

ORLETON PARISH COUNCIL
MEETING OF 15TH FEBRUARY 2024

BRIEFING REPORT

PARISH PROW NETWORK MAINTENANCE, PC WORKING GROUPS EQUIPMENT, THE ROLE OF PARISH FOOTPATH OFFICER & LENGTHSMAN SCHEME

1. Scope

The briefing report is concerned with issues relating to a number of interconnected areas of the Council activities, services and responsibilities, and is intended to inform Members' deliberations and decision making on the following items of the agenda:

(17) Parish Footpath Officer

(17.1) To consider Herefordshire Council's PFO register and guidance scheme proposal and consider its implications regarding the Council's relationship with the PFO, including implications for the Footpath Working Group's Terms of Reference and insurance.

(17.2) To consider the PFO registration of the Working Group with Ramblers Association and determine an appropriate relationship of the PC Working Group with the RA.

(17.3) To consider issuing an identification document for the PFO to be used in the course of their duties.

(18) Equipment provision for the PC Working Groups

(18.1) To agree what categories/types of equipment may, from time to time, be provided to Land Drainage Volunteers and Adopt a Footpath Working Group by the Parish Council.

(18.2) To note the informal grant application made by the PFO on behalf of the AFWG (Adopt a Footpath Working Group) and consider Clerk's recommendations.

To a lesser extent this report inevitably touches on matters of the Lengthsman work schedule where it covers the ad hoc maintenance works on and around parish footpaths and may, therefore, inform Members' discussion under the provision of item – (24.2) To consider and approve schedule of works for the appointed contractor. – of the agenda.

2. Background

2.1 At its meeting of 21st September 2023 the PC adopted two Volunteer groups active in the parish as its Working Groups (WG), approved Terms of Reference for each outlining the conditions under which the groups operate and appointed a Lead for each WG as well as two members of their own number to act as volunteers and co-ordinators for each of the WGs. The two groups adopted were:

- A. Land Drainage Working Group (LDWG/LDVs)** – with Cllr Lane appointed as a Lead and co-ordinator, and
- B. Adopt a Footpath Working Group (AFWG)** – with the Parish Footpath Officer (PFO) appointed as the group Lead and Cllr Lane as the co-ordinator.

2.2 In December 2023 the PFO submitted an email to the Clerk containing a number of requests, as outlined in detail below. This followed previous communications between the PFO, the Clerk and the Lead of LDWG

and Councillor co-ordinator of the AFWG, Cllr Lane, in particular regarding power tools provision for the PC Working Groups (AFWG & LDWG). This correspondence contained following requests made by the PFO on behalf of the AFWG and is attached in its entirety within the agenda pack sent out to the Cllrs.

- 2.3** PFO budget request for AFWG (2024/25) of £2,500 for “direct costs” – to include maintenance and improvements on the parish PROW network (stiles/kissing gates replacements, safety improvements & materials, overgrowth cutback)
- 2.4** PFO budget request (2024/25) of £2,000 for “ad hoc contractor labour” – the PFO states that he does not wish for any footpath maintenance work (in particular overgrowth cut back) to be carried out by the Parish Lengthsman. Instead he envisages to engage contractors on an ad hoc basis, to be appointed and managed by the PFO within the above budget.
- 2.5** An informal grant application on behalf of the AFWG for £1,852.54 to cover purchase of petrol-powered tools. The power tools are proposed to be an AFWG/PC asset with a proposal that the tools be made available for the use of other organisations within the parish (LDWG, ORA, etc.). Detailed list of proposed equipment included (petrol strimmer, petrol hedge cutter, helmets, leg protectors, fuel containers & consumables – fuel, oil).
- 2.6** Furthermore and following a reply from the Clerk outlining a number of concerns and issues arising with the above requests, the PFO submitted an email informing that the AFWG has been registered with the Ramblers Association as a Footpath Maintenance Team and is therefore now covered by the RA insurance, including operation of power tools, and eligible for RA guidance and assistance under their scheme.
- 2.7** In January 2024 the PC received an email from the Local Authority – Economy & Environment Directorate, requesting a registration of the Parish Footpath Officer under the Herefordshire Council’s PFO Register (currently compiled) and accompanied by a ‘PFO Guidelines’ document and a proposed authorisation letter to be issued to PFOs, empowering them to act on behalf of the County Council. Both included in the agenda pack.

3. PROW maintenance & Lengthsman scheme

- 3.1** PROWs (Public Right Of Way – Footpaths, Bridleways & Byways) are the responsibility of Local Authorities who are under a duty¹ to maintain the respective local networks. Parish councils however have no duty to provide any service relating to PROWs from their own budgets (precept). Nonetheless, parish councils do have a range of powers, which enable them to get involved in their local PROW networks’ maintenance, if they wish to do so. These powers are enlisted in Appendix 1 to this report – Endnotes.
- 3.2** In recognition of the parish councils’ unique position and best placement to understand a local PROW network, including the invaluable local knowledge and often immediate understanding on localised PROW issues and needs, Herefordshire Local Authority initiated the Parish Path Partnership (P3) scheme. The scheme was designed to engage with Herefordshire parish councils in equal partnerships, with the PCs taking on the responsibility to manage the maintenance of part or all of their local PROW networks and the Local Authority providing grants to enable such work. The P3 scheme was met with considerable

¹ Specifically:

- A. To ensure the PROW are properly maintained (Section 41, Highways Act 1980).
- B. To assert and protect the rights of the public to use PROW and prevent any obstructions to them (section 130, Highways Act 1980).
- C. To keep the Definitive Map & Statement (DMS), the legal record of PROW, accurate and up-to-date (Part III, Wildlife and Countryside Act 19

enthusiasm from Herefordshire's parish councils and local communities and run successfully until its eventual close in 2019. Orleton Parish Council participated in the scheme until its closure.

3.3 The P3 scheme run alongside another, similar project – the Lengthsman scheme. Whilst the P3 scheme was dedicated to the PROW networks, the Lengthsman scheme was specifically designed to outsource some of the Highways maintenance jobs to local parishes and provided grant funding for works connected to C & U roads in parishes (mainly verges, ditches, drains, etc.). The Lengthsman scheme was since, similarly as the P3, discontinued and grant funding was not available to parishes for a number of years. The scheme was recently brought back, albeit in a reduced form, with some funding made available in the current financial year and a pledge of funding for next financial year already received (amount yet to be confirmed). Whereas some crossover between the schemes have historically and recently took place, in as much as certain maintenance jobs on and around local footpaths have been undertaken by the contracted Lengthsman on an ad hoc basis, these two schemes must not be confused, they have been separately financed and run as two distinct though corresponding and concurrent projects.

3.4 Since the discontinuation of both the Lengthsman and P3 schemes parish councils across the county have taken upon themselves to continue some level of provision of services around their PROWs and C & U roads, with works funded entirely from the PC precepts in recent years. Orleton Parish Council continued with maintaining a schedule of Lengthsman works, with a budget of £5,005 in 2023/24 financial year, as well as PROW works with a budget of £1,800 in current financial year. Respective budgets agreed for next financial year are £6,000 (Lengthsman) and £1,150 (PROWs).

4. The role of PFO

4.1 Orleton Parish is extremely fortunate to have a very professional, knowledgeable and dynamic Parish Footpath Officer – Mr Martin Bradford, who aside from his core duties as the PFO is also successfully managing a group of dedicated volunteers under the auspices of the PC AFWG. Mr Bradford has been appointed by the PC as the Parish Footpath Officer in December 2021 and has been carrying out the duties since, with many valuable improvements to the parish PROW network undertaken in that time. It is imperative to underline that the scope and breadth of PROW maintenance in Orleton Parish is second to none and few parishes in the county and beyond benefit from comparable level of service provision.

4.2 Historically, the PFO role has been created and run alongside the P3 scheme, with the PFO being an integral and fundamental part of it. The PFOs were local volunteers, appointed by respective parish councils to look after the rights of way in the area, including carrying out light clearance work and way marking, and liaising with Balfour Beatty's Locality Stewards on more difficult issues, notifying the Local Authority's PROW team on matters requiring more significant interventions, reporting anomalies on the PROW network (blocked rights of ways, heavy repairs, health & safety risks, etc.). The main part of PFO duties was to walk the network regularly, take note of any issues requiring attention and notifying the County Council either directly or via the Parish Clerk.

4.3 Following the discontinuation of the P3 scheme the PFO role persisted, with many parishes continuing to appoint volunteer PFO and liaising directly with them in their effort to maintain some level of PROW service provision.

4.4 The role of PFO has grown substantially since its inception and, particularly in Orleton Parish, the PFO has taken a much more hands on approach, as well as assembling a group of volunteers to assist with his duties. This has been the case particularly in the last couple of years with a substantial amount of jobs undertaken by the PFO and volunteers and significant improvements on the local PROW network achieved.

4.5 However, and particularly with the prevailing lack of support and diminished service provision from the Local Authority, a number of practical issues arise as the PFO and volunteers continue with their program of PROW maintenance and improvements. Most significantly the need to tackle overgrowth in the growing season to maintain the PROWs clear and free of obstruction. Whilst this remains to be the responsibility of the Local Authority and/or landowners, in practice it is not attended to neither regularly enough nor promptly enough to satisfy the high standard of maintenance adopted by the Orleton PFO nor the service level which the local community came to expect.

5. Equipment provision for the PC WGs (AFWG & LDWG) & appointment of contractors

5.1 The practical considerations and issues encountered by the PFO in the discharge of his duties, as described above, lie at the root of the request for provision of a bank of tools for the use of AFWG. This is also the case for the LDWG, who encounter similar issues when carrying out their program of works aimed at improving the land drainage in the village.

5.2 The Council has already provided number of tools and equipment, as requested by both of the WGs. However, the volunteers continue to rely on their personal tools, in particular power tools like strimmers, hedge cutters and chainsaws. The issue of the PC providing such tools have been raised with the Clerk number of months ago and has been since investigated, results of which analysis are outlined below.

5.3 The use of power tools comes with significant health and safety risk to volunteers and members of the public. To that end, the PC insurance provider have been consulted to determine a best level of coverage and any attendant requirements for the insurance and health & safety of the volunteers to be assured.

5.4 Currently, the PC insurance policy does not cover the PC volunteers for injury caused by the use of power tools in the discharge of their functions under the PC auspices. Consequently, the PC public liability insurance would also not cover any claims arising from accidental injury caused to members of the public and third parties as a result of its volunteers using power tools. The insurer's general expectation is for an authority such as the Council is to hire appropriate contractors whenever works requiring heavy machinery and/or power tools are necessary. This is consistent with the advice received from the Herefordshire Association of the Local Councils and general statutory obligations the PC is under in matters pertaining to health and safety of its volunteers and members of the public.

5.5 Some level of insurance coverage could be considered by the PC insurance provider under the condition of persons using power tools having undergone a specialist power tool handling training. Enquiries about the availability of such training have been made to assess the feasibility of such solution. Whilst a training on safe handling of power tools is available, it comes at a very high cost of roughly £1000 / person and comes with no assurances from the training provider that it will be considered sufficient by the insurer.

5.6 As described in point (2.4) above, one of the proposals is to establish a separate budget of £2000 for the use of the PFO to appoint contractors to carry out clearance jobs as required. Such solution would be contrary to the PC Financial Regulations² and as such unlawful. All appointments of contractors can only be made by the Council itself. Neither can the Council lawfully delegate this or any of its powers to anyone else but its own Committee or the Proper Officer of the Council. All appointments of contractors must be made within the PC usual procedures, properly authorised and in accordance with its Standing Orders (including Financial) and policies. Furthermore, such solution would also be contrary to the Terms of Reference of the Working Groups, which of themselves have no authority to incur any expenditure.

² Particularly: FR4 – Budgetary control and authority to spend, et al; FR10 – Orders for Work, goods and services, et al; and FR11 – Contracts, et al.

5.7 RECOMMENDATION:

- 5.7.1** To agree what categories/types of equipment may, from time to time, be provided to Land Drainage Volunteers and Adopt a Footpath Working Group by the Parish Council.
- 5.7.2** That the Council, in light of identified risks and potential liabilities, considers the use of power tools as falling outside the scope of the work supplied by the PC volunteers, with only light maintenance jobs, using simple hand tools and with observance of strict health & safety practices approved under the auspices of the PC Working Groups.
- 5.7.3** That the Council considers appointing an appropriate contractor to carry out ad hoc maintenance jobs, as and when required, to carry out clearance of overgrowth on and around the local PROW network. The jobs to be notified to the Clerk by the PFO and/or the Cllrs co-ordinators of the PC WGs and approved by the PC as and when required.
- 5.7.4** That the PC considers, under the item (24)(24.1-24.2), which contractor/-s may be used for the ad hoc maintenance jobs, as per item 5.6.3 above, authorises the Clerk to instruct the chosen contractor/-s when required and sets a limit of the value of the job to be approved by the Clerk between the PC meetings under a delegated power, to expedite the carrying out of required works and support the operation of the PC Working Groups.

6. The relationship of the PC Working Groups with outside organisations

6.1 Ramblers Association

- 6.1.1** The PFO notified the Clerk that the AFWG has been registered with the Ramblers Association, as outlined in point (2.6) above.
- 6.1.2** Whilst it is recognised that the Ramblers Association may provide an invaluable advice and support it has to also be recognised that such registration may introduce some complications in the groups relationship with the PC. It is also contrary to the approved Terms of Reference of the AFWG, in particular 3.1-3.3 and should have been considered by the PC beforehand.
- 6.1.3** Similarly, the Groups dual-status and insurance under the RA creates implications under the PC terms of insurance and has to be carefully considered by the PC.
- 6.1.4** The issues of provision of power tools by the PC has been considered in detail above, however, a solution for the PC to provide power tools to its volunteers who will then be insured under the Ramblers Association insurance whilst using them creates a number of unresolvable issues.

6.1.5 RECOMMENDATION:

- 6.1.5.1** That the Council notes the AFWG registration with the Ramblers Association and reiterates the approved Terms of Reference for the WG, in particular that the WG acts strictly under the auspices of the Parish Council and at its direction, that the WG volunteers are insured under the PC insurance policy and that any activities and actions outside of the ToR and undertaken at the direction of another organisation fall outside of the scope of the Working Group.

6.2 Herefordshire Council

- 6.2.1** Following the discontinuation of the P3 scheme the full responsibility of managing the activities of the PFO and any funding of those activities fell to the Parish Council.
- 6.2.2** Whilst some co-operation and contact were inevitably maintained between the PFO and the PROW team during this period, the support provided to the PFO in his activities was patchy and sporadic.
- 6.2.3** Although the Lengthsman scheme grant was recently brought back the P3 scheme has not been renewed and the Local Authority provides no direct grant to the PC to fund any of the PC run PROW activities and services.
- 6.2.4** The Orleton PFO has recently secured an in-kind support from the Local Authority, with the free of charge provision of kissing gates, signposts and other associated supplies promised going forward and already supplied in recent months.
- 6.2.5** The Local Authority's request of PFO registration and sign-up to a set of guidelines supplied by the HC, as outlined in point (2.7) above seems to attempt to take charge of the PC appointed PFO, with the bulk of the financial burden of funding the associated activities remaining with the Parish Council.
- 6.2.6** In particular, point (2) of the Guidelines states that the PFO will be responsible to the PROW Team and point (4) stipulates that the PFO will be required to act under the instruction and direction of the PROW Inspector.
- 6.2.7** Both of the above are in direct conflict with the PC approved Terms of Reference and would significantly redefine the PC's relationship with the PFO. It could also result in the Local Authority directing the PFO to carry out jobs not previously approved by the PC and with uncertain responsibility for any expense incurred and insurance implications.
- 6.2.8** It is also the advice of the Herefordshire Association of Local Councils that this request by the Local Authority should be rejected.
- 6.2.9** **RECOMMENDATION:**
- 6.2.9.1** That the PC rejects the request from the Local Authority and does not comply with the request for PFO registration, neither recommends that the Parish PFO signs up to the proposed Guidelines or carries the authorisation letter as issued by Herefordshire Council.
- 6.2.9.2** That the PC issues an ID document for the PFO, to be used by the PFO in the discharge of his duties.
- 6.2.9.3** That the PC & PFO maintain a working relationship with the Local Authority's PROW team and notify the PROW team on any PROW issues outside of the scope of the service provision by the PC.

7. Grant applications by the PC Working Groups

- 7.1** Orleton Parish Council's Grants Scheme is designed to support local community organisations and for that purpose the PC sets aside a sum in its annual budget. The Community Grants budget set for next financial year (2024/25) is £3000
- 7.2** Under the PC Grants Policy the maximum grant amount for one organisation is £500. All applications must be submitted on the PC approved application form and with all necessary documents.

7.3 The Adopt a Footpath Working Group is the PC own, internal Working Group, comprising the PFO and a group of volunteers and two appointed PC Members. The PC sets aside a sum in its annual budget assigned to fund the activities of the WG.

7.4 Section 137 grants, under which the PC Community Grants scheme operates, is restricted to fund activities which are not otherwise provided for under other statutory powers of the PC. As there exists a separate power for the PC to maintain PROW³ and the PC already maintains PROW budget, it could not lawfully award a grant from the Community Grants budget.

7.5 Furthermore, it would not be appropriate for the PC to fund its own activities from the Community Grants budget.

7.6 A virement could be made, at the discretion of the PC from the Community Grants budget to another head of expenditure, if it was minded to consider the financial request made on behalf of the AFWG, as outlined in point (2.5) above.

7.7 RECOMMENDATION:

7.7.1 To note the informal grant request on behalf of the AFWG and consider its purpose in light of the resolution made under the item (18.1) of the agenda for the meeting.

7.7.2 That the PC considers the PC WG are not eligible to make grant applications under the PC Community Grants scheme for the reasons detailed above and that it advises the Leads of the WGs accordingly. All funding of the PC Working Groups should fall under the respective heads of expenditure, as defined by the PC in its annual budget and requests for funding should be made by the Leads of WGs according to rules set out in their respective Terms of Reference.

Olena Barret
Clerk & RFO

³ Highways Act 1980 ss 43 and 50.

APPENDIX 1

PARISH COUNCIL POWERS – PUBLIC RIGHTS OF WAY

- 1.** To make representations to the highway authority that a highway has been unlawfully stopped-up or obstructed. The authority must act unless satisfied that the representations are incorrect – HA 1980 s 130(6).
- 2.** To hold for public inspection a copy of the definitive map for the parish, and copies of orders made to modify it – WCA 1981 s 57(5).
- 3.** To veto a proposal by a highway authority to apply to a magistrates' court for an order stopping-up or diverting a highway – HA 1980 s 116.
- 4.** To be consulted by a surveying authority on every application for a definitive map modification order – WCA 1981 Sch 14.
- 5.** To be consulted by a surveying authority before a definitive map modification order is made – WCA 1981 Sch 15
- 6.** To object to a public path order or a definitive map modification order. A copy of every such order, both when made and when confirmed, must be served upon the council – HA 1980 Sch 6 para 1(3)(b)(ii), WCA 1981 Sch 15 para 3(2)(b)(ii) and TCPA1990 Sch 14 para 1(2)(b)(ii).
- 7.** To undertake the maintenance of any footpath, bridleway or restricted byway – HA 1980 ss 43 and 50.
- 8.** To erect lighting on any footpath or bridleway – Parish Councils Act 1957 s3.
- 9.** To erect notices on footpaths and bridleways warning of local dangers – RTRA 1984 s 72.
- 10.** To erect seats and shelters in, or on any land abutting on, any road within the parish – Parish Councils Act 1957 s1.
- 11.** To prosecute anyone who wilfully obstructs the free passage along any highway – HA 1980 s137.
- 12.** To prosecute an occupier who fails to ensure that crops do not inconvenience users of footpaths, bridleways and unmetalled carriageways – HA 1980 s137A.
- 13.** To prosecute if a footpath or bridleway has been lawfully ploughed or disturbed, but not restored, or if any highway has been unlawfully ploughed or disturbed – HA 1980 ss131A and 134.
- 14.** To insist to the highway authority that a particular footpath, bridleway, restricted byway or byway should be signposted where it meets a metalled road – CA 1968 s 27.
- 15.** To signpost and waymark footpaths, bridleways, restricted byways and byways on behalf of, and with the consent of, the highway authority – CA 1968 s 27.
- 16.** To create new highways by agreement with the landowner over land in their own and adjoining parishes or communities – HA 1980 s30.