

**PLANNING AND HEALTHIER
STRONGER COMMUNITIES POLICY
ADVISORY COMMITTEE**

2 OCTOBER 2024

PROW DELEGATION TO KCC

| Timetable | |
|---|--------------------|
| Meeting | Date |
| Planning and Healthier Stronger Communities Policy Advisory Committee | 2 October 2024 |
| Cabinet Member for Planning Policy and Management | By 23 October 2024 |

| | |
|---------------------------------------|---|
| Will this be a Key Decision? | No |
| Urgency | Not Urgent |
| Final Decision-Maker | Cabinet Member for Planning Policy and Management |
| Lead Head of Service | Rob Jarman |
| Lead Officer and Report Author | Marion Geary |
| Classification | Public |
| Wards affected | All |

Executive Summary

This report sets out the background to legislative changes to the Highways Act 1980.

The issue is to be considered by the Planning and Healthier Stronger Communities Policy Advisory Committee before being passed to the Cabinet Member for Planning Policy and Management.

Purpose of Report

Recommendation to Cabinet Member for Planning Policy and Management.

This report makes the following recommendations to the Cabinet Member for Planning Policy and Management: That

1. An agreement be made for applications for the extinguishment or diversion of Public Rights of Way under the Highways Act 1980 Amendments (Sections 118ZA and 119ZA) to be delegated to Kent County Council under Section 101 Local Government Act 1972.

PROW DELEGATION TO KCC

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off |
|---------------------------------------|--|------------------------------------|
| Impact on Corporate Priorities | <p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council’s overall achievement of its aims as set out in section 3</p> | Head of Development Management |
| Cross Cutting Objectives | <p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations do not harm the achievement(s) of the cross cutting objectives</p> | Head of Development Management |
| Risk Management | <p>The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council’s Risk Management Framework.</p> | Head of Development Management |
| Financial | <p>The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.</p> | Section 151 Officer & Finance Team |
| Staffing | <p>We will deliver the recommendations with our current staffing.</p> | Head of Development Management |
| Legal | <p>Accepting the recommendations will fulfil the Council’s duties under the Highways Act 1980 Amendments (Sections 118ZA and 119ZA) Acting on the recommendations is within the Council’s powers as set out at Section 101 Local Government Act 1972.</p> | Deputy Head of Legal |

| | | |
|--|--|--------------------------------|
| Information Governance | The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council Processes. | Information Governance Team |
| Equalities | The recommendations do not propose a change in service therefore will not require an equalities impact assessment | Head of Development Management |
| Public Health | We recognise that the recommendations will not negatively impact on population health or that of individuals. | Head of Development Management |
| Crime and Disorder | There are no implications to Crime and Disorder | Head of Development Management |
| Procurement | n/a | Head of Development Management |
| Biodiversity and Climate Change | There are no implications on biodiversity and climate change. | Head of Development Management |

2. INTRODUCTION AND BACKGROUND

- 2.1 Changes are being made to the Highways Act 1980. These changes (new sections 118ZA and 119ZA) will give landowners a "right to apply" to divert or close public paths on some types of their private land. The Department for Environment, Food and Rural Affairs (DEFRA) is working on the necessary regulations to implement these changes. The new rules and the related administrative tasks will apply to both the County Council and District Councils. To ensure consistency in handling and deciding on these applications, Kent County Council (KCC) is asking District Councils whether they wish to delegate their powers under the new provisions to KCC.
- 2.2 KCC currently deal with all applications for the extinguishment, diversion and creation of all public rights of way under the Highways Act 1980. However, MBC deals with a limited number of cases per annum (on average, 6) that derive from the Town and Country Planning Act 1990 where the diversion or extinguishment of a public path is required only in order for operational development to lawfully progress, (ie. as a result of a planning permission). The new provisions have no bearing on these existing arrangements or the TCPA 1990 powers exercised by the districts.
- 2.3 In March 2024, KCC's Head of Public Rights of Way and Access advised Joint Kent Chief Executives of changes to the Highways Act having implications for District Councils.
- 2.4 On 11 September 2024, KCC reported to its Growth, Economic Development and Communities Cabinet Committee in summary the following:

- New legislation is imminent giving landowners a “right to apply” for a public path extinguishment or diversion order where it passes through a garden or curtilage of a residential dwelling, a farmyard or other commercial or industrial premises
- The new legislation gives the power to make such Orders under the Highways Act 1980 to both the county **and** district councils.
- The new legislation will require determination “as soon as reasonably practicable” and in any event within 4 months of receipt.
- An applicant may choose to apply to MBC. This is likely where KCC has previously rejected a proposal or where the applicant believes that KCC may reject a proposal
- KCC recommend that all Kent Districts delegate these new Highways Act 1980 powers to KCC
- Councils should be able to recover the costs incurred
- KCC would be required to consult MBC in respect of all Public Path Orders
- If MBC were to lodge an objection that is not resolved/withdrawn the matter would pass to the Secretary of State for determination

2.5 PROW diversions and extinguishments require a high degree of expertise that MBC does not currently have but KCC does. Without delegating this new power, MBC would have to develop its own administrative processes whereas KCC already have these in train. Lastly, a quick turnaround time will be required because of the new legislation.

2.6 MBC would need to be prepared in advance for the introduction of the amendments. Normally the legislation can be enacted within 28 days although it is understood that DEFRA may give 3-6 months’ notice in this case. Therefore, MBC would need to have set up the delegation arrangements in advance.

2.7 KCC has resolved to set up authorisation to accept any delegation requests from districts.

3. AVAILABLE OPTIONS

3.1 **MBC Deliver:** This would mean additional staff with the required expertise to determine any applications received, and also publish charges, application forms, guidance and a schedule of applications. (i.e the administrative requirements)

3.2 **MBC Delegate to KCC:** Section 101 Local Government Act 1972 allows local authorities to delegate their functions to another local authority, but it does not prevent them from later deciding to take back those powers. The delegation is done through a formal resolution, and similarly, revocation would require a formal resolution by the Borough Council.

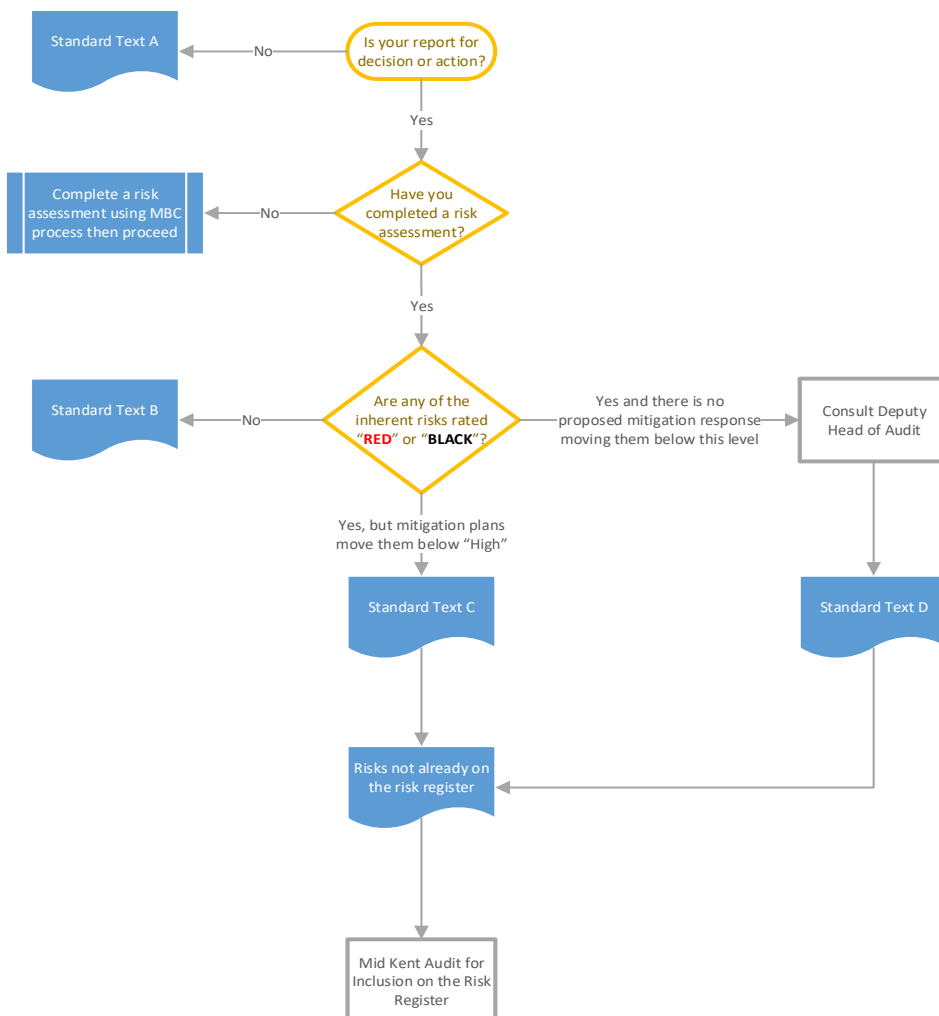
4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 **MBC Delegate to KCC:** Section 101 Local Government Act 1972

allows local authorities to delegate their functions to another local authority, but it does not prevent them from later deciding to take back those powers. The delegation is done through a formal resolution. This is the preferred option.

- 4.2 It is understood that all of the Kent districts have indicated an intention to delegate, so MBC delegating to KCC would secure economies of scale and a Kent wide consistency in charges, application forms, guidance and a schedule of applications.
- 4.3 It is recommended that, save for those orders already dealt with pursuant to the Town and Country Planning Act 1990, KCC should deal with all types of PROW applications under the Highways Act 1980 because they have the expertise and resources and there would be no cost to MBC.
- 4.4 It is recommended that this delegation in regard of the new sections of the legislation should be agreed in advance of its enactment to ensure a smooth transition once the provisions come into operation.

4 RISK



The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 N/a

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 It is recommended that, save for those orders already dealt with pursuant to the Town and Country Planning Act 1990, KCC should deal with all types of PROW applications under the Highways Act 1980 because they have the expertise and resources and there would be no cost to MBC. This will be by agreement using Section 101 Local Government Act 1972.
- 6.2 It is recommended that this delegation in regard of the new sections of the legislation should be agreed in advance of its enactment to ensure a smooth transition once the provisions come into operation.
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7 BACKGROUND PAPERS

<https://democracy.kent.gov.uk/documents/s126595/Amendments%20to%20the%20Highways%20Act%201980%20Report.pdf>

<https://democracy.kent.gov.uk/documents/s126553/Appendix%20A%20-%20Proposed%20Record%20of%20Decision.pdf>

<https://democracy.kent.gov.uk/documents/s126554/Appendix%20B%20-%20Rights%20of%20Way%20Improvement%20Plan%202018-2028.pdf>

<https://democracy.kent.gov.uk/documents/s126555/Appendix%20C%20-%20EQIA.pdf>