

Committee	Lead Cabinet Member for Transport and Environment
Date	26 July 2010
Report By	Director of Transport and Environment
Title of Report	Draft Policy for the Management of Motorised Vehicles on Public Byways in East Sussex
Purpose of Report	To approve the draft 'Policy for the Management of Motorised Vehicles on Public Byways in East Sussex.'

RECOMMENDATION: The Lead Member is recommended to approve the draft 'Policy for the Management of Motorised Vehicles on Public Byways in East Sussex.'

1. Financial Appraisal

1.1 Where the draft policy requires a permanent seasonal byway closure, East Sussex County Council's costs are at most £1,000. This cost includes legal order-making and the installation of structures or gates to prevent off-road motorised vehicle (e.g. 4x4) access during the winter season.

1.2 This policy was trialled on four recently-resurfaced unsealed byways over the winter of 2009-10. Prior to this resurfacing, these byways had been closed to all users for some time due to surface damage caused by inappropriate 4x4 use over winter. Overall, surface improvements to these four routes cost £75,000.

1.3 During this trial the four byways were closed to 4x4s, whilst access for all other users was permitted. These closures had a one-off cost of around £4,000 in total – including order making and gating costs.

1.4 Byway resurfacing is one of the highest-cost activities carried out by the Rights of Way Team at around £64,000 per mile. Unsealed byway surfaces are most susceptible to damage from vehicles during wet weather – in particular over the winter period. Therefore, initial one-off expenditure on seasonal closures will protect paths from damage and significantly reduce long-term surface maintenance costs.

1.5 Based on current information, it is likely that one additional byway will be seasonally closed in 2010-11.

2. Supporting Information

2.1 A byway is a right of way for vehicles - mainly used by the public on foot or horseback. Around 2% (44 miles or 71km) of the 2040 mile Rights of Way (RoW) network in East Sussex is byway. As Highway Authority, East Sussex County Council has a statutory duty to maintain all path surfaces to a safe condition for public use.

2.2 Although byways form a small proportion of the RoW network in East Sussex, a significant number of reports regarding user conflict or inappropriate vehicular usage causing surface damage are regularly received from the public, parish councils and user groups.

2.3 This policy aims to set out East Sussex County Council's procedures for managing motorised vehicle use of its byway network. The policy has been written to be consistent with DEFRA's 'Making the Best of Byways' guidance and the aims of the East Sussex Rights of Way Improvement Plan (ROWIP.) In particular, DEFRA's guidance recommends "that a clear policy is developed by Highway Authorities to manage byways and minimise (user) conflict" whilst a key ROWIP aim is to "develop a clear policy framework for managing and maintaining all the county's byways."

2.4 Once a legitimate problem caused by 4x4 use is identified on a byway, three courses of action are generally available to the Highway Authority: monitoring, maintenance or restraint. ESCC will prioritise any maintenance to benefit non-motorised users.

2.5 The most common type of restraint is of 4x4s. Prior to proposing restraint on a route, consultation and recommendations will be sought with user groups, statutory consultees, land owners and the East Sussex Local Access Forum (ESLAF).

2.6 Where Traffic Regulation Order's are made, enforcement is likely to require physical barriers to restrict the affected users.

2.7 The ESLAF was consulted during the drafting of this policy. The Forum also provided advice on proposals to restrict access in relation to specific byways. (See Appendix 2)

2.8 Following ESLAF advice, the policy was trialled by closing four recently improved byways to 4x4s between October 2009 to April 2010. This trial proved very successful with no surface damage occurring on these byways during the period of closure. The only comment received from user groups or the public was a compliment from the Trail Riders Fellowship, an off-road motorcycle organisation.

3. Conclusion and Reason for Recommendation

3.1 The trial of this policy over the last winter has proved successful in balancing user access with the need to protect East Sussex County Council's investment in improved byway surfaces.

3.2 This draft policy has been informed by advice from the ESLAF and is in line with DEFRA guidance and ROWIP aims. The draft policy has been endorsed by the ESLAF.

3.3 One-off costs associated with appropriate seasonal byway closures will reduce maintenance costs in the long-term due to a reduction in the amount of surface damage that occurs during the winter season.

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Director of Transport and Environment

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Local Members: All

BACKGROUND DOCUMENTS:

Making the Best of Byways, DEFRA, Dec. 2005.

Rights of Way Improvement Plan 2007-2017, East Sussex County Council, 2007.

Policy for the Management of motorised vehicles on Public Byways in East Sussex

Contents:

- 1. Introduction**
- 2. The public byway network in East Sussex**
- 3. The need for a policy**
- 4. How we will manage motorised vehicle use of public byways**
- 5. Policy Statements**

Appendices

1. Introduction

Aim of Policy: To set out the County Council's procedures for managing motorised vehicle use of the byway network in East Sussex.

As Highway Authority, East Sussex County Council (ESCC) has a statutory duty to assert and protect the rights of the public to use the County's 2040 mile rights of way network. This is primarily achieved through exercising the Council's maintenance and enforcement powers and duties.

The rights of way network is made up of footpaths, bridleways, restricted byways and byways open to all traffic.

A byway open to all traffic, referred to as 'byways' in this policy, is a right of way for vehicles which is mainly used by the public on foot or horseback. As Highway Authority, the County Council has a statutory duty to protect *all* public rights that exist over a byway. The County Council is also responsible for maintaining the surface of a public right of way and has powers to carry out improvements.

Whilst byways form a small proportion of the rights of way network in East Sussex, a significant number of reports regarding user conflict, inappropriate vehicular usage or surface damage are regularly received from the public, parish councils and user groups.

This policy will be reviewed as necessary on an annual basis after each winter season.

2. The public byway network in East Sussex

Around 2% (44 miles or 71km) of the Rights of Way network in East Sussex is recorded as a byway open to all traffic. (See Plan 1 below.) This network is relatively fragmented in terms of cohesive off-road vehicular links. Geological conditions vary considerably across the county, e.g. from well-drained chalk downland in the south of the county to heavy wet clay and sandstone in the Low and High Weald respectively. This also impacts upon the durability of particular routes and the management approaches that are needed to manage access. (See Appendix E of the East Sussex Rights of Way Improvement Plan for further detail.)

The assessment and management of geological differences is to be undertaken on a case-by-case basis.

3. The need for a policy

In Making the Best of Byways, DEFRA states that ‘in general, there is minimal direct conflict between byway users.’ (Section 2.1) This statement is, in the main, true in East Sussex. However, conflict between users does on occasion arise – primarily due to:

- a) Surface damage caused by inappropriate or heavy public or private vehicle use or as a result of a lack of Highway Authority maintenance. This can render routes unusable for all users.
- b) Noise from off-road vehicles affecting local residents.
- c) Damage to the local environment or ecology by off-road vehicles.

DEFRA’s Making the Best of Byways recommends “that a clear policy is developed by Highway Authorities to manage byways and minimise conflict.” (Section 2.1)

4. How we will manage motorised vehicle use of public byways

The management approach detailed in this policy will be based on and guided by the recommendations contained in Making the Best of Byways. There will, however, inevitably be a need for any recommendations to be set in the context of East Sussex County Council’s available resources. (E.g. funding being available to carry out surface improvements etc.)

Rights of Way Improvement Plan considerations:

The Statutory Guidance on Rights of Way Improvement Plans issued by DEFRA states: *“wherever possible, proposals for improving rights of way should not unduly benefit one class of user at the expense of another. Improvements that are intended to benefit cyclists, harness-horse drivers, horse riders or walkers should not unduly restrict lawful motorised use of public vehicular rights of way”.*

This Guidance goes on to say that:

“the management principles set out in ‘Making the Best of Byways’ may be used to avoid conflict over the use of byways that are regularly used by vehicles”.

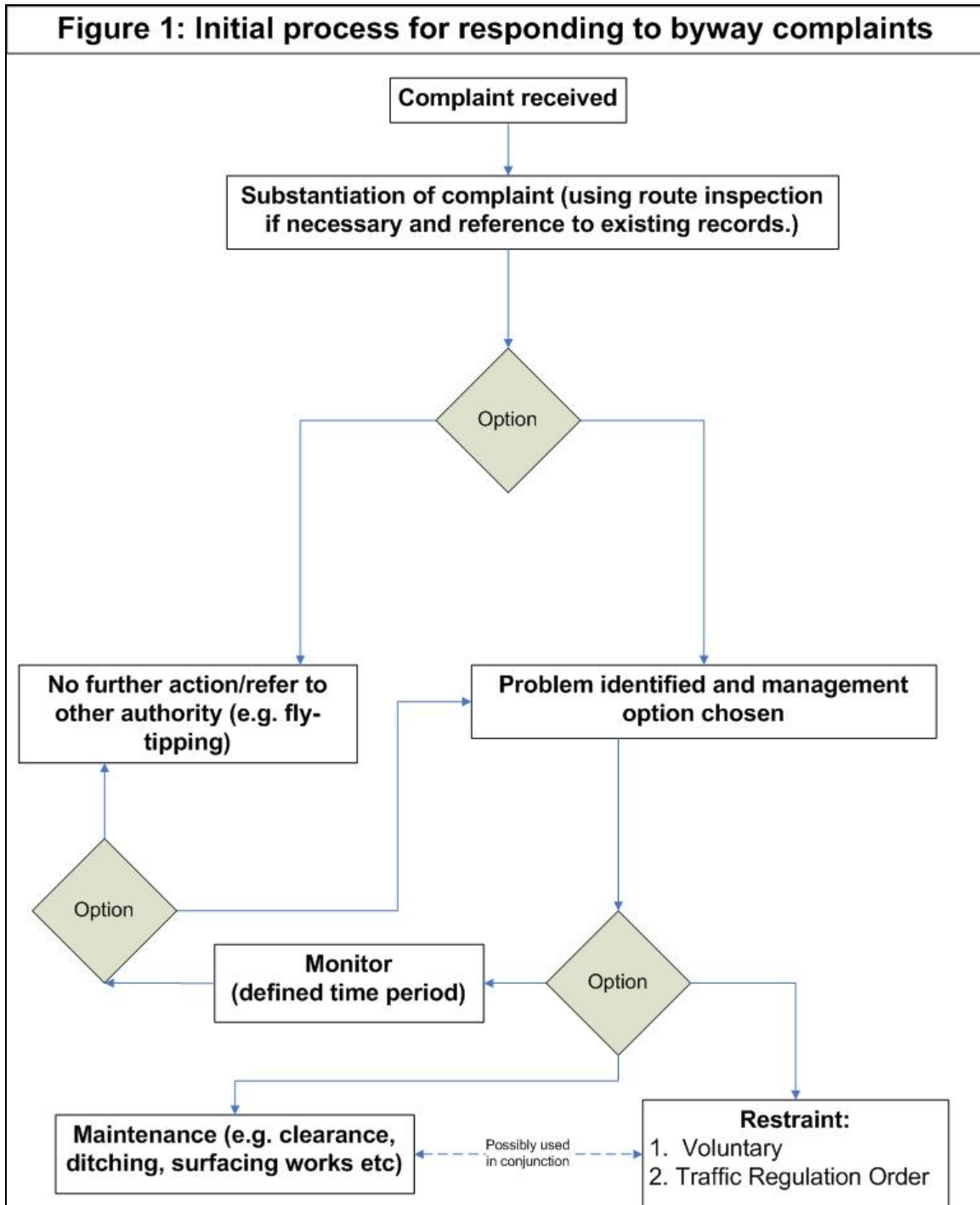
East Sussex’s Rights of Way Improvement Plan also specifies the following aims in relation to byway management:

<p>Objective 2a: Encourage and assist volunteers to help with work on public rights of way, including improvement work as well as basic maintenance.</p> <p>Action: To work with recreational motor user groups to adopt a county-wide 'code of conduct' for use of vehicular rights of way</p>
<p>Objective 3f: Limit the use of legal orders to control public use of byways open to all traffic.</p> <p>Action: To use a TRO (Traffic Regulation Order) as a last resort where recreational motor vehicle use is causing damage to the surface of a byway open to all traffic.</p>
<p>Objective 4c: Recognise that some users of motor vehicles on BOATS are disabled and this may be their main method of accessing the countryside.</p> <p>Action: Ensure that the needs of the disabled and others with mobility problems are properly considered before proposing restrictions on a BOAT.</p>
<p>Objective 4d: Improve the surface of specified bridleways and byways to facilitate use by cyclists and people in wheelchairs.</p> <p>Action: i. Maintain a list of bridleways and byways which could be particularly useful to cyclists and people in wheelchairs and improve them when opportunities arise.</p> <p>ii. Agree with relevant interested parties a maintenance standard for each publicised 'off-road' multi-user route.</p>

Objectives 3f and 4c will be addressed as part of this policy. Objectives 2a and 4d will not be dealt with under this policy but will be progressed directly by the East Sussex Local Access Forum and the prioritisation of available maintenance resources.

4a. The policy in practice:

If complaints regarding a byway's condition or reports of user conflict are received, the process below (figure 1) will initially be followed by the inspecting officer:



Route inspection and accurate record-keeping will be used to assist with identifying and dealing with byway problems – especially as such issues can run over several years.

East Sussex County Council will prioritise the inspection, assessment and management of byway issues according to principles contained in the Rights of Way Team's priority statements (Appendix 3.)

4b. Management options:

Once a legitimate problem is identified on a byway, three courses of action are generally available to the Highway Authority:

1. Monitor.

Following inspection, the relevant officer may recommend that regular monitoring of the byway is carried out. It may also be possible for these inspections to be undertaken by volunteers, parish councils or user groups.

2. Maintenance.

Byway improvement may involve major or minor works (e.g. surfacing, ditching, grading, signage, vegetation clearance etc.) It may be necessary for these works to be carried out in conjunction with user restraint.

Due to the varying local conditions on the byway network, maintenance works will be specified on a case-by-case basis. The level and type of public use over the byway in question will also be taken into account when undertaking maintenance improvements.

East Sussex County Council will prioritise maintenance to benefit non-motorised users.

3. Restraint.

It may be necessary to instigate either voluntary or regulatory restraint on a byway to protect its physical condition, users or the local environment. Based on this Council's current experience in East Sussex, the most common restraint is of four-wheeled motorised vehicles – e.g. 4x4s. This can be implemented through LARA's voluntary restraint mechanism.

Any restraint will be applied in keeping with the ROWIP aims detailed in 4.1. Prior to proposing restraint on a route consultation will take place with user groups, statutory consultees, land owners and the East Sussex Local Access Forum (ESLAF.)

The type of restraint applied (e.g. seasonal, experimental, permanent etc.) and the category of user restrained will be based on proven existence of a problem as well as user group and ESLAF recommendations. The effectiveness and suitability of any restraint will also be monitored or reviewed at appropriate times. (E.g. In the spring following a winter/seasonal closure.)

Enforcement of TROs is likely to involve barriers to restrict the affected users. Due to varying local conditions, barriers will be specified on an ad-hoc basis but taking account of users who continue to have access to the route. It is worth noting that barriers are often not effective at stopping some categories of user, e.g. motorbikes.

Restraint will also take account of any private rights of access along a byway. This will be addressed on a case-by-case basis in consultation with relevant landowners. For example, it may be necessary to provide keys to authorised persons to allow private access to property etc.

As well as the above considerations, management of byway issues will also be undertaken in line with the recommendations contained within DEFRA's Making the Best of Byways guide.

5. Policy Statements:

- 5.1 This policy will be reviewed as necessary on an annual basis after each winter season. This policy will concern itself specifically with the management of unsealed routes. Management of byway issues will also be undertaken in line with the recommendations made by DEFRA's Making the Best of Byways guide.
- 5.2 This Council will prioritise the management of byway issues according to the principles contained in the Rights of Way Team's priority statements. (Appendix 3.)
- 5.3 This Council will prioritise maintenance works to benefit non-motorised users.
- 5.4 The standard of maintenance works will be assessed on a case-by-case basis in reference to the existing condition of the route and level and type of public use over the byway in question. Other local considerations (e.g. ecology, geology, archaeology etc.) will also be taken into account.
- 5.5 This Council will work with recreational motor user groups to adopt a county-wide 'code of conduct' for use of vehicular rights of way.

- 5.6 This Council will use TROs as a last resort where recreational motor vehicle use is causing damage to the surface of a byway open to all traffic.
- 5.7 Prior to proposing restraint on a route, this council will consult with user groups, statutory consultees, land owners and the East Sussex Local Access Forum (ESLAF.) Occasionally, it may be necessary to urgently close a public byway to protect public safety. In such cases, and due to the timescales involved, consultation will not be carried out.
- 5.8 Restraint applied by this Council, and the category of user restrained, will be based on either (a) the proven existence of a problem in conjunction with user group and ESLAF recommendations, or (b) a precautionary approach following major expenditure on improvements, while a new surface consolidates.
- 5.9 This Council will ensure that the needs of the disabled and others with mobility problems are properly considered before proposing restrictions on a BOAT.
- 5.10 The Council will review and monitor the effectiveness and suitability of any restraint at appropriate times.

Appendix 1 – List of terms

Bridleway – a route over which the public have a right of way on foot, bicycle or horseback

Byway/Byway Open to All Traffic (BOAT) – a public right of way for vehicles which is mainly used by the public on foot or horseback.

DEFRA – Department for the Environment, Food and Rural Affairs

ESLAF – East Sussex Local Access Forum, a statutory meeting that advises on access issues in the County.

Footpath – a route over which the public have a right of way on foot only.

4x4/four-by-four vehicle – a motorised off-road, four-wheel drive vehicle.

Highway Authority – A body responsible for the administration of public roads and paths – in this case, East Sussex County Council

LARA – Land Access and Recreation Association, a user group organisation that represents leading national associations in motor sport and recreation

Making the Best of Byways – DEFRA's guidance on managing motorised vehicles on Byways.

Multi-user route – A route with public rights for more than one category of user – i.e: bridleway, byway or restricted byway.

Non-motorised user – e.g. walkers, cyclists, horse-riders and carriage drivers.

Off-road vehicle – a two, three or four-wheeled vehicle with off-road capabilities.

Private use/Private right of way – Private rights to use a path can co-exist with public rights. E.g. A landowner may have private rights to drive along a footpath.

Public right of way – A route over which the public have legally recorded rights.

Recreational motor user groups – User groups that represent motorised interests – e.g. LARA or the Trail Riders Fellowship.

Restricted byway – A route over which the public have access on foot, bicycle, horseback and in a non-motorised vehicle. E.g. A horse and carriage.

Rights of way priority statement – An internal ESCC document used to prioritise Rights of Way workloads.

ROWIP – Rights of Way Improvement Plan A statutory plan running from 2007-2017 which outlines broader aims and specific plans for improving public access on the Rights of Way network.

Sealed surface – a path with a sealed surface, e.g. constructed of concrete or stone chips bound by asphalt.

Statutory consultees – consultees (for example, user groups or utility companies) that Highway Authorities are legally required to consult during the order-making process.

Traffic regulation order (TRO) – A legal order that can be used to regulate or restrict particular users of a route. Implementing orders requires consultation with user groups.

Unsealed surface – a path with an unsealed surface – typically made of compacted stone chippings and finer materials.

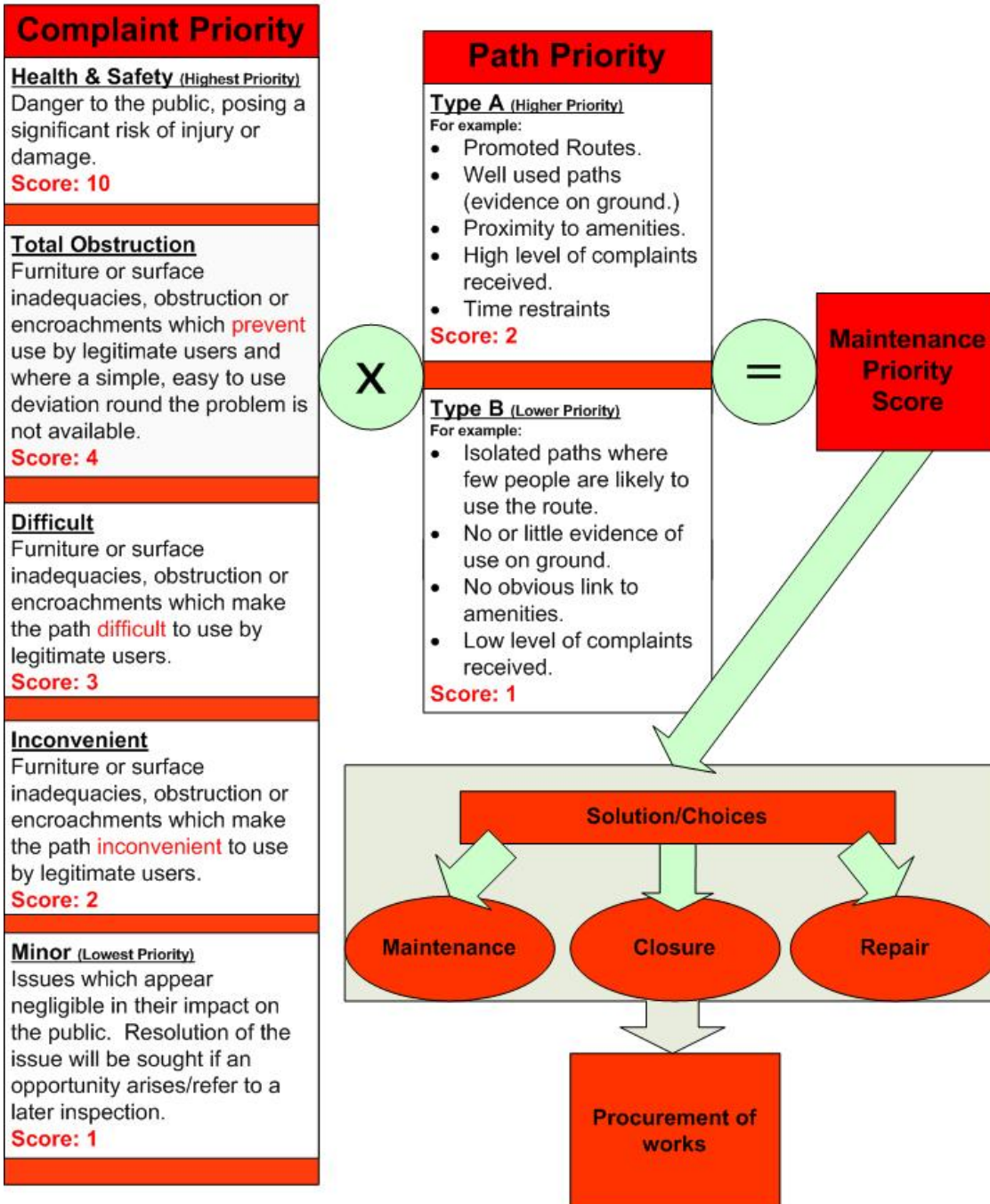
User groups – Groups and associations representing the interests of path users – e.g. Ramblers, British Horse Society etc.

User restraint – Prevention of all or some users from using a route. (For example, prohibiting 4x4 use of a byway.) This can be on a voluntary or legal basis.

Voluntary restraint – A scheme of voluntary restraint organised by LARA. Where applied, members of LARA are asked to refrain from using particular byways on a voluntary basis. More information is available here:
<http://www.laraqb.org/pages/vr.html>

Appendix 2 – Rights of Way priority statements

Maintenance Priority Statement

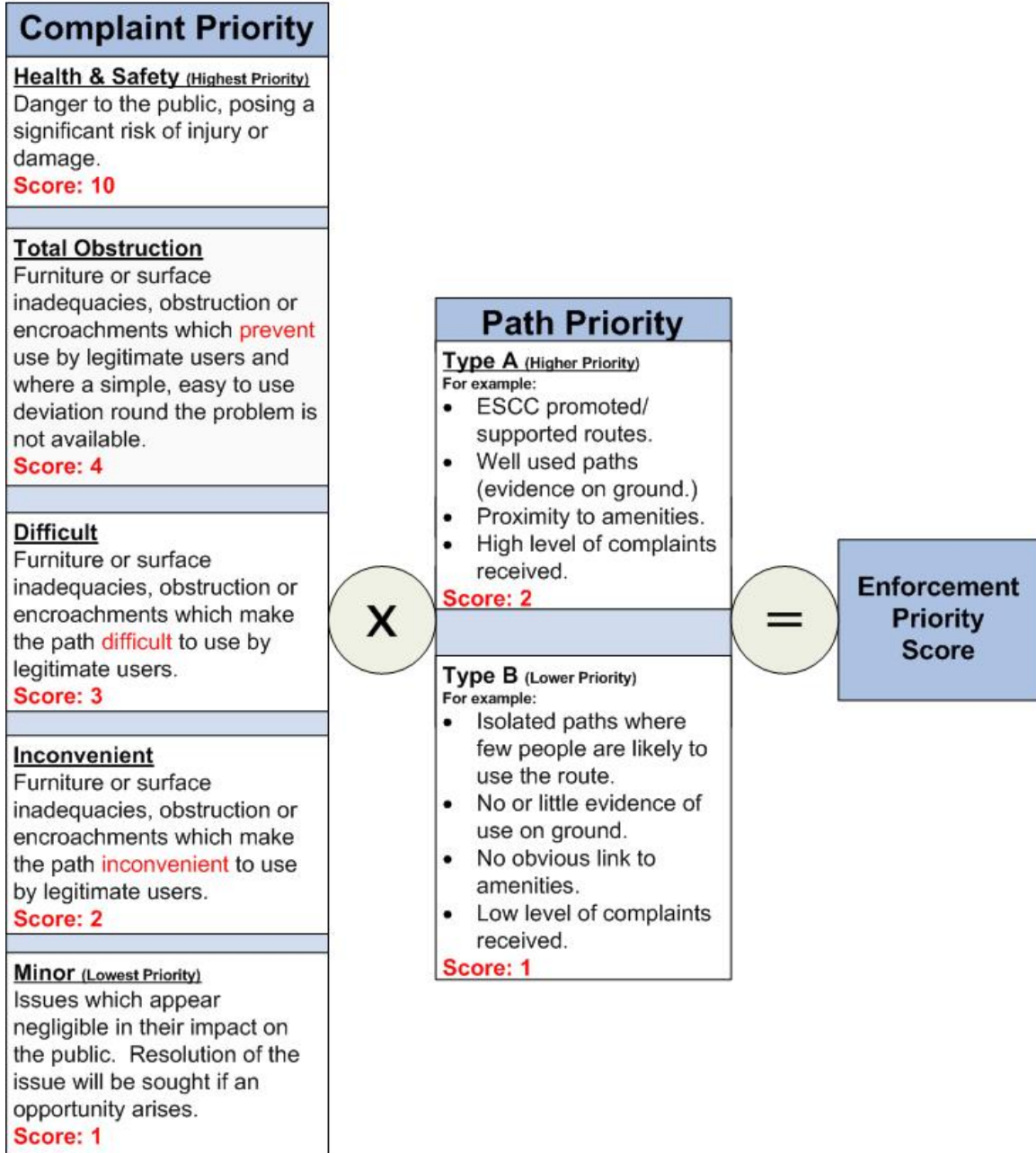


How to calculate the Maintenance Priority Score for a Rights of Way maintenance issue.

1. Choose a Complaint Priority which best fits the maintenance issue.
2. Choose a Path Priority which best fits the Right of Way on which the maintenance issue is situated.
3. Multiply the relevant Complaint Priority and Path Priority Scores. The result is the Maintenance Priority Score.

Note: In exceptional cases, Officers will have the discretion to prioritise issues regardless of the above statement.

Enforcement Priority Statement



How to calculate the Enforcement Priority Score for a Rights of Way enforcement issue.

1. Choose a Complaint Priority which best fits the enforcement issue.
2. Choose a Path Priority which best fits the Right of Way on which the enforcement issue is situated.
3. Multiply the relevant Complaint Priority and Path Priority Scores. The result is the Enforcement Priority Score.

Note: In exceptional cases, Officers will have the discretion to prioritise issues regardless of the above statement.

Appendix 3 - References

Making the Best of Byways:

<http://www.defra.gov.uk/wildlife-countryside/pdf/access/crow/bestofbyways.pdf>

East Sussex Rights of Way Improvement Plan:

<http://www.eastsussex.gov.uk/yourcouncil/consultation/2006/rightsofway/default.htm>

Appendix 2 – East Sussex Local Access Forum Consultation

During 2009, the East Sussex Local Access Forum (ESLAF) was consulted on the draft 'Policy for the Management of motorised vehicles on Public Byways in East Sussex.'

Following this consultation, the ESLAF Chairman commented that the policy "is well drafted and sticks closely to the byway management principles in the DEFRA document." He also presented ESCC's management of Chiddingly Byway 61 (Nash Street) as an example of good practice. (This byway's surface was improved in around 2004 with 4x4-use being restricted with a Traffic Regulation Order during winter. Motorcycles are still permitted to use this route year round.)

The Chairman also proposed that this example should be used as a model for further LAF assessment of other byway management issues.

Additionally, the Chairman and Vice-Chair also requested that any restriction to vehicles should allow motorcycles where possible or appropriate. In particular, due to the low level of impact motorcycles have in terms of surface damage.

Following consultation on the policy itself, a special meeting of the ESLAF was held to discuss management options for several byways in East Sussex. Outcomes of the meeting are outlined below:

Proposed Seasonal Traffic Regulation Orders (TROs) on Byways in East Sussex

The management of the following byways was considered on a case by case basis at a special meeting of the ESLAF:

Recommendation

- Iden 28/Peasmarsh 39 (Malthouse Lane).
 - LAF agreed that surface unlikely to get any worse. LAF recommend that no TRO until such time as works are carried out.

No TRO

- Hailsham 36 (Marshfoot Lane).
- Hailsham 56
- Hailsham 57
 - These three dealt with together as similar situation exists at each. RF explained that water levels were increasing due to works under Countryside Stewardship. Landowner would like to see TRO. It was questioned whether path condition would mean not meeting cross-compliance requirements. LAF agreed that as previously damage was not a problem the situation should be monitored before considering a TRO.

No TRO

- Warbleton 81a/Ashburnham 16 (Pear Tree Lane)
 - TK commended the good quality of the improvement works on this byway. PW suggested that this route would be a good opportunity to observe effects of motorcycle use. JR was interested to see if there may be demand for carriage use should a TRO be made. LAF agreed to recommend a selective TRO to allow motorcycles and to review in one year.

Selective Seasonal TRO

- Hadlow Down 24 (Dog Kennel Lane)
 - PW recommends TRO to protect newly graded surface but thinks should include motorcycles. LAF noted that there appeared to be a problem with water coming off road and running down byway. JG observed that cantering horses would damage the surface. LAF recommended signage requesting horse riders to not canter in wet conditions. It was also noted that water flowing from the highway down the path may be prevented by a bund.

Seasonal TRO

- Arlington 43/44/56 Long Man 15
 - PW recommends improved section requires TRO but suggests selective to allow motorcycles. Other section has a railway which only has access over on foot. This negates the need for TRO.

Seasonal TRO

- Laughton 26
 - PW recommends a selective seasonal TRO just on eastern section. The rest of the route unlikely to deteriorate further as appears that a metalled surface is present under top layer of mud. TRO will be appropriate when works planned. Recommend that ESCC investigate contribution from forestry activities which heavily utilise the path.

Seasonal TRO on eastern section

- Wivelsfield 25
 - Damage to surface appears to be from recreational use. Other users have room to avoid damaged sections. It was identified that minor repairs are required more urgently near the bridge.

No TRO