

APPENDIX 3

The District Council's statutory duties and powers in relation to the provision of public access

Statutory duties of West Berkshire Council

- 1.1 The District Council's fundamental statutory duties as both highway and surveying authority are to:
- Assert and protect the rights of the public to the use and enjoyment of any highway, including a duty to prevent, as far as possible, the stopping up or obstruction of highways. This will include a duty to maintain rights of way in a suitable condition and safe for the public use which is made of them.
 - Keep the Definitive Map and Statement under continuous review and up-to-date, as evidence for alterations or additional routes comes to light.
 - Establish a Local Access Forum.
 - Prepare and publish a Rights of Way Improvement Plan.
 - Protect users of rights of way from reasonably foreseeable risk (Health and Safety Legislation).
- 1.2 Related to these two main themes are other duties, for instance to provide adequate grass or other margins by a carriageway, where necessary or desirable for the safety or accommodation of ridden horses; to have regards for the needs of people with restricted mobility when authorizing structures on rights of way; to signpost rights of way where they leave roads and to sign rights of way to help people follow the routes. The Council must also arrange to keep copies of the Definitive Map and Statement available for public inspection.
- 1.3 Under the Disability Discrimination Acts 1995 and 2005, the Council must not discriminate against people with restricted mobility in the standard of provision of services.
- 1.4 Two National Trails traverse West Berkshire: The Ridgeway and the Thames Path. The principle of National Trails was established under statute in 1949. Natural England and West Berkshire Council work together to secure their management and implementation.
- 1.5 There is a duty across the whole Council to conserve biodiversity, set out by statute in 2006, which states: "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". The duty applies to all local authorities; community, parish and town councils; police, fire and health authorities; and utility companies.

Powers of West Berkshire Council

- 1.6 Various statutes confer powers on the District Council, and the most frequently-used and potentially useful of these are as follows:

- To make legal orders to create, divert or extinguish rights of way and, acting as the traffic authority, to make permanent and temporary traffic regulation orders to regulate the use of rights of way.
 - To authorise new stiles or gates; to maintain stiles or gates and to require the removal or widening of gates. To enter into agreements with landowners to carry out such work in the interests of those with restricted mobility.
 - To require the abatement of nuisance caused by adjacent barbed wire and the cutting or felling of trees or hedges that are overhanging or a danger.
 - To fence dangerous land adjoining a right of way.
 - To prosecute if expedient for the promotion and protection of the interests of the inhabitants of the area.
 - To 'consolidate' the Definitive Map and Statement, by incorporating all legal changes into one document and republishing.
 - To appoint wardens.
- 1.7 Part 1 of the Countryside and Rights of Way Act 2000 set out new areas of land for public access. Such open access land in West Berkshire comprises registered common land and certain areas of heathland and downland. As the access authority, the District Council possesses powers of management, which include the making of byelaws; the appointment of wardens; the installation of notices; and agreements with owners relating to the construction of access to land.

Powers and duties of other bodies

- 1.8 For footpaths and bridleways, a **parish council** may carry out maintenance and erect lighting or erect notices warning of local dangers. It may prosecute those who crop or plough without restoration, or obstruct any right of way. It may signpost and waymark rights of way (with the consent of the District Council) and create new footpaths or bridleways with the consent of the landowner.
- 1.9 Any stile or gate across a right of way must be maintained by **the landowner** in a safe and convenient condition. Where vegetation in the ownership of land adjacent to a right of way grows to cause obstruction to the public, the District Council has powers to require removal of the obstructing vegetation by the owner or occupier. An owner or occupier must also ensure that no obstruction or other inconvenience to the public is caused by ploughing and cropping of a right of way. Under certain circumstances, a landowner may exclude the public from statutory open access land, following a serving of Notice on Natural England.

- 1.10 'Towpaths' in West Berkshire lie along the banks of the River Thames and the Kennet and Avon Canal, and may or may not also be public rights of way (public rights of way are separate and distinct from any rights of towage). **British Waterways** has a duty to maintain its commercial and cruising waterways in a suitable condition for vessels driven by mechanical power. British Waterways takes the view that this duty does not oblige it to maintain towpaths, but in practice it sometimes does so, for instance sections of the Kennet and Avon Canal footpath for which, as owner, it permits access for cycling. British Waterways is under a general duty to have regard to the desirability of preserving for the public any freedom of access to towing paths and open land.
- 1.11 **The Environment Agency** is under a general duty to promote the use of its land for recreational purposes, but has no specific duty to maintain towpaths.
- 1.12 Where towpaths coincide with public rights of way, the statutory responsibility to maintain the right of way rests with the District Council.
- 1.13 Powers have been conferred by statute on statutory undertakers (e.g. water or gas companies) to excavate any highway for the purpose of installing or repairing pipes or cables.