

# Individual Executive Member Decision

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<b>Title of Report:</b>	<b>Policy for the repair and maintenance of public rights of way which are used for access to land or property</b>
<b>Report to be considered by:</b>	Individual Executive Member Decision
<b>Date on which Decision is to be taken:</b>	27 March 2014
<b>Forward Plan Ref:</b>	ID2788

**Purpose of Report:** To seek approval for the draft policy

**Recommended Action:** Approval of the draft policy

**Reason for decision to be taken:** To enable the policy to be adopted and officially implemented

**Other options considered:** N/A

**Key background documentation:**

Portfolio Member Details	
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Contact Officer Details	
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## Implications

- Policy:** The proposed policy contributes to the following corporate objectives, by stating WBC's approach clearly to residents, and providing an appropriate service within WBC's duties:
- Promoting and acting in the interests of the communities, people and businesses of the district.
  - Promoting a vibrant district.
  - Protecting the environment.
  - Putting people first.
- Financial:** This proposed policy is formalizing practices which have been in place for some time, so there would be no significant impact following its adoption. The maintenance work required to upkeep the accesses in question does however have a financial impact and this has to be managed within the available overall budget for PROW maintenance.
- Personnel:** None
- Legal/Procurement:** As outlined in the report.
- The approach will assist in reducing the number of damages claims as a result of use of the accesses to land or property.
- Property:** None
- Risk Management:** The policy would assist in stating in which circumstances maintenance works will take place

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input checked="" type="checkbox"/>
Not relevant to equality			<input type="checkbox"/>

## Consultation Responses

### Members:

**Leader of Council:** Gordon Lundie

**Overview & Scrutiny**

**Management Commission Chairman:** Brian Bedwell

**Ward Members:** N/A

**Opposition Spokesperson:** Jeff Brooks

**Local Stakeholders:** Tony Vickers; Local Access Forum (already approved following consultation)

**Officers Consulted:** Paul Hendry, Jon Thomas, Sallie Jennings, Stuart Higgins

**Trade Union:** Rosemary Culmer

<b>Is this item subject to call-in?</b>	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input type="checkbox"/>

## Supporting Information

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### 1. Background

- 1.1 A number of public rights of way (PROW) in West Berkshire provide access to residential dwellings, usually at one end only and for a relatively short distance. These routes continually become potholed, mainly as a result of vehicular access to land or property, and requests for repairs are constantly coming in to the rights of way team.
- 1.2 This proposed policy is an attempt to find a compromise between the best use of taxpayers' money and the Council's statutory duty to maintain public rights of way.

### 2. History of repair solutions

- 2.1 During the financial year 2002 –3, residents from 20 of these PROW complained about the surface of the tracks accessing their properties, and repairs were carried out to render the surfaces fit for private vehicles. The total cost of these repairs was £33,636, which represented 38% of the total rights of way works budget that year. This level of expenditure was unsustainable, and internal legal advice was sought, which proved very helpful. It said that a distinction may be made between 'private use' of a PROW (i.e. to adjacent property) and 'public' use (i.e. use of the PROW as a highway, to pass and re-pass). The advice said that WBC could require 'private' users to pay for the repairs needed as a result of their own private access, but that the Council would have to fund any repairs to wear and tear caused by public use.
- 2.2 Between 2003 and 2011, this principle was applied and has met with some success. The number of requests for Council expenditure gradually reduced resulting in a reduction from £11,808 in 2010/11 to £7267 in 2011/12. In the last year, 2013, we have received two substantial contributions towards the upkeep and improvement of accesses. In previous years we have been able to set up some arrangements whereby the residents arrange and pay for the work and WBC contributes just an agreed basic portion.
- 2.3 Following objections to the approach from residents of Clay Lane, Beenham (Byway 1), in 2011, and further internal legal advice was sought and the current opinion is that WBC has a duty to maintain the right of way so that it is fit for the public use which is made of it. This means that if potholes and damage caused by access to properties renders the surface inconvenient for any public users of the PROW, the Council has a responsibility to remedy the problem at its own expense.

### 3. Present Situation

- 3.1 There are significant cost implications of the new advice. For instance for a public footpath, the Council has a duty to maintain the lane for pedestrians only, but the damage caused by the vehicular use causes constant deterioration so that the surface becomes unsuitable for pedestrians. The Council is now required to find the funds to maintain the surface.

### 4. Legal redress / other options

#### 4.1 Extraordinary Use

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There may be some redress if the traffic using the access is extraordinarily heavy or damaging. 'Extraordinary use' is defined as being "the damage caused by excessive weight passing along the highway, or other extraordinary traffic thereon" for which the highway authority may recover "the excess expenses" over and above the normal maintenance costs (these are defined as being the "average expense of maintaining the highway or other similar highways in the neighbourhood", Highways Act 1980 s.59.1). If we can prove that the residents' use is extraordinary then we may be able to claim against damage caused. We are prepared to pursue this action if the evidence is present, but the process of proving the case can be difficult where several parties (possibly also including the public) are involved.

#### **4.2 Adoption as roads**

The main use of these PROW is by vehicles so there might be an argument that they have in fact legally become roads. The WBC internal legal view is however that they would not become roads unless they were improved to a fully adoptable standard at the expense of the residents. Experience to date suggests that residents are generally unwilling to expend the funds needed for full road adoption.

#### **4.3 Associations**

If residents /landowners are able to set up an association, it is possible to enter into a legal agreement with the District Council under Section 278 of the Highways Act 1980, whereby the Council carries out agreed works and the association reimburses an agreed sum to the Council. This may be useful where there is sufficient community spirit present, but often this is not the case.

### **5. Policy for consideration**

- 5.1 The suggested policy is considered a measured and balanced approach to this difficult matter, and also the most cost-effective procedure given legal constraints. It is attached at Appendix 1. The main elements are:
- Residents or landowners possessing private rights of vehicular access are entitled to make this access useable for their purposes, but all works must be approved in advance by WBC, and only suitable contractors may be used because the right of way is a highway.
  - Should a complaint be received about the condition of the surface of a right of way used as access to land or property, WBC will inspect the right of way and assess its safety and suitability for the public users. Should the assessment deem that work is required, then basic repairs will take place – for instance, basic re-grading of the surface or filling of potholes. Where wear and tear is clearly primarily as a result of vehicular access to property or land, the residents will be asked for a contribution (but note there is no legal obligation to pay).
  - Should residents / landowners request a higher standard of maintenance, then this will have to be provided at their own cost. The District Council may have to stipulate certain details of specification which are suitable for public highways.

- WBC will contribute to work only where it would have been obliged to carry out basic repairs itself, and the amount of this contribution will equate to the cost of such basic repairs.
- Residents / landowners may be asked to source a quotation themselves from suitable contractors, but WBC must approve the quotation and proposed specification prior to work taking place. If approved, WBC then authorises the repair and requests that residents/ landowners obtain from the contractor an invoice to WBC for WBC's proportion of the contribution. Alternatively, WBC may order the works and invoice a representative of the residents/ landowners, who may then in turn recoup the other contributions.
- Another method of dealing with repairs is for WBC to order materials and arrange for the aggregate company to deposit them on site, at a location to suit the residents/ landowners, and WBC's financial outlay is restricted to the purchase and delivery of the material. The residents /landowners then arrange to lay the material, but such an arrangement should be restricted to a temporary filling of potholes, because residents /landowners would rarely possess the machinery required to incorporate and compact the material across the whole surface.
- WBC must inspect and certify all work on completion, in order to avoid any future liabilities resting on residents/ landowners.
- WBC will only authorise a surface which is consistent with its duty under Section 130 of the Highways Act 1980: "it is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which it is highway authority".

## **6. Equalities Impact Assessment Outcomes**

- 6.1 An Equalities Impact Assessment has been undertaken and is attached.

## **7. Conclusion**

- 7.1 The proposed policy has been in use for some time and to good effect. Its adoption as a formal policy would assist the Council to state more clearly how it intends to use its resources in this area of work.

## **Appendices**

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Appendix A - Residential / land access along public rights of way. West Berkshire District Council's policy for dealing with repairs