

**Report from the Cabinet 26 January 2004**

Executive Member: Derrick Ashley

**EXPENDITURE ON STILES ON RIGHTS OF WAY: REPORT IN THE PUBLIC INTEREST**

The Cabinet have approved an Action Plan to meet the recommendations of a Report in the Public Interest (RPI) issued by the District Auditor on expenditure on stiles on rights of way incurred in the financial year 1999/2000.

The Council is invited to consider the RPI and endorse the Cabinet's decisions.

**1. Background**

A formal objection was made to the County Council's Accounts for 1999/2000. The objection related to expenditure on stiles on rights of way. The District Auditor rejected the objection that expenditure was unlawful, or that the Council failed to bring money into account. The Auditor has however decided to issue an RPI because she has identified weaknesses in the Council's management of its activity in this area. The Auditor's decision is attached as Appendix 1. The RPI is attached as Appendix 2.

The expenditure on this area of work in 1999/2000 was in the order of £8,000 for repairs to stiles and £3,000 for upgrading them.

The RPI requires the Council to produce an Action Plan to meet its recommendations. The RPI must, by law, be considered by full Council.

The Action Plan which has now been agreed by the Cabinet is set out at paragraph 6 below.

**2. The Objection to the Accounts**

The Highways Act 1980 states that a landowner is responsible for maintaining stiles, gates and other similar structures on footpaths and bridleways. The Council has power to carry out repairs if (after being given notice) the landowner fails to do so; and may then recover all or some of the costs of repair.

Separately, if the landowner does incur expenditure in repairing a stile, the Council has a duty to reimburse 25% of the cost, and may pay more.

The Council can authorise a landowner to erect a new stile and can impose conditions about maintenance in giving such approval.

An objection was made to the County Council's Accounts for 1999/2000 by Mr Mark Westley. The details of the objection are set out in the Auditor's decision, paragraphs 6 and 7, attached as Appendix 1. In summary, Mr Westley claimed that the Council had incurred unlawful expenditure on gates and stiles; had repaired gates and stiles without first serving notice on the owner; that no attempt was made to recoup costs of repair from the owner; that expenditure was incurred on new gates and stiles without lawful authority; and that the Council had not recovered sums due to it from landowners.

### **3. Change of Policy**

In 1999/2000 the relevant policy was the Milestones policy adopted by the Environment Committee in March 1995.

In January 2001 the Executive Committee adopted a revised Statement of Policies on Rights of Way. This Statement was supported by a Good Practice Guide.

The new Statement made it clear that the County Council would recover from landowners the cost of repairs to gates and stiles, which was not clear under the previous policy.

Previous practice was based on the premise that it would not usually be cost effective for the Council to try to recoup the cost of repair from landowners who might not be willing to co-operate, and was a practice followed by a number of other local authorities.

### **4. District Auditor's Decisions on the Objection**

On 7 October 2003 the District Auditor issued her decision on the objection. The decision is set out in Appendix 1. In summary, the Auditor decided that

- the objection failed in so far as it wanted the Auditor to take action in respect of unlawful expenditure and/or to recover from any person money which had not been brought into account.
- there were weaknesses in the Council's management arrangements of its activity and that a Report in the Public Interest should therefore be issued.

## 5. **Report in the Public Interest**

The RPI was issued by the District Auditor on 19 November 2003. It is attached as Appendix 2.

The RPI states the Auditor's concerns as being

- that the Council misinterpreted legislation putting itself in a position where it could have incurred expenditure contrary to law
- that the Council's current policies in some respects continue to misinterpret the Council's powers
- that the Council did not respond appropriately to the legitimate concerns raised by the objector
- that there may be other areas of the Council's activities in which it is similarly exposed.

The RPI requires the Council to draw up an Action Plan to deal with these concerns. The specific issues which the Action Plan must address are set out in para. 29 of the RPI. The following section deals with each of these issues in turn, and sets out the proposed action.

## 6. **Action Plan now agreed by the Cabinet (DA's concerns in bold)**

### 6.1 **Review and revise the Statement of Policies and Good Practice Guide in light of the specific concerns expressed by the Auditor in the RPI and the Decision**

#### Action

The Auditor's concerns require the Statement of Policies and Good Practice Guide to be amended in 4 respects

- (1) The Statement of Policies will be amended to include an explicit reference to the landowner's responsibility to maintain gates and stiles and to the Council's enforcement powers.
- (2) The Good Practice Guide will be amended to make clear the distinction between
  - a) the Council's obligation to contribute 25% of the cost of the repair where the landowner does the work himself
  - b) the Council's power to recover up to 100% of the cost of repair if it does the work in default

- (3) The Statement of Policies will be amended to make clear that the new stile, gate or other structure may only be erected if the landowner obtains the authorisation of the County Council; and that the landowner may allow the Council to erect the gate or stile provided he bears the cost.
- (4) The Statement of Policies and Good Practice Guide will be amended so that where an authorised gate or stile falls out of repair (to the extent that it is in breach of its authorisation conditions) a new authorisation will be required for a new replacement structure.

Timetable: Subject to Cabinet approval and Council endorsement, the revised Statement of Policies and Good Practice Guide will be published by 29/2/04. It would be helpful in reviewing the Statement and Guide to take the opportunity of simplifying where appropriate those somewhat complex documents without otherwise changing their meaning.

## **6.2 Establish effective mechanisms to ensure that its policies in this area are being observed in practice.**

### Action

- (1) Relevant staff will be trained on the law and revised Statement of Policies and Good Practice Guide by 29/2/04.
- (2) A sample of cases by senior management, with legal advice, and with support from internal audit will take place in May 2004 to see if the new policy and guide are being correctly applied.
- (3) The new policy and guide will be reviewed by senior management in October 2004 before the District Auditor's review in November 2004.

## **6.3 Ensure that the concerns expressed by the Objector (whether as part of his objection or otherwise) have been considered fully.**

Action The Objector has been asked what other concerns he has, and to address any remaining concerns to the County Secretary. A reply is awaited. (The District Auditor has clarified that this will meet her point).

## **6.4 Ensure that concerns expressed by members of the public concerning the governance of the Council are fully considered by appropriately qualified officers and corrective action taken where appropriate.**

Action The County Secretary has written to all Chief Officers drawing their attention to this case, emphasising the need for managers to treat complaints about legality of the Council's actions seriously by referring

them to the County Secretary's Department for advice; and to implement such advice when given.

**7. Financial Implications**

The financial implications of implementing the Action Plan can be met within existing budgets.