

Regulatory Committee

Meeting to be held on 26 March 2014

Electoral Division affected: 'All'

Consideration of the Authority's role in connection with access to Common Land.

(Appendix 'A' refers)

Contact for further information: Jane Turner, 01172 532813, Office of Chief Executive, Jane.turner@lancashire.gov.uk

Executive Summary

Consideration of the role of the County Council in respect of unauthorised works, encroachment, obstructions, etc. on Registered Common Land affecting public access and approval of the procedure to be adopted prior to any action being considered by Committee

Recommendation

The Committee is asked to agree that the Executive Director for Environment be authorised:

1. To investigate alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green.
2. To consider the effect on rights on Common Land and Town/ Village Green and to collect relevant evidence and information and responses and evaluate resource implications.
3. To present a report to the Committee where, in conjunction with the County Secretary and Solicitor, it is felt that action by the County Council under S41 or S45 of the Commons Act 2006 may be appropriate.

Background and Advice

The public has access rights to much of the registered Common Land in Lancashire. There are also the grazing rights and other rights as registered. Sometimes the public right is limited to rights on foot and on some Common Land the right includes rights on horseback.

Although the County Council is the Commons Registration Authority for Lancashire this does not include an enforcement role under statute.

Under the Constitution the Committee has power to apply for an Order against unlawful works on common land under Section 41 of the Commons Act 2006 and the power to take steps to protect unclaimed common land or town or village greens against unlawful interference and to institute proceedings under Section 45 of the Commons Act 2006.

S41 says that where unauthorised works are carried out on common land any person may apply to the County Court for an order

S45 says that where there is no person registered as owner of any common land or town green and it appears that no owner can be identified a county, district or parish council may take any steps to protect the land against unlawful interference and institute proceedings for any offence committed

It is clear from the statutory provisions that the County Council is only one of the parties who can take action. In particular the applications to court under S41 can be made by individual members of the public as well as companies or councils.

In April 2009 the Committee received a report confirming that so far as action taken by the County Council or District Councils the County Council would be the lead authority. A copy of the report is set out at Appendix 'A'.

Lancashire County Council's Complaints Committee have previously dealt with a complaint regarding the County Council not taking action in connection with proposed works on common land and whilst it was considered that no further action was warranted by the County Council, the Committee felt that it might be helpful to review the role and work of the County Council and other agencies in protecting access to common land.

It is suggested that a clear procedure be established whereby alleged incidents are investigated and seriousness evaluated and, where appropriate, brought to the Committee for a decision.

It is considered that officers in the Environment Directorate are best placed to investigate with appreciation of the reduced resources available. It is suggested that they have significant expertise in map reading and can assess whether the works or obstructions are on registered common land or town/village green even in open rural locations.

It is also suggested that given their role in evaluating the effect of unauthorised works and obstructions on the rights of way network they are able to assess the likely effect on public rights on the Common Land. They will be able to take into account such matters as use by the public, access provisions, extent of common, effect on public use, available alternatives, knowledge of proposed action by others and to balance these against available staff resources and workload in other areas, particularly those which are statutory.

It may be considered appropriate that the County Secretary and Solicitor should consider the reasonable prospect of success and the proportionality and public interest in taking any action and advise accordingly.

The role of other agencies is not directly a matter for the County Council but as the lead authority (see report attached at Appendix 'A') the County Council will be aware of concerns voiced by the District Councils and any wish by them for action to be taken by the County Council.

It is considered that only those matters where the Executive Director for Environment in conjunction with County Secretary and Solicitor consider issues to be sufficiently in the public interest and for which there are sufficient resources to pursue enforcement, will be brought to Committee. This will mean that not every query or complaint will be brought to Committee only those where action may be considered necessary and appropriate to protect public access of significant value and where the necessary staff resources are available. This is indeed similar to other matters such as complaints regarding obstructions on highways where only those which are considered to have sufficient effect on public user are brought to the appropriate decision making officer to consider taking enforcement action.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

No significant risks have been identified in relation to the proposals contained within this report. Authorising the Executive Director and agreeing a consistent procedure will help to ensure that each matter of alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green of which the County Council is made aware is appropriately dealt with.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Agenda and Minutes from Regulatory Committee	21 st April 2009 18 th November 2009	M Neville Office of the Chief Executive 01772 533431

Reason for inclusion in Part II, if appropriate

N/A