enforcement activity and key elements that the team would be focusing on.

Responding to concerns raised about application registration times the Assistant Director – Environment, Planning and Waste reported that he was already looking at possible improvements to the system.

Noting that no Section 215 notices had been issued the message this relayed to property owners was questioned. The Assistant Director – Environment, Planning and Waste responded that properties potentially subject to a S215 notice were monitored.

Responding to various questions concerning Section 106 income and conditions the Assistant Director – Environment, Planning and Waste responded that for the last 16 months an officer had been appointed to increase the monitoring of S106 agreements. While not all agreements related to financial commitments some £1.1m had been secured. However, the economic downturn had affected or delayed the performance of some agreements.

Inspection work undertaken by the Planning Service was undertaken based on a schedule of priorities and was normally undertaken within 5 working days.

RESOLVED: That the report be noted and a Member briefing note be provided on the work of the Section 106 officer together with progress on implementing and monitoring agreements.

At this point the Committee adjourned for 5 minutes and reconvened at 3.12 pm

27. A REVIEW OF THE RIGHTS OF WAY SERVICE PERFORMANCE AND OUTCOMES

The Committee was informed of the scope of the key areas of the rights of way service and received clarification on Amey and the Council's roles, outcomes and progress towards those outcomes. The agenda report also clarified some of the regular rights of way related issues raised by members of the public, including the relationship between the statutory List of Streets and the Definitive Map.

The Chairman reported that a detailed list of suggested areas for scrutiny had been received from Mr McKay – copies of which had been circulated to Committee members. As the list related to subjects for debate under this agenda item the Chairman proposed that the list be passed to officers. Officers would then inform the Chairman and Vice-Chairman of their response to the issues raised. The Chairman and Vice Chairman would then consider whether to recommend to the Committee that any further report(s) be considered for inclusion in the committee work programme.

The Chairman further reported that a question had been submitted by Mr Everitt. While the question related to a number of personal issues it mainly asked whether a satisfactory and acceptable level of rights of way service was being provided. The Chairman and Vice Chairman undertook to incorporate the issues raised into the Committee's questions.

The Parks, Countryside and Leisure Development Manager (PCLD Manager) reminded the Committee that in response to the existing backlog of work in the service, the transfer of the service to Amey Herefordshire, and a number of queries from the public, the Committee had requested a report on the service. He presented the agenda report which set out:

- an overview of the service including its transfer to Amey;
- the responsibilities of Amey and the Council;

- the public rights of way legal order functions including performance in achieving those orders; statistics on the outstanding legal order work; the method of prioritisation and how the backlog was being tackled.
- the historic position regarding maintenance of the network, the current backlog position, the method of prioritisation of works, the involvement of the parish councils, and initiatives to tackle the backlog.
- benchmarking against other authorities as further set out in Appendix D to the report (Shropshire, Warwickshire, Gloucestershire, Monmouthshire)
- the methods that the Council and Amey used to communicate, promote and engage with local communities and the wider public.
- the characteristics, differences and questions raised by members of the public concerning the List of Streets and the Definitive Map.
- the designation and inspection of unsurfaced county roads.

Based on themes identified in the report the following principal points were made:

Service Transfer

Noting the budget and staffing position described in the report, questions were asked about how the extra staff were being funded and whether this would result in less resources for maintenance purposes. In response the Committee were informed that these were not extra posts but the employment of five staff now brought the staff complement up to full strength. The costs would be met from the staffing budget.

Details of what services were being delivered by Amey Herefordshire were set out in Appendix B to the report. For the first 10 months of the contract a number of key performance indicators had been agreed (appendix C to the report) and had been met.

Budget

The Committee noted that the capital and revenue budgets continued to be under pressure due to inflation as, in accordance with the Medium Term Financial Management Strategy, they had not been increased in line with the cost of contract prices.

Questioned on the maintenance budget the Committee was informed that maintenance was undertaken from the core budget which was under pressure from inflation. Finance made available through the Local Transport Plan (LTP) had enabled a number of specific projects identified in the ROWIP to be undertaken. The possibility of further LTP funding was currently uncertain.

Appreciating the social, economic and health benefits derived from the PROW network the Committee noted the figures in Appendix D suggested that other councils appeared to obtain income for its PROW network from other sources and questioned whether this County could be more proactive in seeking further income e.g. from its partners in the NHS and tourism. In response the Committee was informed that the figures in Appendix D had been supplied as basic details and, as each council had differing methods of accounting, variances would occur.

Maintenance

A suggestion was made that responsibility for the footpath network should be returned to the parish councils as parishes had originally been responsible for them. In response the Committee was informed that in addition to strategic development, the Council had a statutory responsibility for the maintenance of rights of way and whilst some powers could be delegated, as was the case through the P3 scheme, the statutory function could not be passed over. If individual parish councils were made solely responsible for day to day maintenance then it was suggested that the network as a whole would lose any co-ordinated /strategic approach to maintenance. Town and parish councils had various

powers relating to the management of public rights of way, primarily under the Highways Act 1980.

Herefordshire Council and Amey Herefordshire worked in partnership with 84 parish and town councils through the Parish Paths Partnership (P3) scheme. The P3 scheme covered one third of the PROW network. This involved Herefordshire Council providing a grant in return for the local council agreeing to carry out certain maintenance and improvement works on behalf of the local authority. While successful, further expansion of the P3 scheme would greatly reduce the Council's financial capability to undertake its statutory duties.

The Committee noted that landowners were responsible for maintaining stiles, gates and other structures used to enable access through hedges and fences and also responsible for ensuring rights of way were not blocked by obstacles such as crops, trees, and overgrowth. The Council was responsible for ensuring that landowners met their legal obligations and it was confirmed that the Council was taking a more robust approach to enforcement and the recovery of costs. The Committee questioned whether landowners were complying with their responsibilities and suggested that a number of maintenance issues should rightly be addressed by them. The Committee therefore recommended that landowners, possibly through the National Farmers Union (NFU), be reminded of their responsibilities concerning public rights of way over their property and of the benefits the PROW network brought to the county through tourism and health.

While the landowner was responsible for stiles and gates the Council was required to give a 25% grant towards the cost of installation. For efficiency reasons the Council now provided the gate in lieu of the grant and this had successfully increased the number of gates on the network.

The Committee noted that in accordance with the ROWIP, routes on the network had been categorised. These ranged from category 1 - a Herefordshire Council promoted route. e.g. Wye Valley Walk to category 4 - Paths with little or no amenity value. In essence maintenance works were prioritised against the categories. However, due to the maintenance backlog the timescales were not being met and therefore the priorities would need to be revised.

The Committee noted that much of the bridge stock on the network was coming to the end of its useful life. With the cost of a bridge replacement being in the region of £10–15k, in many cases paths were often closed for 2-3 years while resources were identified. It was reported that trials were underway with a local PROW bridge supplier to make bridge replacement cheaper and quicker.

Questioned on how resources were prioritised between maintenance and legal order functions the Committee was informed that no formal priority criteria existed. Both areas of work were required to be undertaken and therefore a balance had to be struck. Maintenance was undertaken in accordance with the established Inspection and Maintenance Policy.

Clarification was given regarding the various classifications of routes with public access. The Committee noted that the term green lane was used to describe any un-sealed route and had no legal significance.

Questioned on the provision of new routes in response to the needs of local residents, the Committee noted that a number of new routes had been identified in the ROWIP.

It was confirmed that the Council, not the Environment Agency, was responsible for the maintenance of public rights of way that were subject to river erosion.

Legal Order Functions

Noting that the original definitive map dated back to the late 1940s it was confirmed that parish councils had been made aware of the various updates. It was acknowledged that there was a backlog in definitive map modification order (DMMO) determinations. Asked about the time taken in determining a DMMO the Committee were informed that both Highways Act and DMMO applications, from receipt of an application through to a change on the definitive map, typically took many years to complete and depending on the complexity of the case, certainly the best part of 10-15 years was not unknown.

Noting the characteristics of and differences between Public Path Orders (PPOs), which were a discretionary power, and Definitive Map Modification Orders (DMMOs), which were a statutory duty, the Committee explored whether any advantage could be gained for example by reclassifying applications thereby speeding up the processing and helping to clear some of the backlog. The Committee were informed that the two were separate entities. While the format of the process was similar, legal tests relating to PPOs and DMMOs were fundamentally different and had to be treated accordingly.

On debating the DMMO backlog the Committee noted that a national working group made up of representatives of the major interested parties and sponsored by DEFRA and Natural England had recently issued its final report with a series of recommendations as to how this problem could be tackled. It was noted that in reality the recommendations, even if adopted, may streamline the process but would not radically shorten it. The future of the report was uncertain given the recent change in government. The proposed cut off date of 2026 for DMMO applications under the Countryside and Rights of Way Act 2000 had so far not been enacted.

The Chairman of the Herefordshire Local Access Forum reported that the Forum were seeking a meeting with the government Minister and MPs to present the case for reforms to the acts and processes governing PROW, some of which were archaic and overly complex. The Committee requested that the Council, including the Chairman and Vice-Chairman of this Committee, be included in any discussions with ministers and MPs and that the Rights of Way Service and the Legal Service offer whatever assistance they could to the Forum in presenting a case for simplifying and streamlining the system.

Questioned on the delay in processing the legal orders the Committee noted that delays occurred due to the legal process and limitations on resources and were not due to Legal Services. It was acknowledged that the work load of Legal Services would be effected if the volume of approved legal orders was increased.

Responding to whether a DMMO stopped people walking a path the Committee were informed that some DMMOs could do so, however, others may relate to a path that hadn't been used for many years, but which may be valuable in the future.

It was confirmed that town and parish councils were involved in checking the accuracy of the Definitive Map and that they, in common with the public, could apply for changes.

The Committee noted the level of fees applicable to PPOs and that, rather than review the fees, a revised process was being considered for dealing with applications, namely by applicants being referred to consultants to prepare the case for consideration. The new process would enable resources in the Service to be moved to processing DMMOs. The cost to applicants would therefore vary depending on the complexity of the case. Amey would still process issues of public benefit. The Committee appreciated that, assuming resources were moved to DMMOs as indicated above, it would still take a considerable time to clear the backlog. It was also appreciated that when a DMMO was confirmed it could bring with it maintenance issues and costs.

Benchmarking

In considering the benchmark data (appendix D) the Committee noted that it was difficult to compare authorities as there were variations in how services were delivered, data collected and assessments made. While it seemed that Herefordshire Council was not alone in its backlog of work and pressures, the Committee wished to ensure that performance monitoring continued, improvements were identified and best practice was adopted.

Communication

Responding to comment about the public availability of information about PROW it was noted that the public rights of way web pages on the Council's site had recently been completely reviewed with more relevant information being added. A number of suggestions had been considered about what should be added to the site but had in some cases been rejected as the information would not be factual, not be of interest to the wider public and could potentially cause unnecessary anxiety to landowners and householders.

With maintenance works typically taking weeks or years to complete it was questioned whether the public were able to find out whether a route could be accessed. In response the Committee noted that the maintenance position changed on a daily basis and it would be time consuming, and possibly misleading or confusing, to list all maintenance works on the website. However, public information on network accessibility would be further investigated.

List of streets

The Highway Network Manager reported that the List of Streets was kept under section 36(6) of the Highways Act 1980. The Council had a statutory duty to maintain the list of streets and correct the list as appropriate. While there was no particular requirement on the Council to put any particular procedure in place to undertake this task, given the duty to maintain the list and a need to manage the process to ensure that suggestions for change were dealt with consistently and appropriately and in line with quality assurance standards, a procedure was being developed.

Unsurfaced County Roads

The Highway Network Manager reported that unsurfaced county roads were included under the heading of Rural Access Roads in the Highways Maintenance Plan. Rural Access Roads were defined as "Roads sometime serving rural properties, often unmetalled and providing access to the countryside carrying only access traffic". The designation was a local one and not statutory. There were 144 kilometres (90 miles) of roads without a sealed surface within the county. They were inspected for the risk they pose to the public and as such were regarded as low priority in the overall category rating of highways. They were generally not signposted on the ground and there was no legal requirement to do so. The condition of unsurfaced roads varied considerably as did the maintenance required to make them drivable or in some cases passable. To open up the whole network of unsurfaced county roads would require considerable investment for routes which were a very low priority.

Questioned on whether any benefit could be derived from moving responsibility for unsurfaced roads from Highways to the PROW team, the Highway Network Manager responded that as both teams were answerable to the same directorate and maintenance for both was delivered by Amey, no financial or priority benefit would be derived from such a change.

Questioned on the enforcement and maintenance of unsurfaced roads the Committee were informed that this also had to be prioritised and currently the focus was on the public rights of way network.

RESOLVED: That

1. the list of suggested issues for scrutiny submitted by Mr McKay be forwarded to officers. Following consideration of the officer's response the Chairman and Vice-Chairman be authorised to decide whether any issue(s) should be brought to Committee for consideration as part of the Committee work programme.
2. the Parks, Countryside & Leisure Officer investigate the possibility of obtaining funding from other 'partners' who benefit from the public using the rights of way network e.g. NHS, tourism;
3. further consideration be given to how the public are informed about route closures, particularly major tourist routes, on the PROW network;
4. consideration be given to approaching the NFU to urge them to remind their members of their responsibilities concerning any Public Right of Way over their property; and
5. should the Herefordshire Local Access Forum extend an invitation to Herefordshire Council to meet with the Minister and MPs to discuss PROW issues, the Executive be requested that the Chairman and Vice-Chairman be invited to represent the views of the Committee.

28. COMMITTEE WORK PROGRAMME

The Committee considered its work programme.

RESOLVED: That the Committee work programme be agreed and recommended to the Overview & Scrutiny Committee for approval.

The meeting ended at 5.05 pm

CHAIRMAN