

**SURREY CODE OF BEST PRACTICE
IN RIGHTS OF WAY PROCEDURES**

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THE SURREY CODE OF BEST PRACTICE IN RIGHTS OF WAY PROCEDURES

1 INTRODUCTION

- 1.1 The Surrey Code of Best Practice has been produced so that there is clarification regarding the procedures in rights of way when they go to Local Committees for decisions.
- 1.2 This Code should be considered in conjunction with the Members' Code of Conduct, the Member/Officer Protocol and the Media & Publicity Protocol.
- 1.3 Local Committees have four roles. They:
 - decide on local services and budgets delegated to them by the Cabinet
 - decide on local services and functions handed down to them within a framework of agreed performance standards and budgets
 - monitor the quality of services locally
 - engage local people in issues of concern, and influence the County Council and its Cabinet on county-wide plans and services in the light of local needs.
- 1.4 One of those areas of responsibility is rights of way issues. Those issues include but are not limited to rights of way diversions, definitive map modification orders, and traffic regulation orders.
- 1.5 To have your say on Rights of Way items please visit the Local Committees pages where guidance is available for speaking at Local Committee on those issues. The Rights of Way public notices page also advertises legal orders, which keep members of the public informed about current orders.

2 SUMMARY

- 2.1 The Surrey Code of Best Practice in Rights of Way Procedures is to clarify what Members can expect from Officers, and the public from Members, for all committee decisions relating to public rights of way in Surrey.
- 2.2 All rights of way decisions considered by a Local Committee (or other decision-making committee) will be the subject of full, written reports from officers incorporating firm recommendations. The reasons given by the committee for refusing or granting a recommendation should be fully minuted, especially where these are contrary to officer advice and/or Surrey County Council or other policies.

- 2.3 Members taking part in the consideration of items relating to rights of way issues are encouraged to undertake a period of training in rights of way procedures as specified by the Authority.
- 2.4 Members and officers should avoid indicating the likely decision on a procedure or otherwise committing the Authority during contact with applicants and objectors.
- 2.5 The law and guidance on the declaration of disclosable pecuniary interests as set out in the Member's Code of Conduct and the Council's Standing Orders, must be observed and upheld by all Members and officers.

3 The Code

- 3.1 The Surrey Code of Best Practice in rights of way procedures is to clarify what Members can expect from Officers and the public from Members for all decisions relating to public rights of way in Surrey.

4 Training

- 4.1 Members are encouraged to undertake a period of training in rights of way procedures before taking part in the formal consideration (and voting) of items relating to rights of way issues.
- 4.2 The County Council will from time to time consider and review the form of training that is most appropriate. Such training will also be required for both ex-officio Members and substitutes. A register of those who have attended training will be kept.
- 4.3 In the first instance there will be a series of short seminars by Countryside Access Officers on the legal and practical aspects of the operation of the relevant legislation and procedures surrounding rights of way matters.
- 4.4 This training will be open to all Members and brief handouts will be provided where appropriate. The Council will welcome suggestions from Members on any other subjects that they would like to see covered and any other training procedures that they would wish to adopt.

5 Lobbying of and by Councillors

Members and officers should avoid indicating the likely decision on an application or otherwise committing the Authority during contact with applicants and objectors.

- 5.1 Members should keep an open mind when considering rights of way items in accordance with the relevant considerations. Members must not favour any person, company, group or locality. However Members who have previously done something that directly or indirectly indicated what view they took, would or might take in relation to a matter and the matter was relevant to the decision but who come to the committee prepared to hear all relevant considerations, will not be perceived to have a closed mind when voting on the item.

- 5.2 Members involved in decision making on rights of way items should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Members, act as advocate or put pressure on officers for a particular recommendation. However, Members not on the Committee can make written representations on an item.

6 Attendance at public meetings

- 6.1 Where possible Members who attend public meetings, should inform an Officer so they can attend and take notes. Wherever possible, such meetings should ensure that representatives of both proposers and objectors are allowed to present their views.
- 6.2 It is recognised that Members will be subject to lobbying on specific rights of way matters. In such cases it is essential that care is taken to maintain the Council's and Members' integrity and to protect the public perception of the processes involved with rights of way matters.
- 6.3 Whilst Members should bring to rights of way decisions a sense of the community's needs and interests, they have the difficult task of marrying their duty to represent the interests of the community with an obligation to remain within the constraints of national legislation. They must only take account of relevant matters laid by the relevant Act under which the right of way issue is being considered. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report will deal specifically with these matters so that Members can arrive at an informed decision.

7 Site Visits

- 7.1 The purpose of a site visit conducted by Members and officers is to gain information relating to the rights of way decision and which would not be apparent from the officer's report and recommendation to be considered by the Committee. A site visit may also assist Members in matters relating to the context of the decision in relation to the characteristics of the surrounding area.
- 7.2 Formal site visits will be held where there is a clearly identified benefit to be gained from holding one i.e. where a proposal is contentious or particularly complex and the impact is difficult to assess or visualise from the submitted information or plans contained in the information before the Committee. The Committee Manager or Countryside Access Officer will keep a record of why such visits are being held and who attended.
- 7.3 The need for a site visit will be determined by the Countryside Access Manager in consultation with the Chairman of the Committee in advance of the report being considered by the Committee. All Members of the Committee will be invited to attend the site visit, together with the local Member(s), or Members may defer making a decision until they have held one.
- 7.4 All Members attending site visits should be accompanied by an officer. If access to private land is necessary, the Committee Manager in consultation with the case officer will secure the prior agreement of the land owner/tenant/applicant who will be advised that lobbying is unacceptable and that only factual answers or information should be given to Members.
- 7.5 At the discretion of the Chairman of the Committee, the relevant District and Parish Councils will be notified of any site visit and invited to attend and observe. Any persons present at a site visit who are neither Members nor officers of the Council may observe but not participate in the site visit.

8 Declaration and registration of interests

Members will make oral declarations at a Local Committee of significant contact with applicants and objectors, in addition to the usual disclosure of pecuniary interests.

- 8.1 The law and guidance on the declaration of personal and prejudicial interests as set out in the Members' Code of Conduct and the Council's Standing Orders, must be observed and upheld by all Members and officers. At Committee meetings Members will make oral declaration of significant contact with applicants or objectors.
- 8.2 Members should bear in mind the potential for their interests to affect the decisions they may take on such matters, even if such interests do not amount to disclosable pecuniary interests. If a Member's interest in a matter would lead them to predetermine a decision, it would not be appropriate for that Member to participate in the decision, even if they are not subject to any statutory prohibition relating to disclosable pecuniary interests. If they were to do so, they would be at risk of breaching the code of conduct and making the authority's decision vulnerable to challenge.

9 Officer reports to Committee

- 9.1 All items considered by the Committee will be the subject of a full written report by officers, which incorporates firm recommendations. These reports will consider national legislation, Surrey County Council policies and guidance, and representations made by statutory consultees, local residents and other interested parties. The report will contain all the relevant material known at the time the report is despatched to Members. An updating sheet will be provided at Committee only if there have been any significant developments or changes to the report.
- 9.2 Rights of Way items, which may be submitted to the Planning and Regulatory Committee for determination will relate to: Minerals and Waste applications, cross boundary applications and locally contentious issues.
- 9.3 Decisions for rights of way on Surrey County Council, Borough or District land will be treated in the same way as any decision on private land. Decisions will be made strictly on legislation and Surrey County Council policy without regards to any financial or other gain that might accrue to the Council in respect of the decision. The County Council recognises that its own rights of way applications may not be treated any differently from any other.
- 9.4 Applications for changes to the rights of way network relating to Minerals and Waste applications will be considered by the Planning and Regulatory Committee usually when the decision on the planning application itself is made.
- 9.5 Definitive Map Modification Orders must be determined either way within twelve months in accordance with national legislation; officers conduct a comprehensive consultation and all responses get included in the officers report. Should Members recommend deferring the decision of an application a reason must be fully minuted. New evidence can be submitted to Officers, and a recommendation taken back to the following Local Committee.

9.6 Where rights of way proposals cross Borough and District boundaries, a report would normally go to both Local Committees. For example, in the consideration of Traffic Regulation Orders a report has to go twice; once for a decision on whether to publish a Notice of Intention to make an order and a second time to consider any representations from that Notice and determine whether an Order should be made. In this instance, the rights of way application may go to the Planning and Regulatory Committee for determination following an initial consultation with the appropriate local committee chairmen. Similarly, the Planning and Regulatory Committee can consider items that are particularly contentious locally.

10 Determination of rights of way matters

- 10.1 The reasons given by a Local Committee for refusing or granting a recommendation should be fully minuted, especially where these are contrary to officer advice or the county policy.
- 10.2 The County Council recognises that rights of way decisions are often matters of fine judgement where the balancing of considerations is difficult. The officer's report will normally rely heavily on national legislation and the Council's policies for Rights of Way as stated in the Rights of Way Statement for Surrey (January 2010). Members may wish to exercise their discretion to choose a recommendation as an exception to policy or may not agree with the recommendation. Where the Committee wishes to make a decision contrary to the officer's recommendations (whether for approval or refusal) the Committee will agree the reasons for the decision during the debate on the item, after taking advice from officers. If for any reason this cannot be completed during the debate, the Committee may delegate approval of the detailed drafting of the reasons to the Committee Chairman in consultation with officers. Should the matter end at Public Inquiry as a result of the decision, a Member will be required to attend and give evidence in support.
- 10.3 There is nothing to prevent a Member from seeking advice from officers, including advice on wording for an alternative recommendation, before a Committee meeting provided that he/she comes to the meeting with an open mind.
- 10.4 There will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed, which is contrary to an officer recommendation. In such cases the Chairman will summarise, or cause to be summarised, the salient points of the debate. They will also ensure the text of the proposition is clearly understood before putting the matter to the vote. The officers have a duty to support the decisions of the Committee.
- 10.5 A Member shall decline to vote in relation to any rights of way decision unless he or she has been present in the meeting of the Committee throughout the consideration of that particular item.
- 10.6 Members of the public and their representatives may address the Local Committee on items relating to public rights of way being considered by the Committee. Speakers must first register their wish to speak by telephone or in writing/e-mail to the Community Partnership & Committee Officer by 12 noon one working day before a meeting stating on which item(s) they wish to speak.

10.7 Only those people who have previously made written representations to the Countryside Access Team, in response to an item will be entitled to speak. These representations should have been received during the formal consultation period. Further information about speaking at Local Committees can be found on the Surrey County Council website.