

Environment Services

Rights of Way and Countryside policies

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1. Legal orders

The council has a statutory duty under the Wildlife and Countryside Act 1981 to keep the legal record of public rights of way, the Definitive Map and Statement, up to date and under continuous review. It is also the duty of the council to make this information available to the public. The Definitive Map and Statement is available for viewing at the office of the Rights of Way and Countryside team. A working copy of the Definitive Map (which includes all the alterations since it was produced) is available on Wiltshire Council's web pages. The working copy is also made available to town and parish councils.

1A. Definitive Map Modification Order prioritisation

1A.1 Introduction

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the council to keep the Definitive Map and Statement under continuous review and to make modifications when necessary. Changes are made through Definitive Map Modification Orders [DMMOs] which may be initiated by the council or by an application to the council. This application can be made by an individual or organisation through presenting evidence to show there is an error in the legal record.

There is currently a large backlog of applications to be considered. In order to make best use of limited staff resources to process these orders, a prioritisation scheme has been produced. This prioritises DMMOs for routes that would potentially have the most public benefit and justifies the reasons why some applications are determined before others.

This is in line with guidance by the Department of Environment, Food and Rural Affairs (DEFRA) circular 1/09, paragraph 4.9:

'Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within 12 months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers. The Secretary of State in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant.'

The council may from time to time make Definitive Map Modification Orders that are not resultant of a Definitive Map Modification Order Application, for example to correct errors that have been identified in the definitive map and statement.

There will be times that applications are taken out of order due to other considerations, but generally they will be assessed on the criteria below. The council may also examine an application out of turn where it is considered that such an application is sufficiently straightforward and uncomplicated that it can be processed within existing resources.

1A.2 Initial Sifting Criteria

Irrespective of the main prioritisation system, if an application meets the following criteria the council will often wish to progress it as a highest priority.

- a) Does the application contain user evidence?
 - Yes – application is given highest priority. Will be dealt with in chronological order with other user evidence claims
 - No – go to sifting criteria 2

- b) Is the route threatened by development, i.e. has a planning application been submitted or outline or detail planning permission been granted? A route may be reassessed while it is on the waiting list if circumstances change.
 - Yes – the threat of a possible claim for a public right of way through a development is sometimes best dealt with through assuming this right would be proved. A diversion process on this route could then be undertaken (i.e. through the Town and Country Planning Act 1990). If developer elects to take this option the application will not enter the Definitive Map Modification Order prioritisation process, it will be dealt with through the Public Path Order process
 - No – go to sifting criteria 3

- c) Is the application linked or very close to another so both could be done at the same time?
 - Yes – the council may want to take this out of order
 - No – go to prioritisation criteria

1A.3 Prioritisation criteria

Most criteria are subjective, so scores will be banded in groups then prioritised chronologically

1) To what level is the route recorded on the definitive map (this links to planning)?

Points awarded

- Not at all 40
- Recorded with wrong status and no width 25
- Recorded with wrong status 20
- Recorded but no width 10

2) How long has the application been on the waiting list?

- <1 year 0
- 1 - 5 years 10
- 5 – 7 years 20
- 7 – 10 years 30
- Over 10 years 40

3) Would the route be available to a number of user groups, not just walkers? Use the table below (NB “reducing” status, e.g. from byway open to all traffic to bridleway, is very unlikely but has been scored as theoretically could happen):

Current status	New status			
	Footpath	Bridleway	Restricted byway	Byway open to all traffic
No previous link	0	20	25	30
Footpath	0	20	25	30
Bridleway	-20	0	5	10
Restricted byway	-25	-5	0	5
Byway open to all traffic	-30	-10	-5	0

4) Would the route provide a safer link – e.g. a new route opposite an existing route could avoid the need for a user to travel along a stretch of road locals have safety concerns about (i.e. they feel it is busy or visibility is poor)

- Yes, would help vulnerable road users (i.e. walkers, cyclists, horse riders and/or carriage drivers) 35
- Yes, would mean motorised vehicles would not have to turn onto a busy or fast stretch of road which has poor visibility 10
- No 0

5) Would the route provide useful new walking and cycling exercise opportunities that were not **reasonably** available before, directly from a settlement? This does not include safety considerations, e.g. where a nearby parallel route is available but there is no pavement to get there this does not meet the criteria

- Yes 30
- No 0

6) Would the route provide a useful new link to local shops and services (do not count quality of surfacing as this could be upgraded later if necessary). Do not just think of links within settlements, cycles (or even horses) may come several miles from another settlement via quiet roads to a local service if an attractive new link is put in that avoids a busy stretch of road

- Yes, new link on foot (and possibly cycling as well) 20
- Yes, existing link that would now allow cyclists access 10
- No 0

7) Would the route provide a useful new link to public transport services (do not count quality of surfacing as this could be upgraded later if necessary).

- Yes, completely new link on foot (and possibly cycling as well) 10
- Yes, would now allow cyclists access 5
- No 0

8) Would the route be potentially accessible for people with mobility or visual impairments, or parents with children in buggies (do not count quality of surfacing as this could be upgraded later if necessary)?

- New route -
 - i) would have no stiles and it would be fairly flat 20

- ii) would have no stiles but would have considerable gradients 10
- Existing route –
 - iii) existing stiles would be removed and it would be fairly flat 20
 - iv) existing stiles would be removed but it would have considerable gradients 10
- There would be no increase in accessibility 0

9) Would the route be more enjoyable than other routes nearby for the users (e.g. due to it being particularly attractive for rural routes or a more direct link if urban)

- Yes 10
- No 0

10) Would the route form part of a high priority link, e.g. a National Trail or other long distance route?

- Yes 10
- No 0

11) Would the route provide a new link to Access Land?

- Yes 10
- No 0

1B. Public Path Order prioritisation

1B.1 Public Path Orders

The Council has discretionary powers to alter the rights of way network, as recorded within the definitive map and statement, through various legal procedures, referred to as Public Path Orders (PPO's), which have the effect of diverting, extinguishing and creating public rights of way.

The main legal procedures are set out within the Town and Country Planning Act 1990 and the Highways Act 1980. The relevant section of each Act, has its own legal tests relating to the diversion / extinguishment / creation of public rights of way and each application must be considered on its own merits against the individual legal tests.

Even where an application is made, or the Council is prepared to make an order, the Council cannot guarantee that an order will be confirmed as the order making process is subject to public consultation.

The making of a PPO is a discretionary power for the Council, rather than a statutory duty, therefore the order may be withdrawn at any time up until its confirmation, where the Council no longer supports the making of the order, without the requirement to refer the order to the Secretary of State for determination.

If no objections to the making of PPO are received the order may be confirmed by the Council as an unopposed order. Where objections are received and Wiltshire Council continues to support the making of the order, the order is referred to the Secretary of State for determination.

1B.2 Public Path Order Applications and their Prioritisation

In order for the Council to treat an application as being “complete” and begin processing the application, the following information should be included by the applicant:

- Map of the proposed path diversion, extinguishment, creation, at the prescribed scale;
- Proof of title;
- Written permission to the diversion, extinguishment, creation from all other owners of the land over which the path/proposed path passes;
- Agreement to pay reasonable costs incurred by the Council in processing the order, plus any costs incurred by the Council in providing the new path to a suitable standard for use by the public;
- Reasons why the legal tests for diversion, extinguishment, creation are met according to the specific criteria set out within the relevant section of the Act;
- A diverted/newly created path should meet the Council’s minimum standard width:
Footpath: 2 metres;
Footpath bordered on one side or both sides (e.g. fence, wall or hedge): 3 metres;
Bridleway: 4 metres;
Restricted Byway: 5 metres.

The Council will prioritise public path order applications as follows:

1. Rail crossing diversion and extinguishment applications made under Section 119A and 118A of the Highways Act 1980, where there may be endangerment to life and the authority are required to determine an application within 6 months.
2. Applications to divert/extinguish a right of way, made under Section 257 of the Town and Country Planning Act 1990, where a planning permission may be granted or a planning application is made (please note that if an order is made under Section 257 of the Town and Country Planning Act 1990 where a planning application is made, the order cannot be confirmed until planning permission is granted).
3. All other public path order applications, including those made under Sections 118 and 119 of the Highways Act 1980. These applications will be dealt with in date order of receipt (where the application is valid and complete).

2. Town and village green applications

Town and Village Green applications are processed in the order of receipt, as soon as is reasonably practicable.

3. Permissive paths

Sometimes a landowner may be willing to let people use a route across their land but may not want to dedicate a formal public right of way. There are a number of informal routes such as this around the county. Occasionally it may be appropriate for the council to enter into a formal permissive agreement with the landowner. This would mainly be in cases where the route provides a useful addition to or link within a network of other paths and when financial input would be required from the council to create the path – e.g. if a bridge was required or if a landowner was to receive a monetary contribution for keeping a route open.

As with all other landowners, it is recommended that a statutory declaration is made and submitted with a deposited plan, in accordance with the provisions of Section 31(6) of the Highways Act 1980. This statement provides for the landowner to acknowledge the existence of public rights of way across land within his or her ownership. This can protect against any new rights of way coming into being within the timeframes laid out in the Act. It could also help to protect the landowner from anyone claiming the permissive route as a formal right of way if the landowner decided to close the route at a future date.

It is also recommended that the landowner seeks legal advice before entering into a permissive agreement as they would need to be clear about issues such as liabilities towards public safety, which may be different for permissive paths than with a public right of way.

4. Maintenance of public rights of way

For maintenance purposes the county of Wiltshire is divided into three areas - north, central and south. Each area has a Senior Rights of Way warden. There are two Assistant Rights of Way Wardens for the county, whose time is shared between the three areas.

The wardens are responsible for ensuring that the public rights of way within each of the three areas are inspected, so that any problems identified can be rectified. Inspections are presently carried out in two ways; in response to reports received of path defects and routinely on a parish by parish basis. As a result of the parish inspections, work schedules are drawn up and maintenance issues are resolved.

Maintenance responsibilities are divided between the council and landowners/ occupiers. The council's key responsibilities are:

- surface maintenance
- signage and waymarking (policy 5)
- repairing and replacing of bridges over natural watercourses, although there may be a shared responsibility where a bridge is also used by a landowner or occupier for private access (policy 6)
- contributing toward repair and replacement of gates and stiles (policy 8)
- clearance of annual surface growth and major clearance of overgrown paths

Path maintenance is carried out by contractors, volunteers and occasionally by the Rights of Way Wardens.

The key responsibilities of landowners are:

- maintaining stiles, gates and other boundary crossings in a safe condition commensurate with the status of the path

- obtaining consent from the highway authority before erecting new stiles or gates on footpaths and bridleways (there is no legal provision permitting landowners to erect new gates on restricted byways and byways open to all traffic)
- cutting back encroaching hedges or overhanging vegetation that is growing from their land
- keeping paths clear of obstructions such as padlocked gates, electric fences etc
- ensuring that any animal known to have dangerous characteristics is not kept on land crossed by a public right of way
- ensuring that no misleading signs are placed near rights of way that might deter people from using the path
- re-instating ploughed cross field footpaths and bridleways to not less than their minimum widths within 14 days of initial ploughing. After this period any further disturbances must be reinstated within 24 hours
 - cross field paths must be kept clear of crops to a minimum width of:
 - footpath - 1 metre across field and 1.5 metres field edge;
 - bridleway - 2 metres across field and 3 metres field edge; or
 - other rights of way - 3 metres across field and 5 metres field edge

Appropriate maintenance standards will be identified by the council according to the status of the path, type of use, level of strategic importance within the regional and local network and the character of the surrounding area

Separate programmes for annual growth and major clearance works will be high priorities in the summer and winter months respectively. Bridge maintenance works will be undertaken as the time of year and ground conditions allow.

- the council will ensure that, wherever possible, all public rights of way are signed where they leave metalled routes unless it has been agreed with the town or parish council that a sign is unnecessary
- installation of new or replacement signage will be by provision of a standard post with directional arrow indicating the correct legal status of the path
- wherever there may be difficulty in identifying the route of a path on the ground, the council will seek to provide adequate waymarking. Where possible this will be done in partnership with landowners and occupiers, town and parish councils and volunteers
- the council will consider more detailed signage and waymarking where the right of way forms part of a promoted route (e.g. National Trails, regional routes, and other long-distance paths or local circular walks). The council will seek to meet the extra costs involved from internal and external sources
- the council will focus upgrades of path furniture (i.e. replacing stiles with gates or gaps) on utility routes as identified by the local communities and long-distance or promoted routes (these will often be circular). Funding for these upgrades will be sought from internal or external sources
- When considering the replacement or installation of new gates and stiles, the council will adopt the least restrictive option, (i.e. gap is preferable, then gate, then stile). This will be in accordance with the expected level and type of use of the path, and the management of the land. For further information see policy 7

5. Signposting and waymarking

Under section 27 of the Countryside Act (1968), Wiltshire Council has a duty to signpost rights of way where they leave a metalled road. The council can be relieved of this obligation at certain locations if it considers a sign at that point is unnecessary and if a representative of the local parish council agrees.

Section 27 also requires waymarks to be placed at points along a path where it is considered necessary to help people unfamiliar with the location navigate. Wiltshire Council has a general power to erect and maintain signposts along a path or way.

In the following cases higher than usual levels of signposting and/or waymarking may be appropriate:

- the National Trails have specific standards of signing and waymarking, see www.nationaltrail.co.uk. The two National Trails that pass through Wiltshire are The Ridgeway and the Thames Path.
- other long distance trails and locally promoted routes. Wiltshire Council will consider requests for bespoke signing or waymarking for other routes but may require promoters to source some initial funding and/or demonstrate a commitment to ongoing maintenance

6. Bridges

The majority of rights of way bridges over natural water courses are provided, owned and maintained by the council. Where a privately maintainable bridge carries a public right of way the council will at its discretion contribute towards any justifiable repair or replacement. Contributions would not exceed 5% for a footpath and 10% for a bridleway. Such bridges are typically found on farm tracks, private drives and larger old country estates.

Bridges which carry a restricted byway or byway open to all traffic would normally be maintained by Wiltshire Council in order to ensure that it was suitable for vehicular traffic.

Any structure crossing a railway or canal and originally provided at the time of the construction is owned and maintained by the railway/canal authority. However, under the terms of the 1968 Transport Act the council is responsible for the maintenance of any additional highway surfacing across these structures.

When rights of way cross rivers near mills and sluices, bridges can often be part of the sluice structure. Generally these are privately maintained but ownership and responsibility is on a case by case basis.

7. Access for all and gaps, gate and stile policy

Under the Equality Act (2010), the council must consider the needs of those with mobility impairments when managing rights of way and access. Impairments cover a wide range of disabilities including visual impairments, difficulty walking or climbing over a stile, being a wheelchair user, a parent with a buggy etc. This requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

This policy concerns gaps, gates and stiles, but the following general principles will be applied.

- disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical
- current best practice will be sought in improving access for disabled people
- where there is demand for access improvements, the council will work with disabled people, rights of way user groups, parish councils and other partners to undertake access improvements such as surfacing and replacing stiles by the provision of gaps or gates
- clear, understandable and easily available information about the accessibility of rights of way will be provided where there is demand
- training and development of staff and volunteers with regard to equal opportunities and disability awareness will be provided where required. This will include planning and delivering accessibility improvements
- feedback from people who use the rights of way, including those with mobility problems, will be acted upon where possible

7.1 Structures and accessibility - legislation and guidance

DEFRA (2010). Good practice guidance for local authorities on compliance with the Equality Act 2010. Version 1.

British Standard BS5709. The British standard for gaps, gates and stiles provides specifications to ensure that access features cause the minimum of inconvenience to users whilst fulfilling the requirement to provide effective livestock control. The guidance indicates that the “least restrictive option” should be chosen in order to maximise accessibility.

Highways Act 1980 section 146

Places a duty on landowners to ensure that any stile, gate or other structure across a public footpath, bridleway or restricted byway shall be maintained by the owner of the land in a safe condition and to the standard of repair required to prevent unreasonable interference with the rights of the person using the footpath, bridleway or restricted byway.

Highways Act 1980 section 147

Provides for Wiltshire Council to be able to authorise structures on public footpaths and bridleways on land used or being brought into use for agricultural purposes and where it would be expedient to control the ingress and egress of animals.

Countryside and Rights of Way Act 2000 section 69

Places a duty for the council to have regard for needs of people with mobility problems.

Equality Act 2010

Places a duty on public authorities to make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to participate or benefit as others can, or to show that there are good reasons for not making adjustments.

7.2 Gaps, gates and stiles on rights of way, permissive paths and Access Land

7.2.1 Introduction

Wiltshire Council has the power under Section 147 of the Highways Act 1980 to authorise the erection of stiles and gates (“structures”) on footpaths and gates on bridleways in specific circumstances. These circumstances are where land is being used, or being brought into use for agriculture and where it is satisfied that a structure is needed to control the movement of animals. No new structures can be allowed on restricted byways or byways open to all traffic.

A highway authority has a duty, under the Highways Act, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension, by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do, or to show that there are good reasons for not doing so.

The Department for Environment, Food and Rural Affairs, DEFRA, has produced a good practice guide¹ for local authorities to help them comply with the Equality Act in terms of structures on rights of way. It is not expected or practical that all existing structures be replaced at once, though programmes to make gradual improvements are encouraged. The guide aims to ensure that any new structures that are introduced impose the least possible hindrance to access.

This policy sets out how Wiltshire Council will seek to meet its requirements under the Equality Act when authorising structures on rights of way and landowner responsibilities.

The relevant legislation and policy context is listed at appendix 1 to this document.

7.2.2 Legal powers to authorise structures across public rights of way

Rights of way are highways so must not be illegally obstructed. A structure which restricts the use of Public Right of Way is an offence under section 137 Highways Act 1980 and also a common law nuisance unless:

- it is recorded on the Definitive Map and Statement, the legal record of rights of way, as a limitation; or
- it has been authorised under section 147 Highways Act 1980
- it has been installed by the Highway Authority under either Section 66 or Section 115B of the Highways Act 1980

In the case of unauthorised structures, if the structure can be shown to be unlawful the council may either consider requiring the landowner to remove the structure or take action itself to secure removal at the landowner's expense. Enforcement action will be undertaken in line with the council's enforcement policy.

7.2.3 Specifications of structures

Wiltshire Council will take British Standard BS5709:2006 on Gaps, Gates and Stiles as the specifications that such structures should meet. This is designed to ensure that access furniture causes the minimum of inconvenience to users whilst still controlling livestock. In terms of gaps, the guidance refers to widths and what materials are used to form either side of the gap. Kits of structures which meet these standards are readily available.

There are cases where access furniture that does not meet the British Standards will be acceptable, for instance where local conditions make installation difficult or where there is a history of local designs. This is acknowledged under the DEFRA good practice guidance.

¹ Authorising structures (Gaps, Gates & Stiles) on rights of way. Good practice guide for local authorities on compliance with the Equality Act 2010. Version 1. DEFRA (2010)

7.2.4 The least restrictive option principle

DEFRA's guidance on gaps, gates and stiles says that when considering what structure is acceptable across a public right of way, the "least restrictive option" should be chosen in order to maximise accessibility.

The least restrictive option principle means that:

- i. A gap is the preferred option
- ii. Where a gap is not practicable for stock control, the following apply:
 - a) Footpath - a field gate or pedestrian gate should be used
 - b) Bridleway – a bridle gate is the only allowable alternative to a gap. Latches must be operable from horseback
- iii. On a footpath, where a field gate or pedestrian gate is not practical, a kissing gate may be considered
- iv. On a footpath stiles will only be considered in exceptional circumstances such as where the physical character of the path itself or the surrounding landscape mean that a gate would not significantly increase ease of access

In certain cases some structures may be of local historical or cultural interest. As the DEFRA guidance permits, in such cases local distinctiveness will need to be balanced with the needs of people with limited mobility.

7.2.5 Applying the least restrictive option principle

The principle needs to be applied when:

- a) Existing structures need repairing or upgrades are sought on a route
- b) A route is being diverted
- c) A route is being created
- d) A new structure is requested

a) Existing furniture needs repairing or upgrades are sought to a route

It is the legal responsibility of the landowner to ensure that gaps, gates and stiles already in place on the network are maintained in a safe condition and to a suitable standard (S146 of the Highways Act 1980). The landowner is entitled to recover at least 25% of the reasonable cost from the highway authority.

The council is not able to insist that existing stiles are replaced with gates or gaps so changes can only be achieved through negotiation or incentive. However, stiles must meet the British Standard that is current at the time of installation.

When field furniture is in poor repair or upgrades are sought to make a route more accessible, the council will seek the landowner or occupier's agreement to replacement with the least restrictive option. The landowner will be responsible for ongoing maintenance of the new structure unless it is agreed otherwise with the council as highway authority.

Where the council is seeking to replace stiles with gates or gaps, or improving gates to make them easier to open or close, the council will, within budgetary constraints, contribute towards the cost of this work. This approach ensures that structures meet approved standards of materials and quality of construction, and that works to infrastructure are carried out in a timely and cost effective manner.

b) A route is being diverted

When a public right of way is being diverted, the council can specify what structures can be used. The least restrictive option principle will be used and stiles will generally not be acceptable. Diversion orders will only be confirmed and made operative once all the accommodation works are completed to the council's satisfaction.

The cost of provision and ongoing maintenance of authorised structures will be met by the owner or occupier, unless it is agreed otherwise with the council as highway authority.

c) A route is being created

Creation orders are undertaken when a landowner wishes to dedicate a public right of way. The least restrictive option principle will be used but if the dedication is due to goodwill it may be necessary to accept stiles to BS5709:2006 if it is a footpath. If the creation is being required as part of a planning application it will be possible to specify what structures can be used.

d) A new structure is requested

Under section 147 of the Highways Act 1980, the council has the discretion to allow the erection of structures across footpaths or bridleways in order to control animals. An application under section 147 can only be made by the owner, lessee or occupier of agricultural land. Structures can only be erected for legitimate agricultural purposes and not for other reasons such as increasing personal privacy or security.

Structures will be authorised subject to conditions and the council will follow the least restrictive principle. Authorisation for structures may be revoked if the conditions for authorisation are breached or if there is no longer a need for the structure (e.g. the land ceases to be used for keeping livestock). Only one structure per field boundary will be authorised, so that for example double fenced boundaries will only have one structure. The council will seek to restrict the number of structures along a route in order to minimise inconvenience to the public, so clear justification will be required for each structure. The cost of provision and ongoing maintenance of any structures authorised is to be met by the landowner or occupier.

e) Other times when the least restrictive option principle needs to be considered

i. Permissive paths

The council will, wherever practical, apply the least restrictive option principle to permissive routes, particularly where public funding is used to encourage landowners to provide additional access. However, there may be occasions on which it is necessary to accept gates or stiles to BS5709:2006.

ii. Open access land

In most of the county Wiltshire Council is the Access Authority for land mapped as Access Land under the Countryside and Rights of Way Act 2000. Within the New Forest National Park it is the National Park Authority which is the Access Authority. As with public rights of way, the Access Authority is not able to insist that existing stiles are replaced with gates or gaps so changes can only be achieved through negotiation or incentive. The least restrictive option will be applied in line with policy 7

8. Supply of path furniture to landowners

The Highways Act 1980 requires stiles or gates across a footpath, bridleway or restricted byway to be maintained by the landowner in a safe condition and good standard of repair to prevent unreasonable interference with rights of users (section 146). This always applies unless there is a specific agreement or condition on the contrary.

Where landowners comply with this duty, they are entitled to recover at least 25% of these costs from Wiltshire Council under Section 28(3) of the Countryside Act 1968.

The council will seek to make the network more accessible. Landowners will be encouraged to replace stiles with gaps or gates on key links in the network. The service may agree with the landowners to undertake these upgrades (often with the assistance of volunteers) and to provide the gates to landowners at its own cost, but once these works are done future maintenance will be the responsibility of the landowner as long as there is an agreement in place. These works will be focused on locations where demand is likely to be greatest, e.g. honey pot sites and routes from and between settlements. For further information see policy 7

Stiles will not be supplied to landowners, but where stiles continue to be used the council will encourage landowners to use stiles that meet the current British Standard. At the time of writing this was BS5709:2006.

9. Barriers to safeguard users

Under section 66 of the Highways Act 1980 Wiltshire Council has the power to provide and maintain a barrier, rail or post in public rights of way for the purpose of safeguarding users. Section 115B of the same Act also allows the council to place objects or structures on a highway as long as it is for enhancing the amenity of the highway and immediate surroundings or providing a service for the public.

Barriers other than restrictions for the purpose of stock control cannot legally be installed by landowners. If Wiltshire Council feels a barrier is necessary and meets the criteria above, it must install the barrier itself - landowners cannot be authorised to install these structures on the council's behalf.

10. Electric fences

Electric fences are increasingly being used in fields where livestock are kept. In some circumstances it may be possible to use these near a right of way, but consideration must be given to the risk of the public contacting the wire. Contact with an electric fence can be unpleasant for a walker or cyclist and may be dangerous and could unseat a horse rider where a horse receives a shock causing it to jump or bolt.

Any fence across a right of way is an obstruction whether electrified or not but in some circumstances it is possible to place an electric fence across a footpath where it does not cause inconvenience to the public.

The council will work with farmers and landowners to find solutions but where a right of way is obstructed by the fencing it may be necessary for the council to undertake enforcement to keep the path clear and safe for users.

10.1 Safety First



Where an electric fence is placed alongside or in the case of a footpath, across, a right of way, users of the path must not be exposed to the risk of receiving any shock. The fence must be clearly identified as being electrified by placement of appropriate warning signs displayed at intervals of 50 metres or less along the fence and at any crossing point.

10.2 Electric fences running alongside rights of way

Fences running parallel to rights of way must be at least 2 metres from the edge of the path. The legal line and width may be different from the route that can be seen on the ground. Landowners should therefore check the legal line and width with the council before putting up the electric fencing.

If an electric fence is used alongside a bridleway, restricted byway or byway open to all traffic there should be no electric fencing within four metres of any gate or gateway and care should be taken that a gate may not swing into contact with electrified fencing. A horse and rider require a manoeuvring space of at least 4m x 4m to safely open and close a gate and there should be no risk of the horse coming into contact with electrified fencing while doing so.

10.3 Electric fences across footpaths

Where the fencing leads across a footpath with a stile the fencing must be insulated where it leads across the stile and for a distance of 1 metre on either side. An acceptable way of doing this is to house the wire in plastic piping as shown as shown below.



Where a temporary electric fence is used to control livestock it may be acceptable to cross a footpath under the following conditions. There must be a safe means of breaking the electric current at the crossing point. An example of this would be an expandable type barrier gate with an insulated handle (below) which can be readily and safely released. Handles must be in good condition so they do not conduct electricity when wet.



The fencing should be insulated to a width of at least one metre and hazard warning signs must be displayed as shown below.



Temporary fences are especially hazardous to horse riders and constitute an illegal obstruction if used across a bridleway, restricted byway or byway open to all traffic.

10.4 Liability

If a user of a public right of way comes into contact with an electric fence and suffers harm as a result, it is possible that legal action could be taken against the person responsible for erecting the fence.

11. Enforcement

Section 130 of the Highways Act 1980 imposes a duty on Wiltshire Council “to assert and protect the rights of the public to the use and enjoyment” of public rights of way. The local authority must “prevent, so far as possible, the unauthorised stopping up or obstruction” of rights of way. The means ensuring that routes are kept free from obstructions such as walls, fences, hedges, gates on byways, overhanging vegetation and dangerous animals, and from misleading signs or notices. If crossfield rights of way are ploughed or the soil otherwise disturbed, the route must then be reinstated within prescribed time limits, and it must then be kept clear of growing and/or overhanging crops.

The council will seek to protect these rights by the following procedures:

- Where rights of way are obstructed, cropped or ploughed out, the council will adopt a fair but robust policy on enforcement action. The emphasis will be placed on cooperation wherever achievable, but backed by formal legal action if necessary
- Where a negotiated solution does not appear possible or has failed, the council will as a first measure and where the relevant legislation permits, serve formal notice on the person responsible to remove the obstruction within a defined time. If this is unsuccessful, the council may take default action itself. The costs incurred in the removal of the obstruction will be charged to the person responsible for it. Where required, court proceedings will be pursued to secure removal of the obstruction or misleading notice or the abatement of the nuisance. Immediate action will be taken to remove illegal gates on byways
- The council will promote close liaison between user groups, parishes and landowners. It is hoped this will encourage the proper use of paths and minimise (and if possible avoid) conflicts of interest
- The names and address of members of the public who report obstructions and other difficulties with paths will not be revealed without the prior consent of the person concerned or where disclosure is required to comply with a request made under the Freedom of Information Act

12. Traffic Regulation Orders and Voluntary Restraint

The Road Traffic Regulation Act 1984 gives highways authorities the powers to impose Traffic Regulation Orders (TROs). TRO's may be permanent (all year round or for a defined part or parts of the year), experimental, or temporary. They may be used to control any type of traffic on any type of highway. The Act sets out the powers and describes the circumstances and criteria which have to be met.

Before closing a public right of way by means of a TRO, the council will explore the practicality of implementing all other available options. If it becomes evident that a path or byway is at risk of damage

or is already suffering damage as a result of its use by a particular type or types of traffic, a system of Voluntary Restraint (VR) may be implemented to see whether or not the problems can be overcome without the imposition of a TRO. VR has no legal force and relies on users to act responsibly, but it has the advantage of allowing a more flexible approach to be taken. VR could, for example target particular types of users and/or specified times of the year when certain uses are expected or known to cause problems, and can be more reactive to changing circumstances such as unseasonal adverse weather and ground conditions.

The council will not rule out the use of a temporary or permanent TRO to close a path or byway to specified types of users, where the safety of all other users is evidently at risk and there are sufficient grounds for the action, or if the extent of physical damage or the likelihood of it is so severe that a TRO is necessary to prevent the problem from continuing or occurring. Temporary TRO's are frequently necessary to allow statutory undertakers to carry out works that affect a public right of way.

Where the issue of concern is one of a path or byway that has become dangerous through the failure of a structure, the underlying or supporting ground or damage to the surface, the preferred option will be to carry out repairs to restore it to a safe condition compatible with its location, legal status and the use that can be expected to be made of it. This may include making improvements to the drainage. A temporary TRO may be necessary whilst the route is awaiting repair and for the duration of the work, including time for recovery or settlement before it is re-opened. It may not always be necessary to exclude all types of user and in these cases the least restrictive option possible will be imposed.

13. Authorisation of motor rallies and other events

Under the Road Traffic Act (1988) it is an offence to race motorised vehicles or cycles on roads (including public rights of way). It is also an offence to drive these vehicles dangerously or carelessly. However, a competition or trial (other than a race or trial of speed) can be authorised under the Act.

User organisations sometimes want to hold events on the rights of way. These are generally acceptable as long as they do not have a detrimental impact on other users. This procedure must be followed for all events:

- 1) the organiser contacts the Senior Rights of Way Warden for the area 2 months in advance, letting them know the proposed route, date and how many people they expect to take part in the event. They may also need to contact the Motor Sports Association
- 2) the Warden will consider the route and may require the route to be changed if they have particular concerns, e.g. part of the route may be damaged or there may be risks of conflicts with other users.
- 3) the route and other details must be authorised by the Warden and corporate events co-ordinator before the event takes place
- 4) the event itself must meet the following criteria:
 - the organiser is to make it clear to all entrants that it is not a race
 - the route must be well marshalled
 - the organiser must have their own public liability insurance (generally £5m)

14. Control of dogs

Wiltshire Council supports the advice contained within the Countryside Code with regard to control of dogs in the countryside. The code can be found at: www.naturalengland.org.uk.

15. Countryside sites

Wiltshire Council's countryside sites serve a variety of purposes. Most sites provide both nature conservation and public access, with some providing venues for groups such as running groups or rehabilitation of people with mental health issues. Two sites are for nature conservation only.

The council's vision for its countryside sites is to provide for:

- i) Informed and engaged communities, by
 - increasing awareness, understanding and appreciation of the countryside, the rights of way and countryside service and Wiltshire Council
 - ensuring a range of information is available in formats to enable equal opportunities for people to enjoy and learn about the countryside. This includes use of information technology and social media
 - planning and undertaking a varied countryside events and activities programme for all ages and abilities. Previous examples include dawn chorus walks, bat walks, badger walks, children's craft events, accessing nature through the arts, practical conservation work and educational events. Events will either be free to attend or will incur a modest charge. Volunteers will be asked to assist with delivering this programme wherever possible
 - through the events and activities programme, use of the country parks and rights of way network enable people to connect with their natural environment

- ii) Biodiversity and conservation
 - biodiversity will be enhanced through careful and sympathetic management and support will be given for communities and individuals to manage their own green spaces
 - protected and rare species will be safeguarded on the countryside sites. Levels of priority species and habitats will be increased in terms of health and connectivity and the damaging impacts of non-native species will be reduced
 - action will be taken to increase awareness of biodiversity issues in all areas of the community and businesses, encouraging local involvement. Opportunities will be taken to enhance biodiversity
 - the role the sites can play in mitigating climate change will be considered

- iii) Volunteering
The council will:
 - work with Wiltshire's communities to enhance and promote the enjoyment of the countryside sites and to conserve and enhance landscape, wildlife and heritage
 - further develop the opportunities that can be offered to countryside volunteers
 - provide communities with the support, skills and tools they need to improve recreational opportunities and the environment in their area
- develop opportunities for staff within the Council and from local businesses to work on conservation projects as part of team and personal development initiatives

- iv) Health and minority communities
The council will:
 - continue to engage with communities or individuals who are under-represented and raise awareness and knowledge of how to access Wiltshire's countryside sites and wider countryside
 - develop partnerships with other Council services, charities and health authorities to contribute to improving the health of the community

- access to greenspace has been shown to be very beneficial for both mental and physical health. The countryside sites will continue to be used by mental health groups to help rehabilitation
- increase opportunities for children to learn about nature, while improving their health, through play. This will be done both through the events programme referred to above but also informal exploration at countryside sites and the wider rights of way network

16. Canals

Wiltshire Council supports the restoration of the Wilts & Berks and Thames & Severn Canals, and the maintenance and operation of the Kennet & Avon Canal as part of Wiltshire's Green Infrastructure network. Support comprises both staff time, finance and policy.

The Kennet & Avon towpath is a Public Right of Way and permissive cycleway. In order to cover maintenance Wiltshire Council will seek to continue to provide an annual grant to the Canal & River Trust (formerly British Waterways). Staff support will be given to enable volunteer-led projects on the waterway.

The Thames & Severn and Wilts & Berks Canal projects have short term aims to re-open the towpaths for public access. Restoration of the canal itself is a longer term aim. Restoration on these projects is largely carried out by volunteers, but Wiltshire Council will seek to continue to support this work through officer time, technical advice and the use of IT services by the canal trust volunteers.

17. Access Land

The Countryside and Rights of Way Act (2000) granted a right of access on foot to areas of open country (mountain, moor, heath and down) and to registered common land. These areas are known collectively as Access Land. In most of the county Wiltshire Council is the Access Authority for land mapped as Access Land under the act. Within the New Forest National Park the National Park Authority is the Access Authority. This role is non-statutory (and therefore discretionary). It brings a number of opportunities, which the council will seek to take advantage of when and where they feel there is a clear demand.

These are to:

- work with landowners to provide a means of access to and within parcels of Access Land where there are limitations
- provide a range of local information
- appoint wardens to manage the areas
- make any byelaws which may be required to assist in the management of Access Land

This work will be carried out with the assistance of the Wiltshire and Swindon Countryside Access Forum and New Forest Access Forum.

18. Paths Improvement Grant Scheme

Rights of Way and Countryside in partnership with the Wiltshire and Swindon Countryside Access Forum runs the Paths Improvement Grant Scheme (PIGS). PIGS involves a bidding process where parish councils can apply for match funding (up to 50%) towards schemes that are felt to be important to their community. Previous schemes have included changing stiles to kissing gates, surfacing paths within villages, producing leaflets and notice boards to promote walking routes and producing bespoke signing.

Individuals or local groups can undertake the background work for PIGS schemes (with advice and support from Wiltshire Council) but submissions must be from the parish council as evidence of its support for the proposed scheme. The applicant must be able to source the remainder of the funding for the scheme, this could be from themselves or other organisations/charities. It must be noted that the criteria that have to be met for applications is liable to change, so the latest version is available on request from rightsofway@wiltshire.gov.uk

The local authority may also contribute to the improvement and repair of private roads over which there are also rights of way. This is subject to agreement that the proposed work is needed for the essential maintenance or improvement of the route for public use, and is dependent on funds being available.

19. Administration of the Wiltshire & Swindon Countryside Access Forum

The Wiltshire & Swindon Countryside Access Forum (the CAF) is a statutory body set up under the Countryside and Rights of Way Act (2000). The forum is run jointly by Wiltshire Council and Swindon Borough Council.

The main function of the CAF is to advise the two councils and other public bodies on how public access to land for the purposes of open-air recreation and enjoyment can be improved. In carrying out its functions, the CAF also must have regard to the needs of land management and the desirability of conserving the natural beauty of the area. This includes the flora, fauna and geological and physiographical features of the area.

Wiltshire Council's rules on the membership of the CAF are as follows:

- the CAF must include members who are representative of both users and owners of land which have rights of way or access land on them
- members will be appointed by Wiltshire Council and Swindon Borough Council for a minimum of 1 year and maximum of 3 years, with the option of renewal in each case
- there will be a reasonable balance between members who are user representatives and members who represents owners or occupiers
- only one place can be occupied by an elected member of Wiltshire Council and only one place by an elected member of Swindon Borough Council
- the Chair and Vice Chair will be drawn from the Forum members and elected annually. The Forum must have between 10 and 22 members
- all meetings are open to the public. Agendas, minutes and reports relating to the Forum will be available to the public at the offices of Wiltshire Council, Swindon Borough Council and on the Wiltshire and Swindon Countryside Access Forum website.

The main responsibilities of Wiltshire Council and Swindon Borough Council are to:

- have regard to the Forum's advice when making decisions and relay their advice to relevant bodies
- promote the work of the CAF
- provide a secretariat (Wiltshire Council)

Three of Wiltshire's parishes are partly within the New Forest National Park. Within the national park boundary the New Forest Access Forum has the same role as above.

20. Maintenance of Trees on Council Owned Land

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20.1 Introduction & Scope

The purpose of this document is to set out how Wiltshire Council maintains trees on council owned or maintained land. It sets out a number of frequently encountered issues, the council’s likely response (based on legal statutes and case law) and advice to customers.

This document is not intended to provide a strategy for maintaining, protecting or enhancing tree cover within the county. Similarly, the issues surrounding legal protection afforded to trees, including Tree Preservation Orders and Conservation Areas, fall outside the scope of this document and are not directly discussed.

How do we define a tree?

In 2009 a High Court ruling concluded that with tree preservation orders there are no limitations in terms of size for what is to be treated as a tree; in other words, saplings are trees. However, other than that there is no legal definition of what constitutes a tree for more general purposes. The following definitions have therefore been formulated to provide the boundaries within which this policy operates

Tree;

A tree typically has a single trunk growing in excess of 6m tall and bearing lateral branches. It has a more or less permanent shoot system supported by a single woody trunk. For the purposes of this Tree Policy, saplings will NOT generally be regarded as trees. In woodland a tree has a trunk of over seven inches, 180mm, in diameter.

Shrub;

A shrub is a woody plant smaller than a tree and distinguished from a tree by its multiple stems arising at or near the ground (rather than a single trunk); a shrub is usually less than 6m tall.

20.2 Benefits of trees

The council recognises that trees are an important feature of our urban and rural landscape providing a range of benefits including environmental, social, economic, health and well being, ecological and landscape.

Trees and woodlands deliver a diverse range of individual benefits for the urban and rural environment these benefits include;

Environmental

- Helping to reduce global warming by producing oxygen and absorbing carbon dioxide.
- Improving air quality by filtering, intercepting and absorbing air pollutants.
- Reducing the effects of flash flooding by intercepting and absorbing rainwater.
- Regulating extremes in air temperature in summer and winter.
- Providing a sustainable local energy source through firewood.

Social

- Providing local character, distinctiveness and sense of place.
- Providing amenity, aesthetic value and historical continuity.
- Symbolising community focal points.
- Providing an educational resource.

Economic

- Increasing property values.
- Providing a sustainable source of wood products including timber, mulch, charcoal, wood chip and firewood.
- Providing local employment.
- Reducing energy bills for heating and cooling buildings.

Health and Well Being

- Providing high quality outdoor space for recreation.
- Providing shade, and thereby reducing risk of skin cancers by from harmful ultra-violet radiation.
- Reducing stress and illness by providing a sense of well being through softening the built environment, creating character and a sense of place and permanence.
- Reducing noise levels by acting as a sound barrier.
- Improving recovery times in hospitals.

Ecological

- Increasing biodiversity within towns and cities by providing habitats for a broad range of wildlife.
- Linking green spaces allowing movement of wildlife within urban areas.

Landscape

- Providing an ever-changing landscape with the changing seasons.
- Frame and improve vistas.
- Screen undesirable views or structures.

20.3 Tree management policy

Wiltshire Council will generally only undertake remedial works to trees where the trees pose a direct threat to public safety or property, i.e. if a tree is dead, dying or dangerous or if the tree is causing direct damage to property. It is not reasonable to prune or remove healthy trees simply because of their size and proximity to buildings, roads or other infrastructure. Wiltshire Council will manage any risk through tree inspections and undertake any necessary works to abate hazards due to mechanical faults within the tree's structure, diseases or fungal infections and other conditions relating to tree health.

Wiltshire Council's tree officers seek to comply with industry best practice whenever possible. Particular weight is given to the provisions of British Standard 3998 Recommendations for tree works.

Wiltshire Council use a number of external professional tree surgeons to undertake tree works on their behalf. All tree surgeons working on Wiltshire Council's behalf are suitably:

- **Qualified for the task.** Within arboriculture there are large number of qualifications from using a chainsaw and felling small trees to sectional dismantling large trees or clearing wind-blown trees.
- **Insured.** All tree surgeons are required to carry a minimum of £5 million public liability insurance.

20.4 Common law right on encroaching trees

You have a Common Law right to remove (abate) the nuisance associated with trees encroaching onto your property. The following advice is given if you wish to exercise your Common Law right with respect to encroaching trees:

- a) You can only consider removing those parts of the tree from the point where they cross the boundary of your property. You have no legal right to cut or remove any part of a tree that does not overhang your property;
- b) You are strongly advised to consult a professional tree surgeon for guidance on how best to prune back encroaching trees. A suitably qualified tree surgeon will be able to provide bespoke advice relating to the management of trees whilst ensuring that the tree itself is not adversely impacted by the operation. If a neighbouring tree is made unsafe by your actions, for example by removing a large proportion of the crown, you may be held liable for any damage that is caused as a result.;
- c) Before you consider doing any works to a tree / trees you should find out who owns them and if they are protected by a Tree Preservation Order or are within a Conservation Area. If the trees are protected, you will need to gain consent by making an application / give notice to the council. To find out if the trees are protected and guidance on how to apply for works if they are protected contact the following number for your area:

North - 01249 706444

Central (West, East) – 01225 770344

Web:

www.wiltshire.gov.uk/communityandliving/countryside/forestandwoodlandmanagement/treemanagement.htm

You are advised to discuss with your neighbour your intention to prune encroaching branches. Legally you do not own the encroaching branches and you should first offer them to your neighbour and if your neighbour does not want the cuttings you should make appropriate arrangements to dispose of them yourself. If the encroachment relates to a council owned tree, any cuttings must be disposed of appropriately; the council does not require nor expect to have these returned.

20.5 Dangerous trees requiring urgent action

Policy: If a council owned tree is in such a condition that it poses a very high risk to people or property and is considered to be an emergency situation, urgent action will be taken to make the tree safe.

Our response to this tree-related enquiry: If an emergency situation arises, urgent action will be taken to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or causing an obstruction requiring urgent attention, as outlined below.

Customer Advice:

1. If a tree poses an immediate and present danger urgent action will be taken to make the tree safe.
2. If a tree's condition could be described as any of the following, it may warrant urgent attention:
 - a) Snapped or blown over
 - b) Rocking at its base – roots are damaged
 - c) Uprooted but held up by another tree or building
 - d) Large branch has broken off, is hanging off or hung up within the tree
 - e) Completely blocking road, footpath, access to property
 - f) Fallen onto house or car
3. Signs to look out for which may mean that a tree is a risk to people or property but the risk does not require an emergency response include a tree which is:
 - g) Dead
 - h) Dying - few leaves in summer or dieback in the crown
 - i) Losing bark
 - j) Affected by mushrooms or other fungi growing on or near the tree
 - k) Affected by old splits and cracks in the trunk or large branches
 - l) Losing smaller branches which are falling from the tree
4. Trees can be made safe by pruning or felling. We employ the most cost effective approach. However, for certain High Value and Ancient/Veteran trees we would consider other options to reduce risk to an acceptable level including those which would reduce the likelihood;

- a) Of the tree or parts of the tree failing
- b) Of persons being close to the tree if it did fail

20.6 Dangerous tree requiring action but not an imminent danger

Policy: If a tree is identified as dangerous, but the risk to the public is not high, then the tree will be made safe depending on the degree of risk identified at the time of inspection.

Our response to this tree-related enquiry: If not an emergency situation a site inspection will be undertaken and within 14 days the customer notified of what action is considered appropriate.

20.7 Tree overhanging property and branches touching building

Policy: We will not prune or fell a tree in council ownership to alleviate overhanging branches. Where branches are causing damage by touching a building a site inspection will be made and the customer notified within 14 days of appropriate action.

Our response to this tree-related enquiry: site inspection is not required unless damage has been caused.

Customer Advice:

1. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees - see *Common Law Right*.

20.8 Tree too big or too tall

Policy: We will not prune or fell a council owned tree merely because it is considered to be 'too big' or 'too tall'.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. A tree is not dangerous just because it may be considered too big for its surroundings. Other problems would need to be shown such as those described in the "Dangerous Tree..." policies for the council to consider it to be dangerous.

20.9 Tree Protection - Tree Preservation Orders

Tree Preservation Orders and protection of trees in a Conservation Area are enforced by the Tree & Landscape Officers in the Local Planning Teams -. Before you consider undertaking any works to a council owned or maintained tree / trees you should find out if they are protected by a Tree Preservation Order or are within a Conservation Area.

If the trees are protected, you will need to gain consent by making an application / giving notice to the council. To find out if the trees are protected and guidance on how to apply for works if they are protected customers can contact the following number for their area:

Telephone:

North - 01249 706444

Central (West, East) – 01225 770344

South - 01722 434541

Customer Advice:

A tree preservation order (TPO) is an order made by a local planning authority (LPA) in respect of trees or woodlands. The principal effect of a TPO is to prohibit the:

- (1) Cutting down,
- (2) Uprooting,
- (3) Topping,
- (4) Lopping,
- (5) Wilful damage, or
- (6) Wilful destruction

of trees without the LPA's consent. The cutting of roots, although not expressly covered in (1)(4) above, is potentially damaging and so, in the Secretary of State's view, requires the LPA's consent.

Penalties for undertaking works to a Protected Tree without consent

Anyone who, in contravention of a TPO:

- 1) Cuts down, uproots or wilfully destroys a tree, or
- 2) Tops, lops or wilfully damages a tree in a way that is likely to destroy it is guilty of an offence. Anyone found guilty of this offence is liable, if convicted in the Magistrates' Court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, be liable to an unlimited fine.

It is also an offence for anyone to contravene the provisions of a TPO otherwise than as mentioned above. For example, anyone who lops a tree in contravention of a TPO, but in a way that the tree is not likely to be destroyed would be guilty of this offence. In this case, the Magistrates' Court can impose a fine of up to £2,500.

20.10 Tree Protection - Tree in Conservation Areas

Under section 211 of the Town and Country Planning Act 1990, anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the LPA six weeks' prior notice (a 'section 211 notice').

Penalties for undertaking works to a Tree within a Conservation Area without consent

Anyone who cuts down, uproots, tops, lops, wilfully destroys or wilfully damages a tree in a conservation area without giving a section 211 notice (or otherwise in contravention of section 211) is guilty of an offence. The same penalties apply as those for contravening a TPO.

20.11 High Hedge

Customer Advice:

What is classed as a 'high hedge'?

1. A high hedge is defined in the Anti-social Behaviour Act 2003 as a barrier to light or access and is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees growing to a height of more than 2 metres above ground level.
2. Please note individual trees and shrubs are not covered by this legislation.
3. A complaint can be brought under the Act by the owner or occupier of the property affected by the hedge. The property must be residential and the hedge must detract from the reasonable enjoyment of your home and garden.
4. There is a fee of £350 for the council to undertake an investigation. This fee is non-refundable and no investigation will take place without receipt of cleared funds.

Investigations are undertaken by the Local Planning Tree & Landscape Officers, for more information refer to the planning website or contact the teams by telephone, the contact details can be found in the 'Tree Protection..' section above.

Guidance on the Planning web pages

www.wiltshire.gov.uk/planninganddevelopment/ourplanningservices/conservationhistoricenv/treesandhedges/highhedges.htm#What_new_legislation_covers_this_issue?

20.12 View

Policy: We will not prune or fell a council-owned tree to improve the view from a private property.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. There is no legal right to a 'view'.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.13 Light

Policy: as a general rule we will not prune or fell a council owned tree to improve natural light in a property. However please see customer advice below as there will be certain circumstances in which this might change.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. In law there is no general right to light. Any right to light would need to be established under the Prescription Act 1832, provided the light has been uninterrupted for at least 20 years. A legal right to light can be enjoyed only in relation to a specific opening (such as a window) in a building; there is no right to light in connection with open land, such as a garden.
2. If natural light is being blocked by the growth of a hedge then action may be taken to reduce the problem under the High Hedges Act, Part 8 of the Anti-social Behaviour Act, 2003 – please see High Hedges
3. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.14 Carriageway obstruction due to trees

Policy: Carriageways on minor or estate roads and on major routes including double decker bus routes a minimum clearance of 6m clearance over the carriageway - where reasonably feasible (associated with a street, road or highway).

Our response to this tree-related enquiry:

- a) **If an emergency situation** a tree contractor will be instructed to attend site within 2 days to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or a tree that is causing an obstruction requiring urgent attention, or
- b) **If not an emergency situation** a site inspection will be undertaken and the customer notified within 14 days of what action is considered appropriate.

Customer Advice:

If a privately-owned tree is causing an obstruction to a road, powers exist under the Highways

Act 1980 to make the owner of the tree remove the obstruction. If they do not, the council will do this work and recharge the owner.

20.15 Danger to Highway (private tree)

Policy: If a tree in private ownership is shown to be a danger to highway users it will be identified for work to make it reasonably safe. The landowner will be contacted and instructed to make the tree safe under the Highways Act 1980. If it is necessary that the council undertake this work then the owner will be charged in full for the council's costs of carrying out the work outlined.

- A) **Or in an emergency situation** a contractor will be instructed to attend site within 1 hour to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or a tree that is causing an obstruction requiring urgent attention.
- B) **If not an emergency situation** a site inspection will be undertaken and the customer notified of what action is considered appropriate. The owner of the tree will be informed within 14 days of what works they are responsible for to make the situation safe.

20.16 Danger to Land Other Than Highway (private tree)

Policy: If a tree in private ownership is shown to be a danger to non-highway land; the landowner may be contacted and instructed to make the tree safe (under the Local Government Miscellaneous Provisions Act 1976). If it is necessary that the council undertakes this work then the owner will be charged in full for the council's costs.

Our response to this tree-related enquiry:

- a) **If an emergency situation** a tree contractor will be instructed to attend site within 2 days to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or causing an obstruction requiring urgent attention.
- b) **If not an emergency situation** a site inspection will be undertaken and the customer notified of what action is considered appropriate. The owner of the tree will be informed within 14 days of what works they are responsible for to make the situation safe.

Customer Advice:

1. It is expected that private parties will take care of their own responsibilities and hence the council should not be considered as the first point of contact in attempting to resolve concerns about the danger posed by trees in private ownership. However, the council can intervene under the Act if an owner of such trees fails to act in a reasonable timescale and will seek to recover the costs from the landowner.
2. The powers given in the Act to require a private individual or for the council to make safe a tree are discretionary and will only be used if there is a threat to public safety.

3. In this instance a person who wishes to notify the council of a dangerous tree where there is a threat to public safety is expected to make the formal notification in writing.

20.17 Pavement – obstruction

Policy: We will undertake work to a council owned tree to maintain a minimum (where reasonably feasible) 2.5 metres height clearance over a footpath associated with a street, road or highway (3 metres where there are cycling rights). Any works necessary to prevent an obstruction in the width of a footpath associated with the highway due to the presence of a council-owned tree would be considered on a case-by-case basis.

Our response to this tree-related enquiry:

- a) **If an emergency situation** a contractor will be instructed to attend site within an hour to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or causing an obstruction and requiring urgent attention.
- b) **If not an emergency situation** a site inspection will be undertaken and the customer notified within 14 days of what action is considered appropriate.

Customer Advice:

If a privately owned tree is causing an obstruction to a footpath associated with the highway, powers exist under the Highways Act 1980 to make the owner of the tree remove the obstruction.

20.18 Trip hazard

Policy: We will undertake measures to make safe an unacceptable trip hazard in a street, road or highway and other council owned or maintained land caused by the growth of a council owned tree.

Our response to this tree-related enquiry:

- a) **If an emergency situation** a contractor will be instructed to attend site within an hour to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or is causing an obstruction requiring urgent attention, or
- b) Trip hazards in a footway measured at an upstand greater than 20mm is classed as a priority 1 repair and shall be attended to within 24 hours.
- c) **If not an emergency situation** a site inspection will be undertaken and the customer notified within 14 days of what action is considered appropriate.

Customer Advice:

1. There are a number of ways the council can repair a pathway on council-owned land that is being damaged by tree roots. Simply, the pavement surface can be 'built-up', or isolated roots

may be pruned and the pavement surface repaired. Advice will need to be sought on what thickness of tree roots can be cut to effect a repair without affecting the stability of the tree, or its long term health.

2. For higher value trees it may be appropriate to consider the installation of a root barrier which, although more expensive, does prevent the problem re-occurring.
3. Removal of the tree is the last resort (although in some circumstances, where the tree is of low-value or easily replaced, removal may be the most appropriate solution).
4. Details of intervention criteria can be found on the council's website: www.wiltshire.gov.uk/parkingtransportandstreets/roadshighwayspavements/roadmaintenance/highwaysinspectionfrequencies.htm

20.19 Road – sight lines obstruction

Policy: We will undertake work to a tree in council ownership to maintain clear sightlines (where reasonably feasible) at junctions and access points (associated with a street, road or other highway).

Our response to this tree-related enquiry:

1. **If an emergency situation** a tree contractor will be instructed to attend site within 1 hour to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or is causing an obstruction requiring urgent attention, or
2. **If not an emergency situation** a site inspection will be undertaken and the customer notified of what action is considered appropriate within 14 days.

Customer Advice:

Standards for visibility vary according to the classification of the road and speed limit in force.

If a privately owned tree is causing an obstruction to the visibility at a road junction (sight line), powers exist under the Highways Act 1980 to make the owner of the tree remove the obstruction. If they do not, the council will do the work and recharge the owner.

20.20 Traffic signal / street sign obstruction

Policy: We will undertake work to a tree in council ownership to maintain clear sightlines (where reasonably feasible) for traffic signals and street signs (associated with a street, road or other highway).

Our response to this tree-related enquiry:

- a) If an emergency situation our contractor will be instructed to attend site within 1 hour to make the situation safe. An emergency is defined as a tree that is in immediate danger of collapse or is causing an obstruction requiring urgent attention, or

- b) If not an emergency situation a site inspection will be undertaken within 14 working days of receipt and the customer notified of what action is considered appropriate.

Customer Advice:

1. If a privately owned tree is causing an obstruction to a traffic signal or street sign, powers exist under the Highways Act 1980 to make the owner remove the obstruction. If they do not, the council will do the work and recharge the owner.
2. For information about when council-maintained street trees are next due to be inspected and works issued as a result, see:
www.wiltshire.gov.uk/parkingtransportandstreets/roadshighwayspavements/roadmaintenance/highwaysinspectionfrequencies.htm

20.21 Street light – obstruction

Policy: We will undertake work to a tree in council ownership to ensure that trees do not unduly obstruct street lights.

Our response to this tree-related enquiry:

- a) A site inspection will be undertaken and the customer notified within 14 days of what action is considered appropriate.

Customer Advice:

1. If a tree in private ownership is shown to be causing an obstruction to street lights, the landowner will be contacted and instructed to remove the obstruction under the Highways Act 1980. If it is necessary that the council undertakes this work then the owner will be charged in full for the council's costs.
2. When the council puts in new street lighting or wishes to move a lighting column, consideration is made of the impact on existing trees. Similarly, when new trees are being planted, these are placed so they do not cause problems to existing streetlights.

20.22 Drains

Policy: We will not prune, fell or cut the roots of a council owned tree to prevent roots entering a drain that is already broken or damaged.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. Tree roots typically only invade drains that are already broken or damaged. Tree roots found in a drain are usually symptomatic of an underlying problem requiring repair of the broken pipe. If

you are concerned about the condition of your drains then you are advised to contact your water and sewerage company.

2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.23 Nuisance Third Parties – private tree

Policy: The council has no authority to intervene in a dispute between neighbours. However, if the problem is due to a 'high hedge' information can be found on the Planning web page for guidance see the High Hedges section.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. The council cannot provide a mediation service so you should try to resolve a dispute between yourself and your neighbour amicably or seek advice from a solicitor or Citizens Advice.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.24 Utility trenching

Policy: Consent from the council is required for any form of trenching works that is to be carried out, under or through a council owned or maintained tree's root plate.

Our response to this tree-related enquiry: An agreement will be entered into between the trenching operators and the council whereby any works carried out must follow and adhere to industry best practice and guidance in the form of The National Joint Utilities Group Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees - Volume 4 (NJUG Vol. 4).

Where such an operation shall be undertaken within the 'Prohibited Zone' an arboricultural officer shall have to be consulted and where necessary undertake an onsite inspection.

20.25 Tree next to a building site

Policy: The council is not required to prune or fell a council owned tree to allow building works to proceed, whether planning consent was necessary or via permitted development. We expect that our trees are taken into consideration during the initial surveying/permission phase of the development and adequate protection is given to council owned trees during the development.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.26 Personal medical complaint

Policy: Requests to undertake work to a council owned tree because of a personal medical condition will be treated on a case-by-case basis and on advice from a qualified medical practitioner.

Our response to this tree-related enquiry: site inspection required depending on advice given by medical practitioner.

Customer Advice:

1. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.27 Crime and anti-social behaviour

Policy: Where a council owned tree is associated with criminal activity and/or anti-social behaviour, measures to reduce the problem will be considered on a case-by-case basis.

Our response to this tree-related enquiry: site inspection will be undertaken. Customers will be informed that a site inspection will be undertaken and the customer notified within 14 days of what action is considered appropriate.

Customer Advice:

1. Where a tree is associated with criminal activity and/or anti-social behaviour, steps to reduce the problem will typically require the coordination of a number of agencies including the Police. Just pruning or felling a tree is not always the answer to the problem.
2. You are not allowed to remove wood (or other parts of a tree) from parks or green spaces without consent. Generally, we either remove cut timber from site or leave it in place as a wildlife habitat. Unauthorised persons are not allowed to use a chainsaw or other tools in parks or green spaces. If you see someone who may be removing wood without consent (i.e. a person not associated with a relevant sign-written vehicle and/or without clothing that clearly identifies who they are) or they are using a chainsaw then call the Police on their non-emergency number: 101 and the council's customer services on 0300 456 0100

20.28 Vandalism

Policy: We will look into reports of vandalism to a council-owned tree and address any damage wherever possible.

Our response to this tree-related enquiry: site inspection will be undertaken. Customers will be informed that a site inspection is required and notified within 14 days of what action is considered appropriate.

Customer Advice:

1. We encourage local communities to report incidents of vandalism and we have taken legal action where witnesses have been prepared to come forward.

20.29 Bird droppings

Policy: We will not generally prune or fell a council owned tree to remove or reduce bird droppings from trees, or remove bird droppings from private land.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. Bird droppings may be a nuisance, but the problem is not considered a sufficient reason to prune or remove a tree. Nesting birds are protected under the Wildlife and Countryside Act 1981 (and other related wildlife law). Warm soapy water will usually be sufficient to remove the bird droppings as long as this is done promptly.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law right*.

20.30 Blossom

Policy: We will not prune or fell a council owned tree to remove or reduce blossom from trees or remove fallen blossom from private land.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. Tree blossom usually heralds the start of spring. Blossom is a natural occurrence, which cannot be avoided by pruning.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.31 Fruit / berries / nuts

Policy: We will not prune or fell a council owned tree to remove or reduce the nuisance of fruit, berries or nuts, or remove fallen fruit from private land. However, where fallen fruit is leading to significant anti-social behaviour problems we will consider measures to reduce the problem including whether a phased removal and replacement with alternative species is reasonable.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. Fruit trees such as apple, cherry and pear have the double benefit of spring blossom and autumn fruit. This makes fruit trees good for wildlife and a source of free food. Equally, where fruit trees are established but there is a significant anti-social behaviour problem we may consider phased removal and replacement.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.32 Poisonous berries

Policy: We have no general policy to remove trees bearing poisonous fruit or foliage (such as Yew trees), however where it is claimed or known that unsupervised young children or livestock are likely to be exposed to poisonous berries or foliage, such cases will be investigated and appropriate action considered.

Our response to this tree-related enquiry: site inspection will be undertaken subject to specific circumstances.

Customer Advice:

1. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.33 Pollen

Policy: We will not prune or fell a council owned tree to remove or reduce the release of pollen.

Our response to this tree-related enquiry: site inspection not required.

20.34 Ivy and climbing plants

Policy: We will not prune or remove Ivy (*Hedera helix*) or any other species of climbing plant from a tree to abate a nuisance e.g. bird nesting, pollen, fruit or for the purposes of light. The control of plants

climbing on or over trees is not a routine aspect of crown maintenance.

Our response to this tree-related enquiry: site inspection not required, unless for safety purposes.

Customer Advice:

The control of plants climbing on or over trees is not a routine aspect of crown maintenance. They may, however, be removed or cut back if this is considered necessary in the light of any of the following circumstances:

1. The plant is hindering visual inspection of a tree that could be posing a risk to people or property because of suspected presence of weakened tree structures in areas of high footfall.
2. The plant is growing high into the crown of a tree, so as to increase its resistance to wind;
3. The plant is significantly weighing down a branch or a leaning tree;
4. The tree is otherwise likely to be smothered (e.g. by Clematis, Russian Vine or, occasionally ivy) especially if it is old and therefore unlikely to outgrow the climbing plant;
5. There is potential for dead stems of the plant to become a hazard.

20.35 Leaves / foliage

Policy: We will not prune or fell a council owned tree to remove or reduce leaf / foliage fall or remove fallen leaves / foliage from private property.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. The loss of leaves / foliage from trees in the autumn is part of the natural cycle and cannot be avoided by pruning.
2. The maintenance of gutters is the responsibility of the owner/occupier and the council is not obliged to remove leaves that may have fallen from council owned trees. Where gutters are regularly blocked by fallen leaves owners/occupiers may wish to fit gutter guards to provide a low-maintenance solution.
3. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.36 Sap

Policy: We will not prune or fell a council owned tree to remove or reduce honeydew or other sticky residue from trees.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. Honeydew is caused by greenfly (aphids) feeding on the tree, which excrete a sugary sap. Often the honeydew is colonised by a mould, which causes it to go black.
2. Unfortunately, there is little that can be done to remove the aphids which cause the problem and pruning the tree may only offer temporary relief. Re-growth is often more likely to be colonised by greenfly thereby potentially increasing the problem. Some trees, such as limes, are more prone to attack by greenfly and in some years greenfly are more common especially following a mild winter. Honeydew is a natural and seasonal problem. Where new trees are planted we try to choose trees which are less likely to cause this problem. Where honeydew affects cars, warm soapy water will remove the substance, as long as this is done promptly.
3. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.37 Wildlife - wild animal / insect pest

Policy: We will not prune or fell a council-owned tree to remove or reduce incidence of perceived pests such as bees, wasps, or wild animals.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.38 Utility Cables - overhead lines

Policy: We will undertake work to a council owned tree to prevent damage to overhead lines/telephone wires, if damage is occurring to poles, OHL's or other utility equipment.

Our response to this tree-related enquiry: Site inspection required.

Customer Advice:

1. The local utility provider undertakes clearance work of their OHL's on a cyclical basis and

should be contacted by the customer in the first instance.

2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.39 TV / satellite / telephone/ broadband reception

Policy: We will not prune or fell a council owned tree to prevent interference with TV or satellite, telephone or broadband reception.

Our response to this tree-related enquiry: site inspection not required.

Customer Advice:

1. It maybe that your service provider will be able to suggest an alternative solution to the problem, for example relocating the aerial/dish or a means to boost the signal.
2. If you wish to exercise your Common Law right to remove (abate) the nuisance associated with encroaching trees please see *Common Law Right*.

20.40 Ancient / veteran and high value specimen trees

Policy: The council will seek to help prolong the life of council owned Ancient, Veteran and High Value trees through inspection, protection and as a last resort remedial works.

Our response to this tree-related enquiry: There are a number of threats to Ancient/Veteran trees; these shall be identified through an inspection if required.

Customer response:

1. Where Ancient, Veteran or High Value trees are in private ownership: the Council will when appropriate offer advice to landowners who are the guardians of an Ancient, Veteran or high value tree

Threats to Ancient, Veteran or High Value trees:

1. Felling - for safety reasons, to increase tidiness, for change in land use (e.g. development or agriculture) or for landscape reasons
2. Change in land use (development or agriculture) or for landscape reasons
3. Competition from surrounding trees both planted and naturally occurring (or sudden release from competing trees)

Reasons for management:

1. Management of ancient trees is sometimes needed to ensure that the threats identified do not cause loss of the trees
2. The trees and their situation are checked at regular intervals and management carried out only if it is necessary.

20.41 Subsidence damage to property (tree-related)

Policy: We will prune or remove a council owned tree only where damage has been caused to buildings and other structures as a result of the action of council-owned or maintained trees. We vigorously defend claims of tree-related subsidence damage and require that the claimant and/or their representative supplies sufficient evidence to establish that the vegetation is responsible.

Our response rate to this tree-related enquiry:

a) Concerns about tree-related subsidence damage:

All concerns about tree-related subsidence damage involving a council owned tree will be acknowledged within 14 working days of receipt. In our response, we will advise that you need to notify your home insurer. In addition, we will advise you that you should contact us again if you wish to make a formal claim for damages or to formally notify us of your concerns about future damage. We would then respond as detailed below:

b) Claims / Notice of alleged tree-related subsidence damage:

All claims or notice of claims against the council relating to a council-owned tree will be acknowledged within 14 working days of receipt. In our response, we will tell you what evidence we require so that we may investigate your claim.

Customer Advice:

1. If you believe that your property is suffering subsidence damage due to the action of trees in council ownership (or that you are concerned about potential damage) then you should first contact your property insurer. You should discuss your concerns with your insurer to agree an appropriate course of action.
2. Should you, or those acting on your behalf, wish to make a claim for damages, or make formal representation of your concern about future damage, alleging that a council owned or maintained tree is causing (or may cause) subsidence damage to your property, then you should contact the council. Wiltshire Council will manage your claim / notice in accordance with the 'Joint Mitigation Protocol'. The Protocol details the management of alleged subsidence claims where trees are implicated as being the cause of building movement. The Protocol seeks to establish best practice in the processing and investigation of tree-induced building damage including agreed standards of evidence and working timescale. In response to your claim / notice we will write to you (or your representative) and detail the level of evidence required to process your claim.

20.42 Why was a tree pruned / felled?

Policy: A response to the question of why trees have been felled will be given whenever possible.

Our response to this tree-related enquiry: Clarification of why a tree is to be or has been felled. Customers will be informed within 14 working days of receipt of an enquiry.

Customer Advice:

1. Tree removal is regrettable but necessary in some circumstances. The decision to remove a tree is not taken lightly; most trees that need to be are felled because the tree has become unsafe and there is no cost-effective solution to otherwise retain it.
2. Trees are pruned for a variety of reasons including the removal of damaged or poorly-formed branches, to reduce the likelihood of failure by taking 'weight' out of the tree and generally to keep a tree as healthy and attractive as possible.

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