

## APPENDIX D

### Comments of the Mid – Lincolnshire Local Access Forum 24<sup>th</sup> January 2012

#### 37. REVISION OF RIGHTS OF WAY ENFORCEMENT POLICY

Andrew Savage presented a report in connection with the proposed revised enforcement policy for rights of way work.

Comments made by the Forum included:-

1. It seemed to be a common practice amongst local authorities to make a decision and then consult thereafter and this appeared to be the case with this consultation.

***This is not the case. The need to revise the Policy in light of its age, importance and the reduction in the number of staff working in an enforcement role in RoW was identified and the Policy amended to reflect the Authority's current position.***

***It will not become official policy until such a time as:***

- a) ***Both LAFs have made comment***
- b) ***It is reviewed, amended/approved by the Highways & Transportation Management Group (HTMG - At Head of Service level) due 1<sup>st</sup> March 2012***
- c) ***Recommended to the Executive Member for Highways by the Highways, Transportation and Technology Scrutiny Committee of Councillors***
- d) ***Signed off by the Executive Member for Highways (Cllr William Webb)***

***The LAF comments (and any response to them) will form the Committee Report to HTMG and to the HT&T Scrutiny Committee so that anything arising can be properly assessed.***

2. There was a need to follow good practice by other local authorities.

***Agreed – The Report was written after extensive research into other local authorities and research papers in the Rights of Way Law Review and Training Seminars. As it transpires Lincolnshire is seen as something of a lead authority in terms of arable enforcement issues.***

3. Most landowners complied with the rules and landowners who did not comply were the exception.

***Agreed***

4. The need to avoid issuing repetitive informal cautions which would not act as a deterrent.

***There is no informal caution. The FORMAL caution is part of the legal process which should form part of the toolkit for dealing with repeat***

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*offenders. It has to be served properly and can be cited in any future action in Court. It is by no means a “soft” option but should be considered where the criteria for prosecution are satisfied and they may be appropriate in the following circumstances:*

- *Where the offender shows genuine remorse and a firm resolve not to offend again.*
- *Where the offence is not one that presents a serious risk to public health, safety or the environment*
- *The offender has no previous history of similar offences.*
- *Where a caution presents a practical means to ensure future compliance.*

5. The fine of 50p was derisory.

*The County Council has no control over the level of fines as they are set by the Statute.*

6. The use of the phrase “consideration will be given” gave the impression that the local authority was not serious. There needed to be more emphasis that if a landowner did not comply then the local authority would prosecute.

*Whilst in agreement that the Authority has to be seen that it is serious in its intent there are circumstances in which it is not appropriate to prosecute and as such LCC adopts the Code for Crown Prosecutors whereby consideration must be given to the meeting of two tests; the Evidential Test and the Public Interest Test.*

*The first of the two should clearly be met by a sufficient paper trail of previous years’ correspondence (warnings both written and verbal, formal notices and possibly previous default action by LCC to reinstate the path).*

*The second test is the more subjective and a number of factors should be considered including:*

- *whether a conviction is likely to result in a significant sentence;*
- *whether there is evidence that the offence was pre-meditated (wilful);*
- *whether the Defendant’s previous convictions or cautions are relevant to the present offence;*
- *whether there are grounds for believing that the offence is likely to be continued or repeated;*
- *whether the offence, although not serious in itself, is widespread in the area where it was committed*

*It is unlikely that the Council will proceed with a case if:*

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- *the Court is likely to impose a very small or nominal penalty;*
- *the offence was committed as a result of a genuine mistake or misunderstanding;*
- *the defendant is elderly*

***These lists are not exhaustive but if the case meets both the tests it is at this point that proceedings appear warranted. At this point it is also worthwhile to check the following:***

- *The Magistrates will expect the Authority to have acted in a reasonable manner at all times. Has the offender been made properly aware of the offences and been given an opportunity to rectify the situation?*
- *Check that there are sufficiently clear photographs, ensuring that the evidence trail of notices and correspondence is clear and that at no time was incorrect advice provided.*
- *If the defendant has been met (and although this is not necessary it is often the case) ensure that any interview with them was conducted under the terms of the Police and Criminal Evidence Act 1984 (PACE) including the official caution and the signing of any contemporaneous notes.*
- *If acting on the receipt of a complaint from the public find out if that person is willing to act as a witness even if the decision is that the case is strong enough without asking them to appear at Court*

7. Non compliance after Stages 4 and 5 had gone past the stage of an informal caution.

***As described above there is no informal caution. If an offender fails to comply with a 24hr Formal Notice then one of three options applies:***

- a) Default Action by LCC to open up the route whilst recharging the cost to the offender (quickest and easiest way to ensure the route is available to the public)*
- b) Formal Caution*
- c) Prosecution*

8. The local authority had two roles, to keep the public footpaths open and to enforce the law.

***Agreed – Derived from the statutory duty in section 130 of the Highways Act 1980 to “assert and protect” the public’s right of way.***

9. The third caution should be removed.

***See above reference to Cautions..***

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The conclusion of the Forum was that the majority of landowners obeyed the law and it was an insult to the law abiding landowners when no action was taken by the local authority against those land owners who continued to break the law. The local authority also needed to respond more strongly against those landowners who broke the law.

### ***Agreed***

Andrew Savage stated that the Council had consulted the East Midlands Group of the County Surveyors about the Policy, emphasised the importance of building relationships with landowners and was not aware of any prosecutions in recent times.

### **RESOLVED**

That the report be noted and that the comments made by the Forum be considered by the Council.

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### Comments of the South Lincolnshire & Rutland Local Access Forum 25<sup>th</sup> January 2012

#### 29. PROPOSED LINCOLNSHIRE RIGHTS OF WAY ENFORCEMENT POLICY

A report by Lincolnshire County Council's Senior Countryside Access Officer was considered, which provided the Forum with a copy of the authority's proposed Rights of Way Enforcement Policy.

The existing policy was set following the Leisure and Recreation Committee report of 10 January 1994, although this only covered ploughing and cropping offences specifically.

The basic principles in the proposed policy were that the County Council would escalate its enforcement responses dependent on the offender's past history within a five year period in the following manner: -

- warning letter – issued for a first issue of non-compliance in a five year period;
- 14 day formal notice – issued following non-compliance with a warning letter or for a second offence in a five year period;
- 24 hour formal notice – issued following non-compliance with a 14 day notice or for a third offence in a five year period;
- default action – non-compliance with a 24 hour notice would see the County Council carrying out the required works and recharging the offender.

Following an evaluation of the existing policy and reflecting the Enforcement Concordat formally adopted by the County Council, the proposed policy, as appended to the report, set out how all forms of rights of way enforcement would be implemented. In summary, the revised scheme for ploughing and cropping offences would be as follows: -

- Lincolnshire County Council would initially encourage compliance through a mixture of education and an informal approach. Should this approach not ensure compliance then the above formal written approach would be taken, with the following additional measures: -
  - following default action, consideration would be given to offering the offender a formal caution;
  - for future offences following the 24 hour formal notice, consideration would be given to prosecuting the offender also taking into account any previous formal cautions.

During discussion the Forum agreed that the proposed policy was very fair, clear and flexible, and was the right approach. A suggestion was also put forward that stronger action should be taken on a more frequent basis so that a clear message was sent out to repeat offenders as a deterrent.

The Public Rights of Way Officer from Rutland County Council reported that he was also working towards a revision of Rutland County Council's enforcement policy.

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RESOLVED

That the report be noted.