

CABINET MEMBER FOR STREETPRIDE

Venue: Training Room, 3rd Floor
Bailey House, Rawmarsh
Road, Rotherham. S60
1TD

Date: Monday, 13th July, 2009
Time: 9.45 a.m.

A G E N D A

1. To determine if the following matters are to be considered under the categories suggested, in accordance with the Local Government Act 1972 (as amended March 2006).
2. To determine any item which the Chairman is of the opinion should be considered later in the agenda as a matter of urgency.
3. Waste Collection Compliance - Enforcement Procedures. (report attached) (Pages 1 - 11)
Adrian Gabriel, Waste Strategy Manager, to report.
 - to note the proposed delegation.
4. Petition regarding condition of Public Footpath No. 20 in Wentworth Parish. (report attached) (Pages 12 - 15)
Richard Pett, Public Rights of Way Officer, to report.
 - to present a summary of issues relating to this public right of way and options available to resolve them.

ROTHERHAM BOROUGH COUNCIL – REPORT TO CABINET MEMBER

1.	Meeting:	CABINET MEMBER FOR ECONOMIC DEVELOPMENT, PLANNING AND TRANSPORTATION
2.	Date:	13th JULY, 2009
3.	Title:	WASTE COLLECTION COMPLIANCE – ENFORCEMENT PROCEDURES
4.	Programme Area:	NEIGHBOURHOODS

5. Summary

The Cabinet Member is requested to consider the attached report which was considered by the Cabinet Member for Housing and Neighbourhoods on 29th June, 2009, with particular reference to the delegation arrangements.

6. Recommendation:-

That the Cabinet Member endorses the delegation arrangements as detailed in the attached report.

7. Proposals and Details

The Cabinet Member for Housing and Neighbourhoods considered the attached report on 29th June, 2009 and requested that the Cabinet Member for Streetpride considered the delegation arrangements.

8. Finance

See attached report.

9. Risks and Uncertainties

See attached report.

10. Policy and Performance Agenda Implications

See attached report.

11. Background Papers and Consultation

See attached report.

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ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS
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1.	Meeting:	Cabinet Members for Housing and Neighbourhoods and Streetpride
2.	Date:	29th June 2009
3.	Title:	Waste Collection Compliance – Enforcement Procedures
4.	Directorate:	Neighbourhoods and Adult Services

5. Summary

This report considers a number of issues that have arisen following the completion of the roll out of alternate week bin collection, including bins and rubbish in bags being left on the pavement for substantial lengths of time, impacting upon the local environment, footpath safety and presenting a risk of vandalism including arson. Offending occupiers have received information and advice on how to deal with their waste but, unfortunately, there are a number of occupiers who persist in leaving excess waste at the side or on top of their bin or the bin in the street for unreasonable periods after it has been emptied.

In order to add teeth to information and advisory procedures, this report considers the available enforcement options that have not yet been used.

6. Recommendations

It is recommended that:

6.1 The Cabinet Member for Housing and Neighbourhoods:

6.1.1 Approves the proposed compliance procedures, including the use of enforcement powers, to deal with persistent problems of waste being left at the side and on the top of wheeled bins and empty bins being left in the street for unreasonable periods.

6.1.2 Determines that the statutory default penalty (currently £100) be set for the purposes of fixed penalty notices issued under section 47ZA of the Environmental Protection Act 1990.

6.1.3 Approves publicising the proposed compliance procedures through *Rotherham News* and the media.

6.2 The Cabinet Member for Housing and Neighbourhoods and Streetpride recommend to the Cabinet and in turn the full Council the following delegations:

- 6.2.1 To the Safer Neighbourhoods Manager the power to authorise the issue of section 46 Environmental Protection Act 1990 notices and to authorise prosecutions for offences under section 46 of the 1990 Act and s137 (1) of the Highways Act 1980.**
- 6.2.2 To officers of Neighbourhoods and Adult Services, authorised to conduct interviews under caution, the power to investigate offences under s46 of the Environmental Protection Act 1990 Act and, on behalf of the Council in its capacity as the local highway authority, offences under section 137 (1) of the Highways Act 1980.**

7. Proposals and Details

7.1 Background

The Council completed the roll out of the alternate week collection system to a further 50,000 premises with actual collections commencing from Monday 10th September 2007.

The service has now settled down and occupiers have become used to the alternate week collection system, however in a number of cases large amounts of excess waste are still being left at the side or on top of the bin. In addition some occupiers are continuing to leave their bin on the pavement for unreasonable periods after it has been emptied.

Despite considerable efforts to inform and advise occupiers on how to manage their waste, these problems persist. Action taken by Waste Management (EDS Streetpride) and Safer Neighbourhoods has included:

- Every occupier being supplied with a full information pack that included:
 - Details of collection dates
 - What could be placed out for recycling
 - Details of how to manage residual waste
 - A frequently asked questions fact sheet
- Letters being sent to occupiers who have left excess waste at the side or on top of their bin or left the bin on the pavement for an unreasonable period after it has been emptied.

7.2 Current Position

The main problems that have resulted from excess waste and bins being left on the pavement are:

- Bins being left out and targeted for arson
- Bins being left out and causing nuisance to residents
- Bins being left out and causing obstruction and a safety risk
- Rubbish being left at the side of bins affecting wind blown litter, animal spread litter and general environmental quality and aesthetics of the area.

Public and partner concerns have been raised about these issues in a number of areas and in particular in parts of Masborough, Ferham, Holmes, Eastwood and Brinsworth.

A number of measures have been tried to deal with these problems:

- Adopting an education and information campaign targeted at communities
- Close working with representatives of new communities in the Eastwood area
- Utilisation of interpreter in partnership working
- Production of information and education packs
- Increased resource allocation to areas affected
- Letters requesting removal of bins from the highway.

Communities have seen some improvement from this approach; however the problem still remains amongst a hard core of occupiers.

7.3 Proposals

The proposal is for a two pronged strategy:

- To continue the work done so far in informing and educating occupiers on what they should do with their waste and removing their wheeled bin from the street after it has been emptied on collection days
- To use the legal powers in the Environmental Protection Act 1990 and the Highways Act 1980 to deal with occupiers who persistently disregard such advice and assistance.

Enforcement routes

There are two possible enforcement routes:

- Sections 46 and 47ZA of the Environmental Protection Act 1990
- Section 137 (1) of the Highways Act 1980.

Local authorities consulted for the purpose of preparing this report preferred to use the Environmental Protection Act power rather than the Highways Act power. Leeds and Nottingham councils say they have had great success using this procedure. However, it is a moot point as to whether the Environmental Protection Act power can be used to deal with an empty wheeled bin that has been left on the street. There is opinion that s.46 is not applicable to enforcing the removal of empty bins from the footpath, however, the Head of Legal Services is satisfied that at this time the use of the s.46 (as amended) can be used.

S.46, s.47ZA and s.47ZB of the Environmental Protection Act 1990

Section 46 of the 1990 Act is concerned with the manner in which household waste is stored and made available for collection on collection days. In its capacity as the waste collection authority, the Council may by notice under s.46 require the occupier of domestic premises:

- To place his/her waste for collection in the wheeled bin(s) provided (domestic waste, recycling waste, green waste)
- To place the wheeled bin for collection on collection days at the point specified by the Council (which may include a point on the highway) 'for the purpose of facilitating the emptying of [it], and access to the [wheeled bin] for that purpose'
- To put in the wheeled bin only the substances or articles that are specified in the notice (for example only paper and cardboard in a blue bin)
- To carry out certain precautions if specified substances or articles are put in the bin (for example wrapping broken glass in paper)
- To carry out certain specified steps 'to facilitate the collection of waste from the [wheeled bin]' (for example separating out the categories of waste that may be placed in the bin).

Before wheeled bins may be placed on the highway, the Council must give permission in its capacity as the local highway authority and appropriate insurance must be in place to cover any liability that may arise from them being there.

It is an offence to fail to comply with a s.46 notice. On conviction at the magistrates' court, the penalty is a maximum fine of £1000. There is however a defence of 'reasonable excuse'.

Where an occupier has breached the s.46 notice, s.47ZA of the 1990 Act enables the Council, in its capacity as the waste collection authority, to issue him/her with a fixed penalty notice. s.47ZA enables the Council to set the amount of the fixed penalty or, if no amount is set, the penalty is £100. A lesser sum may be accepted if it has been paid before the end of the period set for paying it.

The limits of a section 46 notice

A fixed penalty notice is clearly appropriate where the occupier has not met one or more of the requirements of the s.46 notice. Unfortunately s.46 is silent on the problem of an emptied wheeled bin being left on the street for an unreasonable period of time or, in extreme cases, permanently. There is an argument that it is implicit in the requirement that the bin should be placed on the street on collection days that it is returned to the occupier's premises as soon as reasonably practicable after it has been emptied. However, as s.46 makes it a criminal offence to breach an s.46 notice, the courts would expect to see clear wording that an emptied bin left on the street fell within the terms of s.46 (see above) and therefore was an offence under the section. Nevertheless this is an arguable point and one that will only be conclusively resolved when considered by the court.

Section 137 (1) Highways Act 1980

Section 137 (1) makes it an offence to obstruct the highway 'without lawful authority or excuse'. The maximum penalty on conviction at the magistrates' court is a fine of £1000. An obstruction occurs if an object of a permanent nature is placed in the highway and it substantially prevents the public from having free access over the whole of the highway, such as a leaving a wheeled bin permanently in the street.

Where the obstruction is of a temporary nature, an offence is only committed under section 137 (1) if it can be shown that the obstruction arose from an unreasonable use of the highway, such as leaving a wheeled bin in the street beyond the period during which it would have been reasonably practicable to remove it.

Evidence that a particular person was obstructed is not necessary to prove the offence. If after conviction at the magistrates' court an occupier continues to leave his/her wheeled bin in the street, in addition to or instead of fining the occupier, the court may order him/her to comply with the order of the court to remove the obstruction, and if he/she fails without reasonable excuse to comply with the order, he/she commits a further offence under s.137ZA of the 1980 Act and on conviction for the s.137ZA offence may be fined up to £5000 and thereafter for each day that the offence is continued a daily fine of £250.

Practical considerations

In practical terms there is not much difference between the two. Whether Environmental Protection Act powers or Highway Act powers are used, it would be necessary to interview the occupier(s) of the premises responsible for the wheeled bin. This would mean either a police officer or a council officer authorised to conduct interviews under caution interviewing the occupier(s). Once the person responsible for leaving waste by the side or on top of the bin had been identified and it had been established that he/she did not have

a reasonable excuse, he/she could be issued with a fixed penalty notice. Likewise, although it is arguable whether leaving an empty wheeled bin in the street for an unreasonable period after collection is an offence under section 46, on the basis that it is an offence under the section, the person responsible could be issued with a fixed penalty notice and, if he/she decided to contest the matter, a summons issued in respect of both the s.46 offence and the s.137 (1) offence. This would ensure that if leaving an empty bin on the street is not an offence under s.46, the s.137 (1) offence could be considered in the alternative.

It is therefore proposed that the procedures set out in Appendix 1 to this report be adopted:

8. Finance

The delivery of any education and enforcement actions will be contained within the existing resources of the Community Protection Unit and Waste Management.

The provision of warning notices (stickers) is approximately £1,600 and will be met from the Waste Management budget.

9. Risks and Uncertainties

Following discussions with officers in Legal and Democratic Services and Neighbourhoods and Adult Services, the proposed procedures have been designed to mitigate the risks that arise from the interpretation of the legislation.

Failure to implement positive deterrents will only continue to exacerbate the current problems being experienced with:

- Bags of waste being left out on the highway after collections have been made
- Continued littering of local neighbourhoods
- Bins continuing to be left out and becoming targets for anti social behaviour, theft and arson.

It is also necessary to ensure occupiers manage their waste in a proper manner to maximise recycling and composting through using the facilities and services available to them thus ensuring the Council meets its recycling and landfill diversion targets.

The Council has so far adopted a low key approach though information and advice in an attempt to ensure occupiers manage their waste and remove bins from the highway after they have been emptied. Where occupiers do not pay fixed penalty notices, prosecution can lead to significant fines as outlined in this report.

10. Policy and Performance Agenda Implications

The failure to maximise recycling and ensure the diversion of waste from landfill could lead to the Council failing to meet its targets for waste in compliance with the Council's Waste Strategy and the National Waste Strategy.

The development of an enforcement policy relating to excess waste and bins being left out on the highway will contribute to delivering the priorities of the Community Strategy and Corporate Plan and demonstrate the importance of local environmental quality for ensuring that people are safe, confident and proud of their neighbourhoods. Alignment is clear from Rotherham Safe. The enforcement approach is clearly an aspect of the Corporate

Priorities 'Rotherham Safe', where the cleaner, greener agenda is set out, emphasising a preventative approach: and 'Rotherham Alive' where the public health agenda is laid out.

In addressing the Rotherham Safe priorities the enforcement approach contributes to delivering the following key strategic actions:

- Maintaining the current overall low crime rate in Rotherham, as well as continuing to address people's concerns about anti-social behaviour and their fear of crime
- Aiding the development of a sustainable housing stock.
- Supporting the Rotherham Renaissance Masterplan and reinforcing the town centre's role as a place for urban living
- Increasing satisfaction with local neighbourhoods.
- Making the connection between national and local strategies
- Providing a link between regional, national and local organisations

In addition an enforcement policy would contribute to the Sustainable Development cross-cutting theme by protecting and enhancing the environment, Rotherham Achieving by helping raise the quality of life in the most deprived communities and Rotherham Proud by increasing the satisfaction in the local area as a place to live and putting pride in the hearts of our communities.

The maintenance of quality local environments and mitigation against criminal damage has clear linkages to the seven outcomes of the Outcomes Framework for Social Care, and importantly includes:

- **Improved Quality of Life**, by supporting independence of people to live a fulfilled life
- **Freedom from Discrimination or Harassment**, by supporting *those who need social care having equal access to services without hindrance from discrimination or prejudice; people feel safe and are safeguarded from harm*
- **Improved Health and Emotional Well-being**, by promoting and facilitating the health and emotional well-being of people who use the services
- **Personal Dignity and Respect**, by providing confidential and secure services, which respects the individual and preserves people's dignity.

An enforcement approach would develop horizontal and vertical linkages to local and national strategies including amongst others the Enviro-Crime Strategy and RESPECT Agenda.

11. Background Papers and Consultation

Environmental Protection Act 1990, Sections 46, 47 and 86

Clean Neighbourhoods and Environment Act 2005

Highways Act 1980, Section 137, Part 5.

Enforcement Team, Environmental Services, Neighbourhoods and Adult Services

Legal and Democratic Services

Department for the Environment, Food and Rural Affairs.

Contact Name: Richard Waller, Non-Contentious Team Manager, Legal & Democratic Services, Tel. Ext. 3553, richard.waller@rotherham.gov.uk : Adrian Gabriel, Waste Strategy Manager, Environment and Development Services, Tel. Ext. 2100, adrian.gabriel@rotherham.gov.uk : Lewis Coates, Community Protection Manager, Tel. Ext 3117, lewis.coates@rotherham.gov.uk

PROPOSED COMPLIANCE PROCEDURES

Excess Waste & Bins Left out on the Highway

It is anticipated that the need for enforcement action will be relatively rare and only considered where a persistent problem is identified and other means of dealing with it have proved unsuccessful.

Prior to implementing enforcement action in relation to excess waste and bins being left in the street, the compliance procedures will be publicised in *Rotherham News* and in the local media.

Officers with delegated authority to investigate offences under s.46 of the Environmental Protection Act 1990 and s.137 (1) of the Highways Act 1980, will conduct interviews under caution with occupier(s) who have allegedly breached the terms of a s.46 notice or committed an offence under s.137 (1) by obstructing the highway without lawful authority or excuse.

The Safer Neighbourhoods Manager will be delegated to authorise prosecutions under s.46 and s.137 (1) in appropriate cases.

A1.1 Excess Waste

Where excess waste has been persistently left at the side or on top of the wheeled bin, it is proposed that the procedure will be as follows.

- 1. Occupier(s) who persistently leave waste** at the side or on top of their bin will be served with a s.46 notice and provided with information and advice on dealing with their waste in accordance with the format below.
- 2. On the first visit** after the s.46 notice has been issued, excess waste will be placed back in the bin and a yellow sticker will be placed on the bin by the refuse collection crew asking the occupier not to overfill the bin. It will inform the occupier(s) that the excess waste has been placed back in the bin and that it is an offence to leave waste on the top or at the side of the bin. The sticker will also provide information on the fixed penalty.
- 3. On the second visit** waste will again be placed back in the bin and a red final warning sticker will be placed on the bin by the refuse collection crew. The sticker will repeat the information in the yellow sticker. This will be a final reminder to the occupier(s) that waste left at the side or on top of the bin will not be collected.
- 4. If the occupier(s) continue** to place waste at the side or on top of the bin an Officer will serve the occupier(s) with a fixed penalty notice under section 47ZA (fixed penalty notices for offences under sections 46 and 47) for breach of section 46 (1) or 47 (1), that is to say for failing to deposit waste for collection in the specified wheeled bin or bins.

A1.2 Bins left on the Highway

Under normal circumstances occupiers place their grey/green wheeled bin, blue box and bag on the pavement outside their properties either the night before or on the scheduled

collection day. The bin should then be returned to the property by the occupier as soon as reasonably practicable after it has been emptied. Some occupiers are persistently leaving their wheeled bins on the pavement all the time with the result that pavements are obstructed, bins are stolen and, in extreme cases, set on fire.

Where the occupier(s) continually leave their wheeled bin in the street, the procedure will be as follows.

1. **Occupier(s) who persistently leave their emptied bin in the street** will be served with a s.46 notice, specifying the period during which the bin can be placed on the street for collection, and also with a section 137 (1) notice advising them that leaving the bin on the street outside the specified period is an obstruction of the highway. The occupier(s) will be advised of the offences and penalties under s46 and s137 (1).
2. **On the first visit** after the issued s.46 notice and s.137 (1) notice have been served, an initial letter will be sent to occupier(s) to remind them of the need to remove their bin promptly after collection. In addition a yellow sticker will be placed on the bin informing them that the bin has been left out for an unreasonable period. The sticker will contain information on the fixed penalty under s.46 and the s.137 (1) penalty.
3. **On the second visit** a red final warning sticker will be placed on the bin repeating the information in the yellow sticker. This will be a final reminder to the occupier(s) that leaving the bin in the street for an unreasonable period after collection is in breach of s.46 and an offence under s.137 (1).
4. **If the occupier(s) continues** the person responsible for breaching the s.46 notice will be served with a fixed penalty notice of £100 and the Assistant Chief Executive (Legal and Democratic Services) instructed to prosecute for non-payment of the penalty and obstruction of the highway under s137 (1).

ROTHERHAM BOROUGH COUNCIL- REPORT TO MEMBERS

1.	Meeting:	CABINET MEMBER FOR STREETPRIDE SERVICES
2.	Date:	13TH JULY, 2009
3.	Title:	PETITION REGARDING CONDITION OF PUBLIC FOOTPATH WENTWORTH no. 20
4.	Programme Area:	ENVIRONMENT AND DEVELOPMENT SERVICES

5. Summary

The report summarises the issues of the line of Public Footpath No. 20 in Wentworth and the condition of it's surface, which are the subject of a petition received from path users.

6. Recommendations

That it be resolved:

a) to pursue a diversion order for a section of Wentworth Footpath 20 and, following confirmation of the order, to carry out necessary improvements to the surface of the new section, and

b) to inform the lead petitioner of the proposed course of action to address user concerns.

7. Proposals and details

A petition with 371 signatures has been received from alleged users of the Public Footpath stating that,

'Wentworth Park gates before Feb 05 were wicket gates not kissing gates and gave access to wheelchairs etc. and a dry even public footpath'.

A letter from a Mr James Campbell accompanied the petition requesting that the surface of the non-definitive footpath used by the public running adjacent to Wentworth Footpath 20 be improved as it is wet and uneven.

The section of path in question is not recorded on the Definitive Map of public rights of way, but it is being used by the public in preference to the recorded route. Indeed, it is likely that many users do not realise this is not the definitive route. The lines of the two paths are shown on the attached plan.

Due to financial resource limitations, it is an informal policy of the Rights of Way Team not to carry out maintenance works on unrecorded paths. This is because resources need to be used to maintain those paths we have a statutory duty to maintain and any expenditure on a claimed path could be a waste of resources if the path was not subsequently added to the definitive map.

A claim that the route is a public footpath has been made (by Mr Campbell) in March 2007 and user evidence provided to support it. The review of Wentworth Parish is unlikely to take place for around 5 or 6 years as it is part of a programmed Parish review schedule. Mr Campbell has been made aware of this by letter on at least 3 occasions since September 2007. This would mean that the status of this section of path would remain undefined for at least that time. If an order made to add it to the map received objections then it could take much longer. For all this time, the public will be continuing to use the route and the surfacing issues may become worse. This would appear to be an unreasonable length of time before action could be considered.

There are a number of options that could be considered:

- Do nothing – the path is very well used and few complaints have been made about it's condition.
- Seek landowner permission to improve the walked line – this is unlikely to be acceptable to them.
- Improve the definitive line – this would enable more extensive use by those with a mobility handicap but the majority of able-bodied users would continue as present.
- Allow the claimed line to be added to the definitive map at Review (creating duplicate paths).
- Seek to divert the definitive line of the path onto the desire line of users.

This last option would then effectively record the route preferred by the public and enable maintenance works to be carried out to improve the drainage and surface

of that section of path. This would resolve the issue in its entirety and be much quicker than awaiting the determination of the claim.

8. Finance

The costs of the diversion order and any subsequent maintenance works can be met from the Public Rights of Way revenue budget.

9. Risks and Uncertainties

The diversion order process is open to public objection, so objections to the diversion proposal may be received. However, an informal pre-order consultation will be carried out, so that any issues raised can be addressed before the order is made.

10. Policy and Performance Agenda implications

Alive – Improvement of the surface of this footpath link will contribute to the objectives of broadening access to the countryside contained within the Rights of Way Improvement Plan thereby encouraging healthy leisure activities.

Safe – The proposals would help to make local facilities more accessible and are part of an overall approach to minimise hazards to users.

Fairness – The proposals would help to reduce inequality by making the path easier to use by the less able.

11. Background papers and consultation

A copy of the petition and letter received are attached to this report.
A plan showing the lines of the paths is attached.

12. Contact name:

Clare McRoy, Rights of Way Officer, ext. 2935
email:clare.mcroy@rotherham.gov.uk

Title: Wentworth Footpath no.20

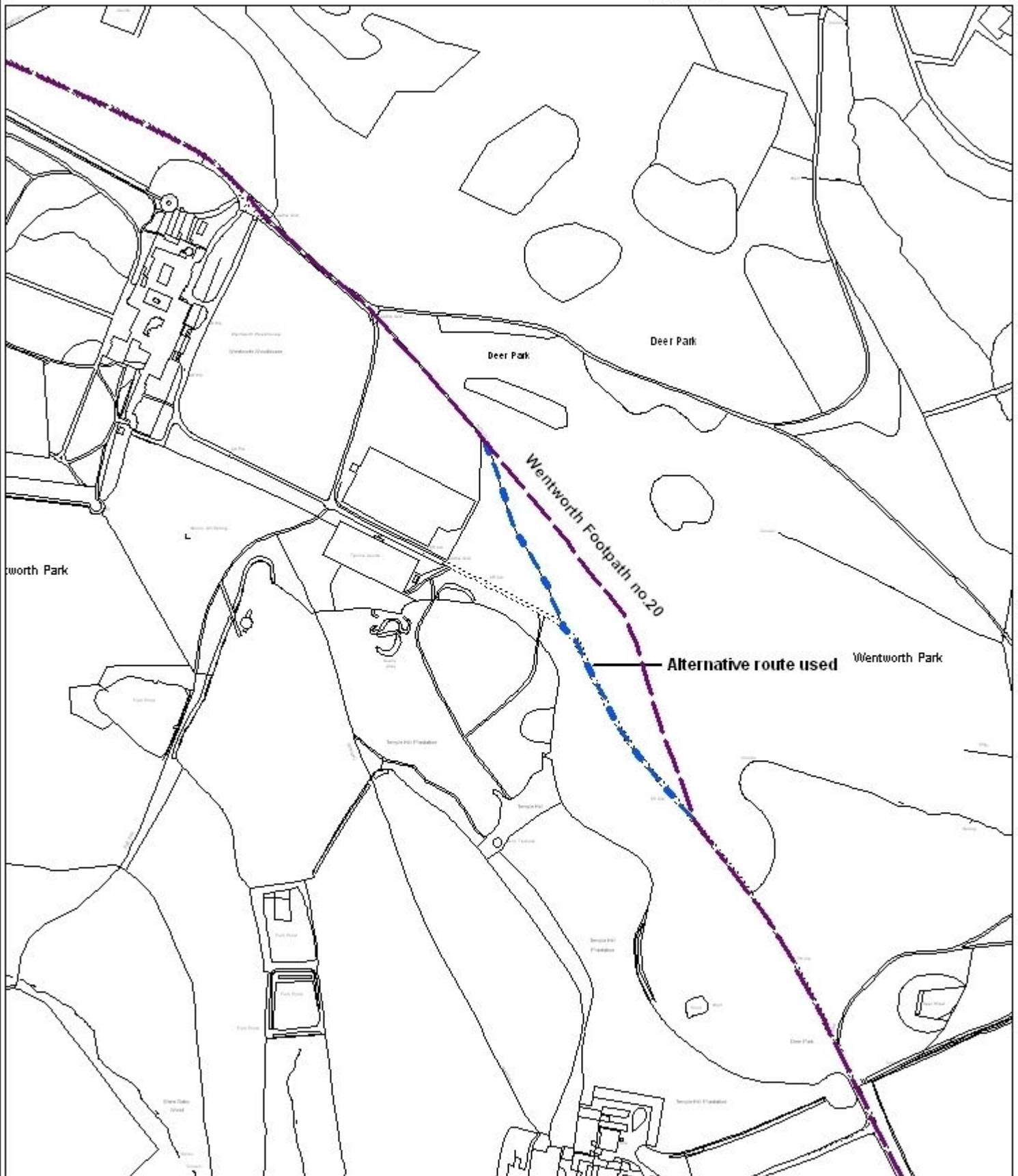
Dwg No: W F20

Parish/Ward: Hooper

Scale 1:5000

Grid Ref: SK 400 974

Rotherham MBC
Environment & Devt Service
Bailey House
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Public Footpath

KEY

Alternative Route

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