

Report to: Place Scrutiny Committee

Date of meeting: 14 July 2023

By: Director of Communities, Economy and Transport

Title: Rights of Way & Countryside Team - update report

Purpose: To gain an understanding of the Rights of Way & Countryside Team's current work, challenges and future priorities.

RECOMMENDATIONS: Scrutiny is recommended to note the activities undertaken by Rights of Way & Countryside and be aware of current work, challenges, and future priorities.

1 Background Information

1.1 East Sussex has around 2,000 miles (3,218km) of Public Rights of Way (PRoWs.) Public Rights of Way are legally recorded public highways which almost always run over privately owned land.

The PRoW network, which is an equivalent length to the main highway network, is comprised of:

- Public Footpath: 79% of the network over which the public have access on foot only.
- Public Bridleway: 18% of the network, which can be used by walkers, equestrians, and cyclists.
- Restricted Byway: 1% of the network available for walkers, equestrians, cyclists and 'non-motorised vehicles' – for example, horse and carriages.
- Byway Open to All Traffic: 2% of the network that can be used by all, including motorised vehicles.

1.2 The County Council has a statutory duty to maintain signposts, path surfaces, steps, surface vegetation and bridges that cross natural watercourses. Landowners are responsible for maintaining stiles, gates, hedges, and trees on their land. They must ensure paths on their land are free of obstruction. The County Council also has enforcement powers if landowners obstruct paths. There are around 3,700 bridges, 13,500 signs and 12,100 stiles and gates on the path network.

1.3 Maintenance and enforcement work is prioritised according to a 'priority statement' policy. Issues which immediately affect public safety are the highest priority for attention. Paths that are well-used or which provide important links are also considered to be a higher priority for attention. This statement is essential to enable the Team to prioritise the approximately 4,000 public reports and enquiries received each year.

1.4 All recognised PRoWs are recorded on the Definitive Map and Statement (DM&S), which is a legal document. The County Council has a statutory duty to maintain the DM&S, which can only be changed by legal order, usually involving public and landowner consultation. Some legal orders also require the holding of a formal Public Inquiry to resolve.

1.5 Changes to the DM&S can range from adding new paths 'claimed' by users – either due to use over 20 years or based on historic evidence, diverting paths following an application by the landowner, or adding new routes as a result of development. The Team also maintains the Common Land and Town and Village Green Registers for East Sussex.

1.6 Countryside sites: The Team manages nine countryside sites covering around 450 Hectares (1111 Acres). These are:

- Camber Sand Dunes/Johnson's Field (Site of Special Scientific Interest - ESCC Freehold)
- Chailey Common Local Nature Reserve (Site of Special Scientific Interest - Managed by ESCC in partnership with Lewes District Council, the Chailey Commons Society, several private landowners, and Chailey Parish Council)
- Cuckoo Trail (around 1/3 of the Trail owned by ESCC and managed in partnership with Wealden District Council who own the remaining 2/3 of the route.)
- Ditchling Common Country Park (Site of Special Scientific Interest and ESCC Freehold)
- Forest Way Country Park (ESCC Freehold)
- Ouse Estuary Local Nature Reserve (ESCC Freehold)
- Riverside Park (ESCC Freehold)
- Shinewater Park (ESCC Freehold)
- Weir Wood Local Nature Reserve (Southern Water freehold, managed by ESCC in partnership with Friends of Weir Wood.)

The Team carries out ecological and public access works across these sites.

2 Staffing and budget overview

2.1 The Rights of Way & Countryside Team (RoWC Team) is formed of 30 staff (27.8FTE.) The team deals with maintenance and enforcement, customer and landowner liaison, planning application responses, DM&S and legal order map work, network surveys, asset management and prioritisation, volunteer management, countryside site management and the England Coast Path National Trail.

2.2 Staffing includes an in-house team of 11 maintenance rangers based at Heathfield Depot. These rangers carry out prioritised practical work across the PRow network and the nine countryside sites. Around 150 volunteers are also supported by ESCC to carry out practical maintenance and ecological work across the PRow network and our countryside sites.

2.3 The team has a gross revenue budget of £1.07m, including £295k of income. (Net revenue budget, excluding income is £779k.) The team also has a capital budget of £552k, funding bridge work and path re-surfacing. This capital funding currently has an uplift of £135k p/a, which is due to end in 24/25. At that time the core capital budget will reduce to £417k.

3 Current work and recent key achievements

3.1 Portfolio Plan target: The RoWC Team's Portfolio Plan target is to complete 80% of 'high priority' maintenance work within two weeks of initial reporting. In 22/23, the Team achieved an outturn of 91%, with an outturn of 88% in 21/22. Examples of some of these works can be seen in Appendix 1.

3.2 Capital bridge works 22/23: The overall condition of our PRow bridge stock has improved since 2019, with 98.5% of structures in a 'fair or good' condition. (Compared to 92% in 2018/19.) The RoWC Team replaced 126 bridges in 22/23 and repaired 60.

3.3 King Charles III England Coast Path National Trail (ECP): The ECP, due to fully open this year, is a new 2,800-mile National Trail around the coast of England. In partnership with Natural England (NE), the RoWC Team opened the first ECP section in East Sussex (from Shoreham to Eastbourne) in Spring 2022. The remaining section, between Eastbourne and Camber, is due to open this year. Once complete, the South-East ECP will be a new National Trail running from London to Brighton via the coast. As part of the management arrangements for the ECP, ESCC is now hosting a National Trail Officer (NTO) and has recently set up a formal multi-authority Trail Partnership. The NTO is funded by Natural England and will work with the Trail Partnership to maintain, manage, and promote the South-East section of ECP.

3.4 High Weald AONB – gates for stiles project: Between 2023-2025, the RoWC Team will be working with landowners to improve access in the High Weald AONB area by replacing 120 stiles with gates. This is a joint project between the RoWC Team and the High Weald AONB Unit, enabled by around £25k from DEFRA's 'Access In Protected Landscapes' fund. The project will replace around 10% of stiles currently installed in the AONB area with more accessible gates.

3.5 Forest Way Country Park - surface improvements: Around £227k of central Government 'Active Travel Funding' enabled major surface improvements to the Forest Way Country Park in 22/23. These improvements will particularly benefit the cyclists who use this popular shared route.

3.6 Introduction of online fault reporting: During 22/23, the RoWC Team launched an improved online map, which, for the first time, allows the public to report faults directly into the Team's asset management database. That same database now also allows staff working in the field to update team records remotely – reducing administration and paperwork.

4 Challenges and future priorities

4.1 Inflation: Over the last three to four years, the cost of raw materials has increased significantly due to persistently high inflation rates. Notably, the cost of cement has increased by an average of 27% annually since 2020/21; timber has increased by around 17% year-on-year since 2019/20. As current RoWC Team budgets do not allow for this inflationary increase, there is a negative impact on the amount of maintenance work which can be funded.

4.2 Deregulation Act 2015 legislative changes – DM&S and path diversions:

a. *Definitive Map 'closure'*: Legislation is currently being finalised to 'close' the DM&S to new PRow applications based on pre-1949 evidence (a date relevant to the first definitive maps being prepared.) The original deadline was 2026, but this has recently been pushed back by DEFRA to 2031 with the aim of giving path users more time to gather evidence. Prior to this legislation, there was no deadline for PRow claims based on 1949 evidence. (The closure of the DM&S to pre-1949 DMMOs does not affect contemporary claims made under the '20-years of use' rule.)

The main consequence of the 2026, and now 2031 deadline, has been a major increase in 'historic' path claim applications made to County Councils. Prior to the introduction of a deadline, ESCC was dealing with around 15 such applications (known as Definitive Map Modification Orders – DMMOs) annually. The DMMO caseload is now over 100, with each case potentially taking around 2-3 years to investigate and resolve.

Each DMMO case is unique, typically complex, and often locally divisive - potentially culminating in a public inquiry. If successful, a DMMO application can result in a landowner having a new permanent PRow formally confirmed over their land.

Due to available resources, the RoWC Team has to strictly prioritise DMMO casework, which can often lead to applicants waiting many years for their application to be considered. Likewise, landowners also suffer uncertainty about the public rights across their land until their case has been concluded. This 'DMMO backlog' is a national issue and not isolated to East Sussex.

The closure of the DM&S is a challenge and priority for the Team, especially as the legislative detail and potential guidance in relation to the 2031 deadline is not yet known. If there is a change of Government following the upcoming general election, then legislation or guidance could again change.

b. *'Right to Apply' for path diversions:* Once implemented, Deregulation Act changes will also give landowners a 'right to apply' for a path diversion. Landowners will also be able to appeal ESCC's decision to the Secretary of State if their application is turned down. (Currently no such right to apply or appeal exists.) There will also be an assumption that PRowS will be diverted where they run through private gardens or curtilages. That could potentially relate to hundreds of paths on the County's network. Like DMMOs, path diversions can also be a complex and locally divisive process, potentially requiring a formal public inquiry if objections cannot be resolved. Those changes should, however, also give ESCC the right to charge 'full cost recovery' for landowner applications. (Currently, ESCC charges around £2,800 for a diversion application, with most of that charge being made up of statutory advertising. As a consequence, officer costs incurred during the diversion process cannot be received.) This is both a challenge and opportunity as, while the number of diversion applications is likely to increase, ESCC should also have the ability to fully charge for its services and potentially fund an additional officer post to cover this caseload.

4.3 Climate change: Higher rainfall, more flash flooding and stormier weather is already contributing to faster erosion of path surfaces. Conversely, periods of very hot and dry weather can impact negatively on the ecology of the countryside sites we manage. This is both a challenge and future priority for the RoWC Team to mitigate.

4.4 Ditchling Common Country Park improvements: This site has around £500k of s106 funding available to spend on public access and ecological improvements. Detailed project plans are currently being developed and will be a future priority to deliver.

5 Conclusion and Reasons for Recommendations

5.1 This report gives an overview of the RoWC Team's current work, recent achievements, challenges, and future priorities. The Committee are invited to note both the achievements and challenges for the RoWC Team.

RUPERT CLUBB

Director of Communities, Economy and Transport

Contact Officer: Andy Le Gresley

Tel. No. 07786 171486

Email: andrew.legresley@eastsussex.gov.uk

LOCAL MEMBERS

None

BACKGROUND DOCUMENTS

All