

CYNGOR SIR POWYS COUNTY COUNCIL

RIGHTS OF WAY COMMITTEE

6th October 2005

REPORT BY: COUNTRYSIDE SERVICES MANAGER

SUBJECT: Charging Policy: Public Path Orders

REPORT FOR: DECISION

Background

Following a request by Committee members to consider a review of the charging policy for public path orders, the Chairman proposed that an initial review be undertaken by a member-officer working group, including the Chair, Vice Chair and a Radnorshire member to balance all three Shires. Officers were to include the Countryside Services Manager and Rights of Way Assistant.

A meeting took place on the 12th September, and included the Chairman and Cllr G Lewis, and the two officers. The Vice Chairman was unwell and unable to attend.

At the meeting, the current policy, set in 1995, was considered along with a review paper that was considered by the then Rights of Way Committee in 1997. A letter from The Ramblers Association had also been received on this subject, and was read and considered by all at the outset of the meeting (see attached letter).

In reviewing the policy, it was noted that RUPPs and Byways had not been specifically referenced in previous policy work. Following advice from Legal Services, on likely costs and officer time implications, the following sets out policy and charging implications for dealing with these Rights of Way.

RUPPs and Byways differ in relation to order making, from footpaths and bridleways, in that any changes to their route can only be considered through application to Magistrates Court, and an advert must be placed in the London Gazette. As such, higher costs are likely.

In considering and setting a charging policy in relation to Town and Country Planning Act and Highways Act, the possible actions and timescales of development were considered, and well as the administrative burdens placed upon officers for a single or split charging policy.

The policy review also considered casework that might arise under the Countryside and Rights of Way Act, in relation to proposals to divert or extinguish paths within School property. In this case, the Committee have already provided their view that the costs associated with such applications should be borne by the Education Authority and not by the Rights of Way budget.

In examining what might be a reasonable and fair charge for pursuing a public path order, the working party also examined how charges are applied across Wales. In research carried out by the Rights of Way Assistant in 2004, charges range widely from Powys' current £400 up to £1,500 plus advertising costs, as levied by Gwynedd.

The working group concluded a levy which equates to the middle and near average figures across Wales, as can be seen as set out on the table attached. The proposed charge would be in line with the Brecon Beacons National Park, Pembrokeshire Coast National Park, Vale of Glamorgan and Carmarthenshire.

The Main considerations of the Working Group

The working group carefully considered:

- each current element of policy in detail.
- the practical issues of managing public path orders in light of the charging policy.
- the issues surrounding the actual charging process itself and its administration by officers.

The meeting was concluded by the working group agreeing a set of revised criteria for charging, as well as the charge itself.

The Revised Policy Framework

The following sets out the working group's recommendations to Committee.

For the purposes of this policy, and where a charge is to be applied, the policy will apply to applications for diversion, extinguishment or where a combination of creation and extinguishment orders are used in combination.

1. A charge should be made where:

- 1.1 A path passes through or near the immediate surroundings of a property, and a diversion is clearly of substantial benefit to the property owner in terms of increasing the value of that property with no obvious gain in convenience to users.
- 1.2 The proposed extinguishment of a path is acceptable to the Committee.
- 1.3 Orders affect paths that currently pass across land used for agriculture or forestry, e.g. diversion of a cross-field path around a field edge or path over-planted by woodland plantation. Exceptions would be in 2.3 and 2.6 below.
- 1.4 An order either allows for some form of development to take place or where a path is to be diverted as a result of development.
- 1.5 When diverting RUPPs or Byways and unless they meet the exemption tests above, a charge of £1,500 should be made.

2. A charge should not be made where:

- 2.1 A path passes through an existing working farmyard or permanent stock handling area, and where the path would be diverted away from it.
- 2.2 The land holder allows a Definitive Map anomaly to be amended for the benefit of both land holder and public.
- 2.3 An Order takes a path out of land that has a naturally difficult surface condition which renders the path unusable for most of the year; or where the path is in danger of being lost to erosion by a river, landslip, etc; or where the new route substantially decreases long term maintenance liability without it being substantially less convenient to the public.
- 2.4 A path is being diverted for reasons of safety, not including any of the cases below.
- 2.5 A new path is being created or dedicated.
- 2.6 A path has been over-planted by forest or woodland and where clearing the Definitive line would not allow the re-instatement of an acceptable surface condition or gradient, or where an alternative route is considered significantly more commodious.
- 2.7 A path order is substantially in the interests of the community at large, except for applications made under the Countryside and Rights of Way Act allowing for diversion or extinguishment of public paths affecting School property.
- 2.8 A path order allows development to take place, where that development would be substantially in the interests of the community at large, e.g. village sports or recreation area.

3. The Charge levied

The charge for making an order under the Highways Act and Town and Country Planning Act should be the same, being set at £1,000, plus £100 for each additional path included in the order. This cost includes the costs of advertising and VAT.

4. Policy Review Period

The Charging Policy should be reviewed in three years time following its commencement.

5. Integration with Planning Policy

As members have noted in Committee previously, and was re-affirmed by members during the Working Group meeting, in order for the Policy and work of the Committee to be effective, the full support and co-operation of the Planning - Division is vital. The previous recommendation of the Committee to see a guide for professionals being developed is an essential part of this ongoing joint working.

6. Application Backlog and the Introduction of a new Policy

The final issue considered by the working group centred on the timing of the new policy's introduction and how the back-log of casework should be treated. The working group felt that in formulating a new charging policy, that the full Committee should consider and approve an appropriate method for its application to the existing backlog of path order casework.

In order to avoid undue uncertainty in discussing policy and charging structures with potential applicants, It is recommended that the new Policy and charging structure is introduced in relation to new applicants with immediate effect.

In relation to outstanding applications, the following options are available for consideration:

Policy Option	Policy & Charge
Option 1	Apply old policy and old charge
Option 2	Apply old policy and new charge
Option 3	Apply new policy but old charge
Option 4	Apply new policy and new charge
Option 5	Apply new policy with a transitional charge
Option 6	Apply old policy with a transitional charge

Advice from Legal Services has indicated that the Committee may wish to give greatest weight to Option 1, since applicants' will have already signed up to the existing policy and in the belief that current charging policy would apply once the application had been made.

RECOMMENDATION: That the new Policy is introduced with immediate effect, and that members confirm the application of policy and charging in relation to outstanding, undetermined applications.

5.8 Charging for Public Path Orders

Following the publication of Statutory Instrument No. 407, in 1993 the Government gave local authorities the right to make certain charges with respect to making public path orders. This allows the County Council to make charges (up to £400 plus the costs of placing adverts in the local press) to cover part of the costs it incurs in drawing up such orders. The costs of such are currently under review again by Government. As with almost all other local authorities, the County Council now charges for many of the public path orders it makes. In each case, the decision as to whether or not to make a charge rests with the County Council's Rights of Way Committee and would be dealt with subject to the following criteria :

A charge should not be made where:

- a) The path goes directly through a working farmyard and would be diverted away from it.
- b) The order allows definitive map anomalies to be amended for the benefit of both landowner and public.
- c) An order takes a path out of land that has a naturally difficult surface condition which renders the path unsuitable at most times of the year, or where it is in danger of being eroded by a river, landslip, etc.
- d) A path is being diverted or stopped-up for reasons of safety, not including any of the cases below.
- e) A new path is being created or dedicated.
- f) A path has been over-planted by forest or woodland and clearing the 'original' line is not considered feasible or where an alternative route is considered significantly more commodious.

Charges are likely to be made when:

- g) A path passes through or near the immediate surroundings of a property, a diversion of which is clearly of substantial benefit to the property owner in terms of increasing the value of that property with no obvious gain in convenience to users.
- h) The closure of a path is acceptable to the Committee for extinguishment, based upon the rationale set out in 'Extinguishment of public paths' above.
- i) Orders affect paths that currently pass across land used for agriculture or forestry e.g. diversion of a cross-field path around a field edge or path over-planted by woodland plantation. Exceptions would be in cases c) & f) above.
- j) An order either allows for some form of development to take place or where a path is to be diverted or extinguished as a result of development. In addition, where the County Council approve the making of an order under the Town & Country Planning Act, the authority will seek to recover all its costs in making such an order.

Policy ROW7 : Charges for the making and advertising of Public Path Orders will be made in appropriate cases, as set out in the criteria a)-j).